

THIS AGREEMENT made the ____ day of _____, 201____

BETWEEN:

GREATER MONCTON WASTEWATER COMMISSION
(the "Commission")

-and -

CITY of MONCTON

CITY of DIEPPE

TOWN of RIVERVIEW
(the "Municipalities")

Service Agreement

WHEREAS the Parties to this Agreement recognize that they have common interests in the advancement of an effective and efficient wastewater system for the Greater Moncton area that will benefit the Municipalities and the Commission;

AND WHEREAS the Parties recognize that the Commission will abide by all applicable Acts and Regulations including their Approval to Operate issued by the Province of New Brunswick to intercept, convey and treat wastewater from the City of Moncton, the City of Dieppe and the Town of Riverview. This Approval to Operate requires the Commission to use certified Wastewater Treatment and Wastewater Collection Operators for the operation and maintenance of the collection and treatment systems through a Certificate of Qualification issued by the Province of New Brunswick;

AND WHEREAS the Councils of the City of Moncton, the City of Dieppe and the Town of Riverview are required to appoint two members from each Municipality to the Commission Board;

AND WHEREAS the Commission Board shall follow their obligations outlined within the New Brunswick Clean Environment Act;

AND WHEREAS the Parties further recognize that the advancement of such a system is best accomplished through effective and ongoing close cooperation, collaboration, coordination, communication and cost sharing where it is in the best interests of the rate payers of the Municipalities;

AND WHEREAS the Parties commit to promoting, fostering and embodying cooperation, collaboration, coordination and communication in their common relationships for such a wastewater system and to the principle of “Mutual Benefit”;

AND WHEREAS the Parties desire to provide an excellent quality of life for the residents and businesses of the Municipalities by ensuring a wastewater system that is effective, efficient and economically delivered, with the Commission being responsible for a centralized wastewater collection and wastewater treatment system and each Municipality being responsible for primary wastewater collection within its jurisdiction and delivery of the same to the Commission’s Collector System;

AND WHEREAS the Municipalities intend to construct wastewater Projects with specifications for infrastructure that meet the Commission’s standards and specifications and its long-term conveyance strategy for the needs of the Municipalities;

AND WHEREAS the Parties agree to co-operate on other matters and issues of common concern;

AND WHEREAS the parties are entering into this Agreement to set forth their rights, obligations and contributions with respect thereto and will enter into Sub-agreements where agreements have been reached on projects, issues and matters of common concern;

AND WHEREAS representatives of the Municipalities and the Commission are members of a Technical Committee for the planning of the overall Greater Moncton wastewater collection and treatment system;

AND WHEREAS the Technical Committee has made and will continue to make recommendations for general cost-sharing agreements for wastewater projects, with the percentage or other contributions made by the parties being expressed in the agreements.

NOW THEREFORE THIS AGREEMENT WITNESSETH that the Parties agree as follows:

1. DEFINITIONS

1.1 “Actual Capital Cost-Sharing Amount” means costs incurred for a Project, net after HST rebates and grants or other contributions by other levels of government, but excluding Municipal funds from other sources that are applied to the project.

1.2 “Commission” means the Greater Moncton Wastewater Commission, a body corporate incorporated by Order-in-Council Number 83-162, and having a registered business name of Trans Aqua.

1.3 “Commission’s Collector System” means the Commission’s collector sewers to which the Municipalities make a connection from their own trunk sewers and which convey wastewater to the Commission’s treatment plant at Outhouse Point in the Town of Riverview.

1.4 “Meter Equivalent Unit” means the number of units for billing purposes based on water consumption for ICI Users.

1.5 “Municipalities” means the City of Moncton, the City of Dieppe and the Town of Riverview each of whom are a municipal corporation pursuant to the Municipalities Act (New Brunswick) and Municipality means any one of them.

1.6 “Municipality’s Wastewater System” means the wastewater systems owned and operated by a Municipality to convey wastewater from residences, businesses, industries and other buildings within the Municipality to the Commission’s Collector System for conveyance to the Commission’s treatment plant at Outhouse Point in the Town of Riverview.

1.7 “Mutual Benefit” means: “mutual” – belonging to each of several and “benefit” – the pursuit of regional advantage and advancement. Achieving mutual benefit means engaging in regular and ongoing communications; establishing agreements that maintain or enhance regional services, assets and programs; and improving the social, economic and environmental well-being of the Greater Moncton area.

1.8 “Project” means a future wastewater project to be entered into from time to time by one or more of the Municipalities and the Commission, for which a sub-agreement will be entered into by the respective Municipality and the Commission.

