

**Boundary Line Highway Agreement**

**This Agreement** made in duplicate the 2<sup>nd</sup> day of November, 2020

**B E T W E E N:**

**The Corporation of The County of Middlesex**  
(Hereinafter Called "County")

**Of The First Part**

- And -

**The Corporation of The Municipality of South Huron**  
(Hereinafter Called "South Huron")

**Of The Second Part**

**Whereas:**

- A. The County is an upper-tier municipality, which has authority over the highways under its jurisdiction pursuant to sections 9 and 11 of the *Municipal Act, 2001*, S.O. 2001, Chapter 25, as amended or replaced (the "Act").
- B. South Huron is a lower-tier municipality, which has authority over the highways under its jurisdiction pursuant to sections 9 and 11 of the Act.
- C. The Parties have joint jurisdiction over a boundary line highway pursuant to subsection 29(1) of the Act and wish to enter into a boundary line highway agreement pursuant to subsection 29.1(1) of the Act, under which the County agrees to keep part of the boundary line highway in repair for its whole width and to indemnify South Huron from any loss or damage arising from the lack of repair for that part.
- D. Subsection 29.1(2) of the Act provides that where there is an agreement under subsection 29.1(1) between municipalities with respect to the repair of part of a boundary line highway, the municipality agreeing to keep the part of the highway in repair has jurisdiction over that part.
- E. An agreement entered into under subsection 29.1(1) and a copy of the by-law authorizing the agreement may be registered in the proper land registry office for the area in which the highway is located pursuant to subsection 29.1(1).

**Now Therefore this Agreement Witnesseth that,** in consideration of the payment of the sum of TWO DOLLARS (\$2.00) from each Party to the other and for other good and valuable consideration, including the covenants herein, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

\_\_\_\_\_  
Initials

**Recitals**

1. The above recitals are true and the same are hereby incorporated into this Agreement by reference.

**Definitions**

2. In this Agreement, in addition to terms defined elsewhere in this Agreement, the following terms have the following meanings:
  - (a) **“Capital Improvement Work”** means new construction or major maintenance work, as distinguished from routine repair and maintenance and does not include Winter Maintenance Services, as defined herein.
  - (b) **“Communication”** means any notice, demand, request, consent, approval or other communication which is required or permitted by this Agreement to be given or made by the Parties to each other;
  - (c) **“Parties”** means the County and South Huron collectively, and **“Party”** means one of them.
  - (d) **“Plow Damage”** means any damage caused to right of way assets as a result of Winter Maintenance Services performed pursuant to this Agreement.
  - (e) **“Winter Maintenance Services”** means sanding, salting, snowplowing and winter patrol operations.

**Covenants**

3. All obligations contained in this Agreement, even if not expressed to be covenants, shall be deemed to be covenants.

**Term**

4. This Agreement, subject to its termination provisions, shall remain in force and effect for a period of ten (10) years, commencing the 2<sup>nd</sup> day of November 2020 at 12:00 a.m. and ending on the 1<sup>st</sup> day of May 2030 at 11:59 p.m.

**Road Number 55**

5. The County hereby covenants and agrees to maintain and keep in repair for the whole width thereof, the portion of Road Number 55, in the Counties of Middlesex and Huron, being the boundary road lying between the Geographic Township of Biddulph (Township of Lucan-Biddulph) in the County of Middlesex and the Geographic Township of Stephen (Municipality of South Huron) in the County of Huron, extending from the east limit of King’s Highway #4, easterly to the west limit of King’s Highway #23, a distance of approximately 9.6 kilometres, as shown on *Schedule "A"* attached.

6. Without limiting the generality of the foregoing, the County hereby covenants and agrees to provide Winter Maintenance Services and to repair and be responsible for any resulting Plow Damage for the whole width of the portion of Road Number 55 described in section 5 above.
7. The County shall conduct all maintenance and repair for the whole width of the portion of Road Number 55 described in section 5 above, including Winter Maintenance Services, in accordance with all applicable laws, including *Ontario Regulation 239/02* of the Act, as amended or replaced, and the *Ontario Traffic Manual*, as amended or replaced.

