

COUNTY MUNICIPAL ROADS TRANSFER FUNDS

BETWEEN:

The Corporation of the United Counties of Prescott and Russell

(“UCPR”)

– And –

The Corporation of the City of Clarence-Rockland

(The Municipality”)

WHEREAS the UCPR has created the County municipal roads transfer funds to provide funding to help local municipalities address critical core infrastructure needs in relation to roads network;

AND WHEREAS the County municipal road transfer funds consist of formula with two (2) components: (1) 40% being a pro rata based on the amount of kilometers of road the municipality have; and (2) 60% being a pro rata based on the requisition the municipality will pay for 2019 to the UCPR; as set out under Part D.1.1 of Schedule “D”;

AND WHEREAS the Municipality is eligible to receive funding under the County municipal roads transfer;

NOW THEREFORE, in accordance with the principles set out above, the mutual covenants and agreements herein and for other good and valuable consideration, the receipt of sufficiency of which is expressly acknowledges, the Parties hereby agree as follows:

SECTION 1 INTERPRETATION

1.1 Definitions. For the purposes of this Agreement, the following terms shall have the following meanings described below.

“Agreement” means this agreement between UCPR and the Municipality, including all Schedules attached hereto.

“Arm’s Length” has the meaning given to it under the *Income Tax Act* (Canada) as in effect on the Effective Date of this Agreement.

“Conflict of Interest” includes any and all circumstances where the Municipality or any person who has the capacity to influence the Municipality’s decisions has outside commitments, relationships or financial interests that could, or could be seen, to interfere with the Municipality’s objective, unbiased and impartial judgment relating to this Agreement.

“Consultant” means any person the Municipality retains to do work related to this Agreement.

“Contract” means a contract between the Municipality and a third party at Arm’s Length whereby the latter agrees to provide a good or service in return for financial consideration that may be claimed as an Eligible Cost under this Agreement.

“Effective Date” means the date set out at Part C.1 of Schedule “C” of this Agreement.

“Eligible Costs” means the costs described in Part E.1 of Schedule “E” of this Agreement.

“Event of Default” has the meaning given to it in section 13 of this Agreement

“Expiration “Date” means the date set out in Part C.2 of Schedule “C” of this Agreement.

“Funds” means the total amount of funding UCPR is providing in Canadian currency to the Municipality under this Agreement, subject to the terms and conditions of this Agreement.

“Indemnified Party” means The Corporation of the United Counties of Prescott and Russell, directors, officers, agents, appointees and employees.

“Ineligible Costs” means the costs described under Part E.2 of Schedule “E” of this Agreement.

“Parties” means UCPR and the Municipality.

“Party” means either UCPR or the Municipality, as the case maybe.

“Project” means the project described in Part B.1 of Schedule “B” of this Agreement.

“Project Report” means the document set out under Part B.1 of Schedule “B” of this Agreement.

“Requirements of Law” means all applicable statutes, codes, acts, ordinances, orders, approvals, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licenses, authorizations, directions and agreements with all authorities that now or at any time hereafter may relate to the Municipality, the Project and this Agreement.

“Term” means the period of time beginning on the Effective Date of this Agreement and ending on the Expiration Date or the termination of this Agreement, whichever is shorter.

1.2 Reference To Statute Or Regulation. Any reference to a statute is to such statute and to the regulations made pursuant to such statute as such statute and regulations may at any time be amended or modified and in effect and to any statute or regulations that may be passed that have the effect of supplanting or superseding such statute or regulations.

1.3 Accounting Terms, Calculations And Submission Of Financial Data. All accounting terms not defined in this Agreement shall have the meanings usually ascribed to them. All calculations will be made and all financial data to be submitted will be prepared in accordance with the applicable accepted accounting principles in effect in Ontario.

SECTION 2 THE AGREEMENT

- 2.1 *The Agreement.*** The Agreement includes this document and the following Schedules attached to this document; as such Schedules may be amended from time to time in accordance with this Agreement.

Schedule

- "A" Eligible Project
- "B" Project Report and Annual Project and Financial Information Update
- "C" Operational Requirements Under The Agreement
- "D" Financial Information For The Project
- "E" Eligible And Ineligible Costs

- 2.2 *Conflict. In the event of a conflict between any of the documents that form part of this Agreement, the conflict shall be resolved in the following descending order:***

- (a) This document; and
- (b) The Schedules attached to this document.

- 2.3 *Expiration Date Of Agreement.*** This Agreement shall expire on the Expiration Date, unless amended or terminated prior to this date in accordance with this Agreement.

