

The Corporation of the Municipality of West Grey

By-law Number 9 - 2018

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 this By-law shall come into full force and effect on the date of passing thereof.

Read a first and second time, this 15th day of January, 2018.

Read a third time and finally passed, this 15th day of January, 2018.

(Signed)
Kevin Eccles, Mayor

(Signed)
Mark Turner, Clerk

Schedule "A" to By-law #09-2018

Boundary Road Agreement

This agreement made in duplicate this 15th day of January, 2018.

Between:

The Corporation of the Municipality of West Grey

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

Of the first part

And

The Corporation of the Township of Chatsworth

Hereinafter referred to as "**Chatsworth**"

Of the second part

Whereas the parties to this agreement are adjoining municipalities and are desirous of entering into an agreement under the provisions of the Section 29(1) of the Municipal Act, RSO 2001 and amendments thereto dealing with the maintenance and repair of boundary highways between such municipalities;

And Whereas pursuant to subsection 29(2) of the Municipal Act, RSO 2001, each Party has jurisdiction over that part of the highway that it has agreed to keep in repair and is liable for any damages that arise from the failure to keep the highway in repair and the other Party is relieved from all liability in respect of the repair of that part;

Now Therefore in consideration of the premises, covenants and promises hereinafter expressed, the parties hereto agree each with the other as follows:

Definitions

1. In this By-law:

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 Party 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.

Routine Maintenance: means those activities completed in the maintenance and repair of a highway. 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 Control Plans: means the Parties Council endorsed winter operations outlining levels of service, patrolling and response to winter events.

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 to 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.

2. Where words or phrases used in this by-law are defined in the Municipal Act, but not defined in this by-law, the definitions of the Municipal Act shall apply to such words and phrases.

Non-Winter Season Maintenance: means the continuous period of time between after the second Friday in April to the second Monday in November annually. Both parties acknowledge their road section responsibilities as per Schedule A, Part A and Part B,

Insurance

Each Party shall during the entire term of this Agreement and any renewals thereof,

at its own cost and expense, take out and keep in full force the following insurance coverage with respect to all activities arising from this Agreement. This insurance shall be primary, non-contributing with and not in excess of any other insurance available to either Party. The policies shall be underwritten by an insurer licensed to do business in the Province of Ontario. Such policies shall include, but not be limited to:

a. Commercial General liability insurance on a per occurrence basis for an amount of not less than Ten Million Dollars (\$10,000,000), such policy to include, but not be limited to, non-owned automobile liability, personal injury, broad form property damage, blanket contractual liability, owners and contractor's protective liability, products and completed operations liability, contingent employers' liability; and shall include cross liability and severability of interest clauses. The Corporation of the Party of Southgate shall be named as an Additional Insured thereunder, with respect to the Company's operations, acts and omissions relating to its obligations under this Agreement. This policy shall not be invalidated as respects the interests of the Party by reason of any breach or violation of any warranties, representations, declarations or conditions.

b. Automobile Liability insurance for an amount not less than Five Million Dollars (\$5,000,000) on forms meeting statutory requirements covering third party property damage and bodily injury liability (including accident benefits) covering all licensed vehicles used in any manner in connection with the performance of the terms of this Agreement and/or as may be required by Applicable Laws.

Insurance upon property of every description owned by the Company, or for which the Company is legally liable or installed by or on behalf of the Company and which is located within the ROW, on an All Risk basis for the full replacement cost thereof, as well as business interruption insurance in such amount as will reimburse the Company for direct or indirect loss of earnings attributable to an insured peril.

Any other form or limits of insurance as the Township, acting reasonably, may require from time to time throughout the Term of the Agreement in form, in amounts and for insurance risks against which a prudent person would insure.

As evidence of the required policies being in effect, each Party shall provide the other Party with Certificates of Insurance prior to the execution of this agreement, and upon each subsequent renewal period throughout the Term of this Agreement.

Each Party shall provide thirty (30) days prior written notice to the other Party in the event of any cancellation which reduces or restricts the insurance provided.

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.

Indemnity

Each Party shall indemnify the other Party, its elected officials, employees and agents from and against any and all liabilities, claims, demands, loss, 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 ROW, the location of Plant or the installation thereof by the either Party, its agents, servants, employees, or invitees whether or not liabilities, claims, demands, loss, cost, damages, expenses, causes of action, suits, judgments or other proceedings are caused by either Party's negligence, except to the extent they are caused by the negligence of caused by either party. This indemnity shall extend to protect either Party from construction liens by contractors, mechanics, material men, and suppliers (which are expressly prohibited), which shall be deemed to include all purchases of expendables, consumables, and other merchandise.

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 the ROW, including but not limited to any liability for clean-up of any hazardous substance in, on, under, along, across and around the ROW caused by:

- a. the operations of either Party in, on, under, along, across or around the ROW; or
- b. any products or goods brought in, on, under, along, across or around the ROW 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.

Interpretation

Where there is any conflict between the provisions of this by-law and the provisions of the Municipal Act, as amended, the provisions of the Municipal Act shall prevail.

Maintenance and Repair of Highways

1. **West Grey** hereby covenants and agrees to maintain and keep in good repair, and any required Routine Maintenance during winter operations those highways listed in Schedule "B" by meeting or exceeding the "Minimum Maintenance Standards for Municipal Roads" for the whole width of those highways listed.
2. **Chatsworth** hereby covenants and agrees to maintain and keep in good repair, and any required Routine Maintenance during winter operations those highways listed in Schedule "B" by meeting or exceeding the "Minimum Maintenance Standards for Municipal Roads" for the whole width of those highways listed.

General

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".
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.
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.
4. The party to this agreement doing the work shall indemnify and save harmless the other party from all claims for loss or damage arising from the want of repair of said highway as assigned in the **Maintenance and Repair of Highways** section to this agreement.
5. This agreement comes into force on the day of its signing by both parties hereto authorized by by-law and shall continue in force for a period of five (5) years from January 15th, 2018 to December 31, 2022 and may be renewed at the end of such terms by a further by-law of both parties to this agreement.
6. No amendment or variation to this Agreement or of any of the terms hereof shall be binding upon the parties hereto, unless the same is in writing and authorized by further by-law of both parties to this Agreement and signed by all parties hereto.

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 Corporation of the Municipality of West Grey

Per _____
Mayor

Per _____
CAO

The Corporation of the Township of Chatsworth

Per _____
Mayor

Per _____
CAO

Schedule "B"

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