

Memorandum of Understanding Re: PJSLC

Dated this [] day of [] 2020

BETWEEN:

THE WINDSOR UTILITIES COMMISSION

-and-

THE CORPORATION OF THE TOWN OF TECUMSEH

MEMORANDUM OF UNDERSTANDING

1. Definitions.

- (a) **"Agreement"** shall be the Agreement as signed on March 31, 2006 between the Windsor Utilities Commission, the City of Windsor, and the Town of Tecumseh for the Supply and Use of Drinking Water as amended by the parties by writing or by arbitral award.
- (b) **"Board"** means the Board of Directors of the Commission
- (c) **"Business"** means the matters coming before or brought forward to the PJSLC within the scope of their mandate as outlined in section 3, Schedule A below.
- (d) **"Commission"** means The Windsor Utilities Commission.
- (e) **"Conflict of Interest"** includes, but is not limited to, any situation or circumstance where the other commitments, relationships or financial interests of an individual: (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of his or her independent judgement; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of his or her obligations under these Terms of Reference or related Agreement.
- (f) **"Council"** when referring to Tecumseh means the duly elected Council of Tecumseh;
- (g) **"Tecumseh"** means The Corporation of the Town of Tecumseh.
- (h) **"MOU"** shall mean this Memorandum of Understanding as between the Parties and shall be deemed to incorporate the Terms of Reference.
- (i) **"Parties"** means the Commission and Tecumseh and **"Party"** means either one of them.
- (j) **"PJSLC"** shall mean the Permanent Joint Staff Liaison Committee established pursuant to the Agreement and to this MOU.
- (k) **"Terms of Reference"** shall mean the Terms of Reference attached to this Agreement

as Schedule "A".

(l) "City of Windsor" means the Corporation of the City of Windsor;

All other capitalized terms used herein and in the Terms of Reference shall have the meaning ascribed to them in the Agreement.


2. **Agreement Incorporated by Reference.** All terms and conditions contained within the Agreement shall be incorporated into this MOU.
3. **Purpose.** This MOU is prepared as required by Section 3 (h) of the Agreement to be ratified and adopted by the PJSJC upon their next meeting .
4. **Binding.** This MOU including, but not limited to, the Terms of Reference, shall be binding on the Parties their respective successors, and permitted assigns.
5. **Entire MOU.** This MOU constitutes the entire agreement between the parties pertaining to the subject matter of this MOU and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, warranties, representations or other agreements between the parties in connection with the subject matter of this MOU (whether oral or written, express or implied, statutory or otherwise) except as specifically set out in this MOU or the Agreement.
6. **Severability.** Any provision of this MOU 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 MOU, all without affecting the remaining provisions of this MOU or affecting the validity or enforceability of such provision in any other jurisdiction.
7. **Amendment.** No modification or amendment to this MOU may be made unless agreed to by each of the parties in writing and the PJSJC.
8. **Conflict with Agreement.** In the event that a provision of this MOU conflicts with a provision of the Agreement, the provision in the Agreement shall prevail.
9. **Personnel Not Employees of the Other.** The personnel of each of the Commission and Tecumseh from time to time involved in the fulfillment of their respective obligations under this MOU, shall be under the control and direction of the Commission or Tecumseh as the case may be and shall not be employees or agents of the other.
10. **Term.** The term of this MOU shall commence the date first above written, and shall continue indefinitely until the Agreement is concluded, terminated, or the Agreement is amended in such a way that no longer requires the continued existence of the MOU.
11. **Further Assurances.** The Parties agree to do or cause to be done all acts or things necessary to implement and carry into effect this MOU to its full extent.
12. **Force Majeure.** No party shall be liable for damages caused by delay or failure to perform its obligations under this MOU where such delay or failure is caused by an event beyond its reasonable control. If a party seeks to excuse itself from its obligations under this MOU due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay.


