



Town of Amherst  
Special Council Meeting  
Agenda

Date: **Thursday, October 3, 2024**  
Time: **12:00 pm**  
Location: **Council Chambers, Town Hall**

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Pages

**1. CALL TO ORDER**

**1.1 TERRITORIAL ACKNOWLEDGMENT**

“I would like to acknowledge that our gathering today is taking place in (MEEG-MA-GEE), the traditional, unceded and ancestral territory of the Mi'kmaw people. I would also like to acknowledge that Nova Scotia has another unique people. These are the Indigenous Blacks of Nova Scotia whose legacy and contributions date back over 400 years predating confederation of this land. We are all treaty people.”

**2. REQUEST FOR DECISION**

**2.1 Industrial Park Land Purchase - Emery**

1 - 11

**2.2 Inter-Municipal Services Agreement - Fawthrop**

12 - 52

**3. ADJOURNMENT**

# SYNOPSIS

## Industrial Park Land Purchase

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In January 2024 Council approved the purchase of five vacant lots in the Amherst Industrial Park from Invest Nova Scotia. As part of that purchase, Invest Nova Scotia have included five additional parcels in the transaction.

Taking ownership would allow the Town to quickly respond to potential buyers that are looking to develop these lands for industrial purposes. Invest Nova Scotia have offered the subject lands to the Town at Net Book Value, and are contributing up to \$5,000 towards the associated closing costs.

Taking ownership of the remaining undeveloped properties will give the Town more direct control over their eventual sale and development, which supports Council's Ongoing Core Strategic Priority of Economic Development.

### **MOTION:**

**That Council approve the purchase of PID 25005414, PID 25394321, PID 25005026, PID 25004920, PID 25005067 at Net Book Value, plus closing costs for future industrial park development, and authorize the Mayor and CAO to execute the necessary agreements.**



**AMHERST TOWN COUNCIL**

**RFD# 2024088**

**Date: October 3, 2024**

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**TO:** Mayor Kogon and Members of Amherst Town Council

**SUBMITTED BY:** Andrew Fisher, Director of Planning and Strategic Initiatives

**DATE:** October 3, 2024

**SUBJECT:** Transfer of Ownership of Invest NS Properties to the Town of Amherst

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**ORIGIN:** Industrial Park Expansion is a 2023 Strategic Priority and supports the 2024 Ongoing Core Priority of Economic Development.

**LEGISLATIVE AUTHORITY:** MGA 50(1) *In addition to matters specified in this Act or another Act of the Legislature, the council may acquire and own property granted or conveyed to the municipality either absolutely or in trust for a public or charitable purpose and MGA(5a) A municipality may acquire property, including property outside the municipality, that the municipality requires for its purposes or for the use of the public.*

**RECOMMENDATION:** That Council approve the purchase of PID 25005414, PID 25394321, PID 25005026, PID 25004920, PID 25005067 at Net Book Value, plus closing costs for future industrial park development, and authorize the Mayor and CAO to execute the necessary agreements.

**BACKGROUND:** In January 2024 Council approved the purchase of five vacant lots in the Amherst Industrial Park from Invest Nova Scotia. As part of that purchase, Invest Nova Scotia have included five additional parcels in the transaction. It is considered a priority by staff to actively market these properties as their development weighs into the feasibility of a future industrial park expansion.

**DISCUSSION:** As property owners, InvestNS, originally NSBI, was responsible for the promotion of the property and negotiating with potential investors for business development. This effort has been waning in recent years. Taking ownership will allow the Town to promote and advertise these available properties and actively pursue development opportunities.

**FINANCIAL IMPLICATIONS:** InvestNS will sell the properties to the Town of Amherst at Net Book Value (\$10) and they will contribute up to \$5,000 towards the closing costs.

**COMMUNITY ENGAGEMENT:** No community engagement is necessary.

**ENVIRONMENTAL IMPLICATIONS:** None specific to this issue.

**SOCIAL JUSTICE IMPLICATIONS:** Future development of the Industrial Park will grow employment opportunities and attract a larger workforce stimulating economic growth and further development in other sectors.





**AMHERST TOWN COUNCIL**

**RFD# 2024088**

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**ALTERNATIVES:**

1. Council does not approve the acquisition of the subject properties.

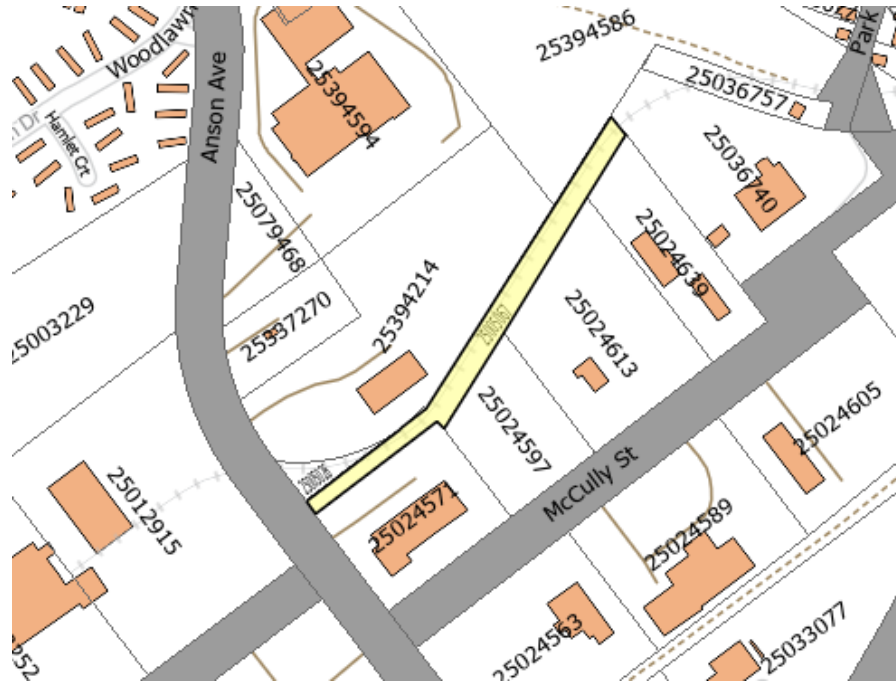
**ATTACHMENTS:** 1) Property maps of the subject properties; 2) Purchase and Sale Agreement for all 10 land parcels.

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Report prepared by: A. Fisher  
Report and Financial approved by:



**Anson Ave. (1.2 Acres) PID 25005067**



**LOT 36 Anson Ave. (0.5 Acres) PID 25005026**



**Tantramar Crescent (1.4 Acres) PID 25394321**



**Anson Ave (4.6 Acres) PID 25004920**



**Tantramar Crescent (1.4 Acres) PID 25005414**





3. HST
  - (a) if this transaction is subject to the HST imposed in the Province of Nova Scotia, then such tax is not included in the purchase price and shall be paid by the Purchaser;
  - (b) if the Purchaser is a Registrant for HST on the Closing Date, the Purchaser shall provide the Vendor with a Declaration and Indemnity Agreement of HST confirming its registration, undertaking to make all remittances in accordance with the HST legislation and indemnifying the Vendor with respect thereto. In such case, the Purchaser shall not be required to pay HST to the Vendor on closing
4. The Property is sold on an "as is" basis.
5. This Agreement is subject to the Property being free and clear from all encumbrances except as to any conditions and reservations expressed in the original grant from the Crown, and except as to any easements, registered restrictions or covenants that affect the Property, provided that the same are complied with and do not materially affect the Purchaser's intended use of the Property, and except as to any restrictions and covenants contained in Schedule "B" to this Agreement, failing which this Agreement shall terminate without liability by the Vendor for any expenses incurred or damages sustained by the Purchaser.
6. The Purchaser is to be allowed ten (10) days following the earlier of the date of acceptance of this Agreement or following migration of title, as the case may be, to examine the title at the Purchaser's own expense. If, within that time, any valid objection to title is made in writing to the Vendor, which the Vendor shall be unable or unwilling to remove, and which the Purchaser will not waive, this Agreement shall, notwithstanding any intermediate acts or negotiations in respect of such objection, shall terminate, and the Vendor shall not be liable for any costs or damages. Save as to any valid objection so made within such time, the Purchaser shall be conclusively deemed to have accepted the title of the Vendor to the Property.
7. The deed of transfer will contain only a covenant by the Vendor that it has done nothing to encumber the lands, and may also include the covenants and Agreements contained in Schedule "B", and if requested by the Vendor, the Purchaser shall execute such deed or transfer.
8. The Purchaser covenants and agrees as follows:
  - (a) at the option of the Vendor the Purchase Price may be paid on the Closing Date by certified cheque, money order or solicitor's trust cheque; and
  - (b) to comply with any restrictions and covenants contained in Schedule "B".
9. Any tender of documents and money hereunder may be made upon the solicitor acting for the party on whom the tender is required, and it shall be sufficient that a negotiable certified cheque may be tendered in lieu of cash or currency.
10. This offer, when accepted, shall constitute a binding contract of purchase and sale and time shall be of the essence of this Agreement, and in any agreed upon amendment, variation or extension of this Agreement or Closing Date herein, time shall continue to be of the essence except as the parties may otherwise in writing agree.
11. This Agreement shall not be assigned in any way by the Purchaser without the prior written consent of the Vendor, which shall be at the sole and absolute discretion of the Vendor.
12. This offer and its acceptance are to be read with all changes of gender or number required by the context.
13. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.
14. The Purchaser agrees that it shall not, without the prior written consent of the Vendor, make any public announcement about the existence of this Agreement or its contents until the Closing Date.
15. This Agreement shall constitute the entire Agreement between the parties hereto for the purchase and sale of the Property and supersedes all other agreements, contracts, or understandings, whether oral or in writing. Any amendments to this Agreement must be in



## SCHEDULE "A"

PID 25004763 - Lot 8B, Tupper Boulevard  
PID 25033499 - Lot 46, Tupper Boulevard  
PID 25004938 - Parcel W, Tantramar Crescent  
PID 25004797 - Lot 21, Tantramar Crescent  
PID 25003211 - Lot 55, Tantramar Court  
PID 25005414 - Tantramar Court Lane  
PID 25394321 - Lot 36- Anson Avenue Rail ROW  
PID 25004920 - Anson Avenue Lane  
PID 25005067 - Anson Avenue Rail ROW  
PID 25005026 - Portion of Anson Avenue Rail ROW

## SCHEDULE "B"

With the intention that the burden of these covenants shall run with the land the Grantor and Grantee do hereby covenant and agree with each other and as to the Grantee with the owner or owners from time to time of the other lands in this industrial park to which the benefit and burden of the following stipulations, regulations and provisions are attached and their/his/her or its respective representatives, successors and assigns to observe, confirm and comply with the following restrictions, namely:

