
WATER SUPPLY AGREEMENT

BETWEEN:

THE CORPORATION OF NORFOLK COUNTY

AND:

THE CORPORATION OF HALDIMAND COUNTY

DATED: June 17, 2022

THIS WATER SUPPLY AGREEMENT (the “**Agreement**”) is dated June 17, 2022 (the “**Effective Date**”)

BETWEEN:

THE CORPORATION OF NORFOLK COUNTY

(“**Norfolk**”)

AND:

THE CORPORATION OF HALDIMAND COUNTY

(“**Haldimand**”)

(each a “**Party**” and collectively the “**Parties**”)

CONTEXT:

- A. Norfolk and Haldimand are both municipal corporations governed in accordance with the *Municipal Act, 2001* (Ontario).
- B. Pursuant to the provisions of section 10 of the *Municipal Act, 2001*, each of the Parties may provide any service or thing that it considers necessary or desirable for the public.
- C. Pursuant to the provisions of section 20 of the *Municipal Act, 2001*, each of the Parties may enter into an agreement for the supply of water to or from an adjoining municipality.
- D. Norfolk is in need of a secure supply of water to service certain communities within its area, and Haldimand wishes to supply such water to Norfolk, which water will have been treated by Haldimand’s water treatment plant that is located within Haldimand’s political boundaries.
- E. Norfolk and Haldimand are also considering possible future joint water supply infrastructure development.

NOW THEREFORE, in consideration of the respective covenants, agreements, representations and warranties herein contained and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each Party hereto), the Parties agree as follows:

ARTICLE 1 PIPELINE AND APPURTENANCES

1.1 Water Infrastructure Construction and Delivery

By December 31, 2025, Norfolk will construct all necessary infrastructure, including pipelines, metering chambers and related infrastructure (collectively, the “**Infrastructure**”) to transport water from the connection point to Haldimand’s infrastructure (which is located within the political boundaries of Haldimand) to the delivery points located at or near the municipal border between the Parties (the “**Delivery Point(s)**”) and through to the Norfolk communities that will be supplied by water, in part or in full, pursuant to this Agreement (the “**Communities**”).

All water provided by Haldimand to the Communities pursuant to this Agreement shall be provided through the Infrastructure.

1.2 Ownership of the Infrastructure

Following completion of the construction of the Infrastructure by Norfolk, and at the latest by January 1, 2026, all right, title and interest to the Infrastructure that is located within Haldimand political boundaries up to the Delivery Point(s) (the “**Haldimand Infrastructure**”) will be transferred to Haldimand pursuant to a separate transfer agreement between the Parties.

All right, title and interest to the Infrastructure located within Norfolk political boundaries (the “**Norfolk Infrastructure**”), together with any water meters supplied by Haldimand for use in Norfolk, shall be and remain vested in Norfolk throughout the Term.

1.3 Participation in Decision-Making

Haldimand will grant Norfolk the right to actively participate in all key decisions and approvals related to the Haldimand Infrastructure (including decisions related to the costs thereof), by carrying out the following process before making any such decision or approval:

- a) Haldimand will provide at least thirty (30) days written notice to Norfolk of a pending decision, which notice will include the need and rationale for the pending decision, and information relevant thereto;
- b) on request by Norfolk, Haldimand will attend one or more meetings with Norfolk to discuss the pending decision;
- c) Haldimand will use commercially reasonable efforts to incorporate comments and address any issues raised by Norfolk in regards to the pending decision;
- d) Norfolk will provide notice to Haldimand of its support or opposition to the pending decision within twenty (20) days of the notice provided pursuant to (a) above, or within such other time agreed to by the Parties; and
- e) Haldimand will provide at least five (5) days written notice to Norfolk of the pending decision, which notice will set out the content of the proposed decision that Haldimand intends to make, taking into account the input from Norfolk, as set out above.

ARTICLE 2 COVENANTS OF NORFOLK

2.1 Suitability of Norfolk Pipelines

Norfolk warrants that the Norfolk Infrastructure is in good working order and are suitable for the purposes of this Agreement.

2.2 Payment for Supply of Water

Norfolk shall pay Haldimand for all water delivered by Haldimand to the Communities pursuant to this Agreement in accordance with the financial principles set out in Schedule “A”.

