

THIS AGREEMENT made in triplicate the _____ day of _____ 2018.

BETWEEN:

THE CORPORATION OF THE TOWN OF KINGSVILLE
hereinafter called the "Municipality"

OF THE FIRST PART

-and-

SOUTH ESSEX COMMUNITY COUNCIL
O/A ERIE SHORE COMMUNITY TRANSIT
hereinafter called the "Operator"

OF THE SECOND PART

The Municipality desires to provide a public transportation system for the physically disabled and the frail elderly within the municipality.

The Operator has agreed to provide such a transportation system for the Municipality.

The Municipality and the Operator have agreed to the terms and conditions of the operation of the system.

THEREFORE the parties in consideration of the premises hereby agree one with the other as follows:

- 1.1 Subject to the terms of this contract, the Municipality grants the Operator the right to maintain and operate transportation services for the physically disabled and frail elderly except hereinafter provided, in the Municipality for the conveyance of the physically disabled and frail elderly in the areas defined by the Municipal Council for a term of ten (10) years, to commence on the 1st day of January, 2018 and continue until the 31st day of December, 2027.
- 1.2 The Municipality recognizes that the Operator holds similar contracts with The Corporation of the Municipality of Chatham-Kent and The Corporation of the Municipality of Leamington who also grant the Operator the right to maintain and operate transportation services for the physically disabled and frail elderly in those respective municipalities for the conveyance of the physically disabled and frail elderly in those areas defined by those respective municipal councils for a term of ten (10) years, to commence on the 1st day of January, 2018 and continue until the 31st day of December, 2027.
 - 1.2.1 Schedule "D" illustrates and defines those geographical areas covered by this contract and those similar contracts held with other municipalities as outlined in Section 1.2 of this agreement.
- 2.0 THE OPERATOR SHALL
 - 2.1 Provide, operate and maintain at its expense a modern and efficient transportation service in accordance with the specifications outlined in the days and hours of operation shown in Schedule "A".

- 2.2 Provide a suitable office required for the service to contain the telephone answering, booking service and dispatch facilities.
 - 2.2.1 To provide general information to callers regarding the transportation services provided for the physically disabled and the frail elderly.
 - 2.2.2 To accept as many reservations as possible consistent with passenger capacity and availability of the vehicle.
 - 2.2.3 To notify callers of alternative service time when unable to supply requested service time.
 - 2.2.4 To keep a record of any complaints, unfulfilled requests for service, cancellations and no-shows.
 - 2.2.5 To inform callers awaiting service of any delays that might affect them.
 - 2.2.6 To make callers aware of the prioritizing of requests as deemed appropriate by the Operator.
 - 2.2.7 To provide radio dispatch facilities for office and vehicles.

Users of the service will be encouraged to reserve their trips at least 48 hours in advance. However, the Operator will accommodate shorter notice as conditions permit.

Adequate service reservation lines, dispatching and booking facilities will operate Monday to Friday from 8:30 a.m. until 4:30 p.m. and with the availability of a voicemail service on weekends and holidays.

- 2.3 Operate the vehicles in accordance with all applicable statutes and regulations and the bylaws of the Municipality and Province.
- 2.4 License, operate and maintain sufficient vehicles to satisfy the service specifications of Schedule "A". The Operator shall be responsible for all maintenance functions associated with the vehicles and any other equipment used in the service.
- 2.5 Maintain all vehicles in safe working order and if requested, to annually provide proof of the Certificate of Mechanical Fitness for each vehicle used in the service.
- 2.6 Keep accounting and operating records and provide an annual report to the Municipality indicating vehicle hours operated during the report year, including fare rates charged to passengers, as well as passengers carried, unmet demand, and cancellations. In addition, the Operator shall keep such other records as may reasonably be required, from time to time, by the Municipality and/or Provincial or Federal Government agencies, or similar bodies. The books of the Operator must be open to provincial audit.
- 2.7 Indemnify and save harmless the Municipality from loss, damage, expense and all suits, claims and proceedings, causes of action and demands arising by reason of, or connected in any way with the operation or maintenance of the system.