1. The Grantee covenants and agrees to complete erection of an industrial building on the said lands within 24 months of the date of closing unless previous authorization is received from the Grantor. If the building is not started and completed within this period, the Grantee may be given notice in writing to complete the construction within 3 months and if not completed within such extended period the Grantee shall re-convey the lands to the Grantor at the original selling price without interest.
2. No building, structure or addition shall be erected on said lands unless written approval of the plans and specifications has been received from the Grantor. It is the responsibility of the Grantee to obtain all necessary municipal, provincial and federal government permits, and to comply with all laws governing purchase, ownership and use of the property.
3. All buildings and structures erected on the lands and all undeveloped portions of the site shall be maintained in good order and repair at all times.
4. No driveway, parking or loading area shall be maintained on the lands unless such driveway, parking and loading area is in a proper state of repair at all times and no driveway, parking or loading area shall be constructed or maintained on the land unless it has as a minimum a bituminous topping surface placed by the Grantee within one (1) year of the substantial completion of construction of any building or structure on the land. Any deviation from the above requires approval of the Grantor in writing.
5. No truck receiving or shipping door shall face the street on the front of the building. Truck receiving and shipping facilities will be placed to the rear of the front half of the depth of the building, except where in the opinion of the Grantor, the contours of the land dictate otherwise. When loading is carried out wholly within the building itself, these restrictions will not apply.
6. Trees shall not be removed by the Grantee without the consent of the Grantor, except where they are located within the areas proposed for construction. If any tree which is to be retained shall be cut down, removed or damaged, the tree shall be replaced to the satisfaction of the Grantor.
7. Those portions of the site between buildings and the front and side lot lines which are not covered by structures, parking areas, loading areas, or driveways will be landscaped. All landscaping shall be commenced as soon as construction is complete and weather permits, but in no event beyond one (1) year from substantial completion of the building or structure. Sodded areas, trees, shrubbery and gardens shall be kept neat and orderly in appearance at all times and shall be maintained in a healthy condition.
8. Fences shall not be erected by the Grantee without the written approval of the Grantor of the location, design and material. Fences shall not be permitted between buildings and front lot lines. Hedges will be permitted if approved as part of the landscaping plan. Fences shall at all times be kept in a proper state of repair.
9. The Grantee shall provide and maintain a central refuse storage collection area which shall be at the same level as adjacent parking areas and driveways and shall be suitably screened with growing trees, hedges, fences, walls or a combination thereof. The location, size and screening of the refuse storage area shall be approved in writing by the Grantor. The criteria of approval is that the designated area shall not be visually objectionable when viewed from public thoroughfares. In any case, the location of the refuse storage area must be on the site to the rear of the building.
10. No boiler or furnace of any kind shall be placed, installed or used on said lands, or within any building thereof other than boilers or furnaces using for fuel either oil, gas or electricity, or a combination thereof, without approval from the Vendor. Fuel storage tanks must be located to the rear of the building and be accessible to fuel delivery trucks from approved areas.
11. No power or telephone lines shall be constructed or maintained on the surface of the lands but may only be constructed as underground facilities unless, before the construction of such power or telephone lines, written permission from the Grantor to maintain them on the surface of the lands is first obtained.

# SYNOPSIS

## Inter-Municipal Services Agreement

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The property formerly known as the 'Dolan Fields', which housed a soccer complex for many years, was sold for residential development earlier this year. As this property straddles the municipal boundary between the Town of Amherst and the Municipality of the County of Cumberland it makes planning for a new large residential community somewhat difficult as there are different rules, regulations and service levels on each side of the boundary.

In order to address this situation, Amherst and Cumberland have negotiated an agreement on a mutual boundary change which will result in the Town of Amherst expanding its boundary to encompass the entire property. At full build out of the community this boundary change could result in approximately 400 additional dwellings constructed within the Town, with the entire community of over 700 dwellings receiving the same municipal services such as police, fire, recreation and public works infrastructure.

In return the Town has agreed to provide access to our sanitary sewer services for up to 400 dwelling units in certain areas of the Municipality of the County of Cumberland in proximity to the Town. This will allow these County lands to be developed on municipal services, resulting in more housing for the region, in close proximity to schools, employment and other services.

We believe that this unprecedented agreement is not only a win - win for the Town and County, but will remove barriers and costs to new, much needed housing development in our region resulting in a stronger community, focused on growth and prosperity for all.

**WHEREAS the *Municipal Government Act* authorizes municipalities to enter agreements to provide or administer municipal services within or outside the municipality;**

**AND WHEREAS the Town of Amherst and Municipality of the County of Cumberland wish to enter an agreement respecting the provision of sanitary sewer services by the Town to the County;**

**NOW THEREFORE BE IT RESOLVED that Council approve the proposed Intermunicipal Services Agreement to enable a mutual boundary change between the Town and County in exchange for the provision of sanitary sewer services by the Town to the County;**

**AND BE IT FURTHER RESOLVED that the Mayor and CAO be and they are hereby authorized to take such actions and do all things including the execution of such documents, instruments and other writings as may be necessary or desirable to implement same.**



## AMHERST TOWN COUNCIL

RFD# 2024089

Date: October 3, 2024

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**TO:** Mayor Kogon and Members of Amherst Town Council

**SUBMITTED BY:** Jason MacDonald, Chief Administrative Officer

**DATE:** October 3, 2024

**SUBJECT:** Intermunicipal agreement regarding sanitary sewer and boundary change with Municipality of the County of Cumberland

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**ORIGIN:** This item originates from discussions with the Municipality of the County of Cumberland (MCC) and Shaw Rural Housing (Shaw) regarding the development of the "Dolan" lands in on Upper Church Street.

**LEGISLATIVE AUTHORITY:** Section 357 of the *Municipal Government Act* (Nova Scotia) (the "MGA") provides that municipalities may agree to a mutual boundary change with approval from the Nova Scotia Utility and Review Board and Section 60 of the MGA provides that a municipality may agree with other municipalities to provide or administer municipal services within or outside the municipality on such terms and conditions as the municipalities may agree.

**RECOMMENDED RESOLUTION:**

WHEREAS The *Municipal Government Act* authorizes municipalities to enter agreements to provide or administer municipal services within or outside the municipality;

AND WHEREAS The Town of Amherst and Municipality of the County of Cumberland wish to enter an agreement respecting the provision of sanitary sewer services by the Town to the County;

NOW THEREFORE BE IT RESOLVED that Council approve the proposed Intermunicipal Services Agreement to enable a mutual boundary change between the Town and County in exchange for the provision of sanitary sewer services by the Town to the County;

AND BE IT FURTHER RESOLVED that the Mayor and CAO be and they are hereby authorized to take such actions and do all things including the execution of such documents, instruments and other writings as may be necessary or desirable to implement same.

**BACKGROUND:** Shaw Rural Housing has purchased the lands known as the Dolan property. They intend to develop this area into a community with approximately 700 homes. As the property straddles the Town boundary, about 400 of the homes would be located within the MCC. This poses many obstacles to the development as there are different rules and regulations, service levels, and tax rates on each side of the boundary.



**DISCUSSION:** At the direction of their respective Councils, the CAOs have been negotiating an agreement, with the support of legal counsel, that would give effect to the proposal. The agreement, while fairly lengthy, sets out the following high-level agreements:

- 1) Amherst, with the support of MCC, will apply for a mutual boundary change for the portion of the Dolan lands that are currently in MCC.
- 2) MCC would have access to TOA sanitary sewer services for a maximum of 400 dwelling units in the defined service boundary just outside the Amherst town boundary.
- 3) There are provisions for both municipal units to share any commercial taxes in the annexed and newly serviced areas.
- 4) Commercial access to the sewer services is restricted to lots currently zoned commercial.
- 5) All new sewer infrastructure would be constructed by MCC and provided to the TOA at no cost.
- 6) All new connections would become customers of TOA and would be subject to the same rates, charges and regulations as customers within Amherst.
- 7) Regulations would be put in place to ensure that new development to the south of Town does not impact existing peak storm water flows in Amherst.
- 8) MCC will adopt necessary bylaw(s) to allow MCC to collect unpaid sewer rates on our behalf.
- 9) MCC will adopt necessary bylaw(s) to restrict storm water inflow into our sanitary sewer system.

The recommended agreement would be signed immediately but there are a number of conditions that must be met before it would take effect. A number of policies and bylaws in both municipal units will have to be amended with respect to infrastructure standards, property liens to aid in collection of delinquent accounts, operation of and access to infrastructure and storm drainage conditions in selected areas. Once all amendments are in place, the application to the Nova Scotia Utility and Review Board (NSURB) would be submitted by the TOA. The final agreement would be effective on the approval of the boundary change application by the NSURB.

**FINANCIAL IMPLICATIONS:** There are many positive financial implications. First and foremost, the potential of approximately 700 housing units constructed within Town will add significantly to our tax base. These new units, along with additional units constructed within MCC will grow the economy of the greater Amherst area resulting in increased business within Town, and more employees for our businesses.

**SOCIAL JUSTICE IMPLICATIONS:** There are no direct social justice implications; however, it is anticipated that this project will provide much needed homes for health care, teachers and other such professionals that provide much needed services to all residents of our community. In addition, at least the first phase of the new housing development (currently under construction) by Shaw Rural Housing will contain a significant number of affordable housing units.

**ENVIRONMENTAL IMPLICATIONS:** Residential development within and around the Town, which is close to employment, education, business and social services is better for the environment than houses built farther away from these services due to lower carbon emissions resulting from lower automobile travel.

