

OGDENSBURG CITY SCHOOL DISTRICT  
OGDENSBURG, NEW YORK

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**SUBJECT:** Resolution to Approve Memorandum of Agreement with the Ogdensburg Bridge and Port Authority for a Non-Exclusive Easement (for municipal purposes)

**DATE:** May 7, 2018

**REASON FOR BOARD CONSIDERATION:**

The Board of Education must accept or reject all contractual agreements.

**FACTS AND ANALYSIS:**

The Ogdensburg Bridge and Port Authority is requesting an non-exclusive easement to sustain its municipal airport operations and is in need of a 20 foot wide easement to install and maintain a sewer force main connecting the airport to the City of Ogdensburg's municipal sewer system; the District has ample and unneeded real property to accommodate the Easement; therefore the following is recommended:

**RECOMMENDED ACTION:**

Moved by \_\_\_\_\_ and supported by \_\_\_\_\_ that, having the recommendation of the Superintendent of Schools, the Board of Education of the Ogdensburg City School District does hereby approve the attached Memorandum of Agreement with the Ogdensburg Bridge & Port Authority for a non-exclusive easement for a sewer force main in favor of the Ogdensburg Bridge & Port Authority across school district property in accordance with the attached Board of Education Resolution, as submitted this 7<sup>th</sup> day of May, 2018.

**APPROVED FOR PRESENTATION TO THE BOARD:**

  
Superintendent

TMV/alf  
Attachment

**RESOLUTION OF THE BOARD OF EDUCATION OF THE  
OGDENSBURG CITY SCHOOL DISTRICT**

Whereas, the Ogdensburg Bridge and Port Authority (OBPA) is the operator of an international municipal airport in proximity to the Ogdensburg City School District (District);

Whereas, to sustain its municipal airport operations OBPA is in need of a 20 foot wide easement to install and maintain a sewer force main connecting the airport to the City of Ogdensburg's municipal sewer system (Easement);

Whereas, the District has ample and unneeded real property to accommodate the Easement;

It is therefore, resolved that the Board of Education approves a nonexclusive easement for a sewer force main in favor of the OBPA across school district property described as follows:

Beginning at a point in the assumed easterly bounds of New York State Route 812, this point being South 85 degrees 38 minutes 53 seconds East a distance of 39.17 feet from the intersection of the center line of Fine Street with the centerline of New York State Route 812, and proceeding on a New York State Grid bearing the following courses;

Thence through lands now or formerly Board of Education Ogdensburg City School District (Reputed Owner) the following seven courses:

- 1) thence **South 68 degrees 32 minutes 26 seconds East** a distance of **88.82 feet** to a point;
- 2) thence **South 58 degrees 26 minutes 04 seconds East** a distance of **97.84 feet** to a point;
- 3) thence **South 72 degrees 15 minutes 35 seconds East** a distance of **126.03 feet** to a point;
- 4) thence **North 60 degrees 42 minutes 10 seconds East** parallel to and distant 20 feet from the southerly boundary of lands said Ogdensburg City School District and northerly bounds of New York State Route 37 a distance of **551.96 feet** to a point;
- 5) thence **North 55 degrees 02 minutes 24 seconds East** a distance of **84.02 feet** to a point;
- 6) thence **North 60 degrees 41 minutes 50 seconds East** a distance of **370.02 feet** to a point;
- 7) thence **South 30 degrees 11 minutes 07 seconds East** a distance of **26.79 feet** to a point in the southerly boundary of lands said Ogdensburg City School District and northerly bounds of New York State Route 37, this point being South 57 degrees 48 minutes 48 seconds West a distance of 166.98 feet from a concrete highway monument found in the northerly bounds of New York State Route 37;

Thence **South 59 degrees 05 minutes 26 seconds West** along the southerly boundary of lands said Ogdensburg City School District and northerly bounds of New York State Route 37 a distance of **20.00 feet** to a point;

Thence through lands now or formerly Ogdensburg City School District the following three courses:

- 1) thence **North 30 degrees 11 minutes 07 seconds West** a distance of **7.35 feet** to a point;
- 2) thence **South 60 degrees 41 minutes 50 seconds West** a distance of **349.34 feet** to a point;
- 3) thence **South 55 degrees 02 minutes 24 seconds West** a distance of **84.02 feet** to a point;