SECTION 3 GENERAL ROLES AND RESPONSIBILITIES OF THE PARTIES UNDER THE AGREEMENT

- 3.1 *Provision Of Funds.*** UCPR agrees, subject to the terms and conditions of this Agreement to provide Funds up to the amount set out under Part D.1 of Schedule "D" of this Agreement to the Municipality in accordance with Part D.2 of Schedule "D" of this Agreement. The Municipality is solely responsible for securing any additional funding, if needed, to complete any Project to which the Funds being provided under this Agreement have been directed.
- 3.2 *UCPR's Role Under Agreement Strictly Limited To Providing Funds.*** The Municipality acknowledges and agrees that UCPR's role is strictly limited to providing Funds and that UCPR will have no other involvement in any Project to which Funds are directed or their subsequent maintenance and operation. UCPR is not a manager, decision-maker nor an advisor to the Municipality in relation to any Project to which Funds are directed. Notwithstanding the generality of the foregoing and without limitation, the fact that UCPR may conduct audits as provided for hereinafter or issues directions under the terms and conditions of this Agreement shall not be construed by the Municipality as UCPR having a management, decision-making or advisory role. The Municipality further agrees that the Municipality will not seek to include UCPR as a decision-maker, advisor or manager of any Project to which Funds are directed through recourse to a third party, court, tribunal or arbitrator.
- 3.4 *Funds Limited To Specific Projects.*** The Municipality shall only use the Funds being provided under this Agreement towards Projects that fall within the category of projects set out under Schedule "A" of this Agreement and those Projects have been set out under Part I of the Project Report, as set out under Part B.1 of Schedule "B" of this Agreement.

- 3.5 Responsibility For Project.** The Municipality acknowledges and agrees that the Municipality, as opposed to UCPR, is solely responsible for the undertaking, implementation, completion, operation and/or maintenance of any Project to which Funds are directed. The Municipality further agrees that the Municipality will not seek to hold UCPR responsible for the undertaking, implementation, completion, operation and/or maintenance of any Project to which Funds are directed through recourse to a third party, court, tribunal or arbitrator.
- 3.6 Behavior Of Municipality.** The Municipality shall carry out any Project to which Funds are directed in an economical and business-like manner, in accordance with the terms and conditions of this Agreement, subject to any reasonable amendments UCPR may agree to or require from time to time in writing.
- 3.7 UCPR Not Responsible For Municipality Obtaining Permits Or Approvals.** For greater certainty, the Parties acknowledge and agree that the entering into this Agreement does not in any way obligate any regulatory authority established under an Act of the Ontario Legislature to issue any type of approval, license, permit or similar authorization that the Municipality may need or want in relation to any Project to which Funding is directed or to meet any terms or conditions under this Agreement

SECTION 4 FUNDS

- 4.1 Use Of Funds.** Any Funds being provided under this Agreement shall only be used for the payment of Eligible Costs.
- 4.2 Cost Must Be An Eligible Cost.** For a cost to be considered an Eligible Cost and therefore eligible to be paid from the Funds being provided under this Agreement, the cost must be specifically set out under Part E.1 of Schedule "E" of this Agreement.
- 4.3 Ineligible Costs Shall Not Be Covered Under Agreement.** Any costs set out in Part E.2 of Schedule "E" of this Agreement are Ineligible Costs and shall not be eligible to be paid from the Funds being provided under this Agreement.
- 4.4 New Information.** In the event of new information, errors, omissions or other circumstances affecting the determination of the amount of any Funds being provided under this Agreement, UCPR may, in its sole and absolute discretion, Adjust the Funds being provided under this Agreement.
- 4.5 Repayment Of Funds.** The Municipality shall repay Funds to UCPR where:
- (a) The Municipality has used the Funds for a purpose not agreed to by UCPR;
 - (b) The Municipality still has Funds under its charge, management or control upon the expiry or termination of this Agreement;
 - (c) The Municipality receives an overpayment by UCPR and is notified by UCPR of said overpayment, within fifteen (15) Business Days of receiving a written demand from UCPR.
- 4.6 UCPR May Adjust The Funds.** Despite any other provision in this Agreement, UCPR may adjust the Funds being provided under this Agreement.

SECTION 5 PAYMENT UNDER AGREEMENT

5.1 Eligibility Of Costs Or Expenses. In order for a cost or expense to be eligible to be paid from the Funds being provided under this Agreement, the cost or expense:

- (a) Must be reasonable;
- (b) Must be directly related to the Project in which the Funds are directed;
- (c) Must be an Eligible Cost;
- (d) Must not be an Ineligible Cost; and
- (e) Must have been incurred on or after the Effective Date of this Agreement

5.2 Payment Of Funds. Subject to all terms and conditions of this Agreement, UCPR shall pay any Funds to the Municipality in accordance with Part D.2 of Schedule "D" of this Agreement.

SECTION 6 RECIPIENT'S REPRESENTATIONS, WARRANTIES, COVENANTS, ACKNOWLEDGEMENTS AND AGREEMENTS

6.1 Municipality's Representations, Warranties And Covenants. The Municipality represents, warrants and covenants that:

- (a) It validly exists as a legal entity, and will continue to exist for the Term of the Agreement, with full power to perform and observe all of the terms and conditions of this Agreement and that it will continue to validly exist until the Expiration Date of this Agreement;
- (b) It has the authority and any necessary approvals to enter into this Agreement and to carry out its terms and conditions and that it is not bound by any other agreement that would in any way interfere with UCPR's rights under this Agreement;
- (c) Where applicable, it has passed the requisite by-laws to undertake any Project in which Funds are directed;
- (d) It is conducting its business in accordance with all Requirements of Law and it shall continue to conduct its business in accordance with all Requirements of Law until the Expiration Date of this Agreement;
- (e) It has all permits, approvals, licenses, certificates or other similar documents that are required to carry out any Project to which Funds are directed or that it will apply for all permits, approvals, licenses, certificates or other similar documents before carrying out the Project; and
- (f) All information provided to UCPR in relation to any Funds being provided under this Agreement remains true, correct and complete as of the date this Agreement is signed in every material respect, except as set out to the contrary herein.

