

BY-LAW NUMBER 18-99

OF

THE CORPORATION OF THE TOWNSHIP OF CLEARVIEW

A By-law to enter into a Boundary Road Agreement between The Corporation of the Township of Clearview and The Corporation of the Town of the Blue Mountains

WHEREAS Section 29 and 29.1 of the Municipal Act, 2001, S.O. 2001, c. 25 (The Municipal Act) provides, inter alia, that municipalities having joint jurisdiction over a boundary line highway may enter into an agreement by which each municipality agrees 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 of repair for that part;

AND WHEREAS Ontario Regulation 239/02 made pursuant to the Municipal Act has set Minimum Maintenance Standards for Municipal Highways to which the highways covered by this Agreement are to be maintained;

AND WHEREAS those highways described in Schedule "A" to this Agreement touch upon the road allowances of the Parties hereto and each has agreed that they shall be maintained in accordance with the Minimum Maintenance Standards for Municipal Highways by the Parties in accordance with the designation of responsibility for maintenance and repair as allocated in Schedule "A";

NOW THEREFORE in consideration of the covenants herein contained, and other good and valuable consideration, the Parties hereto covenant and agree as follows:

1. That the Agreement attached hereto as Schedule "A" forms part of this By-law.
2. That the Mayor and Clerk be authorized to execute the agreement behalf of the Township of Clearview.
3. That this by-law shall come into force and effect on the date of final passing thereof.

By-law Number 18-99 read a first, second and third time and finally passed this 19th day of November, 2018.

MAYOR

DIRECTOR OF LEGISLATIVE SERVICES/CLERK

BOUNDARY ROAD MAINTENANCE AGREEMENT

THIS AGREEMENT made in duplicate this _____ day of _____ 2018

BETWEEN

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

Hereinafter referred to as "The Blue Mountains"

AND

THE CORPORATION OF THE TOWNSHIP OF CLEARVIEW

(Hereinafter called "Clearview")

WHEREAS the parties to this agreement are adjoining municipalities and are desirous of entering into an agreement under the provisions of subsection 29.1 (1) of the *Municipal Act*, S.O. 2001, c.25, as amended (the "Act"), dealing with maintenance and repair of boundary highways and bridges between such municipalities;

AND WHEREAS pursuant to subsection 29.1 (2) of the *Municipal Act*, S.O. 2001, c.25, as amended (the "Act"), each municipality has jurisdiction over that part of the highway that is has agreed to keep in repair and is liable for any damages that arise from the failure to keep the highway in repair and the other municipality is relieved from all liability in respect of the repair of that part;

NOW THEREFORE in consideration of the premises, covenants and promises hereinafter expressed, the parties hereto agree each with the other as follows:

A. DEFINITIONS

1. In this Agreement:

Highway means a common or public highway, any part of which is intended for or used by the public for passage of vehicles and pedestrians and includes the areas between the lateral property lines thereof.

Joint Jurisdiction means the local municipalities on either side of a boundary line between municipalities have joint jurisdiction over any highway forming the boundary line.

Level of Service means the level of service as adopted by the council of the municipality for repair of a highway.

Location Map means Appendix A attached hereto.

Roadway means that part of the highway that is improved, designed or ordinarily used for vehicular traffic, but does not include the shoulder.

Routine Maintenance means those activities completed in the maintenance and repair of a highway or bridge and as described as follows:

- a. *Hardtop surface maintenance* includes frost heave repair; base repair; utility cut repair; hot and cold mix patching; shoulder maintenance including crack sealing, slurry sealing and spray patching; surface sweeping; surface flushing; supply and placement of maintenance gravel and grading for surface irregularities and; routine patrolling.
- b. *Roadside* includes vegetation management including roadside mowing, weed control, tree planting and removal, tree trimming; sidewalk maintenance; debris collection including debris and leaves; curb and gutter, guiderail and fence maintenance.
- c. *Shoulder* means the area adjacent to a roadway, where there is no curb, that may be paved or unpaved but does not include a sidewalk.
- d. *Stormwater management* includes roadside ditching; entrance culvert maintenance; maintenance and cleaning of maintenance holes, storm sewers and catch basins and; video camera inspection.
- e. *Structures* includes washing and component repairs for concrete and steel culverts, bridges of all types and pedestrian bridges.
- f. *Traffic operations* includes pavement markings, illumination, signals, signs, safety devices, bike path maintenance, railroad crossing maintenance.

