

The Corporation of the Township of Huron-Kinloss



BY-LAW

2021-67

Being a By-Law to Adopt a Shoreline Protection Policy
for the Township of Huron-Kinloss

WHEREAS The Council for The Corporation of the Township of Huron-Kinloss deems it expedient to establish policies;

AND WHEREAS the Municipal Act S.O. 2001, c 25, Section 5(3), 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;

NOW THEREFORE the Council of The Corporation of the Township of Huron-Kinloss enacts as follows:

- 1.0 That the Corporation of the Township of Huron-Kinloss Council hereby adopts the Shoreline Protection Policy as contained in the attached Schedule "A" to this by-law.
- 2.0 This by-law shall come into full force and effect upon final passage.
- 3.0 This by-law may be cited as the "Shoreline Protection Policy By-Law"

READ a FIRST and SECOND TIME this 21st day of June, 2021.

READ a THIRD TIME and FINALLY PASSED this 21st day of June, 2021

A handwritten signature in black ink, appearing to be "Mitch Twolan".

Mitch Twolan, Mayor

A handwritten signature in black ink, appearing to be "Emily Dance".

Emily Dance, Clerk



The Corporation of the Township of Huron-Kinloss

Policy

Section: 5.0 General

Policy: Shoreline Erosion Protection

By-Law: 2021-67

Date: 21 June 2021

Revision: [Click here to enter text.](#)

Coverage:

The policy shall cover all applications requesting to install, re-enforce or construction works within the shore road allowance, marine road allowance or lands within the Township's jurisdiction for the purpose of shoreline erosion protection.

Policy Statement:

The Township supports shoreline erosion protection along the Lakeshore. Individuals requesting to install, re-enforce or construction works within the shore road allowance, marine road allowance or lands within the Township's jurisdiction for the purpose of shoreline erosion protection are required to enter into an access and indemnification agreement with the Township. The Township will only give permission to install the works, Saugeen Valley Conservation Authority being the approval body for the works along the shore being responsible for approving the works.

Legislative Authority:

Authority having jurisdiction

Contents:

Due to the increased water level of Lake Huron, lakefront property owners abutting the shore road allowance or marine road allowance are required to request permission from the Township and the Saugeen Valley Conservation Authority (SVCA) to install, re-enforce and construct erosion protection within the shore road allowance or marine road allowance.

Definitions:

"Applicant" means a person who is the registered owner of the land which abuts a shore road allowance, marine road allowance or other land owned by the Township. An Applicant may include an individual and/or corporation authorized by the registered owner(s) to bring the application on behalf of the registered owner(s) of the land that is benefiting from the works.

"Application" means a written request to the Township in the form attached as Appendix A.

"Application Fee" means the administrative fee imposed by the Township from time to time to process the Application.

"Staff" means one or more individuals employed by the Township who is/are designated to process an application.

"Works" or "Work" means the works proposed in an "Application to Alter a Watercourse pursuant to the Conservation Authorities Act, R.S.O., 1990, c.C.27. ("SVCA Application")"

"SVCA" or "Saugeen Valley Conservation Authority" means the authority responsible for the regulation of development, interference with wetlands and alterations to shorelines and watercourse within the jurisdiction of the Township of Huron-Kinloss O.Reg.169/06, s.1.

"MNR" means the Ministry of Natural Resources and Forestry.

Application of Policy:

This policy applies to all requests received from owners of property to construct/install shoreline erosion protection works on/within the shore road allowance marine road allowance or other property within the jurisdiction of the Township or on Township land. This includes all new applications and/or repairs to existing protection works.

Appendices:

Appendix A – Application form

Appendix B - Access and Indemnification Agreement

The Appendices attached hereto form part of this Policy.

Procedure:

The Municipality recognizes that there are private properties along the shoreline that have minimal yard setbacks and that the water levels can be sporadic. Should the private property owner(s) apply to the Township to have works considered to be constructed/repared on municipal land to protect their infrastructure then the following procedure is to be adhered to and the following documentation shall be provided:

1. Applications received by the Township will be processed through the Clerk's Department.
2. All Applications must be submitted in writing or electronically to the Township and directed to the attention of the Clerk and must include the following:

- a. Application Form
- b. Application / Deposit Fee/ Securities if applicable
- c. Information/Documents outlined in below.

*An application will not be deemed complete without items a, b and c and any other documentation/information required.