6.2 Governance. The Municipality represents, warrants and covenants that it has and shall maintain until the Expiration Date of this Agreement all legally necessary instruments to:

- (a) Provide for the prudent and effective management of any Funds being provided under this Agreement;
- (b) Establish procedures to enable the timely identification of risks that would interfere with the Municipality meetings its obligations under this Agreement and strategies to address the identified risks;
- (c) Establish procedures to enable the preparation and delivery of all reports under this

- Agreement; and
- (d) Be responsible for other matters as the Municipality considers necessary to ensure that the Municipality carries out its obligations under this Agreement.

6.3 Additional Covenants. The Municipality undertakes to advise UCPR within five (5) Business Days of the occurrence during the Term of this Agreement of any actions, suits or other proceedings which could or would prevent compliance with the terms and conditions of this Agreement.

SECTION 7 CONFLICT OF INTEREST AND CONFIDENTIALITY

7.1 No Conflicts Of Interest. The Municipality shall ensure that any Person associated with the Project in whatever capacity carries out the administration of any Funds in all its aspects without an actual, potential or perceived Conflict of Interest.

7.2 Disclosure Of Conflict Of Interest Situations. The Recipient shall:

- (a) Disclose to UCPR, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived Conflict of Interest; and
- (b) Comply with any terms and conditions that UCPR may impose as a result of the disclosure.

SECTION 8 INSURANCE

8.1 Municipality Shall Have Insurance. The Municipality shall put in effect and maintain until the Expiration Date of this Agreement at its own expense all necessary insurance that would be considered appropriate by a reasonable for the types of Projects in which Funds are being directed, including Commercial General Liability Insurance, for third party bodily injury, personal injury and property damage to an inclusive limit of not less than the amount indicated in Part C.3 of Schedule "C" of this Agreement per occurrence with insurers with an A.M. Best rating of B+ or equivalent. The Municipality's Commercial General Liability Insurance policy shall include:

- (a) The Indemnified Party as an additional insured with respect to liability arising in the course of performance of the Municipality's obligations under, or otherwise in connection with, the Agreement;
- (b) A cross-liability clause;
- (c) Contractual Liability coverage;
- (d) Products and Completed Operations Liability coverage; (e) Employers Liability;
- (f) Tenants Legal Liability (for premises/building leases only);
- (g) Non-Owned automobile coverage with blanket contractual and physical damage coverage for hired automobiles; and
- (h) A thirty (30) day written notice of cancellation, termination or material change clause.

8.2 UCPR To Have Priority Right On Any Proceeds Of Insurance Policy. The Municipality acknowledges and agrees that UCPR shall have a priority over any other Person, including the Municipality, to use or enjoy the benefits of the proceeds from the insurance required

under section 8.1 of this Agreement to pay any claim, suits, judgments, demands, expenses, actions, causes of action and losses, including, without limitation, reasonable legal expenses and any claim for a lien made pursuant to the *Construction Lien Act* (Ontario) and for any and all liability for damages to property and injury to persons, including death, that may be brought against UCPR as a result of this Agreement.

SECTION 9

LIMITATION OF LIABILITY AND INDEMNIFICATION

- 9.1 *Exclusion Of Liability.*** In no event shall UCPR be liable for any general, compensatory, incidental, special or consequential damages, or any loss of use, revenue or profit by the Municipality or the Municipality's officers, servants, employees and agents arising out of or in any way related to this Agreement.
- 9.2 *Municipality To Indemnify UCPR.*** The Municipality shall indemnify and hold harmless the Indemnified Party from and against all suits, judgments, claims, demands, expenses actions, causes of action and losses, including, without limitation, reasonable legal expenses and any claim for lien made pursuant to the *Construction Lien Act* (Ontario), and for any and all liability for damages to property and injury to persons, including death, which the Indemnified Party may incur, otherwise than by reason of their own gross negligence or willful misconduct, as a result of or arising out of or in relation to any breach by the Municipality of the terms of this Agreement, or the Municipality's own negligence or willful misconduct, as a result of or arising out of or in relation to:
- (a) The performance of this Agreement or the breach of the terms of this Agreement by the Municipality, its officers, servants, employees and agents, or by a third party and any of its officers, employees servants or agents;
 - (b) The ongoing operation, maintenance and repair of the Project; or
 - (c) Any omission or other willful or negligent act of the Municipality, a third party or their respective employees, officers, servants or agents.
- 9.3 *Further Indemnification Of UCPR.*** The Municipality further agrees to indemnify and hold harmless the Indemnified Party from any general, compensatory, incidental, indirect, special or consequential damage or any loss of use, revenue or profit which the Indemnified Party may incur or related in any way to this Agreement or the Project in tort, contract or otherwise other than by reason of their own gross negligence or willful misconduct, as a result of or arising out or in relation to:
- (a) The performance of this Agreement or any breach of the terms and conditions of this Agreement by the Municipality, its officers, servants, agents, employees and Consultants or by a third party and any of its officers, servants, agents or employees where the third party entered into a Contract with the Municipality in relation to the Project;
 - (b) The ongoing operation, maintenance and repair of the Project; or
 - (c) Any omission or negligent act or misconduct of the Municipality its officers, servants, agents, employees and Consultants or by a third party and any of its officers, servants, agents or employees where the third party entered into a Contract with the Municipality in relation to the Project.
- 9.4 *Municipality To Require Third Parties To Indemnify UCPR.*** The Recipient shall use all reasonable efforts to ensure that all third parties that the Municipality enters into a Contract with indemnify and hold harmless the Indemnified Party from and against all suits, judgments, claims, demands, expenses actions, causes of action and losses, including, without limitation,