13. **Successors and Assigns.** This MOU may not be assigned by either Party without the consent of the other Party, unless such an assignment is in accordance with an assignment permitted pursuant to the terms of the Agreement.
14. **Counterparts.** This MOU may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
15. **Electronic Signatures.** Counterparts may be executed either in original, faxed or scanned form and the parties adopt any signatures received by a facsimile or scan as original signatures of the parties.

[Remainder of page left blank. A signature page follows.]

IN WITNESS WHEREOF on the date first written above, the members of the Permanent Joint Staff Liaison Committee established pursuant to this MOU have hereunder signed and delivered this document to take effect as and from the Effective Date.

 12/18/2020
By: Garry Rossi, Authorized Signatory

 12/19/2020
By: Matt Carlini, Authorized Signatory

 12/19/2020
By: David Melnyk, Authorized Signatory
Operations all appointed by the Commission

By: Phil Bartnik, Director of Public Works & Environmental Services

By: Tom Kitsos, Chief financial officer

By: Brad Dupuis, Manager Water & Wastewater

all appointed by Tecumseh

Schedule "A" – Terms of Reference for the PJSLC

1. **Establishment.** By these Terms of Reference, pursuant to Section 3 (h) of the Agreement, the PJSLC is established.

2. **Structure.**

(a) **Composition.** Unless otherwise agreed to in writing by the Commission and Tecumseh, there shall be six (6) members appointed to the PJSLC:

- (i) One (1) shall be appointed from time to time by the Commission and shall be the Chief Engineer or equivalent representative designated as the "Chairperson" of the PJSLC.
- (ii) One (1) shall be appointed from time to time by the Commission and shall be designated as the "Vice-Chairperson" of the PJSLC.
- (iii) One (1) shall be appointed from time to time by the Commission.
- (iv) Three (3) shall be appointed from time to time by Tecumseh.

Each member of the PJSLC shall be subject to removal by the entity who appointed such member at any time.

(b) **Officers.** There shall be the following PJSLC officers:

- (i) **Chairperson.** A "Chairperson" who shall be the individual designated as per paragraph 2(a)(i) above and whose role shall be to facilitate the work of the PJSLC by: preparing agendas with the input of the other PJSLC members; ensuring that informational needs of PJSLC members are met; ensuring meeting time is used effectively; monitoring PJSLC activities to ensure the PJSLC fulfills its mandate; and such other responsibilities as are set out in these Terms of Reference or delegated to her or him by the PJSLC from time to time.
- (ii) **Vice-Chairperson.** A "Vice-Chairperson" who shall be designated as per paragraph 2(a)(ii) above whose role shall be to: liaise with the Chairperson to ensure that she or he is prepared in the event she or he is required to act as Chairperson in the event of the Chairperson's absence, inability or unwillingness to act as such; and such other responsibilities as are set out in these Terms of Reference or delegated to her or him by the PJSLC from time to time.
- (iii) **Secretary.** A "Secretary" appointed by the Chairperson in addition to its number whose role shall be to: ensure appropriate documenting of the business of the PJSLC; to ensure the records of the PJSLC are properly maintained and made available to authorized persons when required; and such other responsibilities as are set out in these Terms of Reference or delegated to her or him by the PJSLC from time to time. The Secretary shall have no voting privileges and will serve the PJSLC solely in an administrative capacity. The Secretary shall not be a member of the Commission.

The Secretary shall be subject to removal and replacement by the Chairperson of the PJSLC at any time and from time to time. The Chairperson or Vice-Chairperson can only be removed or replaced by the Commission.

(c) **Collective.** For greater clarity the PJSLC acts as a collective and no member has any individual power or authority unless specifically assigned, such as for example in the case of the Chairperson who has been individually tasked with, among other things, setting agendas.

- (d) **Notice of Appointments.** Each Party shall provide written notice to the other Party of any appointments or removals to the PJSLC as soon as practicable, and in any event, prior to the next meeting of the PJSLC. Notice provided to the other Party shall be in accordance with the notice requirements arising from the Agreement. Each Party shall promptly notify its representatives appointed to the PJSLC of such appointments or removals from time to time.
- (e) **Commitment to Fill Vacancies.** Each Party shall use commercially reasonable efforts to fill vacancies on the PJSLC as soon as practicable.

