

ROAD USER AGREEMENT

THIS AGREEMENT made this [__] day of April, 2020

BETWEEN:

GREATER ESSEX COUNTY DISTRICT SCHOOL BOARD
hereinafter called the "GECDSB"

OF THE FIRST PART

- and -

THE CORPORATION OF THE COUNTY OF ESSEX
hereinafter called the "COUNTY"

OF THE SECOND PART

WHEREAS the GECDSB is the owner of Anderdon Public School located at, 3170 Middle Sideroad (County Road 10), in the Town of Amherstburg, in the County of Essex, which consists of part of south ½ of south ½ of Lot 7 Concession 3, Anderdon as in AN13178 & R218876 except R168063, Amherstburg;

AND WHEREAS the GECDSB has requested permission from the County to construct, install and maintain a private sanitary forcemain of approximately 3400 metres (the "**Private Sanitary Forcemain**") across and along the south side of County Road 10 right-of-way, which consists as Parts 1 to 6, (inclusive) 12R-28075, Parts 1 to 6 (inclusive), 12R-28076 and Parts 1 to 4, (inclusive) 12R-28077, which Private Sanitary Forcemain will service Anderdon Public School at 3170 Middle Sideroad (County Road 10);

AND WHEREAS The Corporation of the Town of Amherstburg (the "**Town**") has granted its approval to the connection of the said Private Sanitary Forcemain to the Town's municipal sanitary sewer system servicing the area, with the Town's municipal sanitary

sewer system being approximately 70 metres west of Ironwood Drive and approximately fourteen (14) metres from the south edge of County Road 10;

AND WHEREAS the County has agreed to grant the GECDSB permission to construct and install the said Private Sanitary Forcemain and outlet along County Road 10 on certain terms and conditions as set out in this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the aforesaid mentioned premises, the mutual covenants and agreements contained herein, and other good and valuable consideration, the parties hereto agree as follows:

Construction and Maintenance

1. The County hereby grants permission to the GECDSB to construct, install, and maintain the Private Sanitary Forcemain within the right-of-way of that portion of County Road 10 starting from the north side of County Road 10 at the Anderdon Public School, crossing County Road 10 to the south side of County 10 and then heading westerly to connect into an existing sanitary manhole (MH# 1638), which effects Parts 1 to 6 (inclusive) on 12R-28075, Parts 1 to 6 (inclusive) on 12R-28076, and Parts 1 to 4, (inclusive) on 12R-28077, in the Town of Amherstburg. Copies of the said 12R-28075, 12R28076, and 12R-28077 are attached hereto as **Schedule "A"** to this Agreement. The said Private Sanitary Forcemain shall be constructed and installed in accordance with the Plans prepared by R. LUCENTE ENGINEERING INC., Civil Engineering Consultant dated February, 2019 as Office File No. 19-1058, which consists of fifteen

(15) sheets, a copy of which Plans are attached hereto as **Schedule "B"** to this Agreement.

2. The GECDSB hereby agrees to retain the services of R. LUCENTE ENGINEERING INC. to inspect the construction and installation of the Private Sanitary Forcemain and any ancillary works related thereto, and to certify that the said Private Sanitary Forcemain has been completed in accordance with the provisions of this Agreement, and the associated approved drawings identified above. Further, the County requires notice prior to installation of the Private Sanitary Forcemain across County Road 10 and reserves the right to inspect as required to satisfy itself as to the construction.

3. The GECDSB shall not deviate from the approved location without the prior written approval of the County Engineer. The GECDSB shall be required to provide the County Engineer, within forty-five (45) days of the completion of the Private Sanitary Forcement, as-built drawings (electronically) satisfactory to the County Engineer, which drawings shall also note the date of completion of the Private Sanitary Focemain and the related works.

