

## ROAD USER AGREEMENT

THIS ROAD USER AGREEMENT made in duplicate this [ \_\_ ] day of May, 2021 (the "**Effective Date**")

**B E T W E E N:**

**THE CORPORATION OF THE COUNTY OF ESSEX**  
(hereinafter referred to as the "**County**")

**OF THE FIRST PART**

- and -

**UNION WATER SUPPLY SYSTEM**  
(hereinafter referred to as "**Union Water**", and together with the County, the "**Parties**")

**OF THE SECOND PART**

**WHEREAS** the County is the owner of and Road Authority for County Road 45;

**AND WHEREAS** Union Water is owned jointly by the Town of Kingsville, the Town of Essex, the Municipality of Lakeshore, and the Municipality of Leamington, is managed by the Union Water Supply Joint Board of Management, and is operated by the Ontario Clean Water Agency;

**AND WHEREAS** Union Water owns and operates a water treatment facility at municipal address 1615 Union Avenue (County Road 45), Kingsville, Ontario (the "**Water Treatment Plant**");

**AND WHEREAS** Union Water has requested permission from the County to construct, install, and maintain a private sanitary forcemain (the "**Private Sanitary Forcemain**"). Approximately 190 metres of the said Private Sanitary Forcemain shall run across and along the west side of the County Road 45 right-of-way to connect with an existing municipal sanitary sewer, which will affect the parts depicted on the Reference Plan 12R-28577 annexed hereto as **Schedule "A"**, and which Private Sanitary Forcemain will service the Water Treatment Plant that fronts on to County Road 45;

**AND WHEREAS** the Corporation of the Town of Kingsville (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;

**AND WHEREAS** the County has agreed to grant Union Water permission to construct and install the said Private Sanitary Forcemain and outlet along County Road 45 on certain terms and conditions as set out in this Agreement;

**AND WHEREAS** by by-law passed by the Council of the County (the "**By-law**"), the duly authorized individuals have been authorized and directed to execute this Agreement on behalf of the County;

**AND WHEREAS** the Effective Date of this Agreement shall be the date this Agreement is executed by the County, which execution shall not occur until all Schedules have been finalized, approved by the County and attached to this Agreement, and the Agreement has been executed by Union Water;

**NOW THEREFORE IN CONSIDERATION** of the undertakings and covenants hereinafter expressed and upon the terms hereinafter set forth, and other valuable consideration, the receipt and sufficiency of which is hereto acknowledged, the County and Union Water mutually covenant and agree as follows:

## **1. RECITALS**

1. The Parties warrant that the above recitals are true and that same form an integral part of this Agreement and are accordingly hereby incorporated into this Agreement by reference.

## **2. DEFINITIONS**

1. In this Agreement:
  - (a) "**Applicable Laws**" means any and all applicable laws, statutes, codes, ordinances, principles of common and civil law and equity, rules, approvals, regulations, and municipal by-laws which are binding upon and applicable to the Project;
  - (b) "**Approved Plan**" means, as applicable, the approved layout and installation plan for the Private Sanitary Forcemain as approved by the County Engineer, in her sole and absolute discretion, in accordance with the provisions of this Agreement;
  - (c) "**By-law**" has the meaning given to such term in the Recitals;
  - (d) "**Construction Insurance Policy**" has the meaning set out in Section 10(4)(b) of this Agreement;
  - (e) "**Contractor**" has the meaning set out in Section 10(4) of this Agreement;
  - (f) "**County Engineer**" means the most senior individual employed by the County with responsibilities for highways within the County or the person designated by such senior employee or such other person as may from time to time be designated by the Council of the County;