2.3 Installation of Backflow Prevention Device

Norfolk shall install a backflow prevention device at the Delivery Point(s). The maintenance and operation of the backflow prevention device shall be the exclusive responsibility of Norfolk and it shall be the responsibility of Norfolk to ensure that said backflow prevention device meets any applicable standards.

2.4 Maintenance

Subject to Section 3.2, Norfolk covenants and agrees to be fully responsible for: (a) all water meter chambers located within Norfolk; and (b) the maintenance of all Norfolk Infrastructure.

2.5 Connection Rights

Norfolk agrees and understands that Haldimand (including parties acting at the direction or request of Haldimand) shall at all times be permitted to connect service lines and lateral mains to the Haldimand Infrastructure and Haldimand's water treatment plant, as long as (i) such connection does not impact any supply performance (quality/quantity) to Norfolk, and (ii) Haldimand pays for all construction costs associated with connecting to the Infrastructure, if any.

2.6 Maximum Water Consumption Amount

The Parties acknowledge and agree that the anticipated maximum water consumption amount that Norfolk may withdraw from the supply provided by Haldimand pursuant to this Agreement is as follows:

- a) 10,000 cubic metres/day or 166 litres/second from the commencement of the supply of water under this Agreement (and at the latest by January 1, 2026) through to December 31, 2030;
- b) 25,000 cubic metres/day or 289.5 litres/second between January 1, 2031 and December 31, 2040; and
- c) 40,000 cubic metres or 463 litres/second per day from January 1, 2041 to the end of the Term.

Haldimand may implement such measures as may be required, acting reasonably, to limit Norfolk's water supply to the above-listed maximum water consumption amounts.

Either Party may, upon sixty (60) days' written notice to the other Party, request a review of the maximum water consumption amount or the flow rate under this Section 2.6. Any increase to these amounts shall be subject to Haldimand's ability to supply water to Haldimand's ratepayers as currently being provided, and shall become effective on written agreement of the Parties.

2.7 Water Meter Testing

Upon provision of not less than seven (7) days prior written notice delivered to Haldimand, Haldimand shall provide Norfolk access to the water meter(s) used in relation to the supply of water pursuant to this Agreement for the purposes of testing them and/or inspecting their operation.

ARTICLE 3 COVENANTS OF HALDIMAND

3.1 Suitability of Haldimand Water Treatment Plant and Supplies

Haldimand warrants that the water treatment plant and other infrastructure supplied by it to Norfolk for the purposes of this Agreement (including water meters and the new water treatment and transmission infrastructure dedicated to Norfolk water supply) are in good working order and are suitable for the purposes of this Agreement.

3.2 Maintenance of the Infrastructure and Water Treatment Plant

On the transfer of ownership of the Haldimand Infrastructure to Haldimand in accordance with Section 1.2, Haldimand covenants and agrees to be fully responsible for all operation, maintenance and repairs of such Haldimand Infrastructure. This Haldimand responsibility includes responsibility over all costs related to operation and maintenance, and capital costs required for repairs and/or equipment replacement, above and beyond the initial capital cost invested by Norfolk in constructing the Infrastructure, which costs will be recovered in accordance with Section 2.2.

For certainty, Haldimand is solely responsible for its water treatment plant located within Haldimand political boundaries (including maintenance thereof), and nothing in this Agreement transfers any such responsibility or any ownership thereof whatsoever to Norfolk.

Haldimand's maintenance obligations hereunder shall be to the generally accepted standards for water pipeline, supply, treatment and related infrastructure maintenance in Haldimand, and completed in accordance with applicable laws.

Further, notwithstanding Section 2.4, the Parties acknowledge and agree that the chamber and valves associated with the Delivery Point, shall be maintained by Haldimand throughout the Term.

3.3 Supply of Water

Haldimand shall ensure that the water supply capacity (and related infrastructure) is built and in service for provision of water to the Communities in accordance with this Agreement by December 31, 2025

In the event of any possible delays, including delays associated with design and/or construction of such capacity (and related infrastructure), Haldimand shall promptly notify Norfolk thereof, and the Parties shall promptly meet following such notice to discuss the implications of such delays, including possible amendments to this Agreement, and means to secure alternative provisions of the water supply to the Communities provided for under this Agreement.

