

THE CORPORATION OF THE TOWNSHIP OF CONMEE
BY-LAW NO. 1082

A By-law to authorize the execution of a boundary road agreement between The Corporation of the Township of Conmee and The Corporation of the Township of O'Connor, which relates to the joint maintenance of a boundary road shared by the municipalities.

WHEREAS Section 20(1) of the Municipal Act, 2001, permits municipalities to enter into an agreement with one or more municipalities to jointly provide, for their joint benefit, any matter for which all of them have the power to provide within their own boundaries.

AND WHEREAS Section 29 of the Municipal Act, 2001 states that municipalities on either side of a boundary line have joint jurisdiction over any highways forming the boundary line.

AND WHEREAS Section 29(1) of the Municipal Act, 2001 states that 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 the 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 Section 27(2) of the Municipal Act, 2001 requires municipalities to pass by-laws in respect of highways for which they share joint jurisdiction.

AND WHEREAS the previous agreement between The Corporation of the Township of Conmee and The Corporation of the Township of O'Connor has expired and the parties are now desirous of entering into a new agreement to maintain and repair the highways for which they share joint jurisdiction

NOW THEREFORE THE COUNCIL FOR THE TOWNSHIP OF CONMEE HEREBY ENACTS AS FOLLOWS:

1. That the agreement which is attached to this by-law as Schedule "A", being an agreement for the maintenance and repair of "Fleming Road" for which The Corporation of the Township of Conmee and The Corporation of the Township of O'Connor share joint jurisdiction (hereafter called the "Boundary Road Agreement"), is hereby approved, confirmed and adopted.
2. That the Mayor and Clerk be authorized to execute the Boundary Road Agreement on behalf of the Township of Conmee, and if any further changes or amendments to the Boundary Road Agreement are required that such changes and amendments be in form and content satisfactory to the Solicitor.
3. By-law No. 978 is hereby repealed.
4. This By-law shall come into force and effect on the date it is passed.

Read a first and second time this 12th day of January, 2016.

Read a third time and finally passed this 12th day of January, 2016.

K. Harland
Mayor

P. Maxwell
Clerk

SCHEDULE "A"
BOUNDARY ROAD AGREEMENT

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF CONMEE
(referred to in this Agreement as "Conmee")

- and -

THE CORPORATION OF THE TOWNSHIP OF O'CONNOR
(referred to in this Agreement as "O'Connor")

RECITALS:

- (a) Pursuant to Section 20(1) of the Municipal Act, 2001, a municipality may enter into an agreement with one or more municipalities to jointly provide, for their joint benefit, any matter for which all of them have the power to provide within their own boundaries.
- (b) Pursuant to Section 29 of the said Act, the municipalities on either side of a boundary line have joint jurisdiction over any highways forming the boundary line.
- (c) Conmee and O'Connor have the power under the Municipal Act, 2001 to provide maintenance and repair services to Highways within their respective boundaries.
- (d) Conmee passed By-law No. 1082 and O'Connor passed By-law Number 2015-11 in accordance with s.27(2) of the Municipal Act, 2001 with respect to Highways for which they share Joint Jurisdiction.
- (e) Pursuant to Section 29.1 of the Municipal Act, 2001, 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 the failure to keep the Highway in repair and the other municipality is relieved from all liability in respect of the repair of that part.
- (f) Conmee and O'Connor are adjoining jurisdictions that are desirous of entering into an agreement to maintain and repair "Fleming Road" for which they share Joint Jurisdiction.

THIS AGREEMENT IS ENTERED in consideration of the sum of two (\$2.00) dollars, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged.

ARTICLE 1.00 INTERPRETATION

1.01 Definitions: Wherever a term set out below appears in the text of this Agreement with its initial letters capitalized, the term is intended to have the meaning set out for it in this Section 1.01. Wherever a term below appears in the text of this Agreement in regular case, it is intended to have the meaning ordinarily attributed to it in the English language.

- (a) **Agreement** means this agreement, including its recitals and schedules, which form integral parts of it, as amended from time to time.
- (b) **Contract Administrator** for Conmee means the Chief Administrative Officer/Clerk or his or her delegate. **Contract Administrator** for O'Connor means the Clerk-Treasurer of O'Connor or his or her delegate.
- (c) **Conmee** means the Corporation of the Township of Conmee, a municipal corporation duly incorporated pursuant to the laws of the Province of Ontario. Where the context permits, the term also includes the municipality's servants, employees, agents and delegated officials.