reasonable legal expenses and any claim for lien made pursuant to the *Construction Lien Act* (Ontario), and for any and all liability for damages to property and injury to persons, including death, which the Indemnified Party may incur, otherwise than by reason of their own negligence or willful misconduct, as a result of or arising out of or in relation to any breach by the Municipality of the terms of this Agreement, or the Municipality's own negligence or willful misconduct, as a result of or arising out of or in relation to:

- (a) The performance of this Agreement or the breach of the terms of this Agreement by the Municipality, its officers, servants, employees and agents, or by a third party and any of its officers, employees servants or agents;
- (b) The ongoing operation, maintenance and repair of the Project; or
- (c) Any omission or other willful or negligent act of the Recipient, a third party or their respective employees, officers, servants or agents.

The Municipality agrees to take and implement any reasonable direction from UCPR in relation to the enforcement or assertion of this section 9.4 of the Agreement as against any third party.

- 9.5 *Municipality To Limit Heads Of Damage As Against UCPR In Contracts With Third Parties.*** The Municipality shall use commercially reasonable efforts to include in the Municipality's Contracts with any third party a provision that provides notwithstanding anything else, and in no event whatsoever, shall UCPR be liable to the third party for any incidental, indirect, special or consequential damage or any loss of use, revenue or profit which the Indemnified Party may incur as a result of anything under or related in any way to this Agreement or the Project in tort, contract or otherwise. The Municipality agrees to take and implement any reasonable direction from UCPR in relation to the enforcement of this section 9.5 of the Agreement as against any third party.

SECTION 10 PROCUREMENT

- 10.1 *UCPR Not Responsible For Claims Under Tender/Bidding Process.*** Without limiting the generality of section 9.1 of this Agreement, UCPR shall not be responsible for any claim arising from the tender and bidding process in relation to any Project in which Funds are directed.

- 10.2 *Competitive Procurement Process.*** The Municipality shall acquire and manage its equipment, services and supplies, including any construction component, required for any Project in which Funds are directed through a transparent, competitive process that ensures the best value for any Funds expended. Without limiting the generality of the foregoing, the Municipality shall follow its procurement policies as required under the *Municipal Act, 2001* (Ontario).

- 10.3 *Contracts.*** The Municipality shall ensure that all Contracts:

- (a) Are consistent with this Agreement;
- (b) Do not conflict with this Agreement;
- (c) Incorporate the relevant provisions of this Agreement to the fullest extent possible;
- (d) Are managed in a way that is transparent, competitive and consistent with value for money principles
- (e) Require that any third parties thereto comply with all Requirements of Law; and
- (f) Authorize UCPR to collect, use and disclose in accordance with the Requirements of Law information and data gathered by the third party in connection with Project,

perform audits of the third party and monitor the Project as UCPR sees fit.

- 10.4 Costs Of Contracts Not Awarded In Compliance With This Section May Be Deemed Ineligible.** If UCPR determines that the Municipality has awarded a Contract in a manner that is not in compliance with this section 10 of the Agreement, UCPR may, upon written notification to the Municipality, deem the costs associated with the Contract as being ineligible for payment from the Funds.
- 10.5 Goods And Services To Be Procured In Competitive Manner And At Price No Greater Than Fair Market Value.** Despite anything else contained in this section 10 of the Agreement, the Municipality shall ensure that all goods and services purchased with any Funds being provided under this Agreement are purchased or acquired at competitive prices that are no greater than fair market value after deducting trade discounts and/or any other discounts available to the Municipality.
- 10.6 Municipality To Keep Records Of Contracts.** The Municipality shall keep and maintain proper and accurate accounts and records, including, but not limited to, all Contracts, invoices, statements, receipts and vouchers in relation to any Project in which Funds are directed for a period of at least seven (7) years after the Term of this Agreement.

