

ST. THOMAS AREA SECONDARY WATER SUPPLY SYSTEM

JOINT BOARD OF MANAGEMENT

Thursday, May 24, 2018 at 4:00 p.m.

City Hall – Room 415

AGENDA

DISCLOSURES OF INTEREST

Minutes

Review and approval of the minutes of February 22, 2018

Reports

1. SWB02-18 – St. Thomas Area Secondary Water Supply Agreement from the Elgin Primary Water System.

Unfinished Business

New Business

1. Election of Chair and Vice Chair noting that the Chair has to be from St. Thomas and the Vice Chair will be from either Southwold or Central Elgin for this year.

Adjournment



Corporation of the
City of St. Thomas

Report No.
SWB02-18

File No.

Directed to: Councillor Jeff Kohler and Members of The Board of Management for The St. Thomas Area Secondary Water Supply System

Meeting Date: May 24, 2018
Date Authored: May 3, 2018

Department: Environmental Services

Attachments

Prepared By: Justin Lawrence
Director, Environmental Services, City Engineer

#1 – Water Supply Agreement

Subject: St. Thomas Area Secondary Water Supply Agreement from the Elgin Primary Water System

Recommendation:

THAT: Report SWB02-18, St. Thomas Area Secondary Water Supply Agreement from the Elgin Primary Water System, be received for information; and further

THAT: The Chair and Secretary for the St. Thomas Area Secondary Water Supply System, be authorized to sign the agreement on behalf of the Joint Board of Management to formalize the current process.

Origin:

The St.Thomas Secondary system, Dutton-Dunwich, and the Township of Southwold have been receiving their water supply from the Elgin Primary system for many years. In an effort to formalize this water supply arrangement an agreement has been created.

Analysis:

The proposed agreement is a typical agreement for the supply of water for every municipality off the Elgin/Huron Primary Systems. The St.Thomas distribution system will be signing a similar agreement in the near future.

It has been noted in previous internal and external water audits that a formal supply agreement should be created. The annual water rate reviews and approvals can set future rates and are not restricted by this agreement.

A copy of the draft agreement is attached for information.

This agreement has been reviewed in detail by staff and the legal counsel of all parties.

Respectfully Submitted,

Justin Lawrence,
Director, Environmental Services, City Engineer

Reviewed By: _____
Treasury Env Services Planning City Clerk HR Other

**Dutton Dunwich, Southwold, and
St. Thomas Secondary Water System
Water Supply Agreement**

THIS AGREEMENT made in quadruplicate the ____ day of ____, 2018

BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF DUTTON DUNWICH
(herein after referred to as "Dutton Dunwich")

AND

THE CORPORATION OF THE TOWNSHIP OF SOUTHWOLD
(herein after referred to as "Southwold")

AND

THE JOINT BOARD OF MANAGEMENT
OF THE ST. THOMAS SECONDARY WATER SUPPLY SYSTEM
as represented by its Administering Municipality
The Corporation of the City of St. Thomas
(herein after referred to as "St. Thomas Secondary Board")

AND

THE JOINT BOARD OF MANAGEMENT
OF THE ELGIN AREA PRIMARY WATER SUPPLY SYSTEM
as represented by its Administering Municipality
The Corporation of the City of London
(herein after referred to as "Elgin Board")

WHEREAS the Elgin Area Primary Water Supply System supplies treated potable drinking water to the St. Thomas Secondary Water Supply System from a terminal reservoir located near the City of St. Thomas;

AND WHEREAS the St. Thomas Secondary Water Supply System supplies potable drinking water to the City of St. Thomas, the Municipality of Central Elgin, and the Township of Southwold from a booster pump station located at the terminal reservoir site owned by the Elgin Board located near the City of St. Thomas;

AND WHEREAS Dutton Dunwich has requested and the Elgin Board has consented to a connection of the Dutton Dunwich water distribution system to the Elgin Area Primary Water Supply System, via the Township of Southwold water distribution system and the St. Thomas Secondary Water Supply System, and to the purchase and supply of water from the Elgin Area Primary Water Supply System, subject to the terms of this Agreement;

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:

Article 1 INTERPRETATION

1.1 Definitions:

- "**Business Day**" means a day other than any holiday as defined in the *Interpretation Act* (Ontario) and Boxing Day.
- "**Central Elgin**" means the Municipality of Central Elgin
- "**Dutton Dunwich**" means the Municipality of Dutton Dunwich
- "**Dutton Dunwich Connection Point**" means the point of physical connection of the waterworks belonging to the Municipality of Dutton Dunwich and the waterworks belonging to the Township of Southwold near the community of Iona. For the purpose of clarity, the pre-existing connection may be referred to as the "Iona Connection Point".
- "**Dutton Dunwich Distribution System**" means the water pipelines, booster pumping stations, reservoirs, elevated water towers, and associated equipment and works belonging to the Municipality of Dutton Dunwich.
- "**Elgin Board**" means the Joint Board of Management of the Elgin Area Primary Water Supply System and/or its Administering Municipality, The Corporation of the City of London.
- "**Elgin Facility**" means the water treatment plant belonging to the Elgin Area Primary Water Supply System.
- "**Elgin Transmission System**" means the water pipelines, reservoirs, and associated equipment and works belonging to the Elgin Area Primary Water Supply System from the Elgin Facilities up to and including the terminal reservoir near St. Thomas, which pre-exist as of the date of this Agreement.
- "**Meter**" means the meter installed in a chamber adjacent to the pipeline at the Connection Point for the purpose of measuring the total flow of water pumped through the interconnection to the water distribution system of the St. Thomas Secondary System or the benefitting municipality.
- "**Rate for Water**" means the total of:
- (i) "**Primary Rate**" means the rate of 80.47cents (\$0.8047) per cubic metre at the time of executing this agreement, or such other rate as determined from time to time by the Elgin Board expressed in cents per cubic metre, which is charged to the benefitting municipalities and Secondary Water Supply Systems supplied by the Elgin Area Primary Water Supply System;
 - (ii) "**Secondary Rate**" means the rate of 43.36cents (\$0.4336) per cubic metre, or such other rate as determined from time to time by the St. Thomas Secondary Water Supply System Board of Management, expressed in cents per cubic metre, which is charged to the benefitting municipalities of the St. Thomas Secondary System; and,

- (iii) **"Tertiary Rate"** means the rate of 27.50 cents (\$0.275) per cubic metre, or such other rate as determined from time to time by the Township of Southwold which is charged to Dutton Dunwich.

