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**AGREEMENT FOR MANAGEMENT OF**

**BOUNDARY ROADS**

**[insert road name]**

**[*SHIRE/TOWN/CITY OF XXX*]**

**and**

**[*SHIRE/TOWN/CITY OF YYY*]**

**Table of Contents**

[Background 3](#_Toc208827207)

[1 Definitions and Interpretation 4](#_Toc208827208)

[2 Duration 6](#_Toc208827209)

[3 Maintenance Responsibilities 6](#_Toc208827210)

[4 Ongoing Co-operation 6](#_Toc208827211)

[5 Major Works and Upgrades 7](#_Toc208827212)

[6 No Liability for other party’s Boundary Roads 7](#_Toc208827213)

[7 Insurance 7](#_Toc208827214)

[8 Dispute Resolution 8](#_Toc208827215)

[9 Termination 8](#_Toc208827216)

[10 No fettering of discretion 8](#_Toc208827217)

[11 Entire Agreement 8](#_Toc208827218)

[12 General Provisions 8](#_Toc208827219)

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This Deed is made on the day of 20[XX]

BETWEEN

**[*Shire/Town/City of xxx (LG1)*]**

of [***Insert address***]

and

**[*Shire/Town/City of yyy (LG2)*]**

of [***Insert address***]

# Background

1. The [***Insert LG1 name***] and [***Insert LG2 name***] are responsible for the care, control and management of roads within their respective districts.
2. Local government district boundaries are often located along the roads between adjoining local governments. These roads are commonly known as “boundary roads”.
3. District boundaries are usually aligned with the boundary of the road reservation. However, it is not uncommon for the district boundary to be located along the centreline of the boundary road or to follow a different alignment within the road reservation.
4. In many cases, boundary roads are managed and maintained by neighbouring local governments based on historical arrangements, often undocumented.
5. Both parties recognise the need for:
   1. clear, fair and practical allocation of maintenance responsibilities for the boundary roads located between their respective districts; and
   2. ongoing co-operation between [***Insert LG1 name***] and [***Insert LG2 name***] in the performance of their road management functions with respect to the boundary roads located between their respective districts.
6. The parties have agreed to maintain and manage boundary roads on the terms and conditions contained in this deed.

**BY THIS DEED:**

# Definitions and Interpretation

## Definitions

In this Deed, unless the context requires otherwise:

**Authority** includes any government, agency, department, office, Minister or other public body or authority of any kind, acting in accordance with its powers and duties under the *Local Government Act 1995* (WA), and includes any successor or substitute body or authority;

**Boundary Roads** means the roads or sections of roads specified in Schedule A of this Deed and includes any road verges or Infrastructure associated with the road;

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Western Australia;

**Commencement Date** means the date on which the last party executes this Deed;

**Deed** means this Deed as amended or varied from time to time;

**Infrastructure** means any infrastructure which forms part of a road or pathway or which is installed for road-related purposes including:

1. materials from which a road is made or constructed; for example, gravel, asphalt, brick pavers, concrete;
2. structures forming part of a road; for example, pavement, culvert or a bridge; and
3. infrastructure which facilitates the operation or use of a road; for example, road signs, street lights, safety barriers, railings, drainage;

**IRIS** means the Integrated Road Information System used as a data management and inventory tool by MRWA and some Local Governments in Western Australia;

**Local Government** means a local government established under the *Local Government Act 1995* (WA);

**Maintenance** of any road and Infrastructure includes the execution of all works of any description which are required to keep the road or Infrastructure in a safe and functional state determined in accordance with any written law, code or guideline;

**Major Works and Upgrades** means all works of any description in relation to a road or associated Infrastructure that are not for the primary purpose of undertaking Maintenance, including but not limited to extensive sealing or resurfacing, changes to the footprint of the existing road, structural modifications and extensions;

**MRWA** means the body corporate established by s 9 of the *Main Roads Act 1930* (WA);

**Own Resources Costs** means the financial contributions made by a Local Government from its own funds towards works, as distinct from the grant-funding;

**Party** means a party or parties to this Deed;

**Road Management Functions** means the functions, powers or duties conferred or imposed on a Local Government by or under:

1. the Local Government Act 1995 (WA);
2. the Land Administration Act 1997 (WA);
3. the Main Roads Act 1930 (WA);
4. the Road Traffic Act 1974 (WA); and
5. any other written law dealing with the management of roads by a Local Government;

**Roadwork** means any kind of activity conducted on or in the vicinity of a road or proposed road and without limiting the generality of the definition, it includes:

1. the construction of a road;
2. the maintenance or repair of a road;
3. the alteration of a road;
4. the construction of drains and other structures for the drainage of water from a road;
5. the installation of fences, railings, barriers or gates;
6. the installation of traffic control devices, traffic islands or parking bays;
7. landscaping or beautification of a road including the planting or removing of a tree or other vegetation;
8. the installation of street lighting;
9. the installation of amenities or equipment on or adjacent to a road for the use, enjoyment or protection of the public;
10. the installation of signs on or adjacent to a road for the use or benefit of the public; and
11. any other work in connection with a road;

**RAMM** means the road assessment and maintenance management software system currently used as a data management and inventory tool by most Local Governments in Western Australia;

**Schedule** means a schedule to this Deed;

**Verge Maintenance** includes but is not limited to mowing, tree lopping, rubbish removal, levelling, cleaning drains;

**Verge Control** includes but not limited to the enforcement of local laws relating to verges and parking;

**Written law** has the same meaning given to that term in the *Interpretation Act 1984* (WA).

## Interpretation

In this Deed, unless the context requires otherwise:

1. references to any legislation or legislative provision include any statutory modification or re-enactment of, or any legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;
2. words denoting the singular number include the plural number and vice versa;
3. words denoting individuals or persons include corporations, authorities, governments and governmental agencies and vice versa;
4. headings and bolding are for convenience only and do not affect interpretation;
5. the meaning of general words or phrases is not limited by specific examples introduced by ’including’, ‘for example’ or similar expressions;
6. references to clauses, schedules and annexures are to clauses, schedules and annexures of or to this Deed;
7. references to any agreement or document are to that agreement or document as amended, novated, supplemented or replaced from time to time;
8. references to any party to this Deed, or any other document or arrangement, include that party’s executors, administrators, substitutes, successors and permitted assigns;
9. where a term is assigned a particular meaning other grammatical forms of that term have a corresponding meaning;
10. a rule of construction does not apply to the disadvantage of a party because the Party was responsible for the preparation of this Deed or any part of it;
11. an obligation, representation or warranty in favour of two or more persons:
12. is for the benefit of them jointly and severally; and
13. binds them jointly and severally.

# Duration

This Deed commences on the Commencement Date and will remain in force until terminated pursuant to clause 9.

# Maintenance Responsibilities

## The parties agree to the allocation of responsibilities for the Boundary Roads as specified in Schedule B to this Deed.

## In respect of the sections of the Boundary Roads allocated to each party in Schedule B, each party undertakes to:

1. carry out all Maintenance work required to ensure that their allocated sections of the Boundary Roads are serviceable and fit for use by road users and the community;
2. meet all costs associated with such Maintenance work; and
3. carry out all other Road Management Functions and Roadwork in respect of their allocated sections of the Boundary Roads as may be required to be carried out by a Local Government.

# Ongoing Co-operation

## The parties agree to maintain an open dialogue and co-operate with each other in performing their respective Road Management Functions in relation to the Boundary Roads.

## Specifically, the parties agree to consult with each other on all material matters affecting the Boundary Roads, including but not limited to the following:

* 1. the management of any funding, grants or cost recovery in relation to the Boundary Roads;
  2. any Major Works or Upgrades on the Boundary Roads, as proposed to be undertaken by any party;
  3. any proposed closures of Boundary Roads or any sections of them; and
  4. any future development plans and priorities which may impact the Boundary Roads.

# Major Works and Upgrades

## The allocation of responsibilities for the Boundary Roads specified in Schedule B does not apply to Major Works and Upgrades.

## The allocation of responsibilities between the parties for Major Works and Upgrades relating to the Boundary Roads will be agreed by the parties on a case-by-case basis.

## Where Major Works or Upgrades are required in respect of the Boundary Roads, the parties shall have regard to the following principles when allocating responsibilities in accordance with clause [5.2]:

1. where available, reference should be had to relevant [RAMM and IRIS data] as a guide for:
   1. allocation of responsibilities for all activities required to deliver the works including planning, sourcing grant funding, project management, procurement, design, and delivery of construction works; and
   2. allocation of Own Resources Costs for all labour, plant and materials required for delivery;
2. where relevant RAMM and IRIS data is not available:
   1. responsibilities for all activities required to deliver the works including planning, sourcing grant funding, project management, procurement, design, and delivery of construction works will be allocated between the parties on another basis; and
   2. the Own Resources Costs of all labour, plant and materials required for delivery should generally be split proportionately based on the percentage of the works that fall within the district boundary of each party;
3. where a party initiates Major Works and Upgrades (if applicable) and expects funding contributions from the other party, the initiating party should liaise with that other party and negotiate an agreement with it to establish the level of funding contribution it is prepared to make. Such an agreement is to be made within a timeframe suitable to the budget preparation processes of both parties.

