

THE CORPORATION OF THE COUNTY OF MIDDLESEX

BY-LAW #5990

COUNTY ENCROACHMENT BY-LAW

A By-law to provide for the regulation of permanent encroachments upon, under or over highways within the County of Middlesex and to repeal By-law #5843.

WHEREAS Part II of the Municipal Act, 2001, S.O. 2001, c.25, as amended (the "Municipal Act") authorizes a municipality to pass By-Laws for the regulation of matters under its jurisdiction and to provide for a system of licenses, permits, approvals or registrations regarding matters that are so regulated;

AND WHEREAS Part XII of the Municipal Act authorizes a municipality to charge fees and require security deposits under all of the municipality's By-Laws;

NOW THEREFORE the Council of The Corporation of the County of Middlesex enacts as follows:

1. GENERAL

1.1 Short Title

1.1.1 This By-Law, including all schedules attached hereto and forming part of this By-Law, may be cited as the "Permanent Encroachment By-Law".

1.2 Interpretation

1.2.1 The captions and headings in this By-Law are inserted for convenience only and do not define, limit or enlarge the scope, meaning or intent of any provision.

1.2.2 In this By-Law, words used in the present tense include the future tense, words in the masculine gender include the feminine and neuter and the singular number includes the plural and the plural the singular.

1.2.3 In this By-Law, the word "shall" is mandatory and not discretionary.

1.3 Application of Other Legislation

Nothing in this By-Law shall relieve any person from any obligation to comply with the requirements of any other By-Law or legislation or with the requirement to obtain any license, permit, certificate, authority, approval, consent, variance or remit any fee, security deposit, letter of credit or any other security or payment otherwise required. Without limiting the generality of the foregoing, the County Highway By-Law being By-Law No. 5648 may, in certain circumstances, regulate

some of the activities governed by this By-Law. In such event, this By-Law and the County Highway By-Law must be complied with. In the event any section, clause or provision of this By-Law conflicts with the said County Highway By-Law, the section(s), clause(s) or provision(s) that establish(es) the higher standard shall prevail.

1.4 Validity

Should any section, clause or provision of this By-Law be held by a Court of competent jurisdiction to be invalid, in whole or in part, the validity of the remainder of that section, clause or provision and the validity of the remainder of the By-Law shall not be affected thereby. Each section, clause or provision of this By-Law are hereby deemed to be separate and distinct sections, clauses or provisions.

1.5 Conflicting By-Laws

Where any section, clause or provision of this By-Law conflicts with any section, clause or provision of any other By-Law of The Corporation of the County of Middlesex, the section(s), clause(s) or provision(s) that establish(es) the higher standard shall prevail.

1.6 Change in Statutes

Where any Act or any portion of any Act is referred to in this By-Law, such reference shall be interpreted as referring to any subsequently renumbered sections of the Act and/or changes to the date of the Act and/or amendments or revisions to the Act or re-enactments of the Act or any legislation that replaces the Act.

1.7 Effective Date

This By-Law shall come into full force and effect as of the date of passing hereof.

2. DEFINITIONS

“Application” means an application for an Encroachment Agreement in the form set out in Schedule “A”.

“Application Fee” means the fee that is required by the County from any Owner to apply for an Encroachment Agreement.

“Boulevard” means all parts of a Highway save and except any Roadway, shoulder or sidewalk.

“County” means The Corporation of the County of Middlesex.

“County Council” means Council for The Corporation of the County of Middlesex;

“County of Middlesex” means the lands within the geographical boundaries of Middlesex County, in the Province of Ontario.

“County Engineer” shall mean the person appointed by the Council of The Corporation of the County of Middlesex to the position of County Engineer and any employee of the County who acts at the direction of the County Engineer.

“County Highway” shall mean a common and public highway, road allowance, street, avenue, lane or other public way under the jurisdiction of The Corporation of the County of Middlesex and includes any bridge, trestle, viaduct or other structure forming part of the County Highway and except as otherwise provided includes a portion of a highway and includes the entire area between the property lines thereof.

“Encroachment” means anything man-made or naturally occurring that encroaches on a Highway whether below, at, or above the Highway surface and includes a Temporary Encroachment and a Permanent Encroachment.

“Encroachment Agreement” means the Encroachment Agreement referred to in Section 4.4 herein.

“Encroachment Fee” means the annual, monthly, application or any other fees that are payable by an Owner pursuant to an Encroachment Agreement.

“Highway” means a common and public highway, road allowance, street, avenue, lane or other public way and includes any bridge, trestle, viaduct or other structure forming part of the highway and except as otherwise provided includes a portion of a highway and includes the entire area between the property lines thereof.

“Municipality” means any one of the lower tier municipalities which comprise the County of Middlesex.

“Municipal Engineer” means the person appointed by a Municipality to the position of Municipal Engineer and any employee of a Municipality who acts at the direction of the Municipal Engineer.

“Owner” means any person who is a registered owner, owner under agreement, lessee, or occupier of real property.

“Permanent Encroachment” means a new or existing Encroachment on a Highway whether below, at or above the Highway surface, and includes, but is not limited to, a

bay window, a wall, foundation, porch, steps, entrance shelter, fire escape, chimney, fence, hedge, tree, ornamental rock garden or flower bed, community gate or sign, tunnel, vault, pipe, storage tank or duct or any other thing or object that encroaches upon a Highway and is not a Temporary Encroachment.

“Public Utility” means a board, commission or corporation that provides a public work or public utility.

“Roadway” shall mean the travelled portion of a Highway which is improved for the travel of Vehicles and includes the shoulder of the Highway.

“Road Works” shall mean the physical improvements which have been made to a Highway including pavement, curbs (if applicable), signs, gutters, ditches, trees, culverts, treed and graded surfaces, swales, utility apparatus, utility infrastructure and gravelled surfaces.

“Temporary Encroachment” means a new or existing Encroachment on a Highway whether at or above the Highway surface that is used on a temporary basis for no more than six (6) months for purposes including, but not limited to, decorations, planters, canopies, outdoor patios, patios, courier drop boxes, refuse containers, sales kiosks, equipment, equipment for the construction, repair, renovation, alteration, maintenance or demolition of a building and also includes any other Encroachment of a temporary nature.

“Vehicle” includes a motor vehicle, trailer, traction engine, farm tractor, road building machine, bicycle and any Vehicle drawn, propelled or driven by any kind of power, including muscular power, but does not include a motorized snow vehicle.

3. **EXEMPTIONS**

3.1 The provisions of this By-Law do not apply to:

- a. Signs authorized by the County Sign By-Law being By-Law No. 4364;
- b. Works, equipment, assets and infrastructure of the County, an agent of the County or a Public Utility; or
- c. Works and equipment of any person performing construction or maintenance operations on a County Highway, but only to the extent that such works and equipment are lawfully authorized by any agreement with, permit of or a By-Law of the County, failing which the exemption in this Section 3.1.c shall not apply; or
- d. Lands where an Encroachment Agreement for a temporary Encroachment

has been entered into between the owner, the County and the applicable lower tier municipality pursuant to By-Law #5844 in respect of the subject encroachment.

4. PERMANENT ENCROACHMENTS

4.1 Requirement of Encroachment Agreement

- a. Subject to the exemptions listed in Section 3 herein, no person shall allow, permit, excavate for, construct, erect, use, alter or maintain any Permanent Encroachment below, upon or over a County Highway unless such person has first entered into an Encroachment Agreement with the County in accordance with Section 4.4.
- b. An Encroachment Agreement shall not be approved by the County under this By-Law for a Temporary Encroachment upon or over a County Highway.

