

**The Corporation of the Town of Essex**

**By-Law Number 2412**

Being a by-law to being a by-law to enter into an

Agreement between:

The Corporation of the Town of Essex

And

The Essex Region Conservation Authority

**WHEREAS** in accordance with the mandates of the Clean Water Act, Council hereby enters into a renewal agreement with the Essex Region Conservation Authority (ERCA) to administer on its behalf a source water protection plan, the Essex Region Source Protection Plan, in accordance with the agreement set out in Schedule "1" to this by-law, until the termination of the agreement on December 31, 2027 and according to the terms and conditions therein.

**NOW THEREFORE** be it resolved that the Council of The Corporation of the Town of Essex hereby enacts as follows:

1. **That** the Mayor and Clerk be directed to affix their signatures, on behalf of the Corporation of the Town of Essex, to Schedule "1" attached and forming part of this By-Law, for the purpose of renewing the source protection plan management agreement with the Essex Region Conservation Authority until December 31, 2027.

Read a first, a second and a third time and finally passed on December 16, 2024.

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Mayor

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Clerk

**SOURCE PROTECTION PLAN PART IV ENFORCEMENT TRANSFER AGREEMENT**

THIS AGREEMENT made effective the first day of January 2025.

BETWEEN:

**THE TOWN OF AMHERSTBURG**

OF THE FIRST PART

- and -

**THE TOWN OF ESSEX**

OF THE SECOND PART

- and -

**THE TOWN OF KINGSVILLE**

OF THE THIRD PART

- and -

**THE MUNICIPALITY OF LAKESHORE**

OF THE FOURTH PART

- and -

**THE TOWN OF LASALLE**

OF THE FIFTH PART

- and -

**THE MUNICIPALITY OF LEAMINGTON**

OF THE SIXTH PART

- and -

**THE TOWNSHIP OF PELEE**

OF THE SEVENTH PART

- and -

**THE TOWN OF TECUMSEH**

OF THE EIGHT PART

- and -

**THE CORPORATION OF THE CITY OF WINDSOR**

OF THE NINTH PART

- and -

**THE MUNICIPALITY OF CHATHAM-KENT**

OF THE TENTH PART

(hereinafter individually referred to as a "Municipality" and cumulatively referred to as "the Municipalities")

- and -

**THE ESSEX REGION CONSERVATION AUTHORITY**

OF THE ELEVENTH PART

(hereinafter called "the Authority")

**PREAMBLE:**

**WHEREAS** this Agreement is being entered into pursuant to the *Clean Water Act*, 2006 (hereinafter called the "Act") for the purpose of appointing the Authority as agent of the Municipalities with respect to the enforcement and jurisdictional rights under Part IV of the Act as part of implementation of the Essex Region Source Protection Plan.

**And Whereas** the Authority is a Source Protection Authority for purposes of the Act and of this Agreement;

**And Whereas** the Municipalities are located wholly or in part of the Essex Region Source Protection Region or the Thames-Sydenham and Region Source Protection Region as set out in Ontario Regulation 284/07;

**And Whereas the Municipalities agree to collaborate and allocate shared costs** for the purpose of developing and implementing a joint program for the enforcement and jurisdictional rights under Part IV of the *Clean Water Act*

**IN CONSIDERATION** of the mutual covenants herein contained, the parties hereby agree as follows:

## **1.0 GENERAL**

### **1.1 Source Protection Authority**

Under section 4 of the *Act*, the Essex Region Conservation Authority (ERCA) serves as the Source Protection Authority for the Essex Region Source Protection Area. Ontario Regulation 284/07 under the *Act* designates the participating municipalities for ERCA when they act as the Source Protection Authority under the *Act*.

### **1.2 Part IV Requirements under the Act**

The *Act* provides that a municipality is responsible for Part IV enforcement of Source Protection Plans. The *Act* (Section 48) further provides that a municipality may enter into an agreement for the enforcement of Part IV by a board of health, a planning board, or Source Protection Authority in the municipality.

