

BOUNDARY ROAD AGREEMENT

Item: DS-20-XX
Attachment 6

THIS AGREEMENT made in triplicate as of the ____ day of _____, 2020

BETWEEN:

THE CORPORATION OF THE CITY OF OSHAWA(herein referred to as "**Oshawa**")

~ and ~

THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON(herein referred to as "**Clarington**")

RECITALS

- (a) **WHEREAS** The Corporation of the Municipality of Clarington (herein referred to as "Clarington") and The Corporation of the City of Oshawa (herein referred to as "Oshawa") are municipalities as defined by the Municipal Act, 2001.
- (b) **WHEREAS** Clarington and Oshawa have joint jurisdiction over certain parts of Townline Road, a boundary line highway situated between Clarington and Oshawa.
- (c) **WHEREAS** pursuant to section 11 of the Municipal Act, 2001, Clarington and Oshawa may pass by-laws respecting matters within the "highways" sphere of jurisdiction.
- (d) **WHEREAS** pursuant to sections 29 and 29.1 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 party, the agreement and a copy of the by-law authorizing the agreement may be registered in the land registry office for the area in which the highway is located.
- (e) **WHEREAS** by agreement dated January 24, 1979 between Oshawa and The Corporation of the Town of Newcastle, provision was made for the reconstruction and sharing of costs relating to such reconstruction of that part of Townline Road between the Canadian Pacific Railway line and Farewell Creek.
- (f) **WHEREAS** by agreement dated October 1, 1982 between Oshawa and The Corporation of the Town of Newcastle, provision was made for the maintenance and repair of that part of Townline Road forming part of the boundary between Oshawa and The Corporation of the Town of Newcastle.
- (g) **WHEREAS** by agreement dated October 25, 2004 ("Previous Boundary Road Agreement") Oshawa and Clarington made provision for all matters relating to the maintenance, repair and construction and the sharing of costs of such construction of certain parts of Townline Road.
- (h) **WHEREAS** Oshawa and Clarington entered into a Boundary Road Agreement (the "2014 Agreement") on July 2, 2014.
- (i) **WHEREAS** on June 24, 2019, City Council authorized the Director of Engineering Services to extend the 2014 Agreement for another 5 year term and to amend the agreement to address the need to construct Townline Road North, north of Conlin Road to accommodate development in the Kedron Part II Planning Area and to reflect the realignment of Bloor Street
- (j) **AND WHEREAS** by this Agreement Oshawa and Clarington wish to make provision for all matters relating to the maintenance, repair and construction and the sharing of costs of such construction of certain parts of Townline Road.

NOW THEREFORE in consideration of the mutual terms, conditions and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which by each of the Municipalities is hereby acknowledged, THE MUNICIPALITIES HERETO AGREE AS FOLLOWS:

1. **INTERPRETATION**

- 1.1 In this Agreement where words appear with their first letter capitalized, the words shall have the meanings set out for them in the lettered paragraphs of this Section. Otherwise, all words used in this Agreement are intended to have the meanings ordinarily ascribed to them in the English language.
- (a) "Agreement" means this agreement, including its recitals and any schedules which form an integral part of it, as amended from time to time.
 - (b) "Claims" include any and all claims, actions, causes of action, complaints, demands, suits or proceedings of any nature or kind in respect of any and all losses, damages, liabilities, deficiencies, costs and expenses (including, without limitation, all legal and other professional fees and disbursements, interest, liquidated damages and amounts paid in settlement, whether from a third person or otherwise), the costs or expenses of complying with any environmental laws, and any economic losses, consequential, indirect, special and incidental damages resulting from or in any way related to a breach of a term of this Agreement, loss of life, personal injury (including, in all cases, personal discomfort and illness), and loss of and damage to property.
 - (c) "Clarington" means The Corporation of the Municipality of Clarington.
 - (d) "Clarington Roads" mean those portions of Townline Road described in Schedule A to this Agreement and as depicted in Schedule D to this Agreement. For the purposes of Section 3.02 of this Agreement, Clarington Roads shall also include any unopened part of Townline Road between north of Provincial Highway No. 407 and the northern limit of Clarington. The approximate total length of Clarington Roads, excluding any unopened part of Townline Road, is 4.81 km.
 - (e) "Construction" includes reconstruction, gravelling, paving and excavating and includes the installation of engineered fill, subdrains, granular base, concrete curb and gutter, concrete sidewalk, multi-use trails, cycling facilities, guiderails, topsoil, sod, street trees, street lighting, storm sewers, catchbasins, culverts, bridge construction, traffic signalization, sanitary sewers, watermains and service connections and also similar activities and materials in, under, over, upon, along, above or across Townline Road but does not include Maintenance and Repair.
 - (f) "Construction Costs" means all costs relating to Construction and include costs relating to surveying, designing, studies including Environmental Assessments, drafting, preparation of specifications, requests for proposals, tendering, supervision of construction, accounting, overhead costs, debenturing, interest and financing costs.
 - (g) "Developing Municipality" means the Municipality in which a Development is proposed or occurs.
 - (h) "Development" means any work on or to land or buildings, including redevelopment, which requires one of the following actions:
 - (i) the passing of a zoning by-law, or an amendment to a zoning by-law under section 34 of the Planning Act;
 - (ii) the approval of a site plan under section 41 of the Planning Act;
 - (iii) 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;
 - (iv) a conveyance of land to which a by-law passed under subsection 50(7) of the Planning Act applies;

