

Appendix F: Sample Contract



MUNICIPALITY

OF THE

COUNTY OF KINGS

STANDARD ROAD MAINTENANCE

AGREEMENT

SERVICE AREA: _____

THIS AGREEMENT dated for reference the day of _____,
199____.

BETWEEN:

THE MUNICIPALITY OF THE COUNTY OF KINGS, a body
corporate pursuant to the provisions of the Municipal Act RSNS, 1989, Chapter
295 (the Municipality)

OF THE FIRST PART

AND:

@COMPANY-NAME, a body corporate, incorporated under the laws
of the Province of _____ and having its registered office at @ADDRESS,
@CITY, Nova Scotia @ Province, @POSTAL CODE (the "Contractor")

OF THE SECOND PART

SCOPE OF SERVICES

- A. The Municipality has agreed to appoint and retain the Contractor to provide certain highways maintenance services; and
- B. The Contractor has agreed to provide such services for the Municipality on the terms of this Agreement.

NOW THEREFORE in consideration of the premises and the covenants, agreements, representations, warranties and payments hereinafter contained the parties agree as follows:

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ARTICLE I:

DEFINITIONS

1.01 In this Agreement, unless the context otherwise requires:

- (a) “Act” means the Municipal Act and the Municipal Reform (1994) Act.
- (b) “Additional Maintenance Services” means the provision of all labour, materials and equipment for the purpose of maintaining highways at the request of the Municipal Engineer beyond the level of services required for Maintenance Services;
- (c) “Annual Maintenance Plan” means a plan that specifies the scheduling, location and quantity for completion of Annual Maintenance Services;
- (d) “Annual Maintenance Services” means those annual maintenance activities described as such in Schedule “2”;
- (e) “Bonds” means the performance bond and labour and materials bond as set out in Article X issued by a properly licensed surety company authorized to transact business in the Province of Nova Scotia in a form acceptable to the Engineer.
- (f) “Claim” means any demand, commencement of legal proceedings, settlement discussions or alternative dispute resolution mechanisms and any termination, suspension, abandonment, discontinuance, appeal or review thereof;
- (g) “Contract Price” means the amount payable by the Municipality to the Contractor in respect of the Maintenance Services as may be adjusted from time to time in accordance with the terms of this Agreement;
- (h) “Contractor” means the person, firm or corporation identified as such in the Agreement. The term Contractor means the Contractor or an authorized representative as designated in writing.
- (i) “Contractor’s Expenses” means for the purpose of Article IX, amounts, based on the fees set out in Part II of Schedule “3”, payable to the Contractor under this Agreement for repairs or restorations made by or on behalf of the Contractor with respect to damage to Municipal Property caused by persons other than the Contractor or the Controlled Persons;
- (j) “Controlled Persons” means the Contractor’s subcontractors,

servants, employees, agents, management, shareholders, directors and suppliers;

(k) “Cost Schedule” means the schedule of fees for the provision of Services attached as Schedule “3”;

(l) “Emergency” means any of the events or conditions described in the Maintenance Services for “Flood Control and Washout Response”, Earth and Rock Slide Response” and “Structural Damage Response” that may entitle the Contractor to receive payment for excess work performed by the Contractor;

(m) “Emergency Services” means the provision of all labour, materials and equipment for the purpose of maintaining the Highways beyond the level of services required for Maintenance Services in an Emergency;

(n) “Engineer” means the Municipal Engineer or other persons authorized to represent the Municipality in the administration of this Agreement.

(o) “Equipment” means the maintenance equipment used in providing the Services by the Contractor;

(p) “Event of Default” means any event described in section 18.01;

(q) “Force Majeure” means acts of God, wars (declared or undeclared), revolution, riot, insurrection, strikes or lockouts, provided that any such event is a major disabling event or circumstance in relation to the normal operations of the party concerned as a whole which is beyond the reasonable control of the party directly affected and results in a material delay, interruption or failure by such party in carrying out its duties, covenants or obligations under this Agreement, provided always that lack of money, financing or credit to resolve such contingencies will not be deemed an event by force majeure;

