

ARTICLE 11.1 **Interpretation**

In this Agreement, the following terms shall have the following meanings, unless the context shall otherwise require:

- (a) **“Agreement”** means this Easement and Right of Way;
- (b) **“Business Day”** means Monday to Friday both inclusive, except any such day which is a statutory holiday under the laws of either Canada or the Province of Ontario;
- (c) **“Easement Lands”** means the twenty metre wide strip of land depicted on Schedule A hereto and legally described as **[Note to draft: To discuss.]**;
- (d) **“Land Registry Office”** means the land registry office for the Land Titles Division of Lambton (No. 25);
- (e) **“LKDSB Lands”** means the lands legally described as Part Lots 36 & 37 South Boundary Concession Bosanquet Part 1 25R3813 save & except Part 1 25R5262 & Part 1 25R5842; Part Lot 37 South Boundary Concession Bosanquet Part 3 25R7969; Municipality of

Lambton Shores (being all of PIN 43032-0242 (LT)) and which are proposed to be acquired by LKDSB;

- (f) **“LKDSB Person”** means: LKDSB’s officers, directors, employees, agents, independent contractors, service providers, invitees, students (and their parents), tenants and licencees; and, the officers, directors, employees, independent contractors, agents, invitees and customers of LKDSB’s tenants and licencees;
- (g) **“Municipality Lands”** means the lands legally described as Part Lots 36-37 Concession South Boundary Bosanquet Part 1, 2 25R8231 except Part 1 25R10404; Subject to an easement over Part 8 25R10467 in favour of Part 2 25R10198 as in LA168179; Municipality of Lambton Shores (being all of PIN 43032-0239 (LT));
- (h) **“Notice”** shall have the meaning ascribed thereto in Section 9.1 hereof;
- (i) **“Owner”** means either the Municipality or LKDSB and each of their respective successors and transferees. **“Owners”** means, collectively, the Municipality and LKDSB and their respective successors and transferees;
- (j) **“Prime”** shall mean the prime lending rate of interest per annum of the Canadian Imperial Bank of Commerce as declared by it from time to time for Canadian dollar loans made in

Canada to its most creditworthy commercial borrowers and adjusted automatically upon any change by the Canadian Imperial Bank of Commerce;

- (k) **“Road and Sidewalks”** means the Road and Sidewalks to be built on the Easement Lands pursuant to Section 4.1 hereof;
- (l) **“transferee”** means a person to whom an Owner transfers its Lands; and
- (m) **“Unavoidable Delay”** means any bona fide delay beyond the control of an Owner (other than as a result of financial incapacity or any wilful or negligent act or omission) which shall cause an Owner to be unable to fulfil or to be delayed or restricted in the fulfillment of any obligation hereunder.

1.2 **Schedule A**

Schedule A hereto shows the LKDSB Lands, the Municipality Lands and the Easement Lands.

1.3 **Exercise and Enforcement of Rights**

Each Owner shall perform its obligations under this Agreement and shall, except as otherwise expressly provided herein, act reasonably in the exercise and the enforcement of its rights under

this Agreement. Each right shall, except as otherwise expressly provided, be exercisable and enforceable from time to time.

1.4 **Headings, Divisions and Schedules**

The headings of any Article or Section are inserted for convenience only and do not form part of this Agreement. All references in this Agreement to Articles and Sections are to those in this Agreement. The Schedules to this Agreement form a part hereof.

1.5 **Relationship of Owners**

Nothing in this Agreement shall be deemed to create or be construed as creating the relationship of principal and agent or a partnership or a joint venture between or amongst the Owners. No Owner shall, as a result of either this Agreement or its ownership of the Municipality Lands or the LKDSB Lands, as the case may be, have any fiduciary obligations to the other Owner.

1.6 **Nature of Rights**

The rights of way granted by the Municipality to LKDSB under this Agreement are interests in those parts of the Municipality Lands burdened thereby. The rights of access, egress, pedestrian passage and vehicular passage of LKDSB under this Agreement shall also be exercisable by LKDSB Persons.

1.7 **Demand for Payment**

Any demand for payment under this Agreement shall provide a period of thirty (30) days for payment. Arrears of payment shall bear interest from the due date until paid at a rate per annum equal to Prime plus 1%.

