

THE CORPORATION OF THE MUNICIPALITY WEST GREY

BY - LAW NUMBER 25 -2018

BEING, A by-law to enter into an Agreement for Services by and between Streetscan Canada ULC and the Municipality of West Grey;

WHEREAS, the Council of the Municipality of West Grey deems it expedient and in the public interest to enter into the aforementioned Agreement;

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

1. That the Agreement for Services by and between Streetscan Canada ULC and the Municipality of West Grey, attached hereto as Schedule "A", and forming part of this bylaw, is hereby approved.
2. That the Mayor and Clerk are hereby authorized to sign and seal the said Agreement.
3. That this by-law shall come into full force and effect on the date of passing.

READ a first and second time this 19th day of February, 2018.

READ a third time and finally passed this 19th day of February, 2018.


Kevin Eccles, Mayor


Mark Turner, Clerk



SCHEDULE "A" TO BY-LAW NUMBER 25 - 2018

MUNICIPALITY OF



**AGREEMENT FOR SERVICES BETWEEN STREETSCAN
CANADA ULC AND THE MUNICIPALITY OF WEST
GREY**

AGREEMENT FOR SERVICES
BY AND BETWEEN

STREETSCAN CANADA ULC
AND

MUNICIPALITY OF WEST GREY

THIS AGREEMENT is made this 19th day of February, 2018, by and between MUNICIPALITY OF WEST GREY, hereinafter called the MUNICIPALITY, with its head office and clerk located at 402813 Grey Rd 4, RR2, Durham, ON N0G1R0, and STREETSCAN CANADA ULC, with offices at 595 Burrard Street, P.O. Box 49314 Suite 2600, Three Bentall Centre, Vancouver BC V7X 1L3 Canada, hereinafter called STREETSCAN (together the "PARTIES").

WITNESSETH, for the consideration hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1 - ENGAGEMENT OF STREETSCAN

The MUNICIPALITY hereby engages STREETSCAN, and STREETSCAN hereby accepts the engagement to perform certain pavement inspection and management services for the MUNICIPALITY.

ARTICLE 2 - SCOPE OF SERVICES

The Scope of Services will be performed in accordance with STREETSCAN'S proposal to the MUNICIPALITY submitted November 30th 2017 (attached hereto as Exhibit A) (herein referred to as the "PROJECT").

This AGREEMENT represents the full and complete agreement between the PARTIES. Terms and conditions may be changed or additional terms added only by written amendment to this AGREEMENT signed by both PARTIES.

ARTICLE 3 - RESPONSIBILITIES OF THE MUNICIPALITY

The MUNICIPALITY, without cost to STREETSCAN, shall do the following in a timely manner so as not to delay the services of STREETSCAN:

- 3.1 Designate in writing a person to act as the MUNICIPALITY's representative with respect to work to be performed under this AGREEMENT, such person to have complete authority to transmit instructions, receive information, interpret, and define the MUNICIPALITY's policies and decisions with respect to materials, equipment elements and systems pertinent to the work covered by this AGREEMENT.

- 3.2 The MUNICIPALITY's representative will coordinate with officials and other MUNICIPALITY employees who have knowledge of pertinent conditions and will confer with STREETSCAN regarding both general and special considerations relating to the PROJECT.
- 3.3 Assist STREETSCAN by placing at STREETSCAN'S disposal all available information pertinent to the PROJECT or requested by STREETSCAN including previous reports and other historical data relative to design or construction of the roadways in the MUNICIPALITY.
- 3.4 Arrange for access to and make all provisions for STREETSCAN to enter upon public and private lands as required for STREETSCAN to perform its work under this AGREEMENT.
- 3.5 Furnish STREETSCAN all needed topographic, property, boundary and right-of-way maps. Data provided in standard GIS file formats are preferred.

We require a target road GIS layer with segmentation. If it is not available, we can create it from a list of target roads from intersection to intersection unless otherwise directed, charging STREETSCAN's standard engineering billing rates. If client requests a different segmentation after the processing has begun, results will be delayed, and SSI will charge engineering rate to change segmentation.

STREETSCAN will use MUNICIPALITY's pavement maintenance methods and pricing for the pavement maintenance plan, if it is provided by the end of the data collection. Otherwise we'll use our default pavement maintenance methods and pricing. Subsequent changes are also billed at STREETSCAN's standard engineering billing rates.

