

THE CORPORATION OF THE TOWNSHIP OF NIPISSING

BY-LAW NUMBER 2020-08

Being a by-Law to enter into a Joint Jurisdiction Highway and Connecting Road Routine Maintenance and Repair Agreement with the Corporation of the Municipality of Powassan.

WHEREAS the Corporation of the Township of Nipissing wishes to enter into a Joint Jurisdiction Highway and Connecting Road Routine Maintenance and Repair Agreement with the Corporation of the Municipality of Powassan;

NOW THEREFORE the Council of The Corporation of the Township of Nipissing ENACTS AS FOLLOWS:

1. That the Mayor and CAO-Clerk be authorized to sign the agreement attached hereto as Appendix "A" and hereby declared to be part of this by-law.
2. That By-Law Number 2007-1201 is hereby repealed.

READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS 4TH DAY OF FEBRUARY, 2020.



Tom Piper, Mayor



Charles Barton, CAO-Clerk

**JOINT JURISDICTION
HIGHWAY and CONNECTING ROAD ROUTINE
MAINTENANCE AND REPAIR AGREEMENT
("Agreement")**

BETWEEN

The Corporation of the Municipality of Powassan

(hereinafter referred to as "Powassan")

OF THE FIRST PART

-and-

The Corporation of the Township of Nipissing

(hereinafter referred to as "Nipissing")

OF THE SECOND PART

WHEREAS Powassan passed By-Law Number 2020-____ and Nipissing passed By-Law No. 2020-08 in accordance with s.27(2) of the *Municipal Act*, 2001 with respect to Highways under their Joint Jurisdiction (as herein defined);

AND WHEREAS pursuant to subsection 20.1(2) of the *Municipal Act*, 2001, each municipality has jurisdiction over that part of the Highway that it 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;

AND WHEREAS the parties wish to provide for a means of dealing with certain Connecting Roads (as herein defined);

NOW THEREFORE in consideration of the covenants contained herein and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree each with the other as follows:

1.0 DEFINITIONS

- 1.1 "Agreement" means this Joint Jurisdiction Highway and Connecting Road Routine Maintenance and Repair (M&R) Agreement, including the following Schedules:
 - (a) Schedule "A" – "Powassan Joint Jurisdiction Highways";
 - (b) Schedule "B" – "Nipissing Joint Jurisdiction Highways";
 - (c) Schedule "C" – "Powassan Connecting Roads";
 - (d) Schedule "D" – "Nipissing Connecting Roads".
- 1.2 "Business Day" means any day other than a Saturday, Sunday, public holiday, or other day on which banks in Ontario are authorized or required by law to be closed, or a day on which the administrative offices of Powassan or Nipissing are closed.
- 1.3 "Capital Improvement" means any work that is outside of the Routine M&R as required by this Agreement and which materially improves and enhances any part of a Highway.
- 1.4 "Connecting Road" means a Highway or part thereof that lies within one municipality for which the other municipality agrees to perform Routine M&R in accordance with this Agreement.
- 1.5 "Contract Administrator" means an individual appointed by a municipality, or his/her designate, to oversee the administration of the Agreement.

- 1.6 “Highway” includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.
- 1.7 “Joint Jurisdiction” has the meaning described in s.29 of the *Municipal Act*, 2001.
- 1.8 “OSIM” means the “Ontario Structure Inspection Manual (OSIM)”, by the Ministry of Transportation, Policy Planning & Standards Division, Engineering Standards Branch, Bridge Office (October 2000); as amended.
- 1.9 “Road Construction” means the building and rebuilding of Highways or parts of Highways. Road Construction does not mean or include Routine M&R.
- 1.10 “Routine M&R” means those activities completed in the routine maintenance and repair of a Highway, as contemplated in the *Municipal Act*, 2001, S.O. 2001, c.25, as amended and all applicable regulations, including without limitation, the *Minimum Maintenance Standards for Municipal Highways Regulation*, O.Reg. 239/02, as amended and as they exist from time to time, or any successor regulation(s) or statute(s) (collectively referred to as the “*Maintenance Legislation*”), and which shall be conducted in accordance with the specifications contained in the *Maintenance Legislation* and in this Agreement. For greater certainty, Routine M&R does not include Capital improvements or Road Construction.
- 1.11 “Structure” means a bridge, culvert, tunnel, retaining wall or sign support, as the terms are defined in the OSIM.