4.2. Authority of the County Engineer

4.2.1 Subject to Section 4.1.b, the County Engineer may submit an Application for the consideration of County Council or reject an Application in his sole and absolute discretion. Without in any way limiting the discretion of the County Engineer and solely for the purpose of assisting any Owner in submitting an Application, the County Engineer will consider the following issues when evaluating an Application:

- a. Whether the Encroachment was in existence on the date of the passing of this By-Law;
- b. Whether the Application gives rise to any safety concerns;
- c. Whether the Encroachment may cause detrimental impact on the environment;
- d. Whether the Encroachment has the potential to impact traffic flow, Highway maintenance or future development;
- e. Any possible interference with future Highway improvements including, but not limited to, sidewalk or utility construction and road widenings;
- f. Whether the Permanent Encroachment is solely for the construction of a porch or steps;
- g. Possible interference, present and/or future, with public uses

including, but not limited to, interference with utilities, sidewalks and pedestrian use;

h. The size of the Permanent Encroachment and whether it is reasonable in the circumstances;

i. Compliance with policies established by County Council;

j. Whether the Encroachment is a Permanent Encroachment or a Temporary Encroachment;

k. The term of any requested Encroachment Agreement for the Permanent Encroachment;

l. For manure pipelines, compliance with the Standards for Manure Pipelines on County Roads which are annexed hereto as Schedule "B"; or

m. Compliance with all By-Laws of the County and the applicable Municipality; and

n. Any other reason that, in the sole discretion of the County Engineer or County Council is relevant or applicable.

4.2.2 Approval by County Council

If the County Engineer has recommended that an Application be considered by County Council, County Council may accept or reject the Application in its sole and absolute discretion. County Council may also impose such conditions as County Council deems necessary in its sole and absolute discretion. Without in any way limiting the discretion of County Council, County council may consider the issues set out in Section 4.2.1 herein when deciding to accept or reject the application.

4.3 Procedure for Application

4.3.1 Applications shall be made by the Owner or a representative of the Owner in the form specified in Schedule A and shall include:

a. a sketch showing the location and dimensions of the Permanent Encroachment;

b. information as to the materials out of which the Permanent Encroachment has been or will be constructed;

- c. the method and extent of its illumination, if applicable; and
- d. the non-refundable Application Fee as determined by County Council from time to time.

4.3.2 If the Permanent Encroachment proposed in the Application is approved by County Council, the Owner or representative of the Owner shall then file with the County Engineer:

- a. Three copies of a plan, certified by an Ontario Land Surveyor showing the location and dimensions of the Permanent Encroachment and the adjacent part of the premises to which it is or will be appurtenant, and the location of the lot line, except in the case of a permanent canopy that does not require a building permit and is deemed by the County Engineer not to constitute a material alteration to the structure; and
- b. A registerable description of the property to which the Permanent Encroachment is or will be appurtenant.

In the event that the materials referred to in Section 4.3.2 are not consistent with the information set out in the Application, the County Engineer shall have the authority, but not the obligation, to withdraw any approval of the said Application for the Encroachment Agreement.

4.4 Encroachment Agreement

4.4.1 If the Application is approved by County Council, the Owner of the property to which a Permanent Encroachment is appurtenant shall enter into an Encroachment Agreement with the County. The form of Encroachment Agreement shall be substantially in the form of Schedule "C" through Schedule "F" of this By-Law, as applicable. County Council shall have the right in its sole and absolute discretion to determine which form of Encroachment Agreement shall apply for any Application. The County shall have the right to make any amendments to the form of the Encroachment Agreement that may be required in the circumstances in its sole and absolute discretion. For clarity, final approval of the application will not occur until a By-Law is passed by County Council authorizing the County Warden and County Clerk to sign and register the Encroachment Agreement at the Owner's expense.

4.4.2 The Encroachment Agreement referred to in subsection 4.4.1 shall be registered by the County against the land to which the Permanent

Encroachment is appurtenant at the Owner's expense.

4.4.3 The Encroachment Agreement shall require payment of an annual fee which shall be set by County Council at its discretion.

4.5 Insurance

4.5.1 The Owner of the property to which a Permanent Encroachment is appurtenant shall obtain and maintain insurance in accordance with the following requirements:

- a. Comprehensive general liability insurance, in a form satisfactory to the County Engineer, in an amount not less than Two Million Dollars (\$2,000,000.00) inclusive per occurrence, or such higher amount as may be designated by the County Engineer, for bodily injury, death and damage to property, including loss of use thereof, in the joint names of the Owner and the County;
- b. To ensure that the above-mentioned insurance is not cancelled, amended or permitted to lapse, the policy shall contain an endorsement to provide all named insureds with thirty (30) days prior notice of changes to or cancellation of the policy; and
- c. A Certificate of Insurance evidencing the above insurance coverage shall be provided to the County prior to the County signing the Encroachment Agreement and thereafter a Certificate of Insurance shall be delivered promptly to the County on each subsequent insurance renewal date.

5. GENERAL REGULATIONS

5.1 Term of Encroachment Agreement

An Encroachment Agreement shall be for a period not exceeding the life of the Permanent Encroachment or the life of the appurtenant building, structure, or pipe, if applicable, whichever is shorter.

5.2 Location of Encroachment

No Permanent Encroachment shall be erected in a location that obstructs the view of an official regulatory sign or traffic control signal, or that interferes with the operation of, or the timely maintenance of, any part of the County Highway or any utility equipment, plant or infrastructure.

5.3 Rebuilding and Removing the Encroachment

If any Permanent Encroachment is rebuilt, cut down, or removed for any reason

or by any means, the Permanent Encroachment cannot be rebuilt or replaced in whole or in part on the County Highway. Such an Encroachment must be removed from the County Highway and not replaced unless the Owner enters into another Encroachment Agreement authorizing the new Permanent Encroachment.

5.4 Alterations to Encroachment

If an existing Permanent Encroachment authorized by this By-Law is altered or changed in any manner, the original Encroachment Agreement shall be null and void and a new Encroachment Agreement must be obtained pursuant to the provisions of this By-Law.

5.5 Maintenance of the Encroachment

The Owner of the property to which a Permanent Encroachment is appurtenant shall at all times maintain and keep the Permanent Encroachment and adjacent surface in proper repair at the Owner's expense, in a proper and safe condition for the traffic thereon, and to County standards. If the Permanent Encroachment and adjacent surface is not kept in good repair, upon written notice from the County, the Owner of the property to which the Permanent Encroachment is appurtenant shall repair the Encroachment and the adjacent surface at his own expense and to the County's specifications. If the notice is not complied with within ten (10) days from the date that the notice is sent, or such earlier date in the event the public is endangered by the Owner's failure to repair, the County shall have the right, but not the obligation, to repair the Permanent Encroachment and the adjacent surface at the expense of the Owner. The County shall add the cost thereof to the tax roll of the property adjacent to the Permanent Encroachment and any other properties within the County owned by the Owner and collect same in like manner as municipal taxes.

6. GENERAL

6.1 Removal of Unauthorized Encroachments

6.1.1 The County Engineer may give notice in writing to the Owner of the property to which an unauthorized Encroachment is appurtenant to forthwith remove, fill in, or close up the Encroachment and restore the County Highway to its former condition at the Owner's expense.

6.1.2 If the notice referred to in subsection 6.1.1 above is not complied with within ten (10) days from the date that notice is sent, the County shall have the right but not the obligation, to remove, fill in, or close up the Encroachment and restore the County Highway to its former condition at the Owner's cost. The County may add the cost thereof to the tax roll of the property adjacent to the Encroachment and any other properties within

the County owned by the Owner and collect same in like manner as municipal taxes.