**The Municipalities hereby appoint the Essex Region Conservation Authority as a designated agent of the Municipalities to carry out enforcement under Part IV of the Act within their respective**

### **1.3 Application**

This Agreement shall be applicable to all lands located in the Municipalities that are subject to Part IV of the *Act*, save and except for Chatham-Kent where only those lands subject to Part IV Policies that are in the Stoney Point and Wheatley event based areas will be applicable.

**The Essex Region Conservation Authority hereby accepts the appointment and agrees to act as agent of the Municipalities for the duties and enforcement responsibilities of Part IV of the Act for those lands located within the Municipalities that are situated wholly or partially within the Essex Region Source Protection Region or the Thames-Sydenham and Region Source Protection Region as described above.**

### **1.4 Duties**

The Authority shall faithfully carry out its duties hereunder on a fee for service basis in accordance with the *Act*, the Essex Region Source Protection Plan (as amended from time to time), the Thames-Sydenham and Region Source Protection Plan (as amended from time to time), this Agreement, and any other applicable legislation.

## **2.0 DEFINITIONS**

### **2.1 Definitions**

Unless otherwise expressly provided in this Agreement, the words, phrases and expressions in this Agreement shall have the meanings attributed to them as follows:

In this Agreement:

“*Act*” means the Ontario *Clean Water Act, 2006*, as amended;

“*Activity*” means anything or any undertaking, including a land use, as defined by the *Act* that poses or has the potential to pose a significant risk to a source of drinking water;

“*Agreement*” means this document;

“*Cost*” means reasonable operating costs including, but not limited to: wages, supplies, travel, insurance, network access, data security and storage and corporate service allocations;

“*Cost Category A*” means the guaranteed minimum recoverable charges, necessary to sustain and deliver the program, on behalf of the Municipalities;

“Cost Category B” means the costs of service delivery related to fulfilling responsibilities under the *Act*, that are not directly attributable to a specific municipality but provide a benefit to all Municipalities;

“Cost Category C” means the costs that are specifically attributable to a municipality, as a result of direct service delivery, and include costs relating to: reviewing applications; Risk Management Plans; inspections; and any other responsibilities under the *Act*.

“Event Based Area” means an area where modeling has demonstrated that a spill from a specific activity can or could cause deterioration of the raw water quality at the drinking water system.

“Parties” means the Authority and the Municipalities;

“Party” means either the Authority or a Municipality

“the Regulation” means *Clean Water Act* Regulation 287/07

“Risk Management Inspector” means a Risk Management Inspector appointed under Part IV of the *Act*;

“Risk Management Official” means the Risk Management Official appointed under Part IV of the *Act*;

“Source Protection Authority” means a Conservation Authority or other person or body that, under subsection 4 (2) or section 5 of the *Act*, is required to exercise and perform the powers and duties of a drinking water Source Protection Authority under the *Act*;

“Source Protection Plan” means a drinking water source protection plan prepared under the *Act*.

### 3.0 RESPONSIBILITIES

#### 3.1 Responsibilities of the Authority

The Authority is responsible for all the powers and duties of an enforcement body under Part IV of the *Act*. The duties and powers **include, but are not limited to**, those listed in this Section.

The Authority shall:

- i. Appoint such Risk Management Officials and Risk Management Inspectors as are necessary for the enforcement of Part IV of the *Act*.
- ii. Provide mapping to the Municipalities and establish protocols in consultation with the Municipalities to ensure Part IV requirements are incorporated into the review of applications under the *Planning Act* and *Building Code Act*.
- iii. Review applications under the *Planning Act* and *Building Code Act* as deemed necessary under the protocols referred to in (ii) and issue notices with respect to restricted land use policies as contemplated by the *Act* prior to those applications proceeding.
- iv. Negotiate or, if negotiations fail, establish risk management plans with persons (business owners, landowners, tenants, and others) engaged or proposing to engage in an Activity and at a location subject to the *Act*.
- v. Review and accept risk assessments under the *Act*.
- vi. Conduct inspections and use powers of entry on properties where reasonable and obtain inspection warrants from a court where required.
- vii. Issue orders and notices, prosecute any offences under Part IV of the *Act* and exercise any other powers set out under Part IV of the *Act* to ensure compliance with the Part IV policies in the Essex Region Source Protection Plan and/or the Thames-Sydenham and Region Source

Protection Plan.