**ALTERNATIVES:** Do not enter into the agreement, or direct the CAO to negotiate changes to the agreement.

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Report Prepared by: Jason MacDonald, CAO

**THIS INTERMUNICIPAL SERVICES AGREEMENT** (as executed and as it may be amended, modified, supplemented or restated from time to time, this "**Agreement**") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2024 (the "**Effective Date**"), by and between:

**TOWN OF AMHERST**, a municipal body corporate pursuant to Section 8 of the *Municipal Government Act* (Nova Scotia)

("TOA")

-and-

**MUNICIPALITY OF THE COUNTY OF CUMBERLAND**, a municipal body corporate pursuant to Section 7 of the *Municipal Government Act* (Nova Scotia)

("MCC")

### RECITALS

#### WHEREAS:

- A. TOA is the owner and operator of a sewage treatment plant and associated sewage and storm drainage conveyance systems which, at present, serve to treat all sanitary sewage from within TOA and certain areas in MCC;
- B. TOA wishes to extend a portion of its municipal boundary with MCC to accommodate additional residential development within TOA;
- C. MCC is desirous of having additional sanitary sewer treatment capacity from TOA to support residential and commercial growth in MCC;
- D. Section 357 of the *Municipal Government Act* (Nova Scotia) (the "**MGA**") provides that municipalities may agree to a mutual boundary change with approval from the Nova Scotia Utility and Review Board (the "**UARB**");
- E. Section 60 of the MGA provides that a municipality may agree with other municipalities to provide or administer municipal services within or outside the municipality on such terms and conditions as the municipalities may agree;
- F. The Parties wish to extend the TOA municipal boundary such that a portion of the lands currently within MCC's boundary identified as PID No. 25038720 as depicted in Schedule "A" hereto (the "**Annexed Area**"), is included within the TOA municipal boundary (the "**Boundary Change**");
- G. In exchange for the Boundary Change, TOA has agreed to provide customers within MCC with sanitary sewer services (the "**Sanitary Services**") to a maximum capacity allocation of 400 Eligible Units (the "**Capacity Allocation**"), as more particularly described in Schedule "B" hereto, to be deployed by MCC, subject to the terms and conditions set forth herein, in accordance with MCC policy or otherwise in its discretion;
- H. Certain sewer pipelines and related facilities and equipment, including without limitation, lift stations, valves, meters, devices for controlling corrosion, related communication systems and above-ground location markers may need to be constructed and connected to TOA's Sanitary

Facilities prior to the provision of the Sanitary Services by TOA, excluding any lateral pipelines which do not require the construction of associated pipelines, related facilities and/or equipment to connect such lateral pipelines to TOA's Sanitary Facilities (collectively, the "**Sanitary Extensions**"); and

- I. The Parties have agreed to enter into this Agreement to set out the terms and conditions on which: (i) the Boundary Change will be completed, (ii) MCC will, or will cause its Contractor or Developer, to design, engineer, procure, construct, test, and convey to TOA, the Sanitary Extensions; (iii) TOA will provide the Sanitary Services to customers within MCC; and (iv) certain Net Taxation Proceeds within the Annexed Area and Service Boundary shall be shared between the Parties.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **ARTICLE 1 - DEFINITIONS**

**Agreement** shall have the meaning given thereto in the preamble of this Agreement.

**Annexed Area** shall have the meaning given thereto in the recitals of this Agreement.

**Applicable Law** shall mean all applicable federal, provincial and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

**Boundary Change** shall have the meaning given thereto in the recitals of this Agreement.

**Boundary Change Closing** shall have the meaning given thereto in Section 2.2.

**Boundary Change Closing Date** shall have the meaning given thereto in Section 2.2.

**Breach** shall mean the failure of a Party to perform or observe any material term or condition of this Agreement.

**Breaching Party** shall mean a Party that is in Breach of this Agreement.

**Business Day** shall mean Monday to Friday, inclusive, excluding holidays or any other day on which banks located in Halifax, Nova Scotia are authorized or required by Applicable Law to be closed for business. The regular business hours on a Business Day are from 08:30 to 16:30 Atlantic Time.

**By-law and Policy Changes** shall have the meaning given thereto in Section 2.4(c)

**Calendar Day** shall mean any day including Saturday, Sunday, holidays or any other day on which banks located in Halifax, Nova Scotia are authorized or required by Applicable Law to be closed for business.

**Capacity Allocation** shall have the meaning given thereto in the recitals of this Agreement.

**Capacity Allocation Notice** shall have the meaning given thereto in Section 3.1.

**Confidential Information** shall have the meaning given thereto in Section 7.3.

**Contractor** shall mean any Person directly engaged by any Party to perform any part of the work and/or services required to be performed by such Party pursuant to this Agreement on behalf of that Party.

**Default** shall mean the failure of a Breaching Party to cure its Breach in accordance with Section 8.3 of this Agreement.

**Developer** shall mean any Person that is a legal or beneficial owner of any land within the Service Boundary, which is approved by MCC for constructing and developing any Sanitary Extension Units.

**Effective Date** shall have the meaning given thereto in the preamble of this Agreement.

**Eligible Units** shall mean those units located, or constructed, within the Service Boundary, excluding: (i) any unit located on lands which are rezoned as commercial after the Effective Date, unless otherwise agreed in writing by the Parties, (ii) any Existing TOA Customers; and (iii) any units that are located within a building with more than twelve (12) units.

**Existing TOA Customers** shall mean those units or customers within the MCC boundary which are connected to TOA's Sanitary Facilities pursuant to the Policy or the Memorandum as of the Effective Date.

**Force Majeure** shall mean an event, condition, occurrence or circumstance beyond the reasonable control and not attributable to the fault or negligence of the Party claiming Force Majeure, which, despite all Reasonable Efforts of the Party claiming the Force Majeure to prevent its occurrence or mitigate its effects, causes a delay or disruption in the performance of any obligation (other than the obligation to pay monies due) imposed on such Party hereunder, including, without limitation, any act of God, labour disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment if caused by an event which would constitute Force Majeure, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, any failure of any Governmental Authority to grant a necessary license, permit, approval or consent of any kind, or any other cause beyond a Party's control.

**Good Utility Practice** shall mean those practices, methods or acts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the sanitary services utility industry in North America) that at a particular time, in the exercise of reasonable judgment, would have been expected to accomplish the desired result in a manner consistent with regulations, reliability, safety, environmental protection, economy and expedition as applied and practiced in the utility industry with respect to sanitary services, delivery, purchase and sale.

**Governmental Authority** shall mean any national, international, federal, provincial, municipal, county, regional or local government, organization or duly constituted authority having jurisdiction, and includes: (a) any department, commission, bureau, board, administrative agency or regulatory body of any government having jurisdiction; and (b) any Person acting as an authorized agent thereof.

**GST/HST** shall mean all taxes levied under the GST/HST Act.

**GST/HST Act** shall mean Part IX of the *Excise Tax Act* (Canada).

**Intellectual Property Rights** shall mean any and all intellectual property rights of any nature anywhere in the world whether registered, registrable or otherwise, including: (a) trademarks, including all applications and registrations and the goodwill connected with the use and symbolized by the foregoing; (b) copyrights and industrial designs, including all applications and registrations relating to the foregoing; (c) trade secrets and confidential know-how; (d) patents and patent applications; (e) any

other intellectual property rights which subsist in computer software, computer programs and websites; and (f) other intellectual property and related proprietary rights, interests and protections, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers (including all rights to sue and recover and retain damages, costs and legal fees, disbursements and fees for past, present and future infringement and any other rights relating to any of the foregoing).

**Loss** shall mean, subject to Section 10.2 herein, any and all losses relating to injury to or death of any Person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's performance, or non-performance of its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

**Memorandum** shall mean, collectively, those memoranda of understanding described in Schedule "C" hereto.

**MGA** shall have the meaning given thereto in the recitals of this Agreement.

**Parties** shall mean, collectively, TOA and MCC, and **Party** means either one of them.

**Paying Party** shall have the meaning given thereto in Section 7.8.

**Person** shall mean an individual, corporation, company, body corporate, partnership, joint venture, Governmental Authority, organization, trust, association, or other entity.

**Policy** shall mean TOA's "Sanitary Sewer Service to County Residents Policy", as amended from time to time.

**Professional Engineer** shall mean a qualified engineer licensed to practice in the Province of Nova Scotia.

**Professional Engineer Report** shall have the meaning given thereto in Section 4.2(b).

**Net Taxation Proceeds** shall mean all property taxes levied against applicable lands or any part thereof by a Governmental Authority, but specifically excluding: (i) any mandatory provincial flow-through costs, as amended from time to time, which as of the Effective Date are education, assessment and library expenditures; (ii) any levies or charges imposed to fund the development or maintenance of sanitary, storm or water infrastructure, as amended from time to time; and (iii) any deed transfer taxes.

**Reasonable Efforts** shall mean, with respect to an action required to be attempted or taken by a Party hereunder, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

**Recipient Party** shall have the meaning given thereto in Section 7.8.

**Review Period** shall have the meaning given thereto in Section 4.2(d).

**Sanitary Connection Date** shall mean the date upon which a Sanitary Connection Unit or Sanitary Extension Unit, as applicable, is connected to TOA's Sanitary Facilities.

**Sanitary Connection Unit Date** shall mean the date upon which a Sanitary Connection Unit is connected to TOA's Sanitary Facilities.

**Sanitary Connection Units** shall have the meaning given thereto in Section 3.1.

**Sanitary Extension Units** shall have the meaning given thereto in Section 3.1.

**Sanitary Extensions Closing** shall have the meaning given thereto in Section 5.2.

**Sanitary Extensions Closing Date** shall have the meaning given thereto in Section 5.2.

**Sanitary Extensions Work Commencement Date** shall mean such Business Day upon which all of the following conditions are satisfied for the Sanitary Extension Units set out in a Capacity Allocation Notice, in MCC's sole and absolute discretion, acting reasonably:

- (a) The Boundary Change Closing shall have been completed;
- (b) All consents, authorizations, orders and approvals required from all Governmental Authorities for the applicable Sanitary Extensions shall have been obtained by MCC, its Contractors or the Developer, as applicable;
- (c) Necessary real property rights and rights-of-way have been obtained by MCC, its Contractors or the Developer, as applicable, to the extent required, for the applicable Sanitary Extensions;
- (d) MCC has received a budget, work schedule and any other reasonably requested information for, or related to, the applicable Sanitary Extensions;
- (e) MCC has received written authorization to proceed with the applicable Sanitary Extensions from TOA; and
- (f) The By-law and Policy Changes shall have been adopted by each Party, as applicable.

**Sanitary Services** shall have the meaning given thereto in the recitals of this Agreement.

**Service Boundary** shall have the meaning given thereto in Section 5.4(d).

**Storm Sewer Lands** shall have the meaning given thereto in Section 4.1(i).

**TOA's Sanitary Facilities** shall mean all the facilities and equipment owned, controlled or operated by TOA that are used to provide Sanitary Services from time to time, including without limitation, any Sanitary Extensions conveyed to TOA pursuant to this Agreement

**UARB** shall have the meaning given thereto in the recitals of this Agreement.

**UARB Application** shall have the meaning given thereto in Section 2.3(a).

**unit** shall have the meaning given to the term "dwelling unit" in the MGA, subject to the conditions set out in Schedule "B" hereto.

**Work Product** shall mean all work product, including all Intellectual Property Rights therein, produced by MCC, its Contractors, any Developer, or any Professional Engineer, as applicable, for the Sanitary Extensions that is reasonably required by TOA for providing the Sanitary Services, but specially excluding the Sanitary Extensions.

## ARTICLE 2 - MUNICIPAL BOUNDARY CHANGE

**2.1 Actions by Parties.** Subject to the terms and conditions set forth in this Article 2 as of the Boundary Change Closing Date, the Parties shall complete the Boundary Change. All costs of each Party with respect to the Boundary Change Closing shall be borne by TOA.

**2.2 Time of Municipal Boundary Change Closing.** The closing of the Boundary Change contemplated herein (the "**Boundary Change Closing**") shall take place on the date on which the UARB Application is approved by the UARB (such date being, the "**Boundary Change Closing Date**").