"St. Thomas" means the City of St. Thomas

"St. Thomas Secondary Board" means the Joint Board of Management of the St. Thomas Secondary Water Supply System and/or its Administering Municipality, The Corporation of the City of St. Thomas.

"St. Thomas Secondary Connection Point" means the point of physical connection of the waterworks belonging to the St. Thomas Secondary System and the waterworks belonging to the Elgin Area Primary Water Supply System in the Municipality of Central Elgin.

"St. Thomas Secondary System" means the Meter, metering chambers, valve chambers, pipelines, booster pumping station, secondary disinfection systems and equipment, and associated equipment and works as necessary and belonging to the St. Thomas Secondary Water Supply System from the Elgin Transmission System up to the Connection Point to the Township of Southwold water distribution system.

"Southwold" means the Township of Southwold

"Southwold Connection Point" means the point of physical connection of the waterworks belonging to the Township of Southwold and the waterworks belonging to the St. Thomas Secondary Water Supply System in the Municipality of Central Elgin.

"Southwold Distribution System" means the water pipelines, booster pumping stations, reservoirs, elevated water towers, and associated equipment and works belonging to the Township of Southwold.

"Treated Water" means the water that is treated at the Elgin Facility.

"Uncontrollable Circumstance" means any event or condition which materially alters the rights and obligations of the Parties under this Agreement, or the management, operation or maintenance of the Elgin Facility, the Elgin Transmission System, the St. Thomas Secondary System, the Southwold Distribution System, or the Dutton Dunwich Distribution System, which is beyond the reasonable control of or could not reasonably be anticipated by the Party relying thereon as justification for a delay in or non-performance of any obligation of such Party pursuant to this Agreement and shall include but not be limited to:

- (i) an act of God, landslide, lightning, earthquake, hurricane, flood, tornado or other natural disaster, fire, explosion, acts of public enemy, terrorism, war, blockade, sabotage, insurrection, riot or public disturbance;
- (ii) an order of any court, administrative or governmental agency of competent jurisdiction which has not been made as a result directly or indirectly of the actions or inaction of the Elgin Board, St. Thomas Board, Southwold, or Dutton Dunwich. This specific provision shall be construed strictly against the Party seeking to so rely to excuse non-performance or delay;

- (iii) a Change of Laws. This specific provision be construed strictly against the Party seeking to so rely to excuse non-performance or delay;
- (iv) loss or inability to obtain service from a utility;
- (v) provided, however, that a failure by a Party to perform its obligations under this Agreement arising from or related to such Party's insufficient cash flow or its economic or financial condition generally, shall not constitute an Uncontrollable Circumstance;

"Volume Charge" means the volume charge as defined in Subsection 3.1.

- 1.2 **Scope.** The scope of this agreement is limited to the supply of treated potable drinking water to the Municipality of Dutton Dunwich, via the waterworks owned by the Township of Southwold, via the waterworks owned by the St. Thomas Secondary Board, from the Elgin Area Primary Water Supply System.
- 1.3 **Previous Agreements.** The Parties hereby acknowledge and agree that this agreement supersedes and replaces the **Southwold – West Elgin System Interconnection and Water Supply Agreement**, dated July 30, 2003.

Article 2 DUTIES AND SERVICES IN PROVIDING WATER

- 2.1 **Duties of the Elgin Board.** The Elgin Board agrees:
 - 2.1.1 *Water Supply* - to supply water to the St. Thomas Secondary System, which in turn supplies water to its benefiting municipalities (currently being St. Thomas, Central Elgin, and Southwold), and Dutton Dunwich Distribution System on the terms and conditions hereinafter set forth in this Agreement;
 - 2.1.2 *Water Quality* - to supply water within the jurisdiction of the Elgin Board of a quality equivalent to or better than that required by the *Safe Drinking Water Act, 2002*, as amended and Regulations made thereunder, or such other standards as may be legislated;
 - 2.1.2.1 Notwithstanding clause 2.1.2, the Elgin Board assumes no responsibility for the degradation of water quality as a result of the transportation and distribution of supplied water within the St. Thomas Secondary System, Southwold Distribution System, or Dutton Dunwich Distribution system, except for those water quality parameters that are directly in the control of the Elgin Board and not affected by such transportation;
 - 2.1.3 *Delivery Point* - to deliver the water supplied hereunder at the St. Thomas Secondary Connection Point as shall be determined from time to time by the Elgin Board in consultation with the St. Thomas Secondary System. For the purpose of this agreement, at the time of execution, the Connection Point is identified in Schedule A of this agreement;
 - 2.1.4 *Water Quantity* - to deliver such quantity of water as St. Thomas Secondary System may require, save and except in an emergency situation as determined by the Elgin Board.

