

STAFF REPORT: Engineering & Public Works Department

REPORT TO: Council
MEETING DATE: May 25, 2011
REPORT NO.: EPW.11.054
SUBJECT: Peaks Road Reconstruction Update
PREPARED BY: Reg Russwurm, Director of Engineering and Public Works

A. Recommendation

THAT Council receives Staff Report EPW.11.054 entitled "Peaks Road Reconstruction Status Update" for information.

B. Background

Since the fall of 2008, Staff have had ongoing discussions with the proponent of the Neighbourhood of Delphi Point Development regarding the reconstruction of Peaks Road to facilitate the installation of traffic lights at the intersection of Highway 26 and Peaks Road. In light of the road being reconstructed, the Town will install a sanitary sewer from Hwy 26 to Wensley Drive to service the future wastewater service extension on Wensley Drive. The cost of works associated with the intersection reconstruction is the responsibility of the developer.

On November 23 2009 Council approved Staff Report EPW.09.085 (resolution provided as Attachment 1) that authorized the Town's Solicitor and Director of Engineering and Public Works to prepare and recommend for execution by the Mayor and Clerk a cost sharing agreement for the installation of the sanitary sewer as part of the Developer's Construction Contract. The draft agreement is provided as Attachment 2. The finalization of the agreement is pending the tender results in order that the security figures can be accurately stated.

Over the past year, Staff have worked with the proponent to complete the design drawings and are now in the position to accept the drawings for construction in accordance with Town Engineering Standards and road cross section modifications previously approved by Council. Currently, the project is out for tender with the expected closing date of June 1, 2011 with construction this year. Since the cost of the sanitary sewer works will be reimbursed to the Developer and ultimately cost shared by residents along Wensley Drive, the purchasing method must be open, transparent and defensible. To that end, Staff have taken the following measures:

- tender must be widely circulated and available to all qualified bidders
- Staff attend public opening of tender
- Staff provided copy of submitted schedule of unit prices
- Staff verify tender cost of Town paid items is balanced
- Ensure no post tender cost negotiations of Town shared works
- Staff attend site meetings and monitor construction activities
- Staff review payment certificates for works cost shared
- Consultant prepares a tender report outlining the tender process, verifying transparency and recommends award.

Upon tender closing and receiving an acceptable Consultant's tender report, Staff will prepare a report to Council to authorize the award of the Town's portion of the contract to the successful bidder. This report is expected to be at the June 27 meeting of Council. Due to the timing of the tender closing, Staff expect to be only be able to provide a verbal update to the Infrastructure and Recreation Committee at its June 14 meeting.

C. The Blue Mountains' Strategic Plan

This report furthers the Town's Strategic Goal #2 "Addressing the Town's municipal infrastructure needs" and Strategic Goal #6 "Providing a strong well managed municipal government".

D. Environmental Impacts

none

E. Financial Impact

The 2011 Capital Budget includes \$135,000 for the Town's share of the works. In addition to cost sharing on the construction works, the Town will pay an appropriate share of the engineering services based on cost of capital.

F. Attached

1. Resolution of Report EPW.09.085 as passed by Council November 23, 2009
2. Draft Cost Sharing Agreement with The Neighbourhoods of Delphi Point Inc for the Reconstruction of Peaks Road from Highway 26 to Wensley Drive.

Respectfully submitted,

Reg Russwurm

Reg Russwurm
Director of Engineering & Public Works

For more information, please contact:

Reg Russwurm
russwurm@thebluemountains.ca
(519) 599-3131 x260

**RESOLUTION AS PASSED BY COUNCIL
NOVEMBER 23, 2009**

C.2 EPW.09.085 Peaks Road Reconstruction – Cross Section and Georgian Trail Treatment

THAT Council approve the cross section of Peaks Road from Highway 26 to Wensley Drive to consist of an 10.5m travelled portion within the existing 20m right-of-way as outlined in Report EPW.09.085, and

