

Keppel Sand and Salt Storage Structure Agreement

THIS AGREEMENT made this ___ day of _____, 2019, in duplicate between:

THE CORPORATION OF THE COUNTY OF GREY

a municipality within the meaning of the Municipal Act, 2001
(Herein after referred to in this Agreement as "the County"),

- and -

THE CORPORATION OF THE TOWNSHIP OF GEORGIAN BLUFFS

a municipality within the meaning of the Municipal Act, 2001
(Herein after referred to in this Agreement as "the Township");

WHEREAS the County and the Township shared in the cost to construct a sand/salt structure located at 401295 Grey Road 17, Georgian Bluffs being legally described as Part Lot 8 Concession 20 Keppel Part 1 Plan 16R-4593 and Part 1-3 Plan 16R-2201 Except Part 2 Plan 16R-7904 in the former Township of Keppel, in the Township of Georgian Bluffs, on property owned by the Township, for use by the County and the Township for the storage of sand/salt mix and other materials for road maintenance use;

AND WHEREAS the County and the Township agree that the Township owns the sand/salt structure;

AND WHEREAS the Township agrees that the County has the right to use the sand/salt structure;

AND WHEREAS the parties are desirous of entering into an agreement to declare their respective rights, obligations, and liabilities in connection with the sand/salt structure;

NOW THEREFORE in consideration of the mutual covenants and agreements herein and subject to the terms and conditions set out in this Agreement, the parties agree as follows:

1.0 Term

- 1.1 This Agreement shall be effective as of the date of execution and run for a Term of five years.
- 1.2 The Term of the Agreement shall be automatically renewed for successive periods of two years each unless one party gives to the other at least one hundred eighty (180) days of written notice of its wish to terminate this Agreement.
- 1.3 The parties agree that for each successive renewal term of this Agreement, it will be necessary to update Schedule "A" with regard to the lump sum annual user fees referenced in Section 5.1. Such update shall not necessitate further updating of any other terms of this Agreement.
- 1.4 In the event that a party serves notice to terminate this Agreement, it is agreed by the parties at the date of execution of this Agreement that there is no equity in the structure.

2.0 Maintenance, Improvement, Repair Work and Costs

- 2.1 During the term of the Agreement, the Township shall be solely responsible for maintenance of the sand/salt structure at the expense of the Township. For the purposes of this Agreement, maintenance shall include all work except for structural repairs, improvements or renovations.

- 2.2 As further clarification, storage building maintenance shall include, but not be limited to, the following works:
- a. Minor repairs to replace small amounts of shingles and patch leaks on roof
 - b. Repair of man-door(s)
 - c. Servicing of and adjustments to overhead doors
 - d. Repairs to interior and exterior lighting.
- 2.3 Structural repairs and renovations shall include but not be limited to the following:
- a. Storage structure replacement
 - b. Roof replacement
 - c. Overhead door and component replacement
 - d. Concrete rehabilitation
 - e. Major rehabilitative painting or cladding replacement
 - f. New addition to structure
 - g. Drainage upgrades around structure
 - h. Interior or exterior lighting system replacement
- 2.4 An annual inspection of the sand/salt structure shall be carried out by a representative of the Township together with a representative of the County.
- 2.5 When the Township identifies structural repairs, improvements or renovations it wishes to be completed to the sand/salt structure the Township may request in writing that the County consent to the completion of the identified work. Within 30 days of receiving such a request, the County shall consent or decline to consent to the completion of the work described in this paragraph in its absolute discretion. While it is recognized that budget constraints may limit the work to which the County consents and/or when it may be completed, such consent shall not be unreasonably withheld.
- 2.6 Costs for work described in Section 2.5 to which the County consents shall be shared as follows:
- 50% by the County
 - 50% by the Township
- 2.7 The County shall notify the Township of any and all damage that is caused by staff or agents of the County, and shall be responsible for all repairs that it or its agents have caused to the sand/salt structure.
- 2.8 The Township shall be responsible for all repairs that they or their agents have caused to the sand/salt structure.