- (v) the approval of a Plan of Subdivision under section 51 of the Planning Act;
 - (vi) a consent under section 53 of the Planning Act;
 - (vii) the approval of a description under section 9(2) of the Condominium Act; or
 - (viii) the issuing of a permit under the Building Code Act, 1992, in relation to a building or structure.
- (i) "Durham Roads" means those portions of Townline Road described in Schedule C to this Agreement and as depicted in Schedule D to this Agreement. The approximate total length of Durham Roads is 5.40 km.
 - (j) "Maintenance and Repair" means activities relating to the maintenance and repair of municipal highways in accordance with and to the standard from time to time prescribed by by-law policy, and Provincial legislation as applicable, of Clarington or Oshawa, as the case may be, including, without limitation, road patrolling, ditching, CSP culvert replacement, box culvert restoration, curb replacement, guiderail repair, pavement marking, regravelling, repaving, emulsion resurfacing, asphalt patching, gravel patching, grading and seasonal maintenance, sidewalk replacement, sidewalk maintenance, maintenance of existing road closure gates, sewer repair and cleaning, manhole and catchbasin repair and cleaning, priming crack sealing, grass and weed cutting, sweeping and flushing, traffic and regulatory sign maintenance, street lighting winter control measures (including snow plowing, snow removal, snow fencing and de-icing) litter control, tree trimming and removal, traffic signalization maintenance and bridge maintenance.
 - (k) "Municipality" means Clarington or Oshawa.
 - (l) "Oshawa" means The Corporation of the City of Oshawa.
 - (m) "Oshawa Roads" mean those portions of Townline Road described in Schedule B to this Agreement and as depicted in Schedule D to this Agreement. For the purposes of section 3.01 of this Agreement, Oshawa Roads shall also include any unopened part of Townline Road between Oshawa's southern limit and the northern limit of Oshawa Roads. Oshawa Roads will also include the unopened part of Townline between the Northern limit of Oshawa Roads to south of Provincial Highway No. 407. The approximate total length of Oshawa Roads, excluding any unopened part of Townline Road, is 4.12 km.
 - (n) "Term" means the term of this Agreement as specified in section 2 of this Agreement.
 - (o) "Townline Road" is a boundary line highway that includes Clarington Roads (defined in Schedule A), Oshawa Roads (defined in Schedule B), and Durham Roads (defined in Schedule C).
- 1.2 All words in this Agreement shall be deemed to include any number or gender as the context requires.
- 1.3 This Agreement shall be interpreted according to the laws of the Province of Ontario.
- 1.4 Article, section, clause and/or paragraph headings are for reference purposes only and shall not in any way modify or limit the statements contained in the text of this Agreement.
- 1.5 References to federal or provincial statutes or regulations or municipal by-laws are deemed to refer to the relevant legislation as amended, including successor legislation. Without limitation,
- (a) "Building Code Act" means the *Building Code Act, 1992*, S.O. 1992, c. 23
 - (b) "Condominium Act" means the *Condominium Act*, R.S.O. 1990, c. C.26
 - (c) "Municipal Act, 2001" means the *Municipal Act, 2001*, S.O. 2001, c. 25.

(d) "Planning Act" means the *Planning Act*, R.S.O. 1990, c. P.13

2. TERM AND TERMINATION

This Agreement shall commence on [INSERT COMMENCEMENT DATE] (the "Effective Date" and expire on (INSERT DATE AFTER 10 YEARS] for a ten (10) year term (the "Term"), unless terminated earlier by either party in accordance with this Agreement. The parties have the option to extend this Agreement for a further term of ten (10), upon mutual written consent of at least ninety (90) days prior to the expiry of the term (the "Extension Term"). The Extension Term shall be on the same terms and conditions contained herein save and except that there shall be no further right of extension.