- 2.1.5 *Volume Metering* - to install, maintain, repair, inspect, test, and alter such equipment as may be necessary for the purpose of recording the volume or rate of flow of water supplied and delivered to the St. Thomas Secondary System at the St. Thomas Connection Point.
- 2.1.6 *Flow Control* - to install, maintain, repair, inspect, alter and test such equipment, including necessary alarms, as may be required for the purpose of controlling the flow of water through the Meter, including the remote control of such equipment from the Elgin Facility if and as required.
- 2.1.7 *Monthly Reporting* - to record the readings from the Meter monthly for the purpose of calculating the monthly volume of water supplied and delivered to the St. Thomas Secondary System at the St. Thomas Connection Point.
- 2.1.8 *Meter Calibration* - to carry out the calibration of the Meter annually, and as required by applicable legislation, Certificate of Approval, licence and/or permit.
- 2.1.9 *Meter Maintenance* - to maintain the Meter at a frequency of not less than that recommended in the literature published by the manufacturer of the Meter.
- 2.1.10 *Calibration Reporting* - to provide the results of all calibration testing of the Meter to St. Thomas Secondary System upon request.
- 2.2 **Duties of St. Thomas Secondary Board.** St. Thomas Secondary Board agrees:
 - 2.2.1 *Access* - to permit the Elgin Board, its Operating Authority, or its designate, access to the Meter, the St. Thomas Connection Point, and associated valves and equipment at the Meter chamber and Connection Point for the purposes of reading, testing, maintaining, inspecting, repairing, calibrating, or altering such equipment as necessary.
 - 2.2.2 *Payment* - to pay all applicable charges in accordance with Section 5.1 of this agreement.
 - 2.2.3 *Water Supply* - to supply water to Southwold Distribution System, which in turn supplies water to Dutton Dunwich Distribution System, on the terms and conditions hereinafter set forth in this Agreement;
 - 2.2.4 *Water Quality* - to supply water within the jurisdiction of the St. Thomas Secondary Board of a quality equivalent to or better than that required by the *Safe Drinking Water Act, 2002*, as amended and Regulations made there under, or such other standards as may be legislated;
 - 2.2.4.1 Notwithstanding clause 2.1.2, the St. Thomas Secondary Board assumes no responsibility for degraded water quality which may result from the transportation and distribution of supplied water within the Southwold Distribution System or Dutton Dunwich Distribution system, except for those water quality parameters that are directly in the control of the St. Thomas Secondary Board;

- 2.2.5 *Delivery Point and Pressure* - to deliver the water supplied hereunder at the Southwold Connection Point and at such pressures as shall be determined from time to time by the St. Thomas Secondary Board in consultation with Southwold and Dutton Dunwich. For the purpose of this agreement, at the time of execution, the Connection Point is identified in Schedule A of this agreement;
- 2.2.6 *Water Quantity* - to deliver such quantity of water as Southwold and Dutton Dunwich may require, save and except in an emergency situation as determined by the St. Thomas Secondary Board.
- 2.2.7 *Volume Metering* - to install, maintain, repair, inspect, test, and alter such equipment as may be necessary for the purpose of recording the volume or rate of flow of water supplied and delivered to the Southwold Distribution System at the Southwold Connection Point.
- 2.2.8 *Flow Control* - to install, maintain, repair, inspect, alter and test such equipment, including necessary alarms, as may be required for the purpose of controlling the flow of water through the Meter, including the remote control of such equipment from the St. Thomas Secondary System if and as required.
- 2.2.9 *Monthly Reporting* - to record the readings from the Meter monthly for the purpose of calculating the monthly volume of water supplied and delivered to the Southwold Distribution System at the Southwold Connection Point.
- 2.2.10 *Meter Calibration* - to carry out the calibration of the Meter annually, and as required by applicable legislation, Certificate of Approval, licence and/or permit.
- 2.2.11 *Meter Maintenance* - to maintain the Meter at a frequency of not less than that recommended in the literature published by the manufacturer of the Meter.
- 2.2.12 *Calibration Reporting* - to provide the results of all calibration testing of the Meter to Southwold upon request.
- 2.3 **Duties of Southwold.** Southwold agrees:
- 2.3.1 *Access* - to permit the St. Thomas Secondary Board, its Operating Authority, or its designate, access to the Meter, the Southwold Connection Point, and associated valves and equipment at the Meter chamber and Connection Point for the purposes of reading, testing, maintaining, inspecting, repairing, calibrating, or altering such equipment as necessary.
- 2.3.2 *Payment* - to pay all applicable charges in accordance with Section 4.1 of this agreement.
- 2.3.3 *Water Supply* - to supply water to the Dutton Dunwich Distribution System on the terms and conditions hereinafter set forth in this Agreement;
- 2.3.4 *Water Quality* - to supply water within the jurisdiction of Southwold of a quality equivalent to or better than that required by the *Safe Drinking Water Act, 2002*, as amended and Regulations made there under, or such other standards as may be legislated;

- 2.3.4.1 Notwithstanding clause 2.1.2, Southwold assumes no responsibility for degraded water quality which may result from the transportation and distribution of supplied water within the Dutton Dunwich Distribution system, except for those water quality parameters that are directly in the control of Southwold;
- 2.3.5 *Delivery Point and Pressure* - to deliver the water supplied hereunder at the Dutton Dunwich Connection Point and at such pressures as shall be determined from time to time by Southwold in consultation with Dutton Dunwich. For the purpose of this agreement, at the time of execution, the Connection Point is identified in Schedule A of this agreement;
- 2.3.6 *Water Quantity* - to deliver such quantity of water as Dutton Dunwich may require, save and except in an emergency situation as determined by Southwold.
- 2.3.7 *Volume Metering* - to install, maintain, repair, inspect, test, and alter such equipment as may be necessary for the purpose of recording the volume or rate of flow of water supplied and delivered to the Dutton Dunwich Distribution System at the Dutton Dunwich Connection Point.
- 2.3.8 *Flow Control* - to install, maintain, repair, inspect, alter and test such equipment, including necessary alarms, as may be required for the purpose of controlling the flow of water through the Meter, including the remote control of such equipment from the Southwold Distribution System if and as required.
- 2.3.9 *Monthly Reporting* - to record the readings from the Meter monthly for the purpose of calculating the monthly volume of water supplied and delivered to the Dutton Dunwich Distribution System at the Dutton Dunwich Connection Point.
- 2.3.10 *Meter Calibration* - to carry out the calibration of the Meter annually, and as required by applicable legislation, Certificate of Approval, licence and/or permit.
- 2.3.11 *Meter Maintenance* - to maintain the Meter at a frequency of not less than that recommended in the literature published by the manufacturer of the Meter.
- 2.3.12 *Calibration Reporting* - to provide the results of all calibration testing of the Meter to Dutton Dunwich upon request
- 2.4 **Dutton Dunwich.** Dutton Dunwich agrees:
- 2.4.1 *Access* - to permit Southwold, its Operating Authority, or its designate, access to the Meter, the Dutton Dunwich Connection Point, and associated valves and equipment at the Meter chamber and Connection Point for the purposes of reading, testing, maintaining, inspecting, repairing, calibrating, or altering such equipment as necessary.
- 2.4.2 *Payment* - to pay all charges in accordance with Section 3.1 of this agreement.