### **2.3 Transactions to be Effected Prior to Boundary Change Closing.**

- (a) On or before the filing of the application to the UARB for approval of the Boundary Change (the "**UARB Application**"), TOA shall deliver the following to MCC (each of which shall be in form and substance acceptable to MCC, acting reasonably):
  - (i) A letter duly executed by the registered owner of the lands identified as PID No. 25038720 consenting to, and endorsing, the UARB Application;
  - (ii) The UARB Application, duly executed by TOA;
  - (iii) An executed resolution or minutes of TOA's Council authorizing the Boundary Change Closing;
  - (iv) Other than the UARB approval of the UARB Application, all consents, authorizations, orders and approvals from, or any notices to, all Governmental Authorities required for TOA to consummate the Boundary Change Closing; and
  - (v) All such other documents or instruments, duly executed, which in the opinion of MCC, acting reasonably, are necessary to effect and evidence the Boundary Change Closing.
- (b) On or before the filing of the UARB Application, MCC shall deliver the following to TOA (each of which shall be in form and substance acceptable to TOA, acting reasonably):
  - (i) A letter duly executed by MCC consenting to, and endorsing, the UARB Application, and any other information as may be required to complete the UARB Application;
  - (ii) An executed resolution or minutes of MCC's Council authorizing the Boundary Change;
  - (iii) Other than the UARB approval of the UARB Application, all consents, authorizations, orders and approvals from, or any notices to, all Governmental Authorities required for MCC to consummate the Boundary Change Closing; and
  - (iv) All such other documents or instruments, duly executed, which in the opinion of TOA, acting reasonably, are necessary to effect and evidence the Boundary Change Closing.

**2.4 Conditions Precedent for MCC in respect of the Boundary Change Closing.** The obligations of MCC to consummate the Boundary Change shall be subject to the fulfillment, or MCC's waiver, at or before the Boundary Change Closing (except for the purposes of Section 2.4(c) which shall be at or before the filing of the UARB Application), of each of the following conditions:

- (a) the representations and warranties of TOA contained in this Agreement shall be true and correct;
- (b) all of the terms, covenants and agreements set forth in this Agreement to be complied with or performed by TOA on or before the Boundary Change Closing have been complied with or performed by TOA;
- (c) the Parties shall have agreed to, in form and substance satisfactory to each Party, acting reasonably, any required new, or amendments to existing, by-laws, regulations or policies, in order for each Party to comply with its obligations under this Agreement, including without limitation, those set out in Schedule "F" (the "**By-law and Policy Changes**"); and
- (d) approval by the UARB of the UARB Application.

**2.5 Conditions Precedent for TOA in respect of the Boundary Change Closing.** The obligations of TOA to consummate the Boundary Change shall be subject to the fulfillment, or TOA's waiver, at or before the Boundary Change Closing (except for the purposes of Section 2.5(c) which shall be at or before the filing of the UARB Application), of each of the following conditions:

- (a) the representations and warranties of MCC contained in this Agreement shall be true and correct;
- (b) all of the terms, covenants and agreements set forth in this Agreement to be complied with or performed by MCC on or before the Boundary Change Closing have been complied with or performed by MCC;
- (c) the Parties shall have agreed to, in form and substance satisfactory to each Party, acting reasonably, the By-law and Policy Changes; and
- (d) approval by the UARB of the UARB Application.

### ARTICLE 3 - SANITARY SERVICES

**3.1 Sanitary Services.** TOA shall provide Sanitary Services to Eligible Units up to the Capacity Allocation, as requested by MCC in a capacity allocation notice (each, a "**Capacity Allocation Notice**"), in such form and substance as agreed by the Parties from time to time. MCC shall confirm in each Capacity Allocation Notice whether the Eligible Units designated by MCC: (a) require Sanitary Extensions prior to the commencement of Sanitary Services to such Eligible Units (the "**Sanitary Extension Units**"), and the details of such Sanitary Extensions; or (b) can be connected to the existing TOA Sanitary Facilities without any Sanitary Extensions ("**Sanitary Connection Units**"). Any Capacity Allocation Notice shall be deemed issued only if signed by MCC's Chief Administrative Officer, or such other individual designated by MCC's Chief Administrative Officer.

**3.2 Sanitary Services Commencement.** TOA shall commence the Sanitary Services as of the Sanitary Connection Date, provided TOA shall not unreasonably withhold or delay any Sanitary Connection Units or Sanitary Extension Units, as applicable, from being connected to TOA's Sanitary Facilities following receipt of a Capacity Allocation Notice.

**3.3 Capacity Allocation.**

- (a) Notwithstanding the delivery of any Capacity Allocation Notice by MCC to TOA, the Capacity Allocation, or any portion thereof, shall not be considered used by MCC until a Sanitary Connection Unit or Sanitary Extension Unit, as applicable, is connected to TOA's Sanitary Facilities, provided that, MCC shall not issue any Capacity Allocation Notice which would cause the aggregate of the following at any one time to exceed the Capacity Allocation: (a) subject to Section 3.3(b), any proposed Sanitary Connection Unit or Sanitary Extension Unit, as applicable, included in a Capacity Allocation Notice, but which have not yet been connected to TOA's Sanitary Facilities; and (b) those Sanitary Connection Units and Sanitary Extension Units, as applicable, which have already been connected to TOA's Sanitary Facilities.
- (b) For the avoidance of doubt, in the event, a Capacity Allocation Notice has been delivered by MCC to TOA, and the proposed Sanitary Connection Units or Sanitary Extension Units therein, as applicable, are not connected to TOA's Sanitary System within a reasonable period of time following: (i) in the case of Sanitary Extension Units, the applicable Sanitary Extensions Closing, or (ii) in the case of Sanitary Connection Units, TOA's receipt of the Capacity Allocation Notice, then MCC may withdraw such Capacity Allocation Notice, or amend it to only include those Sanitary Connection Units or Sanitary Extension Units that are, or will be, connected to TOA's Sanitary System.

**3.4 Sanitary Services and Rates.** The owners of the Eligible Units that receive Sanitary Services from MCC in accordance with this Agreement shall be customers of TOA, and shall be subject to the by-laws, policies, rates and regulations established by TOA from time to time for its sanitary servicing customers, provided such Eligible Units shall not pay more than the rates paid by customers receiving the same sanitary services from TOA within the TOA boundary.

**3.5 TOA Obligations.** TOA shall:

- (a) provide the Sanitary Services (i) in accordance with Applicable Law, including without limitation, the Policy; (ii) using personnel of required skill, experience, and qualifications; (iii) in a timely, workmanlike, and professional manner; and (iv) in accordance with generally recognized industry standards for similar services;
- (b) respond promptly to any reasonable requests from MCC for instructions, information or approvals with respect to the Sanitary Services; and
- (c) take all steps necessary, including obtaining any required licenses or consents, to prevent delays in TOA's provision of Sanitary Services.

**3.6 Agreement Manager.** Each Party hereby appoints its Chief Administrative Officer as the primary contact to act as its authorized representative with respect to all matters pertaining to this Agreement.

#### **ARTICLE 4 - SANITARY EXTENSIONS WORK**

**4.1 MCC Sanitary Extensions Work.** In the event any Eligible Units designated by MCC in a Capacity Allocation Notice are to be Sanitary Extension Units, then from the applicable Sanitary Extensions Work Commencement Date until the applicable Sanitary Extensions Closing:

- (a) MCC shall, or shall cause its Contractor or the applicable Developer to, at such party's sole cost and risk, design, engineer, procure, construct, commission and test, the applicable Sanitary Extensions, using Good Utility Practice and using standards and specifications provided in writing, acting reasonably, in advance by TOA;

- (b) The design, engineering, procurement, construction, commissioning and testing of the applicable Sanitary Extensions shall comply with all requirements of Applicable Law to which TOA would be subject in the design, engineering, procurement or construction of the TOA's Sanitary Facilities, including without limitation, TOA's *Infrastructure Development Standards* (being Schedule F to the *Town of Amherst Subdivision By-law*) and Standard Specifications for Municipal Services Policy;
- (c) MCC shall be responsible to, or shall cause its Contractor or the applicable Developer to, apply for and obtain all permits, licenses and authorizations that are necessary to design, procure and construct the applicable Sanitary Extensions. The Parties shall cooperate with each other in good faith in obtaining any such permits, licenses and authorizations. With respect to this clause, TOA shall provide permitting assistance to MCC comparable to that provided to TOA's own TOA Sanitary Facilities projects which are required to facilitate new service connections or additional servicing capacity, as the case may be, within TOA;
- (d) MCC shall be responsible for, or shall cause its Contractor or the applicable Developer to be responsible for, obtaining all easements and other access rights necessary to access, construct, operate, maintain, test, inspect, replace and remove the applicable Sanitary Extensions;
- (e) Prior to commencement of construction of any Sanitary Extensions, MCC shall, or shall cause its Contractor or the applicable Developer to, provide to TOA, a schedule and the proposed design plans and specifications for construction of the applicable Sanitary Extensions, and shall promptly respond to requests for information from TOA;
- (f) MCC will keep TOA advised periodically as to the progress of its, or its Contractor or the applicable Developer's, design, procurement and construction work in respect of the applicable Sanitary Extensions;
- (g) At any time during construction of the applicable Sanitary Extensions, TOA shall upon advance written notice to MCC, and subject to any rights of MCC to such real property, have the right to gain unrestricted access to the Sanitary Extensions and to conduct inspections of the same;
- (h) At any time during construction of the applicable Sanitary Extensions, should any phase of the engineering, equipment procurement, or construction of the Sanitary Extensions not meet the standards and specifications provided by TOA, acting reasonably, MCC shall be obligated, or shall cause its Contractor or the applicable Developer, to remedy deficiencies in that portion of the Sanitary Extensions;
- (i) In the event the Sanitary Extension Units subject to the applicable Sanitary Extensions are located on the lands set out in Schedule "D" (the "**Storm Sewer Lands**"), MCC shall, or shall cause its Contractor or the applicable Developer to, make Reasonable Efforts to ensure that such Sanitary Extensions do not create adverse surface runoff issues for TOA during stormwater peak flow; and
- (j) MCC shall indemnify TOA for claims related to a period of time prior to the applicable Sanitary Extensions Closing arising from MCC's construction of such Sanitary Extensions under the terms and procedures applicable to Section 10.1.