SECTION 11 REPORTS

- 11.1 Project Report.** The Municipality shall submit a Project Report for every Project it proposes to direct Funds under this Agreement toward, as set out under Part B.1 of Schedule "B" of this Agreement, to UCPR by the date indicated in Part C.4 of Schedule "C" of this Agreement and in accordance with the requirements set out under Part B.1 of Schedule "B" of this Agreement during the Term of this Agreement. The Municipality shall follow such reasonable administrative procedures as Ontario may specify from time to time.
- 11.2 Annual Financial Report.** The Municipality shall submit an Annual Report, as set out under Part B.2 of Schedule "B" of this Agreement, to UCPR on the dates set out in Part C.5 of Schedule "C" of this Agreement and in accordance with the requirements set out under Part B.2 of Schedule "B" of this Agreement during the Term of this Agreement. The Municipality shall follow such reasonable administrative procedures as UCPR may specify from time to time.
- 11.3 Additional Reports Upon Request.** The Municipality shall, upon UCPR's request in writing, collect such information and provide such additional reports as UCPR may specify from time to time during the Term of this Agreement. The Municipality shall provide any additional reports within ten (10) Business Days of the request, unless the request provides otherwise.
- 11.4 Compliance Attestation.** The Municipality shall provide a compliance attestation, signed by the Municipality's Administrative Officer/Clerk or Treasurer, and in accordance with the following when any reports required under sections 11.1 to 11.3 of this Agreement is submitted.

SECTION 12

RECORDS, INSPECTION, AUDITS AND THE PROVISION OF INFORMATION

12.1 *Municipality's Obligations Under Agreement.* The Municipality:

- (a) Shall keep and maintain all financial records, receipts, invoices and other financially-related documents relating to any Funds or otherwise in relation to any Project in which Funds are directed in a manner consistent with generally accepted accounting principles and clerical practices, and shall maintain such records and keep them available for review by UCPR for a period of seven (7) years from the Expiration Date of this Agreement; and
- (b) Shall maintain all non-financial documents and records relating to any Funds or otherwise to any Project in which Funds are directed, including any records it receives about the people it serves, in a confidential manner consistent with all Requirements of Law.

12.2 *Audits.* UCPR may, at its own expense, conduct audits of any Project in which Funds are directed. UCPR may require the assistance of an external auditor to carry out an audit. If so, UCPR shall be responsible for retaining the external auditor.

12.3 *Information.* The Municipality shall supply to UCPR, within ten (10) Business Days of receiving a written request, such information in respect of this Agreement or any Project in which Funds are directed as UCPR requests unless the request provides otherwise.

12.4 *Provision Of Information Is A True Condition Precedent.* If, in the opinion of UCPR, any of the information requirements of this Agreement are not met, UCPR may in its sole and absolute discretion, and despite section 5.2 and Part D.2 of Schedule "D" of this Agreement, require the information as a condition precedent to the payment of any Funds under this Agreement.

SECTION 13

DEFAULT AND TERMINATION

13.1 *Events Of Default.* UCPR may, acting in a reasonable manner, without liability, cost or penalty and without prejudice to any other rights or remedies of UCPR under this Agreement or at law or in equity, terminate this Agreement immediately upon giving written notice to the Municipality where:

- (a) In the opinion of UCPR:
 - (i) The Municipality has provided false or misleading information to UCPR;
 - (ii) The Municipality breaches a material term or condition of this Agreement, where materiality is to be determined by UCPR, in its sole and absolute discretion, acting reasonably;
 - (iii) The Municipality breaches a material term or condition of any other funding agreement it has with UCPR, where materiality is to be determined by Municipality, in its sole and absolute discretion, acting reasonably;
 - (iv) The Municipality is unable to continue with any Project in which Funds are directed or the Municipality is likely to discontinue any Project in which Funds are directed;
 - (v) A material adverse change occurs such that the viability of a Municipality as a going concern is threatened;
- (b) The Municipality makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or is petitioned into bankruptcy, or files for the appointment of a receiver; or

- (c) The Municipality ceases to operate.

13.2 Remedies On Default. Despite any other rights UCPR has under this Agreement, if an Event of Default has occurred, UCPR shall have the following remedies:

- (a) UCPR shall not have to provide any further Funds under this Agreement;
- (b) UCPR may, at its option, terminate this Agreement immediately after any notice period expires or may, in its sole and absolute discretion, Adjust the Funds, including a demand to return all Funds provided under this Agreement;
- (c) UCPR may avail itself of any of its legal remedies that it may deem appropriate.

13.3 Additional Remedies. In addition to the remedies described in section 13.2 of this Agreement, UCPR may commence such legal action or proceedings as it, in its sole and absolute discretion, may deem expedient, without any additional notice under this Agreement. The rights and remedies of UCPR hereunder are cumulative and in addition to, and not in substitution for, all other rights or remedies otherwise available to UCPR at law, equity or under statute.

