

**THE CORPORATION OF THE MUNICIPALITY OF POWASSAN**

**BY-LAW NO. 2013-41**

---

Being a by-law to authorize a Development Agreement between the Corporation of the Municipality of Powassan and Mr. Adam Clayson to provide for the improvement of a portion of Tower Line to a standard suitable to the Municipality for year round maintenance.

---

**WHEREAS** the OWNER is the owner in fee simple of lands and premises located in Part of Lot 22, Concession 9 and Part of Lot 22, Concession 8 (South Himsworth) now in the Municipality of Powassan in the District of Parry Sound being more particularly described in Schedule "A" and "B" attached hereto.

**AND WHEREAS** the above-mentioned lands currently have access to a seasonally maintained road known as Tower Line that has not been assumed by the MUNICIPALITY to be maintained on a year-round basis.

**AND WHEREAS** the OWNER has agreed to improve a portion of Tower Line to a standard suitable for the MUNICIPALITY to assume and maintain on a year-round basis.

**AND WHEREAS** the MUNICIPALITY is prepared to assume a portion of Tower Line to provide year-round maintenance provided the road is constructed to a suitable standard at no cost to the MUNICIPALITY.

**NOW THEREFORE BE IT RESOLVED THAT THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF POWASSAN ENACTS AS FOLLOWS:**

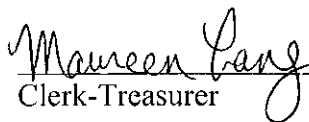
1. That the Mayor and Clerk-Treasurer be authorized to execute the agreement, attached as Appendix "A" and forming part of this by-law.
2. That this By-law be effective upon adoption.

**READ A FIRST TIME and considered read a SECOND and THIRD time and passed as such in open Council meeting this 5th day of November, 2013.**

Adopted on November 5, 2013



Mayor



Clerk-Treasurer

# **THE CORPORATION OF THE MUNICIPALITY OF POWASSAN**

## **DEVELOPMENT AGREEMENT**

**THIS AGREEMENT** made in triplicate this       day of November, 2013.

**BETWEEN:**

**ADAM CLAYSON**  
hereinafter referred to as the "OWNER"

- AND -

**THE CORPORATION OF THE MUNICIPALITY OF POWASSAN,**  
hereinafter called the "MUNICIPALITY"

**WHEREAS** the OWNER is the owner in fee simple of lands and premises located in Part of Lot 22, Concession 9 and Part of Lot 22, Concession 8 (South Himsworth) now in the Municipality of Powassan in the District of Parry Sound being more particularly described in Schedule "A" and "B" attached hereto.

**AND WHEREAS** the above-mentioned lands currently have access to a seasonally maintained road known as Tower Line that has not been assumed by the MUNICIPALITY to be maintained on a year-round basis.

**AND WHEREAS** the OWNER has agreed to improve a portion of Tower Line to a standard suitable for the MUNICIPALITY to assume and maintain on a year-round basis.

**AND WHEREAS** the MUNICIPALITY is prepared to assume a portion of Tower Line to provide year-round maintenance provided the road is constructed to a suitable standard at no cost to the MUNICIPALITY.

**NOW THEREFORE WITNESSETH** that in consideration of other good and valuable consideration and the sum of TWO-----(\$2.00)-----DOLLARS of lawful money of Canada now paid by the MUNICIPALITY to the OWNER, the receipt whereof is hereby acknowledged, the OWNER and the MUNICIPALITY covenant, declare and agree as follows:

### **SECTION I - LANDS TO BE BOUND**

- 1) The lands to be bound by the terms and conditions of this Agreement (sometimes referred to as "the Subject Lands"), located in Part of Lot 22, Concession 9 and Part of Lot 22, Concession 8, in the geographic Township of South Himsworth now in the Municipality of Powassan and are more particularly described in the Schedules attached hereto.

### **SECTION II - COMPONENTS OF THE AGREEMENT**

- 1) The text, consisting of Sections I through VII, and the following Schedules, which are attached hereto, constitute the components of this Agreement.

Schedule "A" -	Legal Description of the Lands subject to this Agreement
Schedule "B" -	Plan Identifying Extent of Tower Line to be Improved.
Schedule "C" -	Construction Standards
Schedule "D" -	Municipal Engineer's Clearance Letter

### **SECTION III – REIMBURSEMENT OF COSTS**

- 1) The OWNER agrees to reimburse the MUNICIPALITY for all professional fees and administrative costs incurred by the MUNICIPALITY in the preparation of this Agreement.

