

LIMITED SERVICE AGREEMENT FOR GRADING OF PRIVATE ROADS

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF FRONTENAC ISLANDS

(the "TOWNSHIP")

- and -

(the "OWNER")

WHEREAS:

- (a) The OWNER is the registered owner of that real property legally identified as [insert legal description of road] over which a traveled roadway commonly known as [insert name of road] runs.
- (b) The traveled roadway has not been dedicated or conveyed to or assumed or accepted by the TOWNSHIP for permanent maintenance purposes or public use, nor established as a public highway by by-law or otherwise under the terms of the *Municipal Act, 2001*, or its predecessor legislation.
- (c) The TOWNSHIP does not exercise jurisdiction over the traveled roadway, which is not a municipal highway.
- (d) The OWNER wishes to engage the services of the TOWNSHIP to provide limited road maintenance services to the traveled roadway.
- (e) Section 23 of the *Municipal Act, 2001* permits the TOWNSHIP to enter into an agreement with the OWNER to maintain a private road.
- (f) The OWNER certifies and the TOWNSHIP has confirmed that the traveled roadway complies with the TOWNSHIP's policy for minimum maintenance standards for the execution of a Limited Service Agreement.

THIS AGREEMENT IS ENTERED in consideration of the mutual covenants and agreements outlined in the document, and for other consideration, the receipt and sufficiency of which is hereby acknowledged by both parties.

ARTICLE 1.00: INTERPRETATION

1.01 Definitions: Wherever a term set out below appears in the text of this AGREEMENT in capital letters, the term shall have the meaning set out for it in this Section 1.01. Wherever a term below appears in the text of this AGREEMENT in regular case, it shall be deemed to have the meaning ordinarily attributed to it in the English language.

- a. **AGREEMENT** means this agreement, including its recitals and schedules, if any, which form integral parts of it, as amended from time to time in accordance with Section 4.07.
- b. **TOWNSHIP** means The Corporation of the Township of Frontenac Islands, a municipal corporation duly incorporated pursuant to the laws of the Province of Ontario. Where the context permits, the term also includes the TOWNSHIPS managers, employees, servants, contractors, agents and delegated officials.
- c. **MANAGER** means the Public Works Manager of the TOWNSHIP.
- d. **FRONTENAC ISLANDS** means the geographic area within the TOWNSHIP's jurisdiction.
- e. **Municipal Act, 2001** means the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended from time to time.
- f. **OWNER** is (_____), a corporation incorporated pursuant to the laws of the Province of Ontario and in good standing, which is the registered owner of the ROAD, and includes its successors and permitted assigns, and, where the context allows, its directors, officers, employees, servants or agents.

g. ROAD means the traveled portion of (*insert name and legal description of road) located on (Wolfe Island) in the TOWNSHIP OF FRONTENAC ISLANDS and legally described as [insert legal description].

h. SERVICES means:

Basic non-winter maintenance of the ROAD, to consist solely of grading of the surface of the ROAD, all as and if deemed necessary by the TOWNSHIP, in the sole and absolute discretion of the MANAGER, to be provided during the following periods;

(a) Between April 31st and May 31st of each year of the TERM;

(b) Between September 31st and October 31st of each year of the TERM

The **TERM** means the entire time period during which this AGREEMENT is operation as set out in Article 2.00.

1.02 Legislation, By-laws: Each reference to Provincial legislation in this AGREEMENT, unless otherwise specified, is a reference to the Revised Statutes of Ontario, 1990 edition, and, in every case, includes all applicable amendments to the legislation, including successor legislation. Each reference to a By-law in this AGREEMENT, unless otherwise specified, is a reference to a By-law of the Township, and, in every case, includes all applicable amendments to the By-law, including successor by-laws.

1.03 Construing this AGREEMENT: The captions, article and section names and numbers appearing in this AGREEMENT are for convenience of reference only and have no effect on its interpretation. All provisions of this AGREEMENT creating obligations on either party will be constructed as covenants. This AGREEMENT is to be read with all changes of gender or number required by the context.