## 4.2 Professional Engineer

- (a) The Parties agree that the construction of each applicable Sanitary Extensions shall be carried out under the direction of a Professional Engineer engaged by MCC, MCC's Contractor or Developer, as applicable. Such Professional Engineer shall oversee and supervise all aspects of the construction of such Sanitary Extensions in accordance with Good Utility Practice, Applicable Law and the standards and specifications set out herein.
- (b) MCC shall, or shall cause its Contractor or the applicable Developer to cause, the Professional Engineer to prepare a commissioning, testing and certification report for each applicable Sanitary Extensions addressed to TOA in a form consistent with Good Utility Practice, certifying that the applicable Sanitary Extensions have been constructed, installed, commissioned and tested in accordance with Good Utility Practice and the other requirements set out herein (each, a "**Professional Engineer Report**").
- (c) MCC shall, or shall cause its Contractor or the applicable Developer to, notify TOA in advance of its performance of tests of the applicable Sanitary Extensions. TOA has the right, at the sole expense of the TOA, to observe such testing.
- (d) MCC shall, or shall cause its Contractor or the applicable Developer to cause, the applicable Professional Engineer to deliver a Professional Engineer Report for each applicable Sanitary Extensions to TOA, and TOA shall review and provide MCC written notice of its acceptance or rejection of such Professional Engineer Report within ten (10) Business Days of receipt thereof (the "**Review Period**"), which approval by TOA shall not be unreasonably withheld, delayed or conditioned. TOA shall approve and accept for operation and maintenance the applicable Sanitary Extensions to the extent engineered, procured, and constructed in accordance with Section 4.1. If TOA fails to provide written notice to MCC of its acceptance or rejection of such Professional Engineer Report on or before the last day of the Review Period, such Professional Engineer Report shall be deemed to have been accepted by TOA.
- (e) In the event that TOA rejects a Professional Engineer Report, it shall provide reasons for such rejection sufficient for MCC, its Contractor or the applicable Developer, and the applicable Professional Engineer to address any deficiencies giving rise to such rejection. In the event TOA rejects a Professional Engineer Report, MCC shall, or shall cause, the reasons for such rejection to be rectified and re-submit a new report in accordance with this Section 4.2.

**4.3 Information Exchange.** As soon as reasonably practicable after delivery of a Capacity Allocation Notice, the Parties shall exchange information regarding the design and compatibility of such Sanitary Extensions with TOA's Sanitary Facilities and shall work diligently and in good faith to make any necessary design changes.

#### **4.4 Real Property**

- (a) On or before a Sanitary Extensions Closing Date or a Sanitary Connection Unit Date, as applicable, MCC shall subdivide and convey, or furnish easements, to TOA, all at no cost to TOA (subject to Section 7.8), the lands owned or controlled by MCC and its agents that are necessary to enable TOA reasonable ingress and egress to operate, maintain, repair, test (or witness testing), inspect, replace or remove the Sanitary Extensions subject to such Sanitary Extensions Closing and/or the applicable Sanitary

Connection Units, and to connect such Sanitary Extensions or Sanitary Connection Units, as applicable, with TOA's Sanitary Facilities.

- (b) On or before a Sanitary Extensions Closing Date, if any part of the Sanitary Extensions subject to such Sanitary Extensions Closing is installed on property owned by Persons other than MCC or TOA within the Service Boundary, MCC shall, at MCC's expense, facilitate a subdivision and sale, or will procure easements, from such Persons that are necessary to access, construct, operate, maintain, test, inspect, replace or remove such Sanitary Extensions and to connect such Sanitary Extensions with TOA's Sanitary Facilities. All such easements, as applicable, shall be registered or recorded by MCC at MCC's expense in the land registration office for the registration district in which the property is situated. Easements shall be in form and substance acceptable to TOA, acting reasonably.

**4.5 Suspension.** MCC reserves the right, upon written notice to TOA, to suspend at any time all work by MCC, its Contractors or the applicable Developer in respect of any Sanitary Extensions required under this Agreement with the condition that such Sanitary Extensions shall be left in a safe and reliable condition in accordance with Good Utility Practice.

## **ARTICLE 5 - SANITARY EXTENSIONS CLOSING**

**5.1 Actions by Parties.** Subject to the terms and conditions set forth in this Article 5 as of each Sanitary Extensions Closing Date, MCC shall, or shall cause its Contractor or the applicable Developer to, transfer ownership, and TOA shall take ownership, of the applicable Sanitary Extensions required pursuant to a Capacity Allocation Notice, free and clear of all encumbrances whatsoever, without cost (subject to Section 7.8).

**5.2 Time of Sanitary Extensions Closing.** Each closing of the transactions contemplated by Section Article 5 (each, a "**Sanitary Extensions Closing**") shall take place on a date no later than two (2) Business Days after the last of the conditions set forth in Section 5.4 and Section 5.5 have been satisfied or waived for the applicable Sanitary Extensions required pursuant to a Capacity Allocation Notice (other than conditions which, by their nature, are to be satisfied on the applicable Sanitary Extensions Closing Date), or such other date as the Parties may mutually agree upon in writing (the Business Day of which a Sanitary Extensions Closing takes place being, a "**Sanitary Extensions Closing Date**").

**5.3 Transactions to be Effected at the Sanitary Extensions Closing.**

- (a) On or before each Sanitary Extensions Closing, TOA shall deliver, or cause to be delivered, the following to MCC (each of which shall be in form and substance acceptable to MCC, acting reasonably):
  - (i) A bring-down certificate confirming that the facts with respect to each of the representations and warranties made by TOA in Section 7.1 remain true and correct at such Sanitary Extensions Closing, and that all covenants to be complied with or performed by TOA on or before such Sanitary Extensions Closing have been complied with or performed by TOA;
  - (ii) All consents, authorizations, orders and approvals from, or any notices to, all Governmental Authorities required for TOA to consummate such Sanitary Extensions Closing; and

- (iii) All such other documents or instruments, duly executed, which in the opinion of MCC, acting reasonably, are necessary to effect and evidence such Sanitary Extensions Closing.
- (b) On or before each Sanitary Extensions Closing, MCC shall deliver, or cause to be delivered, the following to TOA (each of which shall be in form and substance acceptable to TOA, acting reasonably):
  - (i) A bill of sale, duly executed by MCC, its Contractor or Developer, as applicable, transferring title to the applicable Sanitary Extensions to TOA free and clear of all encumbrances;
  - (ii) An assignment of the Work Product, duly executed by MCC, its Contractor or the applicable Developer, as applicable, transferring the Work Product related to the applicable Sanitary Extensions to TOA free and clear of all encumbrances;
  - (iii) A bring-down certificate confirming that the facts with respect to each of the representations and warranties made by MCC in Section 7.1 remain true and correct at such Sanitary Extensions Closing, and that all covenants to be complied with or performed by MCC on or before such Sanitary Extensions Closing have been complied with or performed by MCC;
  - (iv) All consents, authorizations, orders and approvals from, or any notices to, all Governmental Authorities required for MCC to consummate such Sanitary Extensions Closing;
  - (v) All "as-built" drawings, information, and any other documents that are reasonably required by TOA to operate and maintain the applicable Sanitary Extensions after such Sanitary Extensions Closing; and
  - (vi) All such other documents or instruments, duly executed, which in the opinion of TOA, acting reasonably, are necessary to effect and evidence the Sanitary Extensions Closing.

**5.4 Conditions Precedent for MCC in respect of the Sanitary Extensions Closing.** The obligations of MCC to consummate a Sanitary Extensions Closing shall be subject to the fulfillment, or MCC's waiver, at or before each Sanitary Extensions Closing, of each of the following conditions:

- (a) the representations and warranties of TOA contained in this Agreement shall be true and correct;
- (b) all of the terms, covenants and agreements set forth in this Agreement to be complied with or performed by TOA on or before such Sanitary Extensions Closing have been complied with or performed by TOA;
- (c) TOA shall have accepted, or be deemed to have accepted, a Professional Engineer Report with respect to the applicable Sanitary Extensions being conveyed on such Sanitary Extensions Closing, in accordance with Section 4.2(d); and
- (d) TOA shall have adopted its sanitary sewer service boundary to include the lands described in Schedule "E" hereto (the "**Service Boundary**");

**5.5 Conditions Precedent for TOA in respect of the Sanitary Extensions Closing.** The obligations of TOA to consummate a Sanitary Extensions Closing shall be subject to the fulfillment, or TOA's waiver, at or before each Sanitary Extensions Closing, of each of the following conditions:

- (a) the representations and warranties of MCC contained in this Agreement shall be true and correct;
- (b) all of the terms, covenants and agreements set forth in this Agreement to be complied with or performed by MCC on or before such Sanitary Extensions Closing have been complied with or performed by MCC;
- (c) TOA shall have accepted, or be deemed to have accepted, the Professional Engineer Report with respect to the applicable Sanitary Extensions being conveyed on such Sanitary Extensions Closing, in accordance with Section 4.2(d);
- (d) TOA shall have received all easements or other property rights in accordance with Section 4.4;
- (e) MCC shall have adopted a by-law, or amended an existing by-law, establishing a lien mechanism to enable recovery of any unpaid charges from customers receiving TOA's Sanitary Services pursuant to Section 3.1 herein;
- (f) MCC shall have adopted a by-law, or amended an existing by-law, to ensure no storm water connections, sump-pumps, roof drains, piping, or building weeping tiles are connected to TOA's Sanitary Facilities; and
- (g) In the event the Sanitary Extensions being conveyed on such Sanitary Extensions Closing relate to Storm Sewer Lands, TOA shall have received a study from a Professional Engineer certifying the absence of stormwater peak flow impacts on TOA.

**5.6 Work Product.** Following a Sanitary Extensions Closing, TOA grants MCC a worldwide, non-exclusive, royalty-free, irrevocable, non-transferable (except with prior written consent by TOA), perpetual license to use any of the Work Product related to the applicable Sanitary Extensions assigned to MCC pursuant to Section 5.3(b)(ii).

**5.7 Post Sanitary Extensions Closing.** For clarity, following a Sanitary Extensions Closing, TOA shall be responsible for all maintenance and repair obligations of the applicable Sanitary Extensions conveyed to TOA on such Sanitary Extensions Closing.

## **ARTICLE 6 - TAXATION**

**6.1 Annexed Area.** Subject to Section 6.2 and 6.3:

- (a) Following the Boundary Change Closing, TOA will receive one hundred percent (100%) of the property taxes levied against any units and/or lands located within the Annexed Area that are zoned residential, from time to time; and
- (b) Following the Boundary Change Closing, TOA and MCC shall each receive fifty percent (50%) of the Net Taxation Proceeds levied against any units and/or lands located within the Annexed Area that are assessed as commercial, from time to time.

**6.2 Service Area.** In the event any Eligible Units located within the Service Boundary: (a) receive Sanitary Services; and (b) the lands upon which the Eligible Units receiving the Sanitary Services are assessed as commercial as of the Effective Date, and all times thereafter remain assessed as

commercial, then TOA and MCC shall each receive fifty percent (50%) of the Net Taxation Proceeds levied against such lands and/or the Eligible Units receiving Sanitary Services from the Sanitary Connection Date.