- (g) "**Crossing(s)**" means any place where any component(s) of the Private Sanitary Forcemain cross, in whole or in part, any travelled portion of a Highway;
- (h) "**Dispute**" has the meaning set out in Section 29(1) of this Agreement;
- (i) "**Extension Term**" has the meaning set out in Section 5(2) of this Agreement;
- (j) "**Highway**" means all common and public highways, street, roadway, avenue, parkway, driveway, square, bridge, viaduct or trestle, any part of which is intended to be used for or is used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance now or at any time during the term hereof under the jurisdiction of the County, and without limiting the generality of the foregoing, for the purposes of this Agreement specifically refers to County Road 45, and the right-of-way thereof;
- (k) "**Party**" means, singularly, either the County or Union Water and "**Parties**" means, collectively, both the County and Union Water;
- (l) "**Plan**" means any plan required to be provided by Union Water to the County pursuant to this Agreement;
- (m) "**Private Sanitary Forcemain**" has the meaning given to such term in the Recitals;
- (n) "**Project**" means the construction, installation, and maintenance of the Private Sanitary Forcemain;
- (o) "**Term**" has the meaning given to such term in Section 5(1) of this Agreement;
- (p) "**Town**" has the meaning given to such term in the Recitals;
- (q) "**Tree Removal**" has the meaning set out in Section 9(1) of this Agreement;
- (r) "**Water Treatment Plant**" has the meaning given to such term in the Recitals;
- (s) "**Work**" or "**Works**" means any work related to the installation of the Private Sanitary Forcemain to be undertaken by Union Water or its agents or contractors in connection with the installation under the Highway, or in the right-of-way thereof; and

- (t) whenever the singular, masculine or feminine is used in this Agreement, it shall be considered as if the plural, feminine or masculine has been used where the context of the Agreement so requires.

### 3. SCHEDULES

- 1. The following Schedules (as may be amended from time to time by mutual agreement of the Parties) are attached hereto and form part of this Agreement:

**Schedule "A"** – Draft Reference Plan depicting specific parts to be affected by the installation of the Private Sanitary Forcemain; and

**Schedule "B"** – Draft Forcemain Plan/Profile

**Schedule "C"** – Schedule of Permits, Fees, and Charges

### 4. GRANT

- 1. The consent, permission, and authority of the County is hereby given and granted to Union Water, its employees, agents, and contractors:
  - (a) to enter upon the Highways under the jurisdiction of the County in accordance with the timelines provided for in Section 13 hereto, or as amended, to lay, construct, and/or install the Private Sanitary Forcemain under the road allowance of the Highway in accordance with a Plan approved by the County Engineer and to carry out the Works contemplated in this Agreement. The consent, permission, and authority hereby given extends only to County Road 45 and the right-of-way thereof, and the County shall not be obligated to provide any further access to the Highways of the County for the installation of the said Private Sanitary Forcemain; and
  - (b) to do such other things as may be required by the terms of this Agreement and approved by the County to complete the installation of the said Private Sanitary Forcemain.
- 2. The consent, permission, and authority hereby given and granted shall be subject to:
  - (a) the rights and obligations of the County to construct, maintain, reconstruct, rehabilitate, and use at any and all times all Highways under the jurisdiction of the County;
  - (b) the right of free and legal use of all Highways by all persons entitled to use them;

- (c) the rights of the owners of properties adjoining the Highways to enjoy full access to and from the Highways and of constructing crossings and approaches from their properties; and
- (d) the rights and privileges that the County has granted or may grant to other persons (including, but not limited to, commuters, agricultural vehicles, overweight/oversized loads, and maintenance crews for maintenance of drainage ditches and roadway repairs) on the Highways;

all of which rights are expressly reserved.

- 3. Save as hereinafter provided, the consent, permission, and authority hereby given and granted to Union Water to enter upon the Highway shall at all times be subject to the prior approval of the County Engineer which shall be administered in accordance with the procedures set forth in this Agreement. All Work from time to time under this Agreement is subject to the prior approval of the County Engineer, acting reasonably, who has full power and authority to give such directions and orders that the County Engineer considers in the best interest of the County, and Union Water will follow all directions and orders that the County Engineer provides that are issued in accordance with the provisions of this Agreement and Applicable Laws.