THAT Council approve the Mayor and Clerk executing an Agreement for the Reconstruction of Peaks Road with the proponent of Neighbourhoods of Delphi Point upon the endorsement of the Town Solicitor and the Director of Engineering and Public Works to: i) obtain security to undertake reconstruction of Peaks Road and related works; ii) obtain \$5,000.00 frontend funding for future restoration works on the Georgian Trail; iii) require the Neighbourhoods of Delphi Point to administer and frontend construction works; iv) cost share of road reconstruction at 33% Town and 67% Neighbourhoods of Delphi Point; v) construct a trail access from the Georgian Trail to the Georgian Peaks parking lot for trail head parking; and, vi) be contingent on obtaining an easement agreement with Georgian Peaks Ski Club, and

THAT existing motion subject to consultation with the Georgian Trail Management.

“CARRIED”

COST SHARING AND SECURITY AGREEMENT

Dated April **, 2010

Between

THE NEIGHBOURHOODS AT DELPHI POINT INC.
(hereinafter referred to as the "Developer")

and

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS
(hereinafter referred to as the "Town")

WHEREAS the Ontario Municipal Board has given approval to draft plans of subdivision 42T-88003 and 42T-95007 (the "Draft Plans") for the subdivision, development and servicing of the Developer's lands in accordance with the Conditions;

AND WHEREAS the Conditions require the Developer to install the Intersection Works to the satisfaction of the MTO and the Town;

AND WHEREAS the Developer has agreed to install the Georgian Trail Works at its sole cost in conjunction with the installation of the Intersection Works;

AND WHEREAS the Developer has agreed to install the Peaks Road Sewer at the Town's sole cost in conjunction with the installation of the Intersection Works;

AND WHEREAS all of the Works are to be installed under one construction contract entered into by the Developer and the Contractor;

AND WHEREAS the Developer and the Town have agreed to share the Final Costs as herein provided and the purpose of this agreement is to provide for the installation of the Works and the sharing of the Final Costs.

Now Therefore this Agreement Witnesseth that in consideration of the mutual covenants contained herein and the payment of the sum of Ten Dollars (\$10.00) by each party to the other (the receipt and sufficiency is hereby acknowledged) the parties hereto agree with each other as follows:

1. Definitions

In this Agreement, including the recitals:

"Accepted Plans" means all the designs, plans, drawings and specifications for the installation of the Works, the originals of which have been signed and stamped in red ink "Accepted for Construction by the Town and are described in Schedule "A". Where the subject matter or context of a particular section of this Agreement requires reference to an individual Accepted Plan, it may be referred to by its individual name (i.e. Peaks Road Works, Peaks Road Sewer etc);

"Agreement" means this agreement;

"Business Day" means any day other than Saturday, Sunday or any statutory or civic holiday in Ontario;

"Conditions" mean the conditions imposed by the Ontario Municipal Board in accordance with the provisions of the Planning Act for the subdivision, development and servicing of the Developer's lands shown on the Draft Plans;

"Contractor" means a qualified contractor, approved by the MTO;

“construction” includes installation;

“Construction Contract” means a contract between the Developer and a Contractor for the construction of the Intersection Works, the Peaks Road Works, the Peaks Road Sewer and the Georgian Trail Works;

“Default” means any default by the Developer in the performance of its obligations under this Agreement, including the failure of the Developer to design, install, repair and maintain the Works in accordance with all of the requirements of this Agreement and the failure of the Developer to make any payments to the Town required by this Agreement when due;

“Developer’s Share” means the Developer’s Share as shown on the Final Statement;

“Engineer” means CF Crozier & Associates or such other engineer as may be proposed by the Developer and approved by the Town;

“Engineering Services” means the engineering services provided by the Engineer for the design and approvals of the Works, tendering services, construction management, supervision, inspection and testing services for the installation of the Works;

“Final Costs” means the final cost of the Works, including all contingency and engineering costs related thereto incurred by the Developer as shown on the Final Statement;

“Final Statement” has the meaning ascribed to it in Section 6;

“Georgian Trail Works” means the Georgian Trail Works shown on the Accepted Plans;