1.9 “Project Collector Wastewater System” means that portion of the infrastructure of a Municipality’s wastewater project to be installed as an interceptor collector sewer to receive wastewater from the Municipality’s Trunk Sewer and through which the Commission will convey wastewater to its treatment plant at Outhouse Point in the Town of Riverview.

1.10 “Residential User Unit” means the unit of measure for billing purposes set by the Commission for a single residential household. The number of Residential User Units is determined by applying one unit for each single family residential home, two units for each duplex, three units for each triplex and four units for a quadruplex.

1.11 “Technical Committee” means the committee of representatives of the three Municipalities and the Commission that meets on a regular basis to discuss and plan for issues relating to the collection and treatment of wastewater in the Greater Moncton Area.

1.12 “Wastewater By-laws” means the By-laws enacted by the Municipalities for the regulation and control of wastewater into the Commission’s Collector System including but not limited to:

- (a) For the City of Moncton - By-law No. P-215, a By-law Relating to the Regulation and Control of the Discharge of Wastewater and Storm Water Run-off into the Sewerage Works of the City of Moncton, all amendments thereto and any By-law replacing it;
- (b) For the City of Dieppe – By-law No. 78-5, a By-law of the Municipality of Dieppe Respecting the Water and Sewerage Systems all amendments thereto and any By-law replacing it; and

- (c) For the Town of Riverview – By-law No.400-25, a By-law Respecting the Water and Sewerage Systems, all amendments thereto and any By-law replacing it.

2. PREAMBLE

2.1 The Parties hereby confirm and ratify the matters and commitments contained herein and referred to in the Recitals and Schedules to this Agreement.

2.2 The Recitals are part of this Agreement.

3. PURPOSE

3.1 The purpose of the Agreement is to set out the respective rights, obligations and contributions of the Parties hereto for the construction, maintenance and operation of the Commission's Collector System and the respective Municipalities' Wastewater Systems, as presently constructed and as may hereafter be constructed, and to enable the Commission and the Municipalities to work in harmony for the treatment of wastewater in the Greater Moncton Area.

3.2 This Agreement is also to provide guiding principles for the Greater Moncton Wastewater Commission and area Municipalities in advancing an efficient wastewater collection and treatment system that will support the quality of life to residents and will ensure effective, cost efficient solutions are implemented in a collaborative way.

3.3 This Agreement is also to provide the framework for, but not limited to, joint projects with cost sharing, in managing infiltration and inflow as well as combined sewer overflows, in maintaining up to date sewer discharge guidelines and by-laws, and recovering user fees.

3.4 The purpose of this Agreement is also to set out the general principles for formalizing Sub-agreements for other matters and issues of common concern to the Commission and the Municipalities.

3.5 The Municipality and Commission Limits of Jurisdiction are identified in Schedule "A" of this Service Agreement.

4. FUTURE PROJECTS AND COST-SHARING CONTRIBUTIONS

4.1 Cost Sharing

4.1.1 Where future wastewater projects benefit both the Commission and a Municipality and it is in their best interests financially and technically, they will enter into a Sub-agreement to this Service Agreement. The Sub-agreements will be entered into where there is a demonstrated joint benefit.

4.1.2 Sub-agreements to this Service Agreement should set out the details and

specifications of the project, have the plans for the Project attached as a Schedule and the respective funding contributions by the Commission and the Municipality for the Project attached as a Schedule.

4.1.3 The following criteria must be met to be considered as a Project:

- a) That the new component, if a gravity pipe system, has a required design diameter of not less than 300 mm;
- b) That the new component, if a sewage pumping station, has a peak design installed pumping capacity of not less than 50 L/s;

4.1.4 When the Project is completed by the Municipality, the Municipality will deliver to the Commission an Actual Capital Cost-Sharing Amount incurred for the Project, certified as true and correct by the Municipality's Treasurer, and the Commission will reimburse the Municipality for its proportionate share in accordance with the specific Project Sub-agreement.

4.1.5 When the Project is completed by the Commission, the Commission will deliver to the Municipality an Actual Capital Cost-Sharing Amount incurred for the Project, certified as true and correct by the Commission's Director of Finance and Administration, and the Municipality will reimburse the Commission for its proportionate share in accordance with the specific Project Sub-agreement.

4.1.6 The Municipalities will include the Commission in any signage that is erected for the Project and will reflect the Commission as a contributor to the Project and vice versa.

4.1.7 The Parties may negotiate any future replacement of Projects having regard to the benefits to each Party and the joint benefits to them. If agreed, the Parties will enter into a new Sub-agreement as a new Project and the existing Sub-agreement will be null and void upon the execution of the new Sub-agreement.