Winter Control Maintenance includes snowplowing, combination plowing/ice control, ice control, de-icing, sanding, winging back, snow fencing, snow removal, standby, winter patrol, spring clean-up, sidewalk plowing and de-icing.

2. Where words or phrases used in this Agreement are defined in the Act, but not defined in this Agreement, the definitions of the Act shall apply to such words and phrases.

B. INTERPRETATION

Where there is any conflict between the provisions of this Agreement and the provisions of the Act, as amended, the provisions of the Act shall prevail.

C. MAINTENANCE AND REPAIR OF HIGHWAYS

1. The Blue Mountains hereby covenant and agrees to maintain and keep in repair, in accordance with the Town's Level of Service, which is hereby declared to form part of this Agreement, for the whole width thereof the highways as follows:

To perform *Routine Maintenance and Winter Control Maintenance* upon the road sections from Grey Rd 19 to the start of the deviation road in Clearview.

The Blue Mountains - Road Section #1284, #1286, #1287 and #1288
Road Classification for Minimum Standards of Maintenance: 4

To perform Routine Maintenance upon the road sections of the Townline from the 6th Sideroad south to the end of the road section shown as #1278.

The Blue Mountains - Road Section #1040, #1280 and #1278
Clearview – Road Sections # 891 and # 651
Road Classification for Minimum Standards of Maintenance: 6

- a. During each Winter Control Period throughout the term of the Agreement, The Blue Mountains shall be responsible for winter control maintenance activities which shall mean:
- i. patrolling with respect to winter maintenance;
 - ii. removing snow from the roadway (which for the purposes of this agreement means one lane in each direction);
 - iii. application of materials to counteract icy roadways; and,
 - iv. removal of snow banks on portions of the traveled highway beyond the roadway (i.e. the shoulders) and around traffic control devices (i.e. stop and yield signs) as required.

All of the foregoing will be completed in accordance with the level of service standard appended to this Agreement and in the same manner as The Blue Mountains provides the foregoing routine maintenance activities on the same class of road under its jurisdiction.

- b. In addition to the foregoing, outside of the Winter Control Period (being the period April 16th through November 1st inclusive), The Blue Mountains shall undertake the activities listed in subsections 1 (a)(i), (ii) and (iii) in response to winter events in the same manner as The Blue Mountains responds to such winter events on the same class of road under its jurisdiction. Both parties acknowledge and agree that the foregoing activities may occur at a lower level of service than during the Winter Control Period, but that the response is intended to meet the Common Law test of reasonableness as it relates to the specific activities set out in subsections 1 (a)(i), (ii) and (iii).
- c. The obligations set out above shall not include any obligation or responsibility to make capital improvements to the road. Furthermore, Clearview acknowledges and agrees that the physical condition of the subject road may affect the manner in which winter control maintenance services are delivered by The Blue Mountains. The parties agree to conduct a mutual inspection of the condition of the roadway prior to August 31st each year and to make a record of the existing conditions.
- d. The Blue Mountains will be responsible for rectifying any damages which the parties agree was caused by the operations of its equipment during the Regular Winter Control Period. This includes but is not limited to the replacement of signs, guide rails or other Town infrastructure at The Blue

Mountains' expense. The Blue Mountains shall give notice of the occurrence of such damage to Clearview and where The Blue Mountains agrees that it caused such damage it shall have the option of repairing such damage or paying Clearview for the cost of such repairs.

2. Clearview hereby covenants and agrees to maintain and keep in repair, in accordance with the Township of Clearview's Level of Service, which is hereby declared to form part of this Agreement, for the whole width thereof the highways as follows:

To perform Routine Maintenance and Winter Control Maintenance upon the road sections from 36/37 Sideroad northerly to the road section #1284.

