

The Corporation of the Municipality of West Grey

By-law Number 26 - 2019

BEING, A by-law to approve and authorize the execution of a Boundary Road Agreement between the Municipality of West Grey and Township of Chatsworth;

WHEREAS, the Council of the Municipality of West Grey deems it expedient to authorize the execution of the aforementioned Boundary Road Agreement;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF WEST GREY ENACTS AS FOLLOW:

1. That the Boundary Road Agreement between the Municipality of West Grey and the Township of Chatsworth, attached hereto as Schedule "A" and forming part of this by-law, is hereby approved.
2. That the Mayor and Clerk are hereby authorized to sign and seal the said Agreement.
3. That By-law Number 9-2018 is hereby repealed.
4. That this By-law shall come into full force and effect on the date of passing thereof.

Read a first and second time, this 19th day of March, 2019.

Read a third time and finally passed, this 19th day of March, 2019.

(Signed)
Christine Robinson, Mayor

(Signed)
Mark Turner, Clerk

Boundary Road Agreement

This agreement made in duplicate this 19th day of March, 2019.

Between:

The Corporation of the Municipality of West Grey

Hereinafter referred to as "**West Grey**"

And

The Corporation of the Township of Chatsworth

Hereinafter referred to as "**Chatsworth**"

WHEREAS Sections 20, 29, 29.1 and 52 of the Municipal Act, 2001 (The "Act") make provisions for agreements between adjoining municipalities for the maintenance and repair of any highway or bridge forming the boundary between such municipalities, including the bridges thereon;

AND WHEREAS a boundary road exists on the boundary between the Township of Chatsworth and Municipality of West Grey as set out in Appendix "A";

AND WHEREAS it is deemed expedient and necessary for each municipality to be responsible for the year-round oversight, maintenance and repair of a particular portion of the Road(s);

Now Therefore in consideration of the mutual covenants set out below with other good and valuable consideration (the receipt of which is acknowledged), the parties hereto agree each with the other as follows:

Definitions

1. In this By-law:

Bridge: means a public bridge forming part of a highway on, over or across which a highway passes.

Highway: means a common or public highway, any part of which is intended for or used by the public for the passage of vehicles and pedestrians and includes the areas between the lateral property lines thereof.

Joint Jurisdiction: means the local municipalities on either side of a boundary line between municipalities having joint jurisdiction over any highway or bridge forming the boundary line.

Minimum Maintenance Standard: means the Standard(s) as adopted by the Council of the municipality responsible for repair of a highway (see Municipal Act Ontario Regulation 239/02).

Roadway: means that part of the highway that is improved, designed or ordinarily used for vehicular traffic, but does not include the shoulder.

Road Maintenance: means all road maintenance budgeted work activities pertaining to the municipalities' responsibility in meeting Minimum Maintenance Standards as set out in Ontario Regulation 239/02 of the Highway Traffic Act. (Programs exercised normally 365 days of the year in order to maintain the right of ways and infrastructure in a "state of repair").

Routine maintenance and repair of a highway may include, but not be limited to those activities listed below:

- *Hardtop surface maintenance* includes frost heave repair, base repair, utility cut repair, hot and cold mix patching, shoulder maintenance, surface maintenance including crack sealing, slurry sealing and spray patching, surface sweeping, surface flushing and routine patrolling.
- *Winter control* includes snowplowing, combination plowing/ice control, ice control, winging back, snow fencing, snow removal, standby, winter patrol and spring clean-up.
- *Traffic operations* include pavement markings, illumination, signals and signs and safety devices.
- *Roadside* includes vegetation management including roadside mowing, weed control, tree planting and removal and tree trimming.
- *Stormwater management* includes roadside ditching, entrance culvert maintenance, maintenance of storm sewers and catch basins and inspections.

Shoulder: means the area adjacent to a roadway, where there is no curb that may be paved or unpaved.

Winter Maintenance: means all winter based budgeted work activities pertaining to the municipalities' responsibility in meeting the Minimum Maintenance Standards as set out in Ontario Regulation 239/02 of the Highway Traffic Act.

