

LANDOWNER/ENCROACHMENT AGREEMENT

This AGREEMENT made in triplicate this _____ day of _____, 2020.

BETWEEN:

THE CORPORATION OF HALDIMAND COUNTY

Hereinafter called the "County"

OF THE FIRST PART

and

IMPERIAL OIL LIMITED

Hereinafter called "Imperial"

OF THE SECOND PART

WHEREAS the County is the owner of the municipal right of way known as South Coast Drive in Nanticoke (hereinafter called the "Lands" and shown more specifically on Schedule A to this Agreement);

AND WHEREAS Imperial desires to place monitoring wells and associated appurtenances (hereinafter called the "Infrastructure") to be located on the Lands;

AND WHEREAS Imperial is to undertake groundwater monitoring activities (hereinafter called the "Works" described in Schedule B attached);

NOW THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:

1. The encroachment of the Infrastructure onto the Lands shall be deemed to be with the consent of the County with the intent that neither Imperial nor any person claiming under Imperial shall acquire an easement or other right in respect of the encroaching Infrastructure.
2. This agreement shall remain in effect for a period of twenty (20) years from date of execution. Imperial shall have the right to renew the agreement for a further mutually agreed upon term upon approval from the County. If the agreement is not renewed Imperial shall, at Imperial's sole cost and expense, remove the Infrastructure from the road allowance

within ninety (90) days notice of non-renewal, and shall not make any claim against the County on account of such removal, and shall replace and restore the entire Lands hereunto to a safe and proper condition, to the satisfaction of the County. If Imperial neglects, refuses or fails to do so within the terms specified in the notice, then the County may remove all installations and restore the Lands to a safe and proper condition, and may charge the reasonable costs thereof to Imperial.

3. Where a notice is not complied with within ninety (90) days after its receipt, the County may in writing authorize any person to do whatever is necessary to comply with the notice, and all reasonable costs resulting from this action shall be borne by Imperial. Such authorization is authority to the person named therein to remove the encroaching portion of the Infrastructure and /or projections as directed and neither the County nor that person is liable for any damages that may be caused in effecting the removal; provided, however, that the County and its authorized contractor shall remain liable for any bodily injury, death or property damage (except to the Infrastructure itself) caused by their negligence or wrongful conduct or violation of any local, provincial or federal law or regulation.
4. The encroachment of the said Infrastructure onto the Lands shall be permitted to continue until such time as the said Infrastructure is fully decommissioned and removed by Imperial or his agent, or at the expiration of this Agreement, or upon cancellation of this Agreement under the terms herein.
5. Either Party may terminate this Agreement upon providing ninety (90) days written notice to the other Party of cancellation.
6. The Infrastructure installed on the Lands by Imperial shall remain in the ownership of Imperial under the terms agreed upon by Imperial and the Owner, for the life of, and after termination of this agreement. All maintenance, repairs and costs associated with such will be the responsibility of Imperial.
7. Upon completion of initial installation of the Infrastructure, Imperial agrees not to make, or cause to be made, any alteration or improvements to the Infrastructure without the prior written consent of the County. Imperial will make a reasonable attempt to notify landowners before entering the Lands for Works.
8. Imperial or his agent shall not place or deposit, or cause to permit any polluted or toxic materials to be placed or deposited, any fill, sand, gravel, waste debris or other materials, articles or things on road or road allowance.
9. The County agrees not to remove, destroy or alter, in any way, the Infrastructure without prior consultation and approval of Imperial, notwithstanding Article 3 of this Agreement. If there is any noticeable visible damage, accidental or otherwise, to the Infrastructure, the County will immediately notify Imperial.
10. Upon termination by Imperial or County and without extension of this Agreement, and upon the decommissioning and removal of the monitoring equipment by Imperial, Imperial shall assume responsibility for abandonment of the well in accordance with the Ontario Water Resources Act and Regulation 903 or subsequent applicable legislative changes unless the County submits in writing a desire to take ownership of the well.
11. Imperial covenants and agrees to indemnify, defend and save the County hold harmless against all manner of actions, causes of action, claims, demands, losses, costs, damages

and expenses of whatever kind or nature that may be suffered by or occasioned to the County in any manner whatsoever, by reason of existence of the said encroaching Infrastructure and projections therefrom.