7. ENFORCEMENT

7.1 Fine for Contravention

Any person who contravenes any provision of this By-Law is, upon conviction, guilty of an offence and is liable to any penalty as provided in the Provincial Offences Act and Part XIV of the Municipal Act. Any person who hinders or obstructs a person lawfully carrying out the enforcement of this By-Law is guilty of an offence and is liable to any penalty as provided in the Provincial Offences Act (Ontario), as amended, and Part XIV of the Municipal Act.

7.2 Continuation - Repetition - Prohibited - By Order

The Court in which the conviction has been entered, and any Court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted, and such order shall be in addition to any other penalty imposed on the person convicted.

7.3 Performance of Covenants

If any person, firm, corporation, partnership, utility or any other entity, by any act or omission, contravenes any section, clause or provision of this By-Law, without in any way limiting the obligations of such person, firm, corporation, partnership, utility or any other entity, the County shall have the right, but not the obligation, to take such actions as may be necessary to remedy the contravention of the section, clause or provision of this By-Law. In the event that the County takes such actions as are necessary to remedy any contravention of any section, clause or provision of this By-Law, the County shall have the right to collect any costs, disbursements or other expenses incurred in like manner as the collection of municipal taxes.

7.4 Notice

In the event that the County exercises its rights to remedy any contravention of this By-Law, before taking such action, the County shall make reasonable efforts to deliver notice to the person, firm, corporation, partnership, utility or any other entity which has contravened this By-Law. Notice under this Section shall be effectively given when:

- a. personally delivered to the intended recipient;
- b. mailed pre-paid registered mail to the intended recipient at his last known address shown on the records of the County; or

- c. by posting a notice on any Vehicle (licensed or unlicensed) owned by the intended recipient.

Notice personally delivered to the intended recipient shall be deemed received on the date of delivery. Notice given by pre-paid registered mail shall be deemed received on the second business day following the mailing thereof. Notice posted on any vehicle owned by the intended recipient shall be deemed received the day following delivery thereof.

8. That By-law # 5843 be repealed.

BY-LAW read a first time this 8th day of May, 2007.

BY-LAW read a second time this 8th day of May, 2007.

BY-LAW read a third time and finally passed this 8th day of May, 2007.

PASSED in Council this 8th day of May, 2007.

J. Wesley Hodgson, Warden

Donald Hudson, Clerk

Schedule "A"
Encroachment Application
COUNTY OF MIDDLESEX

APPLICATION FOR AN ENCROACHMENT WORK PERMIT UNDER BY-LAW NUMBER

NAME OF APPLICANT: _____

DATE: _____

MAILING ADDRESS: _____

TELEPHONE: _____

Postal Code _____

Res: _____

Bus: _____

Location of Proposed Encroachment: - Please complete **all** boxes

Lot No./Municipal No.	Concession/Street	Municipality
on the N / S / E / W side of	County Road No.	County Road Name

Type of Encroachment
Specify: building, porch, fence,
landscaping, retaining wall,
drainage pipe, waterline, manure
pipeline

At a location

North Arrow



Sketch of Proposed Encroachment and Area: Use back of page if necessary.

- Sketch to include**
- location of encroachment
 - road pavement, shoulder, curb and gutter, and sidewalk
 - existing entrances, culverts, watercourses and utilities
 - existing property lines
 - other features (Buildings, intersections, curves, etc.
 - Dimensions

- Application Fee: As set by County Council

Data completed by: _____

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FOR OFFICE USE ONLY

COMMENTS ON POLICY:

Policy Reviewed By:	Date:
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Recommendation of County Engineer:	Approve	Do Not Approve
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Applicant Advised:	Date:
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District No.

SCHEDULE "B"

**STANDARDS FOR MANURE PIPELINES
ON COUNTY ROADS**

1. Only Permanent crossings will be permitted.
2. "Permanent crossings" will require an encroachment agreement with Middlesex as is provided in By-Law #5843.
3. Permanent crossings must adhere to the following standards:
 - (i) no crossings within 100 metres of a watercourse;
 - (ii) existing road culverts not to be used;
 - (iii) the crossing pipe shall extend to a minimum of 15 metres beyond the road property line;
 - (iv) the crossing pipe shall cross the roadway at right angles;
 - (v) the road crossing is to be designed by a professional engineer licensed to practice in Ontario;
 - (vi) the pipeline crossing shall be designed to accommodate 1.5 times the peak pumping pressure;
 - (vii) the system is to be designed to prevent water hammer;
 - (viii) a 400 mm. high berm is to be constructed along the property adjacent to the road property line for 50 metres each side of the road crossing except where the adjacent land slopes away from the road;
 - (ix) the permanent line is to be drained while frost is in the ground;
 - (x) the pumping system shall be operated in such a manner that it will be shut down within 1 minute of equipment failure;
 - (xi) all road crossings are to be installed by boring and jacking;
 - (xii) the installation and operation of the manure pipeline shall conform to all provincial standards; and
 - (xiii) prior to initial use of the pipeline crossing the County road, and bi-annually thereafter, hydrostatic testing shall be conducted under the supervision of a Professional Engineer licensed to practice in Ontario. Hydrostatic testing shall conform to OPSS 701.07.19.
 - (xiv) aerial spraying of manure is not permitted.

SCHEDULE "C"

Form of Encroachment Agreement for Water Pipelines and Drains

THIS ENCROACHMENT AGREEMENT is made this day of , 20 .

Between: **The Corporation of the County of Middlesex**

(the "County")

- and -

[owner]

(the "Owner")

WHEREAS:

- (a) The Owner represents that they are the registered owner of certain lands and premises (the "Owner's Property") in the Municipality of [name], in the County of Middlesex, known municipally as [street name], which abuts the [street name] road allowance (the "County Lands");
- (b) A [description of encroachment] has been constructed or is located on the Owner's Property which encroach [distance] onto the County Lands as shown on the attached sketch (the "Encroachment");
- (c) The Owner has applied to the County that they be allowed to maintain and use the Encroachment for an indefinite period.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the terms and conditions herein and the sum of Two (\$2.00) Dollars now paid by the Owner to the County, the receipt and sufficiency of which is hereby acknowledged, the Owner and the County covenant and agree as follows:

- 1. The County and the Owner acknowledge and agree that the Encroachment shall be permitted on the County Lands subject to the terms and conditions herein.
- 2. The Owner acknowledges that no representation has been made by the County of any authority to grant the privilege to use and maintain the Encroachment and such use and maintenance by the Owner shall at all times be at the Owner's risk.
- 3. The Owner and the County covenant and agree as follows:
 - (a) The Owner shall apply to the County and obtain a "Work Permit" prior to commencing any work on the County Highway, shall install the pipe and appurtenances at the location and elevations specified in the permit and shall comply with the conditions in the work permit.
 - (b) The Owner shall make no alteration to the County Lands, including without limitation the removal of trees or grade changes, and shall not install any facilities, equipment or other infrastructure, not specifically included in the work permit, on the County Lands without the County's written permission;
 - (c) The Owner shall obtain any other permits, certificates of approval, and approvals required by any other government of competent jurisdiction, all as amended from time to time.
 - (d) The pipeline is to meet all requirements of the Ontario Provincial Standards and Specifications and to conform to all requirements of government authorities of competent jurisdiction, as amended from time to time.
 - (e) The Owner agrees to install the pipeline in accordance with the said Ontario Provincial Standards and Specifications and in accordance with the requirements of other government authorities of competent jurisdiction.