4. The GECDSB shall be required to retain the services of a qualified contractor (the "**Contractor**") to construct the Private Sanitary Forcemain in accordance with the provisions of this Agreement, and which Contractor shall:

(a) provide all required traffic control in accordance with the "Ontario Traffic Manual Book 7", and in accordance with the standards of the County, all of which

the GECDSB is required to seek and obtain the approval of the County prior to construction being commenced. In the event there is any conflict between the standards mandated in the Ontario Traffic Manual Book 7 and the standards of the County, the standards of the County shall take precedence;

(b) during the construction of the Private Sanitary Forcemain procure and maintain public liability insurance (the "**Construction Insurance Policy**"), shall file a copy of the Construction Insurance Policy and the Certificate of Insurance with the County, and the said Construction Insurance Policy shall:

(i) be comprised of primary and/or umbrella coverage with a limit of not less than five million dollars (\$5,000,000.00) per occurrence;

(ii) include commercial general liability covering all operations and liability assumed under this Road User Agreement with the County, and shall include coverage for the following:

1. Premises and Operations
2. Blanket Contractual
3. Broad Form Property Damage
4. Contingent Employer's Liability
5. Cross Liability
6. Severability of Interests
7. Owners and Contractors Protective
8. Personal Injury
9. Employer's Liability
10. Employees as Additional Insureds
11. Non-Owned Automobile Including SEF # 96

12. Hostile Fire

13. Attached Machinery

14. Third Party Environmental Liability

(iii) include a copy of the endorsement or a letter from the insurer verifying coverage is to accompany the Certificate of Insurance;

(iv) include insurance against liability of bodily injury and property damage caused by vehicles and/or owned and operated by the Contractor and used in conjunction with the construction of the Private Sanitary Forcemain either within or outside the terms of this Road User Agreement, and shall have a limit of liability of not less than five million dollars (\$5,000,000.00) inclusive for any one occurrence;

(v) be endorsed to provide that the policy or policies will not be altered, cancelled, or allowed to lapse without providing thirty (30) days prior written notice to the County, with any such notice to be filed with the County Engineer, Department of Engineering, 360 Fairview Avenue West, Essex, Ontario N8M 1Y6, and via facsimile at 519-776-4455; and

(vi) be endorsed to include the County as an additional named insured.

(c) provide the County with confirmation, in a form acceptable to the County in its sole discretion, that the Contractor has WSIB coverage in place; and

(d) provide the County with a material and performance and maintenance bond in a form acceptable to the County in its sole discretion.

5. Save as hereinafter provided, the consent, permission and authority hereby given and granted to the GECDSB to enter upon the lands owned by the County, being County Road 10 and the lands within the County Road 10 right-of-way, shall be at all times subject

to the prior approval of the County Engineer. All works done from time to time under this Agreement, as related to the maintenance and/or removal of the Private Sanitary Forcemain, are subject to the prior approval of the County Engineer who has full power and authority to give such directions and orders that she considers in the best interest of the County, and the GECDSB will follow all directions and orders that the County Engineer provides.

6. The GECDSB shall be responsible for any and all costs associated with the construction and installation of the said Private Sanitary Forcemain, and for all costs associated with the restoration of County Road 10 and the road allowance of County Road 10 required by the construction and installation of the said Private Sanitary Forcemain, to the satisfaction of the County Engineer. Upon completion of the Private Sanitary Forcemain and the related works, any deficiency in the restoration shall be provided by the County in writing, and once the restoration has been completed to the satisfaction of the County Engineer, acceptance of the restoration shall likewise be formally provided by the County in writing.

7. The GECDSB as owner of the Private Sanitary Forcemain shall be solely and completely responsible for all costs associated with the future maintenance, repair and/or reconstruction of this Private Sanitary Forcemain, which shall be maintained in a sound, and fully functioning condition, all to the satisfaction of the County Engineer, unless the need for such repair and/or reconstruction is caused as a result of the wilful misconduct or negligence on the part of the County.

8. The GECDSB shall be required to obtain all of the necessary permits from the County prior to beginning any work on that affects County Road 10 or the County Road 10 right-of-way. The GECDSB shall further be obligated to comply with any and all conditions and restrictions imposed on the granting of the said permits, and for the payment of all fees associated with the issuance of the said permits.

8. The GECDSB hereby agrees to provide the County with a certificate of public liability insurance covering both the GECDSB and the County with respect to those portions of County Road 10 and the County Road 10 right-of-way under which the Private Sanitary Forcemain is constructed. The said insurance shall be in an amount not less than five million dollars (\$5,000,000.00) and shall cover injuries or death to any person and damage to any property arising from any one occurrence. The insurance policy shall include a cross-liability clause endorsement, with the County named as an Additional Insured on the said policy, which shall be kept in full force and effect as long as the Private Sanitary Forcemain remains under County Road 10 or the County Road 10 right-of-way. The said policy of insurance shall not be changed or amended in any way or cancelled until after sixty (60) days written notice of such change or cancellation has been given to the County. A copy of the certificate of insurance shall be delivered to the County for approval prior to commencing any construction on County Road 10 or the County Road 10 right-of-way, with renewal certificates to be provided annually during the term of this Agreement.