- viii. Maintain records in accordance with the *Act* and make records available to the public when required to do so and to the Municipalities upon request.
- ix. Prepare documentation and make provisions for Authority staff to attend Environmental Review Tribunal Hearings.
- x. Report annually on Activities as required under the *Act* and provide a copy of the annual report to the Municipalities.

### **3.2 Responsibilities of the Municipalities**

The Municipalities shall adhere to agreed upon protocols (including circulating certain applications to the Risk Management Official) to ensure Part IV requirements are incorporated into the review of:

- i. building permit applications;
- ii. applications under provisions of the *Planning Act* that are prescribed in section 62 of the *Regulation*; and
- iii. generally cooperate with and assist the Authority with the protection of safe drinking water.

### **3.3 Information and Data Sharing**

To facilitate implementation of this Agreement:

- i. The Municipalities shall provide information and data required by the Authority to carry out its powers and duties under Part IV of the *Act*.
- ii. The Authority shall provide records related to its powers and duties under Part IV of the *Act* to the Municipalities, upon request. In the event of termination of this Agreement, records will be transferred to the respective Municipalities.

## **4.0 COSTS AND COST CATEGORIES**

### **4.1 Responsibility for Cost of Service Delivery**

The Municipalities are responsible for the costs of the enforcement of Part IV of the *Act*. The Municipalities shall pay the greater of: (i) actual identified costs as defined in Section 4.2; or (ii) the guaranteed minimum recoverable charge (Cost Category A), as per Schedule A of this Agreement.

For the purposes of this agreement, the guaranteed minimum recoverable charges (Cost Category A) shall be \$20,000 per annum, to be adjusted annually by a percentage equal to the negotiated wage rate increase for the unionized staff complement.

Cost estimates for Cost Categories B and C, are provided as the Authority's best estimates, using both historical and projected costs of shared and direct service.

### **4.2 Cost Estimates and Allocations**

The Authority attests that annual estimated costs identified in Schedule A represent fair, consistent and reasonable estimates and allocations, and incorporate various assumptions that may materially affect the identified costs. The identified costs will be for the purpose of cost recovery, attributable to executing and performing the essential responsibilities identified in Section 3.1, and additionally, to provide the Authority with guaranteed minimum recoverable charges, necessary to sustain and deliver the program, on behalf of the Municipalities. The Authority shall keep accurate records, relating to expenses associated with this Agreement, including allocations related to the minimum recoverable charges, in accordance with generally accepted accounting principles (GAAP).

#### Estimates

For clarity, identified costs shall include: minimum recoverable charges (Cost Category A); plus, shared direct costs to be allocated to all Municipalities (Cost Category B); and costs directly attributable to a municipality, as a result of direct service delivery, such as reviewing applications, Risk Management Plans, inspections etc. (Cost Category C).

#### Allocations

Costs attributable to Categories A and B, shall be allocated on the basis of: 50% allocated equally to all Municipalities; and 50% allocated on the basis of a pro-rata allocation, using the cost of direct service delivery (Cost Category C), for each billing cycle.

#### Invoicing

Costs, as calculated under this section, will be subject to bi-annual invoicing. HST will be in addition to costs, as services are considered a taxable supply.

### 4.3 Recovery of Non-Routine Costs

The Authority will notify municipalities of any legal actions initiated by or against the Authority associated with executing its duties and powers under this Agreement; and identify estimated costs associated with non-routine work including but not limited to enforcement orders, warrants, Environmental Review Tribunal Hearings and retention of third party experts. These costs are in addition to those outlined in Schedule A and will be recovered from the Municipality in which the non-routine work occurs.

Costs, as recoverable under this section, shall be invoiced quarterly.

## 5.0 OFFICIALS AND INSPECTORS

### 5.1 Appointment

The Authority will appoint such Risk Management Officials and Risk Management Inspectors as are necessary pursuant to subsection 48 (2) of the *Act* and shall issue a certificate of appointment to the Risk Management Officials and Risk Management Inspectors as per subsection 48 (3) of the *Act*.