2.5 No Obligation To Act Where Detrimental.

2.5.1 *Substandard system* - No provision of this Agreement creates any obligation, express or implied on the Elgin Board, to supply water hereunder through a system that, in the opinion of the Elgin Board or their designates, has not been constructed or is not being operated in accordance with good engineering or operational principles or practices.

No provision of this Agreement creates any obligation, express or implied on the St. Thomas Secondary Board or Southwold, to transmit water hereunder through a system that, in the opinion of the St. Thomas Secondary Board or Southwold or their designates, has not been constructed or is not being operated in accordance with good engineering or operational principles or practices.

2.5.2 *Elgin systems* - Without restricting the generality of the forgoing, nothing herein contained creates an obligation, express or implied, to enlarge or extend, or modify the Elgin Facility, the Elgin Transmission System, or the St. Thomas Secondary System if in the opinion of the Elgin Board or its designate, the effect of such enlargement, extension, alteration or modification could be detrimental to the St. Thomas Secondary System, the Elgin Transmission System, the Elgin Facility or its source of supply.

2.6 Temporary Shut Down

2.6.1 *Elgin Facility* - The Elgin Board shall have the right, after reasonable notice has been given to the St. Thomas Secondary Board, Southwold, and Dutton Dunwich, to discontinue the delivery of water provided that such discontinuance shall be of a minimum duration, if the Elgin Board, or its designate, in its discretion determines that:

- (i) An emergency exists, namely that a substantial interruption or reduction, whether actual or potential, in the supply and delivery of water to the St. Thomas Secondary System, Southwold Distribution System, and Dutton Dunwich Distribution System could leave users without drinking water; or,
- (ii) Such discontinuance is necessary for the operation, enlargement, modification, alteration, repair or replacement of equipment.

2.6.2 *St. Thomas Secondary System* - The St. Thomas Secondary Board shall have the right, after reasonable notice has been given to Southwold, and Dutton Dunwich, to discontinue the delivery of water provided that such discontinuance shall be of a minimum duration, if the St. Thomas Secondary Board, or its designate, in its discretion determines that:

- (i) An emergency exists, namely that a substantial interruption or reduction, whether actual or potential, in the supply and delivery of water to the Southwold Distribution System, and Dutton Dunwich Distribution System could leave users without drinking water; or,
- (ii) Such discontinuance is necessary for the operation, enlargement, modification, alteration, repair or replacement of equipment.

2.6.3 *Southwold Distribution System* - Southwold shall have the right, after reasonable notice has been given to Dutton Dunwich, to discontinue the delivery of water provided that

such discontinuance shall be of a minimum duration, if Southwold, or its designate, in its discretion determines that:

- (i) An emergency exists, namely that a substantial interruption or reduction, whether actual or potential, in the supply and delivery of water to the Dutton Dunwich Distribution System could leave users without drinking water; or,
- (ii) Such discontinuance is necessary for the operation, enlargement, modification, alteration, repair or replacement of equipment.

2.7 **Curtailement of Water Usage** - In the event of an emergency in the area supplied by the Elgin Board, St. Thomas Secondary Board, Southwold and Dutton Dunwich agrees that any unnecessary usage of water in the area supplied by the St. Thomas Secondary System, Southwold Distribution System, and Dutton Dunwich Distribution System shall be curtailed.

Article 3

DUTTON DUNWICH - CHARGES, RATE, INVOICING AND REPORTS

3.1 Volume Charges

- 3.1.1 *Obligation for charge* - Dutton Dunwich shall pay to Southwold or its designate all charges for water supplied and delivered hereunder which shall be in accordance with the Volume Charges as set out in Subsection 3.1.2.
- 3.1.2 *Volume Charge* - Subject to the other provisions of this section, the volume charge for water supplied and delivered to the Dutton Dunwich Distribution System at the Connection Point for a month shall be equal to the product achieved by multiplying the Rate for Water and the total volume of water passing through the Connection Point in such month as determined by Southwold or its designate.
 - 3.1.2.1 Dutton Dunwich further agrees to take a minimum volume equivalent to 400 cubic meters per day, averaged over a period of one month.
- 3.1.3 *Monthly Invoice* - Such Volume Charge shall be paid by Dutton Dunwich to Southwold or its designate in accordance with its monthly statement of account delivered to the Dutton Dunwich Distribution System at the Connection Point.
- 3.1.4 *Estimated Volume* - In the event that Southwold or its designate determines that the supply and delivery of water to the Dutton Dunwich Distribution System at the Connection Point has not been recorded or has not been recorded accurately for any period of time, Southwold or its designate shall estimate the volume of water supplied and delivered to Dutton Dunwich at the Connection Point during such period of time and such determination and estimation made on a reasonable basis shall, if disputed, be subject to the Elgin Board's Dispute Resolution process.

3.1.5 *Charge for Elgin Facility and Elgin Transmission System Capacity* - Dutton Dunwich will pay to the Elgin Board a Buy-in charge, consistent with the terms of the New Connection Policy of the Elgin Board, representing Dutton Dunwich's proportionate share of the depreciated value of the Elgin Facility and Elgin Transmission system (LESS the outstanding debt of the Elgin Facility and Elgin Transmission system) in proportion to their Maximum Day Demand for the supplied area of Dutton Dunwich (currently estimated at 571.4 m³/d) to the Elgin Facility capacity (currently estimated at 91,000 m³/d) and as mutually agreed between the parties.

The Parties hereby agree that the Buy-in Charge, consistent with the terms of the New Connection Policy and Elgin's approved rate of \$441/m³, is **\$252,000**.

3.1.6 The Parties agree that the payment of the charge outlined in 3.1.5 above is not the purchase of explicit system capacity of the Elgin System which is solely owned by Dutton Dunwich.

3.2 Invoicing.

3.2.1 *Payment* - Dutton Dunwich shall pay all amounts payable hereunder within fifteen (15) Business Days after the delivery of the statement of account.