Thence **South 60 degrees 42 minutes 10 seconds West** along the southerly boundary of lands said Ogdensburg City School District and northerly bounds of New York State Route 37 a distance of **561.65 feet** to a point;

Thence through lands now or formerly Ogdensburg City School District the following three courses:

- 1) thence **North 72 degrees 15 minutes 35 seconds West** a distance of **137.16 feet** to a point, at a distance of 33.43 feet this course passes through a concrete highway monument found at a corner in the state highway bounds;
- 2) thence **North 58 degrees 26 minutes 04 seconds West** a distance of **98.50 feet** to a point;
- 3) thence **North 68 degrees 32 minutes 26 seconds West** a distance of **63.54 feet** to a point in the assumed easterly bounds of New York State Route 812, this point being North 28 degrees 47 minutes 51 seconds West a distance of 209.5 feet more or less from the southwesterly corner of lands of Ogdensburg City School District;

Thence **North 28 degrees 09 minutes 15 seconds West** along the easterly bounds of New York State Route 812 a distance of **30.87 feet** to the Point of Beginning.

The Easement shall be in the form and content of the Easement Agreement attached to this resolution as prepared by the School District's Attorney.

OBPA shall not be required to pay the District any compensation for the Easement as the OBPA is a municipal entity and the purpose of the easement is to further the municipal operations of the OBPA and its international airport.

The District, through its consulting engineers, has determined that the area subject to the easement is sufficiently limited so as not to impair to any extent District operations and the area subject to the easement is not needed for District operations.

## EASEMENT AGREEMENT

THIS AGREEMENT, made the 4<sup>th</sup> day of May, 2018, by and between the **Ogdensburg Bridge and Port Authority**, with its principal office and place of business at 1 Bridge Plaza, Ogdensburg, New York 13669, hereinafter called "**Grantee**" and the **Ogdensburg City School District and the Board of Education of the Ogdensburg City School District**, Ogdensburg, New York 13669, hereinafter collectively called "**Grantor**",

### WITNESSETH:

**SUBJECT** to such terms and conditions hereinafter set forth in this Agreement, **Grantor** does hereby convey to **Grantee**, without covenant or warranty of any kind, express or implied, an non-exclusive easement to install and maintain a sanitary sewer force main ("Facilities") in furtherance of the municipal purposes of the Grantee at the Ogdensburg International Airport, upon a parcel of land owned by the Grantor located in the Town of Oswegatchie, off of NYS Route 37. The specific area subject to this sewer easement is 20 feet in width and is located and described as follows:

Beginning at a point in the assumed easterly bounds of New York State Route 812, this point being South 85 degrees 38 minutes 53 seconds East a distance of 39.17 feet from the intersection of the center line of Fine Street with the centerline of New York State Route 812, and proceeding on a New York State Grid bearing the following courses;

thence through lands now or formerly Board of Education Ogdensburg City School District (Reputed Owner) the following seven courses:

- 1) thence **South 68 degrees 32 minutes 26 seconds East** a distance of **88.82 feet** to a point;
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- 4) thence **North 60 degrees 42 minutes 10 seconds East** parallel to and distant 20 feet from the southerly boundary of lands said Ogdensburg City School District and northerly bounds of New York State Route 37 a distance of **551.96 feet** to a point;
- 5) thence **North 55 degrees 02 minutes 24 seconds East** a distance of **84.02 feet** to a point;
- 6) thence **North 60 degrees 41 minutes 50 seconds East** a distance of **370.02 feet** to a point;
- 7) thence **South 30 degrees 11 minutes 07 seconds East** a distance of **26.79 feet** to a point in the southerly boundary of lands said Ogdensburg City School District and northerly bounds of New York State Route 37, this point being South 57 degrees 48 minutes 48 seconds West a distance of 166.98 feet from a concrete highway monument found in the northerly bounds of New York State Route 37;

thence **South 59 degrees 05 minutes 26 seconds West** along the southerly boundary of lands said Ogdensburg City School District and northerly bounds of New York State Route 37 a distance of **20.00 feet** to a point;

thence through lands now or formerly Ogdensburg City School District the following three courses:

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thence **North 28 degrees 09 minutes 15 seconds West** along the easterly bounds of New York State Route 812 a distance of **30.87 feet** to the Point of Beginning.