3.0 Materials – Purchasing, Usage, Invoicing

- 3.1 The Township, through a fair and competitive tendering process, will have sand with a minimum of three percent (3%) salt mixed throughout the sand placed in the sand/salt structure no later than September 15 and available through until May 1 every year. The sand shall conform to Ontario Provincial Standard Specification 1004 and the salt shall conform to Ontario Provincial Standard Specification 2502.
- 3.2 The Township shall invoice the County monthly for the amount of sand/salt mixture it uses, based on the amount recorded by the County operators on the Winter Time and Materials Logs. The Township shall charge the County the tender price. Payment of each invoice shall be due 30 days from the date of the invoice.

4.0 Other Services

- 4.1 The Township shall provide a functional, well maintained loader at the sand/salt structure for County staff and agents to use to load sand/salt into road maintenance trucks. The loader must have a bucket capacity of at least 1.25 cubic yards and be capable of loading the materials into the County trucks. County staff and County agents shall be permitted to use the loader at the sand/salt structure to load winter maintenance trucks.
- 4.2 The County shall be permitted to store up to two winter maintenance trucks at the sand/salt structure property. These winter maintenance trucks will be permitted to use electrical outlets.

5.0 Annual User Fee

- 5.1 The Township shall invoice the County upon execution of this Agreement for the 2019-2020 winter maintenance season, and on October 1 of each subsequent year throughout the term of the Agreement for a lump sum annual user fee in the amount indicated on Schedule "A" of this Agreement, attached hereto. The County shall provide payment to the Township no later than 30 days from the date of each invoice.
- 5.2 The Township shall also invoice the County annually for its share of the property insurance premium for the structure. The details are contained in Schedule "A" of this Agreement.

6.0 Indemnification

- 6.1 The Township shall indemnify and hold harmless the County, its officers, members of Council, agents, servants, employees, invitees or licensees from and against any liabilities, claims, expenses, demands, loss, cost, damages, actions, suits or other proceedings by whomsoever made, directly or indirectly arising out of this Agreement attributable to bodily injury, sickness, disease or death or to damage to or destructions of tangible property including loss of revenue or incurred expense resulting from disruption of service; and caused by any acts or omissions of the Township, its officers, members of council, agents, servants, employees, customers, invitees or licensees, or occurring in or on the sand/salt structure, the subject property, or any part thereof and/or, as a result of activities under this agreement.
- 6.2 The County shall indemnify and hold harmless the Township, its officers, members of Council, agents, servants, employees, invitees or licensees from and against any liabilities, claims, expenses, demands, loss, cost, damages, actions, suits or other proceedings by whomsoever made, directly or indirectly arising out of this Agreement attributable to bodily injury, sickness, disease or death or to damage to or destructions of tangible property including loss of revenue or incurred expense resulting from disruption of service; and caused by any acts or omissions of the County, its officers, members of council, agents, servants, employees, customers, invitees or licensees, or occurring in or on the sand/salt structure, the subject property, or any part thereof and/or, as a result of activities under this agreement.

7.0 Insurance

- 7.1 The Township shall, at its expense, obtain and keep in force during the term of this Agreement:
 - i) Municipal General Liability Insurance satisfactory to the County, including the following and underwritten by an insurer licensed to conduct business in the Province of Ontario:
 - a) A limit of liability of not less than \$10,000,000/occurrence.
 - b) The County shall be named as an additional insured;

- c) The policy shall contain a provision for cross liability in respect of the named insured;
 - d) Non-owned automobile coverage with a limit of at least \$5,000,000 including contractual non-owned coverage;
 - e) Products and completed operation coverage (Broad Form) with an aggregate limit not less than \$10,000,000.
 - f) That 30 days prior notice of an alteration, cancellation or material change in policy terms which reduces coverage shall be given in writing to the County.
- ii) standard Automobile policy with liability limits of no less than \$5 million in respect of each owned or leased vehicle;
 - iii) Broad Form Property policy to cover the sand/salt structure, contents, and equipment owned, leased or stored by the Township, with limits sufficient to cover these assets;
 - iv) Environmental Liability Insurance in a combined amount of not less than one million dollars (\$1,000,000), per occurrence against claims for:
 - bodily injury, including sickness, disease, shock, mental anguish, mental injury;
 - injury to or physical damage to tangible property including loss of use of tangible property, or the prevention, control, repair, clean-up or restoration of environmental impairment of lands, the atmosphere or any water course or body of water on a sudden and accidental basis and on a gradual basis.