3.2.1.1 *Payment of Buy-in Charge* - Dutton Dunwich shall pay the Buy-in Charge outlined in 3.1.5 above over a ten (10) year term, starting on the effective date of this Agreement, with interest at the bank prime lending rate LESS 1.53%.

3.2.2 *Incorrect Invoice* - If any error or omission is made in any notification or statement of account delivered to Dutton Dunwich under this agreement, Southwold or its designate shall correct such error or omission in the notification or statement of account within five (5) Business Days following the date on which such error or omission comes to the attention of Southwold or its designate and the parties hereto shall be bound and shall comply with such correction.

3.3 **Reports** - Dutton Dunwich shall supply to the Elgin Board, the St. Thomas Secondary Board, Southwold, or their respective designate upon request at any time or times such other written reports or information as the Elgin Board, St. Thomas Secondary Board, Southwold or their respective designate may reasonably require for the benefit of itself for the proper administration of the delivery of services pursuant to this Agreement.

Article 4

SOUTHWOLD - CHARGES, RATE, INVOICING AND REPORTS

4.1 Volume Charges

4.1.1 *Obligation for charge* - Southwold shall pay to the St. Thomas Secondary Board or its designate all charges for water supplied and delivered hereunder which shall be in accordance with the Volume Charges as set out in Subsection 4.1.2.

4.1.2 *Volume Charge* - Subject to the other provisions of this section, the volume charge for water supplied and delivered to the Southwold Distribution System at the Connection

Point for a month shall be equal to the product achieved by multiplying the Rate for Water and the total volume of water passing through the Connection Point in such month as determined by the St. Thomas Secondary Board or its designate.

- 4.1.3 *Monthly Invoice* - Such Volume Charge shall be paid by Southwold to the St. Thomas Secondary Board or its designate in accordance with its monthly statement of account delivered to the Southwold Distribution System at the Connection Point.
- 4.1.4 *Estimated Volume* - In the event that the St. Thomas Secondary Board or its designate determines that the supply and delivery of water to the Southwold Distribution System at the Connection Point has not been recorded or has not been recorded accurately for any period of time, the St. Thomas Secondary Board or its designate shall estimate the volume of water supplied and delivered to Southwold at the Connection Point during such period of time and such determination and estimation made on a reasonable basis shall, if disputed, be subject to the Elgin Board's Dispute Resolution process.

4.2 Invoicing.

- 4.2.1 *Payment* - Southwold shall pay all amounts payable hereunder within fifteen (15) Business Days after the delivery of the statement of account.
- 4.2.2 *Incorrect Invoice* - If any error or omission is made in any notification or statement of account delivered to Southwold under this agreement, the St. Thomas Secondary Board or its designate shall correct such error or omission in the notification or statement of account within five (5) Business Days following the date on which such error or omission comes to the attention of the St. Thomas Secondary Board or its designate and the parties hereto shall be bound and shall comply with such correction.
- 4.3 **Reports** - Southwold shall supply to the Elgin Board, the St. Thomas Secondary Board or their respective designate upon request at any time or times such other written reports or information as the Elgin Board, the St. Thomas Secondary Board or their respective designate may reasonably require for the benefit of itself for the proper administration of the delivery of services pursuant to this Agreement.

Article 5 ST. THOMAS SECONDARY BOARD - CHARGES, RATE, INVOICING AND REPORTS

5.1 Volume Charges

- 5.1.1 *Obligation for charge* - St. Thomas Secondary Board shall pay to the Elgin Board or its designate all charges for water supplied and delivered hereunder which shall be in accordance with the Volume Charges as set out in Subsection 5.1.2.
- 5.1.2 *Volume Charge* - Subject to the other provisions of this section, the volume charge for water supplied and delivered to the St. Thomas Secondary System at the Connection Point for a month shall be equal to the product achieved by multiplying the Rate for Water and the total volume of water passing through the Connection Point in such month as determined by the Elgin Board or its designate.

- 5.1.3 *Monthly Invoice* - Such Volume Charge shall be paid by St. Thomas Secondary Board to the Elgin Board or its designate in accordance with its monthly statement of account delivered to the St. Thomas Secondary System at the Connection Point.
- 5.1.4 *Estimated Volume* - In the event that the Elgin Board or its designate determines that the supply and delivery of water to the St. Thomas Secondary System at the Connection Point has not been recorded or has not been recorded accurately for any period of time, the Elgin Board or its designate shall estimate the volume of water supplied and delivered to the St. Thomas Secondary System at the Connection Point during such period of time and such determination and estimation made on a reasonable basis shall, if disputed, be subject to the Elgin Board's Dispute Resolution process.
- 5.2 Invoicing.**
- 5.2.1 *Payment* - St. Thomas Secondary Board shall pay all amounts payable hereunder within fifteen (15) Business Days after the delivery of the statement of account.
- 5.2.2 *Incorrect Invoice.* If any error or omission is made in any notification or statement of account delivered to St. Thomas Secondary System under this agreement, the Elgin Board or its designate shall correct such error or omission in the notification or statement of account within five (5) Business Days following the date on which such error or omission comes to the attention of the Elgin Board or its designate and the parties hereto shall be bound and shall comply with such correction.
- 5.3 **Reports.** St. Thomas Secondary Board shall supply to the Elgin Board, or its designate upon request at any time or times such other written reports or information as the Elgin Board or its designate may reasonably require for the benefit of itself for the proper administration of the delivery of services pursuant to this Agreement.

Article 6 REPRESENTATIONS, WARRANTIES AND COVENANTS

- 6.1 Representations, Warranties and Covenants of Dutton Dunwich**
- 6.1.1 *Authority to Contract* - Dutton Dunwich warrants that it has the power and authority to enter into and carry out all of its obligations under this Agreement.
- 6.1.2 *Construction and Maintenance* - Dutton Dunwich covenants and agrees to construct, repair, maintain, and keep in a good state of repair and in accordance with good engineering practice and applicable laws, certificates of approval, licence and/or permits, all equipment and water works that belong to or are under the control of Dutton Dunwich and that are supplied with water hereunder at the Connection Point and beyond the Connection Point to the point of delivery to its customers.
- 6.1.3 *Skilled Personnel* - Southwold represent and warrant to Dutton Dunwich that they have, and any employee or other person that they may retain to help perform the services hereunder will have all necessary skills, training and qualifications to provide services in accordance with the provisions of this Agreement and applicable law.