3.4 Characteristics of Delivered Water

Haldimand shall deliver water having the following characteristics and quality to the Delivery Point(s):

- a) water meeting the Ontario Ministry of the Environment's water quality standards;
- b) water meeting all standards of the *Safe Drinking Water Act, 2002* (Ontario);

- c) water of the same quality as that supplied to consumers in Haldimand; and
- d) a consistent supply of the water volumes identified in Section 2.6.

3.5 Interruption of Supply

In the event that Haldimand is prevented from carrying out its obligations for supply under this Agreement for reason of any industrial disturbance, insurrection, riot, embargo, fire or explosion, act of God or war or by order of any legislative or federal authority or commission having jurisdiction over it, contamination, massive system failure or by any other similar acts over which Haldimand has no control and cannot reasonably foresee or prevent, Haldimand shall, only to the extent to which it is so prevented from carrying out any such obligation, be relieved from same while such disability continues. In such event, Norfolk shall not be responsible for any payment to Haldimand as set out in this Agreement for the duration of such interruption of supply, except for:

- a) any undisputed payments owing for invoices that have already been issued by Haldimand to Norfolk pursuant to this Agreement; or
- b) payment for water supplied by Haldimand to Norfolk in accordance with this Agreement before the interruption of supply,

both of which types of payments Norfolk will continue to be responsible for until paid in full.

If the interruption of service continues for a duration of 200 calendar days, Norfolk shall be entitled to terminate this Agreement on '30 days' notice to Haldimand.

3.6 Temporary Discontinuations

Haldimand shall be permitted to temporarily discontinue the delivery of water at the Delivery Point(s) if an emergency exists in Haldimand, in the sole opinion of Haldimand acting reasonably, or upon receiving the prior written consent of Norfolk, it being understood that in either event, any such discontinuance shall be of the minimum duration possible in the circumstances. Except in the case of an emergency, Haldimand shall use its reasonable efforts to provide Norfolk with at minimum three (3) business days' prior notice of any such discontinuance given the circumstances of each event. In the event of an emergency, Haldimand will use its reasonable efforts to provide Norfolk with notice as soon as possible.

For certainty, Haldimand acknowledges and agrees that all customers on the system will be considered equal and there will no preference of priority given to those customers that reside within the municipal boundaries of Haldimand as opposed to the municipal boundaries of Norfolk.

3.7 Emergency Backup

In the event Haldimand discontinues or interrupts the delivery of water at the Delivery Point(s) pursuant to Sections 3.5 or 3.6, Norfolk may, at its sole cost and expense, supply the Communities with an emergency supply of water until the regular water supply is restored. For certainty, in such an event, Norfolk shall not be responsible for any payment to Haldimand as set out in this Agreement for the duration of such discontinuation or interruption of delivery of water by Haldimand, except for:

- a) any undisputed payments owing for invoices that have already been issued by Haldimand to Norfolk pursuant to this Agreement; or
- b) payment for water supplied by Haldimand to Norfolk in accordance with this Agreement before the discontinuation or interruption of supply,

both of which types of payments Norfolk will continue to be responsible for until paid in full.

ARTICLE 4 FUTURE DEVELOPMENT

4.1 Future Pipelines

It is the intention of the Parties that the terms of this Agreement shall also apply to any communities within the geographic boundaries of Norfolk identified by Norfolk that may need a supply of water from Haldimand in the future (in each case, a **"Future Community"**).

In the event that Norfolk determines that the terms of this Agreement should apply to a Future Community:

- a) Norfolk shall request of Haldimand that this Agreement apply to a Future Community; and
- b) Haldimand shall agree to such request, provided that:
 - i. a independent Professional Engineer, licensed in the Province of Ontario and in good standing, confirms on Norfolk's behalf, at Norfolk's sole cost and expense, that such application to such Future Community will not result in an increase in the volume and flow rates described in Section 2.6, unless and to the extent agreed to by way of amendment to this Agreement or a new agreement between the Parties;
 - ii. Haldimand has the opportunity to review any proposed additions or upgrades to water transmission related infrastructure, including but not limited to Delivery Points, and approves the extension of servicing to such Future Community (which approval may not be unreasonably withheld, delayed or conditioned, but may be withheld if Haldimand determines, acting reasonably, that there would be significant adverse impacts on the transmission related infrastructure);
 - iii. Norfolk shall be responsible for all capital costs associated with the installation of related pipelines, infrastructure and water meters required to serve such Future Community; and
 - iv. this Agreement shall be read with all necessary grammatical and interpretive changes required such that all references herein shall also be a reference to the supply of water by Haldimand to any such Future Community.