2.8 As further security for such indemnity, carry public liability and property damage insurance with an insurer satisfactory to the Municipality, in an amount of not less than ten million (\$10,000,000.00) dollars Third Party Liability, Road hazard and Passenger hazard inclusive for any one occurrence. The insurance shall name the Operator as named insured and the Municipality as additional insured, and shall only be cancellable on thirty (30) days written notice to the Municipality by the insurer and the new policy of insurance forthwith.. The additional coverage provided to the additional insured (i.e., the Municipality) shall include Blanket Contractual, Tenant's Legal Liability, Cross Liability and Thirty (30) Day Notice, and be outlined on the proof of coverage provided annually to the Municipality. Collision and comprehensive coverage shall be at the discretion of the Operator who shall negotiate any settlement of a claim under the policy.

2.8.1 Thirty (30) days prior written notice to the Municipality is required in the event that the policy is materially altered or cancelled.

2.9 The Operator shall maintain good standing with the Workplace Safety and Insurance Board at all times.

2.10 Discipline any vehicle operator or other employee found to be knowingly in breach of the terms and conditions of this contract or in breach of the law, or the subject of consistent passenger complaints.

2.11 Report all accidents or unusual incidents involving vehicle collisions, passenger injuries, etc., promptly to the police, the Erie Shore Community Transit Program Leader and insurance representatives. A written report shall be made by the driver on an approved form. Blank forms shall be carried on the vehicles at all times, and the drivers trained in their use.

2.12 Name a representative responsible for the system, and having the authority to make decisions relating to the terms and conditions of this contract.

2.13 Pay all expenses and remit all taxes associated or connected with operating and maintaining the system except as specifically excluded by the contract.

2.14 Establish the eligibility of users for the system in accordance with the Ontario Ministry of Health and Long-Term Care/Erie-St. Clair Local Health Integration Network requirements.

3.0 THE MUNICIPALITY SHALL

3.1 Pay the Operator the rate set forth in Schedule "B" upon being invoiced each July for the preceding six (6) month period and January for the preceding six (6) month period of each calendar year, with such invoice amounts relating to the actual ridership of each participating municipality, prorated and then taken as a percentage of the approved annual budget. The annual rate payable by the Municipality and as set forth in Schedule "B" shall be adjusted annually, commencing in 2019, in accordance with the increase to the annual Consumer Price Index for the prior year as published by the Government of Canada on or about January 15th of the next year.

3.2 Set aside in a designated capital reserve account held by the Municipality, or optionally pay the Operator directly, the rate set forth in Schedule "C" upon being invoiced each April for the preceding twelve (12) month period of each fiscal year. In those circumstances where the Municipality holds the invoiced amounts in their reserve account, the Operator will request a release of those funds in writing when a purchase of a new vehicle is made.

- 3.3 Agree to act as a distributor for Erie Shore Community Transit information and promotional materials (pamphlets, brochures) through the Municipal Office.
- 3.4 Appoint a representative who will attend regularly scheduled Erie Shore Community Transit Advisory Committee meetings, bring forward any municipal correspondence and be responsible for reporting back to each respective municipality.
- 4.0 Since service to the physically disabled and the frail elderly is of paramount importance to both the Municipality and the Operator, the parties agree that:
 - 4.1 They shall use their best endeavors to provide a good, safe and efficient service for the eligible users within the Municipality.
 - 4.2 In the event of any disputes between the Operator and the Municipality during the currency of this agreement, either party hereto shall give to the other notice of such dispute; thereupon, the following arbitration provisions shall apply:
 - 4.2.1 The Operator and the Municipality shall jointly choose a single arbitrator, acceptable to both, to hear and decide the matters in dispute. The decision shall be binding on both parties.
 - 4.2.2 In the event that the parties should be unable to agree on the choice of a single arbitrator, each party shall appoint an arbitrator and the two arbitrators shall jointly select a third. The decision of any two of the arbitrators shall be final and binding upon the parties.
 - 4.2.3 In any event, the selection of the arbitrators shall take place within seven (7) calendar days of the giving of notice of the dispute as herein before provided. If the selection has not occurred in seven (7) *calendar* days, then the arbitrator selected by one party shall be the sole arbitrator.
 - 4.2.4 The cost of the arbitration shall be paid jointly by the Operator and the Municipality and the arbitrator(s) shall determine what portion each party shall pay.
 - 4.2.5 The ruling of the single arbitrator or a majority of the three arbitrators shall be final and binding upon the parties and complied with by the parties forthwith.
 - 4.2.6 During the period of any arbitration proceedings, there shall be no interruption of service.
 - 4.3 The vehicles used regularly for the service shall have an exterior paint scheme and logo.
 - 4.4 Each vehicle used in the service shall be radio equipped and capable for dispatch within the service area