“Intersection Works” means all of the works, including traffic signals and the Peaks Road Works required by the Ministry of Transportation- Ontario (the “MTO”) for the improvement of the intersection of Highway 26 and Peaks Road;

“MTO” means Her Majesty The Queen in right of the Province of Ontario, represented by the Minister of Transportation for the Province of Ontario;

“MTO Agreement” means an agreement dated June 11, 2010 between the Developer and the MTO provides for the design and construction of the Intersection Works by the Developer at the Developer’s cost;

“Notice” means any written notice given or received in accordance with the provisions of section 11;

“Parties” mean the Developer and the Town;

“Peaks Road Sewer” means the sanitary sewer to be installed on Peaks Road as shown on the Accepted Plans;

“Peaks Road Works” means all road works, including asphalt paving, curbs and gutter, storm drainage works and relocation of the Georgian Trail, to be installed on the Peaks Road all as shown on the Accepted Plans;

“Town’s Share” means the Town’s share of the Final Costs as shown on the Final Statement;

“Works” means collectively, the Peaks Road Works, the Peaks Road Sewer and the Georgian Trail Works. Where the subject matter or context of a particular section of this Agreement requires reference to an individual Work, it may be referred to by its individual name (i.e. Peaks Road Works, Peaks Road Sewer etc).

Unless the context otherwise requires words importing the singular includes the plural and vice versa and words importing a gender include all genders and all capitalize terms have the meanings ascribed to them herein.

All reference to sections and schedules unless otherwise specified are reference to sections and schedules of this Agreement.

2. Recitals

The Parties agree that the recitals herein are true and accurate and form part of this agreement.

3. Installation of the Works by the Developer

- 3.1 Subject to the cost sharing provisions of this Agreement, the Developer, at its cost, agrees to design, tender and award the Construction Contract, provide the Engineering Services and construct the Intersection Works, the Peaks Road Works, the Peaks Road Sewer and the Georgian Trail Works at its cost all in accordance with the provisions of the MTO Agreement, this Agreement, the Accepted Plans and the Construction Contract.
- 3.2 In the event of a conflict between the MTO Agreement and this Agreement with respect to any matter related to the Peaks Road Works, the provisions of the MTO Agreement shall prevail except to the extent that the requirements of the Town are in addition to the requirements of the MTO, in which case the Developer shall satisfy both the requirements of the MTO and the Town.
- 3.3 The parties acknowledge that the Engineer is also the Design Consultant and the Contract Administrator within the meaning of the MTO Agreement and agree that the Engineer, in addition to its responsibilities under the MTO Agreement, shall provide the Engineering Services with respect to Works.
- 3.4 The Developer shall award the Construction Contract by a public tender process satisfactory to the Town. The form of the tender documents for the installation of the Peaks Road Works, the Peaks Road Sewer and the Georgian Trail Works shall be approved by the Town. The tender documents shall include, among other things, separate sections for the Peaks Road Works, the Peaks Sewer Works and the Georgian Trail Works, the Accepted Plans, insurance and bonding provisions satisfactory to the Town, a one (1) year warranty period and a 2 1/2% maintenance holdback.
- 3.5 Immediately following the closing of tenders, the Developer, in consultation with the Town, shall reject all tenders that do not comply with the tender documents and shall determine which of the tenders that are not rejected contain the lowest acceptable bid and award the Construction Contract to the lowest acceptable bidder.
- 3.6 In the event that the MTO requires that any Town owned lands be conveyed to it for the installation of the Intersection Works, the Developer shall be responsible for all costs, including legal and surveying costs, to complete the conveyances to the MTO.

4. Cost Sharing

- 4.1 The parties agree to share the Final Costs in the manner set out in Schedule "B".

