

**HYDRO EXCAVATION VEHICLE CO-OWNERSHIP  
AGREEMENT**

This AGREEMENT made as of the \_\_\_\_ day of \_\_\_\_\_.

**B E T W E E N:**

**THE CORPORATION OF THE TOWN OF OAKVILLE**

(Herein called the "Town")

AND:

**OAKVILLE HYDRO ENERGY SERVICES INC.,**

An Ontario corporation

(Herein called "Hydro")

**WHEREAS** the Town and Hydro are to be co-owners of one (1) new Hydro Excavation Vehicle (hereinafter called the "Hydro-Vac") in the proportion of 35% Town and 65% Hydro;

**AND WHEREAS** Hydro will be responsible for procurement of the Hydro-Vac and capital funding for the acquisition will be shared in accordance with the established co-ownership proportion. Hydro will collaborate with the Town for general equipment specifications and incorporate job-specific attachments where requested by the Town;

**AND WHEREAS** Hydro will be wholly responsible for fuelling, storage, operation, maintenance and usage scheduling of the Hydro-Vac. Hydro shall operate the vehicle under its subsidiary El-Con Construction Incorporated (hereinafter called "EL-Con"). El-Con shall provide full time equipment operators for the Hydro-Vac and may use the unit for its own purposes outside the municipal boundary of the Town. The Town shall coordinate Hydro-Vac usage for its own purposes through El-Con.

**AND WHEREAS** the parties hereto have entered into this agreement to set out their respective rights and obligations concerning the ownership, maintenance and operation of the Hydro-Vac;

**NOW THEREFORE** in consideration of the mutual agreements and covenants herein contained and in consideration of other good and valuable consideration (the receipt and sufficiency of which is hereby mutually acknowledged), the Town and Hydro hereby agree as follows:

**1. RECITALS**

The parties hereto acknowledge and confirm the accuracy of the preceding recitals, all of which are hereby incorporated into, and form part of this agreement.

**2. DEFINITION OF TERMS**

The following terms shall, unless the context otherwise requires, have the following meanings for all purposes of this Agreement:

- a) The term "Capital Cost" means the proportionate sum to be paid hereunder to Hydro by the Town for Hydro-Vac acquisition or replacement;

- b) The term “Operating Fees” means the proportionate sum to be paid hereunder to Hydro by the Town for Hydro-Vac operation and ownership;
- c) The Term “Maintenance and Service Fees” means the proportionate sum to be paid hereunder to Hydro by the Town for Hydro-Vac equipment maintenance, repair and servicing inclusive of fueling costs;

### **3. TERM**

This Agreement shall be effective when signed by both parties and thereafter shall remain in effect until terminated by either party as herein provided. Either party shall have the unfettered right to terminate this Agreement during the Term upon giving the other party twelve months’ written notice. Provided however that if neither party shall have given written notice aforesaid, and provided further that no extension to this agreement shall have been executed by the parties hereto, this agreement shall continue from year to year with all terms and conditions contained herein to continue to apply *mutatis mutandis*. When this Agreement is signed by both parties, the February 26, 2015 agreement between the parties with respect to a previous Hydro-Vac shall be terminated. The previous Hydro-Vac unit will be sold with the proceeds being applied to the purchase of the Hydro-Vac unit referred to in this Agreement.

### **4. CAPITAL COST**

- a) Without limiting the generality of section 2A above, the Town shall pay Hydro the following with respect to the services to be provided and materials supplied hereunder by Hydro:
  - i) The Town shall pay to Hydro 35% of the direct capital acquisition cost of the Hydro-Vac unit up to an upset maximum limit of \$220,000. The total cost of the unit is estimated at \$650,000 and Hydro will be responsible to fund the residual capital acquisition cost which is portioned at 65% inclusive of any associated administration and procurement fees, license and taxes.
  - ii) It is anticipated that the Hydro-Vac will need replacement on an eight (8) year cycle. At the appropriate time, the Town and Hydro shall review usage and confirm the co-ownership model to be used for establishing future proportions for capital replacement.
  - iii) All revenue associated with the disposition of the Hydro-Vac shall be proportionally distributed to each owner based upon the co-ownership model or if mutually agreed, can be wholly used to offset the replacement cost of a new unit.

### **5. OPERATING FEES**

- a) Without limiting the generality of section 2B above, the Town shall pay Hydro the following with respect to the services to be provided and materials supplied hereunder by Hydro:
  - i) The Town shall pay to Hydro 100% of the labour costs including overhead burden to operate the Hydro-Vac for Town works. No other equipment operating charges shall be incurred by the Town.
  - ii) The Town shall pay Hydro 100% of the direct disposal costs associated with material excavated during the operation of the Hydro-Vac for Town works.