5.0 This contract is subject to the provision of The Municipal Act, 2001 S.O. 2001 c.25; and the provisions of The Public Transportation and Highway Improvement Act, R.S.O. 1990, Chapter P.50, as amended.

6.0 Save and except for a postal strike occurring within three days of the date of the mailing of any notice, when personal delivery shall be the only mode of delivery of notice, all notices, requests, demands and other communications of this agreement or in connection therewith shall be given to or made upon the parties as follows:

"Operator"

South Essex Community Council
0/A ERIE SHORE COMMUNITY TRANSIT
215 Talbot Street East
Leamington, Ontario N8H 3X5

"Municipality"

THE CORPORATION OF THE TOWN OF KINGSVILLE
2021 Division Rd North
Kingsville, Ontario N9Y 2Y9

or to such other address as each of the parties may specify by notice in writing to the other. All notices, save and except for notices with personal delivery, and all other communications given or made in connection with the agreement shall be made in writing and by registered mail. Notice shall be deemed to have been given four business days following the posting of same, postage prepaid, save and except when personal delivery is required during a postal strike.

7.0 The personal integrity of the Operator, being a significant factor in this contract, the Operator shall not sublet, sub-contract, or assign any of the work on this agreement or change its effective corporate control without the written consent of the Municipality previously obtained. This agreement shall ensure to the benefit of, and binding upon the parties, their respective successors and assigns.

8.0 The parties agree that Schedules "A", "B", "C" and "D" attached hereto form part of this contract.

9.0 The term of this contract shall commence January 1, 2018 and continue until December 31, 2027.

10.0 Either the Municipality or the Operator has the right, notwithstanding the termination date of this contract, to cancel or renegotiate this Agreement for any reason by giving six (6) months written notice of its intention to cancel or renegotiate to the other party.

10.1 If the Municipality gives notice to terminate, cancel or renegotiate this contract pursuant to Section 10.0 of this contract, the Operator will immediately notify the other participating municipalities.

10.2 The Municipality may terminate this Agreement at any time without notice in the event that the Operator is in material breach or default of any of its obligations under the Agreement and such breach or default has continued unrectified for seven (7) days following notice to the Operator describing the breach or default.

10.3 In the event that the Operator receives a notice of termination from another participating municipality or the agreement between the Operator and another participating municipality is terminated for a material breach or default, the Operator and Municipality shall immediately commence negotiations for a new agreement with one another. If at the conclusion of the notice period in the written notice of the participating municipality the Operator and the Municipality have failed to execute a new agreement, this Agreement shall be terminated forthwith and without the requirement of the notice being sent pursuant to Section 10.0.

11.0 The Municipality shall not be liable for costs or damages of any kind caused to the Operator by any form of cancellation of this agreement.

12.0 This is a contract between two separate legal entities and neither is the agent of the other for any purpose whatsoever. Neither party has the right, power or authority to assume or create any obligation of any kind to bind the other in any way whatsoever to a third party. Neither party shall negotiate on behalf of the other party or with any third party which might have a claim against either party without the other party's express prior written approval.

IN WITNESS WHEREOF the parties have affixed their corporate seals duly attested by their authorized officers in that behalf.