- a. Proof of identification of the registered owners of the abutting lands impacted by the increasing water levels.
- b. Proof of ownership of the lands impacted by the water levels from the Applicant, including the legal boundaries of those lands in relation to the location of the proposed works (this will require production of a survey or surveyor's sketch or report from a surveyor as to the boundaries of the Applicant's property);
- c. Details of the proposed work;
- d. Exact location of the proposed work. An up-to-date Ontario Land Survey will be required to pin the property bars if none are evident to confirm the boundary limits on the private property;
- e. An Engineering Report confirming:
 - i. that there are no viable options to complete the works on the Applicant's property;
 - ii. the urgency of the works;
 - iii. the details of what is to be constructed; and
 - iv. the total costs of works.
- f. The proposed start date and completion date of the works;
- g. A copy of the SVCA Application submitted to SVCA;
- h. Proof that the Applicant has contacted the MNR and has submitted their proposal along with details and location of the Works to MNR; and
- i. Property owners(s) shall enter into an Access and Indemnification Agreement with the Township. The standard form agreement attached as Appendix B ("Access and Indemnification Agreement") shall be required to be signed by all property owners as a condition of approval of the works. It is understood that each agreement may be amended from time to time to address specific provisions additional to the attached standard form.

3. All Applications will be processed based on the order received and will receive the same treatment unless a Letter or Report is provided from a Professional Engineer which confirms that the work being proposed is deemed an emergency. In the case of an emergency, as confirmed by the Professional Engineer, approval may be granted on a temporary basis for a period of 6 months until all conditions required by the Township have been satisfied ("Temporary Approval").
4. Any Applications deemed incomplete will not be considered. If an incomplete application is submitted, Staff will inform the Applicant by telephone or email.
5. Once an application has been deemed complete a staff report and agreement will be forwarded to Council for Final Approval. Any Final Approval remains subject to the terms and conditions in the Access and Indemnification Agreement being complied with/satisfied.

Existing Works

6. For works constructed/installed on lands under the jurisdiction of the Township that are existing and have not received permission from the Township to be constructed/installed on the lands in question, Staff shall send a Notice by registered mail and regular mail to the abutting property owner(s) benefiting from the Works outlining the items that are required to be satisfied within six months from the date of the Notice or the Works are to be removed.
7. If the conditions in item 6 are not complied with, the Township may require:
 - i. removal of all or part of the work at the expense of the private landowner who installed the work without permission; or
 - ii. the existing work be deemed safe by a qualified professional at the expense of the landowner who installed the work if this can be determined.
8. Notwithstanding the above, Council shall have sole discretion on waiving any terms or conditions in the above and/or determining whether work is to be removed and/or remain on the shore road allowance marine road allowance or other Municipal land.



Township of Huron-Kinloss Shoreline
Erosion Protection Application

Foruse by Principal Authority			
Application number:		Permit number (if different):	
Date received:		Roll number:	
Application submitted to: _____ (Name of municipality, upper-tier municipality, board of health or conservation authority)			
A. Project information			
Building number, street name		Unit number	Lot/con.
Municipality	Postal code	Plan number/other description	
B. Purpose of application			
Details of proposed work:			
Estimated Cost of Construction:			
C. Applicant Applicant is: <input type="checkbox"/> Owner or <input type="checkbox"/> Authorized agent of owner			
Last name		First name	Corporation or partnership
Street address		Unit number	Lot/con.
Municipality	Postal code	Province	E-mail
Telephone number	Fax		Cell number
D. Owner (if different from applicant)			
Last name		First name	Corporation or partnership
Street address		Unit number	Lot/con.
Municipality	Postal code	Province	E-mail
Telephone number	Fax		Cell number

E. Contractor				
Last name		First name	Corporation or partnership (if applicable)	
Street address			Unit number	Lot/con.
Municipality		Postal code	Province	E-mail
Telephone number		Fax		Cell number

I _____ declare that:
 (print name)

The information contained in this application, attached schedules, attached plans and specifications, and other attached documentation is true to the best of my knowledge.

If the owner is a corporation or partnership, I have the authority to bind the corporation or partnership.