3. **Mandate.**

The Parties agree that the PJSLC's mandate is to act in accordance with the Agreement and to facilitate the administration and operation of the Agreement for the mutual benefit of the Parties. For clarity, except as may be reflected in an amendment made in accordance with Part 2 Schedule A of the Agreement, no decision, action or course of conduct made by the PJSLC will give rise to or serve as a basis for any legal obligation or liability on the part of either of Party.

The PJSLC:

- (a) **Review and Discuss Operational Items.** As it pertains to the Agreement, the PJSLC shall review and discuss items of an operational nature as determined by the PJSLC from time to time including, without limitation, metering upgrades, supply piping, pump installations and other capital improvements and up-grades, on-going maintenance and operation, budget issues, review billing, review of annual CPI increases, sharing of technical information on plant and distribution system operational matters (provided such information is publicly available and not otherwise considered confidential and/or proprietary to a party), best management practices and regulatory changes.
- (b) **Assist in the Resolution of Disputes.** The PJSLC shall meet to attempt to resolve any Dispute that may, from time to time, arise between the Parties in connection with the issues identified in paragraph 7 of Part II, Schedule A of the Agreement or other interpretation of the Agreement. Any unanimous agreement on the resolution of any such dispute shall be documented by a recommendation of the PJSLC to Tecumseh and the Commission for adoption by their respective Council and Board.
- (c) **Collaborate on Changes to Tecumseh's Distribution System.** The PJSLC shall facilitate collaboration as between the Commission and Tecumseh on any mutually beneficial/efficient changes to Tecumseh's distribution system within the Tecumseh Water Distribution System Area. For greater certainty, the PJSLC does not "approve" or "control" changes to Tecumseh's water distribution system.
- (d) **Water Contamination Protocols.** Develop and from time to time, revise, protocols for:
 - (i) Tecumseh to notify the Commission of any material events of contamination or any facts or circumstances which might reasonably be expected to result in contamination of the Supplied Water within the Tecumseh water distribution system where such contamination which might reasonably be expected to result in contamination of WUC's distribution system; and

- (ii) The Commission to notify Tecumseh of any material events of water contamination or any facts or circumstances which might reasonably be expected to result in contamination of the water supplied by WUC to Tecumseh.

- (e) **Agendas and Reports.** Copies of formal agendas and all relevant reports, financial information and similar material on issues of joint concern are to be prepared and provided to all members of the PJSLC in accordance with the time lines established by the PJSLC from time to time so as to enable: a) all members to comment thereon and thereafter; b) all members to give reasonable consideration to such comments to allow for the relevant party to take such action as may be considered appropriate.

4. **Frequency of Meetings.** The PJSLC shall meet as often as is required in order to fulfil its mandate but not less than once every six (6) months notwithstanding the requirement set out in the Agreement to meet "once every 3 months" – this MOU having been included in the subject matter of a mediation/arbitration process conducted by the Commission and Tecumseh with the consent and attornment of Windsor and incorporated into a binding decision of the mediator/arbitrator made effective May 15, 2019.
5. **Calling of Meetings.** Meetings of the PJSLC may be called by the Chairperson or any four (4) members of the PJSLC.
6. **Place of Meetings.** Meetings of the PJSLC shall be held at the premises of the Commission and Tecumseh on an alternating basis.
7. **Notice of Meetings.** Notice of meetings of the PJSLC shall be subject to and in accordance with the following:
 - (a) **Responsibility.** The Chairperson shall give or cause to be given the required notice.
 - (b) **Amount.** Unless otherwise agreed, at least three (3) weeks' notice (exclusive of the day on which the notice is delivered or sent) shall be given subject to such additional time as may be required for the review of Reports contemplated in 3 (e) above.
 - (c) **Content.** Include the date, time and place, as well as a description of the nature of the business to be transacted.
 - (d) **To Whom Given.** Given to each member of the PJSLC.
 - (e) **Method.** Notice shall be given in writing by way of e-mail to the e-mail addresses for each member, provided by each member to the PJSLC from time to time.
 - (f) **Regular Meetings.** The PJSLC may appoint a time and day or days in any month or months for regular meetings of the PJSLC and in respect of such regular meetings where no notice need be otherwise given.
8. **Chairperson.** The Chairperson shall chair meetings of the PJSLC or in the absence of the Chairperson, the Vice-Chairperson.
9. **Attendance and Participation.** The below listed individuals shall be entitled to attend PJSLC meetings as follows:

- (a) **Members.** Members of the PJSLC shall be entitled to attend all PJSLC meetings and shall be entitled to participate by being heard (verbally or in writing), debating and voting in accordance with these Terms of Reference, except in situations in which the member has a Conflict of Interest or inability to exercise independent judgment (other than the inherent conflict of interest or bias that exists given their association with the Commission, EnWin Utilities Ltd. or Tecumseh as the case may be). Members who are in conflict or unable to exercise independent judgment shall absent themselves from the meeting or relevant portion thereof and shall not otherwise attempt to influence decision making.
- (b) **Invited Guests.** Invited guests shall be entitled to attend all meetings of the PJSLC, on invitation of the Chairperson with the advance consent of a majority of members. Invited guests shall not be entitled to participate in PJSLC meetings by voting or debating but shall be entitled to participate by being heard (verbally or in writing), if recognized by the Chairperson.

10. **Transaction of Business.** Transaction of business of the PJSLC shall be subject to and in accordance with the following:

- (a) **Quorum.** A majority of the PJSLC members shall form a quorum provided that at least two representatives of each of the Commission and Tecumseh are present.
- (b) **Means of Meetings.** A meeting of the PJSLC may be held by such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and a member participating in the meeting by those means is deemed to be present at the meeting.
- (c) **Voting.** Each PJSLC member shall be entitled to one vote respect decisions regarding the Business of the PJSLC. Questions arising at any PJSLC meeting shall be decided by a majority of votes where at least one vote shall be from members appointed by each of the WUC and Tecumseh. The Chair person shall not have a second or casting vote and in the event of a tie the motion on any decision shall be declared lost.

11. **Resources.**

- (a) **Expenses.** Expenses incurred by the PJSLC in respect of the administration of the PJSLC (typically anticipated to be limited to refreshments and clerical support at meetings except as noted in 11(c) below) shall be funded by each of the Commission and Tecumseh equally provided they are incurred consistent with a pre-approved budget or otherwise provided it obtains the prior approval of the Commission and Tecumseh in advance of incurring the expense.
- (b) **Administrative Support.** Administrative support required for and reasonably requested by the PJSLC from time to time shall be provided by each of the Commission and Tecumseh as determined by the PJSLC from time to time.
- (c) **External Advisors.** The PJSLC may engage external advisors or consultants if required from time to time provided it obtains the prior approval of the Commission and Tecumseh

in advance of retaining such advisors. The costs associated with such retainers shall be funded by each of the Commission and Tecumseh equally.

12. **Records**

- (a) **Minutes.** The Secretary shall keep or cause to be kept minutes of all PJSLC meetings which shall include the following:
 - (i) date, time and place of meeting;
 - (ii) attendance at the meeting;
 - (iii) declarations of Conflict of Interest or inability to exercise independent judgment;
 - (iv) succinctly, accurately and clearly the material aspects of the PJSLC's deliberations relative to the subject matter;
 - (v) precise wording of all motions but not the mover or seconder;
 - (vi) whether the motion carried but not the number of votes for and against or which PJSLC member voted which way; and
 - (vii) any objections or dissent requested by the maker to be put on record but otherwise shall not attribute specific comments to specific individuals.
- (b) **Circulation.** PJSLC meeting minutes shall be circulated to PJSLC members within seven (7) days of the relevant meeting.
- (c) **Retained.** All PJSLC meetings minutes shall be retained for at least eleven years.