### **SECTION IV - REGISTRATION OF AGREEMENT**

- 1) The PARTIES agree that this Agreement must be registered against the OWNER'S lands within thirty (30) days of the execution thereof by the MUNICIPALITY.
- 2) The OWNER agrees to have the MUNICIPALITY register this Agreement at the expense of the OWNER.

### **SECTION V - BUILDING PERMITS AND ASSUMPTION OF TOWER LINE**

- 1) On any application for a Building Permit and prior to the issuance thereof, the OWNER shall submit such plans, specifications and approvals with respect to the project as are required by the MUNICIPALITY for the approval of the Chief Building Official.
- 2) The OWNER agrees that the MUNICIPALITY will not assume any portion of Tower Line for year round maintenance unless and until the portion of Tower Line identified on Schedule "C" to this Agreement has been constructed by the OWNER to the standards and in the manner specified in this Agreement and the Municipal Engineer has provided a written clearance that the road has been constructed to such standards.

### **SECTION VI - PROVISIONS**

- 1) The OWNER agrees to construct the portion of Tower Line shown on Schedule "B" to the specifications and standards described in Schedule "C".
- 2) The OWNER will inform any contractor or worker engaged in the project of the responsibilities and duties set out in this Agreement.
- 3) The OWNER agrees that there will be no deviation from the works described in Schedule "C", without the written consent of the Municipal Engineer and an amendment to Schedule "C".
- 4) The OWNER assumes all risk and liability associated with the construction of Tower Line and will ensure that any contractor or worker involved in the construction program will hold sufficient and appropriate insurance to cover general liability and/or workplace injuries and such insurance shall identify the MUNICIPALITY as a party to be insured against liability related to accidents or incidents to workers or any member of the public occurring as a result of construction activities.
- 5) The OWNER and any contractor or worker retained by the OWNER indemnifies and saves harmless the MUNICIPALITY or its agents from any complaint or claim.
- 6) The OWNER acknowledges and agrees to comply with applicable laws and legislation during the construction program including but not limited to the Migratory Birds Act, the Fisheries Act, and the Endangered Species Act. In the event the OWNER encounters a threatened or endangered species or the habitat of such species during construction, the OWNER agrees to cease construction and contact the Ministry of Natural Resources.
- 7) The OWNER agrees that stormwater drainage will be controlled and managed so as not to impact adjacent landowners, including the MUNICIPALITY or wildlife or fisheries. Where stormwater drainage resulting from construction causes flooding or erosion to neighbouring lands, the OWNER shall be responsible for repair and remediation.
- 8) The OWNER covenants and agrees that construction will be at the sole cost of the OWNER, and the MUNICIPALITY shall not be required to compensate the OWNER for personal costs or expenses associated with the construction of Tower Line in the manner set out in Schedule "C". Furthermore, the MUNICIPALITY shall not be responsible for facilitating or coordinating any reimbursement from or cost sharing amongst any other benefitting landowner.

- 9) The OWNER covenants and agrees that the MUNICIPALITY will not bear any financial responsibility to improve any portion of Tower Line to be assumed for year round maintenance purposes.
- 10) The OWNER agrees that no works or construction shall be undertaken beyond the scope of the work set out in Schedule "C" and no signage, structure, gate, fence, light standard, retaining wall, culvert or underground utility shall be erected or installed on any part of Tower Line without the prior authorization of the MUNICIPALITY, which may require an amendment to this Agreement.
- 11) The OWNER agrees to install a turn-around at the terminus of the improved portion of Tower Line in the manner described in Schedule "C".
- 12) The OWNER agrees to provide a reference plan prepared by an Ontario Land Surveyor of the portion of Tower Road subject to this Agreement. Such reference plan will identify the location of the improved road including the turn-around, the location of the original Road Allowance and will also identify any private property necessary to be conveyed to the MUNICIPALITY for assumption purposes.
- 13) The OWNER agrees to convey any private property necessary for assumption purposes to the MUNICIPALITY in fee simple, free and clear of all encumbrances.
- 14) The OWNER agrees that the MUNICIPALITY will not pass a By-law under the Municipal Act to assume any portion of Tower Line until Council for the MUNICIPALITY receives reimbursement for all costs incurred by the MUNICIPALITY, a reference plan, a signed clearance letter from the Municipal Engineer and any requisite legal documents necessary to transfer lands to the Municipality.
- 15) The OWNER acknowledges that nothing in this Agreement shall prevent the MUNICIPALITY or any member of the public from utilizing Tower Line for public purpose in accordance with applicable Provincial statutes and regulations.
- 16) The OWNER indemnifies and saves harmless the MUNICIPALITY or its agents from any potential civil or other legal matter related to the use of Tower Line during construction.