Date

Signature of applicant

Additional Attachment Check List

	Proof of identification and ownership
	Survey (if required to verify property line)
	Detailed site plan
	Engineering Report with: - detailed drawings of proposed work (e.g. site plan, profile) - urgency of work and outline that there are no other viable options
	Proposed start date
	Saugeen Valley Conservation Authority application submission
	Proof that applicant has made the Ministry of Natural Resources aware of the proposed work

ACCESS AND INDEMNIFICATION AGREEMENT

THIS ACCESS AND INDEMNIFICATION AGREEMENT (the “**Agreement**”) made this _____ day of _____, 20__

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF HURON-KINLOSS
A municipal corporation in the Province of Ontario
pursuant to the *Municipal Act, 2001*

(hereinafter referred to as the “**Municipality**”)
OF THE FIRST PART

- and -

[INSERT LANDOWNER’S NAME OR NAMES]
An individual, corporation or other legal entity

(hereinafter referred to as the “**Landowner**”)
OF THE SECOND PART

(all of the above individually hereinafter referred
to as a “**Party**” and collectively hereinafter referred to
as the “**Parties**”)

RECITALS

- A. The Municipality, based on the information provided to it by the Landowner, is the owner of property known as the Original Road Allowance or Marine Road Allowance along the shores of Lake Huron, (the “**Shore Road Allowance/ Marine Road Allowance**”).
- B. The Landowner is the owner of property (the “**Landowner’s Property**”) as set out in Schedule “A” – Municipal Address and Legal Description of Landowner’s Property to this Agreement and such property abuts or adjoins the Shore Road Allowance or Marine Road Allowance.
- C. The Landowner is requesting, and the Municipality is agreeing to provide, access to the Shore Road Allowance or Marine Road Allowance to construct, maintain, and inspect certain structures on this property to combat issues caused by increasing water levels of Lake Huron, including but not limited to, erosion, (the “**Work**”).
- D. This Agreement provides the general terms and conditions governing any access to the Shore Road Allowance or Marine Road Allowance by the Municipality to Landowner to perform such Work. The Municipality and Landowner have further provided specific requirements for the Work proposed by the Landowner and as required by the Municipality, which are included within Schedule “B” – Additional Terms and Conditions of Access to this Agreement.

NOW THEREFORE in consideration of the covenants contained herein and other good and valuable consideration and the sum of one (\$1.00) dollar of lawful money of Canada now paid by each of the Parties (the receipt of which is hereby acknowledged), the Parties hereby covenant and agree as follows:

ARTICLE 1 - RECITALS

- 1.1. **Recitals.** The Parties hereby irrevocably acknowledge and declare that the foregoing recitals are true and correct in substance and in fact, and form part of this Agreement.

ARTICLE 2 – INTERPRETATION AND SCHEDULES

2.1. **Definitions.** Unless otherwise defined in this Agreement, the following terms shall have the meanings set out below:

“**Agreement**” means this agreement and all attached schedules, in each case as supplemented, amended, restated or replaced from time to time in accordance with the provisions hereof.

“**Applicable Law**” means all mandatory laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licences, authorizations, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers of governments, Canadian, provincial and municipal, ordinary or extraordinary which now or at any time hereafter may be applicable to and enforceable against the relevant work in question or any part thereof.

“**Business Day**” means any day except Saturday, Sunday or any date on which Canadian chartered banks are generally not open for business in Ontario.

“**Claims**” means all past, present and future claims, suits, proceedings, liabilities, obligations, losses, damages, penalties, judgments, costs, expenses, fines, disbursements, legal fees on a substantial indemnity basis, interest, demands and actions of any nature or any kind whatsoever.

“**Landowner’s Property**” means the lands described in Schedule “A” – Municipal Address and Legal Description of Landowner’s Property hereto.

“**Municipal Act**” means the *Municipal Act*, 2001, S.O. 2001, c.25 as amended, or any successor legislation.

“**Municipality**” means The Corporation of the Township of Huron-Kinloss.

“**Notice**” has the meaning given to it in Article 9 of this Agreement.

“**Landowner**” includes the successors, assigns, heirs, executors, administrators, or other legal representative of the Landowner of whom the context may apply according to applicable law.

2.2. **Sections and Headings.** The division of this Agreement into Articles, Sections and Subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

2.3. **Lists.** Whenever a statement or provision in this Agreement is followed by words denoting inclusion of examples and then lists or references specific items such list or reference should not be read as to limit the generality of that statement or provision even if words such as “without limiting the generality of the foregoing” do not precede such list or reference.