Schedule of Payment of Permits and Fees

10. The GECDSB shall be required to pay to the County, upon the execution of this Agreement, the sum of ten thousand dollars (\$10,000.00), by way of bank draft or certified cheque, as security to ensure the construction and installation of the said Private Sanitary Forcemain will be completed in accordance with the provisions of this Agreement. At such time as all of the work required under this Agreement has been completed to the satisfaction of the County, acting reasonably, the Owner may apply to the County for a refund of this security, which refund will be payable without interest.

11. The GECDSB covenants and agrees to pay to the County a one (1) time encroachment fee in the amount of two thousand five hundred dollars (\$2,500.00), plus the associated permit fees in the amount of two-hundred and fifty dollars (\$250.00) per kilometre for the use of the right-of-way of County Road 10 by the GECDSB for the Private Sanitary Forcemain, the payment of which shall become due and payable upon the execution of this Agreement and/or issuance of the permit.

12. The GECDSB covenants and agrees to reimburse the County for any and all reasonable legal, survey, and administrative costs incurred by the County with regard to the preparation, execution and registration of this Agreement and all necessary field work and inspections. In this regard GECDSB agrees to pay to the County, upon execution of this Agreement, a retainer towards costs in the amount of five thousand dollars (\$5,000.00), on account of estimated legal fees in the sum of three thousand dollars (\$3,000.00) and estimated administration costs in the sum of two thousand dollars (\$2,000.00). The GECDSB further covenants and agrees to pay within thirty (30) days of being provided with a request by the County such further reimbursement of costs as may

be required by the County in accordance with this provision of the Road User Agreement.

Term of this Agreement

13. The burdens on the lands owned by the County, and the benefits to the property of the GECDSB in having access to the lands owned by the County for a Private Sanitary Forcemain, pursuant to the terms and conditions of this Agreement shall be binding upon and deemed to run with the lands owned by the County for a period of twenty (20) years commencing on the date of execution of this Road User Agreement, unless terminated by the County, in its sole and absolute discretion, by providing not less than one hundred and twenty (120) days prior written notice to the GECDSB.

14. Notwithstanding the above, the Parties agree that should the Private Sanitary Forcemain be required by the GECDSB following the automatic expiry at the conclusion of the twenty (20) year period, and its continued use and placement in the County Road 10 right-of-way can be accommodated by the County, acting reasonably, the Parties shall use their best efforts to negotiate and enter into a fresh Road User Agreement.

Decommissioning and Removal

15. In the event the County, acting reasonably, deems it necessary or require that the Private Sanitary Forcemain be removed from County Road 10 and the County Road 10 right-of-way, or be altered in its location on the said County Road 10 and/or the County Road 10 right-of-way, the GECDSB hereby agrees to remove and/or alter the location of the Private Sanitary Forcemain and restore the affected area at its sole cost and expense,

provided that the County gives one hundred and twenty (120) days' notice in writing to the GECDSB of the requirement to remove or alter the location of the Private Sanitary Forcemain. It is acknowledged and agreed that in the event weather conditions negatively impact the ability of the GECDSB to comply with the provisions of this paragraph within the one hundred and twenty (120) day notice period, the said notice period shall be extended accordingly to allow for the delay caused by adverse weather conditions.

16. In the event access to a public sanitary system becomes available at some future time, and the GECDSB has the ability to connect to that system to service the Anderdon Public School property, the GECDSB hereby agrees to connect the Anderdon Public School property to that public system as soon as possible after it becomes available for the use of Anderdon Public School. Notwithstanding that the GECDSB is to connect to the said public system as soon as possible after it becomes available, the connection will be made within one hundred and twenty (120) days of it becoming available.

17. In the event that access to a public sanitary system becomes available, as soon as practicable after the GECDSB connects to the said public sanitary system, it shall decommission and remove the Private Sanitary Forcemain in accordance with the provisions of this Agreement. Notwithstanding that the GECDSB is to decommission and remove the said Private Sanitary Forcemain as soon as possible after the GECDSB connects to the said public system, the decommissioning and removal of the Private Sanitary Forcemain will be completed within one (1) year of the connection to the said public system being made.