Winter Maintenance Season: means the continuous period of time between the second Monday of November and the second Friday of April annually. Each Party agrees that it shall also attend to winter events that occur prior to November the second Monday in November and after the second Friday in April until winter events have subsided at the end of each season. Both Parties acknowledge that the level of service provided outside the Winter Maintenance Season will be at a lower level than during the Winter Maintenance Season, but that it shall meet the Common Law test of reasonableness.

Non-Winter Season Maintenance: means the continuous period of time between after the second Friday in April to the second Monday in November annually.

Winter Control Plans: means the Parties Council endorsed winter operations outlining levels of service, patrolling and response to winter events.

2. Term

The parties agree to provide winter and general maintenance services on the Boundary Road as set out in Appendix A for five (5) years commencing on the date it is signed by both parties and ending on the 31st day of March, 2024.

The parties agree that this agreement shall automatically renew at the expiration of the term or any extension of the term for a further one-year period on the same terms and conditions unless either Party provides 180 days notice in writing of its intention to terminate the agreement at the expiration of the current term.

3. Municipal General Liability Insurance

3.1 Each Party shall at its own expense, obtain and keep in force during the term of this agreement, liability insurance satisfactory to the other Party including the following terms and minimum coverage, which limits may be achieved by way of primary and/or umbrella or excess policies, and underwritten by an insurer licensed to do business in the Province of Ontario. Such policies shall include, but not be limited to:

- a) **Municipal General Liability Insurance** on an occurrence basis for an amount of not less than Ten Million Dollars (\$10,000,000.00) including:
 - i) The other Party shall be added as an Additional Insured with respect to the operations of the named insured;
 - ii) Cross liability and severability of Interest clauses;
 - iii) Policies shall not be invalidated as respect to the interests of the Additional Insured by reason of any breach or violation on any warranties, representations, declarations or conditions;
 - iv) Non-owned automobile coverage with a limit of no less than Ten Million Dollars (\$10,000,000.00);
 - v) Products and completed operations coverage with a limit of not less than Ten Million Dollars (\$10,000,000.00);
 - vi) A thirty day written notice of cancellation, termination or material change.
- b) Automobile Liability Insurance for an amount not less than Ten Million Dollars (\$10,000,000.00) on forms meeting statutory requirements covering all

licensed vehicles used in any manner in connection with the performance of the terms of this Agreement.

- 3.2 Each Party shall provide the other with proof of coverage each year, in the form of a certificate of insurance.
- 3.3 Both parties agree to immediately notify the other Party of any occurrence, incident or event which may reasonably be expected to expose either Party to material liability of any kind in relation to the Boundary Roads.
- 3.4 Each Party agrees that if either fails to take out or keep in force any such insurance referred to in this section, or should any such insurance not be approved by either Party, and should either Party not commence and proceed to diligently rectify the situation within forty-eight (48) hours after written notice by either Party, either Party has the right without assuming any obligation in connection therewith, to affect such insurance at the sole cost of either Party. Either Party shall be reimbursed as set out under the terms of this Agreement.

4. Indemnity:

Each Party shall indemnify the other Party, its elected officials, employees and agents from and against any and all liabilities, claims, demands, losses, cost, damages, expenses, causes of action, suits, judgments (including legal fees on a solicitor/client basis and all other costs of defense thereof) or other proceedings made by any person, including but not limited to either Parties own employees, arising out of activities arising under this Agreement or in connection with the use of the Boundary Road

In the event of any claims made or suits filed, either Party shall give the other Party timely written notice thereof, and either Party shall have the right to defend or settle the same to the extent of its interest hereunder. Each Party shall promptly accept all responsibility to defend or settle such matters. Further, in the event it is necessary for either Party to incur any expenses whatsoever to enforce this provision, all such expenses shall in their entirety be recoverable from the other Party.

Each Party agrees to assume all environmental liability relating to its use of any boundary road, including but not limited to any liability for clean-up of any hazardous substance in, on, under, along, across and around the roadway caused by:

- a) the operations of either Party in, on, under, along, across or around the Boundary Rod; or
- b) any products or goods brought in, on, under, along, across or around the Boundary Road by either Party, or by any other person with the express or implied consent of either Party.

