

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2014-104

**By-law authorizing the execution of a Joint Use Agreement between the Corporation of the Town of Amherstburg and Heaton Sanitation**

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**WHEREAS** the Municipal Act, S.O. 2001, c. 25, authorizes Council to enter into agreements;

**AND WHEREAS** Heaton Sanitation has requested that the Corporation of the Town of Amherstburg enter into a Joint Use Agreement for the use of a portion of the McGregor Lagoon property as a hydro excavation material disposal and reclamation site;

**AND WHEREAS** the specifics of such Joint Use Agreement have been negotiated and are set out in the Joint Use Agreement attached to and forming part of this bylaw;

**NOW THEREFORE** the Council of the Corporation of the Town of Amherstburg enacts as follows:

1. THAT the Mayor and Clerk be authorized to sign the contract on behalf of the Corporation of the Town of Amherstburg;
2. THAT this By-law shall come into force and take effect immediately upon the final passing thereof.

Read a first, second and third time and finally passed this 3<sup>rd</sup> day of October, 2014.

  
MAYOR - WAYNE HURST

  
CLERK - PAULA PARKER

THIS JOINT USE AGREEMENT made in duplicate this 3<sup>rd</sup> day of October, 2014,

BETWEEN:

**THE CORPORATION OF THE TOWN OF AMHERSBURG**  
Of the Town of Amherstburg and Province of Ontario,  
hereinafter called the "Town"

OF THE FIRST PART

-and-

**HEATON SANITATION**  
Of the Town of Amherstburg and Province of Ontario,  
hereinafter called "Heaton's"

OF THE SECOND PART

**WHEREAS** the Town is the current registered and beneficial owner of the property known as part of Lot 5 and 6, Concession 8, Anderdon and being Part 1 on Reference Plan 12R-2903 in the Town of Amherstburg and County of Essex (the Town's Property, also known as 9420 Walker Road, the McGregor Lagoons);

**AND WHEREAS** Heaton's has requested to the Town joint use of the part of Town's property to Heaton's and the Town grant permission to the use of the Town's Property as a hydro excavation material disposal and reclamation site as required by Heaton's;

**AND WHEREAS** the Town has resolved to grant such permission to Heaton's subject to the terms, covenants and conditions of this Agreement;

**WITNESSETH** that in consideration of the premises and the mutual covenants and agreements contained herein, the parties hereto hereby agree with each other as follows:

#### **ARTICLE I GRANT AND TERM**

##### **SECTION 1.01 – JOINTLY USED PREMISES**

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of Heaton's to be paid, observed and performed, the Town jointly agrees for Heaton's to utilize a portion of the Town's Property known as Part of Lot 5 and 6, Concession 8, Anderdon and being part 1 on Reference Plan 12R-2903 in the Town of Amherstburg and County of Essex, also known as 9420 Walker Road, the McGregor Lagoons which portion is outlined in yellow and is more particularly set out in Schedule "A" attached hereto and forming a part of this Agreement (hereinafter the Demised Premises).

The Town hereby grants permission to Heaton's and Heaton's shall have the right:

- (a) to install, erect, operate and maintain at its own expense all laneways, access points and all other features associated with the use of the Demised Premises as a hydro excavation material disposal and reclamation site; and,

##### **SECTION 1.02 – TERM OF AGREEMENT**

TO HAVE AND TO HOLD the Demised Premises for and during the term of twelve (12) months to be computed from the 1<sup>st</sup> of October, 2014 (herein called the "Agreement Commencement Date") and fully to be completed and ended on the 30<sup>th</sup> day of September, 2015 save as hereinafter provided for earlier termination and any right of renewal. The expression "term" as used herein means the term hereby demised and any renewal or extension thereof.

Notwithstanding any term as set out herein the Town shall have the option, in its sole and unfettered discretion to amend the Agreement Commencement Date to any other date.

**ARTICLE II  
RENT AND MAINTENANCE**

**SECTION 2.01 – FIXED MINIMUM RENT**

Heaton's covenants and agrees to pay unto the Town from and after the Agreement Commencement Date a fixed minimum rent in the sum of Two Thousand Dollars (\$2,000.00) per month, plus Harmonized Sales Taxes, if applicable, for the Demised Premises payable in monthly installments. In the event that the Agreement Commencement Date or the term of the Agreement have been amended pursuant to Section 1.02 of this Agreement, the rental payment dates hereunder shall be amended accordingly and the payments shall be prorated appropriately and made on the corresponding new Agreement Commencement Date and each month period thereafter.