**SECTION VII - BINDING PARTIES, ALTERATION, AMENDMENT, EFFECT, NOTICE, PENALTY**

- 1) This Agreement may only be amended or varied by a written document of equal formality herewith duly executed by the parties hereto and registered against the title to the subject lands.
- 2) This Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of each of the PARTIES hereto.
- 3) The Agreement shall come into effect on the date of execution by the MUNICIPALITY.
- 4) Nothing in this Agreement shall relieve the OWNER from complying with all other applicable by-laws, laws or regulations of the MUNICIPALITY or any other laws, regulations or policies established by any other level of government. Nothing in this Agreement shall prohibit the MUNICIPALITY from instituting or pursuing prosecutions in respect of any violations of the said by-laws, laws or regulations.
- 5) The OWNER covenants and agrees to release and forever discharge the MUNICIPALITY from and against all claims, demands, causes of actions, of every nature and type whatsoever that may arise as a result of the works related to the improvement of Tower Line.
- 6) Any notice required to be given pursuant to the terms hereto shall be in writing and mailed or delivered to the other at the following address:

THE OWNER:

Mr. Adam Clayson  
150 Tower Line  
R.R #2  
Powassan, Ontario P0H 1Z0

THE MUNICIPALITY:

Corporation of the Municipality of Powassan  
c/o Clerk-Treasurer  
466 Main Street  
P.O. Box 250  
Powassan, Ontario  
POH 1J0

THIS AGREEMENT shall enure to the benefit of and be binding upon each of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the OWNER and the MUNICIPALITY have caused their corporate seals to be affixed over the signatures of their respective signing officers.

THIS AGREEMENT was executed by the duly authorized signing officers of each party and sealed this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

SIGNED, SEALED AND DELIVERED  
in the presence of:

S. Freund  
Witness

S. Freund.  
Witness

[Signature]  
Signature of Owner

[Signature]  
Signature of Owner

THE CORPORATION OF THE MUNICIPALITY OF POWASSAN

[Signature]  
Witness

[Signature]  
Mayor

[Signature]  
Witness

Maureen Lang  
Clerk/Treasurer

**SCHEDULE "A"**

**LEGAL DESCRIPTION**

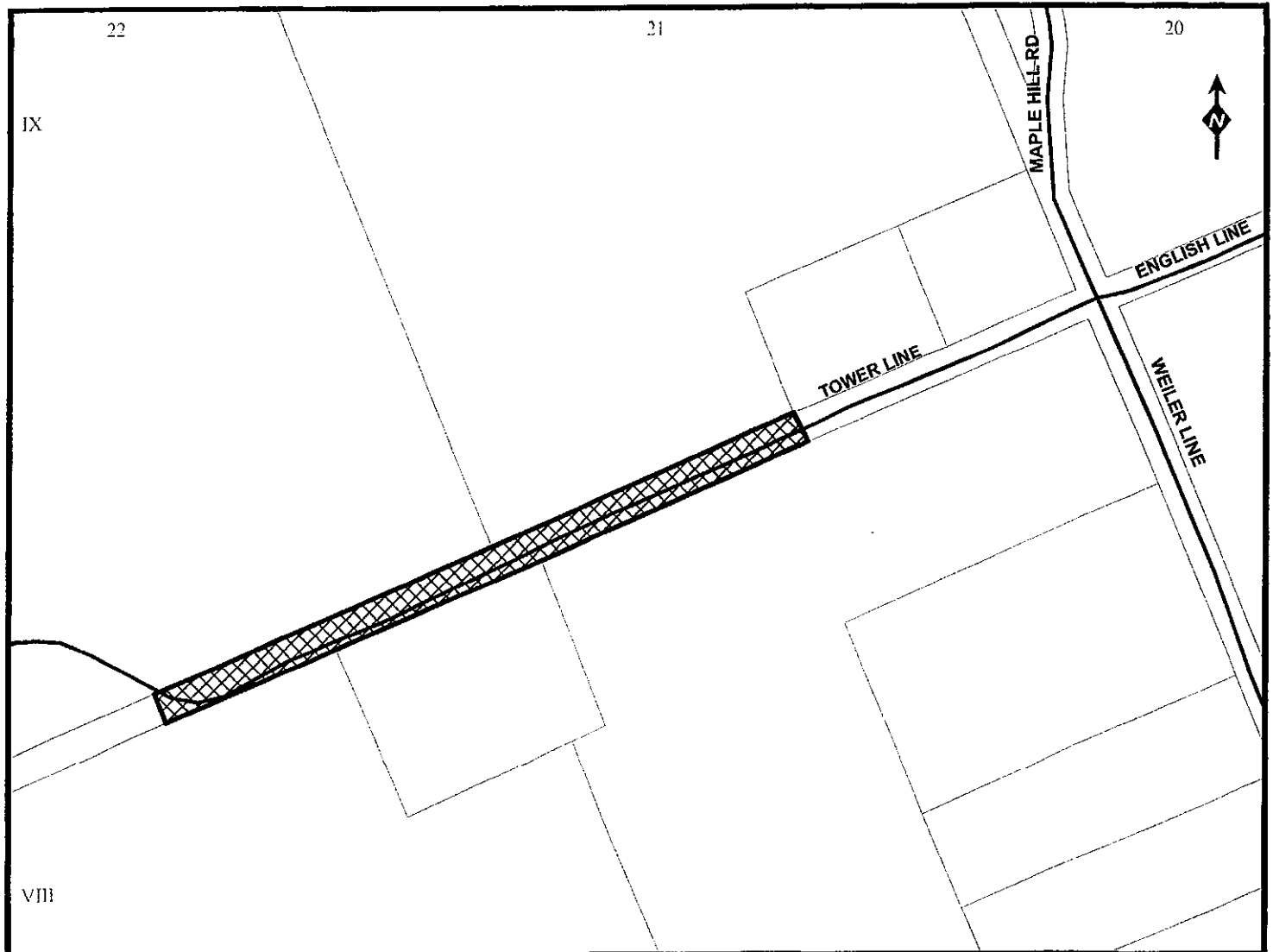
Lot 22, Concession 9 and Lot 22, Concession 8 in the geographic Township of South Himsworth,  
now in the Municipality of Powassan in the District of Parry Sound.

