

## BOUNDARY ROAD AGREEMENT

BETWEEN:

The Corporation of the City of Kawartha Lakes  
("Kawartha Lakes")

- and -

The Township of  
Cavan Monaghan  
("Township")

## Recitals:

1. Section 27 of the *Municipal Act* provides that by-laws may be passed by municipalities respecting highways.
2. Section 28 of the *Municipal Act* sets out the highways over which a municipality has jurisdiction.
3. Section 29.1 of the *Municipal Act* provides that municipalities having joint jurisdiction over a boundary line highway ("Boundary Road") may enter into an agreement to keep any part of the highway in repair for its whole width and to indemnify the other municipality from any loss or damage arising from the lack or repair for that part.
4. A number of Boundary Roads exist on the boundary between Kawartha Lakes and the Township as set out in Appendix 1 which roads have been assumed by the municipalities or been transferred to them by the Province.
5. The road systems adjacent to the Boundary Roads have been assessed to determine the most efficient way to link maintenance activities on Boundary Roads with maintenance activities on the balance of road systems for both municipalities.
6. Kawartha Lakes or the Township will by this agreement provide winter and general maintenance services on the boundary portions of all said Boundary Roads as set out in Appendix 1 commencing January 1<sup>st</sup>, 2010.
7. Kawartha Lakes or the Township's Roads Accounting process does not distinguish costs on its Boundary Roads from costs on area roads.

**IN CONSIDERATION** of the covenants in this agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto agree as follows:

1. **Interpretation:**

- (a) Gender, Plural: All words in this agreement are deemed to include any number or gender as the context requires.
- (b) Proper Law: This agreement shall be interpreted according to the laws of the Province of Ontario.
- (c) Headings: Article, clause and/or paragraph headings are for reference purposes only and shall not in any way modify or limit the statements contained in any article, clause or paragraph.
- (d) Legislation: Reference to federal or provincial statutes or municipal by-laws are deemed to refer to the relevant legislation as amended, including successor legislation.

2. **Term**: The parties agree to provide winter and general maintenance services on the portions of the Boundary Roads as set out in Appendix 1 for ten (10) years from the date of execution of this agreement.

The parties agree that this agreement shall automatically renew at the expiration of the term or any extension of the term for a further one-year period on the same terms and conditions unless either party provides 180 days notice in writing of its intention to terminate the agreement at the expiration of the current term.

3. **Level of Service:** The parties covenant and agree to maintain the portions of the Boundary Road which are its responsibility according to Appendix 1, to a standard which meets provincially enacted Minimum Municipal Maintenance Standards effective during the term of this Agreement.
4. **Call Outs:** The parties covenant and agree that the municipality having responsibility according to Appendix 1, or its agents, shall be responsible for calling in and directing the employees and/or contractors for the roads which are their responsibility.
5. **Municipal General Liability Insurance:**
  - (a) Each municipality shall maintain, in full force and effect, general liability insurance in an amount of not less than Five Million Dollars (\$5,000,000) per occurrence, at all times and throughout the term of this Agreement. Each municipality shall include in the said policy, an extension for non-owned automobile liability coverage in an amount of not less than Five Million Dollars (\$5,000,000). Each municipality shall maintain, in full force and effect, owned automobile liability coverage in an amount of not less than Five Million Dollars (\$5,000,000). The amounts of coverage shall be reviewed by the municipalities on any renewal.
  - (b) Kawartha Lakes shall name the Township as an additional insured as set out under 5(a) above but only with respect to the operations of Kawartha Lakes as defined under Appendix "1" of this Agreement at all times and throughout the term of this Agreement.
  - (c) The Township shall name Kawartha Lakes as an additional insured as set out under 5(a) above but only with respect to the operations of The Township as defined under Appendix "1" of this Agreement at all times and throughout the term of this Agreement.
  - (d) Each municipality agrees to indemnify and save the other harmless from and against any claims including legal expenses, howsoever styled, attributable to the Municipality's negligence in performing the services required under this Agreement at all times and throughout the term of this Agreement, such expense shall be part of the shared cost agreement.
6. **Proof of Insurance:** Each party agrees to provide the other party with proof of the insurance required under this Agreement. Each party shall also be provided within 30 days notice of cancellation from their respective insurers.
7. **Authority:** The parties warrant that they have taken all necessary steps, done all acts, passed all by-laws and obtained all approvals required to give it the authority to enter into this Agreement.
8. **Scope of Work:** The parties agree that this agreement covers all winter and general maintenance and that specifically excluded is capital work, which shall include major bridge/culvert repair/replacement and road reconstruction. Prior approval (upon 1 year's notice) shall be obtained regarding capital expenditures on all boundary roads where costs are to be shared 50/50 and the municipality having responsibility for the affected section of Boundary Road shall manage such projects unless alternative arrangements are made.
9. **Payment:** That Kawartha Lakes deems it advisable to maintain year-round and repair the sections of boundary roads as set out in Appendix 1 and the Township agrees to maintain year-round and repair the sections of boundary roads as set out in Appendix 1. And further, that all surface treatment applications are to be treated as Capital work on a project by project approval basis.
10. Both parties agree that prior to undertaking expenditures in excess of \$5,000.00 in any year, that the work be approved of by the other municipality and that any amount in excess of \$5,000.00 shall be shared equally between the two parties and further that each party shall furnish the other with an annual detailed statement of costs on their portion of boundary road.

