

## **AGREEMENT**

**This Agreement** is made and is first effective on the date the Agreement is executed by both Parties ("**Effective Date**")

**Between**

**THE CORPORATION OF THE COUNTY OF ESSEX**  
(hereinafter the "**County**")  
-and-

**THE CORPORATION OF THE MUNICIPALITY OF CHATHAM – KENT**  
(hereinafter "**Chatham-Kent**")

**Whereas** Sections 20, 29, 29.1 and 52 of the Municipal Act, 2001 (The "Act") make provisions for agreements between adjoining municipalities for the maintenance and repair of any highway or bridge forming the boundary between such municipalities, including the bridges thereon; and

**Whereas** boundary roads exist on the boundary between the County of Essex and Municipality of Chatham-Kent as set out in **Schedule 'A' of this Agreement (the "Boundary Roads")**; and

**Whereas** it is deemed expedient and necessary to clarify which of the Parties are responsible for the year-round oversight, maintenance and repair of the Boundary Roads;

**Now Therefore** in consideration of the mutual covenants set out below with other good and valuable consideration and the sum of two dollars (\$2.00) (the receipt and sufficiency of which is acknowledged), the Parties hereto agree each with the other as follows:

### **1. Definitions**

1.1. The Parties agree that the schedules to this Agreement form part of this Agreement.

1.2. The terms throughout this Agreement appearing with the first letter capitalized or appearing as acronyms will have the meanings assigned to them below or in this Agreement:

**Boundary Roads:** means the roads that are located on the boundary between the County of Essex and the Municipality of Chatham-Kent and are identified in green in the map at Schedule "A" of this Agreement. However, for clarity, the Parties acknowledge and agree that the portion of the Boundary Roads between Goodreau Line and Tilbury West and Romney Road are located entirely within the Municipality of Chatham-Kent, and are not in any way, whatsoever, the responsibility of or a liability for the County.

**Bridge:** means a public bridge forming part of a highway on, over or across which a highway pass.

**Capital Improvement:** All work to be performed that is above and beyond that work required by Routine Maintenance standards or Winter Maintenance standards, including but not limited to items such as road construction, hot mix asphalt, resurfacing and shoulder gravelling associated with this resurfacing, bridge repairs or replacements, and any bridge surface treatment.

**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.

**Minimum Maintenance Standards:** Shall mean those standards stipulated by Ontario Regulation 239/02 (Minimum Maintenance Standards for Municipal Highways) for the maintenance standards of repair for highways under municipal jurisdiction, as they may be amended from time to time.

**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 or Bridge including but not limited to:

- Hardtop surface maintenance including but not limited to 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.
- Roadside maintenance and vegetation management including but not limited to roadside mowing, weed control, tree planting and removal, tree trimming, sidewalk maintenance, debris collection including debris and leaves, curb and gutter, guiderail and fence maintenance.
- Stormwater management including but not limited to roadside ditching, entrance culvert maintenance, maintenance of storm sewers and catch basins and inspections.
- Structure maintenance including but not limited to washing and component repairs for concrete and steel culverts, bridges of all types and pedestrian bridges.
- Traffic operations including but not limited to pavement markings, illumination, signals and signs and safety devices.

**Shoulder:** means the area adjacent to a Roadway, where there is no curb that may be paved or unpaved.

**Winter Maintenance:** includes snowplowing, combination plowing/ice control, ice control, de-icing, sanding, winging back, snow fencing, snow removal, standby, winter patrol, spring clean-up.

**Winter Maintenance Season:** means the continuous period of time between the first day of November to the last day of April annually.

**Non-Winter Maintenance Season:** means the continuous period of time between the first day of May to the last day of October annually.

## **2. Term**

2.1. Chatham-Kent agrees to provide Winter Maintenance and Routine Maintenance services on the Boundary Roads identified in Schedule 'A' for a period of five (5) years commencing on the Effective Date (the "**Term**") and in accordance with the terms and conditions of this Agreement.

2.2. The Parties agree that this Agreement shall automatically renew immediately prior to the expiration of the Term or any extension of the Term for a further one-year period on the same terms and conditions unless either Party provides 180 days of advance notice in writing of its intention to terminate the agreement at the expiration of the then current Term. However, the Parties agree to review this Agreement as required and no later than ten (10) years from the Effective Date.