**6.3 Policy/Memorandum.** Notwithstanding the foregoing of this Article, the sharing of Net Taxation Proceeds with respect to any lands named in the Policy that are connected to TOA's Sanitary Facilities shall be dealt with in accordance with the applicable Memorandum.

## ARTICLE 7 - REPRESENTATIONS, WARRANTIES AND COVENANTS

**7.1 Representations.** Each Party makes the following representations, warranties and covenants:

- (a) such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized, formed, or incorporated, as applicable; that it is qualified to do business in the Province of Nova Scotia; and that it has the corporate power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement;
- (b) such Party has the right, power and authority to enter into this Agreement, to become a Party hereto and to perform its obligations hereunder. This Agreement is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law);
- (c) the execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, constating documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets; and
- (d) such Party has sought or obtained, or, in accordance with this Agreement will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of this Agreement, and it will provide to any Governmental Authority notice of any actions under this Agreement that are required by Applicable Law.

**7.2 Survival.** This Agreement shall continue in effect after termination to the extent necessary to provide for final payments and for costs incurred hereunder, including payments pursuant to this Agreement; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and to permit each Party to have access to the lands of the other Party pursuant to this Agreement or other applicable agreements, to disconnect, remove or salvage its own facilities and equipment. For greater certainty, and without limiting the generality of the foregoing, the following Sections and Articles shall survive termination of this Agreement: Section 7.3 (Confidentiality), Section 8.4 (Termination Costs), Section 10.1 (Indemnity), Section 10.2 (Consequential Damages), Article 12 (Information Access and Audit Rights), Article 14 (Disputes) and Section 15.3 (Expenses).

**7.3 Confidentiality.** All non-public, confidential, or proprietary information of each Party ("**Confidential Information**"), including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, pricing, discounts, or rebates, disclosed by either Party to the other Party, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for recipient Party's use in performing this Agreement and may not be disclosed or copied unless authorized by the disclosing Party in writing. Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of recipient Party's breach of this Agreement; (b) is obtained by the recipient Party on a non-confidential basis from a third party that was not legally or contractually restricted from disclosing such information; (c) the recipient Party establishes by documentary evidence, was in the recipient party's possession prior to disclosing Party's disclosure hereunder. Upon the disclosing Party's request, the recipient Party shall promptly return all Confidential Information received from the disclosing Party. The disclosing Party shall be entitled to injunctive relief for any violation of this Section 7.3.

**7.4 Closing Conditions.** Each Party shall use Reasonable Efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in Section 2.4, Section 2.5, Section 5.4 and Section 5.5, as applicable.

**7.5 Public Announcements.** Unless otherwise required by Applicable Law (based upon the reasonable advice of counsel), no Party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other Party (which consent shall not be unreasonably withheld or delayed), and the Parties shall cooperate as to the timing and contents of any such announcement.

**7.6 Consents; Authorizations.**

- (a) Each Party shall obtain and maintain all consents, authorizations, orders and approvals from, or any notices to, all Governmental Authorities required for such Party to comply with its obligations under this Agreement, including without limitation, approving any new bylaws, amending any existing bylaws, or maintaining any bylaws approved pursuant to this Agreement.
- (b) Without limiting the generality of Section 7.6(a), each Party shall submit the By-law and Policy Changes related to its jurisdiction for council adoption promptly following the Boundary Change Closing, but in no event, later than thirty (30) days following the Boundary Change Closing.
- (c) Following the adoption of any By-law and Policy Changes, each Party covenants to: (i) not pass any by-laws, regulations or policies that would amend the By-law and Policy Changes without the prior written consent of the other Party, or (ii) take any action that would prohibit or restrict any Party from complying with its obligations under this Agreement, including without limitation, the passing or amending of any by-laws, regulations or policies.

**7.7 Stormwater Inflow, Infiltration and Infrastructure Responsibilities.**

- (a) Notwithstanding anything herein to the contrary, TOA will be responsible to ensure that storm water inflow and infiltration on TOA's Sanitary Facilities located within the MCC municipal boundary are identified and repaired by TOA.

- (b) TOA may install sewage flow monitoring to assess inflow, infiltration and use of the Capacity Allocation for discussion with MCC on system use and performance.

**7.8 GST/HST.** In the event GST/HST is determined to be payable in respect of the provision of Sanitary Services, or any transfer of Sanitary Extensions or other property pursuant to this Agreement, then the Party receiving such Sanitary Services or property, as applicable (the "**Paying Party**"), shall pay to the other Party (the "**Recipient Party**"), immediately upon demand, the applicable GST/HST, which the Recipient Party shall forthwith remit to Canada Revenue Agency to the extent required by the GST/HST Act and provide the Paying Party evidence in writing of such remittance. In addition, the Paying Party shall indemnify and hold harmless the Recipient Party against and in respect of any and all interest and penalties assessed by the Minister of National Revenue (Canada) or the corresponding Governmental Authority, together with any and all reasonable legal and professional fees incurred by the Recipient Party.

**7.9 Further Assurances.** Each of the Parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances, and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

## **ARTICLE 8 - TERM AND TERMINATION**

**8.1 Term of Agreement.** This Agreement shall become effective on the Effective Date and shall remain in effect until the earlier of: (a) ninety-ninth (99<sup>th</sup>) anniversary of the Effective Date; (b) the date on which this Agreement is otherwise terminated in accordance with its terms; and (c) in the event the UARB Application for the Boundary Change is rejected by UARB, on the date of such rejection.

**8.2 Termination by Parties.** This Agreement may be terminated at any time by mutual written consent of the Parties.

**8.3 Default.**

- (a) No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of Force Majeure or the result of an act or omission of the other Party. Upon a Default, the non-defaulting Party shall give written notice of such Default to the defaulting Party. Except as provided in Section 8.3(b), the defaulting Party shall have thirty (30) Calendar Days from receipt of the Default notice within which to cure such Default; provided however, if such Default is not capable of cure within thirty (30) Calendar Days, the defaulting Party shall commence such cure within thirty (30) Calendar Days after notice and continuously and diligently complete such cure within ninety (90) Calendar Days from receipt of the Default notice; and, if cured within such time, the Default specified in such notice shall cease to exist.
- (b) If a Default is not cured as provided in this Section 8.3, or if a Default is not capable of being cured within the period provided for herein, the non-defaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity.

**8.4 Termination Costs.** If a Party elects to terminate this Agreement pursuant to Section 8.3, or the Parties agree to terminate this Agreement pursuant to Section 8.2, each Party shall pay all costs

incurred (including any cancellation costs relating to orders or contract for any Sanitary Extensions) or charges assessed by the other Party, as of the date of termination. In the event of termination of this Agreement, both Parties shall use Reasonable Efforts to mitigate the costs, damages and charges arising as a consequence of termination. Upon termination of this Agreement:

- (a) With respect to any portion of Sanitary Extensions that have not yet been constructed or installed, MCC shall to the extent possible and with TOA's prior written authorization cancel any pending orders of, or return, any materials or equipment for, or contracts for construction of, such Sanitary Extensions; provided that in the event TOA elects not to authorize such cancellation, TOA shall, assume all payment obligations with respect to such materials, equipment, and contracts, and MCC shall deliver such material and equipment which it owns and transfer the legal and beneficial title thereto to TOA free and clear of all encumbrances, and, if necessary, assign such contracts, to TOA as soon as practicable, at TOA's expense. To the extent that MCC has already paid for any or all such costs of materials or equipment taken by TOA, TOA shall promptly refund such amounts to MCC.
- (b) MCC may retain any portion of such materials, equipment, or facilities that TOA chooses not to require transfer or accept delivery of pursuant to Section 8.4(a), in which case MCC shall be responsible for all costs associated with procuring such materials, equipment, or facilities.
- (c) With respect to any portion of the Sanitary Extensions already installed or constructed pursuant to the terms of this Agreement, MCC shall be responsible, or shall cause its Contractor or the applicable Developer to be responsible, for all costs associated with the removal, relocation, site remediation or other disposition or retirement of such materials, equipment, or facilities; provided, for the avoidance of doubt, MCC shall have no obligation to remove, relocate, remediate or dispose of any materials, equipment or facilities located on any real property to which MCC owns, leases or has any other legal right to the use of, or which has already been conveyed to TOA pursuant to a Sanitary Extensions Closing.

## ARTICLE 9 - FORCE MAJEURE

**9.1 Force Majeure.** Neither Party shall be considered to be in Default with respect to any obligation hereunder, other than the obligation to pay money when due, if prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Party in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Notices given pursuant to this Article 9 shall be confirmed in writing and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

## ARTICLE 10 - INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE

**10.1 Indemnity.** Each Party shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any Person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other

Party's action or inactions arising from its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

- (a) If an indemnified Person is entitled to indemnification under this Article 10 as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed to assume the defense of such claim, such indemnified Person may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.
- (b) If an indemnifying Party is obligated to indemnify and hold any indemnified Person harmless under this Article 10, the amount owing to the indemnified Person shall be the amount of such indemnified Person's actual Loss, net of any insurance or other recovery.
- (c) Promptly after receipt by an indemnified Person of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this Section 10.1 may apply, the indemnified Person shall notify the indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Party.

The indemnifying Party shall have the right to assume the defense thereof with counsel designated by such indemnifying Party and reasonably satisfactory to the indemnified Person. If the defendants in any such action include one or more indemnified Persons and the indemnifying Party and if the indemnified Person reasonably concludes that there may be legal defenses available to it and/or other indemnified Persons which are different from or additional to those available to the indemnifying Party, the indemnified Person shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an indemnified Person or indemnified Persons having such differing or additional legal defenses.

The indemnified Person shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the indemnifying Party. Notwithstanding the foregoing, the indemnifying Party:

- (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the indemnified Person and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the indemnified Person, or there exists a conflict or adversity of interest between the indemnified Person and the indemnifying Party, in such event the indemnifying Party shall pay the reasonable expenses of the indemnified Person, and
- (ii) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the indemnified Person, which shall not be unreasonably withheld, conditioned or delayed.

**10.2 Consequential Damages.** Except with respect to the loss of any taxes set-out in Article 6 herein, in no event shall either Party be liable under any provision of this Agreement for any Losses, damages,

costs or expenses for any indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be indirect, incidental, or consequential damages hereunder.

**10.3 Duty to Mitigate.** Each Party has a duty to mitigate damages and shall use all Reasonable Efforts to minimize any Losses, costs, expenses, damages or other liabilities it may incur as a result of the other Party's performance or non-performance of this Agreement.