- (d) **Highway** means a common or public highway, road, street, avenue, any part of which is intended for or used by the public for the passage of vehicles and includes the area between the lateral property lines thereof.
- (e) **Joint Jurisdiction** has the meaning described in s. 29 of the Municipal Act, 2001.
- (f) **O'Connor** means the Corporation of the Township of O'Connor, a municipal corporation duly incorporated pursuant to the laws of the Province of Ontario. Where the context permits, the term also includes the municipality's servants, employees, agents and delegated officials.
- (g) **Road Construction** means any work that is outside of Routine Maintenance & Repair as required by this Agreement and is the building and rebuilding of Highways or parts of Highways.
- (h) **Road Routine Maintenance Standards** means the standard(s) as adopted by the respective council of the municipality, as may be amended from time to time, for repair of a Highway.
- (i) **Routine Maintenance & Repair** means those activities completed in the routine maintenance and repair of a Highway and as described as follows:
 - (i) winter control includes snowplowing, sanding/ice control, culvert thawing, winging back, snow removal, standby, winter patrol and spring clean-up.
 - (ii) traffic operations includes signs and safety devices.
 - (iii) roadside includes vegetation management including roadside mowing, weed control, tree removal, tree trimming, brushing and debris collection.
 - (iv) stormwater management includes roadside ditching and culvert maintenance.
 Routine Maintenance & Repair does not mean or include Road Construction.
- (j) **Term** means the entire ten (10) year period during which this Agreement is operational, as set out in Section 2.01.
- (k) **Party** means either Conmee or O'Connor. **Parties** means both Conmee and O'Connor.

ARTICLE 2.00

TERM

2.01 This Agreement comes into force on the day of its execution by both Parties and shall continue in force for a period of ten (10) years therefrom. Unless terminated in accordance with Section 11.03, this Agreement shall automatically renew every year for another five(5) years up to a maximum of ten (10) renewal years.

2.02 Notwithstanding Section 2.01, both parties agree that should any further development occur on Fleming Road which may require adjustment of the terms of this Agreement, discussion shall take place between both Parties on the terms of the modification, without the need to terminate the current Agreement.

ARTICLE 3.00

JOINT JURISDICTION

3.01 Conmee agrees to carry out Routine Maintenance & Repair in respect of "Fleming Road" or parts thereof described and depicted in Schedule "B" of this Agreement.

3.02 O'Connor agrees to carry out Routine Maintenance & Repair in respect of "Fleming Road" or parts thereof described and depicted in Schedule "B" of this Agreement.

ARTICLE 4.00

ROUTINE MAINTENANCE – HIGHWAYS

4.01 Conmee and O'Connor shall perform all Routine Maintenance & Repair for their respective jurisdiction, as outlined in Article 3.00 of this Agreement, in accordance with Road Routine Maintenance Standards at a minimum. Higher standards for Routine Maintenance & Repair may be agreed to in writing between the Parties, in accordance with Section 11.02 of this Agreement, and such writing forms part of this Agreement and amends the Agreement accordingly.

ARTICLE 5.00

COSTS OF WORK REQUIRED

5.01 Both parties will share equally in the cost of maintaining the Joint Jurisdiction described in the Agreement. Each Party will provide Routine Maintenance & Repair for "Fleming Road" as described in Schedule "B" of this Agreement.

5.02 The Parties agree that the value of the respective Routine Maintenance & Repair work as described under Section 5.01 and detailed within Schedule "B" is approximately equal. By performing these respective works, it will not be necessary for either Conmee or O'Connor to invoice the other for costs incurred.

ARTICLE 6.00

INDEMNIFICATION

6.01 Conmee covenants and agrees that it shall indemnify and save harmless O'Connor from any liability, cost, demands, damages, expenses, claims and suits arising out of or in any way related to the obligations of Conmee 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 O'Connor or to the extent that O'Connor is exempt from liability under the Municipal Act, 2001. This indemnity shall survive the early termination or expiry of this Agreement.

6.02 O'Connor covenants and agrees that it shall indemnify and save harmless Conmee from any liability, cost, demands, damages, expenses, claims and suits arising out of or in any way related to the obligations of O'Connor 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 Conmee or to the extent that Conmee is exempt from liability under the Municipal Act, 2001. This indemnity shall survive the early termination or expiry of this Agreement.

6.03 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 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.

