



Public Works Committee Report

To: The Chair and Members of the Public Works Committee
From: Steve Killaire, Transportation Engineer
Date: November 8, 2016
Subject: PW-16-77 Boundary Road Agreement with Haldimand County
Purpose: Approval of By-law

Recommendation

Whereas the Municipal Act allows municipalities to enter an agreement for maintenance of boundary roads;

And whereas such agreements make each municipality responsible for the maintenance of those road sections they agree to maintain;

And whereas in the absence of an agreement, both municipalities share liability for all boundary roads;

And whereas Operations Department staff have come to an agreement with Haldimand County staff on the conditions of a boundary road agreement;

That the attached agreement be signed by the Mayor and the Clerk on behalf of Council;

And that a by-law be passed by Council approving the boundary road agreement between the County of Brant and Haldimand County.

Key Strategic Priority:

1.3 To ensure that our relationships, service agreements and boundaries with our neighboring municipalities, particularly with the City of Brantford and the First Nations communities, are mutually beneficial.

Financial Considerations:

None.

Report:

There is presently no agreement in effect between the County of Brant and Haldimand County to define the responsibilities of each municipality for boundary roads. The Municipal Act specifies that both municipalities jointly share ownership of boundary roads, and also that an agreement can be made between municipalities to take responsibility of portions of boundary roads. When an agreement is in place, each municipality will bear full responsibility for the road sections they have agreed to maintain.

The County of Brant and Haldimand County have continued to maintain road sections according to past agreements which are no longer valid. Under the present circumstances, both municipalities are equally responsible for the maintenance of all the boundary roads.

To clarify the responsibility of each municipality, and to avoid the County of Brant taking responsibility for the maintenance operations of other municipalities with whom we share boundary roads, Operations Department and Legal and Property Services prepared an agreement that was reviewed by Cowan Insurance and their solicitor. Cowan has shared this agreement as a best practice with other municipalities.

This agreement has been slightly modified from the version recommended by Cowan. It includes a provision for equalization of costs where the municipality with the larger amount of road to maintain may invoice the other municipality for 50% of the difference in cost based on the kilometers of road maintained. Haldimand County maintains 0.77 km more road than the County of Brant, and therefore Haldimand County may invoice the County of Brant for the cost of 0.385 km. There are also some wording changes to the insurance clauses made at the request of Haldimand County which do not affect the responsibilities or liability of either party.

Haldimand County intends to bring this agreement to their Council in Committee on November 15, 2016, and to their Council for approval on November 24, 2016. Signed copies should be available for signature by their Mayor and Clerk on November 28, 2016.

Interdepartmental Considerations

By-Law Amendment by Legal and Property Services.

Attachments

1. Boundary Road Agreement

Copy to

1. M. Tout, Director of Roads
2. L. Dale, Director of Legal and Property Services

File #A16 Haldimand County (SK/el)

In adopting this report, is a by-law or agreement required?

If so, it should be referenced in the recommendation section.

By-law required Yes

Agreement(s) or other documents to be signed by Mayor and /or Clerk Yes

Is the necessary by-law or agreement being sent concurrently to Council? Yes

**BOUNDARY HIGHWAY ROUTINE MAINTENANCE
AND CAPITAL REPAIR AGREEMENT**

BETWEEN

THE CORPORATION OF THE COUNTY OF BRANT

(hereinafter called "Brant")

OF THE FIRST PART

- and -

THE CORPORATION OF HALDIMAND COUNTY

(hereinafter called "Haldimand")

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 Highway Routine Maintenance and Capital Repair Agreement, including the following Schedules:

Schedule "A" – County of Brant Boundary Highways;

Schedule "B" – Haldimand County 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 Brant or Haldimand 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 set out 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** 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** Haldimand 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** Brant and Haldimand shall perform all *Routine M&R* for their respective jurisdictions, as outlined in s. 2.1 and s. 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** Brant agrees to bear the entirety of the cost of *Routine M&R* for the *Highways* listed on Schedule “A”.
- 4.2** Haldimand agrees to bear the entirety of the cost of *Routine M&R* for the *Highways* listed on Schedule “B”.
- 4.3** Both parties agree that irrespective of the costs incurred in the performance of Routine M&R, there shall be equal sharing of the costs associated with the work undertaken pursuant to the *Agreement*. If there is a variance between the workload outlined in Schedule “A” and Schedule “B”, then the party undertaking

the greater share of the workload should invoice the other party on an annual basis for an amount equal to fifty percent (50%) of the difference for each kilometre in excess of fifty percent (50%) of the total workload, plus applicable administrative costs. All Maintenance costs associated with the greater share shall be charged back at the three (3) year average Annual Municipal Performance Measurement Program Rate of the party performing the work, as reported at the first day of the calendar year.