**SECTION 2.02 – HEATON'S TO BEAR EXPENSES OF MAINTENANCE**

Heaton's shall not be responsible for the payment of any other costs associated with annual general maintenance and upkeep of the Demised Premises with the exception of any costs associated with the use of the Demised Premises by Heaton's or its agents, employees or authorized personnel.

All of these additional costs and expenses to be borne by Heaton's shall constitute additional rent for the Demised Premises whether or not the same be designated "additional rent" and Heaton's covenants to pay such additional rent.

**ARTICLE III  
USE OF PREMISES BY HEATON'S**

**SECTION 3.01 – USE OF PREMISES**

The Demised Premises shall be used solely for the purposes of a hydro excavation material disposal and reclamation site and for no other use whatsoever without the consent of the Town. Heaton's shall not use or permit the use of the Demised Premises for any other business or purpose other than as hereinbefore provided in this Section. Heaton's shall satisfy itself that its use of the Demised Premises shall conform with the requirements of the appropriate municipal or regulatory authority.

**SECTION 3.02 – RIGHT OF USE**

Heaton's has the right of use as a licensee and not a lessee or tenant. Further by virtue of this agreement there is no relationship with the Town such as an agent or contractor other than a licensee.

**ARTICLE IV  
SIGNS, FIXTURE, ALTERATIONS**

**SECTION 4.01 – INSTALLATION BY HEATON'S**

Heaton's, with the exception of any alterations of the Demised Premises required for its use in accordance with Sections 1.01 and 3.01, shall not make or cause to be made any alterations, additions or improvements or install or cause to be installed any fixtures, signs, lighting, or make any changes to the Demised Premises without first obtaining the Town's written approval and consent, which consent shall not be unreasonably withheld. Heaton's shall present to the Town plans and specifications in form, content and such detail as the Town may reasonably require for such work at the time approval is sought.

Heaton's covenants that any work that may be done in respect of the Demised Premises by or on behalf of Heaton's shall not conflict or interfere with any work being done or about to be done by the Town in or about the Demised Premises, whether such conflict or interference shall arise in relation to labour unions or otherwise and Heaton's shall obtain all requisite permits, licenses and inspections in respect of any such work done by or on Heaton's behalf.

At the end of this Agreement or any renewal thereof, Heaton's shall at its own expense immediately remove any fixture, sign, lighting or change to the Demised Premises as directed by the Town, and shall restore the Demised Premises to its original condition.

**ARTICLE V  
INSURANCE AND INDEMNITY**

**SECTION 5.01 – LIABILITY INSURANCE**

Heaton's shall, during the entire term hereof, keep in full force and effect a policy of public liability and property damage insurance with companies qualified to do business in the Province of Ontario with respect to the Demised Premises, in which the limit of public liability shall not be less than TWO

MILLION (\$2,000,000) DOLLARS and in which the property damage liability shall not be less than TWO MILLION (\$2,000,000) DOLLARS.

#### **SECTION 5.02 – POLICIES**

All policies of insurance shall be in a company or companies authorized to do business in the Province of Ontario and upon terms and conditions satisfactory to the Town. The Town and Heaton's shall be named as the insured in all policies purchased by Heaton's and the interest of all mortgagees shall be noted therein. Heaton's shall deliver to the Town certificates of all policies which shall contain a clause requiring the insurer to give the Town and mortgagees fifteen (15) days written notice of cancellation of such policies.

#### **SECTION 5.03 – INDEMNIFICATION OF THE TOWN**

Heaton's will indemnify the Town and save it harmless from and against any and all claims, actions, damages, liabilities and expenses in connection with loss of life, personal injury and/or damage to the property arising from or out of any occurrence in, upon or at the Demised Premises, the occupancy or use by Heaton's of the Demised Premises or any part thereof, or occasioned wholly or in part by any act or omission of Heaton's, its agents, contractors, employees, servants, licensees or invitees. In case the Town shall, without fault on its part, be made a party to any litigation commenced by or against Heaton's, then Heaton's shall protect and hold the Town harmless and shall pay all reasonable costs, expenses and solicitors and counsel fees on a solicitor and his own client basis incurred or paid by the Town in connection with such litigation.

### **ARTICLE VI**

#### **ACKNOWLEDGEMENT OF USE, ATTORNMENT, SUBORDINATION**

##### **SECTION 6.01 – ACKNOWLEDGEMENT OF USE**

Heaton's agrees to execute and deliver, within seven (7) calendar days of the request of the Town, a certificate and acknowledgement setting out.