2.0 JOINT JURISDICTION HIGHWAY

- 2.1 Powassan agrees to carry out Routine M&R in respect of all the Joint Jurisdiction Highways or parts thereof described in Schedule “A” of this Agreement.
- 2.2 Nipissing agrees to carry out Routine M&R in respect of all the Joint Jurisdiction Highways or parts thereof described in Schedule “B” of this Agreement.

3.0 SUMMER ROUTINE M&R STANDARDS – JOINT JURISDICTION HIGHWAYS

- 3.1 Powassan and Nipissing shall perform all Summer Routine M&R for their respective jurisdictions, as outlined in s.2.0 of this Agreement, in accordance with the requirements of the *Maintenance Legislation* at a minimum. Higher standards for Summer Routine M&R may be agreed to in writing between the parties forming part of this Agreement.

4.0 WINTER ROUTINE M&R STANDARDS – JOINT JURISDICTION HIGHWAYS

- 4.1 Powassan and Nipissing shall perform all Winter Routine M&R for their respective jurisdictions, as outlined in s.2.0 of this Agreement, in accordance with the requirements of the *Maintenance Legislation* at a minimum. Higher standards for Winter Routine M&R may be agreed to in writing between the parties forming part of this Agreement.

5.0 CONNECTING ROADS

- 5.1 Powassan agrees to carry out Routine M&R in respect of all the Connecting Roads or parts thereof described in Schedule “C” of this Agreement.
- 5.2 Nipissing agrees to carry out Routine M&R in respect of all the Connecting Roads or parts thereof described in Schedule “D” of this Agreement.
- 5.3 Powassan and Nipissing shall perform all Winter Routine M&R in accordance with the requirements of the *Maintenance Legislation* at a minimum.
- 5.4 Powassan agrees to bear the entirety of the cost of Routine M&R for the Highways listed on Schedule “C”.

- 5.5 Nipissing agrees to bear the entirety of the cost of Routine M&R for the Highways listed on Schedule "D".
- 5.6 Powassan and Nipissing shall retain jurisdiction over any Connecting Road within its original jurisdiction, irrespective of whether Routine M&R for that Connecting Road is performed by the other party to this Agreement.

6.0 ROUTINE M&R – STRUCTURES

- 6.1 Powassan agrees to carry out all Routine M&R required in accordance with the Winter Routine M&R Standards or Summer Routine M&R Standards as applicable outlined in this Agreement, including, without limitation, biennial structure inspections as required by the OSIM on all Structures, situated in or along the Highways or parts thereof described in Schedule "A" of this Agreement. Biennial OSIM Structure inspection reports will be provided to Nipissing upon completion by Powassan.
- 6.2 Nipissing agrees to carry out all Routine M&R required in accordance with the Winter Routine M&R Standards, or Summer Routine M&R Standards, as applicable, outlined in this Agreement, including biennial structure inspections as required by the OSIM on all Structures, situated in or along the Highways or parts thereof described in Schedule "B" of this Agreement. Biennial OSIM structure inspection reports will be provided to Powassan upon completion by Nipissing.

7.0 COST OF WORK REQUIRED BY THIS AGREEMENT

- 7.1 Powassan agrees to bear the entirety of the cost of Routine M&R for the Highways listed on Schedule "A".
- 7.2 Nipissing agrees to bear the entirety of the cost of Routine M&R for the Highways listed on Schedule "B".
- 7.3 Notwithstanding any other provision in this Agreement, Capital Improvement work of any kind and/or Road Construction relating to any Highway outlined in Schedules A and B of this Agreement shall not be undertaken by either party without the prior approval of the Councils of both municipalities. What constitutes a Capital Improvement for the purposes of this Agreement shall be as agreed between the parties on a project-by-project basis. The parties agree that in the event a project is agreed to be a Capital Improvement, or constitutes Road Construction, the parties shall agree in writing upon the basis of cost-sharing for that project prior to the implementation of said project.