(r) “Government Property” means Roads and all structures and other property appurtenant thereto owned by the Municipality, including without limiting the generality of the foregoing all signs, guardrails, pavement, roadbeds, shoulders, culverts, tunnels, bridges, fences and posts, which the Contractor is obligated to replace, repair or maintain under this Agreement;

(s) “Extraction Permit” means the permit to extract gravels issued by Nova Scotia Department of Environment;

(t) “Local Roads” means all roads, as defined in the Act, under the administration of the Municipality, and without limiting the generality of

the foregoing includes

- (i) all ancillary works, excavation, embankments and improvements reasonably related to the operation of the local roads,
 - (ii) all licenses, properties, rights of way and easements ancillary to roads existing as of the date of the Agreement as determined by reference to the records of the Province, and/or Municipality
 - (iii) any roads added, deleted or changed in classification
- (u) “Maintenance Services” means the provision of all labour, materials and equipment for the purpose of providing the services described in Schedule “2” as may be amended from time to time in accordance with Article VII;
- (v) “Municipality” means the Municipality of the County of Kings as defined in the Municipal Act.
- (w) “Municipal Material” means any and all materials, equipment, components, supplies and personal property of any nature or kind whatever that are provided by or on behalf of the Municipality to the Contractor prior to or during the Term of this agreement;
- (x) “Quality Assurance Program” means the Quality Assurance Program approved by the Engineer as amended from time to time by the Engineer in the Engineer’s sole discretion by notice to the Contractor;
- (y) “Signs” means any highways signs required to be erected by the Contractor as part of the Maintenance Services excluding traffic control signs and temporary signs required to perform the Work of this Contract. Temporary signage required to perform the work will be in accordance with Temporary Workplace Traffic Control Manual as prepared by Nova Scotia Department of Transportation & Public Works.
- (z) “Subcontractors” means persons, firms, or corporation having a direct contact with the Contractor to perform a part or parts of the Work, or to supply products worked to a special design according to the Contract Documents, but does not include one who merely supplies products not so worked.
- (aa) “Term” means the term of this Agreement described in section 3.02.

ARTICLE II: REPRESENTATIONS AND WARRANTIES

2.01 The Contractor represents and warrants to the Municipality on the execution of this Agreement and at all times thereafter during the Term that:

- (a) it is a corporation duly organized and validly existing under the laws of Nova Scotia;
- (b) it has sufficient trained staff, facilities, materials, appropriate equipment and approved subcontractual agreements in place and available to enable it to fully perform the Services; and
- (c) this Agreement has been legally and properly executed by the Contractor and is legally binding upon and enforceable against the Contractor in accordance with its terms;
- (d) all information, statements, documents and reports furnished or submitted by the Contractor to the Municipality in connection with this Agreement, and any other agreement referred to in subsection 2.01 (f) are true and correct;
- (e) it has no knowledge of any fact that materially adversely affects or, so far as it can foresee, might materially adversely affect its properties, assets, condition (financial or otherwise), business or operations or its ability to fulfil its obligations under this Agreement;
- (f) the Contractor is not a party to or threatened with any litigation and has no knowledge of any claims against it that would materially affect its undertaking or financial condition;
- (g) the Contractor is not in breach of any statute, regulation or by-law applicable to the Contractor or its operations;
- (h) the Contractor holds all permits, licences, consents and authorities issued by any federal, provincial, regional or municipal government or an agency of any of them, that are necessary in connection with the operations of the Contractor;

2.02 All representations, warranties, covenants and agreements made in this Agreement and all certificates and other documents delivered by or on behalf of the Contractor are material and will conclusively be deemed to have been relied upon by the Municipality.

ARTICLE III: APPOINTMENT AND TERM

3.01 The Municipality retains the Contractor to provide the Services in accordance with the terms of this Agreement.

3.02 The Contractor will provide the Services during the term of the Agreement which term will, notwithstanding the date of execution and delivery of the Agreement, be conclusively deemed to commence on _____ and will end on _____ unless earlier terminated pursuant to Article XVIII.

3.03 The Municipality will be under no obligation to renew, extend or renegotiate the terms of this Agreement following its termination or expiration.

