



## **SERVICING AND ENCROACHMENT AGREEMENT**

**THIS AGREEMENT made this 3<sup>rd</sup> day of April, 2025.**

**BETWEEN:**

**THE WINDSOR ESSEX CATHOLIC DISTRICT SCHOOL BOARD**

**Of the First Part**

**- and -**

**THE CORPORATION OF THE COUNTY OF ESSEX**

**Of the Second Part**

**WHEREAS** the Windsor Essex Catholic District School Board (the "**School Board**") is the owner of the St. Thomas of Villanova Catholic Secondary School located at municipal address 2800 County Road 8, in the Town of LaSalle, in the County of Essex, in the Province of Ontario (the "**School**");

**AND WHEREAS** the School Board has requested permission from the Corporation of the County of Essex (the "**County**") to install and maintain a private sanitary sewer forcemain (the "**Forcemain**") under County Road 8 and running along the south side of County Road 8, and which Forcemain will service the lands on which the School is situated;

**AND WHEREAS** the Corporation of the Town of LaSalle ("LaSalle") has provided and granted all necessary approvals related to the Forcemain.

**AND WHEREAS** the County has agreed to grant the School Board permission to construct, install, and service the Forcemain on the terms and conditions set out in this Servicing and Encroachment Agreement (the "**Agreement**") and to grant an easement for the installation and ongoing maintenance of the Forcemain.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the above referenced premises, the mutual covenants and agreements contained herein, and other good and valuable consideration, the Parties hereto agree as follows:

### **Construction**

1. The County hereby grants permission to the School Board to construct, install, and maintain the Forcemain within the right-of-way of that portion of County Road 8 depicted on the Reference Plan prepared by Surveyors on Site, a copy of which Reference Plan is appended hereto as **Schedule "A"** to this Agreement.
2. The School Board hereby agrees to retain the services of a professional engineer to oversee and inspect the construction and installation of the Forcemain and any ancillary works related thereto, and to certify that the construction and installation of the said Forcemain has been completed in accordance with the provisions of this Agreement and the associated drawings approved by the County.
3. Notwithstanding the foregoing, the County reserves the right to conduct inspections during the construction of the Forcemain to satisfy itself that the construction is being completed in accordance with the provisions of this Agreement and associated drawings approved by the County.

4. The School Board shall provide at least forty-five (45) days' notice prior to the installation of the Forcemain under and along County Road 8.
5. The School Board shall not deviate from the approved location without the prior written approval of the County Engineer.
6. The School Board shall provide the County Engineer, within forty-five (45) days of the completion of the construction and installation of the Forcemain, as-built drawings (electronically) satisfactory to the County Engineer, which drawings shall also note the date of completion of the Forcemain and the related works.
7. The School Board shall be required to retain the services of a qualified contractor (the "**Contractor**") to complete the construction and installation of the 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 School Board is required to seek and obtain the approval of the County on prior to construction being commenced. In the event there is any conflict between the standard mandated in Ontario Traffic Manual Book 7 and the standards of the County, the standards of the County shall take precedence;
  - b. During the construction and installation of the Forcemain shall procure and maintain public liability insurance (the "**Construction Insurance Policy**"), shall provide a copy of the said Construction Insurance Policy to the County, and shall ensure that the said Construction Insurance Policy:

- i. is comprised of primary and/or umbrella coverage with a limit of not less than five million dollars (\$5,000,000.00) per occurrence;
- ii. includes 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. Owner's and Contractor's 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. includes a copy of the endorsement or a letter from the insurer verifying coverage is to accompany the Certificate of Insurance;

- iv. includes 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 Forcemain and shall have a limit of not less than five million dollars (\$5,000,000.00) inclusive for any one occurrence;
  - v. is endorsed to provide that the policy or policies will not be altered, cancelled, or allowed to lapse without providing at least thirty (30) days prior written notice to the County, with any such notice to be filed with the County Engineer at 360 Fairview Avenue West, Essex, Ontario N8M 1Y6, with a copy via email to [Clerks@countyofessex.ca](mailto:Clerks@countyofessex.ca); and
  - vi. is 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;
  - d. provide the County with a material and performance and maintenance bond in a form acceptable to the County, in its sole discretion.