ARTICLE 7.00

RECIPROCAL INSURANCE

7.01 During the Term of this Agreement, including any renewal or extension thereof, each Party shall obtain and maintain in full force and effect:

- (a) Comprehensive general liability insurance naming the other Party as an additional insured regarding their respective obligations under this Agreement. Coverage shall include, but not limited to, bodily injury, personal injury, property damage, blanket contractual liability, non-owned automobile liability and contain a cross liability severability of insured clause;
- (b) Standard Ontario Automobile Policy (OPA 1) automobile insurance for all owned or leased vehicle as may be used under this Agreement;
- (c) Each of the coverages shall have limits of not less than ten million dollars (\$10,000,000.00) per occurrence or in the case of automobile per accident and shall be issued by insurance companies licensed to carry on business in the Province of Ontario;
- (d) The policies shall provide that such coverage may not be cancelled without sixty (60) day's notice to the other Party;
- (e) Each of the limits of liability required hereunder shall be increased from time to time to such greater amount as shall be prudent having regard to inflation, prevailing risk factors, trends in damage awards and any other reasonably relevant factor so as to provide equivalent protection; and
- (f) Not less that every two (2) years, the Parties shall, in consultation with their insurance advisors, review the coverage for the purpose of meeting the objectives of this provision.

7.02 Upon request, each Party shall provide the Contract Administrator for the other Party such evidence of its insurance as provided in or required under this Agreement. Each Party agrees that it shall not do anything (nor omit to do anything, nor allow anything to be done or omitted to be done) which will in any way impair or invalidate the policies provided pursuant to Section 7.01

7.03 The insurance coverage shall in no manner discharge, restrict or limit the liabilities and obligations assumed by the Parties under this Agreement, including any renewal or extension thereof.

ARTICLE 8.00

CONTRACT ADMINISTRATION AND AMENDMENT

8.01 Each Contract Administrator shall ensure that detailed maintenance and communications logs and other records relevant to the Routine Maintenance & Repair 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 Party upon request and 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 the Agreement.

8.02 For greater certainty, any changes and/or amendments to this Agreement, including any changes to Routine Maintenance & Repair conducted by either or both Parties, requires approval by the council of each Party respectively.

ARTICLE 9.00

DISPUTE RESOLUTION

9.01 In 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.

9.02 In the event the Contract Administrators are unable to resolve a dispute within twenty (20) days of the date the dispute arose, the Parties agree to appoint a committee comprised of three (3) members per Party in order to attempt to resolve the dispute. A dispute is only resolved when the solution is agreed to by both Parties.

9.03 Nothing contained herein shall be construed as waiving any additional rights in law or in equity of either Party with respect to this Agreement.

ARTICLE 10.00

GENERAL PROVISIONS

10.01 Entire Agreement: This Agreement constitutes the entire agreement between the Parties with respect to the maintenance and repair of the Highways for which they share Joint Jurisdiction, and it is agreed that 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.

10.02 Amendments: No amendment or variation of this Agreement (apart from amendments to notice provisions of Section 11.13) shall be binding unless the same is in writing and properly authorized and executed by both Parties to this Agreement. No waiver by a Party of any provision of this Agreement shall be deemed to be a waiver of any other provision unless otherwise expressly provided.

10.03 Termination: Notwithstanding Section 2.01 of this Agreement, this Agreement may be terminated by either Party upon sixty (60) days prior written notice to the other Party, in its discretion.

10.04 Registration: The Parties agree that this Agreement may be registered on title.

10.05 Governing Law: This Agreement shall be construed in accordance with the laws of the Province of Ontario.

10.06 Assignment: This Agreement shall not be assigned by either Party, in whole or in part, without the prior written consent of the other Party.

10.07 Independence of Parties: It is understood and agreed by the Parties 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.

10.08 Time of the Essence: 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.

10.09 Headings: 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.

10.10 Construing this Agreement: All provisions of this Agreement creating obligations on either Party will be construed as covenants. This Agreement is to be read with all changes of gender or number required by the context. The words "include", "includes", and "including" are not to be read as limiting the words or phrases which precede them.

10.11 Legislation, By-laws: Reference to federal or provincial statutes or regulations or municipal by-laws includes all applicable amendments to the legislation as amended and includes successor legislation.

10.12 Conflict: Where there is any conflict between any provision of this Agreement and any requirement of the Municipal Act, 2001, the provision of the Municipal Act, 2001 shall prevail to the extent of the conflict.

10.13 Notices: Any notice provided for under this Agreement shall be in writing and shall be sufficiently given if delivered personally or by facsimile or if sent by prepaid first class mail and addressed to the Parties, as follows:

- (a) to Conmee at:
The Corporation of the Township of Conmee
Municipal Office
19 Holland Road, R. R. #1
Kakabeka Falls, Ontario
P0T 1W0
Attention: CAO/Clerk Facsimile: (807)475-5229
- (b) to O'Connor at
The Corporation of the Township of O'Connor
Municipal Office
330 Highway 595, R. R. #1
Kakabeka Falls, Ontario
P0T 1W0
Attention: Clerk-Treasurer
Facsimile: (807)473-0891

Notice shall not be given by electronic mail. Any communications sent by electronic mail, whether received or read or not shall not be considered for the purposes of formal communications under this Agreement. Receipt of notice shall be deemed on:

- (a) the date of actual delivery of a hand delivered document; or
- (b) the business day next following the date of facsimile transmission; or
- (c) five (5) days following the date of mailing of the notice;

whichever is applicable. Notwithstanding Section 10.02, either Party may change its address for notice by giving notice of change of address pursuant to this Section.

