

BOUNDARY HIGHWAY AGREEMENT
ROUTINE MAINTENANCE AND CAPITAL REPAIR
BETWEEN
THE CORPORATION OF THE COUNTY OF BRANT
OF THE FIRST PART
- and -
COUNTY OF OXFORD
OF THE SECOND PART

WHEREAS pursuant to subsection 29.1(2) of the *Municipal Act, 2001*, if municipalities having joint jurisdiction over a boundary line highway enter into an agreement under which each municipality agrees to keep any part of the highway in repair for its whole width and to indemnify the other municipality from any loss or damage arising from the lack of repair for that part, each municipality 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 failure to keep the highway in repair and the other municipality is relieved from all liability in respect of the repair of that part;

AND WHEREAS, the parties wish to enter into an agreement with respect to boundary line highways;

NOW THEREFORE in consideration of the covenants herein, the parties hereto agree each with the other as follows:

1.0 DEFINITIONS

1.1 “Agreement” means this Boundary and Connecting Highway Routine Maintenance and Capital Repair Agreement, including the following Schedules:

Schedule “A” – County of Brant Boundary Highways;

Schedule “B” – County of Oxford Boundary Highways;

Schedule “C” –Capital Improvement Activities;

Schedule “D” –Routine Maintenance and Repair Activities.

1.2 “Boundary Highway” means the highways listed in Schedule “A” and Schedule “B”.

- 1.3** “Business Day” means any day other than a Saturday, Sunday, public holiday or other day on which banks in Ontario are authorized or required by law to be closed, or a day on which the administrative offices of Municipality A or Municipality B are closed.
- 1.4** “Capital Improvement” means the activities listed in Schedule “C”.
- 1.5** “Contract Administrator” means an individual appointed by a municipality, or his/her designate, to oversee the administration of the Agreement.
- 1.6** "Developing Municipality" means the Municipality in which a Development is proposed or occurs.
- 1.7** "Development" means any Capital Improvement to a Highway that is required as a result of one of the following actions:
- 1.7.1 The passing of a zoning by-law, or an amendment to a zoning by-law under section 34 of the Planning Act;
 - 1.7.2 The approval of a site plan under section 41 of the Planning Act;
 - 1.7.3 The approval of a minor variance under section 45 of the Planning Act which involves a change in use, intensification of use or expansion of use;
 - 1.7.4 A conveyance of land to which a by-law passed under subsection 50(7) of the Planning Act applies;
 - 1.7.5 The approval of a Plan of Subdivision under section 51 of the Planning Act;
 - 1.7.6 A consent under section 53 of the Planning Act;
 - 1.7.7 The approval of a description under sections 8 or 9 of the Condominium Act, 1998;
 - 1.7.8 The issuing of a permit under the Building Code Act, 1992, in relation to a building or structure
 - 1.7.9 The issuing of any permits or permissions allowing occupancy on the Highway of any fixture such as a publicly or privately owned utility; or
 - 1.7.10 The issuing of a permit to allow entrances onto the Highway.
- 1.8** “Highway” means a highway as defined in the Municipal Act, 2001, S.O. 2001, c.25, as amended.
- 1.9** “Joint Jurisdiction” has the meaning described in s.29 of the Municipal Act, 2001.

- 1.10** “OSIM” means the “Ontario Structure Inspection Manual (OSIM)”, by the Ministry of Transportation, Policy Planning & Standards Division, Engineering Standards Branch, Bridge Office (October, 2000), as amended.
- 1.11** “Routine M&R” means those activities completed in the routine maintenance and repair of a Highway, as contemplated in the Municipal Act, 2001, S.O. 2001, c.25, as amended and all applicable regulations, including without limitation, the Minimum Maintenance Standards for Municipal Highways Regulation, O.Reg. 239/02, as amended and as they exist from time to time, or any successor regulation(s) or statute(s) (collectively referred to as the “Maintenance Legislation”), and which shall be conducted in accordance with the specifications contained in the Maintenance Legislation and in this Agreement. For greater certainty, Routine M&R does not include Capital Improvement. Activities considered to be Routine M&R, include but are not limited to the activities listed in Schedule “D”.
- 1.12** “Structure” means a bridge, culvert, tunnel, as those terms are defined in the OSIM.

2.0 MAINTENANCE RESPONSIBILITIES - BOUNDARY HIGHWAYS

- 2.1** The County of Brant agrees to carry out Routine M&R in respect of all the Highways or parts thereof described in Schedule “A” of this Agreement.
- 2.2** The County of Oxford agrees to carry out Routine M&R in respect of all the Highways or parts thereof described in Schedule “B” of this Agreement.