1.8 **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. Subject to Article 7 hereof, each of the Owners irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.

1.9 **Gender and Number**

Words importing the singular number only shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine gender and neuter gender, and words importing persons shall include firms and corporations, and vice versa.

1.10 **Amendments**

No amendment or modification of this Agreement shall be binding unless in writing and signed by the Owners.

1.11 **Waiver**

No delay or omission by any party hereto to exercise any right accruing upon and default by the other party will impair any such right or be construed as a waiver thereof, and no waiver by any party of any of the covenants, conditions, or agreements hereof to be performed by the other party will be construed as a waiver of any succeeding breach thereof or of any other covenant, condition, or agreement.

ARTICLE 2 – EFFECTIVE DATE

2.1 **Effective Date**

The Municipality and LKDSB hereby agree and acknowledge that the provisions of this Agreement shall take effect [on the date first above written].

ARTICLE 3 – EASEMENT AND RIGHTS OF WAY**3.1 Benefitting Lands**

Subject to the terms of this Agreement, the Municipality hereby grants to LKDSB the following easement and rights of way:

- (a) A non-exclusive easement and right of way in perpetuity over the Easement Lands for the passage and repassage of LKDSB Persons, including motor vehicles and pedestrians, over the Easement Lands to and from Amtelecom Parkway to the entrance to the LKDSB Lands all as shown on Schedule A hereto; and
- (b) A non-exclusive easement and right of way in perpetuity for reasonable pedestrian and vehicular access over the Easement Lands for the purpose of enabling LKDSB and LKDSB Persons to maintain, repair, replace or construct buildings and structures on the LKDSB Lands.

Notwithstanding anything contained in this Agreement, the Municipality reserves the right to use the Easement Lands for pedestrian and vehicular access to the remainder of the Municipality Lands. Furthermore, the easements and rights of way granted herein shall not in any circumstances be construed as preventing the use, maintenance, repair, replacement,

construction or enlargement of any building, improvement or structure whatsoever on the Municipality Lands as long as the rights of way granted hereunder remain materially unaffected.

The rights and obligations of LKDSB and the other parties set out above pursuant to this Section 3.1 and otherwise contained in this Agreement shall be of the same force and effect as a covenant running with the Municipality Lands.

3.2 **Confirmation of Easement and Right of Way**

The easements and rights of way granted in Section 3.1 hereof shall exist by virtue of this Agreement without the necessity of confirmation by any other document, but either party will, at the other's request and the submitting by the other party of the appropriate documents in a form suitable for registration, execute and deliver such documents giving further assurances of such easements and rights of way.

ARTICLE 4- MAINTENANCE AND WORK

4.1 **Construction of Road and Sidewalks and Access in the Interim**

The Municipality shall, at its cost, cause to be constructed on the Easement Lands, a two (2) lane asphalt paved road with a concrete sidewalk to service the existing municipal parking lot and install street lighting along the length thereof, all in accordance with the Municipality's standards

for roads and otherwise as specified in Schedule B hereto (the “**Road and Sidewalks**”). The construction of the Road and Sidewalks shall be completed no later than September 30, 2025.

The Municipality recognizes and agrees that, as LKDSB will be constructing a school on the LKDSB Lands and the Easement Lands will be being used for the passage of construction vehicles over the Easement Lands as part of such undertaking, the Municipality shall cooperate on a reasonable basis with LKDSB in terms of coordinating the Municipality’s construction schedule for the Road and Sidewalks. The Municipality acknowledges and agrees that, prior to its construction of the Road and Sidewalks, construction and other vehicles involved in the construction of the school on the LKDSB Lands will be utilizing the Easement Lands for purposes of access to and egress from the LKDSB Lands. LKDSB acknowledges and agrees that access across the easement will be disrupted and may not be available during the construction of the road.

4.2 **Additional Services**

Any additional services required to service the LKDSB property shall be installed by the Municipality in the easement as part of the road construction project. The costs for the installation of such services shall be the sole responsibility of the LKDSB. Such services include but are not limited to water and wastewater servicing, telecommunication services, natural gas services.