5.0 OSIM INSPECTIONS – STRUCTURES - BOUNDARY HIGHWAYS

5.1 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*. 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 Haldimand upon completion.

5.2 Haldimand 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*. Haldimand 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 Brant upon completion.

6.0 CAPITAL IMPROVEMENTS - BOUNDARY HIGHWAYS

6.1 Notwithstanding any other provisions in this *Agreement*, *Capital Improvement* of any kind 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 shall apply.

7.0 DEVELOPMENT

7.1 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 of the development, 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 Brant covenants and agrees that it shall indemnify, defend and save harmless Haldimand from any liability, cost, demands, damages, expenses, claims and suits arising out of or in any way related to the obligations of Brant to carry out Routine M&R 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 Haldimand. This indemnity shall survive any termination or expiry of this *Agreement*.

8.2 Haldimand covenants and agrees that it shall indemnify, defend and save harmless Brant from any liability, cost, demands, damages, expenses, claims and suits arising out of or in any way related to the obligations of Haldimand to carry out Routine M&R 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 Brant. This indemnity shall survive any 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 preservation of information/documentation relevant to any claims that are made against the other party with respect to either party's obligations assumed under this *Agreement*.

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*.

9.2 Each party shall also purchase and maintain automobile liability insurance coverage, which coverage shall include but will not be limited to liability,

comprehensive and collision coverage for owned and 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.

- 9.3** Upon request, each party shall deposit with the *Contract Administrator* for the other party a Certificate of Insurance evidencing its insurance as provided in or required under this *Agreement*. Such Certificate of Insurance shall identify the inclusion of Cross Liability & Severability of Interest Clauses contained within the CGL coverage and indicate that thirty (30) days' written notice of cancellation or material change will be provided.
- 9.4** Each party shall take all reasonable steps to not do or omit to do anything that would impair or invalidate the insurance policies.
- 9.5** The insurance coverages shall in no manner discharge, restrict or limit the liabilities and obligations assumed or agreed to 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

Manager, Roads Operations Division
Haldimand County
1162 Kohler Road
Cayuga, Ontario, N0A 1E0

- 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 Schedule "A" and "B";

10.3.4 Any proposed change of speed limits of any *Highway* as listed on Schedule "A" and "B";

10.3.5 Any changes, additions or removal of any signs on any *Highway* as listed on Schedule "A" and "B";

10.3.6 Any change to the class of *Highway* listed on Schedule "A" and "B".

10.4 In the event of any changes to Schedules "A" or "B" identified in 10.3.3, 10.3.4, 10.3.5, or 10.3.6 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 prior to any such changes taking effect.

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 shall continue in force for a period of ten (10) years there for, unless terminated in accordance with s.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 s.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.** No consent or waiver, express 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 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

THE CORPORATION OF HALDIMAND COUNTY

Per: _____
Mayor

Per: _____
Clerk

Schedule "A"

COUNTY OF BRANT BOUNDARY HIGHWAYS

HIGHWAY	SECTION LIMIT (FROM)	SECTION LIMIT (TO)	ROAD SURFACE TYPE	NUMBER OF STRUCTURES	ROAD CLASS	ROAD MAINTENANCE KM
Seneca Onondaga Townline Road	Baptist Church Road	Sawmill Road	Gravel	0	4	2.06km

Total Length of Highway 2.06km

Schedule “B”

HALDIMAND COUNTY BOUNDARY HIGHWAYS

HIGHWAY	SECTION LIMIT (FROM)	SECTION LIMIT (TO)	ROAD SURFACE TYPE	NUMBER OF STRUCTURES	ROAD CLASS	ROAD MAINTENANCE KM
Seneca Onondaga Townline Road	Highway #54	Baptist Church Road	Surface Treated	0	4	2.83km

Total Length of Highway 2.83km

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