3.0 ROAD MAINTENANCE STANDARDS - BOUNDARY HIGHWAYS

- 3.1** The County of Brant and the County of Oxford shall perform all Routine M&R for their respective jurisdictions, as outlined in subsection 2.1 and subsection 2.2 of this Agreement, in accordance with the requirements of the Maintenance Legislation at a minimum.

4.0 COST OF WORK ROUTINE M&R BOUNDARY HIGHWAYS

- 4.1** The County of Brant agrees to bear the entirety of the cost of Routine M&R for the Highways listed on Schedule “A”.
- 4.2** The County of Oxford agrees to bear the entirety of the cost of Routine M&R for the Highways listed on Schedule “B”.

5.0 OSIM INSPECTIONS – STRUCTURES - BOUNDARY HIGHWAYS

- 5.1** The County of Brant agrees to carry out all biennial structure inspections as required by the OSIM on all Structures, situated in or along the Highways or parts thereof described in Schedule “A” of this Agreement. The County of Brant further agrees to bear the entirety of the cost of all biennial structure inspections for the

Highways listed on Schedule "A" and to provide a copy of all Biennial OSIM Structure inspection reports to the County of Oxford upon completion.

- 5.2** The County of Oxford agrees to carry out all biennial structure inspections as required by the OSIM on all Structures, situated in or along the Highways or parts thereof described in Schedule "B" of this Agreement. The County of Oxford further agrees to bear the entirety of the cost of all biennial structure inspections for the Highways listed on Schedule "B" and to provide a copy of all Biennial OSIM Structure inspection reports to the County of Brant upon completion.

6.0 CAPITAL IMPROVEMENTS - BOUNDARY HIGHWAYS

- 6.1** Notwithstanding any other provisions in this Agreement, Capital Improvement on any Highway outlined in Schedules "A" and "B" of this Agreement shall not be undertaken by either party without one (1) year prior approval of the Councils of both municipalities, and the parties shall agree in writing upon a 50/50 cost-sharing for that project prior to the implementation of said project, unless the Capital Improvement is due to a development within the developing municipality in which case section 7.0 of this Agreement shall apply.

7.0 DEVELOPMENT

- 7.1** Notwithstanding subsection 6.1 of this Agreement, if Capital Improvement on a Highway listed in Schedule "A" or Schedule "B" relates to a Development, the Developing Municipality shall notify the other municipality of the proposed development prior to approval and shall undertake or cause or permit to be undertaken such Capital Improvement on the following terms:

7.1.1 The Developing Municipality shall obtain approval via a written agreement with the other Municipality except with respect to the issuance of entrance permits where providing a copy of the entrance permit to the other municipality as soon as is reasonable subsequent to issuance is sufficient.

7.1.2 The Developing Municipality shall bear full responsibility for the costs relating directly to such Capital Improvements and the other Municipality shall bear none of the costs relating directly to such Capital Improvements.

7.1.3 Nothing in this section shall derogate from each Municipality's obligation for Routine M&R on Boundary Highways pursuant to the terms of this Agreement.

8.0 INDEMNIFICATION

- 8.1** The County of Brant covenants and agrees that it shall indemnify, defend and save harmless the County of Oxford from any liability, cost, demands, damages, expenses, claims and suits arising out of or in any way related to the obligations of the County of Brant to carry out the work or otherwise meet the obligations

provided for in this Agreement, including the failure to perform such work adequately or at all, except to the extent that same is caused by the negligence or wilful misconduct of the County of Oxford. This indemnity shall survive the early termination or expiry of this Agreement.

- 8.2** The County of Oxford covenants and agrees that it shall indemnify, defend and save harmless the County of Brant from any liability, cost, demands, damages, expenses, claims and suits arising out of or in any way related to the obligations of the County of Oxford to carry out the work or otherwise meet the obligations provided for in this Agreement, including the failure to perform such work adequately or at all, except to the extent that same is caused by the negligence or wilful misconduct of the County of Brant. This indemnity shall survive the early termination or expiry of this Agreement.
- 8.3** Notwithstanding anything to the contrary contained in this Agreement, and subject to any applicable legislation and the ability of a party to protect its own rights in the face of litigation against that party, each party agrees to assist the other party in a timely manner in terms of the provision of information relevant to any claims that are made against the other party with respect to either party's obligations assumed under this Agreement.
- 8.4** The County of Brant shall register this Agreement on title to all affected lands in the County of Brant. The County of Oxford shall register this Agreement on title to all affected lands in the County of Oxford.