## ARTICLE 11 - ASSIGNMENT

**11.1 Assignment.** This Agreement may be assigned by either Party only with the written consent of the other Party. Any attempted assignment that violates this Section 11.1 is void and ineffective. Any assignment of this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

## ARTICLE 12 - INFORMATION ACCESS AND AUDIT RIGHTS

**12.1 Information Access.** Each Party shall make available to the other Party information that is in its possession and is necessary in order for the other Party to:

- (a) verify the costs incurred by the disclosing Party for which the other Party is responsible under this Agreement; and
- (b) carry out its obligations and responsibilities under this Agreement. The Parties shall not use such information for purposes other than those set forth in this Section 12.1 and to enforce their rights under this Agreement.

**12.2 Audit Rights.** Subject to the requirements of confidentiality under Section 7.3 of this Agreement, each Party shall have the right, during normal business hours, and upon prior reasonable notice to the other Party, to audit at its own expense the other Party's accounts and records pertaining to either Party's performance or either Party's satisfaction of obligations under this Agreement, provided, however, that each Party shall not exercise its audit rights under this Section 12.2 more than one (1) time in any calendar year. Such audit rights shall include audits of the other Party's costs. Any audit authorized by this Section 12.2 shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to each Party's performance and satisfaction of obligations under this Agreement. Each Party shall keep such accounts and records for a period equivalent to the audit rights periods described in Section 12.3.

### 12.3 Audit Rights Periods

- (a) Accounts and records related to the design, engineering, procurement, and construction of Sanitary Extensions shall be subject to audit for a period of twenty-four months following the termination of this Agreement.
- (b) Accounts and records related to either Party's performance or satisfaction of all obligations under this Agreement other than those described in Section 12.3(a) shall be subject to audit as follows:

- (i) for an audit relating to cost obligations, the applicable audit rights period shall be twenty-four (24) months after the auditing Party's receipt of a request giving rise to such cost obligations; and
- (ii) for an audit relating to all other obligations, the applicable audit rights period shall be twenty-four (24) months after the event for which the audit is sought.

**12.4 Audit Results.** If an audit by a Party determines that an overpayment or an underpayment has occurred, a notice of such overpayment or underpayment shall be given to the other Party together with those records from the audit which support such determination.

## **ARTICLE 13 - CONTRACTORS**

**13.1 General.** Nothing shall prevent a Party from utilizing the services of any Contractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its Contractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such Contractor.

**13.2 Responsibility of Principal.** The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any Contractor the hiring Party hires as if no contract had been made; provided, however, that in no event shall the TOA be liable for the actions or inactions of MCC or its Contractors with respect to obligations of MCC under Section 4.1 of this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any Contractor of such Party.

**13.3 No Limitation by Insurance.** The obligations under this Article 13 will not be limited in any way by any limitation of subcontractor's insurance.

## **ARTICLE 14 - DISPUTES**

**14.1 External Arbitration Procedures.** In the event of a dispute arising between the Parties as to the subject matter of this Agreement that cannot be resolved between them, the Parties agree to submit the dispute to binding arbitration, pursuant to the terms of the *Commercial Arbitration Act*, S.N.S. 1999, c.5. In particular, the Parties agree to utilize the arbitration procedure attached as Schedule "A" to the *Commercial Arbitration Act* in the conduct of the arbitration. Any matter in dispute that is submitted for arbitration shall be heard by a single arbitrator chosen unanimously by the Parties. In the event the Parties cannot agree on a person to act as a single arbitrator, each Party shall choose one panelist and the two panelists shall choose an independent third panelist who shall also chair the arbitration. No such arbitrator shall have previously been employed by either Party and shall not have a direct or indirect interest in either Party or the subject matter of the arbitration. The cost of the arbitration, excluding a Party's legal fees and disbursements shall, unless otherwise ordered by the arbitrator or the panel, be borne equally by the Parties.

**14.2 Arbitration Decisions.** Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change any provision of this Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction.

## ARTICLE 15 - MISCELLANEOUS

**15.1 Binding Effect.** This Agreement, and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.

**15.2 Rules of Interpretation.** This Agreement, unless a clear contrary intention appears, shall be construed and interpreted as follows:

- (a) the singular number includes the plural number and vice versa;
- (b) reference to any Person includes such Person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
- (c) reference to any agreement (including this Agreement), document, instrument or tariff means such agreement, document, instrument, or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;
- (d) reference to any Applicable Law means such Applicable Law as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder;
- (e) unless expressly stated otherwise, reference to any Article, Section or Schedule means such Article or Section of this Agreement or such Schedule to this Agreement;
- (f) "hereunder", "hereof", "herein", "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or other provision hereof or thereof;
- (g) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and
- (h) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including".

**15.3 Expenses.** Except as otherwise expressly provided herein, all costs and expenses, including fees, disbursements and charges of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses.

**15.4 Notices.** Each Party shall deliver all notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (other than routine communications having no legal effect) (each, a "**Notice**") in writing and addressed to the other Party at its address set out below (or to any other address that the receiving Party may designate from time to time in accordance with this Section 15.4). Each Party shall deliver all Notices by personal delivery, nationally recognized same day or overnight courier (with all fees prepaid), email or facsimile (with confirmation of receipt or transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is conclusively deemed to have been validly and effectively given: (a) if sent by personal delivery or by courier (all fees prepaid) on the date of receipt; (b) if sent by email, upon the sender's receipt of an acknowledgment from the intended

recipient (such as by the "read receipt" function, as available, return email or other form of written acknowledgment); (c) if sent by facsimile (with confirmation of transmission) on the date of transmission if a Business Day or if not a Business Day or after 5:00 p.m. on the date of transmission, on the next following Business Day.

If to TOA:

98 Victoria Street East  
Amherst NS B4H 1X6  
Attention: Jason MacDonald, Chief Administrative Officer  
Email: JMacDonald@amherst.ca

If to MCC:

6 Main Street  
Springhill NS B0M 1X0  
Attention: Greg Herrett  
Email: gherrett@cumberlandcounty.ns.ca

**15.5 Entire Agreement.** This Agreement, including all Schedules attached hereto, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

**15.6 Severability.** If any provision in this Agreement is finally determined to be invalid, void or unenforceable by any court or other Governmental Authority having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this Agreement.

**15.7 No Third-Party Beneficiaries.** This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any Persons other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and, where permitted, their assigns.

**15.8 Waiver.** The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party. Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or Default of this Agreement for any reason by MCC shall not constitute a waiver of the MCC's legal rights to obtain a connection to the TOA's Sanitary Facilities by the TOA. Any waiver of this Agreement shall, if requested, be provided in writing.

**15.9 Headings.** The descriptive headings of the various Articles of this Agreement have been inserted for convenience of reference only and are of no significance in the interpretation or construction of this Agreement.

**15.10 Counterparts.** This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument. A signed copy of this Agreement

delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**15.11 Amendment.** The Parties may by mutual agreement amend this Agreement by a written instrument duly executed by both of the Parties.

**15.12 Modification by the Parties.** The Parties may by mutual agreement amend the Schedules to this Agreement by a written instrument duly executed by both of the Parties. Such amendment shall become effective and a part of this Agreement upon satisfaction of all Applicable Law.

**15.13 No Partnership.** This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

**15.14 Applicable Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Nova Scotia, and the federal laws of Canada applicable therein.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**TOWN OF AMHERST**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

**MUNICIPALITY OF THE COUNTY OF CUMBERLAND**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

## SCHEDULE "A" – ANNEXED AREA



The above depicts PID 25038720, the area below the red line is the portion to be annexed by TOA.

## SCHEDULE "B" – SANITARY SERVICES; CAPACITY ALLOCATION

### Sanitary Services

TOA shall provide the same sanitary sewer services to Eligible Units as it provides to TOA customers pursuant to applicable TOA by-laws, policies, rules and regulations.

### Capacity Allocation

The terms outlined below generally describe the number of new units and associated capacity allocated by TOA to MCC:

#### **A. New MCC Development Units Allocation:**

1. MCC will be allocated 400 residential units of new wastewater sewer connections to discharge into the TOA sewerage system.
2. Each commercial unit will be considered as a residential "equivalent" unit.
3. Each multi-residential unit of a development in MCC will be assessed as a single residential unit for allocation purposes (i.e., a six-unit apartment building = six units).
4. The equivalent number of units to be assigned from the 400-unit allocation for any new over-strength and/or restaurant wastewater discharge will be calculated using the AWWA "equivalent meter sizing" multiplier to generate the number of equivalent units.

#### **B. Volumetric Capacity Provisions:**

1. TOA assigns one (1) M<sup>3</sup>/day (1000 litres/day) of wastewater capacity to each of the 400 units approved for wastewater extension in MCC. The total combined average day, dry weather wastewater capacity allocation to MCC is 400 M<sup>3</sup>/day.
2. If any monitoring identifies flow in excess of 400 M<sup>3</sup>/day, MCC will nevertheless be entitled to the 400 equivalent residential units to connect to the TOA system.
3. There is a shared interest between the parties in reducing inflow and infiltration into the sewer system to maximize available wastewater volume capacity to new development.

SCHEDULE "C"  
MEMORANDUM

Town of Amherst Policy Number 31600-15  
Sanitary Sewer Services to County Residents



(SCHEDULE "C")  
Exit 3 Sanitary Sewer Extension MOU

4.4 Exit 3 Sanitary Sewer Extension Request

Moved By Councillor Davidson

Seconded By Councillor Landry

That Council approve of the Memorandum of Understanding for sanitary sewer access at Exit 3 between the Town of Amherst and the Municipality of the County of Cumberland, and based on this approval, further approve required amendments to the Town of Amherst Sanitary Sewer service to County Residents Policy.

