

ACCESS AGREEMENT

This Agreement is made effective the 5th day of August, 2020 (the “Effective Date”) between:

THE CORPORATION OF THE COUNTY OF GREY
(the “County”)

- and -

THE CORPORATION OF THE TOWNSHIP OF SOUTHGATE
 (“Southgate”)
(each, a “Party” and, collectively, the “Parties”)

WHEREAS Southgate is the registered owner of certain lands situated in the Township of Southgate, in the County of Grey more particularly described in Schedule “A” hereto (the “Southgate Lands”), which lands are depicted in purple in the diagram contained in that Schedule;

AND WHEREAS the County is the registered owner of certain lands situated in the Township of Southgate, in the County of Grey more particularly described in Schedule “A” hereto (the “County Lands”), which lands are depicted in green in the diagram contained in that Schedule;

AND WHEREAS the County is the registered owner of certain lands situated in the Township of Southgate, in the County of Grey more particularly described in Schedule “A” hereto (the “Trail Lands”), which lands are depicted in yellow in the diagram contained in that Schedule and which lands are used by the County as a public multi-use trail known as the “CP Rail Trail”;

AND WHEREAS Southgate is considering the development of the Southgate Lands and has requested that the County consider transferring or leasing some or all of the County Lands to Southgate for the purposes of vehicle parking to benefit the Southgate Lands and to grant Southgate certain rights in the Trail Lands to construct pedestrian accesses between the Southgate Lands and the County Lands and to install certain related fixtures, including lighting;

AND WHEREAS Southgate proposes to carry out certain investigations in the County Lands and the Trail Lands in support of the development presently under consideration, and to have a survey prepared of them;

AND WHEREAS the Parties have agreed that it would be mutually beneficial to outline the terms and conditions pursuant to which the County will provide its consent to Southgate accessing the County Lands and the Trail Lands to carry out such investigations and survey work;

NOW THEREFORE in consideration of the mutual terms, conditions and covenants contained herein, the sum of Ten Dollars (\$10.00) now given by each party to the other, and the exchange of other good and valuable consideration (the receipt and sufficiency of all of which is confirmed) the Parties agree and covenant with each other as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions:

- (a) “County Costs” means the reasonable and verifiable costs and expenses of the County, including the cost of labour, equipment and materials, plus a reasonable overhead charge of 10%;
- (b) “County Representative” means the Director of Planning of the County or the individual designated by him or her;

- (c) "Emergency" means an unforeseen situation where immediate action must be taken to preserve the environment, public health, safety or an essential service;
- (d) "Site" means the County Lands and the Trail Lands excepting any Third-Party Lands as defined in section 2.4 below;
- (e) "Users" means Southgate's officers, employees, agents, invitees, consultants and contracting parties;
- (f) "Work" means any activity by any person engaged or directed by Southgate and any of its employees, consultants, agents, contractors or sub-contractors;

and the terms defined in the recitals above have the same meaning.

1.2. The recitals above are true in substance and fact.

2. USE OF SITE

- 2.1. The County hereby consents to Southgate accessing and using the County Lands and the Trail Lands for the purpose of the technical evaluation of the County Land for its proposed use for vehicle parking and the Trail Lands for the use of pedestrian access between the County Lands and the Southgate Lands (collectively, the "Access Purposes"), and for such purposes grants Southgate a limited license to access the County Lands and the Trail Lands, which license may be enjoyed by Southgate and its Users (the "License").
- 2.2. The License includes Work carried on in support of the Access Purposes and any other Work as may be approved by the County Representative including, but not limited to, any survey work on the County Lands and the Trail Lands, provided that all Work to be carried on is subject to the terms and conditions of this Agreement and to be performed in accordance with all applicable municipal by-laws, rules, policies, standards and guidelines ("Municipal Rules").
- 2.3. Southgate agrees that neither it nor its Users, in the exercise of their rights under this Agreement, may interfere with the use and enjoyment of the Trail Lands, except as may be reasonably necessary to carry out Work.
- 2.4. Southgate acknowledges that it is aware of certain areas within the Trail Lands which are occupied by third parties (the "Third-Party Lands"), and agrees that, notwithstanding anything else in this agreement, that the License granted herein does not extend to carrying on any Work on the Third-Party Lands except for survey work. Southgate agrees that neither it nor its Users shall disturb the use to which any of the Third-Party Lands are put.
- 2.5. The County makes no representations or warranties as to the state of repair of the Site or the suitability or fitness of the Site for any activity or purpose whatsoever, and Southgate hereby agrees that the User's entry onto the Site is on an "as is" basis.
- 2.6. The Parties acknowledge and agree that the use of the Site under this Agreement shall not create nor vest in Southgate any ownership or property rights in the Site, and that this Agreement does not create any relationship between the Parties in the nature of a partnership or joint venture or establish any other common intention or purpose.