- (f) The Owner shall obtain and maintain insurance in accordance with the following:
 - (i) Comprehensive general liability insurance, in a form satisfactory to the County Engineer, in an amount not less than Two Million Dollars (\$2,000,000.00) inclusive per occurrence for bodily injury, death and damage to property, including loss of use thereof, in the joint names of the owner and the County of Middlesex;
 - (ii) To ensure that the above-mentioned insurance is not cancelled, amended or permitted to lapse, the policy shall contain an endorsement to provide all named insureds with thirty (30) days prior notice of changes or the cancellation of the policy; and
 - (iii) A Certificate of Insurance evidencing the above insurance coverage shall be provided to the County prior to the County signing the Agreement and thereafter promptly on the insurance renewal date;
 - (g) Subject to Section 3(h) herein, if the Encroachment of the water pipeline or drain is rebuilt, altered or removed in any way for any reason, the Owner shall remove the Encroachment from the County Lands and restore the County Lands to the requirements of the County;
 - (h) If the Encroachment is moved, altered or changed in any manner during the lifetime of this Agreement, the Owner shall apply for a new Encroachment Agreement pursuant to the provisions of the Permanent Encroachment By-law being By-Law #5843 if the Encroachment will remain on County lands after such movement, alteration or change;
 - (i) The Owner of the property to which an Encroachment is appurtenant shall at all times maintain and keep the Encroachment and adjacent surface in proper repair at the Owner's expense, in a proper and safe condition for the traffic thereon, and to County standards. If the Encroachment is not kept in good repair, upon written notice from the County, the Owner of the premises to which the Encroachment is appurtenant shall repair the Encroachment and the adjacent surface at his own expense and to the County's specifications. If the notice is not complied with within ten (10) days from the date that the notice is sent, the County may renew or repair the highway at the expense of the Owner, add the cost to the tax roll and collect same in like manner as municipal taxes;
 - (j) If at any time the County decides to renew, repair or maintain the surface of the highway upon which an Encroachment is located, the Owner of the property to which the Encroachment is appurtenant shall, upon written notice from the County, renew, repair or maintain the surface of the highway adjacent to the Encroachment at the Owner's expense and to the County's specifications. If the notice is not complied with within ten (10) days from the date that the notice is sent, the County may renew or repair the highway at the expense of the Owner, add the cost to the tax roll and collect same in like manner as municipal taxes;
 - (k) Upon removal of the Encroachment from the County Lands, the Owner shall maintain and restore the County Lands to the condition that the County Lands were in prior to the date of the Encroachment or in compliance with the standards of the County at the Owner's sole expense. In the event such restoration is not made, the County may complete such restoration work at the expense of the Owner and recover the expense by any legal means available including the addition of the cost to the tax roll. The County shall have the right to collect such expenses in like manner as municipal taxes; and
 - (l) The Owner shall comply with all federal, provincial and municipal laws, rules, regulations and by-laws including without limitation the Permanent Encroachment By-Law being By-Law #5843.
4. The Owner will at all times indemnify and save harmless the County from and against all loss, liability, claims, demands, damages, costs and expenses, including reasonable legal fees and disbursements, which the County may suffer, be put to or incur for or by reason of or on account of the existence of the Encroachment or the entering into of this Agreement or the maintenance of the Encroachment or any other matter or thing relating to the Encroachment.

5. In addition to the Application Fee in the Permanent Encroachment By-Law having By-Law #5843, the Owner shall remit to the County an annual encroachment fee as determined by County Council from time to time. Failure to remit the Encroachment Fee referred to in this Agreement shall constitute default under this Agreement. Upon termination of this Agreement, no portion of the said Encroachment Fee shall be refunded to the Owner regardless of the date of termination.
6. If the Owner defaults in performing any of its obligations under this Agreement, the County shall have the right but not the obligation to give written notice to the Owner of such default giving the Owner ten (10) days to remedy the default, failing which the County may terminate this Agreement. Any waiver by the County of any breach by the Owner or any provisions of this Agreement shall be without prejudice to the exercise by the County of all or any of its rights or remedies in respect of any continuance or repetition of such breach.
7. The County or Owner may terminate this Agreement on sixty (60) days written notice for any reason.
8. The annual Encroachment Fee under the Permanent Encroachment By-Law being By-Law #5843 as determined by County Council from time to time and any other sums due and payable by the Owner to the County under this Agreement or regarding the Encroachment shall be a first lien and charge upon the lands and premises of the Owner to which the Encroachment is appurtenant.
9. The Owner and the County hereby agree that this Encroachment Agreement shall cover the Encroachment described in any Application submitted by the Owner and this Encroachment Agreement shall not grant any permission to erect any new part of any new building and shall not provide any implied right on the part of the Owner to alter, reconstruct or otherwise change the Encroachment approved by the County in the Encroachment Application.
10. This Encroachment Agreement shall not be assigned by the Owner to any third party without the prior written consent of the County, which consent may be unreasonably withheld. For clarity, in the event that the Owner sells the property to which the Encroachment is appurtenant, the Owner shall instruct the purchaser of the said property to submit a new Encroachment Application to the County for the County's review and approval.
11. In the event that the Encroachment represents a danger or detrimentally impacts: (i) the safety of persons using the County Lands; (ii) traffic flow; (iii) safety of the public (iv) encroaches on the rights of others to use the road allowance; (v) the environment or (vi) interferes with future road improvements, the Owner and the County acknowledge that the County shall have a right to terminate this Agreement. Such termination of this Agreement shall be by written notice to the Owner, except in the case of an emergency. In the case of an emergency, the Encroachment Agreement may be terminated forthwith by the County.
12. In the event that this Agreement is terminated, the Owner shall remove the Encroachment on the date of termination. If the Owner fails to remove the Encroachment on the date of termination, the County shall provide the Owner with a notice requiring the Owner to remove the Encroachment within ten (10) days. If the Owner fails to remove the Encroachment within the ten (10) day period, the County shall have the right to remove the Encroachment at the expense of the Owner and add the cost of removal to the tax roll and shall also have the right to collect such costs in like manner as municipal taxes. In the case of an emergency, the County shall have the right to remove the Encroachment forthwith on the date of termination of the Agreement at the expense of the Owner and such costs shall be added to the tax roll and collected in like manner as municipal taxes.
13. Any notice required to be given to the County or the Owner under this Agreement shall be sufficiently given if delivered or mailed postage prepaid to the addresses below. Such notice shall be deemed to have been received on the date of its delivery or in the case of mailing, three (3) business days after it was delivered to the post office.

<u>County's Address</u>	<u>Owner's Address</u>
c/o County Engineer 399 Ridout Street North London, Ontario N6A 2P1	[name] [address 1] [address 2]

- 14. This Agreement shall ensure to the benefit of, and be binding upon the parties and their respective heirs, administrators, estate trustees, successors and (where permitted) assigns.
- 15. The Owner and the County hereby agree that this Agreement shall be registered on title to the Owner's Property at the Owner's expense. The Owner and the County shall take such further deeds, actions and execute such further documents that may be necessary to effect such registration.

WITNESS my hand and seal at London, Ontario, this _____ day of _____, 200 .

[owner's name]

Per: _____

Name: _____

IN WITNESS WHEREOF the Corporation of the County of Middlesex has hereunto caused to be affixed its Corporate Seal attested by the hands of its proper signing officers pursuant to the authority contained in By-Law #5843 of the Council of the Corporation of the County of Middlesex, passed the 12th day of June, 2005.

THE CORPORATION OF THE COUNTY OF MIDDLESEX

Per: _____, Warden

Per: _____, Clerk

SCHEDULE "D"

Form of Encroachment Agreement for New Structures, Structural improvements and/or Additions

THIS ENCROACHMENT AGREEMENT is made this day of , 20 .