### 5.2 Qualifications

The Risk Management Officials and Risk Management Inspectors will be qualified as prescribed by the Regulation.

## 6.0 LIABILITIES AND INSURANCE

### 6.1 Insurance

The Authority shall provide and maintain Commercial/Comprehensive General Liability insurance subject to limits of Five Million Dollars (\$5,000,000.00) inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof.

The Authority shall provide and maintain Errors and Omissions insurance subject to limits of an annual aggregate of Five Million Dollars (\$5,000,000.00). Such insurance shall provide coverage for all errors and omissions made by the Authority, its officers, directors and employees in regard to the obligations of the Authority under this Agreement.

Such insurance shall be kept in force for the two years following termination of this Agreement.

Such insurance shall be in the name of the Authority and shall name the Municipalities as additional insured there under. Evidence of insurance satisfactory to the Municipalities shall be provided to the Municipalities prior to the commencement of work. The Authority shall annually provide the Municipalities with Certificate(s) of Insurance confirming that the said insurance policies are in good standing.

Should any additional insurance coverage be required as may be determined by majority agreement of the Parties, such coverage will be provided and maintained by the Authority. The costs of any additional insurance will be shared among the Municipalities.

**6.2 Workplace Safety and Insurance Board (WSIB)**

The Authority will maintain during the term of this Agreement coverage as required by the Workplace Safety and Insurance Act and shall provide upon request, verification of WSIB coverage.

**6.3 Indemnification**

The Municipalities agree to save harmless and indemnify the Authority, and its employees, agents, assigns, directors and officers (collectively, the 'Authority Indemnified Parties') from and against any claims, costs, fees, losses, damages or expenses of every nature and kind whatsoever, including but not limited to governmental inquiries, administrative or judicial proceedings, which the Authority Indemnified Parties, might suffer, have imposed on, or incur in connection with or arising out of: this Agreement; any enforcement duties or responsibilities; or otherwise in connection with the Act or any regulations thereunder.

The Authority agrees to save harmless and indemnify the Municipalities, and its employees, agents, assigns, directors and officers (collectively, the 'Municipal Indemnified Parties') from and against any claims, costs, fees, losses, damages or expenses of every nature and kind whatsoever, including but not limited to governmental inquiries, administrative or judicial proceedings, which the Municipal Indemnified Parties, might suffer, have imposed on, or incur in connection with or arising out of the Authority failing to perform its duties or responsibilities under this Agreement.

Notwithstanding this section 6.3, the Municipalities shall not save harmless and indemnify the 'Authority Indemnified Parties' from and against any losses, damages or expenses of every kind and nature whatsoever arising from any willful misconduct or negligent acts of the Authority, the negligent performance of its duties and responsibilities under this Agreement or its breach of this Agreement.

Notwithstanding this section 6.3, the Authority shall not save harmless and indemnify the 'Municipal Indemnified Parties' from and against any losses, damages or expenses of every kind and nature whatsoever arising from any willful misconduct or negligent acts of the Municipalities, the negligent performance of its duties and responsibilities under this Agreement or its breach of this Agreement.

**7.0 TERM, REVIEW, WITHDRAWAL, TERMINATION AND AMENDMENT OF AGREEMENT****7.1 Term**

This Agreement shall, subject to Sections 7.3 and 7.4, continue in perpetuity, commencing on the 1st day of January 2025, and renew annually on January 1<sup>st</sup> thereafter.

**7.2 Review**

The Authority will initiate the review of the Agreement no later than 120 days prior to January 1, 2028 and every four (4) years thereafter.

**7.3 Withdrawal**

Any Municipality to this Agreement may withdraw from the Agreement by delivering notice in writing to the Authority and the Municipalities, within 120 days of December 31<sup>st</sup>, in respect of which the withdrawing Municipality no longer wishes to participate in the Agreement. Upon receipt of notice, the Authority will accept that the Municipality is no longer a Party to this agreement, effective on January 1<sup>st</sup> of the year following the notice year.