For the purpose of this section, "hazardous substance" means any hazardous substance and includes, but is not limited to, radiation, petroleum products and by-products, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any statute, regulation, by-law or code,

whether federal, provincial or municipal.

5. Maintenance and Repair of Highways – Scope of Work

5.1 The Municipalities hereby covenant and agree one to the other, to:

- a) Undertake all winter maintenance activities, including but not limited the patrolling, plowing, and spreading of materials for winter road conditions, during each Winter Maintenance Season throughout the term of the Agreement.
- b) In addition to the requirements set out in section 5.1a), attend to winter events that occur prior to November 15th and After April 1st until winter events have subsided at the end of each season throughout the Term of the Agreement. Both parties acknowledge that the level of service provided outside of the Winter Maintenance Season may be at a lower level than during the Winter Maintenance Season, but that it shall meet the minimum standards set forth in regulations made by the Minister of Transportation as contemplated in Section 44(4) of the Act (the “Minimum Maintenance Standards for Municipal Highways”) where such standards apply and in the event there is no applicable Minimum Maintenance Standard, it shall meet the standard of what is reasonable in the circumstances.
- c) to maintain and keep in good repair, any required Routine Maintenance during winter operations those highways listed in Schedule “A” by meeting or exceeding the “Minimum Maintenance Standards for Municipal Roads” for the whole width of those highways listed.
- d) To Be responsible for all removal of snow beyond the width of the road and shoulders if required;
- e) To be responsible to provide snow blowing services requirement within the right of way, if deemed necessary by one of the parties.
- f) To be responsible for at the drainage maintenance, including the clearing of ditches, curbs and gutters, catch basins and storm drains;
- g) To be responsible for the surface maintenance, including the repair of potholes, cracks and depressions and shoulder gravelling
- h) To be responsible for all routine patrolling and maintenance activities throughout the entire Term of this Agreement. Routine maintenance shall be provided at service levels compliant with the minimum standards set forth in Ontario Regulation 239/02 of the Act.
- i) To be responsible for any and all traffic signal devices at the intersections.

5.2 Location and Work to be Completed by each Party – The map attached hereto as Schedule “A” indicates the location of the Boundary Road. Both parties

acknowledge their road section responsibilities as per Schedule B, Part A and Part B,

6. Capital Costs

- 6.1 Subject to the further terms set out in this section, each municipality shall be responsible for one-half of all capital improvements on the Boundary Road, including but not limited to items such as road construction, hot mix asphalt, resurfacing and shoulder gravelling associated with this resurfacing, bridge repairs and replacement and surface treatment.
- 6.2 Prior to either Party completing any capital improvements each Party will identify the required work to the other Party.
- 6.3 No new construction or major maintenance work (as distinguished from routine maintenance) of any kind on highways and bridges shall commence or be charged by one Party to this agreement to the other unless such construction or major maintenance work has first been approved by the Councils of both municipalities and included in their respective capital budgets for the year that the work is to commence.
- 6.4 If both parties agree that capital work is required, they will mutually agree upon how the work will be completed and the timing of such work to be completed.
- 6.4 Except in the case of emergencies, each Party shall notify the other Party at least two years in advance of any such capital improvement work proposed and the extent and cost of the capital improvement work shall be mutually agreed upon prior to proceed with the work.
- 6.5 The Party who administers the work as determined in Section 6.4 shall invoice the other Party for one half of the capital cost no later than the 31st day of December in the year in which the work was completed. Payment of the invoice shall be made no later than thirty (30) days from receipt of the invoice.

7. Annual Review and Planning

Each year throughout the Term of the Agreement, after April 15th and not later than June 30th, the parties will meet to discuss any issues arising from this Agreement, including but not limited to the previous year's work and will identify and plan works for the upcoming year(s) as the case may be.

8. Payment

- 8.1 West Grey and Chatsworth shall share equally all capital expenses connected with any new construction or major maintenance work (as distinguished from routine maintenance) carried out for all highways listed in Schedule "B".
- 8.2 Each Party will invoice the other as necessary for its share of the expenditures related to new construction or major maintenance work carried out for all highways listed in Schedule "B" and as determined in accordance with paragraph 3 below of

this agreement and the Party being invoiced shall pay the amount invoiced within thirty (30) days of receipt of such invoice.