3.04 The Contractor will use its best efforts to co-operate with the Municipality and any other interested parties to effect a reasonable transition in performance of the Services on the expiration or termination of the Agreement and this obligation will survive such expiration or termination.

ARTICLE IV LEGAL RELATIONSHIP

INDEPENDENT CONTRACTOR

4.01 The Contractor is an independent contractor and not the servant, employee, partner or agent of the Municipality.

4.02 The Contractor will not, in any manner whatsoever, commit or purport to commit the Municipality to the payment of any money to any person.

4.03 The Engineer may, from time to time, give such instructions to the Contractor as the Engineer considers necessary in connection with provision of the Services, which instructions the Contractor will comply with, but the Contractor will not be subject to the control of the Engineer with respect to the

manner in which such instructions are carried out.

4.04 No partnership, joint venture or agency will be created or will be deemed to be created by this Agreement or any action of the parties under this Agreement.

ARTICLE V: SERVICE AREA

5.01 The Contractor will provide the Maintenance Services covered by this Agreement to the Municipality on all local roads listed in Schedule 1 of this Agreement.

ARTICLE VI: SERVICES

6.01 The Contractor will provide the Maintenance Services, as defined on the Schedule of Services, to the Municipality in accordance with the terms and conditions of the Agreement.

6.02 In addition to the services under section 6.01, the Contractor will provide Emergency Services to the Province at the request of the Engineer.

6.03 The Engineer may direct the Contractor to provide Additional Maintenance Services to the Municipality.

6.04 The Contractor will perform the Annual Maintenance Services in accordance with this Agreement and the Annual Maintenance Plan as prepared by the Engineer.

6.05 The Engineer may re-allocate specific items within the Annual Maintenance Services on 30 days written notice to the Contractor. Costs will be adjusted based on the fees and unit prices set out in Schedule "3".

6.06 Decisions of the Engineer under section 6.05 will be final and binding on the parties.

6.07 Any materials, equipment or improvements installed or deposited on the Highways by the Contractor during the Term as part of the Services will immediately become the sole property of the Municipality and the Contractor will, at the request of the Engineer, assign or transfer to the Municipality any warranties available with respect to the same.

ARTICLE VII: MODIFICATION TO MAINTENANCE SERVICES

7.01 In order to promote and enhance public safety and efficiency, the Contractor will:

- (a) in consultation with the Engineer, continually review and re-evaluate the Maintenance Services and in conducting that review will take into account changing technology in the maintenance industry, changing economic and environmental conditions and changing public requirements;
- (b) advise the Engineer if the Contractor considers that any part of the Maintenance Services should be altered in a material way, and submit the proposed alteration to the Engineer for its consideration; and
- (c) reasonably co-operate with the Municipality in tests to accommodate new maintenance technology.

7.02 The Engineer may, change the Maintenance Services by delivery of written notice thereof to the Contractor specifying the change and the Contractor will forthwith perform the Maintenance Services, as so changed.

7.03 If a notice is delivered under section 7.02, then the Engineer will determine the cost adjustment which is the total pro-rated amount from the Cost Schedule applicable from the effective date of the notice under section 7.02 to the end of the term;

7.04 If the Contractor should disagree with a determination of the Engineer under sections 7.03, it may;

- (a) within 30 days of delivery of the notice under subsection 7.02 advise the Municipality in writing of its disagreement, specifying the reasons therefore; and
- (b) if the parties have not resolved the disagreement disclosed under subsection 7.04(a) within 60 days of delivery of the notice under subsection 7.02, the unresolved issues under sections 7.03 may be referred by either party to arbitration pursuant to Article XVI.

ARTICLE VIII: MUNICIPAL MATERIALS

8.01 The Municipality will sell or cause to be sold to the Contractor Signs on the terms and conditions set out in this Agreement and the Contractor will purchase such signs on such terms excluding signs required for traffic control and temporary signage required to perform the Work of the Contract.

8.02 The specifications of any Signs to be acquired by the Contractor for the purpose of this Agreement, other than those described in section 8.01, will be determined by the Engineer.

