

**BY-LAW NUMBER 21-28**  
**OF**  
**THE CORPORATION OF THE TOWNSHIP OF CLEARVIEW**

**A By-law to authorize the execution of the Boundary Road Agreement between The Corporation of the Town of Collingwood and The Corporation of the Township of Clearview**

**WHEREAS**, Section 8 of the Municipal Act 2001, R.S.O. 2001, as amended provides that a municipality has the authority to govern its affairs as it considers appropriate and enables the municipality to respond to municipal issues;

**AND WHEREAS** Section 5(3) of the Municipal Act 2001, R.S.O. 2001, as amended provides that a municipal power, including a municipality's capacity, rights, powers and privileges under section 9, shall be exercised by by-law unless the municipality is specifically authorized to do otherwise;

**AND WHEREAS**, Section 27 of the Municipal Act 2001, R.S.O. 2001, as amended provides that a municipality may pass by-laws in respect of a highway only if it has jurisdiction over the highway;

**AND WHEREAS**, Section 28(1) of the Municipal Act 2001, R.S.O. 2001, as amended sets out the highways over which a municipality has jurisdiction;

**AND WHEREAS**, Section 29.1(1) of the Municipal Act 2001, R.S.O. 2001, as amended provides that municipalities having joint jurisdiction over a boundary line highway 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**, it is deemed necessary and desirable that Council of the Township of Clearview enact a by-law authorizing the Corporation to enter into a Boundary Road Agreement with the Corporation of the Town of Collingwood;

**NOW THEREFORE** the Council of the Township of Clearview hereby enacts as follows:

1. That the Mayor and Clerk are hereby authorized to execute a Boundary Road Agreement with the Corporation of the Town of Collingwood; and
2. That the Boundary Road Agreement attached hereto as Schedule "A" shall form part of this by-law; and

3. That this by-law shall come into force and effect on the date of its passing.

**By-law Number 21-28 read a first, second and third time and finally passed this 8<sup>th</sup> day of March, 2021.**

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MAYOR

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DIRECTOR OF LEGISLATIVE SERVICES/CLERK

# Attachment 1

## WINTER MAINTENANCE SERVICE AGREEMENT

THIS AGREEMENT made in duplicate this \_\_\_\_\_ day of \_\_\_\_\_ 2021

BETWEEN:

### THE CORPORATION OF THE TOWNSHIP OF CLEARVIEW

Hereinafter referred to as “Clearview”

AND

### THE CORPORATION OF THE TOWN OF COLLINGWOOD

(Hereinafter called “Collingwood”)

**WHEREAS** the parties to this agreement are adjoining municipalities and are desirous of entering into an agreement for the winter maintenance and repair of those parts of the highways outlined in **Appendix “A”** for their whole width and to indemnify the other municipality from any loss or damage arising from the lack of winter maintenance and repair for those parts of the highways;

**NOW THEREFORE** in consideration of the premises, covenants and promises hereinafter expressed and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree each with the other as follows:

#### A. DEFINITIONS

1. In this Agreement:

“**Minimum Maintenance Standards**” mean those standards outlined in Ontario Regulation 239/02 entitled “Minimum Maintenance Standards for Municipal Highways”, as amended;

“**Winter Maintenance**” includes snowplowing, combination plowing/ice control, ice control, de-icing, sanding, winging back, and the required winter patrols; and,

“**Winter Maintenance Period**” means from November 1<sup>st</sup> of one year to April 30<sup>th</sup> the following year.

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

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

#### C. MAINTENANCE AND REPAIR OF HIGHWAYS

##### Term

4. This Agreement shall commence on the date of its execution by both of the parties hereto and end on the 31<sup>st</sup> day of December 2025, unless otherwise terminated earlier in accordance with the provisions of this Agreement (the “**Term**”).

5. 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 one hundred and eighty (180) days’ notice in writing to the other of its intention to terminate this Agreement at the expiration of the current term.

##### The Services

6. Clearview agrees to provide Winter Maintenance on the portion of Toner Street and Fairgrounds Road set out in **Appendix “A”** during the Winter Maintenance Period during the Term.

7. Collingwood agrees to provide Winter Maintenance on the portion of Caddo Drive set out in **Appendix “A”** during the Winter Maintenance Period during the Term.