8.0 INDEMNIFICATION

- 8.1 Powassan covenants and agrees that it shall indemnify, defend and save harmless Nipissing from any liability, cost, demands, damages, expenses, claims and suits arising out of or in any way related to the obligations of Powassan to carry out the work or otherwise meet the obligations provided for in this Agreement, including the failure to perform such work adequately or at all, except to the extent that same is caused by the negligence or willful misconduct of Nipissing. This indemnity shall survive the early termination or expiry of this Agreement.
- 8.2 Nipissing covenants and agrees that it shall indemnify, defend and save harmless Powassan from any liability, cost, demands, damages, expenses, claims and suits arising out of or in any way related to the obligations of Nipissing to carry out the work or otherwise meet the obligations provided for in this Agreement, including the failure to perform such work adequately or at all, except to the extent that same is caused by the negligence or willful misconduct of Powassan. This indemnity shall survive the early termination or expiry of this Agreement.

- 8.3 Notwithstanding anything to the contrary contained in this Agreement, and subject to any applicable legislation and the ability of a party to protect its own rights in the face of litigation against that party, each party agrees to assist the other party in a timely manner in terms of the provision of information relevant to any claims that are made against the other party with respect to either party's obligations assumed under this Agreement.

9.0 RECIPROCAL INSURANCE

- 9.1 During the term of this Agreement, each party shall obtain and maintain in full force and effect, Comprehensive General Liability Insurance naming the other party as an additional insured regarding their respective obligations under the Agreement. Each party shall also maintain Automobile Liability Insurance for owned vehicles and Non-Owned Automobile Liability Insurance for non-owned vehicles as may be used under this Agreement. Each of the overages shall have limits of not less than Five Million Dollars (\$5,000,000), and shall be issued by insurance companies licenced to carry on business in the Province of Ontario.
- 9.2 Upon request, each party shall deposit with the Contract Administrator for the other party such evidence of its insurance as provided in or required under this Agreement. Each party shall take all reasonable steps to not do or omit to do anything that would impair or invalidate the insurance policies.
- 9.3 The insurance coverage shall in no manner discharge, restrict or limit the liabilities and obligations assumed by the parties under this Agreement.

10.0 NOTICE, CONTRACT ADMINISTRATION AND AMENDMENT

- 10.1 Each party has appointed the following to act as Contract Administrator for that party:

For Powassan

Road Superintendent
250 Clark Street, Powassan, ON P0H 1Z0
Phone: (705) 724-2813
stoebes@powassan.net

For Nipissing

Operations Superintendent
45 Beatty Street, Nipissing, ON P0H 1W0
Phone: (705) 497-6024
roads@nipissingtownship.com

- 10.2 Any notice provided for under this Agreement shall be in writing and shall be sufficiently given if delivered personally, or if transmitted by facsimile with an original signed copy sent by prepaid registered mail within forty-eight (48) hours thereafter, or if mailed by prepaid registered mail to the addresses above, or at such other address or facsimile number as the party to whom such notice is to be given otherwise directs in writing. Any notice delivered aforesaid shall be effective on the date of the personal delivery, or on the date of facsimile transmission, and any notice mailed as aforesaid shall be effective three (3) Business Days after the mailing thereof, provided that where interruption of mail services is likely by reason of any strike or other labour dispute, notice shall be given by personal delivery or facsimile transmission.