9.0 RECIPROCAL INSURANCE

- 9.1** During the term of this Agreement, each party shall obtain and maintain in full force and effect, Comprehensive General Liability Insurance naming the other party as an additional insured regarding their respective obligations under the Agreement. Each party shall also maintain Automobile Liability Insurance for owned vehicles and Non-Owned Automobile Liability Insurance for non-owned vehicles as may be used under this Agreement. Each of the coverages shall have limits of not less than Twenty Million Dollars (\$20,000,000) per occurrence, and shall be issued by insurance companies licensed to carry on business in the Province of Ontario.
- 9.2** Upon request, each party shall deposit with the Contract Administrator for the other party such evidence of its insurance as provided in or required under this Agreement. Each party shall take all reasonable steps to not do or omit to do anything that would impair or invalidate the insurance policies.
- 9.3** The insurance coverages shall in no manner discharge, restrict or limit the liabilities and obligations assumed by the parties under this Agreement.

10.0 NOTICE, CONTRACT ADMINISTRATION AND AMENDMENT

10.1 Each party has appointed the following to act as Contract Administrator for that party:

Director of Roads
The County of Brant
26 Park Avenue
PO Box 160
Burford, Ontario, N0E 1A0

Director of Public Works
21 Reeve Street
PO Box 1614
Woodstock, Ontario, N4S 7Y4

10.2 Each Contract Administrator shall ensure that detailed maintenance and communications logs and other records relevant to the Routine M&R requirements of this Agreement (“Maintenance Records”) are maintained with respect to the respective parties’ obligations under this Agreement. These Maintenance Records shall be available for review and/or copying by the other municipality upon request. Any records reviewed and/or copied pursuant to this provision shall be kept in the strictest of confidence, subject only to the requirements of applicable privacy and freedom of information laws and any other provision of this Agreement.

10.3 Each Contract Administrator shall be responsible for providing the other party with written notice as soon as reasonably aware of the following:

10.3.1 The amalgamation of one party’s jurisdiction with another jurisdiction;

10.3.2 Any proposed change of name or organization of one party’s jurisdiction;

10.3.3 Any proposed change of name of any Highway as listed on Schedules “A” and “B”;

10.3.4 Any proposed change of speed limits of any Highway as listed on Schedules “A” and “B”;

10.3.5 Any changes, additions or removal of any signs on any Highway as listed on Schedules “A” and “B”;

10.3.6 Any change to the class of Highway listed on Schedules “A” and “B”.

10.4 In the event of any changes to Schedules “A” or “B”, the party proposing to make the change shall not make said change without obtaining the prior written consent of the other party, which consent shall not be unreasonably withheld.

- 10.5** In the event of any authorized changes identified in 10.3.1, 10.3.2 or 10.3.3, this Agreement shall be amended accordingly.
- 10.6** For greater certainty, the changes identified in 10.3.4, 10.3.5, or 10.3.6 shall not require an amendment to this Agreement.
- 10.7** For greater certainty, any changes and/or amendments to this Agreement, including without limitation, any changes to Routine M&R conducted by either or both parties, shall be approved by the Council of each party respectively.

11.0 GENERAL PROVISIONS

- 11.1** This Agreement comes into force on the day of its execution by both parties hereto authorized by By-law and shall continue in force for a period of ten (10) years there for, unless terminated in accordance with subsection 11.2. This Agreement shall automatically renew every year for another ten (10) years up to a maximum of twenty (20) years, unless terminated in accordance with subsection 11.2.
- 11.2** This Agreement may be terminated by either party upon sixty (60) days prior written notice to the Contract Administrator of the other party.
- 11.3** This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 11.4** 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 properly authorized and executed by both parties to this Agreement.
- 11.5** This Agreement shall not be assigned by either party without the prior written consent of the other party.
- 11.6** It is understood and agreed by the parties hereto that they are and shall be independent contractors and that nothing herein is intended to make either party and agent, legal representative, subsidiary, joint venture, partner, fiduciary, employee, or servant of the other for any purpose.
- 11.7** This Agreement contains the entire understanding between the parties with respect to the subject matter contained herein. All other responsibilities, duties, liabilities or other rights and/or powers of the respective jurisdictions, statutory or otherwise, remain unaffected unless specifically addressed herein.
- 11.8** Where there is any conflict between any provision of this Agreement and any provision of the Municipal Act, 2001 as amended, the provision of the Municipal Act, 2001 shall prevail to the extent of the conflict.
- 11.9** All references to a day or days in this Agreement shall mean a Business Day or Business Days.

12.0 DEFAULT

12.1 No consent or waiver, expressed or implied, by any party hereto of any breach or default by any other party hereto in the performance of its obligations hereunder shall be deemed to be or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of any party to complain of any act, or failure to act of any other party, or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by the first mentioned party of its rights hereunder.

