

Boundary Roads Agreement

B E T W E E N

City of Ottawa

(Hereinafter referred to as “City”)

OF THE FIRST PART

- A N D -

The Corporation of the xxxxxxxxxxxxxxxx

(Hereinafter referred to as “County, Township”)

OF THE SECOND PART

WHEREAS pursuant to Section 20(1) of the *Municipal Act*, 2001, S.O. 2001, c. 25 (Municipal Act, 2001), “A municipality may enter into an Agreement with one or more municipalities or local bodies, as defined in section 19, or a combination of both to jointly provide, for their joint benefit, any matter which all of them have the power to provide within their own boundaries.”;

AND WHEREAS Section 29.1(1) of the *Municipal Act*, 2001, S.O. c.25 as amended provides that “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,” for the area in which the highway is located.;

AND WHEREAS the parties are adjoining “Municipalities” and are desirous of entering into an “Agreement” under the provisions of Section 8(1), 9 and 29(1) of the *Municipal Act*, R.S.O. 2001, and amendments thereto dealing with “Routine Maintenance and Repair” and “Capital Improvements” of “Boundary Roads” between such Municipalities totally under the jurisdiction of the respective Municipalities.

AND WHEREAS the County, Township and City has or will have passed respective By-Laws (County or Township By-Law Number 201X-XXXX and City By-Law Number 201X-XXXXXX) in accordance with the *Municipal Act*, 2001 with respect to the “Routine Maintenance and Repair” and “Capital Improvements” of the “Highways” identified in Schedules “A” and “B” of this “Agreement” for the area in which the “Highway” is located;

AND WHEREAS all previous boundary road Agreements between Corporations, Counties and Townships, Town and City will then be considered repealed;

NOW THEREFORE in consideration of the covenants contained herein and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree each with the other as follows:

1.0 DEFINITIONS

- 1.1 **“Agreement”** means this Boundary Roads Agreement.
- 1.2 **“Boundary Roads”** are shared Highways between Municipalities in accordance with the Municipal Act Section 29 and as identified in Schedule A and B attached hereto.
- 1.3 **“Capital Improvements”** means the building and/or rebuilding of Highways, parts of Highways and Structures as a means to extend the life cycle or materially improve and enhance the Highway. The cost of this construction is shared between Municipalities; total costs are generally over \$10,000 and have been approved by the respective Councils. This does not mean or include Routine Maintenance and Repair.
- 1.4 **“Highway”** includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.
- 1.5 **“Joint Jurisdiction”** has the meaning described in Section 29 of the Municipal Act, 2001.
- 1.6 **“Municipalities”** means a geographic area whose inhabitants are incorporated.
- 1.7 **“OSIM”** means the current (as amended) version of the Ontario Structure Inspection Manual by the Ministry of Transportation, Policy Planning and Standards Division, Engineering Standards Branch, Bridge Office.
- 1.8 **“Routine Maintenance and Repair”** means any summer and winter Maintenance work of any kind on the Highway in accordance with the Minimum Maintenance Standards for Municipal Highways as per Ontario Regulation 239/02 as amended.
- 1.9 **“Structures”** means bridges, culverts, tunnels, retaining walls, sign supports and other such features as those terms are defined in the OSIM.

- 1.10 **“Repair”** means any modification, alteration, retrofitting or improvement to a component of the structure which is aimed at correcting existing defects or deficiencies, as those terms defined in the OSIM.
- 1.11 **“Maintenance”** means any actions which aimed at preventing the development of defects or preventing deterioration of a structure or its components, as those terms defined in the OSIM.
- 1.12 **“Rehabilitation”** means any modification, alteration, retrofitting or improvement to a structure which is aimed at correcting existing defects or deficiencies, as those terms defined in the OSIM.

2.0 ROUTINE MAINTENANCE AND REPAIR OF HIGHWAYS AND STRUCTURES

- 2.1 The Municipalities agree that the value of the respective Routine Maintenance and Repair work as described in Section 1.8 for the roads as identified in Schedule “A” will be approximately equal. By performing these respective works, it will not be necessary for either Municipality to invoice the other for costs incurred. Street trees, street lights and traffic lights will be cared for by the respective municipality to which the assets are abutting and or electrical power is sourced from.
- 2.2 The Municipalities agree to have the City carry out regular structure inspections as required by the OSIM on all structures situated in or along the Highways or parts thereof described in Schedule “A” and “B” of this Agreement. Both parties agree that there will be equal sharing of the costs associated with the OSIM inspection of the Structures on all Boundary Roads identified in Schedule “A”. Cost sharing shall be determined in accordance with Section 7.2.
- 2.3 Upon request, Capital Asset Condition Reports and OSIM Structural Inspections will be made available by the City to the Township or County,
- 2.4 No Routine Maintenance and Repair of Highways greater than \$10,000 will be undertaken or be charged by a Municipality unless such works have first been approved by the other Municipality.