3. PERMISSION TO CONDUCT SPECIFIC WORK

- 3.1. Unless otherwise agreed to by the County, Southgate shall, prior to any Work

being undertaken submit the following to the County Representative:

- (a) plans of the proposed Work, showing the nature and locations where the Work is proposed to take place and the remediation Work to return the Site to its original condition;
- (b) a Field Work Request Form (in the form attached as Schedule "B" or as may later be modified or replaced from time to time by the County) for all Work which requires vehicular access to the Site across the Trail Lands or which may impact the Trail Lands or may cause the CP Rail Trail to be closed no less than five (5) Working Days prior to the intended work commencing, in order to ensure that the intended work does not conflict with any other scheduled work or special events on the CP Rail Trail; and
- (c) information as to who will do the Work at the Site and confirmation that such person(s) have full Workplace Safety and Insurance Board coverage or alternate satisfactory insurance coverage against workplace injury and confirmation of insurance against liability claims of any person not a party to this Agreement in an amount not less than \$2 million per incident.

3.2. No Work proposed by Southgate pursuant to section 3.1 may be commenced until the County's consent is provided by the County Representative, which consent shall not be unreasonably withheld.

4. MANNER OF WORK

- 4.1. All Work shall be conducted and completed in accordance with all applicable laws, the Municipal Rules and the plans provided to obtain the consent contemplated in Article 3 of this Agreement.
- 4.2. The County may order the stoppage of the Work for any Emergency, other *bona fide* municipal purpose or cause relating to public health and safety or for non-compliance with section 4.1.
- 4.3. Southgate and the County shall provide to each other a list of 24-hour emergency contact personnel, available at all times, including contact particulars, and shall ensure that the list is kept current.

5. REMEDIAL WORK

- 5.1. Following the completion of any Work, Southgate shall leave the Site in a neat, clean, and safe condition free from nuisance and as close as possible to the condition of the Site prior to the Work, all subject to the satisfaction of the County.

6. FEES AND OTHER CHARGES

- 6.1. Southgate covenants and agrees to pay to the County the County Costs relating to any Work the County is left to do in order to achieve compliance by Southgate and its Users with this Agreement,

7. TERM AND TERMINATION

- 7.1. This Agreement shall have a Term of one year commencing on the Effective Date.
- 7.2. Either Party may terminate this Agreement without further obligation to the other Party, upon providing at least twenty-four (24) hours' notice. Notwithstanding the expiry or earlier termination of this Agreement, each Party shall continue to be

liable to the other Party for all payments due and obligations incurred hereunder prior to the date of such expiry or termination.

8. INSURANCE

8.1 Southgate shall during the entire term of this Agreement and any renewals thereof, at its own cost and expense, take out and keep in full force the following insurance coverage with respect to all activities arising from this Agreement and shall provide proof thereof (by way of a copy of a certificate of insurance) to the County. This insurance shall be primary, non-contributing with and not excess of any other insurance available to the County. The policies shall be underwritten by an insurer licensed to do business in the Province of Ontario. Such policies shall include but not be limited to:

- (a) General Liability insurance on a per occurrence basis for an amount of not less than Five Million Dollars (\$5,000,000); such policy to include, but not be limited to, non-owned automobile liability; personal injury; broad form property damage; blanket contractual liability; owners and contractors protective liability; products and completed operations liability; contingent employers' liability; and, shall include cross liability and severability of interest clauses, in which the Corporation of the County of Grey shall be named as an Additional Insured thereunder, with respect to the operations, acts and omissions of Southgate and its Users relating to Southgate's obligations under this Agreement, and which policy shall not be invalidated as respects the interests of the County by reason of any breach or violation on any warranties, representations, declarations or conditions; and
- (b) Automobile Liability insurance for an amount not less than Two Million Dollars (\$2,000,000) on forms meeting statutory requirements covering third party property damage and bodily injury liability (including accident benefits) covering all licensed vehicles used in any manner in connection with the performance of the terms of this Agreement and as required by applicable laws.

