

**GRAND BEND AREA JOINT SEWAGE BOARD**  
**“TERMS OF REFERENCE”**

**1. Joint Sewage Board**

Pursuant to subsection 202 of the *Municipal Act, 2001*, the Parties have established a separate and distinct Joint Municipal Service Board, to be known as the Grand Bend Area Joint Sewage Board (the “Joint Sewage Board”) composed of three (3) **voting** members from each Participating Municipality. Prior to Bluewater becoming a Participating Municipality, the Joint Sewage Board may invite Bluewater to participate in Joint Sewage Board meetings at the invitation of the Joint Sewage Board. If Bluewater becomes a Participating Municipality then the Parties consent to such changes as may be required to give effect to Bluewater’s participation on the Joint Sewage Board, and if required the Parties shall establish a new Joint Board in order to include Bluewater as a Participating Municipality in the Joint Sewage Board.

**2. Delegation of Control and Management**

The Parties hereby confer responsibility for the control and management of the System upon the Joint Sewage Board, pursuant to Section 202 of the *Municipal Act, 2001*.

**3. Agency**

The Joint Sewage Board shall be the agent of the Participating Municipalities for all actions taken within the Joint Sewage Board’s scope of authority. The Joint Sewage Board shall not otherwise be the agent of the Parties.

**4. Procedural By-Law**

The Joint Sewage Board shall pass a Procedural By-Law governing the procedural matters relating to the Joint Sewage Board as required under Section 238 of the *Municipal Act, 2001*. The Procedural By-Law may supplement the terms set out in this Agreement but shall confirm the following points:

(a) The term of office of a Joint Sewage Board Member shall be in accordance with Section 196 of the *Municipal Act*;

(b) Members may be re-appointed and the term of each Joint Sewage Board Member continues until his or her successor has been appointed, provided the Member remains an elected official. For clarity, a Joint Sewage Board Member shall be an elected official;

(c) Each Participating Municipality will appoint Joint Sewage Board Members as often as necessary to ensure that vacancies are minimized and that the function of the Joint Sewage Board will be facilitated;

(d) A Participating Municipality may revoke the appointment of any Joint Sewage Board Member appointed by it for such reasons as it considers advisable, but may not leave any such position vacant for more than fifteen (15) days;

(e) The quorum for any meeting of the Joint Sewage Board shall be not less than three quarters of all voting members;

(f) An alternate member appointed by a Participating Municipality may attend a meeting in place of any Joint Sewage Board Member appointed by that Participating Municipality;

(g) No member is eligible for remuneration by the Joint Sewage Board;

(h) The Joint Sewage Board will appoint a Chair and Secretary for the calendar year at its first meeting in that year. Typically the Chair and Secretary positions will rotate every two (2) years between the Participating Municipalities provided that the Chair and the Secretary of the Joint Sewage Board shall not be occupied by appointees of a single municipality in any year;

(i) The Joint Sewage Board will meet not less than once in any three (3) month calendar period, at the call of the Chair, with no less than fourteen (14) days' notice, or at any other time with the consent of all Joint Sewage Board Members. The Participating Municipalities shall have the right to call a Meeting of the Joint Sewage Board by providing written notice of the meeting to each of the other Participating Municipalities. The requisite notice for all meetings shall include a summary of the business to be transacted at the meeting. The summary of the business to be transacted at the meeting shall be sufficient for all Participating Municipalities to determine the business

that will be addressed at the meeting, failing which the business transacted at the meeting shall be null and void unless otherwise agreed by the Participating Municipalities;

(j) Meetings of the Joint Sewage Board shall be conducted in accordance with the Procedural By-Law, except as set out in this Agreement or as required by law;

(k) Minutes of all meetings shall be circulated without any of the Participating Municipalities reviewing the content of the Minutes prior to distribution. Any objections to the content of the Minutes shall be noted by the objecting Participating Municipality at the following meeting; and

(l) Each Joint Sewage Board Member that has been appointed by a Participating Municipality shall have one vote with respect to any question.