3.0 CAPITAL IMPROVEMENTS

- 3.1 Prior to any planned Capital Improvements, on any of the Boundary Roads, the Municipality proposing the work will notify the other Municipality a minimum of one year

in advance of the work to allow for appropriate Council budget approvals of equal shared costs.

- 3.2 Procurement method (internal force vs. contracts) shall be discussed and agreed upon considering the scale, complexity, in-house capacity, schedule and cost.
- 3.3 The City will use their own Standard Tender Documents for Unit Price Contracts which include construction specifications, material specifications, and standard detail drawings for use in the design and construction of applicable Boundary Road Infrastructure for procurement through contracts.
- 3.4 The Municipality administering the work will provide a copy of draft construction contract documents, and final tender documents to the other municipality for review and approval, as applicable. As-built drawings, where available, will be provided at the completion of the project.
- 3.5 Should economies of scale and experience be of advantage to one Municipality or the other, the Municipality with the advantage can carry out the planned works with suitable notification and agreement between both parties.
- 3.6 No Capital Improvements of any kind, greater than \$10,000.00 on Highway and Structures shall commence or be charged by any Municipality unless such works have first been approved by the other Municipality. A Capital Structure replacement or Repair that will cost less than \$10,000 will also be agreed to between Municipalities.
- 3.7 If one Municipality proposes a project, the adjoining boundary Municipality must provide a response indicating whether they are in agreement to proceed or not, such time as reasonably practical prior to year-end of the year before the proposed Capital Improvement will be completed unless it is an election year, and in an election year, such approval should be communicated prior to the end of Q1 of the year following the election. Notwithstanding that all efforts will be made to reach an agreement on a mutually beneficial Capital Improvement through discussions pursuant to Section 3.1 and Section 12, if one Municipality does not agree to proceed with a project, the project will not proceed.
- 3.8 Typical Scope and Renewal Agreement wording found in individual Capital Project Contracts will be found in Schedule "C".

4.0 EMERGENCY WORKS

- 4.1 The Municipalities agree that should emergency works or action be required in respect to on-going Maintenance and Repair or Capital Works due to a compromise of the structural integrity and to ensure the safety of the public or property on the road allowance or adjoining property, such emergency works will be undertaken by the Municipality. The Municipality undertaking the work will make reasonable efforts to notify the other Municipality prior to the works or as soon as possible following securing the site.
- 4.2 Notwithstanding anything contained in this Agreement, in the event that there is an emergency or obstruction on any part of the shared Highway such that the Highway is blocked or otherwise obstructed or potentially hazardous, either party may immediately remove said obstruction and, if applicable as Routine Maintenance and Repair, invoice the other Municipality for the whole amount depending on the identified Maintenance responsibility in Schedule A or 50% of total cost if not on the identified Maintenance responsibility.
- 4.3 Emergency Tree Removal will be handled as per Section 5.
- 4.4 Emergency Street Light works or actions will be handled as noted in 4.1 and 4.2 but any notification and invoicing will be directed to the power source municipality.

5.0 TREES

- 5.1 Each Municipality will take responsibility for the maintenance and cost of the trees on their side of the Boundary Roads described in Schedule "A" of this Agreement.
- 5.2 Should economies of scale be of advantage to either Municipality, an agreement can be entered into to share the cost for the work carried out on the Boundary Roads.
- 5.3 Notwithstanding anything contained in this Agreement, in the event that a tree, trees or any part thereof falls onto or is otherwise situated on any part of the Boundary Road such that the tree is blocking or otherwise causing an obstruction or is a potential hazard on the Highway, either Municipality may immediately remove said tree and, if applicable, inform the other Municipality of potential invoicing. The Municipality performing the removal in accordance with Section 4.0 shall not be responsible for any liability related to said tree and /or its removal simply by virtue of performing the removal.

6.0 ROAD CUT PERMITS

6.1 The City will manage all road cut permits, municipal consent and carry out all inspections for the parties to this Agreement and for Third Parties wishing to access the public road allowance on the Highways described in Schedule “A” and “B” to this Agreement.