## 5. TERM

- 1. The burdens on the lands owned by the County, and the benefits to the property of Union Water 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 fifty (50) years commencing on the date of execution of this Agreement (the "**Term**"), unless terminated by the County, in its sole and absolute discretion, by providing not less than twelve (12) months' prior written notice to Union Water or any successor owner of Union Water.
- 2. Notwithstanding the above, upon expiry of the Term, this Agreement may be extended for such further periods as the Parties may expressly agree in writing ("**Extension Term**"), subject to the County, acting reasonably, being able to accommodate the continued use and placement of the Private Sanitary Forcemain in the County Road 45 right-of-way, and the Parties using their best efforts to negotiate and enter into a fresh Road User Agreement.

## 6. APPROVAL PROCESS

- 1. Before commencing any Works under this Agreement, Union Water will deposit both a digital copy and a hard copy of its installation plan (including any amendments thereto) with the County Engineer for review and approval pursuant to

the terms of this Section 6.

2. The County Engineer shall review and consider the Plans submitted by Union Water and, within a reasonable period of time following submission of such Plans, shall either approve or not approve the Work as presented in the applicable Plan. In the event the County Engineer does not approve the Plans, the County Engineer shall issue written instructions to Union Water with any additional information or modifications which are reasonably required by the County Engineer with respect to the Plans, including the imposition of any reasonable terms and conditions as the County Engineer considers in the best interest of the County in its capacity as custodian of the Highways owned by the County. The Parties agree to work together in good faith to consider amendments to Plans, or any other Plan which may be required by the County, provided such amendments comply with Applicable Laws. However, Union Water shall not undertake Work of any kind until it is in receipt of the Approved Plan or an amended Approved Plan, as the case may be, and the relevant permits have been issued by the County.
3. Should there be any disagreement between the County and Union Water regarding the requirements of any Plan to be submitted by Union Water, the opinion and requirements of the County Engineer in her sole and absolute discretion shall prevail.
4. Union Water is required to consult with the County Engineer in advance of commencing with the Project in order to determine what permits are required and agrees to apply for and obtain all permits from the County for the Project.
5. Union Water further agrees that prior to commencement of any Work pursuant to this Agreement, it shall obtain all permits and approvals which are required pursuant to any Applicable Laws, including, where necessary, the approval of any federal, provincial, and/or lower tier municipal government, any agency, and the County, and to satisfy the County that the Works will be completed to and meet the minimum standards of the County, in order to commence any of the Works.
6. Furthermore, it shall be the sole and absolute responsibility of Union Water to notify any other person or body of which it is aware or otherwise notified by the County, which is operating any equipment, installations, utilities, or other facilities, within the Highways where such Work is to be conducted, of the details of the anticipated Work so as to minimize the potential interference with or damage to such existing equipment, installation, utilities, and other facilities by the said Work, and so as to maintain the integrity and security thereof. Should any dispute arise between Union Water and any other user of the Highway(s) and the associated right-of-way, it is the sole responsibility of Union Water to resolve the dispute to the satisfaction of itself and any affected third party.

## **7. HIGHWAYS**

1. Both the County and Union Water acknowledge and agree that County Road 45 and the associated right-of-way is the only Highway authorized for use by Union Water and its agents and/or contractors, for the Private Sanitary Forcemain.
2. If and to the extent Union Water wishes, after commencement of the Works, to alter the alignment or depth of the Private Sanitary Forcemain, Union Water shall request and obtain the prior written approval of the County Engineer prior to altering the Works contained in the Approved Plan, and shall enter into such amendments to this Agreement as the County may require.
3. In the event it becomes necessary, during the installation of the Private Sanitary Forcemain, for Union Water to transport goods by way of oversized loads on any County Highway(s), Union Water shall obtain all of the necessary permits from the County to do so, including posting any security required pursuant to such permits, and to comply with any reasonable conditions that may be required or imposed by the County at that time.
4. Union Water hereby agrees to comply with the provisions of all relevant By-laws of the County with respect to weight restrictions on the Highways, unless and until it receives the express written permission of the County Engineer to be exempted from the weight restrictions, with such permission and terms of such permission at the sole and absolute discretion of the County Engineer.