4.2 Future Infrastructure Development

The Parties agree to work collaboratively to explore possible future water supply infrastructure development in a subsequent phase.

ARTICLE 5 BILLING AMOUNTS, INVOICING AND PAYMENT

5.1 Billing Amount

The Parties acknowledge and agree to the financial principals for the water supply provided pursuant to this Agreement set out in Schedule "A" to this Agreement, which principles shall apply to all applicable costs relating to the operation and maintenance of the water meter(s) and appurtenances thereto that are located within the boundaries of Haldimand.

5.2 Invoice Frequency

Haldimand shall invoice Norfolk for water actually supplied to Norfolk pursuant to this Agreement on a monthly basis.

5.3 Inaccuracies of Meter Readings

In the event that either Party determines that the water supplied to the Delivery Point is not being recorded or has not been recorded accurately for a period of time, Haldimand shall, on its own accord or on notice from Norfolk, and acting reasonably and in good faith, estimate the volume of said water delivered during comparable periods and such determinations and estimates made in accordance with this Section 5.3 shall be final and binding, and rates as provided in this Agreement shall be charged thereon. The volume estimated must be within 5% of the maximum billed volume for comparable periods. Monetary adjustments for any water supplied but not recorded accurately shall not exceed 90 days of supply in any given period.

5.4 Review of Rates

In the first year of the Term of this Agreement, the Parties agree to meet and review average day water consumption trends and charge rates to re-set rates upon mutual agreement which shall come into effect beginning on the later of January 1, 2026 or the date on which Norfolk is servicing ready. The Parties further agree to meet every year thereafter during the Term of this Agreement for the same purposes, and should the Parties fail to agree upon the revisions as required, if any, this Agreement will continue in full force and effect un-amended until otherwise agreed to in writing by the Parties, or as determined by application of the dispute resolution process set out in Article 10.

5.5 Interest

Norfolk shall pay interest on overdue accounts calculated at the same rate as charged on overdue accounts to consumers within Haldimand.

ARTICLE 6 STANDARD OF CARE

6.1 Disclaimer

Haldimand shall not be responsible for any loss or damage sustained directly or indirectly by Norfolk:

- a) by reason of any variation or temporary interruption in the water supply delivered hereunder; or
- b) as a result of a failure of Haldimand to supply water, or sufficient water, to the Communities,

where such variation, interruption or failure to supply is caused by events outside Haldimand's control, such as contamination of the water source, extreme weather events, strikes or wars.

Further, except as otherwise provided in this Agreement, Haldimand shall not be responsible or liable for any loss suffered by Norfolk that is related to or that would not arise, but for this Agreement and anything done by reason of this Agreement.

For added certainty, and without limiting the generality of the foregoing, it is agreed that due to weather and other circumstances beyond the control of Haldimand, the pressure at the Delivery Point may vary and Haldimand shall not be responsible for such variations in pressure.

6.2 Standard of Care

When undertaking the construction, administration, operation, repair, replacement or maintenance of the water works system contemplated by this Agreement, Haldimand shall use the same standard of care used in relation to the construction, administration, operation, repair, replacement or maintenance of the water works systems in Haldimand generally.

6.3 Notice to Norfolk

Other than in cases of an emergency, as determined by Haldimand acting reasonably, Haldimand shall provide Norfolk with reasonable notice when undertaking any planned works which may impact the pressure at the Delivery Point(s) so that Norfolk may in turn notify the Communities.

6.4 Exception

In the event that Haldimand does not properly notify Norfolk as set forth in Section 6.3, Haldimand shall indemnify Norfolk from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever to the extent that Haldimand is liable for not properly notifying Norfolk. Terms within Section 6.3 will not be applicable when Section 3.5 and Section 3.6 are engaged. For clarity, this does not apply to circumstances of an emergency, as determined by Haldimand acting reasonably.