## **5. Duties of the Joint Sewage Board**

The Joint Sewage Board shall be responsible for the management and control of the New Facility and the System, subject only to the duties specifically delegated to the Administering Municipality or the Administering Authority. Without limiting the above, the Joint Sewage Board shall be responsible for:

- a. Obtaining approvals;
- b. Contracting for services;
- c. Entering into agreements with individuals, corporations and governments;
- d. Operating bank accounts and completing other transactions;
- e. Approval of all operational policies for the New Facility;
- f. Approval of all Budgets and rates;
- g. Receive and review all Ministry correspondence and reports on the New Facility;  
  
Receive information and review and provide guidance on claims and potential claims or other serious occurrences relating to the New Facility and the System; and
- h. Appointment of the Administering Municipality, the Administering Authority and Operator by the Joint Sewage Board.

Unless an agreement is within the Administering Municipality's or the Administering Authority's scope of authority, all agreements for the New Facility and the System shall be signed by the Chair of the Joint Sewage Board upon authorization by resolution of the Joint Sewage Board. The Parties acknowledge that there is an existing operating agreement with OMI that relates to the Existing Facility and the Parties contemplate that OMI will operate the New Facility. The said agreement includes other Lambton Shores sewage facilities that OMI operates. When the term of the said agreement expires, unless otherwise agreed by the Parties, a separate agreement will be negotiated for the Existing Facility and/ or the New Facility by the Joint Sewage Board. For clarity, the approval of any tenders for any expansion of the New Facility shall not be approved by the Joint Sewage Board. The role of the Joint Sewage Board is to consider and recommend to the Participating Municipalities', or if applicable the Parties' municipal Councils, to accept or reject the tenders. Such tenders must be approved by all municipal Councils of the Parties that will be contributing to the costs of any expansion of the New Facility. For clarity, the Administering Municipality shall be designated as the party authorized to enter into any contract with the entity that submits the successful proposal for the tender.

**6. Appointment of Administering Authority and Administering Municipality**

The Participating Municipalities hereby appoint Lambton Shores as the initial Administering Municipality. The Administering Municipality may, at any time, be removed and replaced by one of the other Participating Municipalities or an independent Administering Authority by a majority vote of members of the Joint Sewage Board, or by an Order of the OMB. In the event of an OMB Order replacing the Administering Municipality, the new Administering Municipality or Administering Authority, as the case may be, cannot be replaced by a vote of the Joint Sewage Board within three (3) years of the date of the said Order unless the Administering Municipality is in default under this Agreement and has failed to cure such default within a reasonable time of receiving a default notice from one or more of the Participating Municipalities.

**7. Duties of the Administering Municipality or the Administering Authority**

The Administering Municipality or the Administering Authority may execute agreements on behalf of the Joint Sewage Board that are within its authority under this section. Unless otherwise agreed by the parties, the administrative functions are as follows:

- (a) keeping separate books, records and accounts;
- (b) liaison with Ministry of the Environment staff on matters of compliance;
- (c) liaison with the Operating Agent;
- (d) negotiating agreements with the Operating Agent, subject to the approval of the Joint Sewage Board;
- (e) preparing annual Capital Budgets, annual Operating Budgets, and all other Budgets;
- (f) making payments to the Operating Agent;
- (g) making payments on any provincial capital debt and other financing payments;
- (h) raising capital financing;
- (i) invoicing the Parties for amounts payable by the Parties under this Agreement, including work undertaken under the direction of the Joint Sewage Board;
- (j) operating bank accounts for the purposes set out in this Section 11;
- (k) making day-to-day operation and maintenance decisions and implementing or providing for the implementation of those decisions, where they are not being implemented by the Operating Agent, up to a maximum value of Twenty-Five Thousand (\$25,000.00) Dollars or such greater amount that may be incurred for operation and maintenance decisions that are required pursuant to a Regulatory Directive; and
- (l) providing quarterly and annual reports to the Joint Sewage Board regarding flows and a comparison of the budgeted flows versus the actual flows.