## **8. DECOMMISSIONING AND REMOVAL**

1. In the event the County, acting reasonably, deems it necessary or require that the Private Sanitary Forcemain be removed from County Road 45 and the County Road 45 right-of-way, or be altered in its location on the said County Road 45 and/or the County Road 45 right-of-way, Union Water 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 twelve (12) months' notice in writing to Union Water 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 Union Water to comply with the provisions of this paragraph within the twelve (12) month notice period, the said notice period shall be extended accordingly to allow for the delay caused by adverse weather conditions.
2. In the event access to a public sanitary system becomes available at some future time, and Union Water has the ability to connect to that system to service the Water Treatment Plant, Union Water hereby agrees to connect the Water Treatment Plant to that public system as soon as possible after it becomes available for the use of the Water Treatment Plant. Notwithstanding that Union Water is to connect to the said public system as soon as possible after it becomes available, the connection

will be made within twelve (12) months of it becoming available.

3. In the event that access to a public sanitary system becomes available, as soon as practicable after Union Water 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 Union Water is to decommission and remove the said Private Sanitary Forcemain as soon as possible after Union Water connects to the said public system, the decommissioning and removal of the Private Sanitary Forcemain will be completed within twelve (12) months of the connection to the said public system being made.
4. Upon termination of this Agreement, and/or upon the Private Sanitary Forcemain no longer being used to service the Water Treatment Plant, Union Water shall decommission and remove the Private Sanitary Forcemain to the satisfaction of the County Engineer, acting reasonably. All other obligations of Union Water 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.
5. In the event Union Water 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 Union Water, 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 Union Water: (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.

## 9. TREE CLEARING AND REPLACEMENT

1. In the event that trees along the Highway are removed or damaged beyond repair by Union Water and thereby requiring removal (a "**Tree Removal**"), Union Water shall, at its own and sole expense, completely remove the tree(s), including any residual tree stumps to a level below grade and to restore and remediate the surface where the tree(s) were located to an even grade.
2. Further, for each Tree Removal, Union Water shall, at the option of the County, provide the County with a fee in accordance with **Schedule "C"** hereto.

## 10. METHOD OF CONSTRUCTION

1. Union Water shall install the Private Sanitary Forcemain by the method of

construction identified in the Approved Plan as submitted to and approved by the County Engineer.

2. The County requires notice prior to installation of the Private Sanitary Forcemain along County Road 45 and/or its associated right-of-way and reserves the right to inspect as required to satisfy itself as to the construction.
3. Union Water shall not deviate from the approved location without the prior written approval of the County Engineer. Union Water shall be required to provide the County Engineer, within forty-five (45) days of the completion of the Private Sanitary Forcemain, as-built drawings (electronically) satisfactory to the County Engineer, which drawings shall also note the date of completion of the Private Sanitary Forcemain and the related works.
4. Union Water 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 Union Water 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 two million dollars (\$2,000,000.00) per occurrence;
    - (ii) include commercial general liability covering all operations and liability assumed under this 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; and
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 Agreement, and shall have a limit of liability of not less than two million dollars (\$2,000,000.00) 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.

## **11. BACKFILL AND RESTORATION**

1. Prior to commencing any backfill and restoration work, Union Water shall submit a plan for approval to the County Engineer, which approval is in the County Engineer's sole and absolute discretion, and Union Water shall obtain any and all permits and approvals which are required pursuant to any Applicable Laws.