ARTICLE 7 INDEMNITY

7.1 Indemnity to Norfolk

Haldimand shall and does hereby for all times covenant to defend, indemnify and save harmless Norfolk, its elected officials, officers, employees, agents and contractors, from and against any and all actions, causes of action, interest, claims, demands, costs, damages, expenses, loss or other proceedings however arising which Norfolk may bear, suffer or be put to by reason of this Agreement except to the extent such proceedings are due to the negligence of Norfolk, its elected officials, officers, employees, agents or contractors.

7.2 Indemnity to Haldimand

Norfolk shall and does hereby for all times covenant to defend, indemnify and save harmless Haldimand, its elected officials, officers, employees, agents and contractors, from and against any and all actions, causes of action, interest, claims, demands, costs, damages, expenses, loss or other proceedings however arising which Haldimand may bear, suffer or be put to by reason of this Agreement except to the extent such proceedings are due to the negligence of Haldimand, its elected officials, officers, employees, agents or contractors.

ARTICLE 8 INSURANCE

8.1 Haldimand Commercial General Liability Insurance

Haldimand shall effect at its own expense (including the cost of deductibles), and maintain and keep in force during the Term, a Commercial General Liability insurance policy naming Norfolk as additional insured against all claims for personal injury, death, property damage or loss, arising from any accident or occurrence relating to this Agreement in an amount not less than Ten Million Dollars (\$10,000,000.00) in respect of each claim or occurrence. This policy shall also contain Cross Liability coverage,

8.2 Norfolk Insurance

Norfolk shall effect at its own expense (including the cost of deductibles), and maintain and keep in force during the Term, insurance coverage naming Haldimand as additional insured against all claims for personal injury, death, property damage or loss arising from any accident or occurrence relating to this Agreement in an amount not less than Ten Million Dollars (\$10,000,000.00) in respect of each claim or occurrence.

8.3 Environmental Impairment Liability

Each Party shall at its expense obtain and keep in force, during the Term, an environmental liability policy with a limit of Two Million Dollars (\$2,000,000.00) per claim, and provide proof of the limits of this liability coverage to the other Party. The policy shall cover sudden and accidental coverage, and gradual release coverage. The gradual release coverage shall continue for an additional twelve (12) months following the end of the Term.

This Section 8.3 shall survive termination of this Agreement.

8.4 Acceptability, Termination, Cancellation

All insurers retained by the Parties to fulfill their respective insurance requirements under this Agreement shall be licensed to do business in the Province of Ontario.

Each Party shall deliver certificates of insurance, originally signed by authorized representatives, or, on reasonable request by the other Party, certified copies of policies, prior to the Effective Date of this Agreement, and for all policy renewals thereafter.

The insurance certificates/policies shall contain a clause that the insurers will enure to provide thirty (30) calendar days written notice of cancellation, alteration or material change.

If either Party fails to ensure any such policies are maintained, the other Party may do so (but it is not obliged to) and pay the premium, and in that event will be reimbursed the amount so paid as premium.

8.5 Primary Coverage

All insurance coverages required under this Agreement shall be primary and not call into contribution any other insurance coverages.

ARTICLE 9 TERM

9.1 Term of Agreement

Subject to the other terms of this Article 9, this Agreement shall remain in full force and effect for an initial term of ten (10) years beginning on the Effective Date (together with any renewal term, the “**Term**”), unless terminated in accordance with the provisions of this Agreement.

9.2 Renewal Term

Upon expiry of the initial term, the Parties may, upon mutual agreement, extend the Agreement for a maximum of one additional ten (10) year periods (such 10-year period being a renewal term). An extension for a renewal term shall be agreed upon at least one year before expiry of the initial term or renewal term, as applicable, and shall be on the same terms and conditions as set out in this Agreement unless otherwise agreed upon by the Parties in writing.

9.3 Early Termination by Norfolk

In the event that:

- a) the supply of water from Haldimand pursuant to this Agreement is no longer required by Norfolk, as determined in Norfolk’s sole discretion, then upon providing Haldimand with not less than five (5) years’ notice in accordance with the notice provisions contained in this Agreement; or
- b) Haldimand makes a decision:
 - i. in regards to costs that impacts Norfolk; or
 - ii. that impacts the discharge of Haldimand’s obligations to Norfolk pursuant to this Agreement,

which decision either (1) Norfolk provides notice to Haldimand that it opposes after the Parties have carried out the process set out in Section 1.3, or (2) is made by Haldimand without following the process set out in Section 1.3,

then Norfolk may terminate this Agreement.