- 3.6 Cooperate with and assist STREETSCAN in all additional work that is mutually agreed upon.
- 3.7 Pay STREETSCAN for work performed in accordance with the terms specified herein.

ARTICLE 4 - TIME OF PROJECT

STREETSCAN will initiate work under this AGREEMENT following formal acceptance of this AGREEMENT by the MUNICIPALITY. STREETSCAN agrees to provide services described herein in a timely manner. The PARTIES recognize that the services being provided by STREETSCAN are subject to impact by weather, labor, fire, construction, and technological issues that may cause delays during the pavement inspection period. STREETSCAN agrees to use its best efforts to avoid delays.

ARTICLE 5 - PAYMENTS TO STREETSCAN

- 5.1 Fees. For services performed under this AGREEMENT, the MUNICIPALITY agrees to pay STREETSCAN the total amount set forth in the chart below, subject to the revisions

directed by paragraph 5.2, based on those services selected by the MUNICIPALITY as set forth in the below chart after review of the proposal:

Single pass locals- Double pass on other classifications		350 Lane KM
ScanVan Data Collection	\$80	\$28,000
Data Processing	\$70	\$24,500
Pavement Management Plan	Fixed	\$3,000
Travel Cost (see below for discounts)	Fixed	\$1,547
Data Collection & Processing Total		\$57,047
Annual Software License	Fixed	\$1,500
Annual Support & Data Hosting	\$10	\$3,500
Pavement Facing Imagery	\$8	\$2,800
Software & Imagery Total		\$7,800
Total Pavement Management Costs		\$64,847
KM/Group Discount	5%	(\$3,242)
FCM MAMP Grant*		(\$50,000)
Total Cost Net FCM Grant		\$11,605

- 5.2 Reconciliation. The parties hereby acknowledge that the total amount set forth above may be subject to adjustment based on the actual lane miles surveyed, which will not be known until STREETSCAN'S field work is complete. MUNICIPALITY agrees to pay for all services set forth in the above chart based on the actual lane miles surveyed, whether more or less than set forth above or estimated in the proposal.
- 5.3 Monthly Payment. Fees for this PROJECT shall be billed monthly as they accrue based upon the services performed or other agreed upon milestones. The MUNICIPALITY agrees to make payment to STREETSCAN upon receipt of the monthly invoice.
- 5.4 Remedies. If the MUNICIPALITY fails to make any payment due STREETSCAN for services and expenses within thirty (30) days after receipt of STREETSCAN's statement therefor, STREETSCAN may, after giving seven (7) days' written notice to the MUNICIPALITY, suspend services under this AGREEMENT. Unless payment is received by STREETSCAN within seven (7) days of the date of the notice, the

suspension shall take effect without further notice. In the event of a suspension of services, STREETSCAN shall have no liability to the MUNICIPALITY for delay or damage caused the MUNICIPALITY because of such suspension of services.

- 5.5 Costs of Collection. The MUNICIPALITY agrees to pay all collection related costs that STREETSCAN incurs enforcing the terms of this AGREEMENT, including attorney's fees.

ARTICLE 6 - GENERAL PROVISIONS

6.1 Standard of Care

The services provided by STREETSCAN shall be performed in accordance with generally accepted professional practice consistent with that degree of skill and care ordinarily exercised by similar professionals performing similar services under the same or similar circumstances and conditions. STREETSCAN makes no other representations or warranties, whether expressed or implied, with respect to the services rendered hereunder.

6.2 Risk Allocation/Limitation of Liability

6.2.1 STREETSCAN is not responsible for any delay, disruption or liabilities caused by the failure or the inability of any state, federal, local, or other authority to review or take other appropriate action on a timely basis with respect to services performed by STREETSCAN under this AGREEMENT.

6.2.2 STREETSCAN shall be liable only to the extent that its negligence is the proximate cause of any injury or damage to the MUNICIPALITY. In the event that STREETSCAN is adjudicated or otherwise found to be jointly negligent, STREETSCAN'S liability shall be limited to the proportion or degree of its actual negligence, and recovery against STREETSCAN shall be limited to STREETSCAN'S percentage share of the joint negligence as applied against the total amount recoverable.