10.14 Independent Legal Advice: The Parties each acknowledge that it has either received or waived the benefit of its own legal advice with respect to the execution of this Agreement.

ARTICLE 11.00

DEFAULT

11.01 Notwithstanding any of the foregoing, in addition to any other remedies available at law or in equity, in the event that one Party defaults in the performance of its obligations under this Agreement, the other Party has the option of performing said obligations to the extent of the deficiency and charging the defaulting Party for said services, including all personnel, administrative and/or other related costs thereto.

SCHEDULE "B"

MAINTENANCE AND REPAIR OF HIGHWAY

CONMEE SCHEDULE OF HIGHWAY

Fleming Road		Road Surface Type	# of Culverts	Road Class	KM of road Maintenance & Repair
Section Limit (From)	Commencing westerly at Sovereign Road in the Township of Conmee and the Township of O'Connor	Gravel Surface	14	6	1.9
Section Limit (To)	Terminating at 1.9 km from Sovereign road intersection				

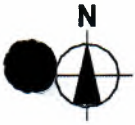
O'CONNOR SCHEDULE OF HIGHWAY

Fleming Road		Road Surface Type	# of Culverts	Road Class	KM of road Maintenance & Repair
Section Limit (From)	Commencing 1.9 km west of Sovereign Road and continuing westerly for a distance of 1.9 km	Gravel Surface	10	6	1.9
Section Limit (To)	Terminating at Strom Road				

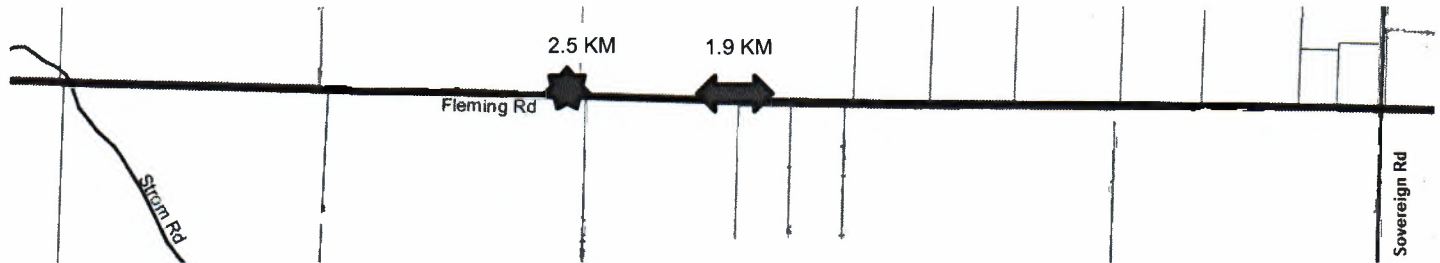
WINTER CONTROL

Fleming Road		
Commencing at Sovereign Road travelling West to the turnaround area approximately 2.5 km	Snowplowing operations will be performed on an alternate season basis, with the Township of Conmee being responsible for Routine Maintenance and Repair for the 2015-2016 winter season	2.5 km
If requested in writing, for a responsible cause, the road may have snowplowing operations performed to the intersection of Strom road and Fleming Road, upon approval from the responsible party.		

SCHEDULE "B" (Continued)
MAINTENANCE AND REPAIRS OF FLEMING ROAD



Township of Conmee



Township of O'Connor

11.02 No consent or waiver, express or implied, by any Party of any breach or default by any other Party 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. 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 right hereunder.

TO WITNESS, the undersigned affixes their corporate seals attested by the hands of our properly authorized officers. By so executing this document, the officers warrant and certify that the corporations for which they are signing are in good standing and duly incorporated and organized under the laws of the jurisdiction in which they are incorporated, and that the officers are authorized and empowered to bind the corporation(s) to the terms of this Agreement by their signatures.

Dated this 25th day of January, 2016.

The Corporation of the Township of Conmee



Kevin Holland, Mayor

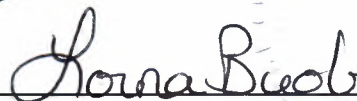


Patricia Maxwell, Chief Administrative Officer/Clerk

The Corporation of the Township of O'Connor



Jim Vezina, Mayor



Lorna Buob, Clerk-Treasurer