



Boundary Road Agreement between the Town of Bracebridge and the Corporation of the City of Kawartha Lakes

This Agreement made this day of , 2020.
BETWEEN

The Corporation of the Town of Bracebridge
(hereinafter referred to as "Bracebridge")

OF THE FIRST PART

AND:

The Corporation of the City of Kawartha Lakes
(hereinafter referred to as "Kawartha Lakes")

OF THE SECOND PART

WHEREAS, Section 27 of the *Municipal Act* provides that by-laws may be passed by municipalities respecting highways that fall under their jurisdiction:

AND WHEREAS, Section 28 of the *Municipal Act* sets out the highways over which a municipality has jurisdiction:

AND WHEREAS, 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:

AND WHEREAS, A Boundary Road exists on the boundary between the Corporation of the City of Kawartha Lakes and The Corporation of the Town of Bracebridge as set out in Schedules 'A' and 'B' which road has been assumed by the respective municipalities or been transferred to them by the Province:

AND WHEREAS, 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:

AND WHEREAS, The Corporation of the City of Kawartha Lakes or the Corporation of the Town of Bracebridge will by this agreement provide winter and summer maintenance services on the boundary portions of all said Boundary Roads as set out in Schedules 'A' and 'B' commencing October 29, 2020:

AND WHEREAS, The Corporation of the City of Kawartha Lakes or the Corporation of the Town of Bracebridge accounting process applies uniform costs for all maintenance and construction activities on both its Boundary Roads and all other roads under its jurisdiction:

NOW THEREFORE 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

- 1.1. Gender, Plural: All words in this agreement are deemed to include any number or gender as the context requires.



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- 1.2. Proper Law: This Agreement shall be interpreted according to the laws of the Province of Ontario.
- 1.3. 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.
- 1.4. Legislation: Reference to federal or provincial statutes or municipal by-laws are deemed to refer to the relevant legislation as amended, including successor legislation.
- 1.5. "Winter Maintenance": Includes all usual winter maintenance including snow plowing /removal, application of sand and/or salt mixture, sign maintenance, and all other activities identified under Ontario Regulation 239/02, as amended, and other nominal winter maintenance.
- 1.6. "Summer Maintenance": Includes all usual summer maintenance including pothole repair, debris removal, shoulder repair, storm water management, and all other activities identified under Ontario Regulation 239/02, as amended, and other nominal summer maintenance.

2. SCOPE

- 2.1. The parties agree that this Agreement covers all Summer Maintenance and Winter Maintenance.
- 2.2. Capital work, which shall include major bridge repair and road reconstruction, is considered separate from Summer Maintenance and Winter Maintenance. Prior approval, upon one (1) years' 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.

3. TERM

- 3.1. The parties agree to provide Summer Maintenance and Winter Maintenance on the portions of the Boundary Road as set out in Schedules 'A' and 'B' for ten (10) years from the date of execution of this Agreement.
- 3.2. The parties agree that this Agreement shall automatically renew at the expiration of the term for a further ten (10) year period on the same Terms and Conditions unless either party provides one-hundred and eighty (180) days notice in writing of its intention to terminate the Agreement at the expiration of the current term.
- 3.3. The parties agree that such notice may only be provided between May 31 and August 31 of any year throughout the term of the Agreement.



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4. PROVISION OF THE SERVICES

4.1. Level of Service

The parties covenant and agree to provide all contemplated road maintenance for the road section noted in Schedules 'A' and 'B' in accordance with section 44(4) of the *Municipal Act*, (the "Minimum Maintenance Standards for Municipal Highways") where such standards apply and in the event that there is no applicable Minimum Maintenance Standard shall meet the standard of what is reasonable in the circumstances.

4.2. General Service Requirements

4.2.1. Enforcement of Individual Municipal Bylaws Dealing with the Roads

Notwithstanding the joint jurisdiction over the Road, it is specifically acknowledged in accordance with section 28 of the Act, that the bylaws passed by each of Bracebridge and Kawartha Lakes relating to their respective portions of the Road, such as, but not limited to, entrances, setbacks and parking shall remain in force and effect unless a bylaw passed by the Councils of both Bracebridge and Kawartha Lakes shall designate otherwise.

4.2.2. 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 5: Payment.

5. PAYMENT

- 5.1. Bracebridge agrees to invoice Kawartha Lakes for the Summer Maintenance and Winter Maintenance covered by this Agreement based on the following:

Winter Maintenance	Time	Equipment / Labour
Each Snowplow Billed at	0.5 hours	Combo Unit
	0.5 hours	Operator
Each Sanding Billed at	0.5 hours	Combo Unit
	0.5 hours	Operator
	Sand Applied to the Road (average 0.75 tonnes)	

- 5.2. The costs associated with Summer Maintenance are to be charged by the material used and hourly rates for labour and equipment.
- 5.3. The costs associated with work performed by contractors will be billed at cost.



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- 5.4. From time-to-time, Winter Maintenance operations will require a greater amount of time and material due to extreme weather events.
- 5.5. Each invoice will include the following information:
 - 5.5.1. Dates on which the road was winter maintained;
 - 5.5.2. Dates on which the road was summer maintained;
 - 5.5.3. Type of maintenance that was performed and equipment used;
 - 5.5.4. The hourly charge out rates for equipment will be in accordance with the rates approved annually by the District Municipality of Muskoka;
 - 5.5.5. The hourly labour rates will be in accordance with the weighted wage rate approved annually by the District Municipality of Muskoka; and
 - 5.5.6. Material costs.
- 5.6. Payments are to be made on an annual basis on or about January 30th in the succeeding year and may be offset by the services of the other municipality such that a payment may be made for the difference only.
- 5.7. Special Projects

Both parties agree that prior to undertaking a single expenditure in excess of \$5,000.00 for a special project 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.
- 5.8. Capital Projects

One (1) years' prior approval shall be obtained regarding capital expenditures on the Boundary Road.