6.3 Dispute Resolution

This Agreement shall be deemed to have been made in Ontario and the validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with the substantive law of the Province of Ontario, excluding, however, such laws as pertain to conflicts of law. STREETSCAN and the MUNICIPALITY forever renounce and waive their right to a trial by jury with respect to any demand, claim or counterclaim arising under this Agreement. Except for claims for injunctive relief, STREETSCAN and the MUNICIPALITY agree that all other claims, disputes and controversies between them arising under this Agreement shall be finally resolved by binding arbitration conducted by the Canadian Arbitration Association, ADR Chambers Canada or such other person or arbitration service as the parties mutually agreed upon. Either STREETSCAN or the MUNICIPALITY may demand arbitration by providing the other party 10 days' notice that notifying party is filing for arbitration. All arbitration

proceedings will take place in Toronto, Ontario. The arbitrator(s) may grant compensatory damages and costs to the prevailing party (but not punitive or exemplary damages) and that the costs of arbitration shall be borne equally by STREETSCAN and the MUNICIPALITY, except that STREETSCAN and the MUNICIPALITY shall bear their own attorneys' fees. This right to arbitration will not preclude or affect in any manner the rights of STREETSCAN to equitable relief hereunder.

6.4 Governing Law and Territorial Jurisdiction

The AGREEMENT shall be governed by and interpreted in accordance with the laws of the Province of Ontario. Any litigation which arises between the PARTIES shall be initiated and pursued exclusively in the judicial region of Toronto.

6.5 Comprehensive General Liability Insurance

STREETSCAN shall secure and maintain, for the duration of this PROJECT, the following Comprehensive General Liability Insurance policy or policies at no cost to the MUNICIPALITY.

With respect to the operations STREETSCAN performs STREETSCAN shall carry:

Comprehensive General Liability Insurance providing a combined single limit of One Million Dollars (\$1,000,000) for bodily injuries, death, and property damage to others with a Two Million Dollars (\$2,000,000) General Aggregate.

6.6 Automobile Liability Insurance

STREETSCAN shall secure and maintain for the duration of this PROJECT, Automobile Liability Insurance covering the operation of all motor vehicles, including those hired or borrowed, used by STREETSCAN in connection with this AGREEMENT, in the following amount:

6.6.1 Not less than Five Hundred Thousand Dollars (\$500,000) for all damages arising out of bodily injuries to or death of one person and subject to that limit for each person, a total limit of Five Hundred Thousand Dollars (\$500,000) for all damages arising out of bodily injuries to or death of two or more persons in any one accident or occurrence, and

6.6.2 Not less than One Million Dollars (\$1,000,000) for all damages arising out of injury to or destruction of property in any one accident or occurrence.

6.7 Employment and Labour Laws

6.7.1 STREETSCAN shall comply with all provincial legislation and regulations as regards all of its employees at the PROJECT.

6.8 Non-Discrimination In Employment – STREETSCAN

STREETSCAN agrees and certifies that in providing the services described herein, it shall not discriminate against any employee or applicant because of race, color, religion, age, sex, sexual orientation, or national origin. STREETSCAN further agrees to be bound by and abide by any and all applicable governmental regulations pertaining to non-discrimination.

6.9 Precedence

These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, or like document regarding STREETSCAN'S services.

6.10 Severability

If any of these Standard Terms and Conditions shall be finally determined to be invalid or unenforceable in whole or part, the remaining provisions hereof shall remain in full force and effect, and be binding upon the parties hereto. The parties agree to reform this AGREEMENT to replace any such invalid or unenforceable provision with a valid enforceable provision that comes as close as possible to the intention of the stricken provision.

6.11 Survival

ARTICLE 6 shall survive the completion of services under this AGREEMENT and the termination of this AGREEMENT for any cause.

6.12 Force Majeure

Neither MUNICIPALITY nor STREETSCAN shall be considered in default in the performance of its obligations hereunder if such obligations were prevented or delayed by any cause beyond the reasonable control of the party which include, but are not limited to acts of God, labor disputes, or civil unrest.

The party affected by force majeure shall inform the other parties in writing regarding the particulars of the event of force majeure, and shall, within fifteen (15) days from the occurrence of such event, provide a report to the other parties explaining the reason for which the obligations cannot be performed in whole or in part and delayed performance is necessary and the proposed remedy.

6.13 Execution in Counterparts.

This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.