The Township shall provide a certificate of insurance to the County annually as proof of the coverage required under this Agreement.

7.2 The County shall, at its expense, obtain and keep in force during the term of this Agreement:

- i) Municipal General Liability Insurance satisfactory to the Township, including the following and underwritten by an insurer licensed to conduct business in the Province of Ontario:
 - a) A limit of liability of not less than \$10,000,000/occurrence;
 - b) The Township shall be named as an additional insured;
 - c) The policy shall contain a provision for cross liability in respect of the named insured;
 - d) Non-owned automobile coverage with a limit of at least \$5,000,000 including contractual non-owned coverage;
 - e) Products and completed operation coverage (Broad Form) with an aggregate limit not less than \$10,000,000.
 - f) That 30 days prior notice of an alteration, cancellation or material change in policy terms which reduces coverages shall be given in writing to the Township.
- ii) Standard Automobile policy with liability limits of no less than \$5 million in respect of each owned or leased vehicle.
- iii) Environmental Liability Insurance in a combined amount of not less than one million dollars (\$1,000,000), per occurrence against claims for:
 - bodily injury, including sickness, disease, shock, mental anguish, mental injury;
 - injury to or physical damage to tangible property including loss of use of tangible property, or the prevention, control, repair, clean-up or restoration of environmental impairment of lands, the atmosphere or any water course or body of water on a sudden and accidental basis and on a gradual basis.

8.0 Health and Safety, WSIB

- 8.1 The Township is responsible for all costs associated with its workplace accidents and all premiums or assessments owing to the Workplace Safety and Insurance Board (WSIB), or insurance company if applicable for its own employees. If requested, the Township shall, throughout the Term of the Agreement, provide the County with evidence of coverage for itself, its employees, subcontractors and subcontractors' employees under the Workplace Safety and Insurance Act or insurance policy.
- 8.2 The Township shall comply with the Occupational Health and Safety Act (Ontario), the Workplace Safety and Insurance Act (Ontario), the Human Rights Act, (Ontario), and applicable regulations under such legislation and all other legal obligations with respect to worker health, safety and treatment.
- 8.3 The County is responsible for all costs associated with its workplace accidents and all premiums or assessments owing to the Workplace Safety and Insurance Board (WSIB), or insurance company if applicable for its own employees. If requested, the County shall, throughout the Term of the Agreement, provide the Township with evidence of coverage for itself, its employees, subcontractors and subcontractors' employees under the Workplace Safety and Insurance Act or insurance policy.
- 8.4 The County shall comply with the Occupational Health and Safety Act (Ontario), the Workplace Safety and Insurance Act (Ontario), the Human Rights Act, (Ontario), and applicable regulations under such legislation and all other legal obligations with respect to worker health, safety and treatment.

9.0 Notice

- 9.1 Any notices required must be in writing and delivered to the following addresses between 9:00 AM and 4:30 PM Monday to Friday.

For the County:

County Clerk
County of Grey Administration Building
595 9th Ave E
Owen Sound, ON N4K 3E3
Fax Number: 519-376-8998
Email: countyclerk@grey.ca

For the Township:

Director of Legislative Services/Clerk
The Corporation of the Township of Georgian Bluffs
177964 Grey Road 18, RR 3
Owen Sound, ON N4K 5N5
Tel: 519-376-2729
Fax: 519-372-1620
Email: whunter@georgianbluffs.on.ca

- 9.2 Notices delivered by fax or e-mail will be deemed to be received on the next business day after the fax or e-mail is electronically confirmed received. Notices sent by mail will be deemed to be received on the fifth day after mailed unless mail service is disrupted. Hand delivered notices will be considered received on the business day of delivery.

10.0 Force Majeure

- 10.1 Neither the County nor the Township shall be held responsible for any damage or delays as a result of war, invasions, insurrection, demonstrations, or as a result of decisions by civilian or military authorities, fire, flood, human health emergency, strikes and generally as a result of any event that is beyond the reasonable control of the County or the Township.