- (a) that the Agreement is in full force and effect and that Heaton's is using the Demised Premises;
- (b) that the Agreement is unamended, or if amended, the particulars of such amendment;
- (c) that the Town is not in default, or if in default, the nature of such default;
- (d) that the Demised Premises are completed and are in good condition and repair, or such other information relating to the premises as the Town may request;
- (e) such other matters as the Town may reasonably require.

##### **SECTION 6.02 – SUBORDINATION AND ATTORNMENT**

It is a condition of this Agreement and Heaton's rights granted hereunder that this Agreement and all of the rights of Heaton's hereunder and under the Agreement are subordinate to any and all mortgages, or other instruments of financing, refinancing or collateral financing, from time to time in existence against the Demised Premises. Upon request, Heaton's will subordinate this Agreement and all of its rights hereunder and under the Agreement in such form as the Town requires to any and all mortgages, or other instruments of financing, refinancing, or collateral financing, as aforesaid, and will, if requested attorn to the holder thereof or to the registered owners of the Demised Premises, as the case may be. Provided always that so long as Heaton's performs its covenants, its tenure as provided herein will be honoured by any mortgagee or like company referred to herein.

### **ARTICLE VII**

#### **ASSIGNMENT AND SUBLETTING**

##### **SECTION 7.01 – CONSENT REQUIRED**

Heaton's shall not have the right to assign or transfer or otherwise encumber the Agreement to another person, firm, or corporation or sub-let the whole or any part of the Demised Premises without first obtaining the Town's consent thereto, such consent shall not be arbitrarily withheld. It is further agreed notwithstanding any assignment or subletting that Heaton's named herein shall remain liable for all obligations under the Agreement. Without limiting the generality of the foregoing, no assignment or sublet shall be effective and no consent shall be given unless the following provisions have been complied with:

- (i) There is not existing any default hereunder on the part of the Heaton's;



- (ii) The assignee or sub-let has assumed in writing with the Town the due and punctual performance and observance of all the agreements, provisions, covenants and conditions hereof on Heaton's part to be performed or observed from and after the execution and delivery of such assignments.

In the event that Heaton's assigns this Agreement or sublets as aforesaid without the prior written consent of the Town, the Town may in its sole discretion terminate this Agreement forthwith without notice. The consent by the Town to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. This prohibition against any assignment or subletting shall apply to subletting or assignment by operation of laws. Notwithstanding any assignment or sublet, Heaton's shall remain fully liable on this Agreement and shall not be released from performing any of the terms, covenants and conditions of this Agreement.

**ARTICLE VIII  
WASTE, GOVERNMENTAL REGULATION**

**SECTION 8.01 – WASTE OR NUISANCE**

Heaton's shall not commit or suffer to be committed any waste upon the Demised Premises or do or suffer any act or thing which may result in a nuisance to any other party.

**ARTICLE IX  
DESTRUCTION OF DEMISED PREMISES**

**SECTION 9.01 – TOTAL OR PARTIAL DESTRUCTION OF THE DEMISED PREMISES**

Provided and it is hereby expressly agreed that if during the term, the Demised Premises are totally or partially destroyed or damaged by fire or the elements, explosion, riot, impact by aircraft or vehicles, malicious damage, acts of God or the Queen's enemies or other perils Heaton's may at its option terminate this Agreement by notice in writing to the Town given within thirty (30) days of the date of such destruction or damage and in the event of such notice being so given this Agreement shall cease and become null and void from the date of such destruction or damage and Heaton's shall immediately vacate the Demised Premises, but if within the said period of thirty (30) days Heaton's shall have not given notice terminating this Agreement as aforesaid or if within the said period of thirty (30) days or upon the Town and Heaton's having agreed as aforesaid, whichever shall be the sooner, Heaton's shall with reasonable promptitude proceed to repair or restore the Demised Premises to the condition required for the continued use of the Demised Premises by Heaton's. Notwithstanding that Heaton's may commence the repair or restoration of the Demised Premises, Heaton's shall not be required to repair or restore any buildings or appurtenances on the Demised Premises that are the property of the Town.

**ARTICLE X  
DEFAULT OF HEATON'S**

**SECTION 10.01 – RIGHT TO TERMINATE AGREEMENT**

Provisions for termination of this agreement for non-payment to the Town of rent for fifteen (15) days after the same is due or non-performance of covenants.

**SECTION 10.02 – CONTAMINATED MATERIALS**

Hydro excavation materials generally consist of wet topsoil, clay and granular materials. These materials should exclude any and all hazardous or contaminated waste. Shall any hazardous or contaminated waste be found on site Heaton's shall immediately remediate the area. Any violation shall constitute cause for immediate termination of this agreement.