Clearview – Road Section # 866
Road Classification for Minimum Standards of Maintenance: 6

To perform Winter Control Maintenance upon the road sections from 6th Sideroad, south to the end of the gravel road section #1278

The Blue Mountains - Road Section #1040, #1280 and #1278
Clearview road section – Road Section #891 and 651
Road Classification for Minimum Standards of Maintenance: 6

- a. During each Winter Control Period throughout the term of the Agreement, Clearview shall be responsible for winter control maintenance activities which shall mean:
 - i. patrolling with respect to winter maintenance;
 - ii. removing snow from the roadway (which for the purposes of this agreement mean one lane in each direction);
 - iii. application of materials to counteract icy roadways; and,
 - iv. removal of snow banks on portions of the traveled highway beyond the roadway (i.e. the shoulders) and around traffic control devices (i.e. stop and yield signs) as required.
- b. All of the foregoing will be completed in accordance with the level of service standard appended to this Agreement and in the same manner as Clearview provides the foregoing winter control maintenance activities on the same class of road under its jurisdiction.
- c. In addition to the foregoing, outside of the Winter Control Period (being the period April 16th through November 1st inclusive), Clearview shall undertake the activities listed in subsections (a)(i), (ii) and (iii) in response to winter events in the same manner as Clearview responds to such winter events on the same class of road under its jurisdiction. Both parties acknowledge and agree that the foregoing activities may occur at a lower level of service than during the Winter Control Period, but that the response is intended to meet the Common Law test of reasonableness as it relates to the specific activities set out in subsections (a)(i), (ii) and (iii).

- d. The obligations set out above shall not include any obligation or responsibility to make capital improvements to the road. Furthermore, The Blue Mountains acknowledges and agrees that the physical condition of the subject road may affect the manner in which winter control maintenance services are delivered by Clearview. The parties agree to conduct a mutual inspection of the condition of the roadway prior to August 31st each year and to make a record of the existing conditions.
- e. Clearview will be responsible for rectifying any damages which the parties agree was caused by the operations of its equipment during the Winter Control Period. This includes but is not limited to the replacement of signs, guide rails or other Municipal infrastructure at Clearview's expense. Clearview shall give notice of the occurrence of such damage to The Blue Mountains and where Clearview agrees that it caused such damage it shall have the option of repairing such damage or paying The Blue Mountains for the cost of such repairs.

D. MAINTENANCE AND REPAIR OF BRIDGES

1. The Blue Mountains and Clearview hereby mutually acknowledge and agree that at the time of this agreement there are no bridges along the boundary.

E. GENERAL

1. Each party will be responsible for the necessary expenditures related to the works carried out on all highways listed in this agreement with the exception of The Blue Mountains Road Section #1040 and in accordance with paragraph 2 of the General section of this agreement with no billing back and forth for costs of routine maintenance.
2. No new construction or major maintenance work (as distinguished from routine maintenance) of any kind on highways and bridges shall commence or be charged by one party to this agreement to the other unless such construction or major maintenance work has first been approved by the Councils of both municipalities.
3. It is anticipated that the cost for all new construction or major maintenance work shall be shared 50/50 between the municipalities.
4. Indemnification
 - a. Clearview agrees to defend, indemnify and save and hold harmless The Blue Mountains from all claims, lawsuits, losses, expenses and costs, or any other liability imposed by statute or common law in any way connected to or in any way arising out of any actual or alleged breach, default or neglect of duty in respect of the winter control maintenance and routine maintenance of the roads referred to in this agreement as being the responsibility of Clearview.
 - b. The Blue Mountains agrees to defend, indemnify and save and hold harmless Clearview from all claims, lawsuits, losses, expenses and costs, or any other

- c. liability imposed by statute or common law in any way connected to or in any way arising out of any actual or alleged breach, default or neglect of duty in respect of the winter control maintenance and routine maintenance of the roads referred to in this agreement as being the responsibility of The Blue Mountains .

5. Insurance

- a. Each party shall, at its own expense, obtain and keep in force during the term of this Agreement, liability insurance satisfactory to the other party, including the following terms and minimum coverage and underwritten by an insurer licensed to conduct business in the Province of Ontario:
 - Municipal General Liability insurance on an occurrence basis for an amount of not less than Fifteen Million Dollars (\$15,000,000);
 - inclusion of the other party as an Additional Insured with respect to the operations covered under this Agreement of the named insured;
 - Cross Liability and Severability of Interest clauses;
 - non-owned automobile coverage with a limit of at least Ten Million Dollars (\$10,000,000) including contractual non-owned coverage;
 - Products and completed operation coverage with an aggregate limit of not less than Fifteen Million Dollars (\$15,000,000);
 - 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
 - a thirty day written notice of cancellation, termination or material change.
- b. Each party shall provide the other party proof of insurance, each year, in the form of an insurance certificate.
- c. Both parties agree to immediately notify the other party of any occurrence, incident or event which may reasonably be expected to expose either party to material liability of any kind in relation to the Road.