Notwithstanding this section 7.3, a) a Municipality who withdraws from this Agreement remains liable for all actions and matters which originate prior to the giving of Notice of Withdrawal and b) no Party shall withdraw from this Agreement until all amounts owing by the Party pursuant to this Agreement have been determined and paid or security provided therefore, including any costs incurred by the Authority and Municipalities as a result of the withdrawal.

If any Municipality to this agreement withdraws, the Authority will advise the Ministry of Environment and Climate Change, in writing that it will no longer be carrying out enforcement under Part IV of the Act for that Municipality.

#### **7.4 Termination**

The Authority may terminate this Agreement, pursuant to Section 8.0 or for any other reason, by delivering 120 days notice in writing to the Municipalities.

If the Authority terminates the Agreement, the Authority will advise the Ministry of Environment and Climate Change, in writing that it will no longer be carrying out enforcement under Part IV of the Act for the Municipalities.

#### **7.5 Amendment**

This Agreement may be amended by mutual agreement from time to time to reflect changes in programs, funding and personnel in both parties, or changes in provincial policy.

### **8.0 DEFAULT**

**8.1** Any monies owing by a Party shall be paid within 60 days Notice thereof to the Party. After 60 days, interest shall accrue on the amount owing at the rate of 10% per annum until paid. Default in payment for more than 120 days may, at the option of the Authority, result in termination by providing 30 days notice in writing.

### **9.0 MISCELLANEOUS**

#### **9.1 Preamble**

The preamble hereto shall be deemed to form an integral part hereof.

#### **9.2 Instrument in Writing**

This Agreement shall not be changed, modified, terminated or discharged in whole or in part except by instrument in writing signed by the parties hereto, or their respective successors or permitted assigns, or otherwise as provided herein.

#### **9.3 Assignment**

This Agreement shall not be assignable by any Party.

#### **9.4 Force Majeure**

Any delay or failure of any Party to perform its obligations under this Agreement shall be excused and this Agreement is suspended if, and to the extent that, a delay or failure is caused by an event or occurrence beyond the reasonable control of the Party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, fires, floods, wind storms, riots, labour problems (including lock-outs, strikes and slow-downs) or court injunction or order.

#### **9.5 Notices**

Any notice, report or other communication required or permitted to be given hereunder shall be in writing unless some other method of giving such notice, report or other communication is expressly accepted by the Party to whom it is given and shall be given by being delivered or mailed to the following addresses of the Parties respectively:



To the Authority:

Tim Byrne, Chief Administrative Officer / Secretary-Treasurer  
Essex Region Conservation Authority  
360 Fairview Avenue West, Suite 311  
Essex, ON N8M 1Y6

To the Town of Amherstburg:

271 Sandwich Street South  
Amherstburg, ON N9V 2A5  
Attention: Municipal Clerk / Chief Administrative Officer

To the Town of Essex

33 Talbot Street South  
Essex, ON N8M 1A8  
Attention: Municipal Clerk / Chief Administrative Officer

To the Town of Kingsville

2021 Division Road North  
Kingsville, ON N9Y 2Y9  
Attention: Municipal Clerk / Chief Administrative Officer

To the Municipality of Lakeshore

419 Notre Dame Street  
PO Box 580  
Belle River, ON N0R 1A0  
Attention: Municipal Clerk / Chief Administrative Officer

To the Town of LaSalle

5950 Malden Road  
LaSalle, ON N9H 1S4  
Attention: Municipal Clerk / Chief Administrative Officer

To the Municipality of Leamington

111 Erie Street North  
Leamington, ON N8H 2Z9  
Attention: Municipal Clerk / Chief Administrative Officer

To the Township of Pelee

1045 West Shore Road  
Pelee Island, ON N0R 1M0  
Attention: Municipal Clerk / Chief Administrative Officer

To the Town of Tecumseh

917 Lesperance Road  
Tecumseh, ON N8N 1W9  
Attention: Municipal Clerk / Chief Administrative Officer

To the Corporation of the City of Windsor

350 City Hall Square  
Windsor, ON N9A 6S1  
Attention: Municipal Clerk / Chief Administrative Officer

Any notice, report or other written communication, if delivered, shall be deemed to have been given or made on the date on which it was delivered to any employee of such party, or if mailed, postage prepaid, shall be deemed to have been given or made on the third business day following the day on which it was mailed (unless at the time of mailing or within forty-eight hours thereof there shall be a strike, interruption or lock-out in the Canadian postal service in which case service shall be by way of delivery only). Any Party may at any time give notice in writing to another Party of the change of its address for the purpose of this Agreement.

