



COST SHARING AGREEMENT

This Cost Sharing Agreement is made and is effective as of March [_], 2024.

Between:

The Corporation of the County of Essex

(hereinafter referred to as the "**County**")

- and -

The Corporation of the Town of Tecumseh

(hereinafter referred to as the "**Town**")

Whereas the County has completed the procurement process to complete Phase II of the County Road 42/43 Project (the "**Project**"), comprised of installation of storm sewers and watermain, and completion of road widening, roundabout construction, and active transportation facilities, with the works covered by Phase II being more particularly described in County RFT. No, IPS-2024-0221-DB (the "**RFT**");

And whereas the works to be completed during Phase II of the Project includes, among other things, the installation of a watermain (the "**Works**") requested by the Town (together with the County, the "**Parties**") to accommodate existing and future development;

And whereas as part of Phase II of the Project, the County has also retained consultants (the "**Consultants**") to provide, among other things, contract administration, engineer of record services, project management, Quality Control, Quality Assurance, and engineering construction observation services and inspection of the works completed by the contractor, GIP Paving Inc. (the "**Contractor**");

And whereas the Town acknowledges that the Works completed by the Contractor and/or its subcontractors and the services provided by the Consultants will accommodate existing and future development in the Town, and the Town expressly agrees to pay for the costs of the Works, including the costs payable to the Contractor to install the Works, its portion of the general and miscellaneous costs as defined in Schedule "A", and its portion of the services provided by the Consultants;

And whereas the Parties wish to formalize the agreement to share the costs from the County retaining the Consultants and the Contractor to complete Phase II of the Project;

Now therefore this agreement witnesseth that in consideration of the mutual

covenants and agreements hereinafter set forth, and for other good and valuable consideration and the sum of Two Dollars (\$2.00) of lawful money of Canada now paid by each of the Parties to the other (the receipt and sufficiency of which is hereby expressly acknowledged by each of the Parties hereto), and in consideration of the Parties executing this Cost Sharing Agreement (the "**Agreement**"), the Parties hereto hereby covenant and agree, to and with each other, as follows:

1. **Scope and Interpretation**

- 1.01 The Parties acknowledge that this Agreement is intended to set out, and does set out, the essential terms which will govern the Parties' collaboration and sharing of costs with respect to Phase II of the Project.
- 1.02 The terms throughout this Agreement appearing with the first letter capitalized shall have the meanings as assigned to them in bold.

2. **Outline of Cost Sharing Agreement**

- 2.01 The County shall, at first instance, pay all invoices rendered by the Consultant and the Contractor on account of Phase II of the Project.
- 2.02 The Town shall reimburse the County for the actual costs of the material for the Works and the labour to construct and install the Works, which actual costs have been identified the Contractor as being in the amount of \$2,378,561.00, but subject to adjustment as determined by the Consultants, in consultation with the Contractor and the Town.
- 2.03 Further, the Town shall reimburse the County for the Town's Proportionate Share (as defined below) of the services provided by the Consultants in respect of the Town's Works using the formula outlined in Section 2.05 below.
- 2.04 Further, and as determined by the Consultants the Town shall reimburse the County for those general and miscellaneous expenses expressly related to the Town's Works during Phase II of the Project, and as identified in Schedule "A" appended to this Agreement (the "**General Expenses**").
- 2.05 The costs for the Consultants and the General Expenses are to be shared by calculating by determining the total number of working days for the entirety of the Project, with the County being responsible for the working days or the portions thereof devoted to the County's portion of the Project (as determined by the Consultants), and the Town being responsible for the working days devoted or the portions thereof to the Town's Works being completed as part of the Project (as determined by the Consultants) The estimated costs thereof shall be based upon the information submitted by the Contractor in response to the RFT and be subject to adjustment thereafter at the conclusion of the Project .

- 2.06 Any changes in scope or revisions to the Town's Works shall require consultation with and approval by the Town.
- 2.07 During the construction of the Works the Town and/or its representatives shall be consulted on such Works and have the opportunity to be on site when and as appropriate.
- 2.08 The percentage of the Consultant's costs and the General Expenses to be paid by the Town to the County, shall be determined by the Consultants at the conclusion of the Project, by dividing the total number of working days devoted to the Town's Works by the total number of working days for the Project (the "**Town's Proportionate Share**").
- 2.09 Following the calculation of the Town's Proportionate Share, the Town shall pay any final amounts it may owe to the County on account of the amounts charged to the County by the Consultants and the Contractor.