7.0 COST OF WORK REQUIRED BY THIS AGREEMENT

7.1 With the exception of not sharing hydro power usage for street lighting, signals and road allowance trees, each Municipality will share equally in the cost of maintaining the Boundary Roads described in Schedule “A” of this Agreement.

7.2 Each party will invoice the other as necessary according to shared Routine Maintenance and Repair of Highways and Structures (as per Section 2), Capital Improvements (as per Section 3) and Emergency Works (Section 4) charging 50% of internal costs, contractors and consultant costs, materials and equipment usage for the work carried out. Parties being invoiced shall be subject to a 15% overhead, except for Capital Improvements. Capital Improvements will be subject to a separate agreement (as per Section 3) where the 10% contingency and 5% inspection costs shall be explicitly outlined. Payment will be due within thirty (30) days of the receipt of the invoice including applicable HST.

8.0 INTERPRETATION

8.1 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.

8.2 Where there is any conflict between any provision of this Agreement and the provisions of the *Municipal Act, 2001*, as amended, the provision of the *Municipal Act, 2001*, shall prevail to the extent of the conflict.

9.0 INDEMNIFICATION

9.1 The Municipalities covenant and agree that they shall indemnify, defend and save harmless the other party from any liability, cost, demands, damages, expenses, claims and suits including reasonable legal fees arising out of or in any way related to the obligations of the Municipality 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 willful misconduct of the Municipality. This indemnity shall survive the early termination or expiry of this Agreement.

9.2 Notwithstanding anything to the contrary contained in this Agreement and subject to any applicable legislation and the ability of a Municipality 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.

10.0 RECIPROCAL INSURANCE FOR CAPITAL WORKS AND MAINTENANCE

10.1 Each Municipality and their contractor shall provide and maintain during the term of the Agreement Commercial/Comprehensive General Liability insurance subject to limits of not less than TEN MILLION DOLLARS (\$10,000,000.00) per occurrence for bodily injury, death and damage to property including loss of use occurring upon its lands. Such insurance shall include premises, property and operations; personal injury; owners' and contractors' protective; occurrence property damage; products and completed operations; non-owned automobile; broad form property damage; contingent employers' liability; blanket contractual liability; employees as additional insured; and cross liability and severability of interests' clauses. Each party shall add the other party as an additional insured and their contractor shall add both parties as an additional insured.

10.2 Each Municipality and their contractor shall provide and maintain during the term of the Agreement Automobile liability insurance with respect to owned or leased licensed vehicles used directly or indirectly in the performance of the Agreement covering liability for bodily injury, death and damage to property with a limit of not less than FIVE MILLION DOLLARS (\$5,000,000.00) inclusive for each and every loss.

10.3 All the above insurance policies shall contain an endorsement to provide all Named Insured and Additional Insured with thirty (30) days prior written notice of cancellation.

10.4 Evidence of insurance shall be provided prior to the execution of the Agreement and upon the anniversary date(s) of all applicable policies.

- 10.5 Each Municipality shall take all reasonable steps to not do or omit to do anything that would impair or invalidate the insurance policies.
- 10.6 The insurance coverage shall in no manner discharge, restrict or limit the liabilities and obligations assumed by the Municipalities under this Agreement.

11.0 AGREEMENT ADMINISTRATION AND AMENDMENT

- 11.1 Each party agrees to appoint at least one (1) representative, who will act as Contract Administrator for that party within one (1) week of execution of this Agreement.
- 11.2 Each Contract Administrator shall provide his/her contact particulars, in writing, to the other party within two (2) weeks of execution of this Agreement.
- 11.3 Each Contract Administrator shall ensure that detailed Maintenance and Communications Logs and other records relevant to the Routine Maintenance and Repair and the Capital Improvement programs are maintained with respect to the parties' obligations under this Agreement. These Maintenance and Capital Records shall be available for review and/or copying by the other Municipality, upon request during regular business hours. 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.
- 11.4 The Contract Administrators shall communicate on a regular basis and in any event, no less than once every year in order to discuss issues arising due to the obligations contained in this Agreement.
- 11.5 For greater certainty, any changes and/or amendments to this Agreement, including without limitation, any changes to Routine Maintenance and Repair, conducted by either or both parties, shall be approved by the Council of each Municipality respectively and shall be authorized by By-Law amending this Agreement.
- 11.6 Both parties shall ensure that contact information is up-to-date in the event of staff change or organizational transition and or address change. Each party agrees to provide new contact particulars, in writing, to the other party within two weeks of the change.