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8. The parties covenant and agree to perform the services on the highways outlined in sections 6 and 7 of this Agreement (the “**Services**”), to a standard which meets or exceeds the Minimum Maintenance Standards effective during the term of this Agreement during the Winter Maintenance Period.
9. Each party shall be solely responsible for the costs associated with performing the Service pursuant to the provisions of this Agreement.
10. The parties agree that this Agreement covers only Winter Maintenance and that specifically excluded from this Agreement is capital work, which includes major bridge repair and road reconstruction.

### **Call Outs**

11. The parties covenant and agree that the party or its agents, employees or contractors, having responsibility for the highways outlined in sections 6 and 7 of this Agreement (the “**Highways**”) during the Winter Maintenance Period, shall be responsible for patrolling the Highways, calling in and directing any agents, employees or contractors responsible for maintaining and repairing the Highways.

### **Annual Inspections**

12. The parties agree to conduct annual inspections of the Highways prior to August 31<sup>st</sup> of each year and to record the condition of the Highways existing at that time.

### **Repairing Damages**

13. Each party shall be responsible for repairing any damages to the Highways, at their sole cost and expense, if both parties agree that such damage was caused by the operations of the other party or their agents, employees, agents, or contractors.

### **Indemnification**

14. Each party agrees to defend, indemnify and save and hold harmless the other party 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 a party’s obligations under this Agreement.
15. For greater clarity, each party is liable for any damages that arise from its failure to adequately perform the Services for which it is responsible and the other party is relieved from all liability in respect thereof.

### **Insurance**

16. 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:
  - a. Municipal General Liability insurance on an occurrence basis for an amount of not less than Fifteen Million Dollars (\$15,000,000);
  - b. inclusion of the other party as an Additional Insured with respect to the operations covered under this Agreement of the named insured;
  - c. Cross Liability and Severability of Interest clauses;
  - d. non-owned automobile coverage with a limit of at least Ten Million Dollars (\$10,000,000) including contractual non-owned coverage;
  - e. Products and completed operation coverage with an aggregate limit of not less than Fifteen Million Dollars (\$15,000,000);
  - f. 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
  - g. a thirty day written notice of cancellation, termination or material change.

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17. Each party shall provide the other party with proof of insurance, each year, in the form of an insurance certificate.
18. 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 Highways.

### **Notice of Claim**

19. 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 perform the Services for which it is responsible 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.

### **Authority**

20. 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 statutory authority to enter into this Agreement.

### **Amendments**

21. 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.

### **Force Majeure**

22. Neither party shall be held responsible for any damages or delays as a result of war, invasions, insurrection, apprehended 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 the parties' reasonable control.
23. The parties agree that in the event of a disaster or force majeure the parties will cooperate and each party will make all reasonable efforts to provide temporary Services until permanent Services are completely restored.

### **Governing Law**

24. 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.

### **Severability**

25. 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.

### **Entire Agreement**

26. This Agreement constitutes the entire agreement between the parties with respect to the Winter Maintenance of the Highways 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 the Winter Maintenance of the Highways, except as provided in this Agreement.

### **Waiver**

27. 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.

### **Successors and Assigns**

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28. This Agreement shall ensure 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.

**Notices**

29. Any notices required to be given by one party to the other shall be in writing and shall be sufficiently delivered if given to the Town Clerk by personal delivery or prepaid post to:

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

or

Town of Collingwood  
P.O. Box 157, 97 Hurontario Street  
Collingwood, Ontario L9Y 3Z5

Notices 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 parties by their duly authorized representatives have set forth their signatures on the dates herein written below:

Signed and sealed this ... day of ....., 2021.

**THE CORPORATION OF THE TOWNSHIP OF CLEARVIEW**

\_\_\_\_\_  
Doug Measures, Mayor

I have the authority to bind the Corporation.

\_\_\_\_\_  
Pamela Fettes, Township Clerk

I have the authority to bind the Corporation.

Signed and sealed this ... day of ....., 2021.

**THE CORPORATION OF THE TOWN OF COLLINGWOOD**

\_\_\_\_\_  
Brian Saunderson, Mayor

I have the authority to bind the Corporation.

\_\_\_\_\_  
Sara Almas, Town Clerk

I have the authority to bind the Corporation.

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**APPENDIX "A"**

**PORTIONS OF HIGHWAY TO BE MAINTAINED BY CLEARVIEW**





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**PORTIONS OF HIGHWAY TO BE MAINTAINED BY COLLINGWOOD**