Between: **The Corporation of the County of Middlesex**
(the "County")

- and -

[owner]
(the "Owner")

WHEREAS:

- (a) The Owner represents that they are the registered owner of certain lands and premises (the "Owner's Property") in the Municipality of [name], in the County of Middlesex, known municipally as [street name], which abuts the [street name] road allowance (the "County Lands");
- (b) A [description of encroachment] has been constructed or is located on the Owner's Property which encroach [distance] onto the County Lands as shown on the attached sketch (the "Encroachment");
- (c) The Owner has applied to the County that they be allowed to maintain and use the Encroachment for an indefinite period.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the terms and conditions herein and the sum of Two (\$2.00) Dollars now paid by the Owner to the County, the receipt and sufficiency of which is hereby acknowledged, the Owner and the County covenant and agree as follows:

- 1. The County and the Owner acknowledge and agree that the Encroachment shall be permitted on the County Lands subject to the terms and conditions herein.
- 2. The Owner acknowledges that no representation has been made by the County of any authority to grant the privilege to use and maintain the Encroachment and such use and maintenance by the Owner shall at all times be at the Owner's risk.
- 3. The Owner and the County covenant and agree as follows:
 - (a) The Owner shall apply to the County and obtain a "Work Permit" prior to commencing any work on the County highway and shall comply with the conditions in the work permit.
 - (b) The Owner shall make no alteration to the County Lands, including without limitation the removal of trees or grade changes, and shall not erect any building or structures on the County Lands without the County's written permission;
 - (c) The Owner shall obtain any other permits and approvals required by any other government of competent jurisdiction, all as amended from time to time.
 - (d) The Owner shall obtain and maintain insurance in accordance with the following:
 - (i) Comprehensive general liability insurance, in a form satisfactory to the County Engineer, in an amount not less than Two Million Dollars (\$2,000,000.00) inclusive per occurrence for bodily injury, death and damage to property, including loss of use thereof, in the joint names of the Owner and the County of Middlesex;

- (ii) To ensure that the above-mentioned insurance is not cancelled, amended or permitted to lapse, the policy shall contain an endorsement to provide all named insureds with thirty (30) days prior notice of changes or the cancellation of the policy; and
 - (iii) A Certificate of Insurance evidencing the above insurance coverage shall be provided to the County prior to the County signing the Agreement and thereafter promptly on the insurance renewal date;
- (e) Subject to Section 3(f) herein, if the Encroachment, or the building to which the Encroachment is attached, is rebuilt, altered or removed in any way for any reason, the Owner shall remove the Encroachment from the County Lands;
 - (f) If the Encroachment is moved, altered or changed in any manner during the lifetime of this Agreement, the Owner shall apply for a new Encroachment Agreement pursuant to the provisions of the Permanent Encroachment By-law being By-Law #5843 if the Encroachment will remain on County lands after such movement, alteration or change;
 - (g) The Owner of the premises to which an Encroachment is appurtenant shall at all times maintain and keep the Encroachment and adjacent surface in proper repair at the Owner's expense, in a proper and safe condition for the traffic thereon, and to County standards. If the Encroachment is not kept in good repair, upon written notice from the County, the Owner of the premises to which the Encroachment is appurtenant shall repair the Encroachment and the adjacent surface at his own expense and to the County's specifications. If the notice is not complied with within ten (10) days from the date that the notice is sent, the County may renew or repair the highway at the expense of the Owner, add the cost to the tax roll and collect same in like manner as municipal taxes;
 - (h) If at any time the County decides to renew, repair or maintain the surface of the highway upon which an Encroachment is located, the Owner of the property to which the Encroachment is appurtenant shall, upon written notice from the County, renew, repair or maintain the surface of the highway adjacent to the Encroachment at the Owner's expense and to the County's specifications. If the notice is not complied with within ten (10) days from the date that the notice is sent, the County may renew or repair the highway at the expense of the Owner, add the cost to the tax roll and collect same in like manner as municipal taxes;
 - (i) Upon removal of the Encroachment from the County Lands, the Owner shall maintain and restore the County Lands to the condition that the County Lands were in prior to the date of the Encroachment or in compliance with the standards of the County at the Owner's sole expense. In the event such restoration is not made, the County may complete such restoration work at the expense of the Owner and recover the expense by any legal means available including the addition of the cost to the tax roll. The County shall have the right to collect such expenses in like manner as municipal taxes; and
 - (j) The Owner shall comply with all federal, provincial and municipal laws, rules, regulations and by-laws including without limitation the Permanent Encroachment By-Law being By-Law #5843.
4. The Owner will at all times indemnify and save harmless the County from and against all loss, liability, claims, demands, damages, costs and expenses, including reasonable legal fees and disbursements, which the County may suffer, be put to or incur for or by reason of or on account of the existence of the Encroachment or the entering into of this Agreement or the maintenance of the Encroachment or any other matter or thing relating to the Encroachment.
 5. In addition to the Application Fee in the Permanent Encroachment By-Law having By-Law #5843, the Owner shall remit to the County an annual encroachment fee as determined by County Council from time to time. Failure to remit the Encroachment Fee referred to in this Agreement shall constitute default under this Agreement. Upon termination of this Agreement, no portion of the said Encroachment Fee shall be refunded to the Owner regardless of the date of termination.

6. If the Owner defaults in performing any of its obligations under this Agreement, the County shall have the right but not the obligation to give written notice to the Owner of such default giving the Owner ten (10) days to remedy the default, failing which the County may terminate this Agreement. Any waiver by the County of any breach by the Owner or any provisions of this Agreement shall be without prejudice to the exercise by the County of all or any of its rights or remedies in respect of any continuance or repetition of such breach.
7. The County or Owner may terminate this Agreement on sixty (60) days written notice for any reason.
8. The annual Encroachment Fee under the Permanent Encroachment By-Law being By-Law #5843 as determined by County Council from time to time and any other sums due and payable by the Owner to the County under this Agreement or regarding the Encroachment shall be a first lien and charge upon the lands and premises of the Owner to which the Encroachment is appurtenant.
9. The Owner and the County hereby agree that this Encroachment Agreement shall cover the Encroachment described in any Application submitted by the Owner and this Encroachment Agreement shall not grant any permission to erect any new part of any new building and shall not provide any implied right on the part of the Owner to alter, reconstruct or otherwise change the Encroachment approved by the County in the Encroachment Application.
10. This Encroachment Agreement shall not be assigned by the Owner to any third party without the prior written consent of the County, which consent may be unreasonably withheld. For clarity, in the event that the Owner sells the property to which the Encroachment is appurtenant, the Owner shall instruct the purchaser of the said property to submit a new Encroachment Application to the County for the County's review and approval.
11. In the event that the Encroachment represents a danger or detrimentally impacts: (i) the safety of persons using the County Lands; (ii) traffic flow; (iii) safety of the public (iv) encroaches on the rights of others to use the road allowance; or (v) interferes with future road improvements, the Owner and the County acknowledge that the County shall have a right to terminate this Agreement. Such termination of this Agreement shall be by written notice to the Owner, except in the case of an emergency. In the case of an emergency, the Encroachment Agreement may be terminated forthwith by the County.
12. In the event that this Agreement is terminated, the Owner shall remove the Encroachment on the date of termination. If the Owner fails to remove the Encroachment on the date of termination, the County shall provide the Owner with a notice requiring the Owner to remove the Encroachment within ten (10) days. If the Owner fails to remove the Encroachment within the ten (10) day period, the County shall have the right to remove the Encroachment at the expense of the Owner and add the cost of removal to the tax roll and shall also have the right to collect such costs in like manner as municipal taxes. In the case of an emergency, the County shall have the right to remove the Encroachment forthwith on the date of termination of the Agreement at the expense of the Owner and such costs shall be added to the tax roll and collected in like manner as municipal taxes.
13. Any notice required to be given to the County or the Owner under this Agreement shall be sufficiently given if delivered or mailed postage prepaid to the addresses below. Such notice shall be deemed to have been received on the date of its delivery or in the case of mailing, three (3) business days after it was delivered to the post office.