### **Grant of Easement**

- 8. The consent, permission, and authority of the County is hereby given, granted, transferred, and conveyed to the School Board, its employees, agents, and contractors, or other entitled to a similar rights in the property the School is located on (the "**Dominant Lands**"):

- a. to enter upon the portions of the land under County Road 8 affected by this Agreement, which lands are more particularly identified on the **Schedule "A"** appended to this Agreement (the "**Servient Lands**"), from time to time and any time, to the extent that the Servient Lands remain under the jurisdiction of the County, to install, maintain, and use the Forcemain on, under, and in the right-of-way of County Road 8;
  - b. the consent, permission, and authority hereby given extends only to the section of County Road 8 depicted on **Schedule "A"**, otherwise known as the Servient Lands, attached hereto, and with rights to access the surface of County Road 8 above the Servient Lands being limited to the time required to complete the construction of the Forcemain or for the maintenance of the Forcemain at times approved by the County, and the County shall not be obligated to provide any further access to the right-of-way of County Road 8 in excess of what is depicted on **Schedule "A"** attached hereto; and
  - c. to do such other things as may be approved by the County pursuant to the terms of this Agreement that are reasonably required to complete the installation of the Forcemain and/or for the ongoing use and maintenance of the Forcemain on an ongoing basis.
9. 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 County Road 8 to enjoy full access to and from County Road 8 and of constructing crossings and approaches from their properties; and
- d. the rights and privileges that the County may grant to other persons on County Road 8, provided, to the extent in the control of the County, that such rights do not derogate from or interfere with the exercise by the School Board of the rights granted to the School Board by this Agreement;

all of which rights are expressly reserved.

10. Save as hereinafter provided, the consent, permission, and authority hereby given and granted to the School Board to enter upon the lands owned by the County, being County Road 8 and the lands within the County Road 8 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 Forcemain, are subject to the prior approval of the County Engineer who has full power and authority to give such directions and orders that he considers in the best interest of the County, and the School Board shall follow all directions and orders that the County Engineer provides.

11. This Agreement runs with the Dominant Lands and its terms, conditions, rights, and obligations shall be the responsibility of the School Board and any and all future owners of the Dominant Lands for so long as the Agreement and the Forcemain remain in place, and the School Board expressly agrees to register a copy of this Agreement on title to the Dominant Lands, and not delete same without the express

written consent of the County and provide proof of same to the County in advance of commencing work on the installation of the Forcemain.

12. This Agreement shall run with and bind the Servient Lands and shall be for the benefit of and run with the Dominant Lands.

13. Nothing in this Agreement provides the County and/or its constituent lower-tier municipalities with the right to tie into the School Board's Forcemain.

### **School Board Solely Liable for Forcemain**

14. The School Board shall be responsible for any and all costs associated with the construction and installation of the said Forcemain, and for all costs associated with the restoration of County Road 8 and the road allowance of County Road 8 to the satisfaction of the County Engineer. Upon completion of the 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.

15. The School Board as the owner of the Forcemain shall be solely and completely responsible for all costs associated with the future maintenance, repair and/or reconstruction of this Forcemain, which shall be maintained in a sound, and fully functioning condition, all to the satisfaction of the County Engineer.

16. The School Board shall be required to obtain all the necessary permits from the County prior to beginning any work that affects County Road 8 or the County Road 8 right-of-way. The School Board shall be further 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.

## **Insurance**

17. In addition, the Construction Insurance Policy, which must be maintained until construction of the Forcemain is complete, the School Board hereby agrees to provide the County with a certificate of public liability insurance covering both the School Board and the County with respect to those portions of County Road 8 and the County Road 8 right-of-way under which the Forcemain is constructed (the "**Post Construction Insurance Policy**"), and which Post Construction Insurance Policy shall:

- a. be in an amount of not less than five million dollars (\$5,000,000.00) and cover injuries or death to any person and damage to property arising from any one occurrence;
- b. include a cross-liability clause endorsement, with the County named as an Additional Insured on the said policy;
- c. be kept in full force and effect as long as the Forcemain remains under County Road 8 or the County Road 8 right-of-way, with renewal certificates to be provided annually;
- d. not be changed or amended in any way, without the express written consent of the County, for so long as the Forcemain remains under County Road 8 or the County Road 8 right-of-way.