9. Entrance Permits

Entrance Permits on Boundary Roads shall be processed by the municipality in which the land requiring the permit is located in consultation with the other municipality as to road safety conditions.

10. Notice

Any notice to be given under this Agreement shall be sufficiently given if delivered or if sent by prepaid first class mail and addressed to:

The Clerk's Office
The Corporation of the Township of Chatsworth
316837 Highway 6, RR1
Chatsworth, ON N0H 1G0

And to:

The Clerk's Office
The Corporation of the Municipality of West Grey
402813 Grey Road 4, RR 2
Durham, ON N0G 1R0

Receipt of notice shall be deemed on the earlier of the date of deliver or five (5) days following the date of mailing of the notice.

11. Arbitration

11.1 In the event of any dispute arising between the parties hereto relating to any matter which is the subject of this Agreement, such dispute shall be settled by the persons named in Section 10. In the event that the dispute cannot be settled within ninety (90) days, then the dispute will be submitted to arbitration by notice given by either Party to the other.

11.2 Upon such notice being given, the dispute shall be determined by the award of three arbitrators or a majority of them, one to be named by each Party within thirty (30) days of such giving notice and the third to be selected by these two arbitrators within seven (7) days after both have been nominated.

11.3 If either Party neglects or refused to name its arbitrator within the time specified or to proceed with the arbitration, the arbitrator named by the other Party shall proceed with the arbitration.

11.4 The arbitrators) shall have all the powers given by the Arbitration Act of Ontario and may at any time proceed in such manner as they may see fit on such notice as them deem reasonable in the absence of either Party if such Party fails to attend.

11.5 Each Party shall pay its own costs and shall share equally in the costs of the arbitration.

11.6 The cost of the arbitrators are not limited to those set forth under the Arbitration Act of Ontario and the arbitrators shall be able to charge their usual professional charges.

12. General

Notwithstanding anything in this agreement, neither Party shall be in default with respect to the performance of any of the terms of this agreement if any non-performance is due to any force majeure, strike, lock-out, labour dispute, civil commotion, act of God, government regulations or controls, inability to obtain any material or service or any cause beyond the reasonable control of the Party.

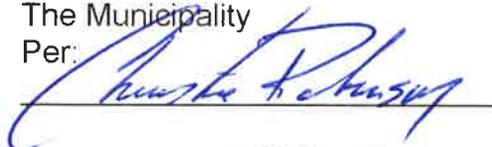
The rights and liabilities of the parties shall enure to the benefit of and be binding upon the parties and their respective successors and approved assigns.

If any provision, clause or part of this agreement or the application of this agreement under certain circumstances, is held by a court or tribunal of competent jurisdiction to be invalid, the remainder of the agreement, or the application of that provision, clause or part under other circumstances shall not be affected

In Witness Whereof the Corporate Seals of each of the parties hereto have been affixed duly attested by the respective officers authorized in that behalf.

The Municipality

Per:



The Corporation of the
Township of Chatsworth

Per:



Schedule "A"

Part "A"

Chatsworth responsibilities:

Chatsworth agrees to conduct year round maintenance on the following portions of the Boundary Highway between the Municipalities of West Grey and Chatsworth.

1. Bentinck-Sullivan Townline - from Bruce Road 10 easterly to Grey Road 3 approx. 5.4 km. Road Class 3
2. 80 Sideroad- from West Back Line to King's Hwy 10 approx. 2.2k. Road Class 6

Covering a total distance of approx. 7.6km.

In an effort to equalize distance and non-crossing billing of maintenance services, Chatsworth further agrees to conduct road maintenance during non-winter maintenance period for:

80 Sideroad - from West Back Line southwesterly to the Boundary approx. 1km

Part "B"

West Grey responsibilities:

West Grey agrees to conduct year round maintenance on the following portions of the Boundary Highway between the Municipalities of West Grey and Chatsworth.

1. Glenelg-Holland Townline - from King's Hwy 6 easterly to 70 Sideroad approx. 9km. Road Class 4
2. 80 Sideroad - from West Back Line southwesterly to the Boundary approx. 1km (winter maintenance period only-see Part A above) Road Class 6

Covering a total distance of approx. 10km