If any services are required as determined by the LKDSB, the specifications for such services shall be supplied to the Municipality by December 31, 2023 for inclusion on the final design of the road.

The Municipality agrees to tender such work as provisional items and supply the tender results for approval (ten) 10 days prior to awarding the contract. The LKDSB shall have the right to authorize or decline the additional servicing work based on their review of the tendered prices prior to the awarding of the contract.

Where water or wastewater services are installed, the services shall remain the property of the Municipality and shall be maintained as such. Other services will be the responsibility of the provider or LKDSB.

4.3 **Maintenance of Road and Sidewalks**

The Municipality shall be required to, at its cost: ensure that the paved areas, curbs and all related substructures of the Road and Sidewalks (including all entrances and exits relating thereto) are maintained, replaced or reconstructed to standards the Municipality has for roads and sidewalks; provide lighting for the Road and Sidewalks and maintain and replace same in good working order and otherwise to the standard the Municipality has for similar lighting; and, restore any part of the Easement Lands which are altered, damaged or affected in the case of an accident and in undertaking any maintenance, repairs, removal, replacements or reconstruction of the Road and Sidewalks to the condition such parts of the Easement Lands were in prior to undertaking same.

All work undertaken pursuant to this Section 4.2 shall be undertaken as expeditiously as practical in order to ensure that LKDSB Persons continue to enjoy the access rights over the Easement Lands granted hereunder.

4.4 **General Maintenance of Road and Sidewalks**

The Municipality shall be responsible, at its cost, for maintaining the Road and Sidewalks in accordance with its standards for two-lane municipal roads. Without limiting the foregoing, the Municipality shall be responsible for clearing ice, snow, mud, dirt, debris and rubbish on the Road and Sidewalks, in accordance with the Municipality's standards for two-lane municipal roads. To the extent that LKDSB wishes to arrange for snowploughing for the Road and Sidewalks over and

above that which the Municipality provides, LKDSB may do so at its own cost and expense.

Neither party shall “dump” snow plowed from their property on the other parties’ property.

Furthermore, in maintaining the Road and Sidewalks, the Municipality will not bring heavy equipment onto the LKDSB Lands or cause damage to the LKDSB Lands.

4.5 Notice of Work, Etc.

To the extent that the Municipality proposes to undertake any repair, removal, replacement or reconstruction of the Road or Sidewalks (“**Work**”), the same shall be subject to the following terms and conditions:

- (a) The Municipality shall, except in circumstances where delay could be reasonably expected to risk damage to persons or persons or property (“**Emergencies**”), give LKDSB not less than thirty (30) days prior Notice of the intention and plan for such Work;
- (b) All Work shall be done with reasonable speed, due diligence, in a good and workmanlike manner and in such a manner as to minimize, to the extent reasonably possible, any impact of the enjoyment of LKDSB Persons of the access rights granted hereunder; and
- (c) The Municipality shall, in undertaking any Work, repair all damage, if any, caused to the LKDSB Lands.

ARTICLE 5- USE RESTRICTIONS**5.1 Restrictions on Use**

For purposes of certainty, LKDSB's use of the Easement Lands shall be for purposes of ingress and egress for vehicles and pedestrians to and from the LKDSB Lands. LKDSB shall use reasonable efforts to ensure that no LKDSB Person:

- (a) parks on or leaves a vehicle on the Easement Lands or any other part of the Municipality Lands (unless specifically permitted to do so by way of a written agreement between the Municipality and LKDSB);
- (b) uses or allows a tracked vehicle or any other vehicle which is likely to cause damage to paved surfaces to cross or otherwise make use of the Easement Lands;
- (c) leaves any debris or personal property in or on the Easement Lands or any other part of the Municipality Lands;
- (d) creates any undue noise or other nuisance in or on the Easement Lands or any other part of the Municipality Lands; or

- (e) erects any facility whatsoever under, over or upon the Easement Lands or any other part of the Municipality Lands.