ARTICLE 7 - TERMINATION

- 7.1 The obligation to provide further services under this AGREEMENT may be terminated by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- 7.2 If the PROJECT is suspended or abandoned in whole or in part for more than three months, STREETSCAN shall be compensated for all services performed prior to receipt of written notice from the MUNICIPALITY of such suspension or abandonment, together with other direct costs then due and all Termination Expenses as defined in Paragraph 7.3. If the PROJECT is resumed after being suspended for more than three months, the PARTIES agree that STREETSCAN'S compensation shall be adjusted to the market rates for the services selected by the MUNICIPALITY at the time the PROJECT is resumed.
- 7.3 In the event of termination by the MUNICIPALITY under Paragraph 7.1 upon the completion of any phase of the PROJECT, progress payments due STREETSCAN for services rendered through such phase constitute payment for such services. In the event of any such termination, STREETSCAN will be paid for all unpaid services and unpaid other direct costs, plus all Termination Expenses. Termination Expenses means additional other direct costs directly attributable to termination, which, if termination is at the MUNICIPALITY'S convenience, shall include an amount computed as 10 percent of total compensation for the PROJECT earned by STREETSCAN to the date of termination.

ARTICLE 8 - OWNERSHIP AND USE OF DOCUMENTS

- 8.1 STREETSCAN shall retain ownership of all work product including, but not limited to, field data, analyses, calculations, notes and other records relating to the project prepared by STREETSCAN. The MUNICIPALITY shall have use of the work product and software for the sole benefit of the MUNICIPALITY with no third party beneficiaries intended. However, such work product is not intended or represented to be suitable for reuse by the MUNICIPALITY or others on extensions of the PROJECT or on any other PROJECT. Any reuse or alteration without written verification or adaptation by STREETSCAN for the specific purpose intended shall be at the MUNICIPALITY'S sole risk and without liability or legal exposure to STREETSCAN, and the MUNICIPALITY shall indemnify and hold STREETSCAN harmless from all claims, damages, losses and expenses, including reasonable attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation shall entitle STREETSCAN to further compensation at rates to be agreed upon by the MUNICIPALITY and STREETSCAN. In the event the PARTIES are unable to agree on the further compensation due to STREETSCAN, the PARTIES agree to resolve any dispute concerning compensation through binding arbitration as described in Paragraph 6.3.
- 8.2 Following delivery of final results, MUNICIPALITY will be able to access all results for a period of one year from the date of delivery. STREETSCAN agrees to maintain the

MUNICIPALITY'S web-based portal for their access and will maintain a backup version of the data onsite and through cloud based services. MUNICIPALITY'S initial license for this access is active for 1 year and sold with the initial proposal.

- 8.3 At the conclusion of the one year period referenced in 8.2, MUNICIPALITY has the option to renew its access subscription on an annual basis. Renewals are good for one (1) year and must be paid in a one-time payment made at the beginning of the renewal term. STREETSCAN reserves the right to withhold access pending receipt of the renewal payment. Renewal pricing is based on the surveyed lane miles and is subject to adjustment for inflation based on the most recent annual Consumer Price Index for All Urban Consumers (CPI-U) in the Greater Toronto Area (GTA). Any and all renewals will be handled by the execution of an additional subscription agreement. The renewal period will not begin until payment is received by STREETSCAN. Renewals may be made as long as the MUNICIPALITY desires access to the data. Non-payment of the renewal notice, once the renewal has begun, will lead to removal of the web based portal from STREETSCAN'S server and termination of MUNICIPALITY'S access to their data.

ARTICLE 9 – CONFIDENTIALITY

MUNICIPALITY agrees not to disclose any of STREETSCAN'S confidential or proprietary information to any person unless requested in writing from STREETSCAN and approved in writing by STREETSCAN, and agrees to bind its employees, officers, and agents to this same obligation.

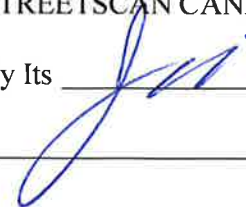
ARTICLE 10 – SOLE REMEDY

Notwithstanding anything to the contrary contained herein, MUNICIPALITY and STREETSCAN agree that their sole and exclusive claim, demand, suit, judgment, or remedy against each other shall be asserted against each other's corporate entity and not against each other's shareholders, directors, officers, or employees.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT the day and year first above written.

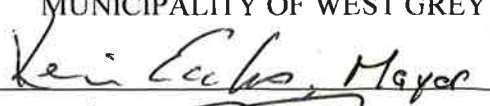

ACCEPTED FOR:
STREETSCAN CANADA ULC

By Its

 CGO

MUNICIPALITY OF WEST GREY

By:

 Mayor
 Clerk