

**SCHEDULE 'A'**

THIS AGREEMENT, made the 14<sup>th</sup> day of DECEMBER, 1999.

BETWEEN:

THE CORPORATION OF THE CITY OF STONEY CREEK  
hereinafter "Stoney Creek"

OF THE FIRST PART

- and -

HAMILTON REGION CONSERVATION AUTHORITY  
hereinafter "HRCA"

OF THE SECOND PART

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

AND WHEREAS Stoney Creek is the owner of the unopened road allowance known as Powerline Road shown as the green 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 Stoney Creek 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 "Powerline Trail";

AND WHEREAS Stoney Creek has completed a Multi-Use Trail Master Plan, hereinafter the "Master Trail Plan";

AND WHEREAS the development of the Powerline Trail is part of the Master Trail Plan;

AND WHEREAS this Agreement is intended to outline the respective rights and obligations of Stoney Creek and HRCA in relation to the design, development, construction, fundraising for, and operation and maintenance of the Powerline 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, Stoney Creek and HRCA agree as follows:

**Interpretation**

- 1.1 Schedule "B" shall be deemed to be part of this agreement.
- 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 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 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 Stoney Creek giving notice to HRCA of its desire for renewal prior to the expiry of the term.

#### **Development of Powerline Trail**

- 4.1 Stoney Creek 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. Stoney Creek shall ensure that the unopened road allowance is free and clear of all encroachments.
- 4.2 HRCA and Stoney Creek shall prepare and thereafter approve a detailed development plan for the Powerline Trail, hereinafter the "Powerline Trail Master Development Plan".
- 4.3 HRCA shall develop and construct the unopened road allowance and abutting lands (if required) portions of the Powerline Trail in accordance with the Master Trail Plan and the Powerline Trail Master Development Plan. If abutting lands are required, HRCA shall attempt to secure their use through acquisition or otherwise.
- 4.4 Stoney Creek shall develop and construct the opened road allowance portions of the Powerline Trail in accordance with the Master Trail Plan and the Powerline Trail Master Development Plan.

#### **Operation and Maintenance of the Powerline Trail**

- 5.1 HRCA shall operate and maintain the unopened road allowance and abutting lands (if required) portions of the Powerline Trail in accordance with HRCA policies/

standards applicable to other HRCA lands.

- 5.2 Stoney Creek shall operate and maintain the opened road allowance portions of the Powerline Trail in accordance with Stoney Creek policies/standards applicable to other Stoney Creek 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 Powerline Trail.
- 6.2 Stoney Creek shall secure all funding required for the development, operation and maintenance of the opened road allowance portions of the Powerline Trail.
- 6.3 Stoney Creek and HRCA shall assist each other in all ways possible to secure funding for the development, operation and maintenance of Powerline Trail.
- 6.4 Stoney Creek shall receive requests for funding from HRCA, from time to time, but nothing herein requires Stoney Creek to provide such funding.
- 6.5 Despite Section 6.1 and 6.2, HRCA and Stoney Creek 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 Powerline Trail Master Development 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 Stoney Creek's obligation in Section 4.1 shall be Stoney Creek'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, interest and liability risks associated with all matters arising out of this Agreement and shall name the other as an Additional Insured on such policy of insurance. The individual policies shall also include Blanket Contractual Liability, Cross Liability and Severability of Interest, and third (30) days notice of cancellation.

#### **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 City of Stoney Creek  
777 Highway No. 8  
PO Box 9940  
Stoney Creek, ON  
L8G 4N9

Hamilton Region Conservation Authority  
838 Mineral Springs Road  
PO Box 7099  
Ancaster, ON  
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 DELIVERED )

THE CITY OF STONEY CREEK

Per:



Name: Anne Bain  
Title: Mayor



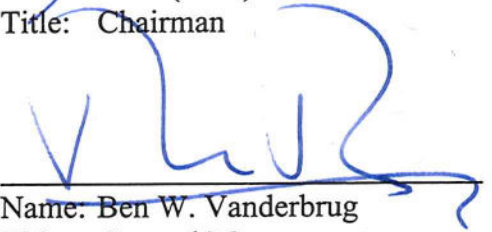
Name: R. Caterini  
Title: Clerk

HAMILTON REGION  
CONSERVATION AUTHORITY

Per:



Name: R. F. (Russ) Powers  
Title: Chairman



Name: Ben W. Vanderbrug  
Title: General Manager