6. Notice of Claim

In the event that either party receives a Statement of Claim, notice of claim or other information regarding a pending or possible claim by a third party with respect to liability for failure to keep the Road in repair or for damages or injuries sustained relating thereto such party shall immediately notify and provide to the other party such claim or notice of claim.

7. This agreement comes into force on the day of its signing by both parties hereto, authorised by by-law, and shall continue in force for a period of ten (10) years therefrom and may be renewed at the end of such terms by a further by-law of both parties to this agreement.

8. No amendment or variation to this Agreement or any of the terms hereof shall be binding upon the parties hereto, unless the same is in writing and authorized by further by-law of both parties to this Agreement and signed by all parties hereto.

9. Force Majeure

- a. Neither Clearview nor The Blue Mountains shall be held responsible for any damage or delays as a result of war, invasions, insurrection, demonstrations, or as a result of decisions by civilian or military authorities, fire, flood, human health emergency, strikes and generally as a result of any event that is beyond Clearview or The Blue Mountains' reasonable control.
- b. Clearview and The Blue Mountains agree that in the event of a disaster or Force Majeure the parties will co-operate and each party will make all reasonable efforts to provide temporary replacement service until permanent service is completely restored.

10. Governing Law

This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of Ontario with respect to any matter arising under or related to this Agreement.

11. Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

12. Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the winter maintenance of the Roads and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to winter maintenance for the Roads, except as provided in this Agreement.

13. Waiver and Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the party to be bound. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver of any provision of this

Agreement constitute a continuing waiver, even if similar in nature, unless otherwise expressly provided.

14. Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Neither party may assign all or any part of this Agreement without the written approval of the other party.

15. Clearview shall invoice The Blue Mountains for the snowplowing and winter control on Section 1040 (400 m of road on The Blue Mountains 6th Line). The invoice shall be issued no later than the 15th day of June and payment from The Blue Mountains shall be received no later than 30 days from the receipt of the invoice. This amount is set at \$2500 per year for the first five (5) years and increase to \$2750 for the following five (5) year.

16. Notice

Any notice required to be given by Clearview to The Blue Mountains shall be in writing and shall be sufficiently delivered if given to the Town Clerk by personal delivery or prepaid post, c/o Town Clerk, to:

Town of The Blue Mountains
32 Mill Street
PO Box 310
Thornbury, ON N0H 2P0

Any notice required to be given by The Blue Mountains to Clearview shall be in writing and shall be sufficiently delivered if given to the Clerk by personal delivery or prepaid post, c/o Clerk, to:

Township of Clearview
217 Gideon Street
Stayner, ON L0M 1S0

Notice delivered by mail shall be deemed to have been received on the fifth (5th) business day following the date of such mailing.

IN WITNESS WHEREOF the Corporate Seals of each of the parties hereto have been affixed duly attested to by the respective officers authorised in that behalf.

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS:

