

## ROAD IMPROVEMENT AGREEMENT

Effective as of the 27th day of June, 2017

**B E T W E E N:**

### THE CORPORATION OF THE COUNTY OF SIMCOE

Hereinafter referred to as "the County"

#### OF THE FIRST PART;

- and -

### THE CORPORATION OF THE CITY OF KAWARTHA LAKES

Hereinafter referred to as "the City"

#### OF THE SECOND PART;

- and -

### MILLER PAVING LIMITED

Hereinafter referred to as "Miller"

#### OF THE THIRD PART;

- and -

### R. W. TOMLINSON LIMITED;

Hereinafter referred to as "Tomlinson"

#### OF THE FOURTH PART

**WHEREAS** Miller and Tomlinson (together the "Contributors") are operators of licensed aggregate operations which use a portion of County Road 47 as a haul route to their markets (that portion being referred to herein as the "Mara Carden Boundary Road"), the location of which is generally outlined in Schedule "A" attached hereto;

**AND WHEREAS** the County and the City (the "Public Authorities") are the municipalities who have jurisdiction over the Mara Carden Boundary Road and for which they share the maintenance and capital expenditures pursuant to a Boundary Road Agreement executed between them on 23 December 2014;

**AND WHEREAS** the County, the City, Miller and Tomlinson (collectively the "Parties" and individually a "Party") have agreed to share the cost for the upgrading of that portion of the Mara Carden Boundary Road running from Scotts Road to the North and County Road 47 to the South (the "Improved Road") as shown on **Schedule "A"** attached hereto (the "Works").

**AND WHEREAS** the Works, which include the repair and reconstruction of both intersections and the costs of the Geotechnical Investigation and Pavement Design Recommendation Study – Mara Carden Boundary Road (17 February 2015) and the County Road 47 Drainage Improvement Study (January 2016), have otherwise been itemized in **Schedule "B"** attached hereto. Not included is the cost to reinforce the shoulder at the south-east corner of Scotts Road and the Mara Carden Boundary Road or the remainder of Scotts Road, which work is the sole responsibility of the Public Authorities;

**AND WHEREAS** the Parties agree that the Works will benefit the Contributors as well as all other users of the Improved Road;

**AND WHEREAS** Dufferin Aggregates ("Dufferin"), while not a Party to this Agreement, has agreed to pay the County the sum of twenty-nine thousand five hundred and sixty-three dollars and sixty-six cents (\$29,563.66) toward the cost of culvert reconstruction as part of the Works (the "Dufferin Contribution"). For the purpose of this Agreement, the cost of the Works to be shared between the Parties shall not include the Dufferin Contribution. The County and the City agree that the Contributors are not responsible for the Dufferin Contribution whether or not Dufferin pays all or part of same;

**AND WHEREAS** there may be future aggregate companies that use the Improved Road and its culverts ("Future Operators");

**AND WHEREAS** the Parties have agreed to enter into this Agreement for the purposes set out herein on the terms and conditions as set out further in the Agreement;

**AND WHEREAS** the Municipal Act, S.O. 2001, c. 25, authorizes the County and the City Councils to pass by-laws authorizing the entering into of an agreement for these purposes.

**NOW THEREFORE** in consideration of the passing of any necessary by-law and the covenants of the Contributors to be fulfilled, the Parties agree as follows:

1. The Parties hereto acknowledge the truth of the foregoing recitals and incorporate them as terms of this Agreement.
2. The Parties agree that the Works have been completed according to the County's and the City's requirements and specifications, including to Ontario Provincial Standard Specifications, as set out further in this Agreement.
3. The Parties agree that the total cost of the Works is eight hundred and ninety two thousand, eight hundred and seventy four dollars and five cents (\$892,874.05).
4. The Parties agree that each Party will be responsible for a quarter of the cost of the Works, less any cost recovered from Future Operators as set out in paragraph 6.
5. Each of the Contributors and the City shall provide to the County the sum of two hundred and twenty three thousand, two hundred and eighteen dollars and fifty one cents (\$223,218.51) to the County within 30 days of execution of this Agreement
6. For a period of 15 years from the date of this agreement if requested by either of the Contributors, if any Future Operators start using, or are required by the terms of a license to use, all or a portion of the Improved Road to transport aggregate, the Public Authorities will use their best efforts to require such Future Operators to pay their pro-rata share (the "Pro-Rata Share") of the costs of the Works, calculated as:

$$1 / (1 + \text{the number of parties who have already contributed})$$

So, for example, the first Future Operator will pay 20% of the cost of the Works and the second Future Operator will pay 16.67% of the cost of the Works. The contribution from Future Operators will be divided equally amongst the parties who have already contributed.

The County shall advise the Contributors of any applications made by Future Operators.

"Best efforts" includes making submissions to the Ministry of Natural Resources or attending at Ontario Municipal Board, or any successor body, hearings requiring contributions from Future Operators as part of the aggregate license conditions and requiring that the Pro-Rata Share be included in the terms of haul route agreements signed with the Future Operators. If the County or the City incurs costs to obtain payment of the Pro-Rata Share from Future Operators, such costs will be deducted before any distribution is made to the parties who have already contributed provided that an estimate of such costs has been provided to the other Parties in advance of incurring same.