**SECTION 10.03 – INTERFERENCE OF TOWN'S OPERATIONS**

Any interference with the Town's use that is not remedied within fifteen (15) days of written notice shall be cause for immediate termination of this agreement.

**ARTICE XI  
ACCESS BY THE TOWN**

**SECTION 11.01 – RIGHT OF ENTRY**

(a) The Town and any person authorized by the Town shall have the right to use, install, maintain and/or repair pipes, wires, ducts or other installations in, under or through the Demised Premises for or in connection with the supply of any services to the Demised Premises;

(b) When necessary by reason of accident or other cause or in order to make any repairs, alterations or improvements to the Demised Premises, the Town may cause such reasonable and temporary obstruction of access laneways or common areas as may be necessary and may interrupt or suspend the supply to the Demised Premises of electricity, water and other services where necessary and until said repairs, alterations, improvements and additions shall have been completed. There shall be no abatement in rent because of any such repairs, alterations, improvements or additions if such repairs are made with reasonable dispatch;

(c) The Town or its agents shall have the right to enter upon the Demised Premises at all reasonable times to view the state of repair, condition and use thereof and to make such alterations as it may deem advisable and the Town or its agents shall be allowed to take all material into and upon the Demised Premises that may be required therefore without the same constituting any eviction of Heaton's. The rent hereunder shall in no way abate while such repairs, alterations, improvements or additions are being made by reason of loss or interruption of the operations of Heaton's because of the execution of any such work;

(d) The Town shall not be liable to Heaton's for any interference or inconvenience cause by any additional construction or repairs permitted hereunder, provided such additional construction or repairs are carried out as expeditiously as is reasonably possible;

(e) Nothing in this Section contained however, shall be deemed or construed to impose upon the Town any obligations, responsibility or liability whatsoever, for the care, maintenance or repair of the Demised Premises or any part thereof, except as otherwise in this Lease specifically provided.

## **ARTICLE XII THE TOWNS PROPERTY AND OPERATIONS**

### **SECTION 12.01 – TAXES ON DEMISED PREMISES**

The Town shall be responsible for and shall pay all municipal, county, provincial or federal taxes assessed during the term of this Agreement.

### **SECTION 12.02 – LOSS AND DAMAGE**

The Town shall not be liable for any loss, injury or damage from any cause whatsoever to Heaton's or to other persons or property wheresoever situate except where the Town is responsible. Without limiting the generality of the foregoing, the Town shall not be liable for any such damage caused by anything done or omitted to be done by other persons on the Demised Premises, occupants of adjacent property, or the public, or caused by operations in construction of any private public or quasi-public work.

### **SECTION 12.03 – NOTICE BE HEATON'S**

Heaton's shall give immediate notice to the Town in case of fire or accidents on the Demised Premises or of defects therein or in any fixtures or equipment thereon.

## **ARTICLE XIII HOLDING OVER AND SUCCESSORS**

### **SECTION 13.01 – HOLDING OVER**

In the event that Heaton's remains in possession of the Demised Premises after the end of the term hereof and without the execution and delivery of a notice of renewal if granted hereunder if a right of renewal is granted, there shall be not tacit renewal of this Agreement and the term hereby granted and Heaton's shall be deemed to be occupying the Demised Premises from month to month, and otherwise upon the same terms and conditions as are set forth in this Agreement monthly at the same rental as was paid in the last year of the term, so far as applicable.

### **SECTION 13.02 – SUCCESSORS**

All rights and liabilities herein given to or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors and assigns of the said parties; and if Heaton's is more than one person, they shall all be bound jointly and severally by the term, covenants and agreements herein. Subject to Paragraph 8.01 herein, Heaton's shall not assign or otherwise transfer this Agreement and all rights hereunder shall not endure to the benefit of any assignee or successor of Heaton's. This Agreement shall endure to the benefit of Heaton's successors and assigns. If the Demised Premises are sold, then the Town shall be released at the time of completion of such sale from all of its covenants and obligations set out in this Agreement. If the Town makes a bona fide sale or otherwise disposes of the Demised Premises to a third party at any time during the term of the Agreement, such sale or disposition shall expressly provide that the purchaser,

from the Town, shall enter into and assume all of the rights, covenants and obligations of the Town as set out in this Agreement, and shall be bound by all of the remaining terms and provisions herein for the remainder of the term.

**ARTICLE XIV  
MISCELLANEOUS**

**SECTION 14.01 – WAIVER**

Failure by the Town to require performance of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or of any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by the Town shall not be deemed to be a waiver of any preceding breach by Heaton's of any term, covenant or condition of this Agreement, other than the failure of Heaton's to pay the particular rent so accepted, regardless of the Town's knowledge of such preceding breach at the time of acceptance of such rent. No covenant, term or condition of this Agreement shall be deemed to have been waived by the Town, unless such waiver be in writing by the Town.