2.4. **Reference to Statutes.** References herein to any statute or any provision thereof includes such statute or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto.

2.5. **Schedules.** The following schedules are attached hereto and are incorporated in and are deemed to be an integral part of this Agreement:

Schedule “A” – Municipal Address and Legal Description of Landowner’s Property

Schedule “B” – Additional Terms and Conditions of Access

2.6. **Conflict of Provisions.** This Agreement and the attached schedules are to be construed together. In the case of any conflicting provisions between this Agreement and the attached schedules, the provision granting greater rights or remedies to the Municipality, or imposing the greater duty, standard, responsibility or obligation on the Landowner, shall govern.

ARTICLE 3 – TERMS OF ACCESS

- 3.1. **Conditions of Access.** All rights of the Landowner to perform the Work under this Agreement are conditional and subject to receiving the written approval by the Municipality of the Work, including but not limited to;
- a) The location of the Work within the Shore Road Allowance, Marine Road Allowance OR municipal property;
 - b) The location of the Landowner's property in relation to the location of the Work, as confirmed by Ontario Land Surveyor (OLS);
 - c) The type of Work, including any material structures to be placed within the Shore Road Allowance or Marine Road Allowance as part of the Work;
 - d) An engineering report relating to the Work, as requested by the Municipality;
 - e) Any and all designs, sketches, and plans relating to the Work as requested by the Municipality; and
 - f) Any and all permits obtained or submitted in relation to the Work.
- (hereinafter referred to as "**Work Design**").
- 3.2 **Fees.** The Landowner agrees to pay to the Municipality prior to the execution of this Agreement, an administration fee for the cost of preparing and administering this agreement and shall further pay to the Municipality a deposit fee as outlined in the Township of Huron-Kinloss Consolidated Rates and Fees By-Law.
- 3.3 **Security.** The Landowner shall provide a deposit to the Municipality in the amount stipulated in Schedule "B" prior to access to the Shore Road Allowance or Marine Road Allowance and performing the Work ("**Security**"). The Security shall be in the form of cash or in another form, as agreed to by the Municipality, the particulars of which are outlined in Schedule "B". The Security will be held by the Municipality in a non-interest bearing account until the Work is fully constructed, as determined by the Municipality in its sole discretion, in accordance with the Work Design and/or upon receipt of a letter from a professional engineer confirming that the Works have been constructed in accordance with the Work Design. If the Landowner does not complete the Work for any reason or at any time, the Municipality, at its sole discretion, has the option to either complete the Work or remove the Work and return the Shore Road Allowance or Marine Road Allowance to its original condition. If it does so, the Municipality shall be entitled to take from the Security any amounts incurred by it to complete or remove the Work. The Municipality reserves the right, at any time, to review the amount of the Security in light of the value of the Work remaining to be completed and to require an adjustment in the Security, such adjustment to be based upon any anticipated changes to site conditions or construction costs. Any additional security shall be paid forthwith to the Municipality by the Landowner when requested.
- 3.4 **Right to Access.** Subject to Section 3.1 above, the Municipality hereby consents to the Landowner entering upon the Shore Road Allowance or Marine Road Allowance to access and perform the Work. Access under this Agreement shall not be construed or interpreted as providing any exclusive rights of possessing the area in which the Work is located. The Work shall not obstruct public use or enjoyment of the Shore Road Allowance or Marine Road Allowance in any way. The permission granted under this section shall be subject to the Landowner providing the Municipality with at least forty-eight (48) hours written notice before conducting any construction, maintenance, or inspection of the Work.
- 3.5 **Obligations of the Landowner.** The Landowner hereby accepts the land in which the Work is to be located under this Agreement "as is" and agrees that the Municipality is providing no representations or warranties regarding the suitability of the Shore Road Allowance

or the Marine Road Allowance for the Work or any environmental issues. The Landowner hereby covenants and agrees to proceed at its own cost and expense with the requisite construction, maintenance, and repair of the Work, all in accordance with the Work Design, through to completion and shall supervise and direct all aspects of the Work, including without limitation as to the generality of the foregoing:

- a) Direct performance, maintenance, and repair, including payment of all associated costs to do so, for the Work;
 - b) Arrange for the preparation of all plans, work drawings and specifications required for the Work;
 - c) Correct or remedy or cause to be corrected or remedied, any violations of Applicable Law relating to the Work;
 - d) Obtain all necessary governmental approvals, consents, permits and licences required for the Work in accordance with the Work Design and Applicable Law;
 - e) Prepare, negotiate, and execute all necessary agreements, licences and other permits and arrangements as are required;
 - f) Cause all construction activities and maintenance to be performed by a qualified professional with all necessary insurance coverage, if required by the Municipality;
 - g) Cause all construction activities and maintenance to be performed in a good and workmanlike manner, all in compliance with the Work Design and Applicable Law;
 - h) Ensure that all insurance required pursuant to the terms of this Agreement, Applicable Law, construction contracts, or as may otherwise be required by the Municipality, is obtained and maintained in force, in each case in connection with the construction and development of the Work and provide certified copies of all policies of insurance to the Municipality upon request;
 - i) Shall use best efforts to organize and coordinate construction and maintenance activities relating to the Work to minimize disruption to Shore Road Allowance or Marine Road Allowance;
 - j) Shall provide an engineering letter confirming the Work has been completed in accordance with the Work Design; and
 - k) Upon request, provide such evidence as to payment of construction, maintenance, and inspection costs for the Work as the Municipality shall reasonably require.
- 3.6 **Consideration.** Any amounts payable by the Landowner to the Municipality for access for the purpose of the Work under this Agreement, including but not limited to, the Security as per Clause 3.3, any associated legal costs and/or disbursements, or applicable taxes, shall be determined in the sole discretion of the Municipality and agreed to by the Landowner within Schedule "B" to this Agreement.
- 3.7 **Ownership.** The Work and any modifications, revisions, or improvements therein, shall be and remain the sole and exclusive responsibility and property of the Landowner, notwithstanding the degree of its affixation to the Shore Road Allowance or Marine Road Allowance.
- 3.8 **Damage.** If the Landowner, directly or indirectly, causes any damage to the Shore Road Allowance or Marine Road Allowance, or any improvements located thereon, as result of Landowner exercising any rights pursuant to this Agreement, the Landowner shall remedy such damage immediately by restoring the Shore Road Allowance or Marine Road Allowance or improvement thereon to the condition in which they were found prior to the occurrence of the damage.
- 3.9 **No Representations or Warranties by Municipality.** The Municipality provides no representations, warranties, or any assurances whatsoever to the Landowner as to the Municipality's ownership of the Shore Road Allowance or the Marine Road Allowance, its authority to enter into this Agreement or as to the ability or inability of the

Landowner to perform or complete the Work, or any activities ancillary to the Work, including but not limited to, any environmental factors such as rising water levels or flooding.

- 3.10 **Municipality's Right to Information.** The Municipality shall have access to all materials, reports, studies, models, and other documentation relating to the Work upon request. The Landowner hereby consents to releasing to the Municipality any information held by any other party regarding the Work, including but not limited to, any government agencies. The Landowner undertakes and agrees to execute and deliver such further authorizations to access any information as set out within this Section, as the Municipality may request.
- 3.11 **No Transfer or Assignment.** The Landowner hereby acknowledges and agrees that this Agreement is not transferrable or assignable by it. The Landowner also agrees that prior to any lease, transfer, sale, or entering into a binding Agreement of Purchase and Sale of the Landowner's Property or any part thereof, (a "Conveyance") the Landowner shall forthwith notify the Clerk of the Municipality of such Conveyance together with the name and the address of the proposed lessee, transferee, or purchaser. Prior to any such Conveyance, the proposed lessee, transferee, or purchaser shall be required to sign an agreement with the Municipality regarding the Work.

ARTICLE 4 – ROLE OF MUNICIPALITY

- 4.1 **Municipality.** Nothing in this Agreement derogates from, interferes with, or fetters the exercise by the Municipality of all of its rights and obligations as a municipality (whether discretionary or mandatory), or imposes any obligations on the Municipality in its role as a municipality, and the Municipality shall not be prevented from or prejudiced in carrying out its statutory rights and responsibilities, including but not limited to, its planning rights and responsibilities, and the application of the *Building Code Act* (Ontario), its Regulations, or successor legislation. Nothing in this Agreement derogates from, interferes with, or fetters the exercise by the Municipality's officers, employees, agents, representatives or elected and appointed officials of all of their rights, or imposes any obligations on the Municipality's officers, employees, agents, representatives or elected and appointed officials.