9. LIABILITY AND INDEMNIFICATION

9.1 For the purposes of this Article 9, the following definitions shall apply:

- (a) "County" means the County and its elected and appointed officials, officers, employees, contractors, agents, successors and assigns;
- (b) "Claims" means any and all claims, actions, causes of action, complaints, demands, suits or proceedings of any nature or kind;
- (c) "Losses" means, in respect of any matter, all losses, damages, liabilities, deficiencies, Costs and expenses;
- (d) "Costs" means those costs (including, without limitation, all legal and other professional fees and disbursements, interest, liquidated damages and amounts paid in settlement, whether from a third party or otherwise) awarded in accordance with the order of a court of competent jurisdiction, the order of a board, tribunal or arbitrator or costs negotiated in the settlement of a Claim; and
- (e) "Hazardous Substance" means any harmful substance including, without limitation, electromagnetic or other radiation, contaminants, pollutants, dangerous substances, dangerous goods and toxic substances, as defined,

judicially interpreted or identified in any applicable law (including the common law);

9.2 Indemnification by Southgate

- (a) Southgate shall indemnify the County from Claims, Losses and Costs made by or awarded to any person, including but not limited to Southgate's Users, arising out of activities arising under this Agreement or in connection with the use of the Site by Southgate and its Users, whether or not such Claims, Losses and Costs are caused by the negligence of Southgate or its Users. This indemnity shall extend to protect the County from construction liens by contractors, mechanics, and suppliers (which are expressly prohibited), which shall be deemed to include all purchases of expendables, consumables, and other merchandise.
- (b) In the event of any Claims, the County shall give Southgate timely written notice thereof, and Southgate shall have the right to defend or settle the same to the extent of its interest hereunder. Southgate shall promptly accept all responsibility to defend or settle such matters. Further, in the event it is necessary for the County to incur any expenses whatsoever to enforce this provision, all such expenses shall in their entirety be paid by Southgate.

9.3 Southgate agrees that the County is not responsible, either directly or indirectly, for any damage to the natural environment or property, including any nuisance, trespass, negligence, or injury to any person, howsoever caused, arising from the presence, deposit, escape, discharge, leak, spill or release of any Hazardous Substance in connection with the occupation or use of the Site by Southgate and its Users unless such damage was caused directly by the negligence or wilful misconduct of the County or those for which it is responsible in law.

9.4 Southgate agrees to assume all environmental liabilities, claims, fines, penalties, obligations, costs or expenses whatsoever relating to its use of the Site, including, without limitation, any liability for the clean-up, removal or remediation of any Hazardous Substance on or under the Site that result from:

- (a) The occupation, operations or activities of Southgate or its Users, or by any other person with the express or implied consent of Southgate within the Site; or
- (b) Any equipment brought or placed within the Site by Southgate or its Users, or by any other person with the express or implied consent of Southgate;

unless such damage was caused directly by the negligence or wilful misconduct on the part of the County or those for which it is responsible in law.

10. NOTICES

10.1 Any notice required to be given, served or delivered must be in writing and sent to the other party at the address indicated below, or to such other address as may be designated by notice provided by either party to the other.

If to the County:

County Clerk
County of Grey Administration Building
595 9th Ave East
Owen Sound, ON N4K 3E3

Fax: 519-376-8998
countyclerk@grey.ca

If to Southgate:

Lindsey Green, Acting Clerk
The Township of Southgate
185667 Grey County Road 9
Dundalk, ON N0C 1B0
Fax: 519-923-9262
lgreen@southgate.ca

- 10.2 Any notice to be given by either party to the other shall, in the absence of proof to the contrary, be deemed to have been received by the addressee if delivered personally on the day of delivery, if sent by prepaid registered post, then on the second business day following the registration thereof sent by ordinary mail, then on the fifth business day following the date on which it was mailed; or if sent by facsimile or email on a business day, or the following business day, upon confirmation of successful transmission of the notice.