- 10.2 The County and Township agree that in the event of a disaster or Force Majeure, they will co-operate and the Township will make all reasonable efforts to provide temporary replacement service until permanent service is completely restored.

11.0 Governing Law

- 11.1 This Agreement will be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada. The parties submit to the exclusive jurisdiction of the courts of Ontario with respect to any matter arising under or related to this Agreement.

12.0 Severability

- 12.1 Each of the clauses in this Agreement is distinct and severable. A declaration of invalidity or unenforceability of any clause will not affect the validity or enforceability of the other clauses in this Agreement.

13.0 Entire Agreement

- 13.1 This Agreement is the entire agreement between the parties with respect to the Keppel sand/salt structure and replaces all prior written or verbal agreements, understandings, negotiations or discussions.

14.0 Amendment of Agreement

- 14.1 This Agreement can only be changed by a written document signed by signing authorities for both parties.

15.0 Successors and Assigns

- 15.1 Neither party may assign all or any part of this Agreement without the written approval of the other party.
- 15.2 This Agreement benefits and binds the parties and their respective successors and permitted assigns.

16.0 No Partnership

- 16.1 Nothing in this Agreement means that a partnership, joint venture or employment relationship exists between the County and the Township.

17.0 Adherence to Laws

- 17.1 The parties agree to follow all applicable federal and provincial laws in carrying out the terms of this Agreement.

18.0 No Waiver

- 18.1 For either party to release any of its rights under this Agreement, it must be in writing and signed by both parties.
- 18.2 A waiver of a breach of one clause of the Agreement does not apply to any other clause.
- 18.3 A failure or delay in enforcing an obligation in the Agreement does not prevent the enforcement of that obligation at a later date.

19.0 Dispute Resolution

- 19.1 A dispute between the parties relating to the interpretation or implementation of this Agreement will be addressed through good faith negotiation, with or without the assistance of a mediator. The parties agree that in the event that they are not able to reach a resolution of all the matters in dispute after mediation, then the matters remaining in dispute will be finally determined by arbitration in accordance with the provisions of the *Ontario Arbitrations Act*.
- 19.2 The location for any such arbitration hearing will be within the County of Grey at a location to be determined by the County.

IN WITNESS WHEREOF THE PARTIES hereto have executed this Agreement as of the day and year set out above:

THE CORPORATION OF THE COUNTY OF GREY:

SELWYN HICKS, WARDEN

HEATHER MORRISON, CLERK

We have the authority to bind the Corporation of the County of Grey.

THE CORPORATION OF THE TOWNSHIP OF GEORGIAN BLUFFS

DWIGHT BURLEY, MAYOR

WENDI HUNTER, DIRECTOR OF LEGISLATIVE SERVICES/CLERK

We have the authority to bind the Township of Georgian Bluffs.

SCHEDULE A

Keppel Sand and Salt Storage Structure Agreement (Former Keppel Township)

Location: 401295 Grey Road 17, Georgian Bluffs being legally described as Part Lot 8 Concession 20 Keppel Part 1 Plan 16R-4593 and Part 1-3 Plan 16R-2201 Except Part 2 Plan 16R-7904 Township of Georgian Bluffs (former Township of Keppel).

With reference to Section 5.1 of the Agreement, the lump sum annual user fee includes the use of the loader and the authorization for two or less County winter maintenance trucks to be stored at the site.

The lump sum amount shall increase by 2% per year in each subsequent year throughout the Term of the Agreement.

The Township of Georgian Bluffs shall invoice the County of Grey as follows over the term of the Agreement.

2019-2020	\$4,594.74
2020-2021	\$4,686.63
2021-2022	\$4,780.36
2022-2023	\$4,875.97
2023-2024	\$4,973.49

With reference to Section 5.2 of the Agreement, the Township of Georgian Bluffs will invoice the County of Grey annually for the fifty percent share of the property insurance premium for the subject structure. The share will be calculated using a formula of:

2019 Insurance Premium Amount Total Cost = \$3,429.00
(\$3,429.00 x 50% = \$1,714.50)

2019 County Share = \$1,714.50

2019 Township Share = \$1,714.50

No additional fees shall be charged for yard, maintenance, electricity or other overhead items.