FOR THE MUNICIPALITY

MAYOR

CLERK-ADMINISTRATOR

CORPORATE SEAL

FOR THE OPERATOR

AUTHORIZED REPRESENTATIVE

AUTHORIZED REPRESENTATIVE

CORPORATE SEAL

SCHEDULE "A"

DAYS, HOURS AND FREQUENCY OF OPERATION

	BUS HOURS				<u>OFFICE HOURS</u>		
MONDAY	7:00 A.M.	TO	5:00 P.M.		8:30 A.M.	TO	4:30 P.M.
TUESDAY	7:00 A.M.	TO	5:00 P.M.		8:30 A.M.	TO	4:30 P.M.
WEDNESDAY	7:00 A.M.	TO	5:00 P.M.		8:30 A.M.	TO	4:30 P.M.
THURSDAY	7:00 A.M.	TO	5:00 P.M.		8:30 A.M.	TO	4:30 P.M.
FRIDAY	7:00 A.M.	TO	5:00 P.M.		8:30 A.M.	TO	4:30 P.M.
SATURDAY	CLOSED				CLOSED		
SUNDAY	CLOSED				CLOSED		

Evening and weekend service available upon request, subject to driver availability, and at additional cost.

Holiday service is available at regular rates and offered at times as determined by the Operator on the following occasions:

- Easter Sunday
- Mother's Day
- Father's Day
- Sunday before Thanksgiving
- Christmas Day

SCHEDULE "B"

MUNICIPAL RIDERSHIP PAYMENT TO THE OPERATOR

The payment to the Operator for the term of this contract (January 1, 2018 to December 31, 2027) shall be calculated by subtracting user fees and provincial grants from projected costs and then apportioning the net amount remaining among the participating municipalities on the basis of ridership. The estimated costs to be apportioned for each of the contract years of 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026 and 2027, to the respective Municipalities shall be as calculated below:

EXAMPLE

Municipality	Estimated Percentage of Ridership	Estimated Annual Ridership Contribution
Leamington	50%	\$20,000
Kingsville	40%	\$16,000
Chatham-Kent	10%	\$4,000
TOTAL	100%	\$40,000

The provisions of Section 3.1 of this contract determines the nature and timing of payments to the Operator. However, the provisions of Section 3.1 shall not preclude the possibility of the Municipality prepaying the apportioned share on a monthly, quarterly, semi-annual, or annual basis, if the Municipality wishes.

The Operator shall furnish to each Municipality an Operating Budget for Erie Shore Community Transit, subject to final approval by the Ontario Ministry of Health and Long-Term Care/Erie-St. Clair Local Health Integration Network, at the start of each fiscal year.

The cost sharing apportionments for any subsequent contracts shall continue to be negotiated with the Municipalities on the basis of actual ridership usage during the preceding year.

The annual ridership contribution shall not exceed \$40,000 plus any annual increases granted by virtue of Section 3.1. The Municipality's payment shall not exceed its share of the annual ridership contribution as calculated based upon the percentage of ridership attributable to the Municipality.

SCHEDULE "C"