3. Invoicing and Payment

- 3.01 Unless otherwise agreed to in writing by the Parties hereto, the County shall invoice the Town forthwith following receipt of the final invoices from the Consultants and the Contractor.
- 3.02 The Parties expressly agree that the County will designate the appropriate staff to review the invoices of the Consultants and the Contractor for accuracy and reasonableness, and that the County undertakes to protect the interests of the Town with respect to the amounts charged by the Consultants and the Contractor on account of Phase II of the Project.
- 3.03 The Town agrees that it shall ensure that the invoices rendered to it by the County on account of Phase II of the Project are paid by the Town within thirty (30) days of being invoiced.

4. Dispute Resolution

The Parties will attempt to resolve any and all disputes that may arise on account of this Agreement by using (a) good faith negotiations, and, failing that, (b) formal mediation, prior to commencing any other legal proceeding they may have a right to commence respecting this Agreement. If the dispute has not been resolved with mediation within such time period or such further time period as is agreed by the parties, either party may at any time by giving a Notice in Writing to the other party, of at least 10 Working Days to refer the dispute to be finally resolved by arbitration under the rules of arbitration as provided in CCDC 40 in effect on the date of the Contract. The arbitration shall be conducted in the jurisdiction of the Place of the Work.

5. Notices

All notices and communications related to this Agreement shall be in writing and be delivered via email as follows:

To the County:

Daniel Baggio, Project Manager
(E) dbaggio@countyofessex.ca

With a copy to:

David Sundin, County Solicitor
(E) dsundin@countyofessex.ca

To the Town:

Phil Bartnik, Director of Public Works & Engineering
Services

(E) pbartnik@tecumseh.ca

With a copy to:

Jennifer Alexander, Deputy Clerk
(E) jalexander@tecumseh.ca

Any and all notices delivered in accordance with this section will be deemed to be delivered when the receiving party provides an email confirmation of receipt.

6. Amendment

Any amendment to this Agreement, or any clarification of the terms herein, shall be in writing and shall be signed by each of the Parties hereto.

7. Assignment

None of the Parties hereto shall assign any of their rights and/or obligations referred to in this Agreement without the prior written consent of the other Party.

8. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and all applicable laws of Canada, and the Parties hereby attorn to the exclusive jurisdiction of the Courts of the Province of Ontario located in the City of Windsor.

9. Severability

Should any of the provisions of this Agreement be judicially determined to be invalid for any reason, the Parties expressly agree that the remaining valid and legally binding provisions shall continue in full force and effect, undisturbed by such invalidity.

10. Expenses

Each of the Parties hereto shall be responsible for and bear all of their respective individual costs and expenses incurred in connection with the negotiation of the

terms and conditions of this Agreement, the carrying out of Phase II of the Project, and any dispute arising on account of this Agreement.

11. Counterparts and Electronic Execution

11.01 This Agreement may be executed in counterparts, each of which together shall constitute the entire fully executed Agreement.

11.02 This Agreement may be executed electronically, and the signature affixed electronically shall be deemed to be an original signature for all purposes.

The Parties hereto have each electronically executed this Agreement, written on this and the preceding four (4) pages, by their respective duly authorized officers as identified below.

The Corporation of the County of Essex

Per: _____
Hilda MacDonald, Warden

Per: _____
Katherine Hebert, Deputy Clerk

We have the authority to bind the County.

The Corporation of the Town of Tecumseh

Per: _____
Gary McNamara, Mayor

Per: _____
Robert Auger, Director Legislative
Services and Clerk

We have authority to bind the Town.

Schedule "A"

The General Expenses provided for in Section 2.04, include, but are not necessarily limited to the following:

- 1) Consultants Costs Inclusive of:
 - Contract Administration
 - Project Management
 - Inspection
 - Soil Sampling & Geotechnical Support
 - Material Testing
 - Material Quality Control and Quality Assurance
- 2) Stripping and Stockpiling of Topsoil
- 3) Clearing and Grubbing
- 4) Pavement Removal (All Types)
- 5) Sidewalk and Trail Removal
- 6) Saw cutting Existing Pavement
- 7) Fire Hydrant Relocation
- 8) Remove and Salvage Existing Water Meter Pits
- 9) Adjust Existing Water Valves
- 10) Curb Boxes for Water Service Connections
- 11) Adjust Existing Fire Hydrants
- 12) Adjust Existing Watermain
- 13) Relocate Private Water Service Connection
- 14) Erosion and Sediment Control
- 15) Sediment Trap Bags at Catch basins
- 16) Supply, Place and Grade Imported Topsoil
- 17) Hydraulic Seed and Mulch
- 18) Maintenance of Seeding
- 19) Temporary Pavement Markings (Provisional)
- 20) Traffic Control
- 21) Business/Institutional Access Signs
- 22) Variable Message Boards
- 23) Protection of Trees (Provisional)
- 24) Engineer's Site Office
- 25) Construction Fencing
- 26) Soil Delineation
- 27) Additional Excess Soil Disposal
- 28) Labour for Additional Work