## **Schedule of Payment of Permits and Fees**

18. The School Board 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 certified cheque, as security to ensure the

construction and installation of the said 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, the Owner may apply to the County for a refund of this security, which refund will be payable without interest.

19. The School Board covenants and agrees to pay to the County a one-time encroachment fee in the sum of two thousand five hundred dollars (\$2,500.00), the payment of which shall become due and payable upon the execution of this Agreement.

20. The School Board further 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, the School Board agrees to pay to the County, within thirty (30) days of being provided with a request by the County, reimbursement of the costs outlined above.

### **Term of this Agreement**

21. The burdens on the lands owned by the County, and the benefits to the property of the School Board in having access to the lands owned by the County for the Forcemain, pursuant to the terms and conditions of this Agreement shall commence on the date this Agreement is fully executed by the Parties hereto and shall continue in force for so long as the Forcemain remains in use and is not decommissioned to the satisfaction of the County.

22. Notwithstanding the foregoing, in no event shall the term of this Agreement run for a period in excess of 40 years in accordance with Section 14 of the *Perpetuities Act*, R.S.O. 1990, c. P.9, as amended, and the School Board shall be required into a fresh version of this

Agreement (on substantially the same terms as contained in this Agreement) within 40 years of the execution of this Agreement or decommission the Forcemain to the satisfaction of the County Engineer.

### **Decommissioning and Removal**

23. In the event the County, acting reasonably, deems it necessary or requires that the Forcemain be removed from County Road 8 and the County Road 8 right-of-way, or be altered in its location under the said County Road 8 and/or the County Road 8 right-of-way, the School Board hereby agrees to remove and/or alter the location of the Forcemain and restore the affected area at its sole cost and expense, provided (1) that the County gives sixty (60) days' notice in writing to the School Board of the requirement to remove or alter the location of the Forcemain, (2) consults with the School Board as needed to assist in determining an alternate location for the Forcemain within the right-of-way, and/or (3) assist the School Board in identifying another solution for the sanitary sewer requirements of the School.
24. It is acknowledged and agreed that in the event weather conditions or any other reasonable issue identified by the School Board negatively impact the ability of the School Board to comply with the provisions of the paragraph above within the sixty (60) day notice period, the said notice period shall be extended accordingly to allow for the delay caused by any adverse weather conditions or any other reasonable issue identified by the School Board.
25. Upon termination of this Agreement, and/or upon the Forcemain no longer being required to service the School, the School Board shall decommission and remove the Forcemain to the satisfaction of the County Engineer, acting reasonably. All other obligations of the School

Board 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.

26. In the event the School Board fails to decommission and remove the 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 Forcemain, the County shall have the right to remove and dispose of all parts of the Forcemain as the County may determine, acting reasonably, and the School Board shall have no recourse against the County for any losses, expenses, or damages as a result thereof, and shall be liable for any and all costs incurred by the County in effecting the said removal and disposal of all, or any parts, of the Forcemain.

### **Indemnification and Release**

27. The School Board 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.
28. The School Board waives any and all claims against the County for damages to the Forcemain resulting from any activity of the County on County Road 8 and/or on the road allowance for County Road 8, 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**

29. The School Board hereby acknowledges that the County has agreed to allow the construction and installation of this Forcemain within the road allowance of County Road 8 solely for the use of the School. The School Board may not assign any part of this Agreement without the prior written consent of the County, in its sole and absolute discretion.

## **Notice**

30. All notices, demands, or requests which may be or are required to be given under the provisions of this Agreement by either Party to the other herein shall be in writing and shall be mailed by registered mail to the last known address of the Party. 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.

## **General Terms**

31. The School Board hereby consents to the registration of this Agreement against title to the School property.

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

33. 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.

34. 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 the other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement.

35. 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 duly authorized signing officers of each of the Parties have electronically executed this Agreement, written on this and the preceding 13 pages.

**THE WINDSOR ESSEX CATHOLIC DISTRICT SCHOOL BOARD**

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Per:  
Title:

I have the authority to bind the School Board.

**THE CORPORATION OF THE COUNTY OF ESSEX**

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Per: Hilda MacDonald  
Title: Warden

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Per: Katherine Hebert  
Title: Clerk

We have the authority to bind the County.