18. Upon termination of this Agreement, and/or upon the Private Sanitary Forcemain no longer being used to service the Anderdon Public School Property, the GECDSB shall decommission and remove the Private Sanitary Forcemain to the satisfaction of the County Engineer, acting reasonably. All other obligations of the GECDSB shall continue under the provisions of this Agreement until such obligations have been complied with and/or completed in full to the satisfaction of the County Engineer, acting reasonably.

19. In the event the GECDSB fails to decommission and remove the Private Sanitary Forcemain in accordance with the requirements of the County Engineer within one (1) year of either the termination of this Agreement or the abandonment of the Private Sanitary Forcemain by the GECDSB, the County shall have the right to remove and dispose of all or part of the Private Sanitary Forcemain as the County may determine, acting reasonably, and the GECDSB; (1) shall have no recourse against the County for any losses, costs, expenses or damages as a result thereof; and (2) shall be liable for any and all reasonable costs directly incurred by the County in effecting the said removal and disposal of all or part of the Private Sanitary Forcemain.

Indemnification and Release

20. The GECDSB will indemnify and save the County harmless from all claims for damages, liabilities, losses, costs, or expenses of every kind that may be sustained by any person by reason of the permission granted herein, save and except for losses, costs, expenses or damages caused as a result of the wilful misconduct or negligence on the part of the County.

21. The GECDSB waives any claim against the County for damages to the Private Sanitary Forcemain resulting from any activity of the County on County Road 10 and or on the road allowance for County Road 10, save and except any damages caused by the wilful misconduct or negligent acts of the County, or those for whom it is responsible at law.

Assignment

22. The GECDSB hereby acknowledges that the County has agreed to allow the construction and installation of this Private Sanitary Forcemain within the road allowance of County Road 10 solely for the use of the Anderdon Public School property. Except to a successor owner of the Anderdon Public School property, the GECDSB may not assign any part of this Agreement without the prior written consent of the County, in its sole and absolute discretion.

Notice

23. All notices, demands or requests which may be or are required to be given under the provisions of this Agreement by any party to the other herein shall be in writing and shall be mailed by registered mail, and shall be addressed: in the case of the GECDSB at:

The Greater Essex County District School Board
451 Part Street West
Windsor, Ontario N9A 6K1
Attention: General Counsel

and in the case of the County to:

The Corporation of the County of Essex
360 Fairview Avenue West,
Essex, Ontario N8M 1Y6.
Attn: County Engineer

Any notice sent by registered mail shall be deemed to have been received on the fifth (5th) business day following the date it was mailed, whether signed for or not. In the event that the address as stated herein of any party is changed during the term of this Agreement, the party changing the address shall give notice of the change to the other party within ten (10) days of the effective date of that change in address. In the event the party changing its address fails to give notice of such change as required herein, then any notice given by the other party to the address as stated in this paragraph shall be deemed to be effective, and to be given in accordance with the terms of this Agreement.

General Terms

24. The GECDSB hereby consents to the registration of this Agreement against title to the Anderdon Public School property.

25. This Agreement shall be binding upon the parties, their respective heirs, executors, administrators, successors, permitted assigns, and any subsequent owners of the Anderdon Public School property or the lands owned by the County.

26. The parties hereto acknowledge that the doctrine of *contra proferentem* shall not apply to any of the terms of this Agreement, and the parties agree that this Agreement is to be treated as though drafted by both of them.

27. The parties shall with reasonable diligence do all things required of them by this Agreement and provide all reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each party shall provide such further documents or instruments required by any other party as may be reasonably necessary or desirable to effect the purpose of this Agreement.

28. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, and the laws of Canada applicable therein and shall be treated, in all respects, as an Ontario contract. The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of Ontario.

IN WITNESS WHEREOF the parties have set their corporate seals attested by the hands of their respective officers duly authorized in that behalf.

THE GREATER ESSEX COUNTY DISTRICT SCHOOL BOARD

Per:
Title:
I have the authority to bind the Board.

THE CORPORATION OF THE COUNTY OF ESSEX

Per: Gary McNamara
Title: Warden
We have authority to bind the County

Per: Mary Birch
Title: Clerk