ARTICLE 5 – INDEMNIFICATION AND RELEASE

- 5.1 **Indemnification.** The Landowner shall defend, indemnify and save harmless the Municipality from any and all Claims whatsoever arising from this Agreement, including but not limited to, those arising out of:
- a) Any breach, violation, or non-performance of any covenant, condition or agreement set forth in this Agreement to be fulfilled, kept, observed or performed by the Landowner;
 - b) Any injury to person or persons, including death resulting at any time therefrom, occasioned, connected to, or related to the Work; and
 - c) Any damage to or loss of property occasioned, connected to, or related to the Work.

The obligation of the Landowner to indemnify the Municipality contained in this Section shall survive any termination of this Agreement, anything in this Agreement to the contrary notwithstanding.

- 5.2 **Release.** The Landowner hereby releases the Municipality, its Council, individual councillors, officers, directors, agents, representatives, employees and volunteers from all liability, recourse, proceedings, claims, and causes of action of any kind whatsoever, including but not limited to, any claims under the *Occupiers' Liability Act*, R.S.O. 1990, c. O.2., as amended and the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, or any other statutory duty of care, any negligence, or breach of contract, and damages, for costs or expenses of whatsoever kind, nature, or description, whether direct or indirect, present or future, whether known or unknown, and any injury, including but not limited to death, arising out of or in any way connected with or resulting from the Work. This release shall be binding upon the Landowner's heirs and personal representatives.

Landowner's

Initials: _____

ARTICLE 6 - INSURANCE

- 6.1 **Insurance.** The Landowner shall obtain and maintain a comprehensive insurance policy of which a prudent owner in similar circumstances would obtain, providing not less than a minimum liability coverage of two million dollars (\$2,000,000.00) per occurrence, protecting the Municipality and for its additional benefit, and those for whom the Municipality is in law responsible for, from any and all claims for damages, personal injury including death, and for any claims from property damage, which may arise from the Work, including any act or omission of the Landowner and/or its contractors, agents, or employees for any obligation under this Agreement, and such coverage shall include all costs, charges, and expenses reasonably incurred with any injury or damage.
- 6.2 **Coverage.** The insurance policy as required under Section 6.1 above shall extend to cover the contractual obligations of the Landowner as provided for within this Agreement, shall be in the name of the Landowner, and shall name the Municipality as an additional insured thereunder. The policy shall provide that it cannot be cancelled, lapse, or be materially changed without at least sixty (60) days' notice to the Municipality by registered mail. Evidence of this insurance satisfactory to the Municipality shall be provided by the Landowner prior to the execution of this Agreement, and annually thereafter.

ARTICLE 7 – RESPONSIBILITY AND COSTS

- 7.1 **Sole Responsibility of Landowner.** All costs associated with the Work, including but not limited to, the construction, maintenance, and inspection of the Work, shall be the sole responsibility of the Landowner.
- 7.2 **Repair and Replacement by Landowner.** In the event of damage to or destruction of the Work or any part thereof, the Landowner shall replace the portion of the Work damaged or destroyed at its own cost. Any such replacement, repair, reconstruction or removal of the Work, or any part thereof, shall be commenced diligently after such damage or destruction and in any event within thirty (30) days thereafter or such longer period, not to exceed ninety (90) days after such damage or destruction, as is reasonably necessary having regard to the circumstances at such time, shall be completed. Alternatively, if removing the Work, this shall be considered termination of this Agreement by the Landowner and shall be subject to the Landowner's obligations as set out in Section 8.3 below.
- 7.3 **Third Party Liens.** The Landowner shall, at its own cost and expense, cause any and all construction liens, including but not limited to, those with respect to labour, services or materials alleged to have been furnished to or to have been charged to or for the Landowner or any person on its behalf, and any other lien, which may be registered against or otherwise affect the Shore Road Allowance or Marine Road Allowance, to be paid, satisfied, released, cancelled and vacated forthwith after registration of any such lien.
- 7.4 **No Agency.** Nothing in this Agreement, or any other document related thereto, shall be constituted as giving the Landowner any right, power, or authority to contract for or permit the performance of any labour or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against the Municipality in respect thereof. Notice is hereby given that the Municipality shall not be liable for any labour or services performed or any materials or other property furnished in respect of the Work or any part thereof and that no construction or other lien for any such labour, services, materials or other property shall attach to or affect the interest of the Municipality.
- 7.5 **Lien.** The Landowner agrees that any and all costs, sums and expenses paid, incurred or sustained by the Municipality as herein provided shall form and constitute a charge or lien on the lands set out in Schedule "A" attached hereto until fully paid.