**9.6** Headings

The Section headings hereof have been inserted for the convenience of reference only and shall not be construed to affect the meaning, construction or effect of this Agreement.

**9.7** Governing Law

The provisions of this Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario as at the time in effect.

**9.8** Execution of Agreement; Counterparts; Electronic Signatures

- I. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument, and shall become effective when counterparts have been signed by each of the Parties and delivered to the other Parties; it being understood that all Parties need not sign the same counterparts.
- II. The exchange of copies of this Agreement and of signature pages by electronic transmission in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by electronic means shall be deemed to be their original signatures for all purposes.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the day and year first written above.

**ESSEX REGION CONSERVATION AUTHORITY**

Jim Morrison, Chair, Essex Region Conservation Authority	Date
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Tim Byrne, Chief Administrative Officer/Secretary-Treasurer	Date
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*I/We have authority to bind the Essex Region Conservation Authority.*

**TOWN OF AMHERSTBURG**

Signature/Name/Title	Date
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Signature/Name/Title	Date
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*I/We have authority to bind the Town of Amherstburg.*

**TOWN OF ESSEX**

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Signature/Name/Title

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Date

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Signature/Name/Title

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Date

*I/We have authority to bind the Town of Essex.*

**TOWN OF KINGSVILLE**

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Signature/Name/Title

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Date

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Signature/Name/Title

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Date

*I/We have authority to bind the Town of Kingsville.*

**MUNICIPALITY OF LAKESHORE**

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Signature/Name/Title

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Date

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Signature/Name/Title

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Date

*I/We have authority to bind the Municipality of Lakeshore.*

**TOWN OF LASALLE**

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Signature/Name/Title

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Date

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Signature/Name/Title

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Date

*I/We have authority to bind the Town of LaSalle.*

**MUNICIPALITY OF LEAMINGTON**

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Signature/Name/Title

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Date

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Signature/Name/Title

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Date

*I/We have authority to bind the Municipality of Leamington.*

**TOWNSHIP OF PELEE**

\_\_\_\_\_  
Signature/Name/Title Date

\_\_\_\_\_  
Signature/Name/Title Date  
*I/We have authority to bind the Township of Pelee.*

**TOWN OF TECUMSEH**

\_\_\_\_\_  
Signature/Name/Title Date

\_\_\_\_\_  
Signature/Name/Title Date  
*I/We have authority to bind the Town of Tecumseh.*

**THE CORPORATION OF THE CITY OF WINDSOR**

\_\_\_\_\_  
Signature/Name/Title Date

\_\_\_\_\_  
Signature/Name/Title Date  
*I/We have authority to bind the City of Windsor.*

**Appendix A**

	<b>Cost Category A Section 4.1</b>	<b>Cost Category B Section 4.2</b>	<b>Cost Category C Section 4.2</b>	<b>Total Estimated</b>
	<b>Minimum Fixed Cost</b>	<b>Estimated Shared</b>	<b>Estimated Direct</b>	<b>Annual Program Cost</b>
<b>Amherstburg</b>	\$ 2,000	\$ 1,000	\$ 670	\$ 3,670
<b>Essex</b>	2,000	690	260	2,950
<b>Kingsville</b>	2,000	1,130	850	3,980
<b>Lakeshore</b>	2,000	830	430	3,260
<b>Lasalle</b>	2,000	570	100	2,670
<b>Leamington</b>	2,000	2,110	2,150	6,260
<b>Pelee</b>	2,000	570	100	2,670
<b>Tecumseh</b>	2,000	570	100	2,670
<b>Windsor</b>	2,000	1,460	1,300	4,760
<b>Chatham-Kent</b>	2,000	1,070	770	3,840
	<b>\$ 20,000</b>	<b>\$ 10,000</b>	<b>\$ 6,730</b>	<b>\$ 36,730</b>