## **12. PROTECTION OF HIGHWAYS, ACCESS, AND FUTURE EXPANSION**

### **Access**

1. Union Water expressly acknowledges and agrees that it is obligated to ensure the right of free and legal use of all Highways by all persons entitled to use them during completion of the installation of the Private Sanitary Forcemain and any related future maintenance of same.
2. Union Water further acknowledges and agrees that:
  - (a) the County has an overarching responsibility to ensure that the Highways, including the associated rights-of way, are operated and utilized in a manner that ensures safety of users and that maintains the traffic carrying ability and physical integrity of the Highways and associated rights of ways; and
  - (b) in light of the responsibility of the County, Union Water shall complete the installation of the Private Sanitary Forcemain in such a manner as to protect the structural integrity of the Highway(s) and associated rights-of-way, and to ensure the safety of users of the Highway(s) and associated rights-of-way, during installation and future maintenance of the Private Sanitary Forcemain.

### **Protection of Highways from Damage**

3. No tracked or overweight equipment shall be placed on the Highway(s) unless approved protection methods are in place, and with special care and attention being provided with respect to the paved surface of the Highways.

### **Accommodation of County Moving Permits**

4. It is a requirement of this Agreement, that the Highway(s) remain open and available at all times for use by users of the Highways(s), including users who have been issued oversized/super-load permits by the County. To this end, Union Water shall ensure that there remains a minimum of five (5) metres of passable lane available to traffic at all times.

## **13. SCHEDULE OF INSTALLATION**

1. Following execution of this Agreement, Union Water shall provide a schedule of the installation of the Private Sanitary Forcemain to the County, which schedule is subject to approval by the County, in its reasonable discretion.

#### **14. ENVIRONMENTAL LIABILITY**

1. The County is not responsible, either directly or indirectly, for any damage to the natural environment or to any property, including any nuisance, trespass, negligence, or injury to any person, howsoever caused, arising from the presence, deposit, escape, discharge, leak, spill, or release, of any hazardous substance in connection with Union Water's occupation or use of the Highways as part of this Agreement and the Private Sanitary Forcemain.
2. Union Water agrees to assume all environmental liabilities, claims, fines, penalties, obligations, costs, or expenses, whatsoever, relating to the installation of the Private Sanitary Forcemain, any future removal of same, and/or its use of the Highways as part of the installation and future maintenance of the Private Sanitary Forcemain and/or any future removal of same, including, without limitation, any liability for the clean-up, removal, or remediation of any hazardous substance on or under the Highways that result from:
  - (a) the occupation, operations, or activities of Union Water, its contractors, agents, or employees, or by any person with the express or implied consent of Union Water within the Highways; or
  - (b) any Works brought or placed within the Highway by Union Water, its contractors, agents, or employees, or any person with the express or implied consent of Union Water;

unless such environmental liabilities (including, without limitation, any liability for the clean-up, removal, or remediation of any hazardous substance) were caused directly or indirectly in whole or in part by the negligence or wilful misconduct on the part of the County or those for which it is responsible under Applicable Laws.

#### **15. REQUIRED HIGHWAY UPGRADES TO ACCOMMODATE THE PROJECT**

1. In the event that the standard condition or maintenance of any of the Highways is not sufficient to permit Union Water to carry out completion of the Project, or any of its obligations under this Agreement, Union Water shall be solely responsible for carrying out any required remedial work or maintenance required to upgrade or maintain the Highway(s), at its own and sole expense, but with the Union Water not carrying out any such remedial work or maintenance without first obtaining the approval of the County Engineer and any necessary permit(s).
2. Should Union Water complete any remedial work or maintenance required to upgrade or maintain the Highway(s) to complete the Project, Union Water expressly agrees that it shall, at its own and sole expense, return the Highway(s) to the condition it was in prior to the remedial work or maintenance work being completed, unless the

County expressly advises that Union Water is not required to do so.