8.03 The Municipality will provide certain Materials as described in the Schedule of Services. The Contractor will at no expense to the Municipalities:

- (a) receive, unload, store and be responsible for the Municipal Material; and
- (b) provide an accounting for and inventory of the Municipal Material satisfactory to the Engineer, and
- (c) allow persons specified by the Engineer access to the Municipal Material.

8.04 The Municipal Material will, remain the exclusive property of the Municipality, and the Municipality may, in its sole discretion, dispose of the same to the Contractor.

ARTICLE IX: INSURANCE AND INDEMNITY

9.01 The Contractor will obtain and maintain in force during the Term:

(a) comprehensive general liability insurance providing coverage of not less than \$2 million inclusive per occurrence for bodily injury, death and property damage and including loss of use thereof, which may arise directly or indirectly out of the acts or omissions of the Contractor and the Controlled Persons or any of them under this Agreement, such insurance to include the Municipality as an additional named insured;

(b) automobile liability insurance in an amount not less than \$2 million and automobile physical damage insurance including collision and comprehensive coverage, covering all automobiles owned, rented or leased by the Contractor, that are required by law to be licensed; and

(c) equipment insurance covering all equipment owned, rented or leased (with policy limits and conditions that may be applicable to any rental or lease agreements) by the Contractor utilized in the performance of the Services by the Contractor, and the Controlled Persons or any of them against "all risks" of loss or damage;

all in form and content and with an insurer or insurers acceptable to the Engineer.

9.02 Evidence satisfactory to the Engineer that the insurance required under section 9.01 has been obtained will be submitted by the Contractor on execution of this Agreement by the parties, and the Contractor will, upon the request of the Engineer submit evidence, that the insurance remains in force and effect.

9.03 The Contractor will ensure that the insurance described in section 9.01 may not be cancelled or materially changed in any way whatsoever without the insurer or insurers giving not less than 30 days prior written notice to the Municipality.

9.04 The Contractor will indemnify and save harmless the Municipality and the Engineer from and against all claims, liabilities, demands, losses, damages, costs and expenses, fines, penalties, assessments and levies made against or incurred, suffered or sustained by the Municipality, Engineer or either of them at any time or times (whether before or after the expiration or sooner

termination of the Agreement) where the same or any of them are based upon or arise out of or from anything done or omitted to be done by the Contractor and the Controlled Persons or any of them pursuant to this Agreement including any claim against the Municipality for failure to supervise or inspect the work which is performed by the Contractor pursuant to this Agreement which indemnity will survive the expiration or sooner termination of the Agreement.

9.05 The Contractor will be responsible for compliance with all conditions and regulations under the *Workers Compensation Act* and for all assessments and levies which may be made thereunder.

9.06 Subject to section 9.07, the Municipality will reimburse the Contractor for any Contractor's Expenses if the Engineer is satisfied that:

- (a) the Contractor's Expenses have been solely and properly incurred for the purpose of repairing or restoring Municipal Property damaged by persons other than the Contractor or the Controlled Persons; and
- (b) all such repairs or restorations of Municipal Property damaged by persons other than the Contractor or the Controlled Persons have been repaired or restored in accordance with the Agreement.

9.07 The Contractor will co-operate with the Municipality and its counsel in any and all investigation, settlement and judicial determination of any claims made against the Municipality or the Contractor and any claims relating to damage to Municipal Property relating directly or indirectly to the Agreement and will cause the Controlled Persons to be similarly bound.

ARTICLE X: BONDS

10.01 The Contractor will obtain and maintain the Bonds in full force and effect during the Term.

- (a) a performance bond in an amount that is equal to not less than 50% of the Contract Price.
- (b) a labour and materials bond in an amount that is not less than 50% of the Contract Price.

10.02 Bonds will be in a form and be issued by a bonding company approved by the Engineer and will be delivered to the Engineer within 15 working days of contract award.