- 6.1.4 *Water Quality* - Dutton Dunwich shall use reasonable care and its best efforts not to permit contamination of any kind to enter the Dutton Dunwich Distribution System. In the event that any contamination enters the Dutton Dunwich distribution system, Dutton Dunwich shall forthwith notify the Elgin Board, the St. Thomas Secondary Board, and Southwold, or their designate, and take such steps as may be reasonably be taken to correct such contamination.
- 6.1.5 *Provision of Information* - Dutton Dunwich shall use reasonable care to prepare and supply to the Elgin Board, the St. Thomas Secondary Board, and Southwold, or their designate, for the benefit of itself of any report or information required hereunder.
- 6.1.6 *Extension of Service* - Dutton Dunwich shall not extend or permit the extension water supplied by the Elgin Transmission System, beyond the municipal boundaries of Dutton Dunwich without the express authorization of the Elgin Board, by written notice of resolution or bylaw of the Elgin Board.

6.2 Representations, Warrantees and Covenants of Southwold

- 6.2.1 *Authority to Contract* - Southwold warrants that it has the power and authority to enter into and carry out all of its obligations under this Agreement.
- 6.2.2 *Construction and Maintenance* - Southwold covenants and agrees to construct, repair, maintain, and keep in a good state of repair and in accordance with good engineering practice and applicable laws, certificates of approval, licence and/or permits, all equipment and water works that belong to or are under the control of Southwold and that are supplied with water hereunder at the Connection Point and beyond the Connection Point to the point of delivery to its customers.
- 6.2.3 *Skilled Personnel* - Southwold represent and warrant to Dutton Dunwich that they have, and any employee or other person that they may retain to help perform the services hereunder will have all necessary skills, training and qualifications to provide services in accordance with the provisions of this Agreement and applicable law.
- 6.2.4 *Water Quality* - Southwold shall use reasonable care and its best efforts not to permit contamination of any kind to enter the Southwold Distribution System. In the event that any contamination enters the Southwold distribution system, Southwold shall forthwith notify the Elgin Board, the St. Thomas Secondary Board, and Dutton Dunwich, or their designate, and take such steps as may be reasonably be taken to correct such contamination.
- 6.2.5 *Provision of Information* - Southwold shall use reasonable care to prepare and supply to the Elgin Board, the St. Thomas Secondary Board, and Dutton Dunwich, or their designate, for the benefit of itself of any report or information required hereunder.
- 6.2.6 *Extension of Service* - Southwold shall not extend or permit the extension water supplied by the Elgin Transmission System beyond the municipal boundaries of Southwold without the express authorization of the Elgin Board, by written notice of resolution or bylaw of the Elgin Board.

6.3 Representations, Warrantees and Covenants of the St. Thomas Secondary Board

- 6.3.1 *Authority to Contract* - St. Thomas Secondary Board warrants that it has the power and authority to enter into and carry out all of its obligations under this Agreement.
- 6.3.2 *Construction and Maintenance* - St. Thomas Secondary Board covenants and agrees to construct, repair, maintain, and keep in a good state of repair and in accordance with good engineering practice and applicable laws, certificates of approval, licence and/or permits, all equipment and water works that belong to or are under the control of the St. Thomas Secondary Board and that are supplied with water hereunder at the Connection Point and beyond the Connection Point to the point of delivery to its customers.
- 6.3.3 *Skilled Personnel* - The St. Thomas Secondary Board represent and warrant to Southwold, and Dutton Dunwich that they have, and any employee or other person that they may retain to help perform the services hereunder will have all necessary skills, training and qualifications to provide services in accordance with the provisions of this Agreement and applicable law
- 6.3.4 *Water Quality* - St. Thomas Secondary Board shall use reasonable care and its best efforts not to permit contamination of any kind to enter the St. Thomas Secondary System. In the event that any contamination enters the St. Thomas Secondary System, the St. Thomas Secondary Board shall forthwith notify the Elgin Board, Southwold, and Dutton Dunwich, or their designate, and take such steps as may be reasonably be taken to correct such contamination.
- 6.3.5 *Provision of Information* - St. Thomas Secondary Board shall use reasonable care to prepare and supply to the Elgin Board, Southwold, and Dutton Dunwich, or their designate, for the benefit of itself of any report or information required hereunder.

6.4 Representations, Warrantees and Covenants of the Elgin Board

- 6.4.1 *Authority to Contract* - The Elgin Board warrants that it has the power and authority to enter into and carry out all of its obligations under this Agreement.
- 6.4.2 *Water Supply* - The Elgin Board covenants and agrees to use their best efforts to supply and deliver water sufficient for the requirements of the St. Thomas Secondary Board, Southwold, and Dutton Dunwich pursuant to this Agreement.
- 6.4.3 *Skilled Personnel* - The Elgin Board represent and warrant to St. Thomas Secondary Board, Southwold, and Dutton Dunwich that they have, and any employee or other person that they may retain to help perform the services hereunder will have all necessary skills, training and qualifications to provide services in accordance with the provisions of this Agreement and applicable law.
- 6.4.4 *Water Quality* - The Elgin Board covenants and agrees to use their best endeavours to supply water and deliver water to St. Thomas Secondary Board of sufficient quality which meets the requirements of applicable law.

Article 7

LIABILITY, AND INDEMNITY DURING THE PROVISION OF SERVICES

7.1 Indemnification of Elgin Board, St. Thomas Secondary Board and Southwold by Dutton Dunwich.

7.1.1 Dutton Dunwich shall indemnify and hold the Elgin Board, the St. Thomas Secondary Board, Southwold, their respective employees, officers, directors, agents and representatives harmless from and against all liability for all damages of any nature whatsoever, including any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, which is caused by or directly attributable to the negligent or wrongful act of Dutton Dunwich, its employees, officers, directors, agents and representatives for which it may be responsible in the performance or purported performance of its obligations hereunder, but only to the extent and in proportion to the negligence or fault of Dutton Dunwich.