# No Liability for other party’s Boundary Roads

A party shall not be liable for any loss or damage, claims, actions, proceedings, judgments, orders, decrees, costs and expenses of any nature which may be commenced or brought in connection with any loss, property damage, bodily injury or death as a result of any Maintenance, Roadwork or other Road Management Functions carried out by the other party on any section of a Boundary Road allocated under this Deed to that other party.

# Insurance

Each party will be responsible for effecting and maintaining all necessary insurances in relation to the Boundary Roads allocated to it under this Deed.

# Dispute Resolution

## Notice of Dispute

1. If a dispute between the parties arises in relation to this Deed, the affected party may give the other party a notice setting out the material particulars of the dispute.
2. The parties must continue to comply with their obligations under this Deed despite the dispute unless the parties agree otherwise.

## Appointment of Representative

1. If a notice is given under clause 8.1(a), each party shall appoint a person with authority to be its representative to negotiate and reach settlement of the dispute.
2. The parties’ representatives shall personally meet within 10 Business Days of the date on which the notice is received.

## Best Endeavours to Resolve

The parties’ representatives shall attempt to resolve the dispute in good faith and using their best endeavours at all times.

## Referral of Dispute

If the dispute is not resolved under clauses 8.2 and 8.3, then the dispute may be referred by either party to the relevant State Government Department or Minister responsible for the subject matter of the dispute to provide assistance, deliberation or determination of the issues.

# Termination

This Deed may not be terminated unless the parties have an alternative agreement or arrangement in place between the parties as to the allocation of responsibilities for the Boundary Roads.

# No fettering of discretion

Nothing in this Deed shall fetter or be construed as an attempt to fetter the discretion or the powers of each party acting in its capacity as an Authority under any written law.

# Entire Agreement

This Deed embodies the entire understanding of the parties and contains all the terms agreed on between the parties and supersedes any earlier agreements, arrangements or understandings (in writing or otherwise) between the parties.

# General Provisions

## Notices

Any communication under this Deed:

1. must be in writing;
2. must be addressed as follows:

[***Insert LG1 name***]

Address: [xxx]

Email: [xxx]

For the attention of: Chief Executive Officer

[***Insert LG2 name***]

Address: [yyy]

Email: [yyy]

For the attention of: Chief Executive Officer

1. must be delivered or posted by prepaid post, or sent by email to the addressee.

## Costs

The parties agree to share the legal costs of and incidental to the preparation, negotiation and execution of this Deed on an equal basis.

## Amendments

This Deed may be modified, amended or varied only by a document in writing signed by or on behalf of each party.

## Counterparts

This Deed may be executed in any number of counterparts. All counterparts will be taken to constitute one instrument.

## Assignment

A party cannot transfer any of its rights or obligations under this Deed without the written consent of the other party.

## Severability

Any provision of this Deed that is illegal, void or unenforceable will be ineffective to the extent of its illegality, voidness or unenforceability and will not invalidate the remaining provisions.

## Waiver

1. A waiver by a party under this Deed must be in writing.
2. A waiver of one breach of any term or condition in this Deed shall not be a waiver of any other breach of this Deed.

## Governing Law

This Deed will be construed and interpreted in accordance with the laws of Western Australia and the parties agree to submit to the jurisdiction of the courts of that State and of courts competent to hear appeals therefrom.

**Signing page**

EXECUTED as a Deed

THE COMMON SEAL OF the

[***Insert LG1 name***]

was affixed in the presence of:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Shire President/ Mayor Signature of Chief Executive Officer

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Shire President/ Mayor Name of Chief Executive Officer

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

THE COMMON SEAL OF the

[***Insert LG2 name***]

was affixed in the presence of:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Shire President/ Mayor Signature of Chief Executive Officer

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Shire President/ Mayor Name of Chief Executive Officer

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

**SCHEDULE A – Boundary Roads**

[***Insert description and/or diagram of each “boundary road” including any road verges or infrastructure associated with the road***]

**SCHEDULE B - Allocation of responsibilities for Boundary Roads**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Allocation of Responsibilities** | | | | | |
| **Road Name** | **Location (SLK – SLK)** | **Length** | **Responsible LG (Road)** | **Responsible LG (Verge)** | |
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[***Insert Boundary Road location map/diagram***]

**[*Drafting note: supplement the table and appropriately cross-refence to allocations indicated on the diagram/map. It is conceivable that allocations might be non-linear or otherwise difficult to specify in the table above without cross-references to a diagram/map*.]**