ARTICLE 8 – TERMINATION AND REMEDIES

- 8.1 **Duration and Termination.** This Agreement shall remain in full force and effect unless terminated earlier as provided for herein. This Agreement may be terminated by the Municipality at any time upon sixty (60) days written notice to the Landowner, in accordance with Article 9 below. This Agreement may not be terminated by the Landowner.

- 8.2 Events of Default; Immediate Termination.** In any of the following events (each an “Event of Default”):
- a) If the Landowner shall fail or neglect to perform or comply with any of the terms, covenants, or conditions contained in this Agreement on the part of the Landowner to be performed or observed, the Municipality may at any time thereafter, give Notice of such failure or neglect to the Landowner, and if the Landowner has not corrected the matter complained of within a period of ten (10) Business Days after giving such Notice;
 - b) A breach of an obligation by the Landowner has resulted in cancellation of the insurance coverage as required within Article 6 above where the Landowner has not prior to or concurrent with such cancellation replaced such coverage with comparable coverage, or a breach of an obligation where there has been a notice of cancellation of insurance coverage which has not been cured and where the Landowner has not, within the period set out in such notice (or within ten (10) Business Days where no period is set out therein) replaced such coverage with comparable coverage or which is otherwise a breach of the obligations respecting insurance; or
 - c) The Work is abandoned by the Landowner, as determined by the Municipality in its sole discretion;

then the Municipality, at its option, may terminate this Agreement by Notice to the Landowner, in which event such termination shall be effective immediately upon the delivery of such Notice.

- 8.3 Obligations of the Landowner on Termination.** Upon termination of this Agreement, the Landowner shall promptly undertake and be solely responsible for returning the Shore Road Allowance or the Marine Road Allowance where the Work is located to a condition that is not materially different from that in which the Municipality originally provided access under this Agreement, including but not limited to, the removal of any structures and contaminants connected or related to the Work. For greater certainty, the foregoing obligations of the Landowner shall include the treatment of water, including surface and groundwater, and the remediation by removal of any soils containing contaminants at levels exceeding the standards set as acceptable at the time of remediation under Applicable Law. Any soil so removed shall be promptly replaced by soil free of contaminants at concentrations above the standard described in the preceding sentence.
- 8.4 Survival of Landowner’s Obligations.** The obligations of the Landowner under this Article 8, including the Landowner’s obligation to remove the Work and remediate the Shore Road Allowance or Marine Road Allowance, shall survive the termination of this Agreement. If after the termination of this Agreement, the performance of those obligations by the Landowner requires access to the Shore Road Allowance or Marine Road Allowance (or any part thereof), the Landowner shall have such access and entry at such times and upon such terms and conditions as the Municipality may, from time to time, specify. The obligations of the Landowner under this Article 8 are in addition to, and shall not limit, the obligations of the Landowner contained in other provisions of this Agreement.
- 8.5 Right to Cure Defect.** Without limiting any other rights or remedies the Municipality may have arising out of this Agreement or at law in respect of any default in the performance of the Landowner’s obligations under this Agreement, the Municipality shall have the right, in the case of any default, to cure or attempt to cure such default (but this shall not obligate the Municipality to cure or attempt to cure any such default or, after having commenced to cure or attempt to cure such default, prevent the Municipality from ceasing to do so), including but not limited to, removing the Work, and the Landowner shall forthwith on demand promptly reimburse the Municipality for any expense incurred by the Municipality in so doing.
- 8.6 Remedies of Municipality Generally.** If an Event of Default shall have occurred and be continuing, the Municipality, whether or not this Agreement shall have been terminated pursuant to the provisions hereof, may after providing Notice, remove the Works or any part thereof. The Landowner shall forthwith on demand promptly reimburse the Municipality for any expense incurred by the Municipality in so doing. The Municipality shall not be

under any liability to the Landowner for or by reason of any such removal. The Municipality shall additionally have all other rights and remedies, including damages and injunction, at law or in equity arising upon any default by the Landowner under this Agreement. Such remedies are not exclusive or alternative, but the Municipality may from time to time have recourse to all or any of such remedies.