<u>County's Address</u> c/o County Engineer 399 Ridout Street North London, Ontario N6A 2P1	<u>Owner's Address</u> [name] [address 1] [address 2]
--	--

- 14. This Agreement shall ensure to the benefit of, and be binding upon the parties and their respective heirs, administrators, estate trustees, successors and (where permitted) assigns.
- 15. The Owner and the County hereby agree that this Agreement shall be registered on title to the Owner's Property at the Owner's expense. The Owner and the County shall take such further deeds, actions and execute such further documents that may be necessary to effect such registration.

WITNESS my hand and seal at London, Ontario, this _____ day of _____, 200 .

[owner's name]

Per: _____

Name: _____

IN WITNESS WHEREOF the Corporation of the County of Middlesex has hereunto caused to be affixed its Corporate Seal attested by the hands of its proper signing officers pursuant to the authority contained in By-Law #5843 of the Council of the Corporation of the County of Middlesex, passed the 14th day of June, 2005.

THE CORPORATION OF THE COUNTY OF MIDDLESEX

Per: _____, Warden

Per: _____, Clerk

SCHEDULE "E"

Form of Encroachment Agreement for Manure Pipelines

THIS ENCROACHMENT AGREEMENT is made this day of , 20 .

Between: **The Corporation of the County of Middlesex**

(the "County")

- and -

[owner]

(the "Owner")

WHEREAS:

- (a) The Owner represents that they are the registered owner of certain lands and premises (the "Owner's Property") in the Municipality of [name], in the County of Middlesex, known municipally as [street name], which abuts the [street name] road allowance (the "County Lands");
- (b) A [description of encroachment] has been constructed or is located on the Owner's Property which encroach [distance] onto the County Lands as shown on the attached sketch (the "Encroachment");
- (c) The Owner has applied to the County that they be allowed to maintain and use the Encroachment for an indefinite period.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the terms and conditions herein and the sum of Two (\$2.00) Dollars now paid by the Owner to the County, the receipt and sufficiency of which is hereby acknowledged, the Owner and the County covenant and agree as follows:

- 1. The County and the Owner acknowledge and agree that the Encroachment shall be permitted on the County Lands subject to the terms and conditions herein.
- 2. The Owner acknowledges that no representation has been made by the County of any authority to grant the privilege to use and maintain the Encroachment and such use and maintenance by the Owner shall at all times be at the Owner's risk.
- 3. The Owner and the County covenant and agree as follows:
 - (a) The Owner shall apply to the County and obtain a "Work Permit" prior to commencing any work on the County Highway, shall install the pipe and appurtenances at the location and elevations specified in the permit and shall comply with the conditions in the work permit.
 - (b) The Owner shall make no alteration to the County Lands, including without limitation the removal of trees or grade changes, and shall not install any facilities, not specifically included in the work permit, on the County Lands without the County's written permission;
 - (c) The Owner shall obtain any other permits, and approvals required by any other government of competent jurisdiction, all as amended from time to time.
 - (d) The Owner shall extend the crossing pipe to 15 metres beyond the County Highway property line or such greater distance as may reasonably be required by the County Engineer or any other governmental authority.
 - (e) The Owner is to provide satisfactory evidence to the County that the pipeline has been designed by a professional engineer licensed to practice in Ontario and that the said pipeline has sufficient capacity to accommodate 1.5 times the peak operating pressure and to conform to all requirements of government authorities of competent jurisdiction,

all as amended from time to time.

The Owner agrees to construct a 400 millimetre high berm along the County Highway property lines for 50 metres each side of the road crossing. The County may waive this condition where the County is of the opinion, in its sole and absolute discretion, that the slope of the land beyond the property line is sufficient to prevent manure from flowing onto any portion of the lands forming the County Highway.

- (f) The Owner agrees to operate the pipeline in accordance with the Standards for Manure Pipelines on County Roads attached as Exhibit "A" to this Agreement and in accordance with the requirements of other government authorities of competent jurisdiction, all as amended from time to time.
- (g) The Owner shall obtain and maintain insurance in accordance with the following:
 - (i) Comprehensive general liability insurance, in a form satisfactory to the County Engineer, in an amount not less than Two Million Dollars (\$2,000,000.00) inclusive per occurrence for bodily injury, death and damage to property, including loss of use thereof, in the joint names of the Owner and the County of Middlesex;
 - (ii) To ensure that the above-mentioned insurance is not cancelled, amended or permitted to lapse, the policy shall contain an endorsement to provide all named insureds with thirty (30) days prior notice of changes or the cancellation of the policy; and
 - (iii) A Certificate of Insurance evidencing the above insurance coverage shall be provided to the County prior to the County signing the Agreement and thereafter promptly on the insurance renewal date;
- (h) Subject to Section 3(j) herein, if the Encroachment of the manure pipeline is rebuilt, altered or removed in any way for any reason, the Owner shall remove the Encroachment from the County Lands and restore the County Lands to the requirements of the County;
- (i) If the Encroachment is moved, altered or changed in any manner during the lifetime of this Agreement, the Owner shall apply for a new Encroachment Agreement pursuant to the provisions of the Permanent Encroachment By-law being By-Law #5843 if the Encroachment will remain on County lands after such movement, alteration or change;
- (j) The Owner of the property to which an Encroachment is appurtenant shall at all times maintain and keep the Encroachment and adjacent surface in proper repair at the Owner's expense, in a proper and safe condition for the traffic thereon, and to County standards. If the Encroachment is not kept in good repair, upon written notice from the County, the Owner of the premises to which the Encroachment is appurtenant shall repair the Encroachment and the adjacent surface at his own expense and to the County's specifications. If the notice is not complied with within ten (10) days from the date that the notice is sent, the County may renew or repair the highway at the expense of the Owner, add the cost to the tax roll and collect same in like manner as municipal taxes;
- (k) If at any time the County decides to renew, repair or maintain the surface of the highway upon which an Encroachment is located, the Owner of the property to which the Encroachment is appurtenant shall, upon written notice from the County, renew, repair or maintain the surface of the highway adjacent to the Encroachment at the Owner's expense and to the County's specifications. If the notice is not complied with within ten (10) days from the date that the notice is sent, the County may renew or repair the highway at the expense of the Owner, add the cost to the tax roll and collect same in like manner as municipal taxes;
- (l) Upon removal of the Encroachment from the County Lands, the Owner shall maintain and restore the County Lands to the condition that the County Lands were in prior to the date of the Encroachment or in compliance with the standards of the County at the Owner's sole expense. In the event such restoration is not made, the County may complete such restoration work at the expense of the Owner and recover the expense by any legal means available including the addition of the cost to the tax roll. The County shall have the right to collect such expenses in like manner as municipal taxes; and