ARTICLE 2.00: TERM OF AGREEMENT

2.01 TERM: The TOWNSHIP and the OWNER agree that the TERM of this AGREEMENT is Five (5) years, to be computed from the 1st day of August, 2016 concluding on the 31st day of July, 2021, subject to renewal and termination as provided in this AGREEMENT.

2.02 Renewal: This AGREEMENT contains no right of renewal and shall expire upon the completion of the TERM, subject to early termination in accordance with this AGREEMENT.

2.03 Termination: This AGREEMENT may be terminated by either party on the giving of thirty (30) days' prior written notice to the other.

ARTICLE 3.00: COVENANTS & ACKNOWLEDGEMENTS

3.01 ROAD Not Highway: The OWNER hereby acknowledges and agrees that the ROAD is not a municipal highway and that the TOWNSHIP does not have jurisdiction over the ROAD. The OWNER further acknowledges that the ROAD has not been previously dedicated or conveyed to or assumed or accepted by the TOWNSHIP for public use nor established as a public highway by by-law or otherwise under the terms of the *Municipal Act, 2001* or its predecessor legislation.

3.02 SERVICES: The TOWNSHIP agrees to provide SERVICES on the ROAD in accordance with this AGREEMENT for a fee. Fees established in SCHEDULE A of this AGREEMENT and the OWNER acknowledges that the terms of this AGREEMENT govern the entire obligation of the TOWNSHIP, if any, to provide maintenance of the ROAD.

3.03 Access: The OWNER agrees to provide the TOWNSHIP with full and free access to any and every part of the ROAD at all times for the purposes of the provision of the SERVICES, and acknowledges that entry by the TOWNSHIP onto or over the ROAD will and does not constitute an act of trespass.

3.04 Maintenance Fee: The OWNER agrees to pay the TOWNSHIP a minimum of three (3) hours per site visit as per the Hourly rate attached in Schedule "A".

3.05 Standards: The OWNER acknowledges that the standards for the performance of the SERVICES are at the sole discretion of the TOWNSHIP, as may be established from time to time, and specifically, are outside of the requirements for maintenance of municipal highways as established pursuant to the *Municipal Act, 2001* and its prescribed regulations.

3.06 No Capital Expenditure: The OWNER acknowledges and agrees that the TOWNSHIP's commitment to provide the SERVICES is limited to the terms of this AGREEMENT and, specifically, the OWNER agrees that the TOWNSHIP is under no obligation to provide equipment, manpower, maintenance or the expenditure of public funds for ROAD purposes other than defined as the SERVICES, and further, the TOWNSHIP is under no obligation to construct capital improvements on, over, under or along the ROAD

3.07 Ownership: The OWNER covenants that it is the OWNER of the ROAD as of the date of this AGREEMENT and that it, or a lawful predecessor in title was the OWNER of the ROAD on December 31, 2002 and that such ROAD is not a municipal highway. The OWNER further covenants that it has the right to enter into this AGREEMENT with the TOWNSHIP for the provision of the SERVICES thereon.

3.08 No Assumption: The TOWNSHIP and the OWNER agree that, notwithstanding the provisions of the *Municipal Act, 2001* the provision of the SERVICES does not, cannot and shall not constitute an assumption of the ROAD by the TOWNSHIP, nor establishment of a public highway.

3.09 No Claims: The OWNER shall not have any claim or demand against the TOWNSHIP for damages of any nature on the ROADS, unless the damage is due to the gross negligence or wrongful actions of the TOWNSHIP acting within the scope of its duties under this AGREEMENT.

3.10 Indemnification: The OWNER agrees that it shall at all times indemnify and save harmless the TOWNSHIP from and against all claims and demands, by whomsoever made, which are occasioned by or attributable to the existence of this AGREEMENT or any action taken or things done or maintained because of this AGREEMENT, or the exercise of rights arising pursuant to this AGREEMENT, excepting claims for damage resulting from the gross negligence of the TOWNSHIP while acting within the scope of its duties.