## **3. Insurance**

3.1 Each Party shall at its own expense, obtain and keep in force during the term of this agreement, insurance satisfactory to the other Party including the following terms and minimum coverage, which limits may be achieved by way of primary and/or umbrella or excess policies, and underwritten by an insurer licensed to do business in the Province of Ontario. Such policies shall include, but not be limited to:

- a) **Municipal General Liability Insurance** on an occurrence basis for an amount of not less than Ten Million Dollars (\$10,000,000.00) including:
  - i. Shall include but not limited to bodily injury, property damage and contractual liability;
  - ii. The other Party shall be added as an Additional Insured with respect to the operations of the named insured;
  - iii. Contain a Cross liability and severability of Interest clauses;
  - iv. Policies shall not be invalidated as respect to the interests of the Additional Insured by reason of any breach or violation on any warranties, representations, declarations or conditions;

- v. Non-owned automobile coverage with a limit of no less than Five Million Dollars (\$5,000,000.00);
- vi. Products and completed operations coverage with a limit of not less than Five Million Dollars (\$5,000,000.00); and
- vii. A thirty-day written notice of cancellation or termination.

b) **Standard OAP 1 Automobile Liability Insurance** for an amount not less than Ten Million Dollars (\$10,000,000.00) on forms meeting statutory requirements covering all licensed vehicles used in any manner in connection with the performance of the terms of this Agreement.

c) **Environmental Liability Insurance** subject to limits of not less than Two Million (\$2,000,000) inclusive per claim and shall include coverage for but not limited to, bodily injury including death, property damage and remediation costs which are reasonable and necessary to investigate, neutralize, remove, remediate (including associated monitoring) or dispose of soil, surface water, groundwater or other contamination.

3.2 Prior to execution of this agreement and upon the placement, renewal, amendment, or extension of all or any part of the insurance, each Party shall provide the other Party with confirmation of the insurance coverage required by this agreement. Insurance shall apply to the sub-contractor in the same manner as it would to each Party to this Agreement. Further, it is each Party's obligation to ensure that the sub-contractor is aware of these obligations. Each Party shall provide to the other party confirmation of the sub-contractor's insurance.

3.3 Both Parties agree to immediately notify the other Party of any occurrence, incident or event which may reasonably be expected to expose either Party to material liability of any kind in relation to the Boundary Roads.

3.4 Each Party agrees that if either fails to take out or keep in force any insurance referred to in this section, 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.

#### 4. Indemnity

4.1. Each Party agrees to indemnify and save and hold harmless (but not defend) the other Party and each of their Councillors, officers, directors, employees and agents from all claims, lawsuits, applications, proceedings, losses, settlements, judgments, penalties, fees, expenses and costs, or any other liability, whatsoever, imposed by contract, statute or common law (collectively "**Claims**") in any way connected to or in any way arising out of any actual or alleged breach, default or neglect of duty in respect of the obligations under this Agreement for which they are responsible

including, but not limited to, obligations surrounding patrolling the Boundary Roads and performing Winter Maintenance and Routine Maintenance of the Boundary Roads. For clarity, Chatham-Kent is indemnifying and saving the County harmless from all Claims in any way connected to the want of repair of the Boundary Roads.

## **5. Notice of Claim**

5.1. In the event that either party receives a Statement of Claim, notice of claim or other notice or information regarding a pending or possible claim or proceeding by a third party with respect to liability for failure to keep any of the Boundary Roads in repair, or for damages or injuries sustained relating thereto, such Party shall immediately notify and provide to the other Party such claim or notice of claim.

## **6. Maintenance and Repair – Scope of Work**

6.1. Chatham-Kent hereby covenants and agrees to:

- a) Perform all Winter Maintenance and Routine Maintenance required for all Highways and Bridges on, along, adjacent to or crossing the Boundary Roads, throughout the term of the Agreement, at in accordance with or exceeding the Minimum Maintenance Standards or, if there are no such standards, to or exceeding a standard that is reasonable in the circumstances.
- b) For clarity, the requirements set out in section 6.1a) include but are not limited to performing Winter Maintenance on the Boundary Roads during the Winter Maintenance Season and, if necessary, during the non-Winter Maintenance Season. Chatham-Kent acknowledges and agrees that the level of Winter Maintenance service shall meet or exceed the Minimum Maintenance Standards whether it is performed during the Winter Maintenance Season or the Non-Winter Maintenance Season where such standards apply and, in the event there are no applicable Minimum Maintenance Standards, Chatham-Kent shall meet or exceed a standard that is reasonable in the circumstances.
- c) For clarity, the requirements set out in section 6.1a) include but are not limited to maintaining and keeping in good repair the Boundary Roads and performing any required Routine Maintenance during the Winter Maintenance Season and the Non-Winter Maintenance Season by meeting or exceeding the Minimum Maintenance Standards for the whole width of those highways listed or, if there are no applicable Minimum Maintenance Standards, by meeting or exceeding a standard that is reasonable in the circumstances.
- d) To be responsible for all removal of snow beyond the width of the Highways on the Boundary Roads if required.