13.0 DISPUTE RESOLUTION

13.1 In the event of a dispute between the parties to the Agreement arising pursuant to this Agreement, the Contract Administrators agree to engage in good faith negotiations with a view to resolving the dispute.

13.2 In the event the Contract Administrators are unable to resolve a dispute within sixty (60) days as of the date the dispute arose, the parties agree to appoint a Committee comprised of three (3) members per party ("Dispute Committee") in order to resolve the dispute.

13.3 In the event the Dispute Committee is unable to resolve the dispute within thirty (30) days as of the date the dispute was brought before the Dispute Committee, the parties agree to submit to arbitration under the rules of the Arbitration Act, 1991, S.O. 1991, c.17, as amended and as it exists from time to time. This part of the Agreement is not intended to apply to third party tort litigation.

13.4 Nothing contained herein shall be construed as waiving any additional rights in law or in equity of either party with respect to this Agreement.

IN WITNESS WHEREOF the Corporate Seals of each of the parties hereto have been affixed duly attested by the respective authorized signing officers:

THE CORPORATION OF THE COUNTY OF BRANT

Per: _____
Mayor

Per: _____
Clerk

We have the authority to bind the Corporation.

COUNTY OF OXFORD

Per: _____
CAO

I have the authority to bind the Corporation.

Schedule "A"

COUNTY OF BRANT BOUNDARY HIGHWAYS

HIGHWAY	SECTION LIMIT (FROM)	SECTION LIMIT (TO)	ROAD SURFACE TYPE	NUMBER OF STRUCTURES	ROAD CLASS	ROAD MAINTENANCE
Muir Road South	Harley Road (Oxford Road 21)	Highway #53 (Oxford Road 53)	Paved/Surface Treated	4	3	8,400 metres
Highway#2	Middle Townline Road	Governors Road West	Paved	1	3	6,430 metres
Governors Road West	Highway #2	Puttown Road	Paved	0	3	780 metres
Brant-Oxford Road	Puttown Road	Keg Lane	Paved	2	2	2,000 metres

Total Length of Highway

17.61km

Schedule "B"

COUNTY OF OXFORD BOUNDARY HIGHWAYS

HIGHWAY	SECTION LIMIT (FROM)	SECTION LIMIT (TO)	ROAD SURFACE TYPE	NUMBER OF STRUCTURES	ROAD CLASS	ROAD MAINTENANCE
Muir Road North	Highway #53 (Oxford Road 55)	Highway #2	Paved	0	4	4,290 metres
Highway #2	Muir Road North	Middle Townline Road	Paved	1	3	7,170 metres
Brant-Oxford Road	Keg Lane	Brant-Waterloo Road	Paved	0	3	8,120 metres

Total Length of Highway

19.58km

Schedule “C”

CAPITAL IMPROVEMENT ACTIVITIES

Included in Capital Improvement Activities:

1. Utility relocations required for road reconstruction
2. Design, environmental assessment, tendering and construction administration
3. Traffic control during construction
4. New and replacement bridges and centerline culverts
5. Rehabilitation of bridges and centerline culverts
6. Gravel roadway resurfacing
7. Road realignment, widening, grade revisions, intersection improvements
8. Excavation
9. Placing earth fill and granular base
10. Hot mix asphalt paving or surface treatment on new grade
11. Storm sewers, catch basins, curbs and gutters
12. Sidewalks
13. Illumination
14. Traffic Signals
15. Signing replacement or enhancement required for road reconstruction
16. Guiderail systems
17. Topsoil on slopes, seeding, sodding, tree planting and other landscaping required to restore roadsides after road reconstruction
18. Environmental protection
19. Issuance of entrance permits

Schedule “D”

ROUTINE MAINTENANCE AND REPAIR ACTIVITIES

1. Included in Maintenance Legislation:

- Patrolling
- Weather monitoring
- Snow removal
- Ice treatment/removal
- Pothole repair
- Shoulder grading and gravelling
- Pavement crack repair
- Debris removal
- Luminaire maintenance
- Sign maintenance
- Traffic control signal system maintenance
- Bridge deck spall repair
- Road surface discontinuity repair
- Sidewalk surface discontinuity repair

2. Other Routine Maintenance Activities:

- Asphalt patching
- Surface treatment overlay
- Tree trimming and removal
- Grass and vegetation control
- Roadway drainage system maintenance
- Culvert cleaning, repair and replacement
- Guiderail maintenance
- Bridge washing and minor repairs
- Responding to public concerns
- Emergency response and repairs
- Gravel surface grading and placing gravel to restore roadway surface
- Pavement marking maintenance
- Environmental protection
- Dust control