## **16. EMERGENCY**

1. In the event of an emergency involving the Private Sanitary Forcemain during the Term or an Extension Term hereof, Union Water shall notify the responsible police force immediately upon becoming aware of the situation and shall do all that is necessary and desirable to control the emergency, including such work in and to the Highways as may be required for the purpose. As soon as is reasonably possible after the emergency is discovered, Union Water shall advise the County Engineer by telephone and shall keep her advised throughout the emergency. If the emergency is caused by Union Water, Union Water shall reimburse the County for any and all costs incurred in connection with the emergency. Forthwith after it becomes necessary for Union Water to exercise its obligations under this Section, Union Water shall provide a written report to the County Engineer of what work was done and the further work to be undertaken, if any, and seek the approval of the County Engineer for the further work as contemplated in this Section, with the sufficiency of the completed work being subject to the approval of the County Engineer, in her sole and absolute discretion.
2. Should Union Water fail to comply with its obligations pursuant to this section of the Agreement to the satisfaction of the County Engineer, in her sole and absolute discretion, the County may complete any and all necessary work to address the emergency involving the Private Sanitary Forcemain, or retain a qualified third party contractor to do so, and shall charge the amounts for same, plus any and all other expenses incurred by the County, which includes, but is not limited to the time expended by the County to oversee the work and for any additional third party expenses, to Union Water. Union Water expressly agrees to pay for said charges forthwith upon demand from the County.

## **17. URGENT HIGHWAY REPAIRS**

1. During the time of the installation of the Private Sanitary Forcemain and associated Works are underway, should the County determine that urgent repairs to the Highway are required, and which repairs are not required as a result of the Works, Union Water shall immediately cease any Works underway, to permit the County to complete the repairs it deems necessary, in the County's sole and absolute discretion.
2. During the time of the installation of the Private Sanitary Forcemain and associated Works are underway, the County may give written notice to Union Water that urgent repairs are required to the Highway in order to maintain the Highway in a passable condition for the everyday traffic load or to remove material and adverse safety risk or to prevent imminent harm to the users of such Highway in the normal course, provided that such repairs are required as a direct result of Union Water's

use of such Highway. The need for such repairs shall be determined by the County Engineer, acting reasonably. If the urgent repairs are not completed by Union Water within twenty-four (24) hours of the sending of the written notice by the County or, if the emergency repairs cannot be completed within such twenty-four (24) hour period, Union Water does not commence to diligently perform the urgent repairs within such twenty- four (24) hour period, the County may perform the emergency repairs at Union Water's sole expense and Union Water shall pay the County's invoice(s) for such urgent repairs immediately upon receipt.

**18. [INTENTIONALLY DELETED]**

**19. [INTENTIONALLY DELETED]**

**20. UNION WATER'S DUTY REGARDING DAMAGED HIGHWAYS**

1. Union Water shall well and sufficiently restore, to the reasonable satisfaction of the County Engineer, with reference to a photographic record of pre and post Highway conditions, all Highways and property that it damages during the course of the Project. Union Water shall be solely responsible for all costs associated with the repair of any Highways damaged by Union Water or its employees, agents, or contractors as a result of the Works done in completing the Project, in accordance with the process set out herein and as determined by the County Engineer. Such restoration shall be equal to or better than the condition of the said Highway as it was before any of the Works commenced. If Union Water fails at any time to do, or commence and complete, any of the required work within a reasonable period of time following notification by the County (having regard to the nature of the required work), the County may do so, or may retain a qualified third party contractor to do so, and the County shall charge the amounts for same, plus any and all other expenses incurred by the County, which includes, but is not limited to the time expended by the County to oversee the work and for any additional third party expenses, to Union Water. Union Water expressly agrees to pay for said charges forthwith upon demand from the County.

**21. RECORD DRAWINGS**

1. Union Water shall provide two (2) copies of the "as constructed" Private Sanitary Forcemain (with sufficient detail to the satisfaction of the County, including but not limited to, both location and depth) for the records of the County plus a final electronic copy prepared in an AUTOCAD, CAD, or GIS environment, prior to release of any deposits or securities.