**SCHEDULE "B"**

Portion of Tower Line subject to this Development Agreement.

# SCHEDULE 'B'

## Portion of Tower Line to be Constructed to Municipal Standards Municipality of Powassan



Portion of Tower Line to be Constructed to Municipal Standards



**SCHEDULE "C"**

Development Standards prepared by Mr. Antoine C. Boucher, P. Eng.

## **Municipality of Powassan**

### **Report to CAO/Clerk**

Report No.: R-2013-01

Date: October 25, 2013

Originator: Antoine C. Boucher, Municipal Engineer

Subject: **Tower Line Extension - Revised**

---

#### **RECOMMENDATION**

**That** Tower Line be extended 435 metres in the westerly direction from the existing turn around.

**That** the references in this report be based on stations starting at 0+000 at the existing turn around and at 0+435 at the end of the proposed turn around.

**That** the Contractor shall provide a minimum 48 hour notice to the Municipality for inspection services during construction when needed. This shall include a pre-construction meeting (Oct 21, 2013), approval of the ditching and widening work, inspection of the placement and compaction of Granular 'A' and a final completion inspection.

**That** the Contractor shall remove boulders from the road base in accordance with OPSD 204-010 and as discussed on site.

**That** during ditching, the Contractor shall remove the large boulders located along both sides of the road. All material removed shall be disposed off site.

**That** the Granular 'A' thickness of the existing surface was established to be at approximately 50mm on a 5.4m width where the Contractor shall place an additional 100mm granular lift on the existing road surface. Furthermore, the road widening will require a minimum 300mm Granular 'B' base lift including a 150mm Granular 'A' top lift. The final road width will be 8m including the shoulders with an average granular 'A' lift of 150mm thick.

**That** granular materials placed on the road be compacted at 100% Proctor.

**That** the Contractor will be presented with the quantity breakdown for review as identified on page 3 of this report and that any adjustment is to be approved at the pre-construction meeting prior to its placement. The final granular material quantity required for this project will be identified in a letter to be signed by the Municipal Engineer, the Contractor and his client. The Municipality will require a copy of all tickets as proof of placement of the material for their record.

**That** between stations 0+080 and 0+120 the Contractor shall install a 450mm diameter HDPE culvert approximately 12m long (based on the skew to be determined on site) be installed to divert the water from the North side to the South side to by-pass the existing entrance.