12.0 DISPUTE RESOLUTION

- 12.1 In the event of a dispute between the Municipalities 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.
- 12.2 In the event the Contract Administrators are unable to resolve a dispute within twenty (20) days as of the date the dispute arose, the dispute shall be elevated to the General Manager (or designates) of each municipality for resolution within ten (10) business days of receipt of such request.
- 12.3 In the event the General Managers (or designates) are unable to resolve the dispute within sixty (60) days as of the date the dispute was brought, then the dispute shall be elevated to the City Manager/Chief Administrator Officer of the respective municipality for resolution within thirty (30) business days of receipt of such request failing which the parties agree to submit to arbitration under the Rules of the Arbitration Act, 1991, S.O. 1991 c.17, as amended.
- 12.4 Nothing contained herein shall be construed as waiving any additional rights in law or in equity of either party with respect to this Agreement.

13.0 GENERAL PROVISIONS

- 13.1 This Agreement comes into force on the day of its execution by both Municipalities hereto and shall continue in force for a period of ten (10) years. This Agreement shall then automatically renew for another five (5) years unless one of the parties provides the other party with ninety (90) days written notice prior to the renewal date of an intent to revise portions of the Agreement.
- 13.2 If upon the termination of this Agreement no new agreement is in place the shared jurisdictional practices carried out in the past will continue until a new agreement is entered into by the parties.
- 13.3 No amendment or variation to this Agreement or any of the terms hereof shall be binding upon the Municipalities hereto, unless the same is in writing and properly authorized and executed by both parties to this Agreement by going through By-law authorization.
- 13.4 This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

- 13.5 This Agreement shall not be assigned by either Municipality without the prior written consent of the other party.
- 13.6 It is understood and agreed by the Municipalities hereto that they are and shall be acting independently in the performance of their duties under this Agreement. Nothing in this Agreement is intended to make either party an agent, legal representative, subsidiary, joint venture, partner, fiduciary, employee or servant of the other for any purpose.
- 13.7 Time shall be of the essence of this Agreement and of every part hereof and no extension or variation of this Agreement shall operate as a waiver of this provision.
- 13.8 If any provision of this Agreement is held to be invalid, void or unenforceable, then the remaining provisions shall continue in full force and effect without being impaired or invalidated in any way.
- 13.9 No waiver to the provisions of this Agreement will be allowed unless both Municipalities are in agreement and document the waiver. Should there be any breach or default by any party hereto in the performance of its obligations hereunder the party shall be subject to requirements set out in Section 14. Failure on the part of any Municipality to complain of any act or failure to act of any other Municipality or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by the first Municipality of its rights hereunder.
- 13.10 The insertion of headings in this Agreement is for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.
- 13.11 This document may be executed in any number of counterparts, each of which shall be deemed to be an original and shall fully bind each party who has executed it.
- 13.12 All references to a day or days in this Agreement shall mean a calendar day or calendar days.
- 13.13 Any notice provided for under this Agreement shall be in writing and shall be sufficiently given if delivered personally or if transmitted by facsimile with an original signed copy sent by prepaid registered mail within forty-eight (48) hours thereafter or if mailed, by prepared registered mail, to the parties, as follows:

(a) To County, at:

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX

Attention: XXXXXXXXXXXXXXXXXXXXXXXX

e-mail XXXXXXXXXXXXXXXXXXXXXXXX

Fax: XXXXXXXXXXXXXXXXXXXXXXXX

(b) To City, at:

100 Constellation

Ottawa, ON

K2G 6J8

Attention: XXXXXXXXXXXXXXXXXXXXXXXX

e-mail XXXXXXXXXXXXXXXXXXXXXXXX

FAX XXXXXXXXXXXXXXXXXXXXXXXX

An alternate address or facsimile number will be accepted if given in writing. Any notice delivered shall be effective on the date of personal delivery or on the date of facsimile transmission and any notice mailed shall be effective three (3) days after the mailing thereof, provided that where interruption of mail services is likely by reason of any strike or other labour dispute, notice shall be given by personal delivery or facsimile transmission.

14.0 DEFAULT

Notwithstanding any of the foregoing, in addition to any other remedies available at law or in equity, in the event that one Municipality defaults in the performance of its obligations under this Agreement, the other party has the option of performing the work to the extent of the deficiency and charging the defaulting party for said services, including without limitation, all personnel administrative and/or other related costs thereto.

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

EXECUTED IN QUADRUPLICATE

THE CORPORATION OF THE XXXXXXXXXXXXXXXXXXXX

Per: _____

Warden –

Per: _____

Clerk –

Date

We have the authority to bind the Corporation.