**SECTION 14.02 – ENTIRE AGREEMENT**

This Agreement and the Schedules if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between the Town and Heaton's concerning the Demised Premises and there are no covenants, promises, agreements, conditions or representations, either oral or written, between them other than are herein and in the said Schedules, if any, set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Town or Heaton's unless reduced to writing and signed by them.

**SECTION 14.03 - FORCE MAJEURE**

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labour, troubles, inability to procure materials, failure of power, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Notwithstanding anything herein contained, the provisions of fixed minimum rent, additional rent or any other payments required by the terms of this Agreement, nor entitled Heaton's to compensation for any inconvenience, nuisance or discomfort thereby occasioned.

**SECTION 14.04 – NOTICES**

All notices or other documents required which may be given under this Agreement shall be in writing duly signed by the party giving such notice and transmitted by registered or certified mail, telegraph telex addressed as follows:

TO TOWN:                   Town of Amherstburg  
271 Sandwich Street South  
Amherstburg, ON N9V 2A5  
Telephone: 519-736-0012  
Facsimile: 519-736-5403  
Attention: Paula Parker, Clerk  
Email: [pparker@amherstburg.ca](mailto:pparker@amherstburg.ca)

TO HEATON'S:           Heaton Sanitation  
6930 Concession 6 North  
Amherstburg, ON N9V 2Y9  
Attention: Don Kennedy

Any notice or document so given shall be deemed to have been received on the third business day following the date of mailing if sent by registered mail or certified mail, but shall be deemed to have been received on the next business day if transmitted by Telex or Telegram. Any party may from time to time by notice given as provided above, change its address for the purpose of this clause.

**SECTION 14.05 – PLACE FOR PAYMENT OF RENT**

Heaton's shall pay the rent, including all additional rent and all other payments that may be required, at the office of the Town specified in Section 15.04 hereof or to such manager at such place or places as the Town may designate from time to time by notice in writing.



**SECTION 14.06 – REGISTRATION**

Heaton’s shall not register this Agreement without the written consent of the Town. However, upon the request of either party hereto, the other party shall join in the execution of a memorandum or so called “short term” of this Agreement for the purpose of registration. Said memorandum or short form shall describe parties, the Demised Premises and the terms of this Agreement and shall be prepared and registered at the expense of the Heaton’s.

**SECTION 14.07 – GOVERNING LAW**

This Agreement is to be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

**SECTION 14.08 - CAPTIONS AND SECTION NUMBERS**

The index, captions, section numbers, and article numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles of this Agreement, nor in any way affect this Agreement.

**SECTION 14.09 – TOWN TO INCLUDE REPRESENTATIVES**

Wherever the word “Town” is used in the present Agreement, it shall be deemed to include the Town and its duly authorized representatives.

**SECTION 14.10 – PARTIAL INVALIDITY**

If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement and/or the application of such term covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

**SECTION 14.11 – NOT OPTION**

The submission of this Agreement for examination does not constitute a reservation of or option for the Demised Premises and this Agreement becomes effective as a Agreement only upon execution and delivery thereof by the Town and Heaton’s.

**SECTION 14.12 – THE PLANNING ACT**

This Agreement is entered into subject to the condition that it is to be effective only on obtaining the consent required under the Planning Act, R.S.O. 1980, c. 379 as amended, if such consent is required, it shall be obtained by the Town at the expense of Heaton’s and until such consent is obtained and term hereof, including options, if any, shall be read as not exceeding twenty one (21) years less one day and in the event such consent is not obtained, the term hereof, including options, if any, shall not exceed twenty one (21) years less one day.

**SECTION 14.13 – TIME OF ESSENCE**

Time shall be of the essence of this Agreement and every part thereof.

**IN WITNESS WHEREOF**, the Town and Heaton’s have signed and sealed this Agreement as of the day and year first above written.

**SIGNED, SEALED AND DELIVERED**

In the presence of

) THE CORPORATION OF THE  
 ) TOWN OF AMHERSTBURG  
 ) Per:   
 ) Name: Wayne Hurst  
 ) Title: Mayor  
 ) Authorized signing officer  
 Per:   
 ) Name: Paula Parker  
 ) Title: Clerk  
 ) Authorized signing officer

) HEATON SANITATION  
 ) Per:   
 ) Name: Don Kennedy  
 ) Title: Manager  
 ) Authorized signing officer