ARTICLE XI: CONTRACTORS COVENANTS

11.10 The Contractor will:

- (a) observe, abide by and comply with all laws, by-laws, orders, directions, rules and regulations of any competent government authority or branch or agency thereof directly or indirectly applicable to the Contractor or this Agreement;
- (b) ensure that the representations and warranties set forth in Article II are true and correct at all times during the Term and provide evidence to that effect to the Province on the written request of the Minister;
- (c) maintain its corporate existence and carry on and conduct its business in a proper business-like manner in accordance with good business practice and keep or cause to be kept proper books of account in accordance with generally accepted accounting principles applied on a consistent basis;
- (d) punctually pay as they become due all accounts, expenses, wages, salaries, taxes, levies, rates, fees, contributions and assessments required to be paid by it on any of its undertaking;
- (e) co-operate with the Municipality and any other contractors providing services to the Municipality in the Service Area and in areas adjacent to the Service Area;
- (f) at all times promptly respond to road maintenance complaints from Municipality;
- (g) perform the Services in a good workmanlike manner to the satisfaction of the Minister;
- (h) continually train its staff in the safe operation of road maintenance equipment and facilities to the satisfaction of the Engineer; provide personnel properly trained to the requirements of the Temporary Workplace Traffic Control Manual.
- (i) provide and maintain at all times sufficient staff, facilities, materials, appropriate equipment and approved subcontractual agreements in place and available to it to fully perform the Services; and

- (j) paint, identify and light the Equipment in accordance with the policy directives of the Department of Transportation and Communication.

ARTICLE XII: CONTRACT PRICE AND FEES

12.01 In consideration of the Contractor providing to the Municipality the Maintenance Services and performing all other obligations of the Contractor under this Agreement, except Emergency Services and Additional Maintenance Services, the Municipality will, subject to the terms of this Agreement and without limiting the generality of the foregoing, sections 15.02 and 17.13, pay to the Contractor the Contract Price in the manner set out in the Cost Schedule “3”;

12.02 The Municipality will, subject to the terms of this Agreement, pay to the Contractor for Additional Maintenance Services and Emergency Services in the amounts and in the manner set out in Schedule “3”; and

12.03 The amounts described in Section 12.01 constitute the maximum amounts payable to the Contractor for its performance of the Services, and the Contractor will not be entitled to any additional compensation for its performance as described in this Agreement. Without limiting the generality of the foregoing, the Contractor will not be entitled to any compensation beyond the Contract Price unless:

- (a) the Contract Price is adjusted in accordance with the Agreement; or
- (b) the Contractor performs Emergency Services or Additional Maintenance Services at the request of the Engineer in accordance with this Agreement.

12.04 The Municipality certifies the property and/or services ordered and purchased under this Agreement are for the use of, and are being purchased by, the Municipality with and are therefore subject to the Goods and Services Tax.

ARTICLE XIII: ASSIGNMENT AND SUBCONTRACTING

13.01 The Contractor will not without the prior written consent of the Engineer assign, either directly or indirectly, the Agreement or any right of the Contractor under this Agreement.

13.02 The Contractor will not subcontract any obligation of the Contractor under this Agreement to any person without the prior written consent of the Engineer.

13.03 The appointment of subcontractors by the Contractor will not relieve the Contractor of its responsibility hereunder or for the quality of work, materials and services provided by it.

13.04 The Contractor will at all times be held fully responsible to the Municipality for the acts and omissions of its subcontractors and persons employed by them and no subcontract entered into by the Contractor will impose any obligation or liability upon the Municipality to any such subcontractor or any of its employees.

13.05 The Contractor will cause every subcontractor to be bound by the terms of the Agreement so far as they apply to the work to be performed by each subcontractor.

13.06 Nothing in this Agreement will create any contractual relationship between the Municipality and a subcontractor of the Contractor.

ARTICLE XIV: QUALITY ASSURANCE PROGRAM

14.01 The Contractor acknowledges and agrees that the performance of the Contractor's obligations under this Agreement, will be subject to review by the Municipality in accordance with the terms of the Quality Assurance Program;

14.02 All quality assurance inspection reports will be forwarded to the Engineer.

14.03 All work determined to be deficient will be corrected or replaced at the Contractors' sole expense.

ARTICLE XV: DEFAULT AND REMEDIES

15.01 Any of the following events will constitute an event of default whether any such event be voluntary, involuntary or result from the operation of law or any judgment or order of any court or administrative or government body:

- (a) the Contractor fails to observe, perform or comply with any provision of this Agreement, on the part of the Contractor to be observed, performed or complied with;
- (b) any representative or warranty made by the Contractor in this Agreement is materially untrue or incorrect;
- (c) any information, statement, document, certificate or report furnished or submitted by or on behalf the Contractor under or as a result of this Agreement, is materially untrue or incorrect;
- (d) the Contractor fails to furnish and give to the Municipality notice that there has occurred or is continuing a default under the Agreement, and specifying particulars of the same;
- (e) a change occurs with respect to any one or more, including all, of the properties, assets, condition (financial or otherwise), business or operations of the Contractor which, in the reasonable opinion of the Engineer, materially adversely affects the ability of the Contractor to fulfil any of its obligations under this Agreement;
- (f) the Contractor becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency;
- (g) the Contractor permits any sum which is not disputed to remain unpaid after legal proceedings have been commenced to enforce payment thereof;
- (h) the Contractor ceases, in the reasonable opinion of the Engineer, to carry on business as a going concern;
- (i) the Contractor, without the prior written approval of the Engineer, assigns, sells or in any manner disposes of or encumbers all or any of its interest in, or rights acquired under this Agreement;

15.02 On the happening of an Event of Default, or at any time thereafter, the Engineer may deliver written notice to the Contractor, specifying the Event of Default and the Municipality may, at its option, elect to do any one or more of the following:

- (a) pursue any remedy available to it at law or in equity;
- (b) holdback from each payment due to the Contractor under section 12.01 (a) up to 5% of each such payment until the Event of Default is resolved to the satisfaction of the Engineer;
- (c) take all actions in its own name or in the name of the Contractor that may reasonably be required to cure the Event of Default in which case all payments, costs and expenses incurred therefor will be payable by the Contractor to the Municipality on demand and set-off against any sums owing by the Municipality to the Contractor present or future including any holdback maintained pursuant to subsection 15.02 (b);
- (d) require that the Event of Default be remedied within a time period specified by the Engineer;
- (e) forfeit, any holdback maintained pursuant to subsection 15.02 (b);
- (f) waive the Event of Default; and
- (g) terminate this Agreement, subject to the expiration of any time period specified by a notice delivered pursuant to subsection 15.02 (d).

15.03 The rights, powers and remedies conferred on the Municipality under this Agreement are not intended to be exclusive and each will be cumulative and in addition to and not in substitution for every other right, power and remedy existing or available to the Municipality under this Agreement, any other agreement, at law or in equity and the exercise by the Municipality of any right, power or remedy will not preclude the simultaneous or later exercise by the Municipality of any other right, power or remedy.

15.04 No failure or delay on the part of either party to complain of any act or failure of the other party or to declare such other party in default, irrespective of how long such act or failure to act will continue, will constitute a waiver by such party of its rights hereunder.

ARTICLE XVI: ARBITRATION

16.01 All disputes arising out of or in connection with subsection 7.04 (b) shall be submitted to arbitration in accordance with the provisions of the Nova Scotia Arbitration Act.

16.02 In recognition of the obligation by the Contractor to perform the disputed work in connection with subsection 7.04, settlement of dispute proceeding may be commercial immediately following the dispute in accordance with Section 16.01.

16.03 The place of arbitration will be Kentville, Nova Scotia.

ARTICLE XVII: MISCELLANEOUS

17.01 Any property, including Municipal Material, whatsoever provided by or on behalf of the Municipality to the Contractor as a result of this Agreement will be the exclusive property of the Municipality and will be delivered by the Contractor to the Engineer forthwith following the expiration or sooner termination of this Agreement. The Engineer may, at any time or times prior to the expiration or sooner termination of this Agreement, give written notice to the Contractor requesting delivery by the Contractor to the Engineer of all or any part of such property in which event the Contractor will forthwith comply with such request.

17.02 The Contractor will not, during the Term, perform a service for or provide advice to any person, firm or corporation or other legal entity where the performance of the service or the provision of the advice may or does, in the reasonable opinion of the Engineer, give rise to a conflict of interest between the obligations of the Contractor to the Municipality under this Agreement and the obligations of the Contractor to such other person, firm or corporation or other legal entity.