4.2 Easement

4.2.1 Where required a Sub-agreement will include a grant to the Commission of an easement for the purpose of operating and maintaining the Commission's infrastructure and the right to connect to and to use the Municipality's Wastewater System and also to connect to the Municipality's connection points as shown on the plans, or otherwise as may be necessary for the Commission's purposes. The Municipality will give a written connection permit before work proceeds and the Commission will provide as-built drawings to the Municipality upon completion.

4.2.2 Where required a Sub-agreement will include a grant to the Municipality of an easement for the purpose of operating and maintaining the Municipality's infrastructure and the right to connect to and to use the Commission's Collector System and also to connect to the Commission's connection points as shown on the plans, or otherwise as may be necessary for the Commission's/Municipality's purposes. The Commission will give a written connection permit

before work proceeds and the Municipality will provide as-built drawings to the Commission upon completion.

4.2.3 Where required the Commission shall have the right to enter upon the Project right-of-way with or without equipment for any purpose in relation to its collector sewer lines or the Project Collector Wastewater System, provided that such entry will be in such a manner as to cause a minimum of interference or inconvenience to the Municipality. The Commission shall advise the Municipality beforehand.

4.2.4 Where required the Commission shall be allowed to connect to that portion of the Project Collector Wastewater System at its own expense, and in particular shall have the right to connect for the purpose of servicing and extending to a present or future Commission's Collector System, provided the Municipality has adequate capacity and is in agreement.

4.2.5 The Municipality or the Commission will deliver to the other party "as built" drawings of the Project and any "as built" drawings of any future upgrades or changes.

4.3 Ownership, Operation and Maintenance

4.3.1 The Municipality will report any issues and anomalies immediately to the Commission that may affect negatively the operation of the Project system as they become aware of the same, and the Commission will give a similar notice immediately to the Municipality.

4.3.2 Upon request, both the Commission and the Municipality will share their inspection and maintenance reports with each other.

5. INFILTRATION AND INFLOW

5.1 The Municipalities acknowledge that they will be responsible to abide by any Provincial legislation and enforce any applicable municipal By-laws for the control or reduction of infiltration and inflow into their wastewater collection systems, if feasible, to reduce any negative impacts on the Commission's system. Infiltration and inflow issues with respect to the whole of the Municipalities wastewater systems shall be the responsibility of the Municipality. There should be no significant infiltration/inflow volumes that negatively impact the capacity and/or operation of the Commission's Collector System.

5.2 Where required the Commission may conduct visual, camera or other inspections of the Commission's or Municipality's system and install flow, level or other meters for full monitoring of the systems. The Commission will advise the Municipality beforehand and provide results of the inspection to the Municipality upon request.

6. COMBINED SEWER

6.1 The parties agree that all new subdivision developments will not have combined wastewater systems but will have separate systems for sanitary sewers and surface water systems. It is recognized that the Municipality of Moncton has combined sewer systems in the older sections of the City. Moncton will endeavor to separate sanitary and storm sewer flows in

the older parts of the City when upgrades or replacements to combined sewers are done.

6.2 The Commission is required to file, with Environment and Climate Change Canada and New Brunswick Department of Environment and Local Government, a report of Combined Sewer Overflow discharges from its own Collector System as well as from overflow structures associated to major Municipal trunk sewers to be defined in the Combined Sewer Overflow Sub-Agreement. The Sub-Agreements with the Municipalities will outline the reporting protocol and information that will be required for the Commission to complete.

6.3 The Commission, as part of its mandate, is developing a long term Combined Sewer Overflow Strategy that is aimed at increasing the capture rate during high flow events and gradually incorporating control and treatment to the discharge. The Municipalities will cooperate closely with the Commission in their initiatives relative to system expansion and system reconfiguration to work towards that common goal.

7. WASTEWATER BY-LAWS

7.1 The Municipalities and the Commission recognize that protection of the Greater Moncton regional environment is a shared responsibility between the Municipalities and the Commission.

7.2 The Commission developed sewer discharge guidelines for the Municipalities using as a reference guidelines developed by the Canadian Council of the Ministers of Environment (CCME) and other industry accepted authorities. The guidelines are intended to reinforce municipal by-laws to ensure that contaminants that could negatively impact the collector system or wastewater process can be controlled.

7.3 Subject to the approval of each Municipality's respective Council, where required, the Municipalities will amend their wastewater by-laws to harmonize with the Commission's Sewer Discharge Guidelines as revised from time to time to prohibit and/or limit the discharge of deleterious substances into their wastewater systems.