5. Payments by the Town

- 5.1 The Developer shall, following substantial completion of the Works, submit to the Town;
 - (a) a certificate from the Engineer certifying that all of the Works have been installed and are functioning in strict accordance with the Accepted Plans and that the construction lien period (45 days) has expired and it has received no notice of lien in respect of the Works pursuant to the Construction Lien Act (Ontario);
 - (b) a statutory declaration from the Developer stating that all contractors and subcontractors associated with the installation of the Works have been paid and that there are no outstanding lien claims in respect of the installation of the Works pursuant to the Construction Lien Act (Ontario); and
 - (c) an invoice for the Town's share of the cost of the Works incurred by the Developer up to and including substantial completion of the Works, less any required holdbacks, calculated in accordance with the cost sharing formulae set out in Schedule "B".

5.2 The Town shall inspect the Works and shall pay to the Developer the amount of _____ this invoice within sixty (60) Business Days from the date the Developer has _____ rectified and repaired to the satisfaction of the Town all defects and deficiencies _____ in the Works found by this inspection, unless otherwise agreed to by the Town.

5.3 The Remaining Balance, as defined in Section 6, shall be paid in accordance with _____ Section 7.

6. The Final Statement

6.1 The Developer shall, within thirty (30) Business Days after the Developer has advised the Town that the Construction Contract is deemed to be completed within the meaning of subsection 2(3) of the Construction Lien Act, all hold back periods pursuant to the Construction Lien Act have expired and all warranty periods under the Construction Contract have expired,

- (i) submit to the Town all required digital data, hard copy plots and report information as specified by the Town, including red-lined "as recorded" plans of the Works and a certificate from the Engineer certifying that all of the Works have been installed and are functioning in strict accordance with the Accepted Plans; and
- (ii) prepare, in consultation with the Town and deliver to Town a detailed statement (the "Final Statement") showing the Final Costs incurred by the Developer, the Town's Share and the Developer's Share calculated in accordance with the cost sharing provisions set out in Schedule "B", and the remaining balance of the Town's Share which remains unpaid (the "Remaining Balance")

6.2 The Town shall have thirty (30) Business Days to review the Final Statement and make comments thereon to the Developer, following which the Developer shall have twenty (20) Business Days to consider all such comments received and issue a notice to the Town either confirming that the Final Statement as originally issued is final or providing an amended Final Statement (which shall thereafter be deemed to be the Final Statement). The Final Statement issued by the Developer, subject to amendment by the Developer in accordance with this section and subject to any errors identified by the Town shall be deemed to be correct and final and binding on the Town.

7. Monies Owed to the Developer

The Town shall inspect the Works and shall pay the Remaining Balance to the Developer within sixty (60) Business Days from the date the Developer has rectified and repaired to the satisfaction of the Town all defects and deficiencies in the Works found by this inspection.

8. Security and Financial Provisions

8.1

- (a) In order to guarantee installation of the Peaks Road Works and the Georgian Trail Works (the Secured Works") in accordance with the provisions of this Agreement by the Developer, the Developer shall provide to the Town, upon execution of this Agreement, an irrevocable letter of credit in the amount of \$*****, being 67% of the estimated cost of the Peaks Road Works and 100% of the estimated cost of the Georgian Trail Works, including site supervision, contract administration and engineering costs (6%) (the "Security"). The letter of credit shall be from an Ontario Branch of a Canadian Chartered Bank and in a form approved by the Treasurer. The Developer covenants and agrees that the letter of credit shall be kept in full force and effect and that it will pay all premiums on the letter(s) of credit as they become due until such time as the Town returns the letter of credit.
- (b) Wherever in this Agreement a letter of credit is required to be filed with the Town, the Developer may instead deposit cash or a certified cheque to be cashed, in an amount equal to the letter of credit and such deposit shall be held by the Town as Security in accordance with this Agreement provided that no interest shall be payable on any such Security.