In so terminating this Agreement, Norfolk shall remove or disconnect the pipelines and the water meter(s), water meter chamber(s) and all appurtenances and restore the lands associated therewith to a reasonable condition, and Norfolk shall be responsible for all expenses associated with such removal, disconnection and restoration.

9.4 Early Termination by Haldimand

In the event that during the Term (i) there is a major contamination event at the water intake or source and as a result there is not sufficient capacity in Haldimand's waterworks system to continue to supply Norfolk the volumes and rates of water provided for herein, or (ii) there is a failure to pay by Norfolk, which failure to pay when due is confirmed by arbitration conducted in accordance with this Agreement, then upon Haldimand providing Norfolk with not less than five (5) years' notice in accordance with the notice provisions contained in this Agreement, Haldimand may terminate this Agreement. In so terminating this Agreement, Haldimand shall promptly remove or disconnect the pipelines and the water meter(s), water meter chamber(s) and all appurtenances and restore the lands associated therewith to a reasonable condition, and Haldimand shall be responsible for all expenses associated with such removal, disconnection and restoration if it was responsible, in full or in part, for such contamination event.

ARTICLE 10 DISPUTES

10.1 Dispute Resolution

If a dispute arises under this Agreement that is not resolved by the operational personnel involved, Haldimand's General Manager and Norfolk's General Manager shall be notified and shall meet within fifteen (15) business days in attempt to resolve the dispute. In the event they are unable to resolve the dispute, they shall notify Haldimand's Chief Administrative Officer and Norfolk's Chief Administrative Officer who shall meet as promptly as possible in attempt to resolve the dispute. In the event that they are unable to resolve the dispute, the Parties may proceed to applying the processes set out under Section 10.2 or take any other steps available at law to protect their interests.

In the case of a dispute between the Parties, each Party agrees to fulfill its contractual obligations according to the Agreement until the earliest time at which the dispute is settled by (i) the Parties, (ii) a mediator or an arbitrator, or (iii) such other means taken by the Parties to protect their interests.

10.2 Mediation and Arbitration

Should the Parties not be able to resolve the dispute between themselves, they may by mutual agreement, refer the matter to an independent third party mediator.

If the matter is not referred to an independent third party mediator, or if the mediator fails to resolve the dispute, either Party has the right to refer the matter to arbitration.

The mediator and/or arbitrator, as the case may be, shall be mutually agreed upon by the Parties. Each Party shall be responsible for its use of the third party mediation/arbitration process, however the cost of the third party mediator/arbitrator shall be shared equally between the Parties.

The Parties agree that the rules and procedures of the *Arbitration Act, 1991* (Ontario) shall apply. The Parties expressly acknowledge and agree that the provisions of the *Municipal Arbitrations Act* (Ontario) shall not apply at any time to any arbitration initiated pursuant to this Agreement.

ARTICLE 11 NOTICE

11.1 Notice

Any notice required to be given under this Agreement shall be in writing, and may be given personally, by e-mail or by prepaid first class mail, in which case receipt shall be deemed five business days after the date of mailing.

Notice to the Parties may be delivered to the following addresses:

Haldimand: 53 Thorburn St. South
Cayuga, Ontario
N0A 1E0

E-mail: craig.manley@haldimandcounty.ca
Attn: Chief Administrative Officer

Norfolk: 50 Colborne Street South
Simcoe, Ontario
N3Y 4H3

E-mail: al.meneses@norfolkcounty.ca
Attn: Chief Administrative Officer

ARTICLE 12 GENERAL PROVISIONS

12.1 Compliance with Laws

The rights and privileges, duties and obligations arising out of this Agreement shall be subject to any applicable statute, regulation, law, order and direction of any governmental authority having jurisdiction over the parties and now or hereafter in effect during the Term.

12.2 Statutes

A reference to any statute in this Agreement is to that statute as now enacted or as it may be amended, re-enacted or replaced, and includes any regulations made thereunder.