7.4 Where required the Commission may collect wastewater samples and conduct laboratory analysis for the parameters outlined in the GMWC Sanitary and Combined Sewer By-law Guidelines and the Municipality's Wastewater By-laws. The Commission will advise the Municipality beforehand and provide results of the laboratory analysis to the Municipality upon request.

7.5 The Municipalities shall notify the Commission of any wastewater discharges that exceed the Municipality's Wastewater By-laws.

8. PLANNING

8.1 Each Municipality that does not have a long-range Sewer Master Plan will prepare the

same as soon as practicable in order to facilitate the Commission's long range planning, particularly with regard to hydraulic capacity requirements.

8.2 Each Municipality as well as the Commission will share their Sewer Master Plans with all Parties once they are approved by Council or the Commission Board.

8.3 The Municipalities and the Commission should consider climate change in their planning as well as the Petitcodiac River tide level changes and storm surcharges in all designs of their wastewater systems and take into account the most recent reports and studies published.

9. OVER-STRENGTH WASTEWATER

9.1 A Municipality may permit a municipal ratepayer to exceed the GMWC Sanitary and Combined Sewer By-law Guidelines provided that the Commission has sufficient capacity to receive this over-strength wastewater component and treat the same without being detrimental to the Commission's overall system or treatment process.

9.2 The Commission must approve any over-strength wastewater discharge that the Municipality permits and the Municipality agrees to compensate the Commission for the additional cost of over-strength wastewater treatment through an Over-Strength Sub-agreement with the Municipalities.

9.3 The Municipality will enact by-laws or enter into agreements with individual businesses, industries or individuals who discharge over-strength wastewater. The Municipality will assess and collect over-strength wastewater fees from the ratepayer and forward compensation to the Commission.

10. COST RECOVERY

10.1 The Commission is responsible to set the unit rate to be applied on the number of units charged to a Municipality. The rate is set on the basis of the Commission fulfilling its mandate of operating its assets, in carrying out various studies and designs, and in managing a Capital program that will ensure long term viability of the system.

10.2 The Municipalities are responsible to establish the number of units to be applied to the various categories of customers and to recover the fees through their Water and Wastewater billing.

10.3 In order for the Municipality to complete their budget planning, the Commission will submit their following year draft budget and proposed unit rate by Oct 1. The draft budget will also include a five year projection.

10.4 The Municipalities agree to work towards establishing a consistent method of

determining a Residential User Unit and Meter Equivalent Unit formula applied to the rates charged by the Commission to the Municipalities for residential units, and industrial, commercial and institutional buildings.

11. TERM, RENEGOTIATION and TERMINATION

11.1 Term. Subject to Clause 11.2, the term of this Service Agreement is to be for as long as the Commission and the Municipalities exist or such earlier date as the Parties may mutually determine in writing.

11.2 Renegotiation. Parties may request renegotiation or termination of all or part of this Agreement or a Sub-agreement by providing a written twelve (12) months' Notice to the other Party or Parties as the case may be, requesting renegotiation or termination of this Agreement, specifying the terms to be renegotiated or the terms of termination as the case may be.

11.3 The Parties shall meet within ninety (90) days of the delivery of the request for the resolution of the request.

12. DISPUTE RESOLUTION

12.1 In the event of a dispute between the Parties or any of them regarding the interpretation or application of any of the terms, covenants or conditions contained within this Agreement, the Parties shall follow the following Dispute Resolution steps:

- a) Step One - Negotiation between the Mayor of the Municipality and the Chair of the Commission or their respective delegates, with each having a senior advisor present;
- b) Step Two - The parties recognize that mediation is then the most appropriate form of alternative dispute resolution;
- c) Step Three - However, if negotiation and mediation are unsuccessful, then any dispute shall be submitted to Arbitration which shall be conducted in accordance with the Arbitration Act (New Brunswick) and the decision of the Arbitrator(s) shall be binding upon the parties.

13. INSURANCE

13.1 Each party shall, at its sole cost and expense, take out and maintain in full force and effect, at all times throughout the term of a Sub-agreement, the following insurance:

- a) General liability and property damage insurance, including personal liability, contractual liability, non-owned automobile liability, and owners' and contractors' protective insurance coverage with respect to the Premises which

coverage shall include the business operations conducted by the Party and any other person on the Premises. Such policies shall be written on a comprehensive basis with coverage for any one occurrence or claim of not less than five million dollars (\$5,000,000); Without limiting the generality of the foregoing, the Municipalities shall maintain municipal liability insurance coverage for bodily injury, property damage and personal injury, and include the following;

- i) The Commission and the other Municipality, if a Party to the Service Agreement, as an additional insured with respect to the Project and the operations of the Named Insured;
 - ii) The policy shall contain a provision for cross liability and severability of interest in respect of the Named Insured;
 - iii) Non-owned automobile coverage with a limit not less than \$2,000,000 and shall include contractual non-owned coverage (SEF 96);
 - iv) Products and completed operations coverage;
 - v) Broad Form Property Damage;
 - vi) Contractual Liability;
 - vii) Hostile Fire; and
 - viii) The policy shall provide thirty (30) days prior notice of cancellation.
- b) Such other forms of insurance as may be reasonably required from time to time.
 - c) Each party shall furnish to the other, on written request, certificates of all such policies.