8.2 **Developer in Default**

- (a) The Developer agrees that the Town Treasurer shall be entitled to draw upon and use all or a part of the Security to rectify any Default.
- (b) If, in the sole and absolute opinion of the Town, the Developer is in Default, the Town, except in cases of emergencies, shall give Notice to the Developer of the Default and require the Developer to rectify the Default. If the Default is not rectified within Twenty (20) Business Days after receipt by the Developer of such Notice or within such time period as may be designated in the Notice by the Town, then
 - (i) the Town shall have full authority and power immediately to purchase such materials, tools and machinery and to employ such contractors or workmen as in the opinion of the Town are required for the proper rectification of the Default, to enter upon the Lands and to do all such work and things, including the installation of Works, as are necessary to rectify the Default to the satisfaction of the Town, at the cost and expense of the Developer. In cases of emergencies, such work may be done without prior Notice but the Developer shall be notified forthwith. The cost of such work will be calculated by the Town, whose decision shall be final. It is understood and agreed that such costs shall include a management fee of fifteen per cent (15%) of the cost of the labour, materials, tools, machinery, and applicable taxes; and
 - (ii) the Town Treasurer may, at any time draw on and use all or part of the Security to pay the cost, as calculated by the Town, of any works or things, including the installation of Works, done by the Town pursuant to the provisions of this section to rectify the Default.

8.3 **Reduction and Release of Security**

- (a) The Town shall reduce the amount of the Security by ninety per cent (90%) forthwith after its has paid the invoice referred to in Section 5.1(b).
- (b) The Town shall release of the balance of the Security forthwith after it has paid the Remaining Balance.

8.4 **Financial Provisions including Disbursements and Expenses**

- (a) The Town acknowledges receipt from the Developer of a works fee in the amount of \$2000.00 for expenses incurred by the Town for review of the design of the Works and for inspections and other matters related to the installation of the Works.
- (b) The Developer shall pay to the Town, within twenty (20) Business Days of receipt of a Notice demanding payment, the full amount of such costs, expenses and disbursements as may be or are incurred by the Town in any way in connection with the preparation, administration and enforcement of this Agreement and the Georgian Peak Club Memorandum of Understanding, the conveyance of Town lands to the MTO as required by the MTO Agreement, including, without limiting the generality of the foregoing, legal costs, survey costs, the costs of other consultants and the costs of registration of all documentation related to this Agreement and the Georgian Peak Club Memorandum of Understanding (the "Agreement Costs").
- (c) As security to ensure payment of the Agreement Costs by the Developer, the Developer shall pay to the Town, upon execution of this Agreement a refundable deposit of \$5,000.00 to be used by the Town for the purpose of paying the Agreement Costs. The Developer shall replenish this refundable deposit to its full amount within twenty (20) Business Days of receipt of a Notice providing details of the amounts of the Agreement Costs incurred by the Town and requesting replenishment of this deposit. Failure to replenish this deposit constitutes a Default and the Treasurer shall be entitled to draw upon and use all or a part of the Security to rectify the Default and replenish the deposit.

9. General Liability Insurance Policy

9.1

(a) Prior to the execution of this Agreement and the Contractor commencing any work under the Construction Contract, the Developer shall take out and keep in full force and effect during the term of the Construction Contract, at its sole cost and expense, the following minimum insurance:

- (i) Commercial General Liability insurance applying to all operations of the Developer which shall include coverage for bodily injury liability, property damage liability, products and completed operations liability, contractor's protective liability, contractual liability, and non-owned automobile liability, contingent employers liability and employees as additional insureds.

This policy shall contain no exclusions for damage or loss from blasting, vibration, pile driving, the removal or weakening of support, shoring, and underpinning or from any other activity or work that may be done in connection with the development of the Plan.

This policy shall be written with limits of not less than FIVE MILLION DOLLARS (\$5,000,000) exclusive of interest or costs, per occurrence and shall include the Town as an additional insured;

This policy shall provide primary insurance coverage and not excess to any other insurance available to the Town; and

- (ii) Automobile Liability (Owned and/or Leased Vehicles) insurance with an inclusive limit of liability of not less than TWO MILLION DOLLARS (\$2,000,000) exclusive of interest or costs, per occurrence for loss or damage resulting from bodily injury to or death of one or more persons and for loss or damage to property. This policy must cover all vehicles owned, leased or operated by or on behalf of the insured; and
- (iii) Environmental Pollution Liability insurance to cover third party bodily injury and property damage claims arising out of sudden and accidental pollution, including but not limited to unexpected and unintentional spill, discharge, emission, dispersal, leakage, migration, release or escape of pollutants. The coverage cannot be limited to hostile fire only.