7. The Contributors agree to pay their proportionate share of all reasonable costs incurred by the County and the City for its staff (including legal staff) and agents, for any work performed in preparing, administering, enforcing or terminating this Agreement.

8. The failure of:

- a. any Party to pay its share of costs as set out in this Agreement in addition to paying their pro-rata share for the Works as set out in this Agreement, upon written request by the County for payment; or
- b. the Public Authorities to treat the Improved Road as a full service road for a period of at least 20 years from the date of this Agreement. The City and County recognize their obligations to maintenance on an on-going basis to the Minimum Maintenance Standards under the Highway Traffic Act as may be amended from time to time.

shall constitute a breach of the Agreement. If any Party fails to pay its share of costs after thirty days of the execution of this Agreement, interest shall accrue on the amount outstanding at the rate of 1.5% per month or 18% per annum and, at the discretion of the County, may be collected from the defaulting Party.

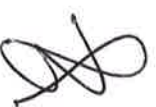
9. The Public Authorities agree that they will immediately lift any load restrictions placed on the Improved Road and treat the Improved Road as a full service road for a period of at least 20 years from the date of this Agreement. This section does not fetter the ability of the Public Authorities to temporarily place load restrictions on the Mara Carden Boundary Road if and only when the Mara Carden Boundary Road cannot function as a full service road for aggregate haulage for reasons to do with the deterioration of that road or an act of nature that causes damage to that road. In such a circumstance the Public Authorities shall, as immediately as practicable, repair the Improved Road to its previous condition so that it can continue to be used as a full service road for aggregate haulage.

10. The Parties agree to use their best efforts to settle any dispute which may arise between them. Should they be unable to settle a dispute, the Parties agree to attend a non-binding interest based mediation to attempt to settle the dispute. The Parties shall agree on the mediator who will conduct the mediation. In the event that the Parties cannot agree on a mediator, the Contributors shall jointly nominate a mediator and the Public Authorities shall jointly appoint a mediator and these mediators shall select a third mediator who shall conduct the mediation. Should the Parties be unable to settle their disputes at mediation, the Parties may then pursue their civil remedies.

11. Where this Agreement requires notice to be delivered by one party to the other, such notice shall be in writing and delivered either personally, by email or facsimile transmission or by prepaid registered mail by one party to the other at their addresses noted below. Such notice shall be deemed to have been given, if by personal delivery, on the date of delivery, and if by facsimile transmission, on date of delivery with electronic confirmation of receipt obtained, and if by prepaid registered mail, on the fourth business day following the posting thereof which for the purposes of this Agreement shall be deemed to exclude Saturdays, Sundays and statutory holidays:

**County:**

Administration Centre  
1110 Highway 26  
Midhurst, Ontario, L9X 1N6  
Attention: Paul Murphy  
Fax: (705) 727-7984




**City:**

City of Kawartha Lakes  
 26 Francis St., P.O. Box 9000  
 Lindsay, ON, K9V 5R8  
 Attention: City Clerk  
 Fax: (705) 324-1750

**Miller:**

Miller Paving Limited  
 P. O. Box 4080  
 Markham, Ontario, L3R 9R8  
 Attention: Tom Jones  
 Fax: (905)457-7160

**Tomlinson:**

R. W. Tomlinson Limited  
 5597 Power Road  
 Ottawa, Ontario, K1G 3N4  
 Fax: (613) 822-6844  
 Attention: Rob Pierce

It is agreed that such addresses and fax numbers may be changed by written notice to each of the other Parties.

12. No failure of any party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon the breach thereof, shall constitute a waiver of any such breach or any subsequent breach of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement and no breach thereof shall be waived except by written instrument signed by the party granting the waiver. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in force and effect with respect to any other then-existing or subsequent breach thereof.
13. The Parties shall not call into question in any proceeding or action in court or before any administrative tribunal, the County's or the City's right to enter into and enforce this Agreement. This provision may be pleaded by the Public Authorities in any action or proceeding as a complete estoppel of the right.
14. This Agreement shall constitute the entire Agreement between the Parties and the Parties further acknowledge that there is no representation, warranty, collateral agreement or adverse condition affecting this Agreement other than as expressed herein in writing.
15. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof and any such invalid or unenforceable provision shall be deemed to be severable.
16. The Parties agree to execute such further and other agreements as may be requested by the County or the City from time to time to give effect to the full intent and meaning of this Agreement.
17. This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of the Province of Ontario and shall be treated in all respects as an Ontario contract.
18. This Agreement shall ensure to and be binding upon the Parties, their heirs, successors, administrators and assigns and runs with the lands.




19. This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument and notwithstanding their date of execution shall be deemed to bear date as of the date first above written. An executed copy of this Agreement may be delivered by any party hereto by facsimile. In such event, such party shall forthwith deliver to the other parties hereto a copy of this Agreement executed by such party.