Costs for the agreed capital works are to be shared equally between both parties.

The municipality having jurisdiction for the section of Boundary Road shall manage such projects unless alternative arrangements are made.

And further, that all surface treatment, slurry, and micro applications are to be treated as Capital work on a project-by-project approval basis.

Capital projects shall be invoiced monthly on the basis of 50% of each progress certificate as paid by the responsible municipality for authorized work.



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6. INDEMNITY, INSURANCE AND SECURITY

- 6.1. Bracebridge shall, at its own expense, obtain and keep in force during the term of this Agreement liability insurance satisfactory to Kawartha Lakes including the following terms and minimum coverage underwritten by an insurer licensed to conduct business in the Province of Ontario:
 - 6.1.1. Municipal general liability insurance on an occurrence basis for an amount of not less than Fifteen Million Dollars (\$15,000,000);
 - 6.1.2. Inclusion of the other party as an Additional Insured with respect to the operations of the named insured;
 - 6.1.3. Cross liability and severability of interest clauses;
 - 6.1.4. Policies shall not be invalidated as respects the interests of the Additional Insured by reason of any breach or violation on any warranties, representations, declarations or conditions;
 - 6.1.5. Non-owned automobile coverage with a limit of at least Ten Million Dollars (\$10,000,000) including contractual non-owned coverage;
 - 6.1.6. Products and completed operation coverage with an aggregate limit of not less than Fifteen Million Dollars (\$15,000,000);
 - 6.1.7. Automobile liability insurance for an amount not less than Ten Million Dollars (\$10,000,000) on forms meeting statutory requirements covering all licensed vehicles used in any manner in connection with the performance of the terms of this Agreement; and
 - 6.1.8. A thirty (30) day written notice of cancellation, termination ~~or material change~~.
- 6.2. Bracebridge agrees to provide Kawartha Lakes with proof of the insurance required under this Agreement on an annual basis on or before October 1st in the form of an insurance certificate.
- 6.3. 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.

7. AMENDMENTS

- 7.1. Recommended amendments to this Agreement shall be made in writing and agreed upon by both parties.
- 7.2. 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.



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- 7.3. The Bracebridge Director of Public Works, in consultation with the Director of Corporate Services/Clerk, is delegated authority to make minor amendments to this Agreement for execution of the Mayor and Director of Corporate Services/Clerk.

8. NOTICE

- 8.1. All notices, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the provision collectively called "Notices"), shall be in writing and shall be delivered personally or by prepaid registration post, addressed to the party or parties to receive such notice as follows:

If intended for the Town, to:

Director of Public Works
The Corporation of the Town of Bracebridge
1000 Taylor Court
Bracebridge, ON
P1L 1 R6

And if intended for the City, to:

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

- 8.2. All service of notification shall be effective from the date of personal delivery or on the next following business day after posting of the registered letter.
- 8.3. 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.

9. DISPUTE RESOLUTION

- 9.1. 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 8: Notice. 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.
- 9.2. 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 (2) arbitrators within seven (7) days after both have been nominated.
- 9.3. 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.



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- 9.4. 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.
- 9.5. Each party shall pay its own costs and shall share equally in the costs of the arbitration.
- 9.6. 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.

10. GENERAL

- 10.1. 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.
- 10.2. The rights and liabilities of the parties shall ensure to the benefit of and be binding upon the parties and their respective successors and approved assigns.
- 10.3. 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.
- 10.4. 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.
- 10.5. 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.

11. COMPLETE AGREEMENT

- 11.1. This Agreement may only be changed by written amendment, signed and sealed by authorized representatives of both parties.
- 11.2. The boundary road agreement between Bracebridge and Kawartha Lakes dated September 25, 2008 is terminated immediately upon the effective date of this Agreement.

12. SCHEDULES

- 12.1. Schedules 'A' and 'B' inclusive, attached hereto, are incorporated within and form part of this Agreement.



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IN WITNESS WHEREOF, the parties have caused to be affixed their corporate seals under the hands of their authorized officers on their behalf. Copies of this Agreement will be treated as originals. This agreement can be executed and transmitted electronically.

**Authorized by Motion
20-GC-XXX and
Confirmation By-law
2020-XXX dated
February , 2020**

The Corporation of the Town of Bracebridge

Date: _____

Graydon Smith,
Mayor

Date: _____

Lori McDonald,
Director of Corporate Services/Clerk

The Corporation of the City of Kawartha Lakes

Date: _____

Andy Letham,
Mayor

Date: _____

Cathie Ritchie,
City Clerk



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SCHEDULE 'A'

Boundary Road

BOUNDARY ROAD NUMBER	FROM	TO	HWY CLASS	LENGTH	RESPONSIBLE MUNICIPALITY
Miriam Drive (Longford Boundary Road)	The boundary of the Town of Bracebridge, southerly	A point 1.8 kilometres southerly	5	1.8 kilometres	Town of Bracebridge (Year-round)

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SCHEDULE 'B'

Map of Road Area Subject to Agreement