This policy shall be written with a limit of not less than TWO MILLION DOLLARS (\$2,000,000) exclusive of interest or costs, on a claims-made basis, or such other limit as the Town may reasonably require, and shall include the Town as an additional insured.

As an alternative, the Developer may provide this insurance by requiring the Contractor to take out this insurance and keep it in full force and effect at all times during the term of the Construction Contract and include the Developer and the Town as additional insured.

- (b) These policies shall not be terminated, cancelled, or materially altered unless written notice, by registered mail, of such termination, cancellation, or material alteration is given by the insurers to the Town at least sixty (60) days before the effective date thereof.
- (c) The premiums on these policies must be paid initially for a period of one year and the policies shall be renewed for further one-year periods until all the Works required under this Agreement are installed and assumed by the Town. If required by the Town, the Developer shall prove to the satisfaction of the Town that all premiums on these policies have been paid and that all insurance is in full force and effect.
- (d) The Developer shall deliver with this Agreement (if not previously delivered) certified copies of these policies of insurance or a certificate of insurance setting out the essential terms and conditions of insurance, the form and content of which shall be satisfactory to the Town.
- (e) The Developer shall file a renewal certificate with the Town not later than one (1) month before the expiry date of any policy provided pursuant to this Agreement, until the Town has indicated in writing that the policy need not continue in force any longer. In the event that such renewal certificate is not

received, the Town shall be entitled to either renew the policy at the expense of the Developer or to order that all work on the Lands cease until the policy is renewed.

- (f) These policies shall provide for cross-liability and severability of interest protecting the Town against claims by the Developer as it were separately insured and providing that the Town shall be insured notwithstanding any breach of any condition in the policy by any other insured.
- (g) If these policies contain deductible clauses, the Developer agrees to deposit a certified cheque or such Security as may be acceptable to the Town in the deductible amounts, as a deposit, together with a letter from the Developer authorizing the Town to appoint an independent adjuster and to investigate claims less than the deductible amount and authorizing the Town to pay such claims determined to be valid by the adjuster out of the said deposit. The Developer is responsible for all adjustment service costs and shall maintain the deposits in the amount of the deductible.
- (h) In Sections 9.1, 9.3 and 9.3, the term policy or policies includes a policy or policies of insurance provided the Contractor.

9.2 No Relief

The issuance of such policies of insurance shall not be construed as relieving the Developer from responsibility for other or larger claims, if any, for which the Developer is or may be liable under this Agreement or at law.

9.3 Notice of Cancellation

If the Town receives notice from the insurer that it has cancelled or refused to renew the insurance, or that it intends to do so, or if the Town otherwise determines that the insurance has lapsed or is about to lapse without renewal or replacement, the Town may, on Notice to the Developer and at the sole cost and expense of the Developer, obtain insurance in accordance with this section. In such circumstances, the Town shall be entitled to obtain new insurance or add the necessary insurance coverage to the Town's blanket insurance. The Developer shall forthwith, upon receipt of Notice thereof from the Town, reimburse the Town for the cost of such insurance payable as noted above. In addition, the Town shall, at its sole discretion and option, be entitled to draw upon any Security posted under this Agreement to cover the costs of the insurance.

10. Indemnity and Release

The Developer shall indemnify and save completely harmless the Town and its elected officials, officers, agents, contractors and employees from and against all actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly or in any way connected with a Default, the design, installation or operation of any of the Works required under this Agreement, the maintenance and repair or lack of maintenance and repair of such Works by the Developer pursuant to the terms of this Agreement or any defect in workmanship or material until acceptance of all of the Works by the Town.

The Developer hereby releases the Town and its elected officials, officers, agents, contractors and employees from all actions, causes of actions, suits, claims and demands whatsoever which may arise directly or indirectly or in any way connected with the installation of the Works.