CAPITAL RESERVE CONTRIBUTION PAYMENT TO THE OPERATOR

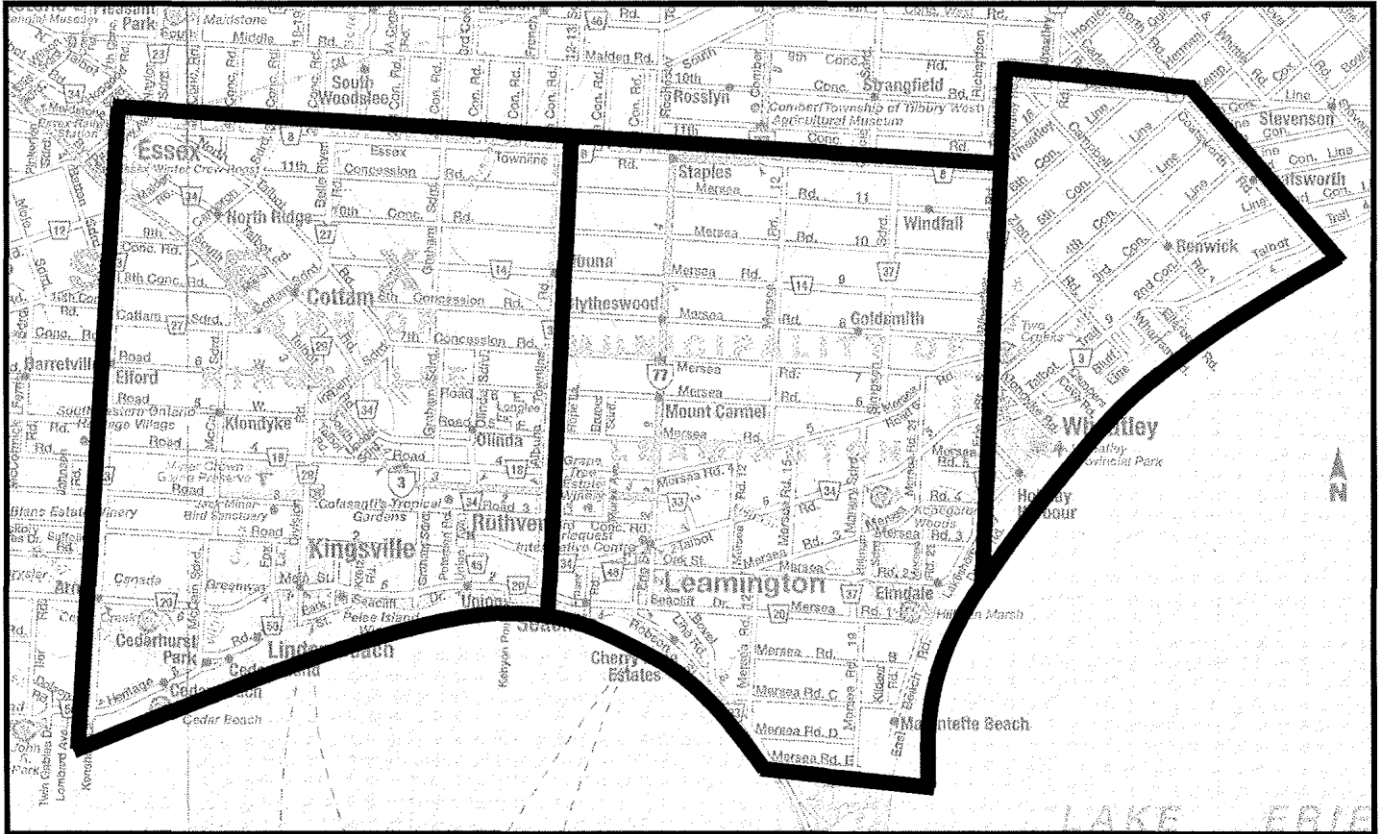
The reservation of capital funds or payment to the Operator for the term of this contract (January 1, 2018 to December 31, 2027) shall be calculated by assessing a flat commitment fee among the participating municipalities. The estimated costs to be apportioned for each of the contract years of 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026 and 2027, to the Municipality of Leamington shall be as calculated below:

40% SECC Commitment / 60% Municipal Commitment							
est. transit bus cost =		\$100,000.00					
			Year 1	Year 2	Year 3	Year 4	Total
SECC	40.00	\$ 40,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$ 40,000.00
Leamington	30.00	\$ 30,000.00	\$ 7,500.00	\$ 7,500.00	\$ 7,500.00	\$ 7,500.00	\$ 30,000.00
Kingsville	24.00	\$ 24,000.00	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	\$ 24,000.00
Chatham-Kent	6.00	\$ 6,000.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 6,000.00
Total	100.00	\$100,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	\$ 100,000.00

The provisions of Section 3.2 of this contract determines the nature and timing of reserving or making payments to the Operator. However, the provisions of Section 3.2 shall not preclude the possibility of the Municipality reserving or pre-paying the apportioned share on a monthly, quarterly, semi-annual, or annual basis, if the Municipality wishes.

SCHEDULE "D"

ERIE SHORE COMMUNITY TRANSIT AREA OF SERVICE MAP & DEFINITIONS



Erie Shore Community Transit services:

The Town of Kingsville, herein defined as that area of Essex County bordered by County Road 23 to the west, County Road 8 to the north, County Road 31 to the east, and those roads along the north shore of Lake Erie to the south; and

The Municipality of Leamington, herein defined as that area of Essex County bordered by County Road 31 to the west, County Road 8 to the north, Kent County Road 1 to the east, and those roads along the north and western shores of Lake Erie to the south; and

The Municipality of Chatham-Kent - specifically the Village of Wheatley and part of the former Township of Romney - herein defined as that area of Chatham-Kent bordered by County Road 1 to the west, County Road 4 to the north, Coatsworth Road to the east, and those roads along the western shores of Lake Erie to the south.