- iii) The Town shall pay Hydro 35% of the direct annual licensing and insurance costs associated with ownership of Hydro-Vac. Hydro will be responsible to pay the residual costs portioned at 65%.
- iv) The above fees will be based on direct costs and associated markup will be billed based on the following schedule:

<b>Direct Costs</b>	<b>Markup</b>
Labour Rates	15%
Licensing & Insurance	15%
Disposal Services	15%

- b) Operating Fees, excluding Licensing and Insurance, will be billed monthly with supporting background details and format agreeable to the Town, and are to be paid within 30 days of receipt. Licensing and Insurance costs will be billed once per year,
- c) Hydro reserves the right to adjust rates and fees associated with the work, services and supplies as contemplated by this Agreement. Without restricting Hydro’s right to set fees and simply by way of illustration, some cost factors which may affect the level of the Fees are collective agreement settlements and pricing adjustments by suppliers or service providers.

**6. MAINTENANCE AND SERVICE FEES**

- a) Without limiting the generality of section 2C above, the Town shall pay to Hydro the following with respect to the services to be provided and materials supplied hereunder by Hydro:
  - i) The Town shall pay Hydro 35% of the labour and material costs including overhead burden associated with fuel, fluids, parts, shop labour, contract services, oil and consumables required for maintenance, service and repair of the Hydro-Vac. Hydro will be responsible to pay the residual costs portioned at 65%.
  - ii) Hydro shall immediately notify the Town if the Hydro-Vac is out of service and/or inoperable for any reason. Hydro shall be wholly responsible for any repairs to the unit including any ancillary fees, arising out of inappropriate use or negligence by Hydro or their staff.
  - iii) The above fees will be based on direct costs and associated markup will be billed based on the following schedule:

<b>Direct Costs</b>	<b>Markup</b>
Fuel	15%
Parts and Consumables	15%
Maintenance Contract Services	10%

- d) Fees will be billed quarterly with supporting background details and format agreeable to the Town of Oakville, and are to be paid within 30 days of receipt.

**7. MAINTENANCE AND REPAIR SERVICES**

Hydro agrees to perform, provide, arrange and manage all servicing, repair and maintenance of the Hydro-Vac at such intervals as shall be recommended by the

unit's manufacturer. Without limiting the generality of the foregoing, the maintenance and service schedule shall take into account good professional judgement, legislative requirements, generally accepted guidelines for proper vehicle and equipment care and preventative maintenance and any specific recommendations and requests made by the Town.

## **8. SCHEDULING OF HYDRO-VAC SERVICES**

- a) Scheduling of Hydro-Vac work assignments shall be administered by Hydro.
- b) With the exception of emergencies, the Town and Hydro will endeavor to schedule work at least two weeks in advance with timeslots allocated in the proportion of 35% Town and 65% Hydro; Time slots not booked in advance can be utilized by either party on a first come, first served basis.

## **9. INSURANCE AND LICENSING**

Hydro shall be solely responsible for insuring, annual vehicle licensing and commercial vehicles operation registration of the Hydro-Vac.

## **10. LABOUR DISRUPTION**

In the event of any labour disruption affecting the ability of Hydro to perform the services herein, Hydro shall use its best efforts to arrange the performance of the Services by alternative measures. In any event and notwithstanding any other provision of this Task Specification, Hydro shall ensure that all emergency services and those Services affecting public safety are performed. To that end, immediately Hydro becomes aware that a labour disruption is occurring or is likely to occur, Hydro shall convene a meeting with the Town for the purpose of developing a plan as to which Services are to be given priority and how such plan is to be carried out while the labour disruption continues.

## **11. INSURANCE**

Each of the parties hereto shall maintain insurance, in an amount, with such insurance company and insuring against such liability and hazards against any losses of whatsoever kind, to persons or property for losses sustained by each of the parties hereto in performing their duties hereunder. Such policies of insurance shall name both parties hereto as loss payees and shall contain a waiver of subrogation as it pertains to Schedule 'A' Town owned units.

The Town shall not be liable to Hydro for losses sustained by Hydro, directly or indirectly, in whole or in part attributable to any action or omission of the Town in the performance of its duties hereunder whether through negligence or otherwise. Hydro shall have recourse only against any proceeds of the aforementioned insurance and hereby waives its right to bring an action against the Town. This section may be pleaded as an estoppel by the Town.

## **12. CVOR**

Hydro agrees that it shall operate the Hydro-Vac under its own CVOR, and is solely responsible for all exigencies thereunder. Hydro also agrees that its CVOR license and its driver/operator's abstracts may be confidentially reviewed by appropriate Town staff in due authority upon request to the Fleet Manager of Hydro, such review request not to be unreasonably delayed.

## **13.**

**13. WHOLE AGREEMENT**

This agreement sets out the entire agreement between the parties and can only be modified by instrument in writing duly executed by both parties hereto.

**IN WITNESS WHEREOF** the Town and Hydro have signed this Agreement as of the date first above written.

**THE CORPORATION OF THE TOWN OF  
OAKVILLE**

\_\_\_\_\_  
CAO

\_\_\_\_\_  
CLERK

**OAKVILLE HYDRO ENERGY SERVICES  
INC.**

\_\_\_\_\_  
Name: Ian Ross  
Title: General Manager, El-Con Construction

\_\_\_\_\_  
Name: Mary Caputi  
Title: Chief of Staff and COO, Oakville Enterprises