

THIS MEMORANDUM OF UNDERSTANDING made this 10 day of Aug, 2020

BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF LAMBTON SHORES
(Hereinafter referred to as "Lambton Shores")

OF THE FIRST PART

- and -

THE CORPORATION OF THE MUNICIPALITY OF SOUTH HURON
(Hereinafter referred to as "South Huron")

OF THE SECOND PART

WHEREAS Lambton Shores, South Huron and The Corporation of the Municipality of Bluewater ("Bluewater") entered into an agreement dated March, 2014 (the "Joint Agreement for the Grand Bend Sewage Treatment Facility") for the construction of a wastewater treatment facility and other shared assets including the collection system which included a trunk sanitary sewer;

AND WHEREAS Lambton Shores and South Huron recognize the mutual benefit to their respective communities of working together to construct a jointly owned trunk sanitary sewer on Ontario Street and Municipal Drive to replace the existing Lambton Shores sanitary sewer that will facilitate existing and future flows from Lambton Shores and South Huron;

AND WHEREAS Lambton Shores was successful in obtaining connecting link funding from the Province of Ontario to reconstruct Ontario Street from Main Street to the north limit of Lambton Shores on Ontario Street;

AND WHEREAS Lambton Shores and South Huron recognize the mutual benefit to their respective communities to construct a jointly owned trunk sanitary as part of this connecting link project;

AND WHEREAS Lambton Shores and South Huron agree that the Joint Agreement for the Grand Bend Sewage Treatment Facility should be amended at the completion of the trunk sanitary sewer installation to add the section of trunk sanitary sewer on Ontario Street and Municipal Drive as a jointly owned asset to be administered by the Grand Bend Area Sewage Treatment Plant Board under the said agreement;

BE IT HEREBY RESOLVED that the following mutual understandings of this Memorandum of Understanding be confirmed:

1. South Huron and Lambton Shores hereby agree to share in the capital costs of the trunk sanitary sewer on a flow proportional basis for each municipality's share of the total design capacity of the sewer as determined by GM BluePlan (the "Cost Sharing Estimate"). Attached to this Memorandum as Schedule 1 is a copy of the Cost Sharing Estimate calculations.
2. South Huron agrees that Lambton Shores' contribution shall be reduced by the total amount of the remaining useful life of the existing sanitary sewer as determined by GMBLuePlan Engineers based on the date of construction of trunk sanitary sewer and the useful life of this asset as per Lambton Shores Asset Management Plan.
3. The parties agree to proceed with the construction of a jointly owned trunk sewer on Ontario Street and Municipal Drive to replace the existing Lambton Shores sanitary sewer and facilitate future flows from Lambton Shores and South Huron (the "Project"). Lambton Shores shall be the project lead and be responsible to complete the engineering, update approvals, prepare tender documents, tender and award a contract, project manage and administer the contract for the Project.
4. South Huron and Lambton Shores agree that all engineering, construction and project costs shall be initially paid by Lambton Shores. Lambton Shores agrees to invoice South Huron for South Huron's share of costs on a monthly basis and South Huron agrees to pay all invoices from Lambton Shores within thirty (30) days in the amounts contemplated herein.
5. South Huron and Lambton Shores acknowledge that the engineers' cost estimate for the Project dated April 1, 2020 and attached hereto as Schedule 1 including engineering, is a total of \$4,500,178.84 South Huron's share of the Project's estimated costs is \$1,641,379.84 and Lambton Shores' share of the estimated costs is \$2,858,799.00 (the "Engineers Estimates").
6. South Huron and Lambton Shores agree that the Project shall be defined by the following sections and the cost sharing shall apply based on Schedule 1:
 - a. Section 1 - Bluewater Highway from MH.A1 to MH.A4
 - b. Section 2 - Ontario Street from MH.A4 to MH.A9