12.3 Binding Agreement

This Agreement shall not be in force, or bind any of the Parties, until executed by both Parties. This Agreement shall ensure the benefit of and be binding upon the Parties hereto and their successors, but shall not be assigned in whole or in part.

12.4 Time of the Essence

Time shall be of the essence of this Agreement.

12.5 Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

12.6 Amendments Must Be Equally Formal

This Agreement may not be amended except by an instrument in writing of equal formality signed by the Parties or by their successors having the authority to do so.

12.7 Independent Legal Advice

Each of the Parties acknowledge that it has read, understood and obtained independent legal advice respecting this Agreement and the terms thereof.

12.8 Waiver

Each of the Parties agree that any actions of either or both Parties hereto in contravention of this Agreement shall not be relied upon as a waiver of any term of this Agreement and no approvals given by any employee of either Party shall constitute a waiver by the respective Party of its rights under this Agreement.

12.9 Further Assurances

Each of the Parties agree that they will, upon the reasonable request of each other, make, do, execute or cause to be made, done or executed all such further and other lawful acts, deeds, things, devices and assurances whatsoever to effect all of the terms, provisions and conditions of this Agreement.

12.10 Severability

If any provision in this Agreement is invalid or unenforceable, the remainder of this Agreement is not affected thereby and each covenant, obligation and provision of this Agreement is separately valid and enforceable to the fullest extent permitted by law.

12.11 Counterparts

This Agreement may be executed and delivered (including being scanned and e-mailed) in one or more counterparts, and by the different Parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

12.12 Entire Agreement

This Agreement and the documents and instruments to be executed and delivered under it constitute the entire agreement between the Parties and supersedes any previous agreement or arrangement, oral or written, between the Parties. This Agreement and the documents and instruments to be executed and delivered under it, contain all the covenants, representations, and warranties of the respective Parties. There are no oral representations or warranties between the Parties of any kind.

[Remainder of page left intentionally blank – Signature page follows]

IN WITNESS WHEREOF the Parties have, by the signature of their representatives duly authorized in that behalf, entered into this Agreement.

SIGNED, SEALED and DELIVERED

**THE CORPORATION OF
NORFOLK COUNTY**

Mayor, Kristal Chopp

County Clerk, Teresa Olsen

**THE CORPORATION OF
HALDIMAND COUNTY**

Mayor, Ken Hewitt

Municipal Clerk, Evelyn Eichenbaum

Schedule “A” – Financial Principles

Haldimand-Norfolk Water Supply Rates shall be calculated in accordance with the following principles:

1. Operating Cost Recovery

A proportionate share of the operating costs specific to the treatment and delivery of water is to be allocated to Norfolk. To calculate the operating rate each year, the total operating cost anticipated is divided by the total annual flow anticipated. The resulting rate is a charge per cubic metre of water volume utilized. At year-end, the actuals for operating costs and flows will be reviewed and the calculation adjusted and reconciled.

2. Lifecycle Cost Recovery

For the financial management of assets, lifecycle costing is used to identify the annual contribution required to replace an asset at the end of its useful life. Haldimand currently utilizes this approach for calculating water and wastewater rates for its users.

The cost for replacement of the assets is fixed (subject to inflationary factors) regardless of the volumes utilized.

3. Capital Costs

The capital costs associated with the treatment and delivery of water “the servicing” to Norfolk will be completely funded by Norfolk. This includes the necessary expansions to the existing Nanticoke Water Treatment Plant in Haldimand, as well as the transmission main extensions to bring the water to Norfolk’s boundary. As a result, there would be no rate/fee charged to Norfolk for these works.

Since Norfolk will be responsible for the up-front capital costs, Norfolk will be considered a stakeholder in the design process, and granted participation rights that, at minimum, encompass the process set out in Section 1.3 of this Agreement.

4. Administrative Cost Recovery

It is recognized that Haldimand will have additional administrative costs associated with administering the water supply agreement as well as the Water Operations agreement currently in place with the Ontario Clean Water Agency (OCWA). As a result, the calculated operating rate per cubic metre and annual lifecycle charges will have a 2.84% administrative charge applied to them for cost recovery purposes. This administrative charge is based on the rate established with Haldimand’s service agreements with industry.