This Agreement may be terminated (i) by mutual written consent of both Municipalities; or (ii) upon six (6) months prior written notice by either Municipality.

3. MAINTENANCE AND REPAIR

3.1 Oshawa covenants and agrees that it shall:

- (a) Maintain and Repair to their full width Oshawa Roads;
- (b) indemnify and save harmless Clarington from and against any Claims arising from or in any way related to its obligations pursuant to this Agreement, provided that such Claims are not caused by the negligent acts or omissions of Clarington or failure of Clarington to fulfil its obligations in the Agreement Roads; and
- (c) subject to Articles 5 and 6 of this Agreement, not undertake any Construction or approve any development in respect of Oshawa Roads except with Clarington's prior written consent.

3.2 Clarington covenants and agrees that it shall:

- (a) Maintain and Repair to their full width Clarington Roads;
- (b) indemnify and save harmless Oshawa from any against any claims arising from or in any way related to its obligations pursuant to this Agreement, provided that such Claims are not caused by the negligent acts or omissions of Oshawa or failure of Oshawa to fulfil its obligations in the Agreement; and
- (c) subject to Articles 5 and 6 of this Agreement, not undertake any Construction or approve any development in respect of Clarington Roads except with Oshawa's prior written consent.

3.3 Oshawa and Clarington shall, subject to each Municipality's budget approval, share equally the cost of any regravelling, repaving and emulsion resurfacing, bridge maintenance, box culvert restoration and traffic signalization maintenance associated with their respective obligations to Maintain and Repair contemplated by clauses 3.01(a) and 3.02(a) of this Agreement.

3.4 Clarington shall administer third party access and utility consents to Townline Road from Clarington.

3.5 Oshawa shall administer third party access and utility consents to Townline Road from Oshawa.

3.6 Each Municipality shall consult with the other for the purposes of the administration of access pursuant to sections 3.04 and 3.05 of this Agreement.

4. STREET LIGHTING AND SIDEWALKS

- 4.1 Oshawa and Clarington shall, subject to each Municipality's budget approval, share equally the costs of operating, maintaining, and upgrading a street lighting system in respect of Clarington Roads, Durham Roads, and Oshawa Roads.
- 4.2 Clarington shall be solely responsible for the maintenance and repair of sidewalks on the east side of the Durham Roads, and Clarington shall indemnify and save harmless Oshawa from and against any Claims arising from or in any way related to the maintenance and repair of sidewalks on the east side of the Durham Roads, provided that such Claims are not caused by the negligent acts or omissions of Oshawa or failure of Oshawa to fulfil its obligations pursuant to this Agreement.
- 4.3 Oshawa shall be solely responsible for the maintenance and repair of sidewalks on the west side of the Durham Roads, and Oshawa shall indemnify and save harmless Clarington from and against any Claims arising from or in any way related to the maintenance and repair of sidewalks on the west side of the Durham Roads, provided that such Claims are not caused by the negligent acts or omissions of Clarington or failure of Clarington to fulfil its obligations pursuant to this Agreement.

5. CONSTRUCTION

- 5.1 Subject to Article 6 of this Agreement and to each Municipality's budget approval, Oshawa and Clarington will contribute equally to Construction Costs related to Construction of Oshawa Roads and Clarington Roads. Oshawa and Clarington will equally split Construction Costs on Durham Roads for assets under the jurisdiction of the Municipality such as streetlights, street lighting, sidewalks, and multi-use paths.

6. DEVELOPMENT

- 6.1 Notwithstanding paragraphs 3.01(c) and 3.02(c) of this Agreement, if Construction relates to a Development, the Developing Municipality may undertake or cause or permit to be undertaken such Construction on the following terms:
 - (a) The Developing Municipality shall give to the other Municipality at least eight (8) weeks' written notice prior to the commencement of such Construction.
 - (b) Oshawa and Clarington shall, subject to each Municipality's budget approval, share equally the benefit-to-existing component of the street lighting portion of Construction Costs relating directly to such Construction. The Developing Municipality shall bear the balance of the street lighting portion of Construction Costs relating directly to such Construction. Otherwise, the Municipality that is not the Developing Municipality shall bear none of the Construction Costs relating directly to such Construction.
- 6.2 Nothing in section 6.01 shall derogate from each Municipality's obligation to Maintain and Repair Townline Road pursuant to the terms of this Agreement.