7.2 Indemnification of Dutton Dunwich, Southwold, and St. Thomas Secondary Board by Elgin Board.

7.2.1 The Elgin Board shall indemnify and hold Dutton Dunwich, Southwold, St. Thomas Secondary Board, their respective employees, officers, directors, agents and representatives harmless from and against all liability for all damages of any nature whatsoever, including any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property which is caused by or directly attributable to the negligent or wrongful act of the Elgin Board, its employees, officers, directors, agents and representatives for which it may be responsible in the performance or purported performance of its obligations hereunder, but only to the extent and in proportion to the negligence or fault of the Elgin Board.

7.3 Indemnification of Dutton Dunwich, Southwold, and Elgin Board by St. Thomas Secondary Board

7.3.1 The St. Thomas Secondary Board shall indemnify and hold Dutton Dunwich, Southwold, Elgin Board, their respective employees, officers, directors, agents and representatives harmless from and against all liability for all damages of any nature whatsoever, including any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property which is caused by or directly attributable to the negligent or wrongful act of the St. Thomas Secondary Board, its employees, officers, directors, agents and representatives for which it may be responsible in the performance or purported performance of its obligations hereunder, but only to the extent and in proportion to the negligence or fault of the St. Thomas Secondary Board.

7.4 Indemnification of Dutton Dunwich, St. Thomas Secondary Board, and Elgin Board by Southwold

7.4.1 Southwold shall indemnify and hold Dutton Dunwich, St. Thomas Secondary Board, Elgin Board, their respective employees, officers, directors, agents and representatives harmless from and against all liability for all damages of any nature whatsoever, including any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property which is caused by or directly attributable to the negligent or wrongful act of Southwold, its employees, officers, directors, agents and representatives for which it may be responsible in the performance or purported performance of its obligations hereunder, but only to the extent and in proportion to the negligence or fault of Southwold.

7.5 Waiver of Consequential Damages.

7.5.1 In no event shall the parties be liable to each other, and each party specifically waives as against the other, any and all claims for consequential, incidental, indirect, special or punitive damages resulting in any way from performance or non-performance of this Agreement, whether such damages are characterized as arising under breach of contract or warranty, tort (including negligence), fault, strict liability, indemnity, or other theory of legal liability.

7.6 Uncontrollable Circumstances.

7.6.1 In the event that performance of this Agreement in the reasonable opinion of any Party is made impossible by reason of an Uncontrollable Circumstance, and if a Party seeks to rely on the occurrence of an act, event or condition as an Uncontrollable Circumstance as grounds for not performing its obligations under this Agreement, then the Party relying on such act, event or condition shall;

7.6.1.1 Provide prompt notice to the other Party of the occurrence of the act, event or condition as soon as reasonably practicable after the Party first knew of such occurrence and give an estimation of its expected duration and the probable impact on the performance of its obligations hereunder,

7.6.1.2 Exercise all reasonable efforts to continue to perform its obligations hereunder,

7.6.1.3 In accordance with this Agreement, as expeditiously as reasonably practicable take action to correct or cure the act, event or condition preventing its performance,

7.6.1.4 Exercise all reasonable efforts to mitigate or limit damages to the other Party, and

7.6.1.5 Provide prompt notice to the other Party of the cessation of the act, event or condition giving rise to its inability to perform,

- 7.6.2 Except as expressly provided under the terms of this Agreement, neither Party to this Agreement shall be liable to the other for any loss, damage, delay, default, or failure to perform any obligation to the extent it results from an Uncontrollable Circumstance. The occurrence of an Uncontrollable Circumstance shall not excuse or delay the performance of a Party's obligation to pay monies previously accrued and owing under this Agreement, or to perform any obligation hereunder not affected by the occurrence of the Uncontrollable Circumstance.

Article 8 GENERAL PROVISIONS

- 8.1 **Dispute Resolution.** If a dispute arises between the parties, the parties agree that the Dispute Resolution Process of the Joint Board of Management for the Elgin Area Primary Water Supply System shall be used, a copy of which has been provided to Dutton Dunwich, Southwold, and the St. Thomas Secondary Board.
- 8.2 **Applicable Law.** This Agreement and its interpretation shall be governed by the laws of the Province of Ontario.
- 8.3 **Headings.** 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 any provision hereof.
- 8.4 **Amendments.** No amendment to this Agreement shall be effective unless in writing and signed by all Parties to this Agreement.
- 8.5 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto and supersedes all previous or contemporaneous communications, representations or agreements. No oral agreement or conversation with any officer, agent or employee of the Elgin Board, St. Thomas Secondary Board, Southwold or Dutton Dunwich, either before or after the execution of this Agreement, shall affect or modify any of its terms or obligations herein contained.
- 8.6 **Enurement and Assignment.** This Agreement shall enure to the benefit of the Parties and be binding upon their respective successors and assigns.
- 8.7 **Survival.** Wherever this Agreement contains an express obligation by one or more Parties to indemnify any other Party, such obligation to indemnify shall survive the completion or termination of this Agreement and continue in full force and effect.
- 8.8 **Severability.** 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 provision in any other jurisdiction.
- 8.9 **Waiver.** The failure on the part of either 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.

8.10 Notices.

8.10.1 *Delivery Mode and Address.* Any notice required to be or may be given or made by one of the parties hereto to the other, it shall be in writing and shall be delivered in person, transmitted by facsimile or similar means of recorded electronic communication, or sent by ordinary or registered mail to the respective addresses of the parties hereto:

If to the Elgin Board:

The Elgin Area Primary Water Supply System
235 North Centre Road, Suite 200
London, Ontario N5X 4E7
Attention: Chief Administrative Officer
Phone: 519-930-3505
Fax: 519-474-0451

If to St. Thomas Secondary Board:

The St. Thomas Secondary Water Supply System
c/o The City of St. Thomas
545 Talbot Street
P.O. Box 520, City Hall
St. Thomas, Ontario N5P 3V7
Attention: City Engineer
Fax: (519) 631-2130
Phone: (519) 631-1680

If to Southwold:

The Corporation of the Township of Southwold
35663 Fingal Line
Fingal ON N0L 1K0
Attention: Chief Administrative Officer/Clerk
Fax: (519) 769-2837
Phone: (519) 769-2010

If to Dutton Dunwich:

The Corporation of the Municipality of Dutton Dunwich
P.O. Box 329
199 Currie Road
Dutton, Ontario N0L 1J0
Attention: Clerk Administrator
Fax: (519) 519-762-2278
Phone: (519) 519-762-2204

8.10.2 *Time of Delivery.* Any such notice shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a Business Day, on the next following Business Day), or if mailed, on the third Business Day following the date of mailing; provided, however, that if at the time of mailing or within three Business Days thereafter there is or occurs a labour dispute or other events which might reasonably be expected to disrupt the delivery of document by mail, any notice hereunder shall be delivered or transmitted by means of recorded electronic communications as aforesaid.