ARTICLE 6- AGREEMENTS FROM THIRD PARTIES

6.1 Consent of Mortgagees

The Municipality agrees to obtain from each and every prior mortgagee, trustee, or encumbrancer of the Municipality Lands a written agreement consenting to the grants of rights of way and easements hereinbefore provided and postponing and subordinating the rights of each such mortgagee, trustee or encumbrancer to this Agreement and to the rights of way and easements hereby created and granted and to obtain from every prior and future mortgagee, trustee or encumbrancer a covenant in substantially the form of Schedule C.

6.2 Release and Requirements on Transfer

LKDSB or the Municipality shall upon a sale by them of the LKDSB Lands or the Municipality Lands, as the case may be, to a bona fide third party dealing at arm's length, be released from any obligations arising subsequent to the completion of such sale provided that such third party executes and delivers the covenant in the form of Schedule D. In addition to the foregoing, in the event that an Owner proposes to sell or otherwise transfer its Lands, it shall, prior to completing

any such sale or transfer cause the proposed purchaser/transferee to execute and deliver to the other Owner the covenant in substantially the form of Schedule D hereto.

ARTICLE 7 - ARBITRATION

7.1 Arbitration – General

(a) If the parties are in dispute as to any matters governed by this Agreement or are unable for a period of thirty (30) days to agree on any matter upon which they are required by the terms of this Agreement to agree or which is necessary for them to agree upon in order to conduct their respective business, or if an approval or consent is required of an Owner and such approval or consent is unreasonably withheld in the opinion of the party who requested same, then the matter shall be submitted to an arbitration panel. Arbitration proceedings shall be started by the party desiring arbitration (hereinafter called the “**Initiating Party**”) giving Notice to the other party (hereinafter called the “**Responding Party**”) specifying briefly the matter to be arbitrated and designating an arbitrator, and the Responding Party shall be entitled to designate a second arbitrator by giving Notice thereof to the Initiating Party within ten (10) days after receipt of the Initiating Party’s Notice, if the Responding Party shall elect to designate a second arbitrator and deliver Notice thereof within the time limited above, the two arbitrators so designated shall within ten (10) days following the receipt of the Notice designating the Responding Party’s arbitrator

designate a third arbitrator to act jointly with them, if the arbitrators shall be unable to agree in the selection of the third arbitrator (who shall be the Chairman of the arbitration panel hereunder), the third arbitrator shall be designated by the Court upon proper application by the Initiating Party pursuant to the provisions of the *Arbitrations Act*, (Ontario). The arbitration panel shall then promptly proceed to hear the evidence and submissions of the Initiating Party and the Responding Party and shall render a written decision within thirty (30) days after the designation of the third arbitrator. The decision of the majority of the arbitration panel shall be deemed to be the decision of the arbitration panel, both in respect of the procedure and conduct of the parties during the arbitration and the final determination of the matter to be arbitrated, and such decision shall be final and binding upon the parties and shall not be subject to appeal and may be made an order of the Court pursuant to the *Arbitrations Act* (Ontario).

(b) Submission to arbitration as provided in this section 7.1 shall be a condition precedent to the bringing of any legal action with respect to any matter pursuant to the provisions of this Agreement. The arbitration panel shall have the authority to assess the costs of the arbitration panel against either or both the Initiating Party or the Responding Party but each party, however, shall bear its own evidence, witness and legal counsel fees.

(c) It is agreed that the arbitration shall take place in Forest Ontario and that such arbitration shall be held for the purpose of hearing such evidence and representations as either the Initiating Party or Responding Party may present at a time and place in Forest, Ontario to be agreed upon at the time by the parties or, failing such agreement, by the arbitrators.

Furthermore, the party in whose favour the arbitration decision is rendered shall be entitled to specific performance to ensure that such decision is properly carried out.

7.2 **Failure to Designate Arbitrator**

If the Responding Party shall fail to designate an arbitrator and deliver Notice thereof to the Initiating Party within the time limited in Section 7.1 hereof, then the arbitrator appointed by the Initiating Party shall be entitled to arbitrate the matter to be arbitrated as if appointed a single arbitrator pursuant to the provisions of the *Arbitrations Act* (Ontario).