**22. PAYMENT OF FEES**

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1. Union Water covenants and agrees to pay to the County a one (1) time encroachment fee in the amount of \$2,500.00 for the use of the right-of-way of County Road 45 by Union Water for the Private Sanitary Forcemain, the payment of which shall be due and payable upon the execution of this Agreement and issuance of the related permits.
2. Union Water 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 Union Water agrees to pay to the County, upon execution of this Agreement, a retainer towards costs in the amount of four thousand dollars (\$4,000.00), on account of estimated legal fees in the sum of three thousand dollars (\$3,000.00) and estimated administration costs in the sum of one thousand dollars (\$1,000.00). Union Water 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 this Agreement.

### **23. FORCE MAJEURE**

1. If either Party is prevented from carrying out its obligations under this Agreement by reason of any cause beyond its control, such Party shall be relieved from such obligations while such inability continues; provided, however, that this Section shall not relieve Union Water from its obligations to indemnify the County as contemplated herein, and provided further that nothing herein shall require either Party to settle any labour or similar dispute unless it is in the best interests of such Party to do so.

### **24. APPLICABLE LAWS**

1. It is acknowledged and agreed by the Parties that this Agreement is subject to the provisions of all Applicable Laws of the Province of Ontario.

### **25. NOTICES**

1. Any notice to be given under any of the provisions of this Agreement shall be provided to the County by delivering the notice to the clerk of the County, or by sending the notice by facsimile transmission to 519-776-4455, or by registered mail, postage prepaid, addressed to the attention of the clerk of the County at **360 Fairview Avenue West, Suite 202, Essex, Ontario N8M 1Y6**, and to Union Water by delivering the same to its head office, or by sending same to its business office by registered mail, postage prepaid, addressed to Union Water as follows:

UNION WATER SUPPLY SYSTEM  
1615 Union Avenue

If any notice is sent by facsimile transmission, the notice shall be deemed to have been given on the next business day following its transmission. If any notice is sent by mail, the same shall be deemed to have been given on the fourth (4th) day following the posting of the notice, provided that in the event of a disruption in postal service, either at the point of mailing or the point of delivery, any notice sent by mail shall be deemed to have been given on the day when it is actually received by the addressee of such notice.

## **26. ASSIGNMENT**

1. Union Water may not assign any part of this Agreement without the express written consent of the County. Union Water further acknowledges that any proposed assignee shall be required to covenant, in favour of the County, to assume full responsibility of this Agreement.
2. The County acknowledges that Union Water is currently contemplating transitioning to a new legal structure whereby it may become a new corporate entity. If Union Water elects to complete such transfer, the County agrees that nothing contained within this Agreement shall: (a) prevent Union Water from completing this transfer; or (b) require Union Water to first obtain the County's consent to complete said transfer. Union Water will be entitled to assign this Agreement, and all of its rights and obligations under it, to the new corporate entity, and Union Water shall thereupon be released of all liability arising from and after the date of such assignment to the extent that it is assumed by the new corporate entity.

## **27. INDEMNIFICATION**

1. Union Water shall indemnify and save harmless the County, its Councillors, officers, directors, employees, legal counsel, agents, and contractors from and against all claims, suits, demands, liabilities, losses, costs, damages, or other expenses of every kind that the County may incur or suffer as a consequence of or in connection with any negligent or wilful misconduct or any breach of this Agreement by Union Water, except to the extent that such claims, liabilities, losses, costs, damages, and other expenses are caused by the County's negligence or breach of this Agreement.

## **28. BREACHES OF THIS AGREEMENT**

1. If Union Water commits a breach of or otherwise fails to comply with any of the provisions of this Agreement, the County shall give Union Water notice in writing specifying the breach complained of. In the event Union Water fails to remedy such breach within sixty (60) days of receipt of such notice (or such longer period of time having regard to the nature of the breach as the County may in its sole discretion

deem appropriate), the matter shall be addressed in accordance with Section 29 of this Agreement, being the dispute resolution provisions provided for hereunder.