8.11 **Effective Date.** This Agreement shall be effective as of January 1, 2018.

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IN WITNESS WHEREOF the Elgin Board, the St. Thomas Secondary Board, Southwold and Dutton Dunwich have cause this Agreement to be executed by the affixing of their proper seals attested by the signature of the proper persons duly authorized in that behalf.

**THE JOINT BOARD OF MANAGEMENT OF THE
ELGIN AREA PRIMARY WATER SUPPLY SYSTEM**

Pete Barbour
Board Chair

Kelly Scherr
Chief Administrative Officer

**THE JOINT BOARD OF MANAGEMENT OF THE
ST. THOMAS SECONDARY WATER SUPPLY SYSTEM**

Jeff Kohler
Board Chair

Board Secretary

THE CORPORATION OF THE TOWNSHIP OF SOUTHWOLD

Mayor

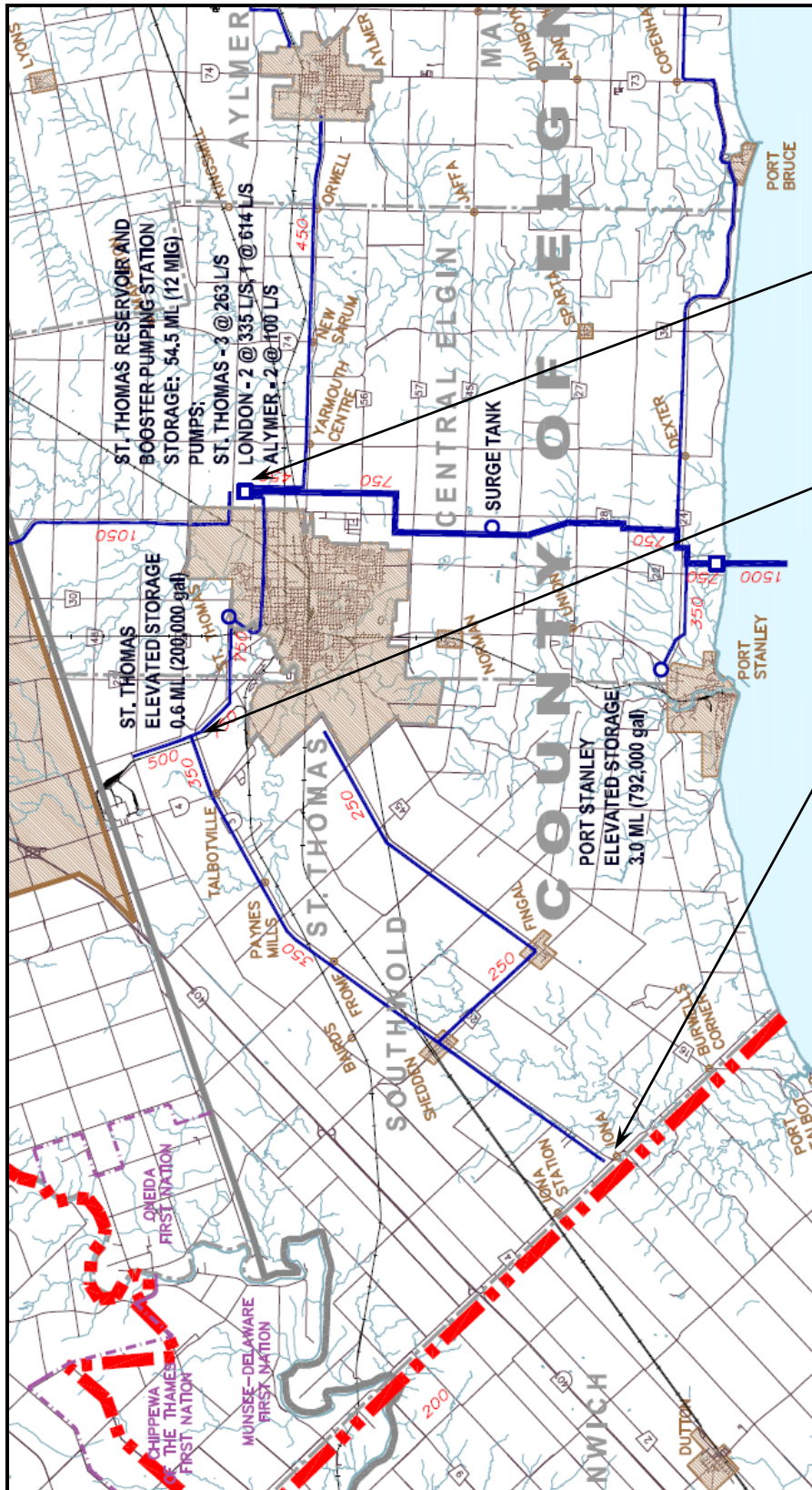
Chief Administrative Officer/Clerk

THE CORPORATION OF THE MUNICIPALITY OF DUTTON DUNWICH

Mayor

Clerk Administrator

Schedule "A" – Map of Connection Points



St. Thomas Secondary
Connection Point
(Elgin-Middlesex Pump Station)

Southwold Connection Point
(Chambers F027A & S001 @ Hwy3)

Dutton Dunwich
Connection Point
(Talbot Rd. / Hwy 3 @ Iona Rd.)