### **Costs and Payment**

8. The County and South Huron shall share equally all expenses connected with any work carried out by the County pursuant to this Agreement.
9. The County shall invoice South Huron as necessary for its share of the expenditures related to work carried out under this Agreement, and as determined in accordance with section 8 of this Agreement, and South Huron shall pay the amount invoiced within thirty (30) days of receipt of such invoice.

### **Capital Improvement Work**

10. Notwithstanding any other provisions in this Agreement, no Capital Improvement Work of any kind shall be undertaken on the portion of Road Number 55 described in section 5 of this Agreement, unless such Capital Improvement Work has first been approved by the Councils of both municipalities. If Capital Improvement Work is undertaken with approval of both Councils, such work shall be managed by the County unless otherwise agreed upon by the Parties.

### **Liability, Indemnity and Insurance**

11. The County shall be responsible and liable for any and all damages established which arise from its failure to maintain the portion of Road Number 55 described in section 5 of this Agreement to the standards it has agreed to under this Agreement. Without limiting the foregoing, the County hereby agrees to indemnify and save completely harmless South Huron from all claims, debts, causes of action, demands, liens, liabilities, losses, damages, costs and expenses arising from the failure to keep in repair the portion of Road Number 55 described in section 5 of this Agreement.
12. The County shall carry a minimum of Ten Million Dollars (\$10,000,000.00) public liability insurance during the term of this Agreement. Such insurance shall name South Huron as an additional insured thereunder and contain the following endorsements: contractual liability, non-owned automobile liability, and cross liability with a severability of interest clause. Such policy shall include a 30 day written notice of cancellation, termination or material change.
13. The County shall carry a minimum of Ten Million Dollars (\$10,000,000.00) automobile third party liability insurance during the term of this Agreement.

14. The County shall provide proof of insurance to South Huron where so requested.

### **Termination**

15. Notwithstanding section 4 of this Agreement, this Agreement may be terminated in its entirety by Communication in writing being given by either Party to the other no less than one (1) year prior to the intended termination date. In the spirit of this Agreement, such notice will presume that reasonable effort has been made to ensure such termination is well founded and that other options have been considered.

### **Notices**

16. Any Communication must be in writing and either be:
  - (a) delivered personally or by courier;
  - (b) sent by prepaid registered mail; or
  - (c) transmitted by facsimile, e-mail or functionally equivalent electronic means of transmission, charges (if any) prepaid.

Any Communication must be sent to the intended Party at its address for service listed on the signature pages of this Agreement or to any other address as any Party may at any time advise the other by Communication given or made in accordance with this section. Any Communication delivered to a Party to whom it is addressed will be deemed to have been given or made and received on the day it is delivered at that Party's address, provided that if that day is not a Business Day then the Communication will be deemed to have been given or made and received on the next Business Day. Any Communication transmitted by facsimile, e-mail or other functionally equivalent electronic means of transmission will be deemed to have been given or made and received on the day on which it is transmitted; but if the Communication is transmitted on a day which is not a Business Day or after 4:00pm (local time of the recipient), the Communication will be deemed to have been given or made and received on the next Business Day.

### **Registration**

17. This agreement shall be registered in the proper Land Registry Offices for Middlesex and Huron following execution of this Agreement by both parties and at the joint expense of the Parties.

### **Amendment and Waiver**

18. No amendment, discharge, modification, restatement, supplement, termination or waiver of this Agreement or any section of this Agreement is binding unless it is in writing and executed by the Parties to be bound. No waiver of, failure to exercise, or delay in exercising, any section of this Agreement constitutes a waiver of any other section (whether or not similar) nor does any waiver constitute a continuing waiver unless otherwise expressly provided.

**Assignment and Enurement**

19. Neither this Agreement nor any right or obligation under this Agreement may be assigned by any Party, other than provided for herein, without the prior written consent of the other Parties. This Agreement enures to the benefit of and is binding upon the Parties and their respective heirs, executors, administrators, estate trustees, trustees, personal or legal representatives, successors and permitted assigns.