13.4 Waiver Of Event Of Default Must Be In Writing. UCPR may, in its sole and absolute discretion, at any time, waive any above-mentioned Event of Default which may have occurred provided that no such waiver shall extend to, or be taken in any manner whatsoever to affect, any subsequent Event of Default or the right to remedies resulting therefrom, and that no such waiver shall be, or shall be deemed to constitute, a waiver of such Event of Default unless such waiver is in writing from UCPR. UCPR may also impose conditions on any waiver it provides under this section 13.4 of the Agreement.

13.5 UCPR's Discretion To Terminate Agreement. Despite anything else contained in this Agreement, UCPR may, without liability, cost or penalty and without prejudice to any other rights or remedy UCPR may have under this Agreement or at law or in equity terminate this Agreement at any time upon one hundred and eighty (180) days' notice to the Municipality, provided it acts reasonably in doing so.

13.6 Termination Of Agreement For Circumstances Beyond The Control Of A Party. Neither Party shall be liable for damages caused by delay or failure to perform its obligations under this Agreement where such delay or failure is caused by an event beyond its reasonable control. Should the event last more than ninety (90) Business Days, this Agreement shall terminate and the process set out under section 15.5 of this Agreement shall be followed, with any necessary modifications.

13.7 Date of Termination. In the event of termination pursuant to this section 13 of the Agreement, the effective date of termination shall be the last day of the notice period, the last day of any subsequent notice period or immediately, whichever applies.

SECTION 14 GENERAL PROVISIONS

14.1 Terms Binding. The Municipality shall take all reasonable measures to ensure that its officers, directors, partners, employees, agents, third party contractors shall be bound to observe all of the terms and conditions of this Agreement, including, but not limited to all of the covenants, representations and warranties set out herein.

14.2 Representatives May Bind Parties. The Parties represent and warrant that their respective representatives have the authority to legally bind them to the extent permissible by

the Requirements of Law.

- 14.3 Further Assurances.** The Parties agree to do or cause to be done all acts or things necessary to implement and carry into effect this Agreement to its full extent.
- 14.4 Agreement Binding.** This Agreement shall ensure to the benefit of and be binding upon the Parties, their successors, executors, administrators, heirs and their permitted assigns.
- 14.5 Waivers In Writing.** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the notice provisions set out in section 14.16 of this Agreement. Any waiver must refer to a specific failure to comply and shall not have the effect of waiving any subsequent failures to comply.
- 14.6 Time Is Of The Essence.** In the performance and observance of the terms and conditions of this Agreement, time is of the essence and no extension or variation of this Agreement shall operate as a waiver of this provision.
- 14.7 Severability.** If any term or condition of this Agreement, or the application thereof to the Parties or to any persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Agreement, and the application of such term or condition to the Parties, persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.
- 14.8 No Assignment Of Agreement.** The Municipality shall not assign this Agreement to any other person.
- 14.9 No Amendment.** This Agreement shall not be varied or amended except by a document in writing, dated and signed on behalf of the Parties.
- 14.10 Joint Authorship Of Agreement.** The Parties shall be considered joint authors of this Agreement and no provision herein shall be interpreted against one Party by the other Party because of authorship. No Party shall seek to avoid a provision herein because of its authorship through recourse to a third party, court, tribunal or arbitrator.
- 14.11 Parties Independent.** The Municipality acknowledges that it is not an agent, joint venturer, partner or employee of UCPR and the Municipality shall not take any actions that could establish or imply such a relationship.
- 14.12 Municipality Cannot Represent UCPR.** The provision of any Funds to the UCPR pursuant to this Agreement is for the sole purpose of, and is limited to, allowing the Municipality to carry out the Project. The Municipality represents warrants and agrees that under no circumstances shall it enter into any contract or commitment in the name of or on behalf of UCPR. The Municipality acknowledges and agrees that it is not by the terms and conditions of this Agreement or otherwise granted any right or authority to assume or to create any obligations or responsibility, express or implied, on behalf of or in the name of UCPR, to act as an agent of UCPR or to bind UCPR in any manner whatsoever other than as specifically provided under this Agreement.
- 14.13 Consultants.** UCPR acknowledges and recognizes that, in connection with the carrying out the Project, the Municipality may engage one or more Consultants. UCPR acknowledges and agrees that the Municipality shall have the sole authority and responsibility for such employees, agents or Consultants, including the hiring and termination. The Municipality acknowledges and agrees that the Municipality shall be responsible for all acts and actions of the

Municipality's employees, agents and Consultants and that all such acts and actions shall be treated as actions of the Municipality for the purposes of this Agreement.

14.14 Notice And Service Of Documents Under Agreement. Notices shall be in writing and shall be delivered by mail, personal delivery, facsimile transmission or Email transmission and shall be addressed to UCPR and the Municipality respectively, as set out in Part C.6 of Schedule "C" of this Agreement.

Notice shall be deemed to have been received:

- (a) In the case of mail, five (5) Business Days after such notice is mailed; or
- (b) In the case of personal delivery, facsimile transmission or Email transmission, one (1) Business Day after such notice is delivered to the other Party.

In the event of a postal disruption, notices shall be given by personal delivery, facsimile transmission or Email transmission. Unless the Parties expressly agree in writing to additional methods of notices, notices may only be provided by the method(s) contemplated in this section 14.16 of the Agreement.

