

SCHEDULE 'A'

THIS AGREEMENT, made the 16th day of July, 1999.

BETWEEN:

THE CORPORATION OF THE TOWN OF FLAMBOROUGH
hereinafter "Flamborough"

OF THE FIRST PART

- and -

HAMILTON REGION CONSERVATION AUTHORITY
hereinafter "HRCA"

OF THE SECOND PART

WHEREAS Flamborough is the owner of the opened road allowance known as Middletown Road, shown on the attached Middletown Road Trail Concept Plan (Schedule "B") as the red line entitled "on road alignment", hereinafter the "opened road allowance";

AND WHEREAS Flamborough is the owner of the unopened road allowance known as Middletown Road shown as the yellow line entitled "Off Road Alignment" on Schedule "B", hereinafter the "unopened road allowance";

AND WHEREAS HRCA and unknown third parties are owners of lands abutting the opened road allowance and unopened road allowance, hereinafter the "abutting lands";

AND WHEREAS Flamborough and HRCA consider it desirable to develop a multi-use recreational trail on the opened road allowance, the unopened road allowance and, possibly, the abutting lands, hereinafter the "Middletown Trail";

AND WHEREAS Flamborough is in the process of finalizing its Master Trail Plan, which process is expected to be completed by September 1999;

AND WHEREAS the development of the Middletown Trail is part of Flamborough's Master Trail Plan;

AND WHEREAS this Agreement is intended to outline the respective rights and obligations of Flamborough and HRCA in relation to the design, development, construction, fund-raising for, and operation and maintenance of the Middletown Trail.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH that, in consideration of the covenants and agreements herein contained, the sum of one dollar (\$1.00) by each party paid to the other, and other good and valuable consideration, Flamborough and HRCA agree as follows:

Interpretation

1.1 The following Schedules, which are attached or will be attached, to this Agreement, are incorporated by reference with this Agreement and shall be deemed to be part of it:

"Schedule "B" – Middletown Road Trail Concept Plan;

"Schedule "C" – Flamborough Master Trail Plan as approved by Council.

1.2 Nothing in this Agreement shall be construed as creating, in law, a relationship of partners, joint venturers or fiduciaries between the parties. Neither party hereto has any authority to enter into any contract, assume any obligations or give any warranties or representations on behalf of the other, except as expressly otherwise provided in this Agreement.

- 1.3 This Agreement contains the entire Agreement between the parties and supersedes all prior understandings and agreements, written or oral.
- 1.4 This Agreement shall be interpreted in accordance with the laws of the Province of Ontario and the laws of Canada, applicable to the Province.
- 1.5 This Agreement shall enure to the benefit of the parties and be binding upon their successors and assigns, provided that neither party shall be permitted to assign or transfer its rights or obligations under this Agreement without the prior written consent of the other, which consent may not be unreasonably withheld.
- 1.6 In the event that either party is delayed or prevented from performing its obligations under this Agreement by reason of unforeseen circumstances beyond the control of such party, such party so prevented shall not be held responsible for damages caused by its delay or failure to perform such obligation.

Dispute Resolution

- 2.1 Any dispute arising from the application or interpretation of this Agreement should be resolved by the parties through discussion and negotiation. In the event the parties are unable to resolve any such dispute or controversy through discussion and negotiation, then either party may refer such dispute or controversy to a sole arbitrator or arbitration panel, selected by agreement between the parties, for the purposes of acting as adjudicator.
- 2.2 The decision of the adjudicator shall be final and binding upon the parties and there shall be no resort to any court for further relief.

Term

- 3.1 The term of this Agreement shall be for a period of fifty (50) years, commencing on the date of execution of this Agreement by the parties. This Agreement may be renewed at the expiry of the term for an additional fifty (50) years upon Flamborough giving notice to HRCA of its desire for renewal prior to the expiry of the term.

Development of the Middletown Trail

- 4.1 Flamborough shall prepare and deliver to HRCA a map defining the limits of the unopened road allowance. The said limits shall be clearly marked on site to permit HRCA to develop the unopened road allowance as contemplated by this Agreement. Flamborough shall ensure that the unopened road allowance is free and clear of all encroachments.
- 4.2 HRCA shall prepare the Middletown Road Trail Concept Plan to be attached to this Agreement as Schedule "B". Upon attachment, Schedule "B" shall be deemed to form part of Flamborough's Master Trail Plan.
- 4.3 HRCA shall develop and construct the unopened road allowance and abutting lands (if required) portions of the Middletown Trail in accordance with the Master Trail Plan and Concept Plan. If abutting lands are required, HRCA shall secure their use through acquisition or otherwise.
- 4.4 Flamborough shall develop and construct the opened road allowance portions of the Middletown Trail in accordance with the Master Trail Plan and Concept Plan.

Operation and Maintenance of the Middletown Trail

- 5.1 HRCA shall operate and maintain the unopened road allowance and abutting lands (if required) portions of the Middletown Trail in accordance with the Master Trail Plan and HRCA policies/standards applicable to other HRCA lands.
- 5.2 Flamborough shall operate and maintain the opened road allowance portions of the Middletown Trail in accordance with the Master Trail Plan and Flamborough policies/standards applicable to other Flamborough lands.

Funding

- 6.1 HRCA shall secure all funding required for the development, operation and maintenance of the unopened road allowance and abutting lands (if required) portions of the Middletown Trail.
- 6.2 Flamborough shall secure all funding required for the development, operation and maintenance of the opened road allowance portions of the Middletown Trail.
- 6.3 Flamborough and HRCA shall assist each other in all ways possible to secure funding for the development, operation and maintenance of Middletown Trail.
- 6.4 Flamborough shall receive requests for funding from HRCA, from time to time but nothing herein requires Flamborough to provide such funding.
- 6.5 Despite Section 6.1 and 6.2, HRCA and Flamborough shall share equally (50/50) all incidental costs associated with the obligations arising out of this Agreement, including but not limited to the preparation of the Concept Plan and legal costs incurred in the preparation of this Agreement.
- 6.6 Despite Section 6.5, any survey, title search or associated costs arising from Flamborough's obligation in Section 4.1 shall be Flamborough's sole responsibility.

Liability and Insurance

- 7.1 Nothing contained in this Agreement shall alter the duties in law of either party to the other or their respective agents or employees, and third parties. The parties are responsible for maintaining their own insurance coverage to protect their own actions, interests and liability risks associated with all matters arising out of this Agreement and shall name the other as a co-insured on such policy of insurance. Nothing in this Agreement shall be construed to transfer the risk of damage to property or third parties from one party of this Agreement to the other.

Notice

- 8.1 Where notice is required under this Agreement, such notice shall be in writing and shall be delivered in person or sent by registered mail to the following:

The Corporation of the Town of Flamborough
163 Dundas Street East
P.O. Box 50
Waterdown, Ontario
L0R 2H0

Hamilton Region Conservation Authority
838 Mineral Springs Road
P.O. Box 7099
Ancaster, Ontario
L9G 3L3

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals duly attested to by their proper signing officers in that behalf.

SIGNED, SEALED AND DELIVERD

THE CORPORATION OF THE
TOWN OF FLAMBOROUGH

Per:

Name: Ted McMeekin
Title: Mayor

Name: M. Jane Lee
Title: Clerk

HAMILTON REGION
CONSERVATION AUTHORITY

Per:

Name: R.F. POWERS
Title: CHAIRMAN

Name: Ben W. Vanderbrug
Title: General Manager