**Dispute Resolution**

20. Upon written request to resolve any disputes arising from this Agreement which is sent by one Party to another, the Parties hereby agree to resolve all disputes pursuant to this section. Upon receipt by the receiving Party of a written request to resolve disputes, the Parties shall first attempt to resolve all disputes by way of formal negotiation between the Parties and their appointed representatives. If the disputes cannot be settled within thirty (30) days from the receipt of the written request to resolve disputes by the receiving Party, then the Parties shall enter into a structured negotiation on a without prejudice basis with the assistance of a mediator appointed by them. If the disputes cannot be settled within ninety (90) days from the receipt of written request to resolve disputes by the receiving Party, or such longer period as may be agreed to by the Parties, the Parties shall, refer the matter forthwith to an arbitration which shall finally resolve the dispute(s). The aforementioned arbitration shall be conducted in accordance with the Ontario *Arbitration Act, 1991*, c 17, as amended.

**Entire Agreement**

21. This Agreement constitutes the entire agreement between the Parties pertaining to repair of the portion of Road Number 55 described in section 5 of this Agreement, and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. The Parties acknowledge that there are no representations, warranties or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement and that no Party has been induced to enter into this Agreement in reliance on, and there will be no liability assessed, either in tort or contract, with respect to, any warranty, representation, opinion, advice or assertion of fact, except to the extent it has been reduced to writing and included as a term in this Agreement. Except as amended herein, the terms of this Agreement shall remain in full force and effect.
22. This Agreement includes the provisions of this Agreement, each of its Schedules, Ontario Regulation 239/02 of the Act as amended or replaced, and the Ontario Traffic Manual, as amended or replaced, all of which shall be read together in the forming of this Agreement. In the event there is a conflict between the provisions of this Agreement and its Schedules, the provisions of this Agreement shall prevail.

**Voluntary Enforceable Agreement**

23. The Parties warrant that this Agreement is voluntary, that none of the Parties are under any legal disability and that each Party has had an opportunity to seek the advice of independent legal counsel with respect to this Agreement.

**Counterparts**

24. This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which will be an original, and each of which may be delivered by facsimile, e-mail or other functionally equivalent electronic means of transmission, and those counterparts will together constitute one and the same instrument.

**Severability**

25. Each section of this Agreement is distinct and severable. If any section of this Agreement, in whole or in part, is or becomes illegal, invalid, void, voidable or unenforceable in any jurisdiction by any court of competent jurisdiction, the illegality, invalidity or unenforceability of that section, in whole or in part, will not affect:
- (a) the legality, validity or enforceability of the remaining sections of this Agreement, in whole or in part; or
  - (b) the legality, validity or enforceability of that section, in whole or in part, in any other jurisdiction.

**Governing Law**

26. This Agreement is governed by, and is to be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable in that Province.

**[ONE (1) SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF** this Agreement has been executed by the Parties hereto on the date(s) set out below and the Parties agree that this Agreement shall be effective on the 2<sup>nd</sup> day of November 2020.

**THE CORPORATION OF THE COUNTY OF MIDDLESEX**

Date: \_\_\_\_\_, 2020

Address for Service:  
Attn: County Clerk  
Administration Offices  
399 Ridout Street North  
London, ON N6A 2P1

Per: \_\_\_\_\_  
Cathy Burghardt-Jesson, Warden

Per: \_\_\_\_\_  
Kathleen Bunting, Clerk

*We have authority to bind the Corporation*

**THE CORPORATION OF THE MUNICIPALITY OF SOUTH HURON**

Date: \_\_\_\_\_, 2020

Address for Service:  
Attn: Clerk  
322 Main St. S  
Box 759  
Exeter ON N0M 1S6

Per: \_\_\_\_\_  
George Finch, Mayor

Per: \_\_\_\_\_  
Rebekah Msuya-Collison, Clerk

*We have authority to bind the Corporation*