The Parties agree that for the purposes of this section 14.16 of the Agreement, the name(s) of the individuals may be changed without amending the Agreement through the Party making the change providing written notice to the other Party of said change.

14.15 Governing Law. This Agreement and the rights, obligations and relations of the Parties shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings in connection with this Agreement shall be conducted in Ontario.

14.16 Agreement Executed In Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together, shall constitute one and the same agreement.

14.17 Entire Agreement. This Agreement, including its Schedules, embodies the entire Agreement between the Parties with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations or agreements. No prior document, discussion, negotiation, provision undertaking or agreement in relation to the subject matter of this Agreement has any legal effect. No representation or warranty, whether express, implied or otherwise, has been made by UCPR to the Municipality except as expressly set out in this Agreement.

14.18 Survival. The provisions of this Agreement that by their nature survive the expiration or early termination shall so survive. Without limiting the generality of the foregoing, the provisions that shall survive the termination or expiration of this Agreement for a period of seven (7) years from the Expiration Date or termination of this Agreement, whichever occurs first, include: sections 3 to 6, 9 and 11 to 13; subsections 1.2 to 1.3, 2.2, 14.5, 14.7, 14.9 to 14.11, and 14.14 to 14.18; Parts C.6 of Schedule "C" of this Agreement and Schedules "E"; along with all applicable defined terms within section 1, all cross-referenced provisions within the foregoing sections, subsections and Schedules.

IN WITNESS WHEREOF the Parties have executed this Agreement on the dates set out below.

THE CORPORATION OF THE UNITED COUNTIES OF PRESCOTT AND RUSSELL

Name: Stéphane P. Parisien
Title: CEO

Date

I have the authority to bind the Corporation.

THE CORPORATION OF THE CITY OF CLARENCE-ROCKLAND

Name:
Title:

Date

AFFIX CORPORATE SEAL

Name:
Title:

Date

I/We have the authority to bind the Municipality.

SCHEDULE "A"
ELIGIBLE PROJECT

Eligible Projects include:

Capital projects for the renewal, rehabilitation and replacement of core infrastructure assets and maintenance works which include:

- Roads
 - o Paved Roads
 - o Unpaved Roads
 - o Street lighting and sidewalks may be included as eligible items when part of a road project.
- Bridges and Culverts
- Storm Sewer Systems (Urban and Rural)
- Equipment related to road maintenance

Funds are not to be used for growth-related expansion projects (e.g., new subdivision infrastructure).

SCHEDULE "B"
PROJECT REPORT AND ANNUAL PROJECT AND
FINANCIAL INFORMATION UPDATE

PART B.1 – PROJECT REPORT

The Project Report, Section A, shall indicate to UCPR what Projects the Municipality will use the Funds for with the estimated funds used per project. Project Report must be submitted no later than May 31st, 2019.

Should the Municipality require a revision in the Project set out in the Project Report; the Municipality shall revise the Project Report and submit an updated Project Report as soon as possible to UCPR and prior to any construction being undertaken on the Project. The Municipality shall note that the Project has been changed from the original Project Report.

PART B.2 – ANNUAL PROJECT AND FINANCIAL INFORMATION UPDATE

Section B of the applicable Project Report must be submitted no later than December 31st, 2019.

For the project report and annual project and financial information update use report hereinto attached to this Schedule.

**SCHEDULE “C”
OPERATIONAL REQUIREMENTS UNDER THE
AGREEMENT**

PART C.1 – EFFECTIVE DATE OF AGREEMENT

C.1.1 *Effective Date Of Agreement.* This Agreement is effective as of the date that the Parties sign it.

PART C.2 – EXPIRATION DATE

C.2.1 *Expiration Date Of Agreement.* Unless this Agreement is terminated earlier, this Agreement shall expire on December 31, 2019.

PART C.3 – INSURANCE REQUIREMENTS

C.3.1 *Insurance Requirements.* The Municipality shall have no less than Five million dollars (\$5,000,000.00) in general commercial liability insurance per occurrence.

PART C.4 – SUBMISSION OF PROJECT REPORT

C.4.1 *Submission Of Project Report.* The Municipality shall submit its Project Report no later than May 31, 2019.

PART C.5 – SUBMISSION OF ANNUAL REPORT

C.5.1 *Submission Of Annual Report.* The Municipality shall submit the Annual Financial Report and Part “B” of the Project Report for all applicable Projects to UCPR by December 31, 2019.

PART C.6 – NOTICE AND CONTACT

C.6.1 *Notice And Contact Information.* Notices under this Agreement shall be sent to the following persons at the following addresses:

To UCPR: The Corporation of the United Counties of Prescott and Russell 59 Court St., PO Box 304 L'Orignal, Ontario K0B 1K0 Attention: Marc Clermont, Public Works Director Telephone: (613) 675-4661 x 3100 Email: mclermont@prescott-russell.on.ca	To Recipient: The Corporation of the City of Clarence- Rockland 1560 Laurier Street Rockland ON K4K 1P7 Attention: Helen Collier, CAO Telephone: 613-446-6022, #224 Email: hcollier@clarence-rockland.com
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**SCHEDULE “D”
FINANCIAL INFORMATION FOR THE
PROJECT**

PART D.1 – PROVISION OF FUNDS

D.1.1 Funds Provided By UCPR. Subject to the terms and conditions of this Agreement, UCPR shall provide the Municipality with an amount up to the amount indicated, for your Municipality, in the table immediately below in Funds for Eligible Costs. Subject to sections 3.5 and 4.3 of this Agreement.