20. The Recitals and Schedules "A", "B" and "C" attached hereto form part of this Agreement.

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IN WITNESS WHEREOF the Parties hereto have signed this Agreement.

**THE CORPORATION OF THE COUNTY OF  
SIMCOE**

\_\_\_\_\_  
Gerry Marshall, Warden

\_\_\_\_\_  
John Daly Clerk

We have authority to bind the corporation.

**THE CORPORATION OF THE CITY OF  
KAWARTHA LAKES**

Per: \_\_\_\_\_  
Name & Title: Juan Rojas, Director of Engineering

I have authority to bind the corporation with respect  
to the cost expenditure per Council Resolution \_\_\_\_\_, adopting the Capital  
Budget for 2016.

Per: \_\_\_\_\_  
Name & Title: Andy Letham, Mayor

We have authority to bind the corporation with  
respect to its ongoing obligations to the Contributors per Council Resolution  
\_\_\_\_\_, approving execution of the agreement.

**MILLER PAVING LIMITED**

Per:   
Name & Title: W. BARRIE GRAYFORD, EXECUTIVE

VP, C.A.O., SECRETARY-TREASURER  
I/We have authority to bind the corporation.

**R. W. TOMLINSON LIMITED**

Per:   
Name & Title: ROB PIERCE, VICE PRESIDENT

I/We have authority to bind the corporation.

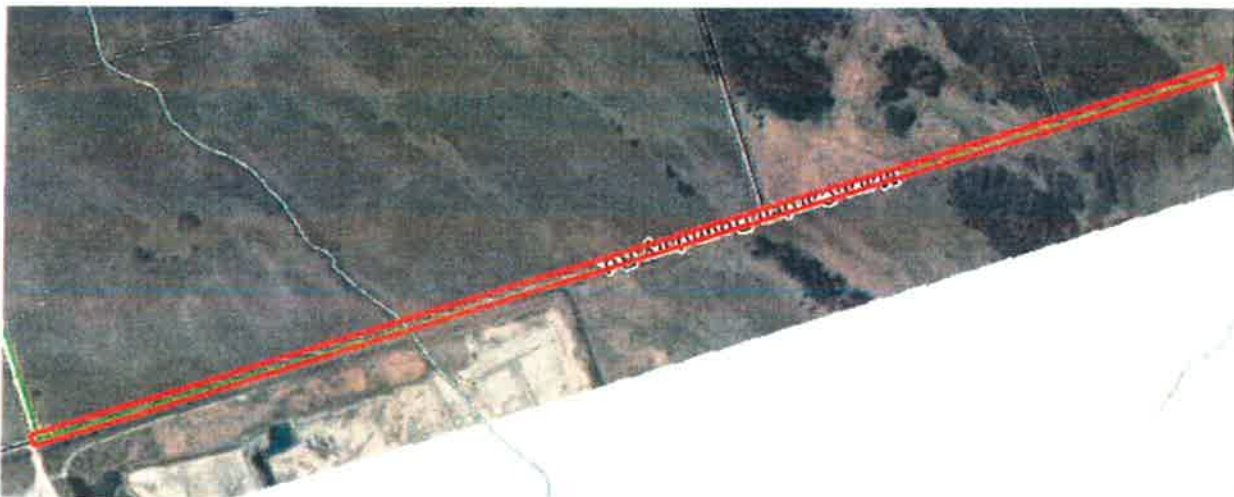




**Schedule "A"**  
**Location of the Improved Road**

The limit of the Improved Road is shown in the air photo below.

Limit of Road and Intersection Work Air Photo

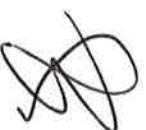


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**Schedule "B"****Road Works**

1. Replace the existing 600 mm diameter CSP culvert (Crossing #1) with a 900 mm diameter by 14 m HDPE culvert.
2. Replace existing 1880 mm wide by 1260 mm high by 17 m CSPA culvert (Crossing #2) with an 1880 mm wide by 1260 mm high by 17 m coated CSPA culvert.
3. Install twin 910 mm wide by 660 mm high by 15 m coated CSPA relief cross culverts (Crossing #3).
4. Install a 450 mm diameter by 15 m HDPE relief culvert (Crossing #4).
5. Remove old culvert and replace with 450 mm diameter by 13 m HDPE culvert just north of Scott Road.
6. Replace the existing 300 mm CSP culvert (Crossing #5) with a 450 mm diameter by 14 m HDPE culvert.
7. Pulverize 200 mm deep the entire length of the project.
8. Place 150 mm of Granular "A" on the entire length of the project.
9. Place 300 mm of Granular "A" from the north limit of the project to 150 m south of Scotts Road.
10. Resurface with binder course of 60 mm of Superpave 19 and a top course of 40 mm of Superpave 12.5.





Schedule "C"

Cost Summary

KJ Beamish Final Payment Certificate -	\$894,011.55
Extra Culvert -	\$1,218.37
Pavement Review Report -	\$10,622.00
Drainage Study -	<u>\$16,565.79</u>
Sub-Total -	\$922,417.71
Less Dufferin Contribution -	<u>-\$29,543.66</u>
Total -	\$892,874.05