7. REPORTING

- 7.1 For the purpose of reporting on assets and/or asset values the assets within the Right-of-Way of Oshawa Roads, Clarington Roads, and Durham Roads for the components of Durham Roads under the jurisdiction of the Municipality will be divided as such:
 - a) The road including CSP culverts, box culverts, curb, underdrains, guiderail, pavement markings, asphalt, gravel, granular material, storm sewer, manhole and catchbasin, storm sewer devices, traffic signal, and lighting will have its value and/or inventory be divided evenly in half by each Municipality.
 - b) The sidewalks, multi-use paths, and any other off-road active transportation facilities will be entirely accounted for by each Municipality based on whether it is on the west or east side of the Townline Road. All facilities on the west side of Townline Road will be reported on by Oshawa and all facilities on the east side of Townline Road will be reported on by Clarington.

8. GENERAL

8.1 Any notice to be given under this Agreement shall be sufficiently given if delivered or if sent by email or prepaid first class mail and addressed

to Clarington at:

The Corporation of the Municipality of Clarington
Attention: Director of Engineering Services
40 Temperance Street
Bowmanville, Ontario
L1C 3A6
Email: _____

and to Oshawa at:

The Corporation of the City of Oshawa
Attention: Commissioner of Development Services
50 Centre Street South
Oshawa, Ontario
L1H 3Z7
Email: _____

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 or, if notice is given by way of personal delivery, email, it shall be effective on the date on which the notice is sent. Either Municipality may change its address or number for notice by giving notice of change of address or number pursuant to this section.

- 8.2 Notwithstanding anything in this Agreement, neither Municipality 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, war or similar event, invasion, the exercise of military power, act of God, government regulations or controls, inability to obtain any material or service, or any cause beyond the reasonable control of the Municipality (unless such lack of control results from a deficiency in financial resources). Otherwise, time shall be of the essence of this Agreement and all the obligations contained herein.
- 8.3 The rights and liabilities of the Municipalities shall enure to the benefit of and be binding upon the Municipalities and their respective successors and approved assigns.
- 8.4 Subject to section 8.05 of this Agreement, this Agreement contains the entire agreement between the Municipalities. There is no covenant, promise, agreement, condition precedent or subsequent, warranty or representation or understanding, whether oral or written, other than as set forth in this Agreement. This Agreement fully replaces and supersedes any agreement or other contractual arrangement between the Municipalities related to the subject matter of this Agreement. For greater certainty, this Agreement supersedes the Previous Boundary Road Agreement.
- 8.5 Nothing in this Agreement relieves either Municipality from any outstanding financial obligation to the other in respect of any prior agreement or other contractual arrangement between the Municipalities related to the subject matter of this Agreement.
- 8.6 If any article, section, subsection, paragraph, clause or subclause or any of the words contained in this Agreement shall be held wholly or partially illegal, invalid or unenforceable by any court of competent jurisdiction, the Municipalities agree that the remainder of this Agreement shall not be affected by the judicial holding, but shall remain in full force and effect. The provisions of this Agreement shall have effect, notwithstanding any statute to the contrary.
- 8.7 No supplement, amendment or waiver of or under this Agreement shall be binding unless executed in writing by the Municipality to be bound thereby. No waiver by a Municipality of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision or a continuing waiver unless otherwise expressly provided.

8.8 **Registration of Agreement:** The Municipalities may register this Agreement together with a copy of the by-laws authorizing the execution of this Agreement on title to the respective lands in the land Registry Office of Durham (no. 40). The Municipalities also agree that in the event this Agreement has expired or is terminated, the municipality is responsible for deleting same off title or if applicable, pay reasonable costs to the other municipality for deleting same off title.

IN WITNESS WHEREOF the Municipalities hereto have hereunto affixed their corporate seals duly attested by the proper signing officers in that behalf.

THE CORPORATION OF THE CITY OF OSHAWA

COMMISSIONER
c/s

CLERK

THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON

MAYOR
c/s

CLERK

Schedule "A" ("Clarington Roads")

Those parts of Townline Road:

- (a) from Concession Road 7 in Clarington northerly to Winchester Road East in Oshawa, being a distance of approximately 0.18 km; and
- (b) from a point approximately 0.22 km south of Regional Road 3 (Columbus Road East in Oshawa) northerly to Regional Road 3 and further northerly approximately 4.31 km to Concession Road 10 in Clarington, being a total distance of approximately 4.53 km.