- 10.3 Each Contract Administrator shall ensure that detailed maintenance and communications logs and other records relevant to the Routine M&R requirements of this Agreement (“Maintenance Records”) are maintained with respect to the respective parties’ obligations under this Agreement. These Maintenance Records shall be available for review and/or copying by the other municipality upon request and during regular business hours. Any records reviewed and/or copied pursuant to this provision shall be kept in the strictest of confidence, subject only to the requirements of applicable privacy and freedom of information laws and any other provision of this Agreement.
- 10.4 The Contract Administrators shall meet on a regular basis and in any event, no less than once every six (6) months, in order to discuss issues arising due to the obligations contained in this Agreement. A meeting summary shall be created and submitted to each Council.
- 10.5 Each Contract Administrator shall be responsible for providing the other party with written notice as soon as reasonably aware of the following:
- i. The amalgamation of one party’s jurisdiction with another jurisdiction;
 - ii. Any proposed change of name or reorganization of one party’s jurisdiction;
 - iii. Any proposed change of name of any Highway;
 - iv. Any proposed change of speed limits of any Highway;
 - v. Any changes, additions or removal of any signs of any Highway.
- 10.6 In the event of any changes identified in 10.5(iii), (iv) and (v), the party proposing to make the change shall not make said change without obtaining the prior written consent of the other party, which consent shall not be unreasonably withheld.
- 10.7 In the event of any authorized changes identified in 10.5(i), (ii) and (iii), this Agreement shall be amended accordingly.
- 10.8 For greater certainty, the changes identified in 10.5(iv) and (v) shall not require an amendment to this Agreement.
- 10.9 For greater certainty, any changes and/or amendments to this Agreement, including without limitation, any changes to Routine M&R conducted by either or both parties, shall be approved by the Council of each party respectively.

11.0 DISPUTE RESOLUTION

- 11.1 In the event of a dispute between the parties to the Agreement arising pursuant to this Agreement, the Contract Administrators agree to engage in good faith negotiations with a view to resolving the dispute.
- 11.2 In the event the Contract Administrators are unable to resolve a dispute within twenty (20) days as of the date the dispute arose, the parties agree to appoint a Committee comprised of three (3) members per party (“Dispute Committee”) in order to resolve the dispute.
- 11.3 In the event the Dispute Committee is unable to resolve the dispute within thirty (30) days as of the date the dispute was brought before the Dispute Committee, the parties agree to submit to arbitration under the rules of the *Arbitration Act*, 1991, S.O. 1991, c.17, as amended and as it exists from time to time.
- 11.4 Nothing contained herein shall be construed as waiving any additional rights in law or in equity of either party with respect to this Agreement.

12.0 INTERPRETATION

- 12.1 This Agreement contains the entire understanding between the parties with respect to the subject matter contained herein. All other responsibilities, duties, liabilities or other rights and/or powers of the respective jurisdictions, statutory or otherwise, remain unaffected unless specifically addressed herein.

- 12.2 Where there is any conflict between any provision of this Agreement and any provision of the Municipal Act, 2001 as amended, the provision of the Municipal Act, 2001 shall prevail to the extent of the conflict.

13.0 GENERAL PROVISIONS

- 13.1 This Agreement comes into force on the day of its execution by both parties hereto authorized by By-law and shall continue in force for a period of five (5) years therefrom. Unless terminated in accordance with s.14.3, this Agreement shall automatically renew every year for another five (5) years up to a maximum of ten (10) years.
- 13.2 No amendment or variation to this Agreement or of any of the terms hereof shall be binding upon the parties hereto, unless the same is in writing and properly authorized and executed by both parties to this Agreement.
- 13.3 This Agreement may be terminated by either party upon six (6) months prior written notice to the Contract Administrator of the other party.
- 13.4 This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 13.5 This Agreement shall not be assigned by either party without the prior written consent of the other party.
- 13.6 It is understood and agreed by the parties hereto that they are and shall be independent contractors and that nothing herein is intended to make either party an agent, legal representative, subsidiary, joint venture, fiduciary, employee, or servant of the other for any purpose.
- 13.7 All references to a day or days in this Agreement shall mean a Business Day or Business Days.