- (m) The Owner shall comply with all federal, provincial and municipal laws, rules, regulations and by-laws including without limitation the Permanent Encroachment By-Law being By-Law #5843.
- 4. The Owner will at all times indemnify and save harmless the County from and against all loss, liability, claims, demands, damages, costs and expenses, including reasonable legal fees and disbursements, which the County may suffer, be put to or incur for or by reason of or on account of the existence of the Encroachment or the entering into of this Agreement or the maintenance of the Encroachment or any other matter or thing relating to the Encroachment.
- 5. In addition to the Application Fee in the Permanent Encroachment By-Law having By-Law #5843, the Owner shall remit to the County an annual encroachment fee as determined by County Council from time to time. Failure to remit the Encroachment Fee referred to in this Agreement shall constitute default under this Agreement. Upon termination of this Agreement, no portion of the said Encroachment Fee shall be refunded to the Owner regardless of the date of termination.
- 6. If the Owner defaults in performing any of its obligations under this Agreement, the County shall give written notice to the Owner of such default giving the Owner ten (10) days to remedy the default, failing which the County may terminate this Agreement. Any waiver by the County of any breach by the Owner or any provisions of this Agreement shall be without prejudice to the exercise by the County of all or any of its rights or remedies in respect of any continuance or repetition of such breach.
- 7. The County or Owner may terminate this Agreement on sixty (60) days written notice for any reason.
- 8. The annual Encroachment Fee under the Permanent Encroachment By-Law being By-Law #5843 as determined by County Council from time to time and any other sums due and payable by the Owner to the County under this Agreement or regarding the Encroachment shall be a first lien and charge upon the lands and premises of the Owner to which the Encroachment is appurtenant.
- 9. The Owner and the County hereby agree that this Encroachment Agreement shall cover the Encroachment described in any Application submitted by the Owner and this Encroachment Agreement shall not grant any permission to erect any new part of any new building and shall not provide any implied right on the part of the Owner to alter, reconstruct or otherwise change the Encroachment approved by the County in the Encroachment Application.
- 10. This Encroachment Agreement shall not be assigned by the Owner to any third party without the prior written consent of the County, which consent may be unreasonably withheld. For clarity, in the event that the Owner sells the property to which the Encroachment is appurtenant, the Owner shall instruct the purchaser of the said property to submit a new Encroachment Application to the County for the County's review and approval.
- 11. In the event that the Encroachment represents a danger or detrimentally impacts: (i) the safety of persons using the County Lands; (ii) traffic flow; (iii) safety of the public (iii) encroaches on the rights of others to use the road allowance; (iv) the environment or (v) interferes with future road improvements, the Owner and the County acknowledge that the County shall have a right to terminate this Agreement. Such termination of this Agreement shall be by written notice to the Owner, except in the case of an emergency. In the case of an emergency, the Encroachment Agreement may be terminated forthwith by the County.
- 12. In the event that this Agreement is terminated, the Owner shall remove the Encroachment on the date of termination. If the Owner fails to remove the Encroachment on the date of termination, the County shall provide the Owner with a notice requiring the Owner to remove the Encroachment within ten (10) days. If the Owner fails to remove the Encroachment within the ten (10) day period, the County shall have the right to remove the Encroachment at the expense of the Owner and add the cost of removal to the tax roll and shall also have the right to collect such costs in like manner as municipal taxes. In the case of an emergency, the County shall have the right to remove the Encroachment forthwith on the date of termination of the Agreement at the expense of the Owner and such costs shall be added to the tax roll and collected in like manner as municipal taxes.
- 13. Any notice required to be given to the County or the Owner under this Agreement shall be

sufficiently given if delivered or mailed postage prepaid to the addresses below. Such notice shall be deemed to have been received on the date of its delivery or in the case of mailing, three (3) business days after it was delivered to the post office.

<u>County's Address</u>	<u>Owner's Address</u>
c/o County Engineer 399 Ridout Street North London, Ontario N6A 2P1	[name] [address 1] [address 2]

- 14. This Agreement shall ensure to the benefit of, and be binding upon the parties and their respective heirs, administrators, estate trustees, successors and (where permitted) assigns.
- 15. The Owner and the County hereby agree that this Agreement shall be registered on title to the Owner's Property at the Owner's expense. The Owner and the County shall take such further deeds, actions and execute such further documents that may be necessary to effect such registration.

WITNESS my hand and seal at London, Ontario, this _____ day of _____, 200 .

[owner's name]

Per: _____

Name: _____

IN WITNESS WHEREOF the Corporation of the County of Middlesex has hereunto caused to be affixed its Corporate Seal attested by the hands of its proper signing officers pursuant to the authority contained in By-Law # _____ of the Council of the Corporation of the County of Middlesex, passed the 8th day of May, 2007.

THE CORPORATION OF THE COUNTY OF MIDDLESEX

Per: _____, Warden

Per: _____, Clerk

EXHIBIT "A"

**STANDARDS FOR MANURE PIPELINES
ON COUNTY ROADS**

1. Only Permanent crossings will be permitted.
2. "Permanent crossings" will require an encroachment agreement with Middlesex as is provided in By-Law #5843
3. Permanent crossings must adhere to the following standards:
 - (i) no crossings within 100 metres of a watercourse;
 - (ii) existing road culverts not to be used;
 - (iii) the crossing pipe shall extend to a minimum of 15 metres beyond the road property line;
 - (iv) the crossing pipe shall cross the roadway at right angles;
 - (v) the road crossing is to be designed by a professional engineer licensed to practice in Ontario;
 - (vi) the pipeline crossing shall be designed to accommodate 1.5 times the peak pumping pressure;
 - (vii) the system is to be designed to prevent water hammer;
 - (viii) a 400 mm. high berm is to be constructed along the property adjacent to the road property line for 50 metres each side of the road crossing except where the adjacent land slopes away from the road;
 - (ix) the permanent line is to be drained while frost is in the ground;
 - (x) the pumping system shall be operated in such a manner that it will be shut down within 1 minute of equipment failure;
 - (xi) all road crossings are to be installed by boring and jacking;
 - (xii) the installation and operation of the manure pipeline shall conform to all provincial standards; and
 - (xiii) prior to initial use of the pipeline crossing the County road, and bi-annually thereafter, hydrostatic testing shall be conducted under the supervision of a Professional Engineer licensed to practice in Ontario. Hydrostatic testing shall conform to OPSS 701.07.19.
 - (xiv) aerial spraying of manure is not permitted.

SCHEDULE "F"

Form of Encroachment Agreement for Existing Structures

THIS ENCROACHMENT AGREEMENT is made this day of , 20 .

Between: **The Corporation of the County of Middlesex**

(the "County")

- and -

[owner]

(the "Owner")

WHEREAS:

- (a) The Owner represents that they are the registered owner of certain lands and premises (the "Owner's Property") in the Municipality of [name], in the County of Middlesex, known municipally as [street name], which abuts the [street name] road allowance (the "County Lands");
- (b) A [description of encroachment] has been constructed or is located on the Owner's Property which encroach [distance] onto the County Lands as shown on the attached sketch (the "Encroachment");
- (c) The Owner has applied to the County that they be allowed to maintain and use the Encroachment for an indefinite period.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the terms and conditions herein and the sum of Two (\$2.00) Dollars now paid by the Owner to the County, the receipt and sufficiency of which is hereby acknowledged, the Owner and the County covenant and agree as follows:

- 1. The County and the Owner acknowledge and agree that the Encroachment shall be permitted on the County Lands subject to the terms and conditions herein.
- 2. The Owner acknowledges that no representation has been made by the County of any authority to grant the privilege to use and maintain the Encroachment and such use and maintenance by the Owner shall at all times be at the Owner's risk.
- 3. The Owner and the County covenant and agree as follows:
 - (a) The Owner shall make no alteration to the County Lands, including without limitation the removal of trees or grade changes, and shall not erect any building or structures on the County Lands without the County's written permission;
 - (b) The Owner shall obtain and maintain insurance in accordance with the following:
 - (i) Comprehensive general liability insurance, in a form satisfactory to the County Engineer, in an amount not less than Two Million Dollars (\$2,000,000.00) inclusive per occurrence for bodily injury, death and damage to property, including loss of use thereof, in the joint names of the Owner and the County of Middlesex;
 - (ii) To ensure that the above-mentioned insurance is not cancelled, amended or permitted to lapse, the policy shall contain an endorsement to provide all named insureds with thirty (30) days prior notice of changes or the cancellation of the policy; and
 - (iii) A Certificate of Insurance evidencing the above insurance coverage shall be provided to the County prior to the County signing the Agreement and thereafter promptly on the insurance renewal date;

- (c) Subject to section 3(d) herein, if the Encroachment, or the building to which the Encroachment is attached, is rebuilt, altered or removed in any way for any reason, the Owner shall remove the Encroachment from the County Lands;
 - (d) If the Encroachment is moved, altered or changed in any manner during the lifetime of this Agreement, the Owner shall apply for a new Encroachment Agreement pursuant to the provisions of the Permanent Encroachment By-law being By-Law #5843 if the Encroachment will remain on County lands after such movement, alteration or change;
 - (e) The Owner of the premises to which an Encroachment is appurtenant shall at all times maintain and keep the Encroachment and adjacent surface in proper repair at the Owner's expense, in a proper and safe condition for the traffic thereon, and to County standards. If the Encroachment is not kept in good repair, upon written notice from the County, the Owner of the premises to which the Encroachment is appurtenant shall repair the Encroachment and the adjacent surface at his own expense and to the County's specifications. If the notice is not complied with within ten (10) days from the date that the notice is sent, the County may renew or repair the highway at the expense of the Owner, add the cost to the tax roll and collect same in like manner as municipal taxes;
 - (f) If at any time the County decides to renew, repair or maintain the surface of the highway upon which an Encroachment is located, the Owner of the property to which the Encroachment is appurtenant shall, upon written notice from the County, renew, repair or maintain the surface of the highway adjacent to the Encroachment at the Owner's expense and to the County's specifications. If the notice is not complied with within ten (10) days from the date that the notice is sent, the County may renew or repair the highway at the expense of the Owner, add the cost to the tax roll and collect same in like manner as municipal taxes;
 - (g) Upon removal of the Encroachment from the County Lands, the Owner shall maintain and restore the County Lands to the condition that the County Lands were in prior to the date of the Encroachment or in compliance with the standards of the County at the Owner's sole expense. In the event such restoration is not made, the County may complete such restoration work at the expense of the Owner and recover the expense by any legal means available including the addition of the cost to the tax roll. The County shall have the right to collect such expenses in like manner as municipal taxes; and
 - (h) The Owner shall comply with all federal, provincial and municipal laws, rules, regulations and by-laws including without limitation the Permanent Encroachment By-Law being By-Law #5843.
4. The Owner will at all times indemnify and save harmless the County from and against all loss, liability, claims, demands, damages, costs and expenses, including reasonable legal fees and disbursements, which the County may suffer, be put to or incur for or by reason of or on account of the existence of the Encroachment or the entering into of this Agreement or the maintenance of the Encroachment or any other matter or thing relating to the Encroachment.
 5. In addition to the Application Fee in the Permanent Encroachment By-Law having By-Law #5843, the Owner shall remit to the County an annual encroachment fee as determined by County Council from time to time. Failure to remit the Encroachment Fee referred to in this Agreement shall constitute default under this Agreement. Upon termination of this Agreement, no portion of the said Encroachment Fee shall be refunded to the owner regardless of the date of termination.
 6. If the Owner defaults in performing any of its obligations under this Agreement, the County shall give written notice to the Owner of such default giving the Owner ten (10) days to remedy the default, failing which the County may terminate this Agreement. Any waiver by the County of any breach by the Owner or any provisions of this Agreement shall be without prejudice to the exercise by the County of all or any of its rights or remedies in respect of any continuance or repetition of such breach.
 7. The County or Owner may terminate this Agreement on sixty (60) days written notice for any reason.

8. The annual Encroachment Fee under the Permanent Encroachment By-Law being By-Law #5843 as determined by County Council from time to time and any other sums due and payable by the Owner to the County under this Agreement or regarding the Encroachment shall be a first lien and charge upon the lands and premises of the Owner to which the Encroachment is appurtenant.
9. The Owner and the County hereby agree that this Encroachment Agreement shall cover the Encroachment described in any Application submitted by the Owner and this Encroachment Agreement shall not grant any permission to erect any new part of any new building and shall not provide any implied right on the part of the Owner to alter, reconstruct or otherwise change the Encroachment approved by the County in the Encroachment Application.
10. This Encroachment Agreement shall not be assigned by the Owner to any third party without the prior written consent of the County, which consent may be unreasonably withheld. For clarity, in the event that the Owner sells the property to which the Encroachment is appurtenant, the Owner shall instruct the purchaser of the said property to submit a new Encroachment Application to the County for the County's review and approval.
11. In the event that the Encroachment represents a danger or detrimentally impacts: (i) the safety of persons using the County Lands; (ii) traffic flow; (iii) safety of the public (iv) encroaches on the rights of others to use the road allowance; or (v) interferes with future road improvements, the Owner and the County acknowledge that the County shall have a right to terminate this Agreement. Such termination of this Agreement shall be by written notice to the Owner, except in the case of an emergency. In the case of an emergency, the Encroachment Agreement may be terminated forthwith by the County.
12. In the event that this Agreement is terminated, the Owner shall remove the Encroachment on the date of termination. If the Owner fails to remove the Encroachment on the date of termination, the County shall provide the Owner with a notice requiring the Owner to remove the Encroachment within ten (10) days. If the Owner fails to remove the Encroachment within the ten (10) day period, the County shall have the right to remove the Encroachment at the expense of the Owner and add the cost of removal to the tax roll and shall also have the right to collect such costs in like manner as municipal taxes. In the case of an emergency, the County shall have the right to remove the Encroachment forthwith on the date of termination of the Agreement at the expense of the Owner and such costs shall be added to the tax roll and collected in like manner as municipal taxes.
13. Any notice required to be given to the County or the Owner under this Agreement shall be sufficiently given if delivered or mailed postage prepaid to the addresses below. Such notice shall be deemed to have been received on the date of its delivery or in the case of mailing, three (3) business days after it was delivered to the post office.

<u>County's Address</u> c/o County Engineer 399 Ridout Street North London, Ontario N6A 2P1	<u>Owner's Address</u> [name] [address 1] [address 2]
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- 14. This Agreement shall ensure to the benefit of, and be binding upon the parties and their respective heirs, administrators, estate trustees, successors and (where permitted) assigns.
- 15. The Owner and the County hereby agree that this Agreement shall be registered on title to the Owner's Property at the Owner's expense. The Owner and the County shall take such further deeds, actions and execute such further documents that may be necessary to effect such registration.

WITNESS my hand and seal at London, Ontario, this _____ day of _____, 200 .

[owner's name]

Per:

Name:

IN WITNESS WHEREOF the Corporation of the County of Middlesex has hereunto caused to be affixed its Corporate Seal attested by the hands of its proper signing officers pursuant to the authority contained in By-Law # _____ of the Council of the Corporation of the County of Middlesex, passed the 8th day of May, 2007.

THE CORPORATION OF THE COUNTY OF MIDDLESEX

Per: _____, Warden

Per: _____, Clerk