11. Notices

Any Notice to be given by either Party with respect to this Agreement shall be given in writing and may be mailed by postage prepaid mail, personally delivered or sent by facsimile transmission to the other Party at the addresses shown below or such other addresses of which the Parties have advised each other by Notice and any such Notice mailed or delivered shall be deemed good and sufficient Notice under the terms of this Agreement.

THE NEIGHBOURHOODS AT DELPHI POINT INC.

**1-261 Martindale Road
St. Catherines, Ontario
L2W 1A1
Fax (905) 688-5274
Attention: Richard Hodge**

THE TOWN of THE BLUE MOUNTAINS

**26 Bridge Street East,
Box 310, Thornbury, ON, N0H 2P0
Attention: The Director of Engineering and Public
Works
Facsimile: (519) 599-3664**

Any Notice shall be deemed to have been given to and received by the party to which it is addressed;

- (i) if delivered, on the date of delivery;
- (ii) if mailed, on the fifth day after mailing thereof; or
- (iii) if faxed, on the date of faxing, as confirmed

12. Time

Time shall be of the essence of this Agreement. Any time limits specified in this Agreement may be extended with the consent in writing of both the Developer and the Town, but no such extension of time shall operate or be deemed to operate as an extension of any other time limit, and time shall be deemed to remain of the essence of this Agreement notwithstanding any extension of any time limit.

13. Nullification of this Agreement

If the Construction Contract is not awarded within one (1) year from the date of execution of this Agreement, the Town may, at its option and on twenty (20) Business Days Notice to the Developer, declare this Agreement null and void and of no further effect. Any Security held at the time of nullification of this Agreement shall be returned forthwith to the Developer, without interest and less any amounts drawn by the Town from the Security to remedy any Defaults occurring before the nullification of this Agreement.

14. Amendment

No change or modification of this Agreement shall be valid unless it be in writing and signed by each Party.

15. Governing Law

This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.

16. Enurement

This Agreement shall enure to the benefit of the Parties and their respective successors and assigns.

IN WITNESS WHEREOF the Parties have set their hands and seals

SIGNED SEALED AND DELIVERED

THE NEIGHBOURHOODS AT DELPHI POINT INC.

Per _____

Name

Title

I have authority to bind the corporation

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

Ellen Anderson - Mayor

Corrina Giles - Clerk

SCHEDULE "A"

**This schedule forms part of a Servicing and Cost Sharing Agreement between the Neighbourhoods at
Delphi Point Inc and
The Corporation of the Town of The Blue Mountains**

ACCEPTED PLANS FOR THE WORKS

Servicing Plans

Engineer - C.F. Crozier and Associates Ltd.

Drawing "Hwy 26 at Peaks Road Intersection Improvements, Town of The Blue Mountains – New Construction Street 'A' STA9+982 – 10+000, Peaks Rd. STA10+00 – 10+097 Dwg.305 dated February 3, 2009 revised March 17, 2009 prepared by Crozier & Associates, Engineers.

Drawing "Hwy 26 at Peaks Road Intersection Improvements, Town of The Blue Mountains – New Construction Highway 26 STA 22+050 – 22 + 314.7 Dwg. 304 dated February 3, 2009 revised March 7, 2009 prepared by Crozier & Associates, Engineers

NOTE: These are old drawings the details of these drawings will have to be updated including the "Accepted for Construction" date.

Any new drawings need to be added to the Schedule.

SCHEDULE "B"

**This schedule forms part of a Servicing and Cost Sharing Agreement between the Neighbourhoods at
Delphi Point Inc and
The Corporation of the Town of The Blue Mountains**

COST SHARING PROVISIONS

The Parties agree to share the Final Cost of installing the Works in the following manner

Intersection 26 Works - (not including Peaks Road Works)	100% Developer
Georgian Trail Works -	100% Developer
Peaks Road Works -	67% Developer 33% Town
Peaks Road Sewer -	100% Town