**That** between stations 0+230 and 0+260 bedrock was found on the south side of the road. At that location, the contractor shall install a diagonal culvert – 450mm diameter HDPE approximately 12m long (based on the skew to be determined on site). This will direct drainage from the south side towards the north side in order to by-pass the bedrock. Furthermore, the Contractor shall provide an additional gravel lift to ensure a proper crown with the gravel edge being 50mm above the bedrock elevation on the South side.

**That** the contractor shall install drainage outflow as discussed during the pre-construction site inspection and obtain written consent from the property owners for the construction of these outflow where the drainage will outlet onto their private property. These drains will be constructed to reduce the quantity of runoff thus reducing the risk of future erosions downhill along Tower Line.

**That** the new turn around for Tower Line be constructed on the existing Road Allowance and that the additional land required to properly construct the turn around be transferred from Mr. Adam Clayson where the South portion be a part of CON 8 PT LOT 22 PCL 13086; N/S property number 495901000111200 and the North portion be a part of CON 9 LOT 22 PCL 10621 N/S property number 495901000116600. The portion of land required from these properties will be transferred at no cost from Mr. Clayson to the Municipality of Powassan.

**That** the new turn around for Tower Line be constructed with a radius of 16m including a 1m shoulder with rounding.

**That** the Contractor/Developer will not be required to install street lights along the Tower Line extension.

**That** Mr. Clayson be authorized to construct his entrance off the proposed turn around along his underground hydro line and that this entrance be considered his main entrance.

**That** upon completion and acceptance of the final certificate for the above work including but not limited to the land transfer, the Municipality of Powassan would pass a by-law assuming the extension of Tower Line pursuant to s. 31(4) of the Municipal Act.

**That** upon the passing of such a by-law, ownership of the Tower Line extension services shall rest with the Municipality and winter maintenance, garbage and recycling services shall become the responsibility of the Municipality.

## **BACKGROUND**

On August 2013, two residents located on the unmaintained portion of Tower Line expressed an interest in bringing their section of Tower Line up to a municipal standard in order for the municipality to assume it.

A geometric guideline was provided identifying criteria to be met for such work. On October 21<sup>st</sup>, 2013 a field inspection was completed with one of the resident, Mr. Adam Clayson, the Contractor Evan Hughes and myself to clarify to the scope of work.

Mr. Chris Jones, Municipal Planning Services will act as the Municipal Planner in preparing the agreement identifying the works to be undertaken above, including but not limited to legal land transfer, final conditions and procedures to be followed for this portion of road to be assumed on a year-round basis.

---

## NOTES

Tower Line is a gravel road. The Municipality maintains the first 200m from Maple Hill intersection. The proposal is to improve an additional 435m. Upon final acceptance, the Municipality would be responsible to maintain 635m from Maple Hill intersection to the new turn around.

Consideration was given to construct the proposed turn around some 130m further west of that point. Due to the physical location of that turn around and its proximity to Mr. Clayson's house, this alternative was not selected.

The existing road surface is approximately 5.4m wide, which is an equivalent of a single laneway. The road will have to be widened to 8m including the gravel shoulder. In general, widening will be on the north side.

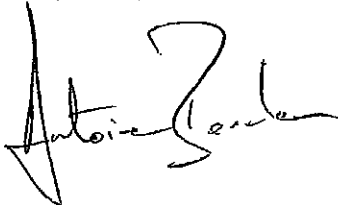
The Contractor may have to install a small culvert as part of the ditching work, more specifically beside an existing hydro pole as identified during the site visit.

The completion of this project may require approximately 1790 tonnes of granular 'B' and 1320 tonnes of granular 'A'. During the pre-construction meeting, the Contractor will be presented with the quantity breakdown for review. Any adjustment is to be approved at that meeting prior to its placement.

Engineering services for this project were estimated at an upset limit of \$2,500.00 before taxes based on a maximum of three (3) work days for field visit during construction. Engineering services will be charged on an hourly rate for actual worked hours.

---

Respectfully Submitted,



Antoine C. Boucher, P. Eng.  
Municipal Engineer

**SCHEDULE "D"**

Clearance letter to be signed by Municipal Engineer.

I, Antoine Boucher P. Eng, hereby certify that the portion of Tower Line abutting Lots 21 and 22, Concessions 8 and 9 in the Township of South Himsforth has been constructed to a standard suitable for assumption by by-law for the provision of year-round maintenance.

In my opinion, the road construction of Tower Line is compliant with the requirements set out in my memo dated October 25, 2013, which is attached as Schedule "C" to a Development Agreement approved by Council for the Municipality of Powassan on November 5, 2013.

---

Antoine C. Boucher P. Eng.

---

Date