- e) To be responsible for the drainage maintenance, including the clearing of ditches, curbs and gutters, catch basins and storm drains on, along, or adjacent to the Boundary Roads.
- f) To be responsible for the surface maintenance, including the repair of potholes, cracks and depressions and shoulder gravelling on, along, or adjacent to the Boundary Roads.
- g) To be responsible for patrolling the Boundary Roads on a regular and routine basis to assess the need for Winter Maintenance, Routine Maintenance, and any other maintenance activities or services and to perform any such services by meeting or exceeding the Minimum Maintenance Standards or, if no such standards exist, a standard that is reasonable in the circumstances.
- h) To be responsible for any and all signs, pavement marking and traffic signal devices on, along, or adjacent to the Boundary Roads throughout the Term of this Agreement.
- i) To represent and warrant that the Winter Maintenance and Routine Maintenance will be performed in a diligent, good and workmanlike manner and of a quality at least equal to that generally accepted in the industry or profession for similar work.

6.2. The map attached hereto as Schedule 'A' indicates the location of the Boundary Roads. Chatham-Kent acknowledges their responsibilities as per Schedule 'A'.

## **7. Capital Costs**

- 7.1. No new construction or major maintenance work (as distinguished from Routine Maintenance) of any kind on Highways and Bridges on, along, adjacent to or over the Boundary Roads 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 their Councils or delegated authorities, and included in their respective capital budgets for the year that the work is to commence.
- 7.2. If both parties agree that Capital Improvement is required, they will mutually agree upon how the work will be completed and the timing of such work to be completed.
- 7.3. Except in the case of emergencies, each Party shall notify the other Party at least two years in advance of any such Capital Improvement work proposed and the extent and cost of the capital improvement work shall be mutually agreed upon prior to proceeding with the work.

## **8. Maintenance and Repair of Bridges and Culverts**

8.1. The Parties acknowledge and agree that this Agreement applies to Bridges and culverts on, along, adjacent to and crossing the Boundary Roads unless the *Drainage Act* is applicable, in which case costs will be apportioned in accordance with the drainage report and the Parties will share equally in the costs apportioned to the road authority.

## **9. Annual Review and Planning**

9.1. Each year throughout the Term of the Agreement, after April 15th and not later than June 30th, the Parties will meet to discuss any issues arising from this Agreement, including but not limited to the previous year's work and will identify and plan works for the upcoming year(s) as the case may be.

## **10. Payment**

10.1. Subject to the terms and conditions of this Agreement, the County and Chatham-Kent shall share equally all expenses connected with any Winter Maintenance, Routine Maintenance and Capital Improvements, including but not limited to new construction or major maintenance work.

10.2. Chatham-Kent will invoice the County as necessary for its share of the expenditures under this Agreement no later than February 15<sup>th</sup> in the year following the Winter Maintenance, Routine Maintenance, or Capital Improvements.

## **11. Permits**

11.1. All requests for permits for the Boundary Roads shall be the responsibility of Chatham Kent to review, approve or deny, and administer including but not limited to:

- Driveway Alterations;
- New Entrance Construction;
- Utility Consents;
- Moving Permits; and
- Encroachment Permits (temporary and permanent).

11.2. Chatham-Kent will consult with the County on all permits prior to being issued. In case of disagreement between the Parties on a permit application, the decision-making authority will default to the County if the infrastructure is or will be located on its side of the Boundary Roads and Chatham-Kent if the infrastructure is or will be located on its side of the Boundary Roads as delineated by the centre line of the Boundary Roads.

## **12. Notice**

- 12.1. Any notice to be given under this Agreement shall be sufficiently given if delivered or if sent by prepaid first-class mail and addressed to:

The Clerk's Office  
The Corporation of the County of Essex  
360 Fairview Ave, West  
Essex, ON N8M 1Y6

And to:

The Clerk's Office  
The Corporation of the Municipality of Chatham-Kent  
315 King St, West  
Chatham, ON N7M 5K8

Receipt of notice shall be deemed on the earlier of the date of delivery or five (5) days following the date of mailing of the notice unless there is a mail strike, in which case receipt will require delivery by hand.