Schedule "B" ("Oshawa Roads")

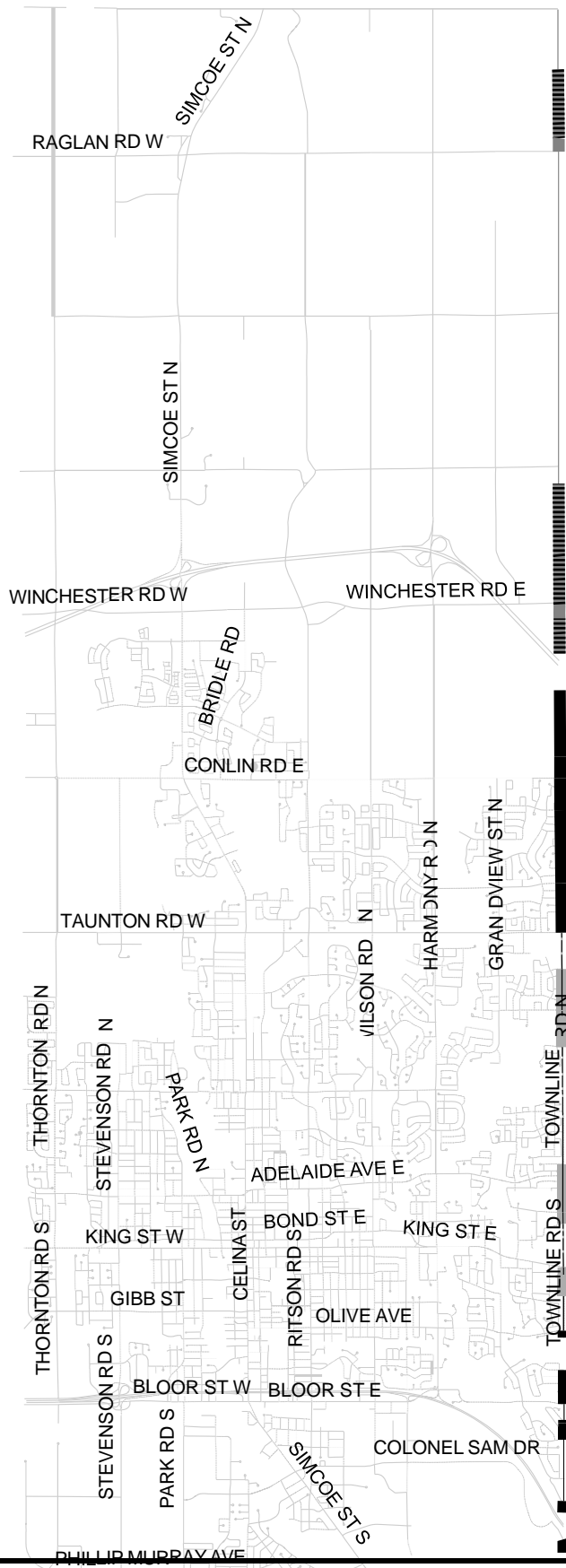
Those parts of Townline Road:

- (a) from McLaughlin Bay on Lake Ontario northerly to Provincial Highway No. 401, being a distance of approximately 0.18 km;
- (b) from the St. Lawrence & Hudson Railway (formerly CPR) northerly to Durham Regional Road 22 (Bloor Street in Clarington), being a distance of approximately 1.4 km;
- (c) from Durham Regional Road 22 (Bloor Street East in Oshawa) northerly to Cherrydown Drive in Oshawa, being a distance of approximately 0.46 km;
- (d) from a point approximately 0.08 km south of Durham Road 59 (Olive Avenue in Oshawa) northerly to Durham Regional Road 59 (Olive Avenue in Oshawa), being a distance of approximately 0.08 km; and
- (e) from Durham Regional Road 4 (Taunton Road) northerly to Conlin Road East in Oshawa (Concession Road 6 in Clarington) and further northerly approximately 0.19 km to the southerly limit of the unopened part of Townline Road, being a total distance of approximately 2.25 km.

Schedule "C" ("Durham Roads")

Those parts of Townline Road:

- (a) from Regional Road 59 (Olive Avenue in Oshawa), northerly to Regional Road 4 (Taunton Road), being a distance of approximately 5.15 km.



**Boundary Road Agreement
Between the Municipality of Clarington
and City of Oshawa**



Schedule D

- Oshawa Roads
- Clarington Roads
- Unopened Clarington Road
- Durham Roads

Item: DS-20-xxl
City of Oshawa

Development Services Department