Municipality	Total Municipal road (km)	% of road per Municipality versus total	% of requisition per Municipality in 2019	Subsidy calculated on 40% of road	Subsidy calculated on 60% of requisition	Total
Clarence-Rockland	503	14.81	27.32	\$ 118,457.46	\$ 327,840.00	\$ 446,297.46
Hawkesbury	118	3.47	9.05	\$ 27,789.23	\$ 108,600.00	\$ 136,389.23
Casselman	21	0.62	4.35	\$ 4,945.54	\$ 52,200.00	\$ 57,145.54
Alfred-Plantagenet	590	17.37	9.55	\$ 138,946.13	\$ 114,600.00	\$ 253,546.13
Champlain	292	8.60	9.49	\$ 68,766.56	\$ 113,880.00	\$ 182,646.56
East-Hawkesbury	258	7.59	4.03	\$ 60,759.49	\$ 48,360.00	\$ 109,119.49
Nation	1113	32.76	14.64	\$ 262,113.63	\$ 175,680.00	\$ 437,793.63
Russell	502	14.78	21.57	\$ 118,221.96	\$ 258,840.00	\$ 377,061.96
Total	3397	100.00	100.00	\$ 800,000.00	\$1,200,000.00	\$2,000,000.00

PART D.2 – PAYMENT OF FUNDS

D.2.1 Payment of Funds. UCPR shall pay, subject to the terms and conditions of the Agreement, to the Municipality the Funds in accordance with the following:

Funding Year	100% Payment Date Range
2019	After project report approval

**SCHEDULE “E” ELIGIBLE AND
INELIGIBLE COSTS**

PART E.1 – ELIGIBLE COSTS

E.1.1 Eligible Costs. Subject to the terms and conditions of this Agreement and Part E.2 of this Schedule “E” of the Agreement, Eligible Costs shall only include all direct and incremental costs that are attributable to the development and implementation of the Project and are in UCPR’s sole and absolute discretion, properly and reasonably incurred as well as necessary for the Project. Eligible Costs must also be actual, verifiable cash outlays that are documented through invoices, receipts or other records that is acceptable to Ontario.

Without limiting the generality of the foregoing, Eligible Costs shall only include the following:

- (a) The capital costs of constructing, rehabilitating, replacing or improving, in whole or in part, a tangible core infrastructure asset;
- (b) Maintenance cost of tangible core infrastructure asset
- (c) All planning and assessment costs, such as the costs of environmental planning, surveying, engineering, architectural supervision, testing and management consulting services;
- (d) The costs for permits, approvals, licenses and other authorizing documents, as well as inspections and other fees directly attributable to obtaining a permit, approval, license or other authorizing document, provided those costs are directly attributable to the construction and implementation of Project,
- (e) The costs of Project-related signage, lighting, Project markings and utility adjustments;
- (f) Purchase of road related equipment;

PART E.2 – INELIGIBLE COSTS

E.2.1 *Ineligible Costs.* The following costs are Ineligible Costs and are therefore ineligible to be paid from the Funds being provided under this Agreement:

- (a) Costs not incurred in accordance with section 5.1(e) of the Agreement; (b) Costs associated with the acquisition or leasing of:
 - (i) Land,
 - (ii) Buildings,
 - (iii) Equipment,
 - (iv) Other facilities, and
 - (v) Obtaining easements, including costs or expenses for surveys, and includes real estate fees and other related costs;
- (c) The value of any goods and services which are received through donations or in kind;
- (d) Employee wages and benefits, municipal equipment/recovery cost, overhead costs as well as other direct or indirect operating, and administrative costs incurred by the Municipality for the Project, and more specifically, but without limiting the generality of the foregoing, costs relating to services delivered directly by permanent employees of the Municipality;
- (e) Meal, hospitality or incidental costs or expenses of Consultants

E.2.2 *Harmonized Sales Tax.* Any portion of the Harmonized Sales Tax that is refundable by the Canada Revenue Agency as an input tax credit or as a rebate shall be deemed to be an Ineligible Cost. Any portion of the Provincial Sales Tax that is refundable by the respective provincial tax authority shall be deemed to be an Ineligible Cost.

E.2.3 *Costs Of Non-Arm's Length Parties.* The costs or expenses of goods or services acquired from parties that are not Arm's Length from the Municipality must be valued at the cost of the supplying entity and shall not include any mark up for profit, return on investment or overhead costs and shall not exceed fair market value. UCPR may not consider the eligibility of any of these costs unless access is provided to the relevant records of the supplying entity.