Capital projects shall be invoiced monthly on the basis of 50% of each progress certificate as paid by the responsible municipality for authorized work.
11. **Signage:** Each municipality shall supply and install roadside sign(s) for the sections of road for which they are responsible as set out in Appendix 1, to notify the road user who is responsible for carrying out the winter and general maintenance of the road.

12. **Amending Formulae:** Either party may, upon 180 days' written notice to the other, withdraw from this Agreement or make proposals for change to take effect 180 days after the beginning of the notice period. Where there is mutual agreement, in writing, on a shorter notice for change, this clause shall not prohibit early implementation of such change.
13. **Entrance Permits:** Entrance permits on Boundary Roads shall be processed by the municipality in which the land requiring the permit is located on consultation with the other municipality as to road safety conditions.
14. **Severances:** Severance applications with respect to lands on Boundary Roads shall be processed by the municipality in which the lands are located on consultation with the other municipality as to road safety conditions.
15. **Emergencies:** Notwithstanding anything in this agreement, in the event of an emergency situation, the non responsible municipality shall be allowed to react to the situation which the other municipality would otherwise be responsible. The costs of such emergency action shall be apportioned as set out in Section 9.
16. **Notice:** Any notice to be given under this agreement shall be sufficiently given if delivered or if sent by prepaid first class mail and addressed to:

Director of Public Works  
The Corporation of the City of Kawartha Lakes  
P.O. Box 9000  
26 Francis Street  
Lindsay, ON K9V 5R8

And to:

Clerk's Office  
The Corporation of the Township of Cavan Monaghan  
988 County Road #10, R.R. #3  
Millbrook, ON L0A 1G0

Receipt of notice shall be deemed on the earlier of the date of delivery or five (5) days following the date of mailing of the notice. Either party may change its address for notice by give notice of change of address pursuant to this section.