#### **8. Auditing of Joint Sewage Board Records**

The Joint Sewage Board shall direct that its Records be audited at least annually or upon the request of any of the Parties.

#### **9. Auditing of Administering Municipality Records**

The Records of the Administering Municipality and the Administering Authority which pertain to its responsibilities under this Agreement shall be audited at least annually or upon the request of any of the Parties.

#### **10. Joint Sewage Board Approval**

The Joint Sewage Board is to take all necessary steps to have the draft Budgets completed and approved by November 30 in each preceding calendar year and then

submit it to the Municipal Councils of the Participating Municipalities for approval before December 31<sup>st</sup>.

**11. Budget Approval**

If a Budget approved by the Joint Sewage Board for the next calendar year is not confirmed by each Participating Municipality that is contributing flows to the New Facility by January 1 of the next calendar year, the most recent Budget of that kind which has been approved by all Participating Municipalities that are contributing flows to the New Facility or the Existing Facility shall be continued, except that all amounts for income and expenses as applicable, shall be increased to reflect the actual increase in revenues or expenses based upon approved charges or Operating Agent fees, or an annual increase in the consumer price index for Ontario reported by the Statistics Canada for the most recent twelve-month period ending prior to November 1 of the year preceding the year for which the draft Budget was prepared, whichever, in the opinion of the Joint Sewage Board, is more appropriate. If the Joint Sewage Board subsequently approves the draft Budget, such approved Budget shall supersede the default new Budget. For clarity, only members of the Joint Sewage Board that represent the Participating Municipalities that are contributing flows to the New Facility shall vote on the Operating Budget.

**12. Operating Budget Contents**

The Operating Budget prepared and approved shall detail all items of expected revenue and expense, in accordance with accepted accounting practice and as may be required by the Joint Sewage Board.

**13. Capital Replacement and Rehabilitation Budget**

The Capital Replacement and Rehabilitation Budget will project capital replacement and rehabilitation expenditures in accordance with all legislative requirements and the terms of the funding for the New Facility. For clarity, only members of the Joint Sewage Board that represent the Participating Municipalities that are contributing flows to the New Facility shall vote on the Capital Replacement and Rehabilitation Budget.

**14. Capital Repairs - Emergent Requirements**

In the event that an urgent replacement or rehabilitation expenditure must, in the opinion of the Administering Municipality or the Administering Authority, be made during the course of the year, that is not provided for in the Capital Replacement and Rehabilitation

Budget, or an expenditure is required under a statute that is not provided for in the Operating Budget or Capital Replacement and Rehabilitation Budget, then the Joint Sewage Board or Administering Municipality or the Administering Authority may incur such expenditure and the Joint Sewage Board will recover it as an addition to the Replacement and Rehabilitation Budget in one or more subsequent years, to the extent that it is not provided for in the Capital Replacement and Rehabilitation Reserve Fund.

**15. Capital Replacement and Rehabilitation Reserve Fund**

A Capital Replacement and Rehabilitation Reserve Fund will be held by the Joint Sewage Board for the purpose of ensuring that sufficient funds are held to properly maintain the System. The Joint Sewage Board will hold this fund in a dedicated interest-bearing account. For clarity, only members of the Joint Sewage Board that represent the Participating Municipalities that are contributing flows to the New Facility shall vote on the Capital Replacement and Rehabilitation Reserve Fund.

**16. System Capacity**

The Joint Sewage Board shall, from time to time review the capacity requirements for the System and make recommendations to the Participating Municipalities to reduce or increase capacities as may be identified by that review.

**17. Cost Recovery**

The Joint Sewage Board may propose how to finance and recover the costs of providing new capacity to the Participating Municipalities.