## **13. Arbitration**

- 13.1. The parties will attempt to resolve all issues that arise under this Agreement. In the event of any dispute arising between the parties hereto relating to any matter which is the subject of this Agreement and cannot be settled within ninety (90) days, then the dispute will be submitted to arbitration by notice given by either Party to the other.
- 13.2. Upon such notice being given, the dispute shall be determined by the award of three arbitrators or a majority of them, one to be named by each Party within thirty (30) days of such giving notice and the third to be selected by these two arbitrators within seven (7) days after both have been nominated.
- 13.3. If either Party neglects or refused to name its arbitrator within the time specified or to proceed with the arbitration, the arbitrator named by the other Party shall proceed with the arbitration.
- 13.4. The arbitrators shall have all the powers given by the Arbitration Act of Ontario and may at any time proceed in such manner as they may see fit on such notice as they deem reasonable in the absence of either Party if such Party fails to attend.
- 13.5. Each Party shall pay its own costs and shall share equally in the costs of the arbitration.



13.6. The cost of the arbitrators is not limited to those set forth under the Arbitration Act of Ontario and the arbitrators shall be able to charge their usual professional charges.

#### **14. Confidentiality**

14.1. The Parties agree that they shall not divulge or disclose to a third party any information that is designated by the other Party as being confidential without prior written consent, which will not be unreasonably denied, and they will not use any such confidential information for any purpose other than performing their obligations under this Agreement. The Parties will ensure that the other Party's confidential information receives the same level of protection as their own confidential information and, in any event, no less protection than is reasonable in the circumstances.

14.2. The Parties acknowledge and agree that any information collected under this Agreement is subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 ("MFIPPA"), as may be amended or replaced from time to time, and, as such, the information collected pursuant to this Agreement may be subject to disclosure in accordance with the provisions of the said *MFIPPA*.

#### **15. General**

15.1. Notwithstanding anything in this agreement, neither Party shall be in default with respect to the performance of any of the terms of this Agreement if any non-performance is due to any force majeure, strike, lock-out, labour dispute, civil commotion, act of God, government regulations or controls, inability to obtain any material or service or any cause beyond the reasonable control of the Party.

15.2. The rights and liabilities of the Parties shall ensure to the benefit of and be binding upon the Parties and each of their respective successors and approved assigns.

15.3. If any provision, clause or part of this Agreement or the application of this Agreement under certain circumstances, is held by a court, arbitrator or tribunal of competent jurisdiction to be invalid, the remainder of the Agreement, or the application of that provision, clause or part under other circumstances shall not be affected and shall continue in full force and effect.

15.4. Without limiting anything else in this Agreement, the Parties hereby covenant and agree to comply with all duties and obligations as set out in applicable laws, as amended from time to time, and shall make all reasonable efforts to assist each other with their duties and obligations which arise from law applicable to this Agreement.

15.5. This Agreement and the schedules attached hereto constitute the entire agreement between the Parties and supersede all previous negotiations, understandings and agreements, verbal or written, with respect to any matters referred to in this Agreement except as specifically set out in this Agreement.

15.6. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada, and the Parties attorn to the exclusive jurisdiction of the courts located in the Province of Ontario for any action or proceeding brought by either of them in connection with this Agreement or any alleged breach thereof.

15.7. The representations, warranties and other provisions in this Agreement that by their sense and context are intended to survive completion of performance, expiration or termination of this Agreement, shall so survive the performance, expiration or termination of this Agreement as necessary to give effect to their intention.

15.8. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one agreement. To evidence the fact that it has executed this Agreement, a Party may send a copy of its executed counterpart to the other Party by electronic transmission and the signature transmitted by such transmission shall be deemed to be that Party's original signature for all purposes.

The Parties hereto have each executed this Agreement, written on this and the preceding nine (9) pages, by their respective duly authorized officers as identified below.

**The Corporation of the County of Essex**

Date: \_\_\_\_\_

\_\_\_\_\_  
Per: Hilda MacDonald  
Title: Warden

Date: \_\_\_\_\_

\_\_\_\_\_  
Per: Katherine Hebert  
Title: Clerk

We have the authority to bind the County

**The Corporation of the Municipality of Chatham-Kent**

Date: \_\_\_\_\_

\_\_\_\_\_  
Per: Darrin Canniff  
Title: Mayor

Date: \_\_\_\_\_

\_\_\_\_\_  
Per: Judy Smith  
Title: Clerk

We have the authority to bind Chatham-Kent

## Schedule 'A'

### Boundary Roads

Road Name	Road Section Description	Class
Kent Road 1	Essex County Road 2, southerly 3.02 km to Canadian Pacific Railway	3
Kent Road 1	Essex County Road 46, southerly to the south property limit of Mun No. 703 Kent Road 1	3
Kent Road 1	Ladale Lane, southerly 2.23 km to Deer Run Road, Leamington	4