17.03 Any notice, document, statement, report, demand or payment desired or required to be given or made under this Agreement, will be in writing and may

be given or made by personal delivery to the party to whom it is to be given or made, or by mailing in Canada with postage prepaid addressed,

if to the Municipality of the County of Kings or the Engineer (or both of them):

Municipality of the County of Kings
Environment Department
P.O. Box 100
87 Cornwallis Street
Kentville, Nova Scotia
B3N 3W3
Attention: Mr. Ken Redden, Operations Manager

with a copy to: the Chief Administrative Officer

and if to the Contractor:

@NAME-INFULL
@ADDRESS
@CITY-AN-PROV
@POSTAL-CODE

Attention: @NAME

Any such notice, document, statement, report, demand or payment so mailed will be deemed given to and received by the addressee on the third business day after the mailing of the same except in the event of disruption of postal services in Canada in which case it will be deemed given to and received by the addressee when actually delivered to the particular address set out above.

17.04 In addition to section 17.03, any notice, report, document, statement or demand transmitted by facsimile transmission from either party or the Engineer will be conclusively deemed validly given to and received by the intended recipient when so transmitted if transmitted to the following numbers:

If to the Municipality or the Engineer: (902) 679-2820

If to the Contractor: (902) _____

17.05 Either party may, from time to time, advise the other by notice in writing of any change of address or facsimile number of the party giving such notice and from and after the giving of such notice the address or facsimile number therein specified will, for purposes of this Agreement, be deemed to be the address of facsimile number of the party giving such notice.

17.06 A reference in this Agreement:

(a) to a statute whether or not that statute has been defined, means a statute of the Province of Nova Scotia unless otherwise stated and includes every amendment to it, every regulation made under it and any enactment passed in substitution therefor or in replacement thereof; and

(b) to any other agreement between the parties means that other agreement as it may be amended from time to time by the parties.

17.07 Each Schedule attached to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.

17.08 This Agreement constitutes the entire agreement between the parties and no understandings, representations or agreements, oral or otherwise, exist between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement.

17.09 Each of the parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever

for the better or more perfect and absolute performance of the terms and conditions of this Agreement.

17.10 If any provision of this Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be valid and enforceable to the extent permitted by law.

17.11 All dollar amounts expressed in this Agreement refer to lawful currency of Canada.

17.12 No waiver by either party of a breach or default by the other party in the observance, performance or compliance of any of its obligations under this Agreement will be effective unless it is in writing and no such waiver will be deemed or construed to be a waiver of any other breach or default and failure or delay on the part of either party to complain of any act or failure of the other party or to declare such other party in default, irrespective of how long such failure or delay continues, will not constitute a waiver by such party of any of its rights against the other party.

17.13 If any event of Force Majeure occurs or is likely to occur, the party directly affected will notify the other party forthwith, and will use its best efforts to remove, curtail or contain the cause of the delay, interruption or failure and to resume with the least possible delay compliance with its duties, covenants and obligations under this Agreement; and

17.14 Time will be of the essence of this Agreement.

17.15 This Agreement will be governed by and construed and interpreted in accordance with the laws of the Province of Nova Scotia.

Duly executed by the Municipality of the County of Kings and @ COMPANY-NAME, each by their duly authorized officers or representatives on the ____ day of _____, 199 ____.

SIGNED on behalf of Municipality)
of the County of Kings)
)
)
)
)
)

Witness

For the Municipality of the
County of Kings

THE common seal of)
@ COMPANY NAME)
was hereunto affixed)
in the presence of:)
)
)
_____)

Signature)
)
)
_____)

Authorized Signature

Title

SCHEDULE 1

LIST OF ROADS

ID Number Road Name Subdivision Name Surface Type Length

SCHEDULE 2

ANNUAL MAINTENANCE SERVICES

Maintenance Activity	Unit of Measure	Estimated Quantity
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PART II - EMERGENCY SERVICES and ADDITIONAL MAINTENANCE SERVICES

Maintenance Services	Unit of Measure	Unit Cost
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