14.0 DEFAULT


- 14.1 Notwithstanding any of the foregoing, in addition to any other remedies available at law or in equity, in the event that one party defaults in the performance of its obligations under this Agreement, the other party has the option of performing said obligations to the extent of the deficiency and charging the defaulting party for said services, including without limitations, all personnel, administrative and/or other related costs thereto.
- 14.2 No consent or waiver, express or implied, by any party hereto of any breach or default by any other party hereto in the performance of its obligations hereunder shall be deemed to or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of any party to complain of any act or failure to act on any other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by the first mentioned party of its rights hereunder.

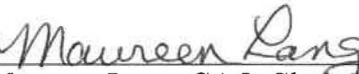
IN WITNESS WHEREOF the Corporate Seals of each of the parties hereto have been affixed duly attested by the respective authorized signing officers:

EXECUTED IN QUADRUPLICATE



Approved as to Content
Municipal Engineer
Powassan

POWASSAN

Per: _____
Peter McIsaac, Mayor

Per: 

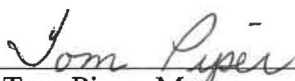
Maureen Lang, CAO-Clerk-Treasurer

[I have authority to bind the corporation]


Date: _____



Approved as to Content
Operations Superintendent
Nipissing

NIPISSING
Per: 

Tom Piper, Mayor

Per: 

Charles Barton, CAO-Clerk

[I have authority to bind the corporation]

Date: Feb. 4, 2020

Schedule "A"

POWASSAN SCHEDULE OF JOINT JURISDICTION HIGHWAYS

1. The Municipality of Powassan agrees to maintain and keep in repair the boundary road between Concessions 3 and 4, Lot 35, Gurd, of the Township of Nipissing and Concessions 3 and 4, of the Municipality of Powassan referred to as Butterfield Road.
2. The Municipality of Powassan agrees to maintain and keep in repair the boundary road at Concession 1, Lots 1,2,3,4 and 5, of the Township of Nipissing and at Concession 8, Lots 29, 30, 31, 32 and 33 of the Municipality of Powassan referred to as Schlosser Line.
3. The Municipality of Powassan agrees to maintain and keep in repair the boundary road starting 200 metres south of the Hummel Bridge over the South River between Concession 1 and Part of Concession 2 of the Township of Nipissing and Concession 9 and Part of Concession 10 of the Municipality of Powassan referred to as Hemlock Road.
4. The winter maintenance shall include sanding, snowplowing and thawing culverts.
5. That summer maintenance will be the responsibility of the respective municipalities.

Schedule "B"

NIPISSING SCHEDULE OF JOINT JURISDICTION HIGHWAYS

1. The Township of Nipissing agrees to maintain and keep in repair the boundary road between Concessions 5 and 6, Gurd, Lot 35, of the Township of Nipissing and Concessions 5 and 6, Lot 37, of the Municipality of Powassan referred to as Butterfield Road.
2. The Township of Nipissing agrees to maintain and keep in repair the boundary road starting 200 metres south of the Hummel Bridge over the South River between Part of Concession 2 and Concession 3 and 4 of the Township of Nipissing and Part of Concession 10 and Concession 11 and 12 of the Municipality of Powassan to Highway 534 referred to as Hemlock Road and Alsace Road.
3. The winter maintenance shall include sanding, snowplowing and thawing culverts.
4. That summer maintenance will be the responsibility of the respective municipalities.

Schedule "C"

POWASSAN SCHEDULE OF CONNECTING HIGHWAYS

1. That the Municipality of Powassan agrees to winter maintenance which shall include sanding and snowplowing on Sprucedale Road located in the Township of Nipissing.

Schedule "D"

NIPISSING SCHEDULE OF CONNECTING HIGHWAYS

1. That the Township of Nipissing agrees to winter maintenance which shall include sanding and snowplowing on Munro Park Road located in the Municipality of Powassan.
2. The Township of Nipissing agrees to maintain and keep in repair, including Capital Improvements, the Ski Hill Road located between Concession 12 and 13, Lot 35 in the Municipality of Powassan.