ARTICLE 9 – NOTICE

9.1 **Notice.** Any notice, demand, request, consent, agreement or approval which may or is required to be given pursuant to this Agreement shall be in writing and shall be sufficiently given or made if served personally upon an officer of the party for whom it is intended, or couriered, or mailed by prepaid registered mail, or by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender, and in the case of:

a) To the Municipality, addressed to it at:

Township of Huron-Kinloss
21 Queen Street, P.O. Box 130
Ripley, ON
N0G 2R0
Attention: Clerk
Fax: 519-395-4107

b) To the Landowner, addressed to it at:

Attention:
Tel:
Email:

or to such other address or in care of such other officers as a party may from time to time advise to the other parties by notice in writing. The date of receipt of any such notice, demand, request, consent, agreement or approval if served personally, by telecopy or email, shall be deemed to be the date of delivery thereof, or if mailed as aforesaid, five (5) business days from mailing.

ARTICLE 10 – GENERAL

10.1 **Registration of this Agreement.** The Municipality may, at its sole option and discretion, register this Agreement against the title to Landowner's Property as the Landowner as applicant, and by the Landowner duly signing this Agreement, no further consent to register this Agreement is required to be obtained by Municipality. The cost of preparation and registration of same, as outlined in Schedule B, shall be paid by the Landowner at the time of signing of this Agreement. The Municipality may, in its discretion, require the Landowner to obtain postponements of any mortgages or other charges registered against title to the Landowner's Property that would otherwise take priority over this Agreement.

10.2 **Severability.** If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, that provision will, as to that jurisdiction, be ineffective only to the extent of that restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement, without affecting the validity or enforceability of that provision in any other jurisdiction and, if applicable, without affecting its application to the other parties or circumstances. The Parties shall engage in good faith negotiations to replace any provision which is so restricted, prohibited or unenforceable with an unrestricted and enforceable provision, the economic effect of which comes as close as possible to that of the restricted, prohibited or unenforceable provision which it replaces.

10.3 **Successors.** This Agreement is binding on, and enures to the benefit of, the Parties and their respective successors, assigns, heirs, executors, administrators, or other legal representatives.

- 10.4 **Entire Agreement.** This Agreement constitute the entire agreement among the Parties. There are no oral representations or warranties among the parties of any kind. This Agreement may not be amended or modified in any respect except by written instrument signed by both Parties.
- 10.5 **Governing Law.** This Agreement is governed by, and interpreted and enforced in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in that province, excluding the choice of law rules of that province.
- 10.6 **Independent Legal Advice.** Each of the Parties acknowledges that it has read and understands the terms and conditions of this Agreement and acknowledges and agrees that it has had the opportunity to seek, and was not prevented or discouraged by any other party from seeking, any independent legal advice which it considered necessary before the execution and delivery of this Agreement and that, if it did not avail itself of that opportunity before signing this Agreement, it did so voluntarily without any undue pressure. A failure by a Party to obtain independent legal advice shall not be used by it as a defense to the enforcement of its obligations under this Agreement.
- 10.7 **Waiver.** The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party shall not be construed as a waiver of any subsequent breach of the same or other provisions.
- 10.8 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together constitute one agreement. Delivery of an executed counterpart of this Agreement by facsimile or transmitted electronically in legible form, including in a tagged image format file (TIFF) or portable document format (PDF), shall be equally effective as delivery of a manually executed counterpart of this Agreement.
- 10.9 **Further Assurances.** The Parties agree to execute such further documents and consents as required for the purposes that may affect the carrying out of this Agreement.
- 10.10 **Effective Date.** This Agreement is effective from the date it is signed by the Municipality.

[SECTION INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the Parties hereto have executed this Agreement under seal, as of the date first written above.

**THE CORPORATION OF THE TOWNSHIP OF
HURON-KINLOSS**

Per: _____
Name:
Title: Mayor

Per: _____
Name:
Title: Clerk

We have the authority to bind the Corporation.

LANDOWNER(S)

Witness:

Name:

Witness:

Name:

SCHEDULE 'A'

MUNICIPAL ADDRESS/LEGAL DESCRIPTION OF LANDOWNER'S PROPERTY

Municipal Address: _____

Legal Description: _____

SCHEDULE 'B'

ADDITIONAL TERMS AND CONDITIONS OF ACCESS

1. Security (per s.3.3):
2. Legal Fees/Disbursements (per s.3.6):
3. Other Consideration (per s.3.6):