**29. DISPUTE RESOLUTION**

1. Any controversy, dispute, difference, question or claim arising between the Parties hereto in connection with the interpretation, performance, construction, or implementation of this Agreement that cannot be resolved by the County Engineer and a representative of Union Water (the "**Dispute**") shall be settled in accordance with this Section. The aggrieved Party shall send the other Party written notice identifying the Dispute, the amount involved (if any) and the remedy sought, and invoking the procedures in this Section. The Parties shall confer in an effort to resolve the Dispute themselves. If the Parties are unable to resolve the Dispute within five (5) business days after receipt of the written notice of the Dispute, then the Dispute is to be referred to a mediator selected by Agreement between the Parties. If the Parties cannot agree on the selection of a mediator, the final decision as to the mediator shall be at the sole discretion of the County, provided that the mediator selected is a certified mediator, a respected senior lawyer with experience in municipal law, or a retired judge.
2. If the Dispute cannot be resolved by way of mediation, the Parties may then pursue any remedies available to them at law.
3. Except to the extent that a matter is specifically subject to a Dispute, both Parties shall continue to observe and perform the terms and conditions of this Agreement pending the resolution of the Dispute.

**30. NUMBER AND GENDER**

1. This Agreement shall be construed with all changes in number and gender as may be required by the context.

**31. COVENANTS**

1. All obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants.

**32. INCLUSIONS**

1. Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" do not precede such list or reference.

**33. SEVERABILITY**

1. The Parties agree that all covenants and conditions contained in this Agreement shall be severable, and that should any covenant in the Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions of the remainder of the Agreement shall remain valid and of full force and effect.

**34. EFFECT OF WAIVER AND FOBEARANCE**

1. No waiver by any Party hereto of any breach by any other Party of any of its covenants, agreements or obligations contained in this Agreement shall be or be deemed to be a waiver of any subsequent breach thereof or the breach of any other covenants, agreements or obligations nor shall any forbearance by any Party hereto to seek a remedy for any breach by any other Party be a waiver by the Party so forbearing of its rights and remedies with respect to such breach or any subsequent breach.

**35. NO JOINT VENTURE, PARTNERSHIP, OR CO-OWNERSHIP**

1. The Parties hereby acknowledge and agree that this Agreement is solely a road user agreement, and that no relationship is formed between the Parties in the nature of a joint venture, partnership, co-ownership arrangement or other similar relationship.

**36. GOVERNING LAW**

1. This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.

**37. ENTIRE AGREEMENT**

1. This Agreement constitutes the entire agreement between the Parties in relation to the subject matter, and there are no representations or inducements of any kind given by any party to the other except as set out in this Agreement.

**38. AMENDMENTS**

1. This Agreement may only be amended by written agreement between the County and Union Water.

**39. SUCCESSOR AND ASSIGNS**

1. This Agreement shall enure to the benefit of and be binding upon the Parties hereto, and their respective successors and permitted assigns.

**40. COUNTER-PARTS**

1. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. To evidence its execution of an original counterpart of this Agreement, a Party may send a copy of its original signature on the execution page hereof to the other Party by facsimile transmission or electronic mail and such transmission shall constitute delivery of an executed copy of this Agreement to the receiving Party as of the date of receipt thereof by the receiving Party or such other date as may be specified by the sending Party as part of such transmission. Notwithstanding the foregoing, either Party may demand a fully executed single copy of this Agreement.

**IN WITNESS WHEREOF** the Parties hereto have duly executed this Agreement, written on this and the preceding eighteen (18) pages, with effect from the day first written above.

**THE CORPORATION OF THE  
COUNTY OF ESSEX**

**UNION WATER SUPPLY SYSTEM**

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Per: Gary McNamara  
Title: Warden

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Per:  
Title:

I have authority to bind Union Water.

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Per: Mary Birch  
Title: Clerk

We have authority to bind the County.