The location of this easement is also identified on a map of survey prepared for the Ogdensburg Bridge & Port Authority dated January 24, 2017 at Exhibit A hereto. Furthermore, the Grantor does hereby convey, to Grantee, without covenant or warranty of any kind, express or implied, an easement to install and maintain the sanitary sewer force main.

#### **LICENSE SUBORDINATE TO PRIOR RIGHTS**

1. The rights described above are given and accepted subject to any and all outstanding leases, tenancies, easements, licenses or other tenures, existing covenants and restrictions, and/or claims of title affecting **Grantor's** said Property or any portions thereof; and subject also to any and all encumbrances, liens, conditions, restrictions and/or reservations under which **Grantor** holds the same.

#### **INSURANCE REQUIREMENTS**

2. At the time of execution of this Agreement by **Grantor and Grantee**, **Grantee** shall furnish to **Grantor** evidence that insurance policy(ies) satisfactory, in form, content and amount of coverage, to **Grantor**, and not subject to cancellation or material change without thirty (30) days prior written notice to **Grantor** have been issued to it and equally satisfactory renewals or extensions thereof shall be maintained in force so long as **Grantee** exercises the rights granted herein and/or as long as this Agreement remains in effect.

#### **PRIOR NOTICE OF CONSTRUCTION AND RIGHT OF INSPECTION**

3. **Grantee** shall give **Grantor** at least one (1) week written notice before commencing any work hereunder whether in initial construction or subsequently. **Grantor**, at its election, may have its inspector ("inspector") present at the time or times such work is being

performed. Such inspector shall have the right and authority to require modification or cessation of any or all work hereunder when, in the inspector's judgment, such work is contrary to the provisions of this Agreement, or is or may become a source of danger to the Facilities and/or property of **the Grantor**. The presence or absence of **Grantor's** inspector shall not constitute a waiver of any provisions of this agreement.

In case of emergency, however, **Grantee** may proceed to make immediate repairs upon verbal or telephone notice to **Grantor** of the situation which said notice **Grantee** shall follow within three (3) working days thereof with a confirming letter.

#### **NON INTEREFERENCE**

4. **Grantee** shall construct and maintain the sanitary sewer force main and all related fixtures and equipment of any kind and nature so as not to interfere with the use, by anyone, of any of the remaining lands or facilities of the Grantor

#### **RESTORATION**

5. All lands, improvements and fixtures thereto of the Grantor, disturbed by the work or operations of the Grantee or the employees or agents of the Grantee shall be properly and promptly restored to their former condition by the **Grantee** at its sole cost and expense.

#### **STANDARD CONSTRUCTION**

6. The sanitary sewer force main shall be constructed, installed and maintained in compliance with all federal, state and local regulations concerning the construction of such Facilities. **Grantee** shall, at all times after construction, maintain said Facilities in good repair and in a safe condition.

### **QUALITY OF CONSTRUCTION MATERIALS**

7. The quality of the material to be used in constructing the Facilities on the **Grantor's** land shall be in compliance with all regulations relating to the construction of such Facilities.

### **COMPLIANCE WITH APPLICABLE LAWS**

8. **Grantee** shall, at its own cost, comply with applicable laws, ordinances, orders, rules and regulations of the United States, and State of New York, and/or any departments, bureaus, authorities or commissions created under the laws of any such governments, as the same relates to the exercise of the rights and privileges granted hereunder and the connection of the Facilities to any municipal sewer and/or waste water treatment system, and shall obtain all required permits for the construction, operation, maintenance and uses permitted herein.

### **NON-INTERFERENCE WITH FACILITIES**

9. **Grantee** shall so construct and shall thereafter operate, maintain, repair, reconstruct, and/or remove its Facilities so as not to injure or damage any of **Grantor's** Property or injure, damage or interfere with its Facilities and/or improvements currently existing or which may be installed in the future by **Grantor** on any of its properties. The **Grantee** shall immediately, completely and properly remove all of its Facilities from the land of the **Grantor** should the sewer force main permanently cease to be used for any reason. Upon the removal of the **Grantee's** Facilities this easement shall automatically expire and terminate.