Alar Soever, Mayor

Corrina Giles, Town Clerk

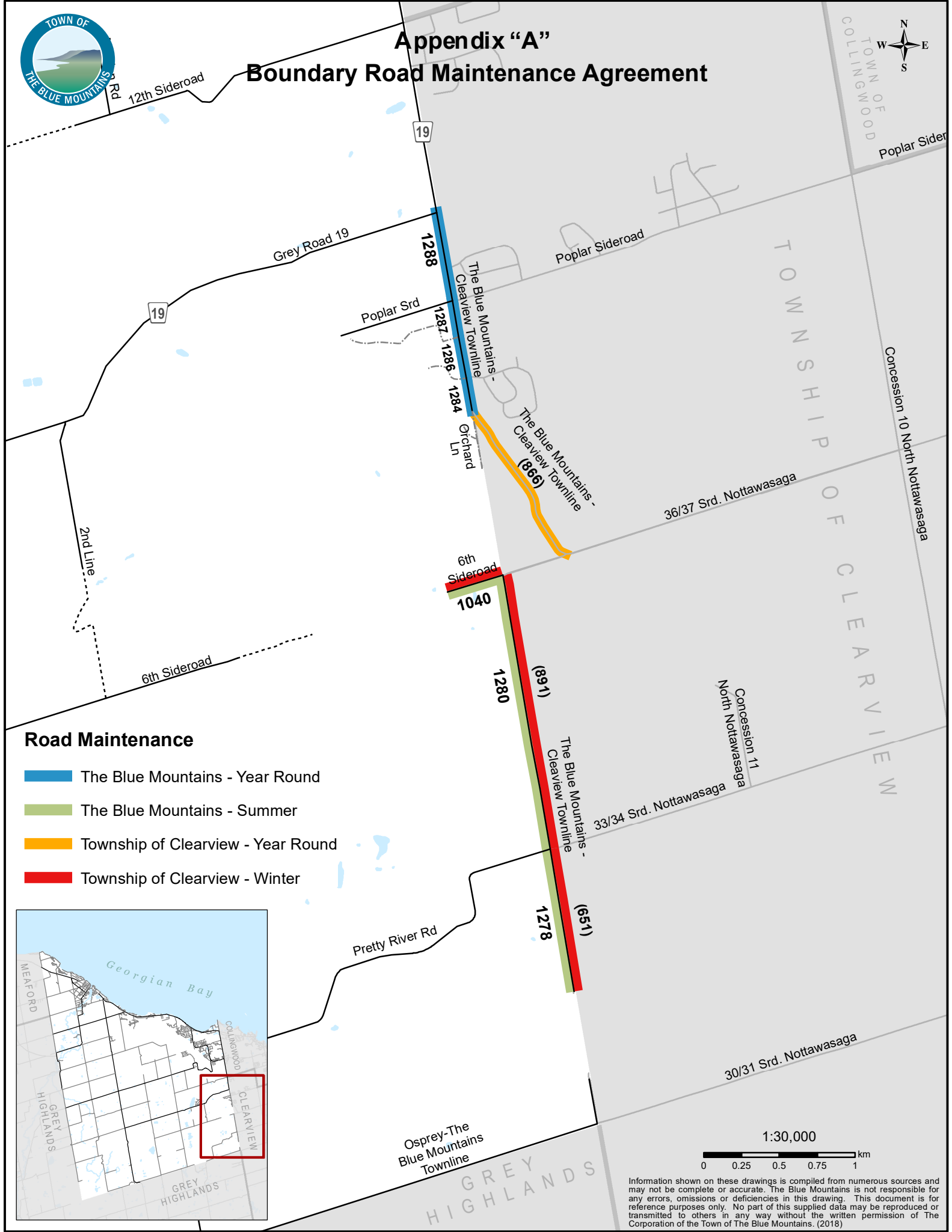
THE CORPORATION OF THE TOWNSHIP OF CLEARVIEW:

Christopher Vanderkruys, Mayor

Pamela Fettes, Director of Legislative Services/Clerk

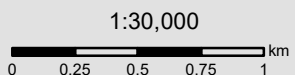
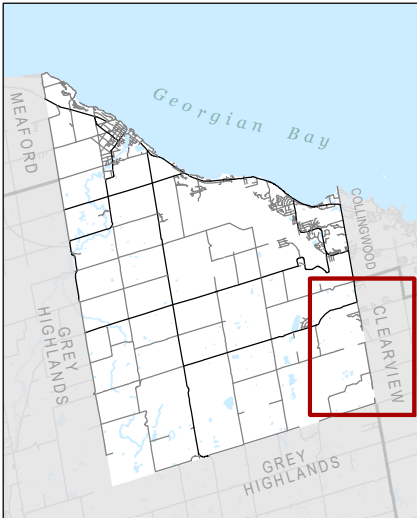


Appendix "A" Boundary Road Maintenance Agreement



Road Maintenance

- The Blue Mountains - Year Round
- The Blue Mountains - Summer
- Township of Clearview - Year Round
- Township of Clearview - Winter



Information shown on these drawings is compiled from numerous sources and may not be complete or accurate. The Blue Mountains is not responsible for any errors, omissions or deficiencies in this drawing. This document is for reference purposes only. No part of this supplied data may be reproduced or transmitted to others in any way without the written permission of The Corporation of the Town of The Blue Mountains. (2018)