11 GENERAL

- 11.1 This Agreement, together with the Schedules attached hereto, constitutes the complete and exclusive statement of the understandings between the Parties with respect to the rights and obligations hereunder and supersedes all proposals and prior agreements, oral or written, between the Parties.
- 11.2 In this Agreement, words importing the singular include the plural and vice versa, words importing gender, include all genders.
- 11.3 The division of this Agreement into sections and subsections and the insertion of headings are for convenience of reference only and do not affect the interpretation of this Agreement. Unless otherwise indicated, references in this Agreement to a section, subsection or schedule are to the specified section or subsection of or schedule to this Agreement.
- 11.4 A reference to a statute includes all regulations and rules made pursuant to the statute and, unless otherwise specified, the provisions of any statute or regulation which amends, supplements or supersedes the statute or the regulation.
- 11.5 Where the word "including" or "includes" is used in this Agreement it means "including (or includes) without limitation as to the generality of the foregoing".
- 11.6 Unless otherwise indicated, references in this Agreement to money amounts are to the lawful currency of Canada.
- 11.7 This Agreement may not be assigned, in whole or in part, without the prior written consent of the other Party.
- 11.8 Each Party shall at all times act reasonably in the performance of its obligations and the exercise of its rights and discretion under this Agreement.
- 11.9 Except as expressly provided in this Agreement, no modification of or amendment to this Agreement shall be effective unless agreed to in writing by the County and Southgate.
- 11.10 The terms and conditions contained in this Agreement that by their sense and context are intended to survive the performance thereof by the Parties hereto shall so survive the completion of performance, the expiration and termination of

this Agreement, including, without limitation, provisions with respect to indemnification and the making of any and all payments due hereunder.

11.11 This Agreement shall be governed by the laws of the Province of Ontario and all federal laws of Canada applicable therein.

11.12 Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

11.13 If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and everything else in this Agreement shall continue in full force and effect.

11.14 This Agreement is and shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and permitted assigns.

11.15 Either Party may, in addition to any other remedies it may have at law or equity, seek equitable relief, including without limitation, injunctive relief, and specific performance to enforce its rights or the other Party's obligations under this Agreement.

11.16 This Agreement may be executed in counterparts, each of which is deemed an original, but all of which constitute one and the same agreement. Delivery of an executed counterpart of this Agreement electronically shall be effective delivery of an original executed counterpart of this Agreement.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement by their duly authorized representatives.

THE CORPORATION OF THE TOWNSHIP OF SOUTHGATE

John Woodbury, Mayor

Lindsey Green, Acting Clerk

THE CORPORATION OF THE COUNTY OF GREY

Paul McQueen, Warden

Heather Morrison, Clerk

SCHEDULE "A"

LEGAL DESCRIPTION OF SOUTHGATE LANDS (OUTLINED IN PURPLE BELOW)

All those lands comprising Part of Lot 229-230 Concession 2 2 South West of the Toronto Sydenham Road Proton Also Known as Canadian Pacific Railway Station Grounds Part 1 16R-9721; Subject to an Easement in Gross over Part 1, 16R-10953 as in GY147874; Township of Southgate, County of Grey.

Roll No.: 420711000144910

PIN: 37315-0135 (LT)

DESCRIPTION OF THE COUNTY LANDS (OUTLINED IN GREEN BELOW)

Part of those lands comprising Part of Lot 229 Concession 2 South West of the Toronto Sydenham Road Proton Also Known as Canadian Pacific Railway Station Grounds being Part of Part 2 16R-9721; Subject to an Easement in Gross over Part 1 16R-9821 as in GY27892; Township of Southgate, County of Grey.