**18. Requirement for Optimization Study**

An Optimization Study will be undertaken by the Joint Sewage Board before any expansion of the New Facility is considered. The purpose of the Optimization Study is to assess the potential for the treatment capacity of existing facilities to be increased (“re-rated”), by means of changes to procedures, equipment or other measures satisfactory to the provincial regulatory agency (MOE) (“Optimization Study”).

**19. Initiating an Optimization Study**

The Joint Sewage Board may undertake the Optimization Study on its own initiative and shall undertake such a study at the request of a Party.

**20. Cost of Optimization Study**

A Party seeking expansion of the New Facility or wishing to initiate an Optimization Study shall initially be responsible for the cost of the Optimization Study, along with such other studies as may be required, in the opinion of the Joint Sewage Board, for the feasibility of optimization or expansion to be properly considered.

**21. New Capacity Capital Budget**

The Joint Sewage Board shall make all reasonable efforts to provide new capacity on an as-required basis and sufficiently in advance of growth as to not impede development within any Participating Municipality's respective municipal boundaries, and will establish a New Capacity Capital Budget as required for this purpose. The Joint Sewage Board may decide how to finance and recover the costs of providing new capacity.

**22. Regulating Demand**

No Participating Municipality will make changes or permit changes to works connected to the System that will have an adverse effect on the System or result in a larger demand being placed on the System than the System is designed to meet, and for the purposes of this section, the Joint Sewage Board may temporarily allocate and reallocate any unused capacity in the System among the Participating Municipalities as may be mutually agreed to.

**23. Dispute Resolution/Arbitration**

Each Party shall have the right to appeal a decision of the Joint Sewage Board or action to a full joint meeting of the Parties' Municipal Councils, subject to the exceptions noted below. Failing a resolution satisfactory to all Parties, each Party shall have the right to appeal the decision to the Ontario Municipal Board, pursuant to the Transfer Order and Section 6 of the Municipal Water Sewage and Transfer Act. Notwithstanding the above, until Bluewater becomes a Participating Municipality, Bluewater's right of appeal under this Section 45 shall not apply with respect to the following issues:

- (i) budget issues and approvals, other than budget decisions that will materially impact the long-term management of the assets constituting the New Facility; and
- (ii) capacity allocations among Participating Municipalities in the New Facility.

**24. Payment of Invoices and Voting Privileges**

The Administering Municipality shall invoice the Participating Municipalities for amounts in respect of the capital contributions in accordance with the tender documents, the grant agreements, the requirements of the project and all other liabilities and expenses to be shared among the Participating Municipalities under this Agreement. If a Participating Municipality has not remitted payment of an invoiced cost within sixty (60) days, that Participating Municipality's voting rights shall be suspended until payment is remitted.

**25. Application Remedy for Unfair Actions**

The Parties acknowledge that it is their intention the affairs of the Joint Sewage Board and matters relating to the New Facility shall be conducted in a manner that is fair and reasonable to all Parties and any actions that are oppressive, unfairly prejudicial or that unfairly disregard the interests of any Party may be addressed through an Application under this Section 65. Upon Application of any Party, if the Ontario Municipal Board is satisfied that the actions of any Party or Parties have effected or threaten to effect a result that is oppressive or unfairly prejudicial to or unfairly disregards the interests of a Party to this Agreement, the Ontario Municipal Board may make an Order to rectify the actions in question. In such circumstances, the Ontario Municipal Board may make any interim or final Order that it deems necessary including without limiting the generality of the foregoing:

- (a) an Order restraining the actions that are the subject of the actions complained of in the Application;
- (b) an Order appointing a new Administering Municipality;
- (c) an Order directing any Party or Parties to take such actions that the Ontario Municipal Board deems necessary to address the conduct complained of;
- (d) an Order varying or setting aside a transaction or contract that is the subject matter of the Application;
- (e) an Order compensating an Applicant under this Section 65; and
- (f) any other Order that the Ontario Municipal Board deems necessary to address the conduct complained of.