### **GRANTOR'S PARAMOUNT RIGHTS**

10. All rights granted hereunder shall be subject and subordinate to the paramount rights of **Grantor** or tenant of **Grantor**, now and hereafter to occupy and use all or any portion or portions of said Properties in its operations, provided however, that any such occupancies or uses shall not prevent the exercise by **Grantee** of the rights conferred by this Agreement.



**Grantor**, however, shall not be responsible to **Grantee** for any damage to **Grantee's** Facilities arising out of **Grantor's** operations or otherwise.

#### **NOTICE**

11. Any notice to be given to **Grantor** under the terms of this agreement shall be in writing, addressed to the attention of The Superintendent of the Ogdensburg City School District. The date of mailing shall be deemed the date of service of such notice.

#### **INDEMNIFICATION**

12. **Grantor** shall not be responsible for any loss, damage, or injury (including death) to property or persons, including **Grantee** and **Grantee's** employees, agents, customers, patients, invitees, agents and/or guests, arising from or in any way connected with the exercise of the rights provided herein. **Grantee** agrees to indemnify, defend and hold harmless **Grantor** against all loss, damage, liability, cost and expenses arising from or in connection with any damage or injury to third parties (including real property, personal property and environmental damages) or persons (including injuries resulting in death), directly or indirectly arising out of, caused by, incurred during, or in any way connected with the use of the rights granted herein, or which occurs on or about the areas of the Easement granted herein, or which is caused by any act, omission, negligence or misconduct of **Grantee**, including its agents, employees, and guests. **Grantee**, shall indemnify, defend and hold harmless **Grantor** from any and all liabilities, of any kind and nature, in any amount, arising from or related to its use of any municipal sewer system.

#### **TERMINATION**

13. This agreement and the easement shall run with the land. In the event of termination, for any reason, **Grantee** shall remove any and all Facilities installed or constructed

hereunder and shall restore **Grantor's** Property in all respects to the condition existing at the time of execution of this agreement.

**ENTIRE AGREEMENT**

15. No provision of this Easement shall be deemed to have been waived by **Grantor** unless such waiver be in writing signed by **Grantor**. This Easement contains the entire agreement between the parties and any executory agreement hereafter made shall be ineffective to change, modify or discharge it in whole or in part unless such executory agreement is in writing and signed by both parties.

**IN WITNESS WHEREOF**, the parties hereto have hereunto subscribed their names and affixed their seals all on the day and year first above written.

**Ogdensburg Bridge & Port Authority**

By: Wade A. Davis  
Name: WADE A. DAVIS  
Its: EXECUTIVE DIRECTOR

**Ogdensburg City School District / Board of Education  
of the Ogdensburg City School District**

By: Ronald N. Johnson  
Name: Ronald N. Johnson  
Its: President

STATE OF NEW YORK :  
 : ss.:  
COUNTY OF ST. LAWRENCE :

On the 4<sup>th</sup> day of May, 2018, before me, the undersigned, a Notary Public in and for said state, personally appeared Wade A. Davis, Executive Director of the **Ogdensburg Bridge & Port Authority**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

**ALANE L. FARRELL**  
Notary Public, State of New York  
#01FA6222912  
Residing in St. Lawrence County  
Commission Expires June 01, 2018

Alane L. Farrell  
Notary Public

STATE OF NEW YORK :  
 : ss.:  
COUNTY OF ST. LAWRENCE :

On the 4<sup>th</sup> day of May, 2018, before me, the undersigned, a Notary Public in and for said state, personally appeared Ronald W. Johnson, President of **Ogdensburg City School District / Board of Education of the Ogdensburg City School District**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

**ALANE L. FARRELL**  
Notary Public, State of New York  
#01FA6222912  
Residing in St. Lawrence County  
Commission Expires June 01, 2018

Alane L. Farrell  
Notary Public

**EXHIBIT "A"**