Part of Roll No.: 4207 1100 0147 500

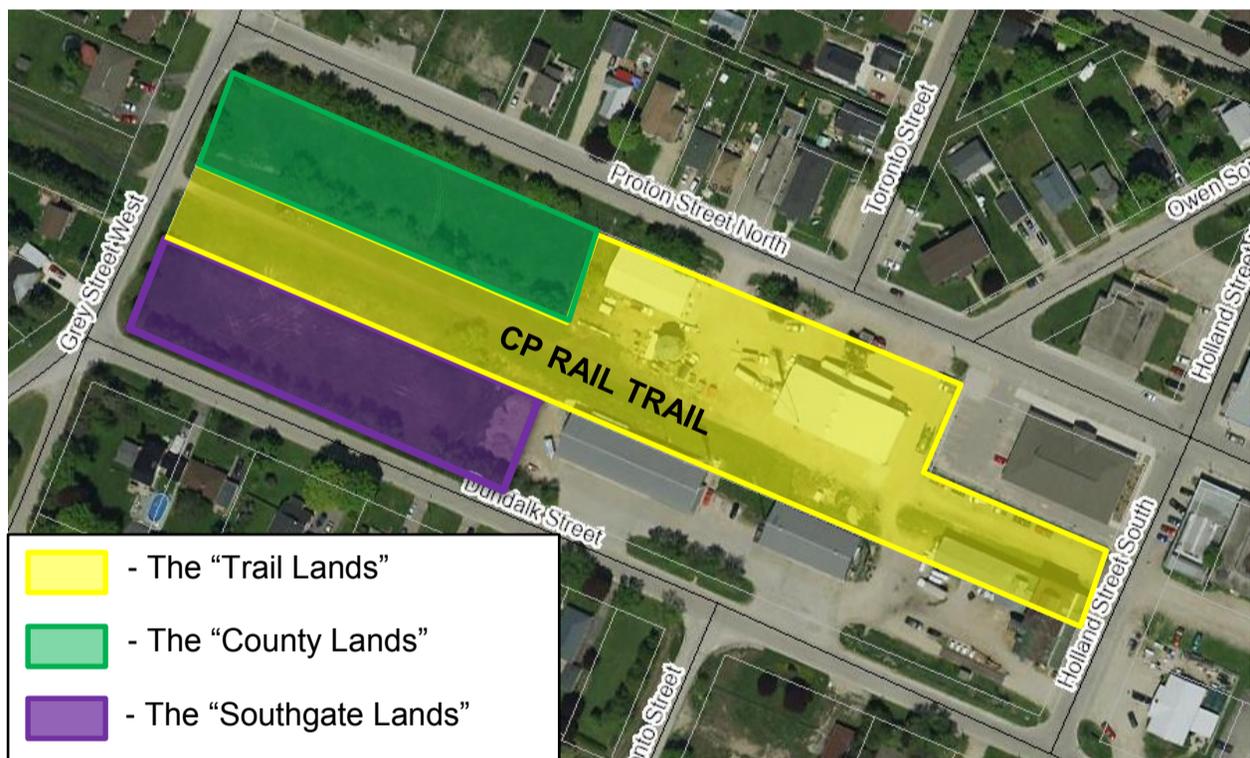
Part of PIN: 37315-0136 (LT)

DESCRIPTION OF THE TRAIL LANDS (OUTLINED IN YELLOW BELOW)

Part of those lands comprising Part of Lot 229-230 Concession 2 South West of the Toronto Sydenham Road Proton Also Known as Canadian Pacific Railway Station Grounds being Part of Part 2 16R-9721; Subject to an Easement in Gross over Part 1 16R-9821 as in GY27892; Township of Southgate, County of Grey.

Part of Roll No.: 4207 1100 0147 500

Part of PIN: 37315-0136 (LT)



Schedule "B" Field Work Request Form



Field Work Request Form

595 9th Avenue East
Owen Sound Ontario N4K 3E3
Phone: 519-376-2205 / Fax: 519-376-7970

THIS FORM IS TO BE COMPLETED BY PARTIES WHO ALREADY POSSESS AN ACTIVE ENCROACHMENT AGREEMENT) WITH THE COUNTY OF GREY

This completed notification must be submitted at least **five (5) Working Days** prior to commencing work on Grey County property by either Fax: 519-376-7970 or email to trails@grey.ca

Company Requiring the Work: _____

Contractor Performing Work: _____

Location of Work: _____

Closest Civic Address (if available): _____

Township/Municipality: _____

Date of Work: _____

Printed Name of Applicant: _____

Signature of Applicant: _____

Contact Phone Number: _____

Duration of Work: _____

Describe any work which may affect CP Rail Trail users: _____

Work Limits: _____

Description of Work: _____

Approved

Not Approved

Grey County Signature: _____