Motion Carried 6-1  
Councillor Baker NAY vote

MEMORANDUM OF UNDERSTANDING (MOU)

Made in duplicate

BETWEEN

Municipality of the County of Cumberland, a corporation under the laws of the Province of Nova Scotia, carrying out business at 1395 Blair Lake Road, RR6, Amherst, NS B4H 3Y4, (the "MCC")

- AND -

Town of Amherst, a corporation under the laws of the Province of Nova Scotia, carrying out business at 98 Victoria Street East, Amherst, NS B4H 4A1, (the "TOA")

(Collectively referred to as the "Parties")

WHEREAS the MCC has requested the TOA to provide sanitary sewer services to existing residential uses and future residential uses between the Town Boundary and Exit 3, and more clearly defined in the attached Schedule A and herein referred to as the Subject Properties;

AND WHEREAS the TOA has agreed to allow access to the sanitary sewer system for the Subject Properties;

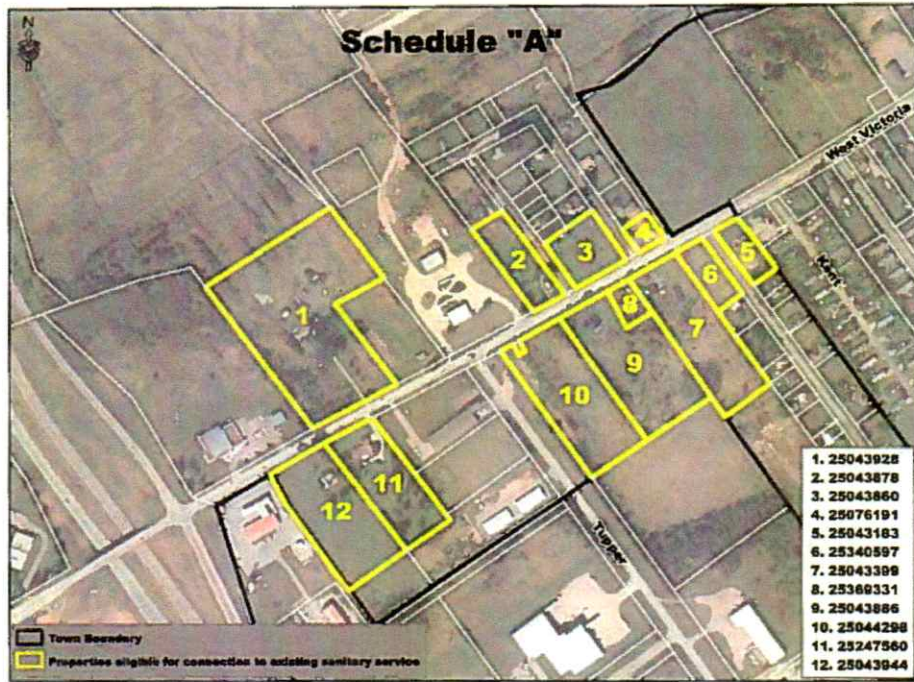
NOW THEREFORE THIS AGREEMENT WITNESSETH in consideration of the mutual covenants contained herein, the parties covenant and agree as follows:

1. Infrastructure Standards – The MCC agrees that any new infrastructure will be constructed to the standards of the TOA Infrastructure Standards currently contained within our Subdivision Bylaw.
2. Main Extensions – Any extension of the sanitary sewer main will require the prior approval of Amherst Town Council.
3. The continued usage and operation of the sanitary sewer system within the MCC will be subject to the rates and rules established by the Town of Amherst for the provision of sanitary sewer services to Town properties as may be changed from time to time including but not limited to the SANITARY SEWER RATES BYLAW and the BYLAW RESPECTING DISCHARGE INTO PUBLIC SEWERS; BUILDING SERVICE CONNECTIONS Policy; and SEWER INSTALLATIONS Policy.
4. For properties which receive sanitary sewer service, and which a new building has been constructed or a significant addition or renovation takes place as a result of the provision of the sanitary sewer service:
  - a) A Base Assessment will be established which is the assessment amount for the year prior to the service installation;
  - b) Any increase in assessment above and beyond the base assessment will be shared with the MCC receiving 65% and the TOA receiving 35%, until otherwise agreed by both parties;
  - c) All taxes will be applied at the MCC rate, as may be changed from time to time.
5. Payment – The MCC shall be billed annually for its contribution and shall pay within 30 days of the invoice date.

IN WITNESS WHEREOF the parties hereto have executed this agreement the day and year first above written.

SIGNED, SEALED & DELIVERED  
in the joint presence of:

)	TOWN OF AMHERST
)	Per: _____
)	
)	Per: _____
)	
)	MUNICIPALITY OF
)	COUNTY OF CUMBERLAND
)	Per: _____
)	
)	Per: _____
)	



TOWN OF AMHERST POLICY

NUMBER 31600-15  
PAGE 8 of 11

DEPARTMENT: OPERATIONAL SERVICES

TITLE: SANITARY SEWER SERVICE TO COUNTY RESIDENTS

Minutes reference date: 26 November 2001 23 June 2014 29 November 2021

**PURPOSE**

To determine when the extension of the Town's Sanitary Sewer System to properties outside our boundaries is appropriate.

**POLICY STATEMENT**

The extension of sanitary sewer services to properties located outside the boundaries of the Town of Amherst will be reviewed on an individual basis. Any decision to extend the sanitary sewer service to a property outside of the Town of Amherst will require a motion of Council to amend this policy.

**APPROVED PROPERTIES TO RECEIVE SANITARY SEWER SERVICES**

Sanitary sewer services will be provided to the Cumberland Regional Health Care Center (PID#25384009, PID#25047044, PID#25376930 and PID#25337478) at Exit 4.

Sanitary Sewer Services will be provided to PID#25044009, PID#25043951 and PID#25098021 at Exit 3 currently operated as the Wandlyn Inn, subject to an agreement between the Town of Amherst and the Municipality of the County of Cumberland for the provision of such services.

Sanitary Sewer Services will be provided to PID#25043928, PID#25043878, PID#25043860, PID#25076191, PID#25043183, PID#25340597, PID#25043399, PID#25369331, PID#25043886, PID#25044298, PID#25247560 and PID#25043944, subject to an agreement between the Town of Amherst and the Municipality of the County of Cumberland for the provision of such services.

**4.5 Community Support Grant Amherst Food Assistance Network**

**Moved By Councillor Fawthrop**

**Seconded By Councillor Davidson**

**That Council approve the request for \$2,000 for the Amherst Food Assistance Network.**

**Motion Carried**

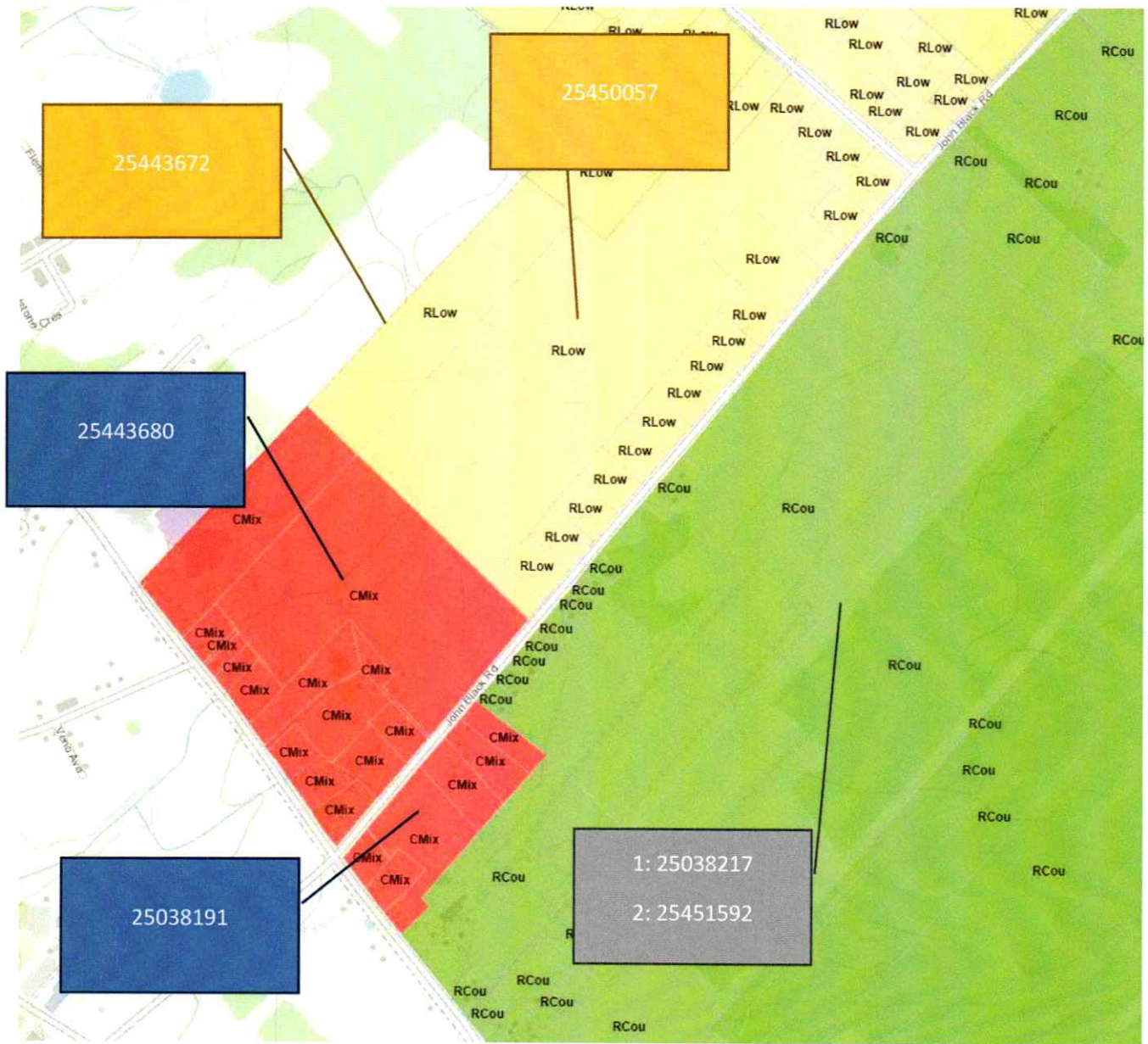
(SCHEDULE "C")  
TOA / MCC Hospital Servicing Extension

Council approval to provide sanitary sewer services to the Cumberland Regional Health Care Center at Exit 4.

TOA sanitary sewer service to County residents policy references Council minute date: 26 November 2021.

SCHEDULE "D" - STORM SEWER LANDS

# John Black Rd



**RLow (Lower Density Residential)**

- 1: 25443672
- 2: 25450057

**CMix (Mixed-use)**

- 1: 25443680
- 2: 25038191

**RCou (Country Residential)**

- 1: 25038217
- 2: 25451592

PIDs can be found by clicking on the properties on this map: <https://www.plancumberland.ca/zoning-map>

SCHEDULE "E" – SERVICE BOUNDARY

N  
Schedule E  
Town of Amherst and Cumberland County Service Map



**Legend**

- Service Boundary
- Town of Amherst Boundary
- Property Lines

**SCHEDULE “F”**  
**BY-LAW AND POLICY CHANGES**

**TOWN OF AMHERST (TOA)**

**By-laws**

- Sanitary Sewer Rates By-law;
- Subdivision By-law;
- By-law Respecting Discharge into Public Sewers; and
- Land-Use By-law.

**Policies**

- Sanitary Sewer Services to County Residents Policy;
- Building Service Connections Policy;
- Commercial Sewer Services Policy;
- Sewer Installations Policy; and
- Standard Specifications for Municipal Services Policy.

**MUNICIPALITY OF THE COUNTY OF CUMBERLAND (MCC)**

**By-laws**

- Building By-law;
- Cumberland Land-Use By-law;
- Subdivision By-law; and
- Public Sewers By-law.

**Policies**

- Building Service Connection Standards and Specifications Policy;
- Fees Policy; and
- Policy Respecting Uniform Sewer Charges.