13.2 All of the foregoing policies shall not contain a waiver of any right of subrogation or recourse by the insurers against the other Party or their employees, whether or not any loss is caused by the act, omission or negligence of them or their employees.

14. GENERAL PROVISIONS

14.1 Changes to Federal or Provincial Legislation. In the event that a change in Federal or Provincial Legislation has significant material adverse impact on the ability of one or more of the Parties to fulfill their obligations under this Agreement, they may request a meeting of the Parties

to determine what implications the change(s) may have for the Agreement.

14.2 Further Assurances. The Parties covenant and agree to such things and execute such further documents, agreements and assurances as may be necessary or advisable from time to time to carry out the terms and conditions of this Agreement in accordance with their true intent.

14.3 Assignment of Agreement. No Party will assign its interest in this Agreement, or any part thereof, in any manner whatsoever without having first received written consent from all the other Parties. Such consent is not to be unreasonably withheld, provided that in no event will any assignment which may have been consented to, release or relieve the assignor from its obligations to fully perform all of the terms, covenants and conditions of this Agreement or its parts.

14.4 Notices. Any notice required to be given hereunder by any Party will be deemed to have been well and sufficiently given if it is delivered personally or mailed by pre-paid registered mail to the address of the party for whom it is intended. A notice or other document sent by registered mail will be deemed to be sent at the time when it was deposited in a post office or public letter box and will be deemed to have been received on the fourth day after it was postmarked. Until a notice of change of address is given to the other party, the addresses of the Parties are as follows:

The Commission 355 Hillsborough Rd, Riverview, NB E1B 1S5
Attention: The Chairman

City of Moncton: 655 Main Street. Moncton, New Brunswick. Canada E1C 1E8
Attention: The Mayor

City of Dieppe: 333 Acadie Avenue Dieppe NB E1A 1G9
Attention: The Mayor

Town of Riverview: 30 Honour House Court, Riverview NB E1B 3Y9
Attention: The Mayor

14.5 Entire Agreement. The Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties in relation to the subject matter hereof. There are no warranties, representations or other agreements among the Parties in connection with the subject matter hereof except as specifically set forth herein.

14.6 Unenforceable Terms. If any term, covenant or condition of this Agreement or the application thereof to any Party or circumstance will be invalid or unenforceable to any extent, the remainder of this Agreement or application of such term, covenant or condition to a Party or circumstance other than those to which it is held invalid or unenforceable, will not be affected thereby and each remaining term, covenant or condition of this Agreement will be valid and enforceable to the fullest extent permitted by law.

14.7 Amendments. This Agreement may only be altered or amended in any of its provisions when any such changes are put in writing and signed by all of the Parties.

14.8 No Waiver. No consent or waiver, express or implied, by any Party to or of any breach or default by any other Party, in the performance by such other Party of their obligations hereunder will be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of obligations hereunder by such Party. Failure on the part of any Party to complain of any act or failure to act of another Party or to declare such Party in default, irrespective of how long such failure continues, will not constitute a waiver by such Party of his rights hereunder.

14.9 Counterparts. This Agreement may be executed in several counterparts each of which when so executed, will be deemed to be an original. Such counterparts will constitute the one and same instrument and notwithstanding their date of execution, will be deemed to bear the date as of the date of this Agreement.

14.10 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of New Brunswick.

14.11 Time. Time will be of the essence for this Agreement.

14.12 Enurement. This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

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The Parties have hereunto executed this Agreement under their respective corporate seals and by the hands of their proper officers duly authorized in that regard.

GREATER MONCTON
WASTEWATER COMMISSION

Per: _____
Chairman

Per: _____
Secretary

CITY OF MONCTON

Per: _____
Mayor

Per: _____
City Clerk

CITY OF DIEPPE

Per: _____
Mayor

Per: _____
City Clerk

TOWN OF RIVERVIEW

Per: _____
Mayor

Per: _____
Town Clerk

Schedule “A”

Maps of Municipality and Commission Limits of Jurisdiction