CITY OF OTTAWA

Per: _____

Mayor – Jim Watson

Per: _____

Clerk – Rick O'Connor

Date

We have the authority to bind the Corporation.

SCHEDULE "A"

BOUNDARY ROADS, DESCRIPTIONS AND MAINTENANCE PRACTICES

SCHEDULE “B”

BOUNDARY ROADS AND SKETCHES

**SCHEDULE “C” SAMPLE
BOUNDARY ROAD CAPITAL RENEWAL AGREEMENT
AND PROJECT SCOPE**

15.0 PARTY OF THE FIRST PART

Phone (613)

Representative

Director

Roads and Public Works

PARTY OF THE SECOND PART

City of Ottawa

**16.0 Planning, Infrastructure and
Economic Development
Department**

100 Constellation Cr., Ottawa, K2G 6J8

Phone (613) 580-2424, ext.

Representative

Senior Engineer, Structure Renewal

Asset Management Branch

It is hereby agreed by the first party to contract with the second party, which shall provide boundary road renewal on specific roads according to the following conditions:

1. Both parties have agreed to the general culvert renewal strategy as described in Schedule A: Scope of Work (“project”).
2. The City of Ottawa will tender and manage the project. The Project Manager for the City of Ottawa is _____, Asset Management, Planning, Infrastructure and Economic Development.

3. The parties agree that the City of Ottawa shall perform the services identified above in paragraph 1. _____ shall be responsible for reimbursing the City of Ottawa 50% of the total cost of the design and construction work carried out as part of the project including external (e.g., labour, equipment, vehicles and material cost) and internal costs (e.g., contract administration, construction supervision) plus applicable taxes. The total cost is estimated to be \$XX, plus applicable HST; however, invoicing will be based on actual costs at the end of the project. Should the price be higher, _____ will be advised prior to proceeding with granting the contract.
4. All invoices shall be sent to the attention of the above Representative of _____. Payment (including applicable HST) shall be made for actual incurred costs upon completion of the project within thirty (30) days of invoicing.
5. Shall commit funds in its 20XX budget for the project in the amount of \$XX. Will invoice the City of Ottawa for 50% of any related internal costs. Payment (including applicable HST) shall be made for actual incurred costs upon completion of the project within thirty (30) days of invoicing.
6. The parties agree that the value of the road infrastructure assets is shared at 50% for accounting purposes.
7. Other considerations:

The undersigned parties hereby agree to abide by the above conditions until notice to withdraw from this Agreement is appropriately given by one party to the other with no less than one month's notice, but not for more than one year from the date of signing of this Agreement.

This Agreement shall be effective from the _____ day of _____

Signed and sealed this _____ day of _____, 2016 _____

PARTY OF THE FIRST PART

Signed _____

Position

Date _____

PARTY OF THE SECOND PART

Signed _____

Position: General Manager

Planning, Infrastructure and Economic Development Department

City of Ottawa

Date _____

SCOPE OF WORK

Boundary road renewal of the Timmins Road culvert (known as L431010 in the City of Ottawa inventory), a 610 mm RCSP located under Timmins Rd approximately 0.01 km from Kinburn Side Road, shall include the following:

Strategy:

- Invert of West extension has rusted out. Invert of section under the roadway has severe rust with possible perforations and East extension has light rust in invert. The recommended renewal strategy entails the following major components:
- Culvert shall be replaced with aluminized CSP, minimum thickness 2.8 mm.
- Reduction in size of the culvert is not recommended.
- Culvert shall be replaced with equal/larger size. A cover depth of 300mm over the culvert shall be maintained.
- All joints shall be wrapped with non-woven geo-textile of minimum 1 m width.
- Erosion control measures shall be installed as required.

Environmental Screening:

- Species at Risk Screening (SARS) was carried out by the City and the culvert has been classified as follows:
 - Low Risk – Milksnake
- Mitigation measures required:
 - Recommend site-specific SAR awareness training for all supervisors on-site
 - Construction staff, or person designated by a supervisor of the project, must survey work area prior to construction start-up to ensure no SAR are present. SAR observations to be reported to City Project Manager and Contract Administrator, who in return must contact the MNR. Further measures may be needed to continue the activity
 - Provide site-specific SAR information to on-site staff. Information should include:
 - A description of relevant SAR;

- Photos of SAR that may be present on site;
- Appropriate avoidance measures; and
- Emergency contact numbers in case of incident with SAR