12. Throughout the term of the agreement, Imperial covenants and agrees at all times to take out and keep in full force and affect a policy (or policies) of:

Commercial General Liability Insurance on an occurrence basis, including but not limited to bodily and personal injury liability, extended bodily injury, property damage, products liability, completed operations liability, owners & contractors protective liability, blanket contractual liability, premises liability, and contingent employer's liability coverage, having an inclusive limit of not less than \$5,000,000 per occurrence. The insurance policy will contain Cross Liability and Severability of Interest clauses and name Haldimand County as an Additional Insured;

Errors and Omissions Liability insurance in an amount of not less than \$2,000,000 per occurrence for any error or omission arising from any consulting, testing and work performed;

Environmental Impairment Liability insurance in an amount of not less than \$5,000,000 per occurrence covering any pollution event arising from the work performed including on site clean up as required by law or ordinance;

Non Owned Automobile Liability insurance in an amount of not less than \$2,000,000 per occurrence; and

Standard Ontario Auto Third Party Liability for any vehicles owned, rented or leased by in an amount of not less than \$2,000,000.

Imperial shall provide a Certificate of Insurance that will provide 30 days' written notice of cancellation, alteration or material change. The Certificate of Insurance shall identify the activity to which the Certificate applies. The policies shall apply as primary and not as excess of any insurance available to the County. Insurance companies providing coverage must be licensed to do business in the Province of Ontario.

13. Imperial shall perform the work as outlined in Schedule B with due diligence and care and in keeping with the expertise expected from it. Imperial shall maintain the well and the installed equipment well in accordance with the Ontario Water Resources Act and Regulation 903.
14. All costs associated with the construction and maintenance of the Infrastructure and registration of this agreement shall be borne by Imperial. Imperial shall also be responsible for all costs associated with decommissioning and removal of the Infrastructure, and any and all documentation required at time of decommissioning of the Infrastructure and release of the Encroachment Agreement.
15. Upon request by the County, Imperial shall deliver to the County the water quantity and/or water quality data collected from the County's well by Imperial during the term of this Agreement.
16. Should Imperial become aware of water quality concerns, such as water sample analytical results from the program that are above the Ontario Drinking Water Quality Standards

(ODWQS), during the term of the program, Imperial agrees to provide the County with written notification of said results within 7 calendar days of finding adverse results.

17. Service of all written notice may be made by delivering it to Imperial personally, or by mailing it, post-paid and registered, to the last addresses of Authority shown below, and in the case of service by registered letter shall be deemed to have been received on the second day following its mailing.

To Imperial:

Imperial Associates Ltd.
110 Hannover Drive, Building A, Suite 203
St. Catharines, ON L2W 1A4

To the County:

Haldimand County
Manager, Legal & Support Services
53 Thorburn Street South
Cayuga, ON N0A 1E0

18. The County and Imperial agree that the provisions of Schedule 'B' to this Agreement form a part of this Agreement as if fully incorporated herein.
19. The employees and representatives, if any, of the Parties shall at all times comply with all applicable federal, provincial and municipal laws, ordinances, statutes, rules, regulations and orders, and all by-laws of all relevant local authorities.
20. This Agreement shall enure to the benefit of and be binding upon all heirs, executors, administrators, successors and assigns of the Parties hereto respectively.

IN WITNESS WHEREOF the parties have duly caused this Agreement to be executed.

THE CORPORATION OF HALDIMAND COUNTY

MAYOR – Ken Hewitt

CLERK – Evelyn Eichenbaum

IMPERIAL OIL LIMITED

I/We have the authority to bind the Corporation.

SCHEDULE A – “LANDS”





SCHEDULE B – “WORKS”

- Obtaining public and private locates of the expected borehole locations
- Borehole drilling of two locations (Monitoring Well 1 and Monitoring Well 2) using an M75 track-mounted drill rig or equivalent model of drill rig. All locations to be completed as observation wells (construct details below).
- Traffic control subcontractors will be present during drilling activities as heavy equipment will encroach on the eastbound lane of traffic.
- Environmental soil samples will be collected from the overburden material during drilling.
- Observation wells will be monitored and developed prior to the collection of groundwater samples. Monitoring wells will have top of casing and ground elevations calculated by a surveyor.

The well construction details are provided below:

The observation wells will be constructed of 50 millimetre diameter, Schedule 40 polyvinyl chloride screen and solid riser. The screen will be 10-feet in length. All well completion zones will consist of 0.010 inch slot screens with 10/20 silica sand placed around the screen to a level of approximately 0.3 m below the screen and 0.6 m above the top of the screen. Well annuli above the sand pack will be sealed with hydrated bentonite chips. All observation wells will be completed with lockable flushmount steel casings set in concrete.