ARTICLE 8 - MISCELLANEOUS

8.1 Notice

Any notices or other communications provided for or permitted in this Agreement shall be in writing and sent by delivery service or e-mail transmission to the following:

(a) in the case of the Municipality to:

The Municipality of Lambton Shores
9577 Port Franks Road
Thedford ON N0M 2N0

Attention: Steve McAuley, Chief Administrative Officer
E-mail: smcauley@lambtonshores.ca

(b) and in the case of LKDSB to:

Lambton Kent District School Board
200 Wellington Street, PO Box 2019
Sarnia, ON N7T 7L2

Attention: Brian McKay
E-mail: Brian.McKay@lkdsb.net

A party may change its notice particulars for purposes of this section 8.1, from time to time, by notice in writing. For purposes of this section 8.1, “**Normal Business Hours**” means 8:00 AM (Eastern Standard Time) to 5:00 PM (Eastern Standard Time) on a Business Day.

Notices sent by e-mail shall be deemed to have been received on the date sent (unless the sender receives an “undeliverable” reply), so long as such e-mail is sent during Normal Business Hours, failing which it shall be deemed to have been received on the next Business Day. Notices which

are sent utilizing a delivery service shall be deemed to have been received on the date such delivery service delivers same, so long as such delivery is made during Normal Business Hours, failing which such notice shall be deemed to be received on the next Business Day.

8.2 **Certificate of Status**

Each Owner shall within ten (10) Business Days of request made by Notice by the other Owner deliver to such other Owner a certificate in writing stating (if such be the case) that this Agreement is unmodified and in full force and effect or if there have been any modifications, stating the modifications and stating whether to the knowledge of the officer of the Owner making the certificate either of the Owners is in default under this Agreement and, if so, the nature of the default.

8.3 **Time**

Time shall be of the essence of this Agreement.

8.4 **Unavoidable Delay**

If, by reason of Unavoidable Delay, an Owner is in good faith and without default or neglect on its part prevented or delayed in carrying out its obligations hereunder which under the terms of this Agreement it is or may be required to do by a specified date or within a specific period of time,

the date or the period of time within which the work was to have been completed may be extended by a period of time equal to that of such delay or prevention. Such Owner shall not be deemed to be in default if it performs and completes the work in the manner required by the terms of this Agreement within such extended period of time or within such further extended period of time as may be agreed upon from time to time by the parties hereto.

8.5 **Further Assurances**

The Owners and their successors and assigns shall execute and deliver such additional documents and instruments and shall perform such additional acts as may be necessary or appropriate in connection with this Agreement and all matters contemplated hereby to effectuate, carry out, and perform the intent of this Agreement and all of the obligations and agreements contained herein.

8.6 **Illegality**

If any provision of this Agreement or its application to a person or circumstance is, to any extent, invalid, illegal, or unenforceable, it shall be considered separate and severable from this Agreement, and the remaining provisions of this Agreement or the application of the provisions to persons or circumstances other than those as to which it is invalid, illegal, or unenforceable shall

remain in full force as though such invalid, illegal, or unenforceable provision or application had never been included.

8.7 **Planning Act Compliance**

Successors and Transferees

This Agreement shall enure to the benefit of and be binding upon the Owners and their respective successors, assigns and transferees.

8.8 **Electronic Execution**

This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument. This Agreement may be executed electronically by the delivery of a facsimile or electronic portable document format (.pdf) copy of signature(s) or through the use of an online signing application. Signature(s) so provided are binding as if executed with ink on paper and constitute original signature(s).

8.9 **Law of Agreement**

This Agreement shall be construed and interpreted according to the laws of the Province of Ontario.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date first above written.

THE MUNICIPALITY OF LAMBTON SHORES

Per:

Name: Doug Cook
Title: Mayor

Per:

Name: Stephanie Troyer-Boyd
Title: Clerk

LAMBTON KENT DISTRICT SCHOOL BOARD

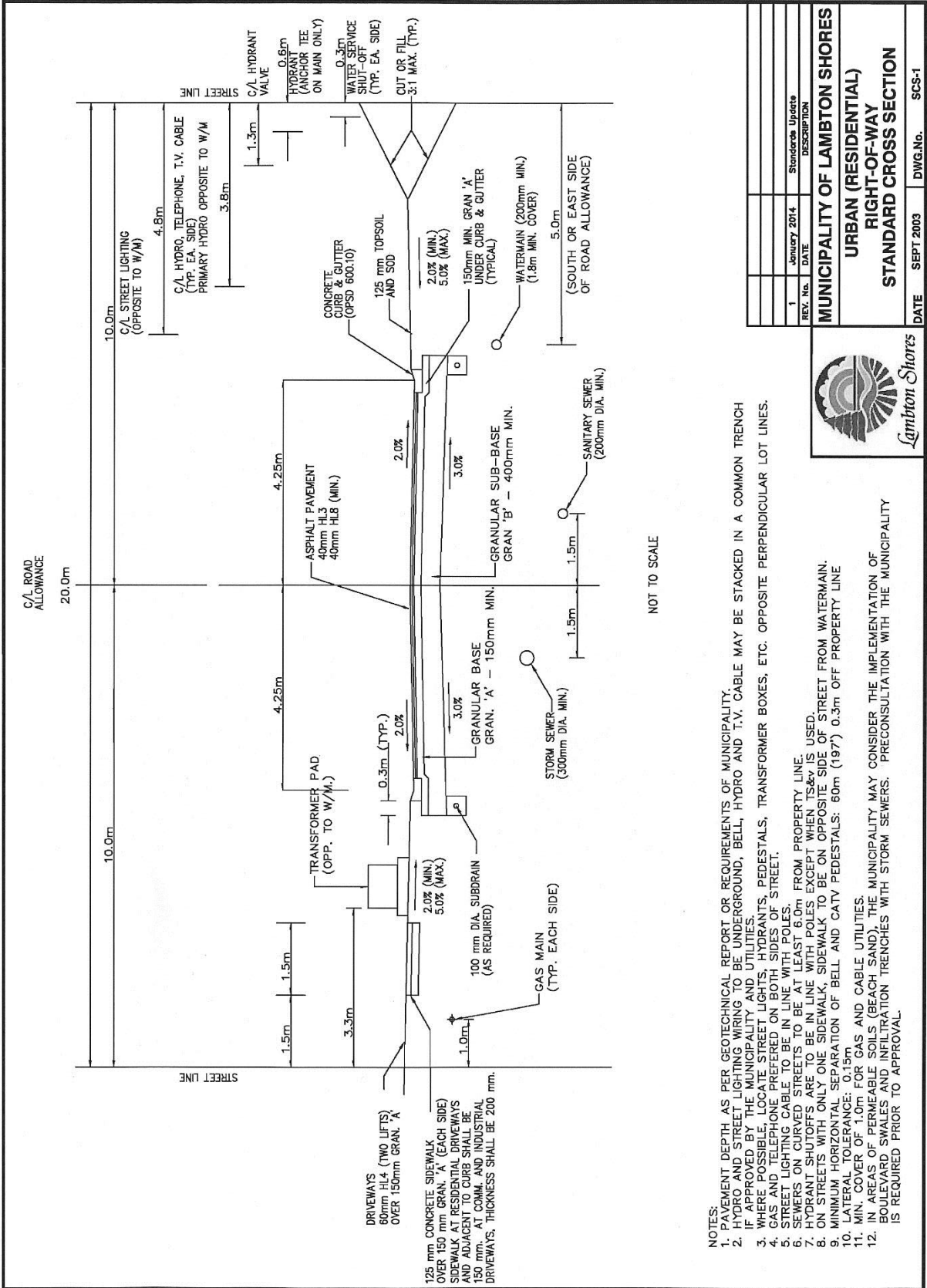
Per:

Name:

Title:

SCHEDULE B

MUNICIPAL STANDARDS FOR ROADS AND SIDEWALKS



Lambton Shores

REV. No.	DATE	Standard Update	DESCRIPTION
1	January 2014		

MUNICIPALITY OF LAMBTON SHORES

URBAN (RESIDENTIAL)

RIGHT-OF-WAY

STANDARD CROSS SECTION

DATE: SEPT 2003 DWG.No.: SCS-1

APPENDIX 1

[Note to draft: Attach copy of Easement and Right of Way Agreement.]