c. Section 3 - Municipal Drive from MH.A9 to PS-2

7. South Huron and Lambton Shores agree that the construction schedule is dependant on a number of factors and that Lambton Shores will work diligently to complete the Project in a timely manner and well prior to November 21, 2021. Once the all of the Projects have been tendered and awarded Lambton Shores will provide a schedule to South Huron with the expected start and completion dates. The parties acknowledge that this schedule shall be an estimate using the best information available at the time and the failure to complete the project within that time frame shall not constitute a breach of this Memorandum of Understanding, and no damages will arise from same, provided the parties have used commercially reasonable efforts to complete the Project in a timely manner.
8. South Huron and Lambton Shores agree that Lambton Shores is hereby authorized to award a contract to the low qualified bidder if the total tendered price (excluding HST) is not greater than 15% higher than the Engineers Estimates, failing which Lambton Shores shall not award the contract for the Project without the prior written consent from South Huron.
9. If the bids for the Project are greater than 15% above the Engineer's estimates as contemplated in Section 8, Lambton Shores shall be free to conduct the road work on Ontario Street as per its funding and grant commitments and there shall be no damages arising from this work. Nothing in this Memorandum of Understanding shall be construed as an agreement by Lambton Shores to delay its road work in the event the bids are greater than 15% above the Engineer's estimates.
10. The capacity allocated to each party shall be based on the Sanitary Drainage Area Plan attached as Schedule 2. For clarity, the capacity allocated to South Huron shall be based on the areas and flows identified on the Plan originating from South Huron, the remaining available capacity shall be allocated to Lambton Shores to service both existing and future redevelopment within Lambton Shores.
11. The parties acknowledge that the operating costs of the Project following its completion will be based on the capacity allocation of the resulting trunk sewer.
12. After the Project has been completed, Lambton Shores and South Huron shall make reasonable commercial efforts to amend the Joint Agreement for the Grand Bend Sewage Treatment Facility to deem the trunk sanitary sewer system that is part of the Project as part of the System as defined in

the Joint Agreement for the Grand Bend Sewage Treatment Facility. The parties acknowledge that they require Bluewater's agreement to amend the Joint Agreement for the Grand Bend Sewage Treatment Facility. In the event that Bluewater does not execute any amendment to the said agreement, the parties shall enter into a separate agreement between Lambton Shores and South Huron to allocate the operating costs and other related costs pertaining to the Project in the same manner that such costs are allocated under the Joint Agreement for the Grand Bend Sewage Treatment Facility based on the capacity allocation.

13. Each of the parties hereto covenants and agrees to execute such further documents and to do such further acts and things as may be reasonably necessary to give full force and effect to the provisions hereof.
14. If a court of competent jurisdiction should determine that any provision of this agreement is void or unenforceable, such provision shall be deemed to be severable and such determination shall not affect the validity or enforceability of any other provision of this agreement.
15. This Memorandum of Understanding shall be binding upon Lambton Shores and South Huron and their successors and assigns.

IN WITNESS WHEREOF the Parties have hereto affixed their corporate seals
attested by the hands of their duly authorized officers.

THE CORPORATION OF THE MUNICIPALITY
OF LAMBTON SHORES


By:

Mayor



(seal)

Clerk



I have authority to bind the Corporation.

THE CORPORATION OF THE MUNICIPALITY
OF SOUTH HURON

By:

Mayor



(seal)

Clerk



I have authority to bind the Corporation.

8767399.1

SCHEDULE 1

GRAND BEND AREA TRUNK SANITARY SEWER COST-SHARING BREAKDOWN - ONTARIO STREET AND MUNICIPAL DRIVE GMBP File No. 519025			
	TOTAL ESTIMATE	PROPOSED COST-SHARING	
		MUNICIPALITY OF SOUTH HURON	MUNICIPALITY OF LAMBTON SHORES
SUBTOTAL ONTARIO STREET	\$3,311,275.00	\$821,058.01	\$2,490,216.99
SUBTOTAL MUNICIPAL DRIVE	\$1,015,260.56	\$723,643.08	\$291,617.48
SUBTOTAL	\$4,326,535.56	\$1,544,701.09	\$2,781,834.47
ENGINEERING DESIGN (2020)	\$31,700.00	\$22,594.68	\$9,105.32
ENGINEERING CONTRACT ADMINISTRATION	\$64,110.00	\$45,695.42	\$18,414.58
SUBTOTAL INCLUDING ENGINEERING	\$4,422,345.56	\$1,612,991.19	\$2,809,354.37
NON-RECOVERABLE HST	\$77,833.28	\$28,388.64	\$49,444.64
SUBTOTAL INCLUDING ENGINEERING	\$4,500,178.84	\$1,641,379.84	\$2,858,799.00

SCHEDULE 2

- A) Grand Bend Sanitary Trunk Sewer - Drainage Area Plan (capacity allocations by equivalent population) – dated 02/26/2020
- B) Grand Bend Sanitary Trunk Sewer - Drainage Area Plan (capacity allocations by peak residential flows in l/sec) – dated 02/26/2020