Article 4.00: MISCELLANEOUS

4.01 Notice: Any notice to be given under this AGREEMENT shall be sufficiently given if delivered by hand, or facsimile, or if sent by prepaid first class mail and addressed to the OWNER'S representative at:

or to the TOWNSHIP at:

The Corporation of the Township of Frontenac Islands
Attention: CAO/Clerk-Treasurer
1191 Rd. 96
P.O. Box 130
Wolfe Island, ON, K0H 2Y0
Facsimile: 613-385-1032

Receipt of such notice shall be deemed on:

- (a) the date of actual delivery of a hand delivered document; or
- (b) the business day next following the date of facsimile transmission; or
- (c) five (5) days following the date of mailing of the notice;

Whichever is applicable. Notwithstanding Section 4.07, either party may change its address for notice by giving notice of change of address pursuant to this Section.

4.02 Force Majeure/Time: 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.

4.03 Successors: The rights and liabilities of the parties shall endure to the benefit of and be binding upon the parties and their respective successors and approved assignees.

4.04 Entire Agreement: This AGREEMENT constitutes the entire agreement between the parties and it is agreed that 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 and this AGREEMENT fully replaces and supersedes any letter, letter of intent, or other contractual arrangement between the parties related to the ROAD in existence at the time of execution and delivery of this AGREEMENT.

4.05 Partial Invalidity: If any article, section, subsection, paragraph, clause or sub clause or any of the words contained in this AGREEMENT shall be held wholly or partially illegal, invalid or unenforceable by any court of competent jurisdiction, the TOWNSHIP and the OWNER agree that the remainder of this AGREEMENT shall not be affected by the judicial holding, but shall remain in full force and effect.

4.06 Relationship of Parties: Nothing in this AGREEMENT shall create any relationship between the parties. It is specifically agreed that neither party is a partner, joint venturer, agent or trustee of the other.

4.07 Amendments: No supplement, amendment or waiver of or under this AGREEMENT (apart from amendments to notice provisions of Section 4.01) shall be binding unless executed in writing by both parties. No waiver by a party of any provision of this AGREEMENT shall be deemed to be a waiver of any other provision unless otherwise expressly provided.

4.08 Governing Law: This AGREEMENT shall be constructed in accordance with and governed by the laws of the Province of Ontario.

4.09 Freedom of Information: The OWNER acknowledges that this AGREEMENT is a public document and subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended from time to time.

4.10 Independent Legal Advice: The OWNER acknowledges that it has either received or waived the benefit of its own legal advice with respect to the execution of this AGREEMENT.

TO WITNESS, the undersigned affixed their corporate seals (where applicable) attested by the hands of our properly authorized officers. By so executing this document, the officers warrant and certify that the corporation(s) for which they are signing is in good standing and duly incorporated and organized under the laws of the jurisdiction in which they are incorporated, and that the officers are authorized and empowered to bind the corporation(s) to the terms of this AGREEMENT by their signatures.

DATED at _____ this ____ day of _____, 2016.

We have authority to bind the Corporation.

**THE CORPORATION OF THE
TOWNSHIP OF FRONTENACISLANDS**

Per: _____
Mayor Doyle

Per: _____
C.A.O./Clerk Plumley

DATED at _____ this ____ day of _____, 20.

SIGNED, SEALED AND DELIVERED

in the presence of:

Witness

OWNER REPRESENTATIVE

We have authority to bind the Corporation.

LIMITED SERVICE AGREEMENT FOR MAINTENANCE OF PRIVATE ROADS

Schedule "A" (Hourly Rate for Grader Rental)

Minimum Charge of 2 hours shall apply

2016-2018	\$130.00 per hour
2018-2021	\$140.00 per hour