17. **Arbitration:**
  - (a) In the event of any dispute arising between the parties hereto relating to any matter which is the subject of this Agreement, such dispute shall be settled by the persons named in Section 15. In the event that the dispute cannot be settled within 30 days, then the dispute will be submitted to arbitration by notice given by either party to the other.
  - (b) Upon such notice being given, the dispute shall be determined by the award of three arbitrators or a majority of them, one to be named by each party within twenty-one (21) days of the giving of such notice and the third to be selected by these two arbitrators within seven (7) days after both have been nominated.
  - (c) If either party shall neglect or refuse to name its arbitrator within the time specified or to proceed with the arbitration, the arbitrator named by the other party shall proceed with the arbitration.
  - (d) The arbitrator(s) shall have all the powers given by the *Arbitration Act* of Ontario and may at any time proceed in such manner as they may see fit on such notice as they deem reasonable in the absence of either party if such party fails to attend.
  - (e) Each party shall pay its own costs and shall share equally in the costs of the arbitration.
  - (f) The cost of the arbitrators are not limited to those set forth under the *Arbitration Act* of Ontario and the arbitrators shall be able to charge their usual professional charges.
18. **General:**
  - (a) Notwithstanding anything in this agreement, neither party shall be in default with respect to the performance of any of the terms of this agreement if any non-performance is due to any force majeure, strike, lock-out, labour dispute, civil commotion, war or similar event, invasion, the exercise of military power, act of God, government regulations or controls, inability to obtain any material or service or any cause beyond the reasonable control of the party (unless such lack of control results

from a deficiency in financial resources). Otherwise, time shall be of the essence of this agreement and all the obligations contained herein.

- (b) The rights and liabilities of the parties shall enure to the benefit of and be binding upon the parties and their respective successors and approved assigns.
- (c) This Agreement contains the entire agreement between the parties. There is no covenant, promise, agreement, condition, precedent or subsequent, warranty or representation or understanding, whether oral or written, other than as set forth in this agreement. This Agreement fully replaces and supersedes any agreement or other contractual arrangement between the parties related to the subject matter of this agreement.
- (d) If any provision, clause, or part of this agreement, or the application of this agreement under certain circumstances, is held by a court or tribunal of competent jurisdiction to be invalid, the remainder of this agreement, or the application of that provision, clause or part under other circumstances, shall not be affected.
- (e) The parties hereto agree to execute such additional documents and to pass such additional by-laws as may be necessary in order to give effect to the meaning and intent to this Agreement.

**IN WITNESS WHEREOF** the parties by their duly authorized representatives have set forth their signatures on the dates herein written below:

Signed and sealed this 21<sup>st</sup> day of December, 2009

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

Ric McGe...  
Mayor

Judy Currie  
Clerk

Signed and sealed this 7<sup>th</sup> day of December, 2009.

**THE TOWNSHIP OF CAVAN MONAGHAN**

John Quinlan  
Reeve

...  
Clerk

### APPENDIX # 1

BOUNDARY ROAD NUMBER	FROM	TO	HWY. CLASS.	LENGTH	RESPONSIBLE MUNICIPALITY
Hogs Back Road	Ski Hill Road	Unassumed Portion	6	0.3 kms.	Year-Round – City of Kawartha Lakes
Hillview Drive	Bethany Hill's Rd.	Unassumed Portion	4	0.9 kms.	Year-Round – City of Kawartha Lakes
Skiview Dr.	Hillview Dr.	Turn-around	4	0.3 kms.	Year Round – City of Kawartha Lakes
Dranoel Rd. (S. of Hwy. #7A)	Hwy. #7A	Railway Tracks	4	3.3 kms.	Year Round – Cavan Monaghan
Dranoel Rd. (N. of Hwy. #7A)	Hwy. #7A, northerly	Stewart Line	4	3.9 kms.	Year Round – Cavan Monaghan
Hayes Line	Road #38, easterly	Jones Quarter Line	4	3.4 kms.	Year Round – City of Kawartha Lakes
Hayes Line	Jones Quarter Line, easterly	Road #10	4	3.5 kms.	Year Round – City of Kawartha Lakes
Hayes Line	Road #10, easterly	Orange Corners Road	4	3.6 kms.	Year Round – Cavan Monaghan
Hayes Line	Orange Corners Road, easterly	Hwy. #7	4	2.8 kms.	Year Round – Cavan Monaghan
Glamorgan Rd.	Solanum Way, southerly	Clarington/Manners Boundary Rd.	4	1.5 km.- Gravel 1.5 km.- Hardtop; 0.8 km.- Gravel	Year-Round – City of Kawartha Lakes