

APPENDIX A

**BOUNDARY and CONNECTING HIGHWAY
MAINTENANCE AND REPAIR AGREEMENT (“Agreement”)**

This Agreement is made this _____ day of _____, 2016.

BETWEEN

**The Corporation of the
TOWN OF MILTON**

(Hereinafter referred to as “Milton”)

OF THE FIRST PART

-And-

**The Corporation of the
TOWN OF OAKVILLE**

(Hereinafter referred to as “Oakville”)

OF THE SECOND PART

WHEREAS pursuant to Section 20(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25 (*Municipal Act, 2001*) a municipality may enter into an agreement with one or more municipalities or local bodies, as defined in section 19 (of the *Municipal Act, 2001*), or a combination of both to jointly provide, for their joint benefit any matter which all of them have the power to provide within their own boundaries;

AND WHEREAS pursuant to the *Municipal Act, 2001* Milton and Oakville have the power to provide maintenance and repair services to Highways (as herein defined) within their respective boundaries;

AND WHEREAS Milton and Oakville are adjoining jurisdictions that are desirous of entering into an agreement to maintain and repair the Highway(s) shown in Schedule C, for which they share Joint Jurisdiction;

AND WHEREAS Milton and Oakville have passed respective by-laws (Town of Milton By-law No. _____ and Town of Oakville By-law No. _____) in accordance with s.27(2) of the *Municipal Act, 2001* with respect to Highways under their Joint Jurisdiction (as herein defined);

AND WHEREAS pursuant to subsection 29.1(2) of the *Municipal Act, 2001*, each municipality has jurisdiction over that part of the Highway that it has agreed to keep in repair and is liable for any damages that arise from the failure to keep the Highway in repair and the other municipality is relieved from all liability in respect of the repair of that part;

AND WHEREAS the parties wish to provide for the Routine Maintenance and Repair of certain Connecting Highways (as herein defined);

NOW THEREFORE in consideration of the covenants contained herein and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree each with the other as follows:

1.0 DEFINITIONS

- 1.1 “Agreement” means this Boundary and Connecting Highway Maintenance and Repair Agreement.
- 1.2 “Capital Improvement” means any work that is outside of the Routine Maintenance and Repair as required by this Agreement and which materially improves and enhances any part of a Highway.
- 1.3 “Connecting Highway” means a highway or part thereof that lies within one municipality for which the other municipality agrees to perform Routine Maintenance and Repair in accordance with this Agreement.
- 1.4 “Highway” includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.
- 1.5 “Joint Jurisdiction” has the meaning described in s.29 of the *Municipal Act, 2001*.
- 1.6 “OSIM” means the “Ontario Structure Inspection Manual (OSIM)”, by the Ministry of Transportation, Policy Planning & Standards Division, Engineering Standards Branch, Bridge Office (October 2000); as amended.
- 1.7 “Roadway” means that part of the Highway that is improved, designed or ordinarily used for vehicular traffic, but does not include the boulevard or sidewalk.
- 1.8 “Routine Maintenance and Repair” means those activities, including Patrolling, undertaken in the routine maintenance and repair of a Highway, as contemplated in the *Minimum Maintenance Standards for Municipal Highways Regulation*, O.Reg. 239/02, as amended and as it exists from time to time (“*Maintenance Reg*”), or any successor regulation or statute, and which shall be conducted in accordance with the specifications contained in the *Maintenance Reg* and in this Agreement. In addition, Routine Maintenance and Repair also includes maintenance and repair activities (e.g. sweeping, flushing, rough-cut mowing), as set out in Level of Service Standards, as approved from time to time, by the Council of the municipality undertaking the maintenance services. For greater certainty, Routine Maintenance and Repair includes roadway and roadside drainage (e.g. ditching and minor road-crossing culvert maintenance) and guard rail maintenance, but does not include pavement preservation activities such as surface treatment or crack sealing, nor does it include capital rehabilitation or improvements.
- 1.9 “Structure” means a bridge, culvert, tunnel, retaining wall or sign support, as those terms are defined in the OSIM.

2.0 MAINTENANCE SERVICES

- 2.1 Milton agrees to carry out Routine Maintenance and Repair to the Joint Jurisdiction and Connecting Highways or parts thereof described in Schedule “A” of this Agreement.
- 2.2 Oakville agrees to carry out Routine Maintenance and Repair to the Joint Jurisdiction and Connecting Highways or parts thereof described in Schedule “B” of this Agreement.

3.0 ROUTINE MAINTENANCE AND REPAIR - STRUCTURES

- 3.1 Milton agrees to carry out structure inspections every two years, as required by the OSIM on all Structures, situated in or along the Highways or parts thereof described in Schedules A and B of this Agreement. OSIM Structure inspection reports will be provided to Oakville, upon request by Oakville.
- 3.2 Both parties agree that irrespective of the physical location of the Structures, there should be equal sharing of the costs associated with the OSIM inspections of these Structures.

3.3 Both parties agree that irrespective of the physical location of the Structures, there should be equal sharing of any costs associated with the repair of these Structures, including those defined as a Capital Improvements.

3.4 Notwithstanding s. 3.2 and 3.3, Milton is 100% responsible for all structure inspections and any costs associated with the repair of Structures, including those defined as a Capital Improvements, on Sixth Line from the Oakville/Milton town limits at Highway #407 northerly to the southerly limit of the intersection at Lower Base Line (located completely within Milton Town limits).

4.0 ROAD CUT PERMITS

4.1 Milton will manage all road cut permits and municipal consents on the Highways described in Schedules A and B to this agreement, including permit issuance, holding of securities/deposits and inspections. Oakville will receive all residential road cut permit requests for properties located in Oakville but fronting onto Highways described in Schedules A and B and forward these to Milton for processing. Milton's permit fee structure will apply for all road cut permits within the Highways listed in Schedules A and B of this agreement.

5.0 ENTRANCE CULVERTS

5.1 The installation, replacement and maintenance of culverts under driveways to private properties shall be managed according to the policies of, and shall be coordinated and financed (if applicable) by, the municipality in which the private property resides.

5.2 Notwithstanding anything contained in s.5.1, flushing or "rodding" of private entrance culverts for debris removal in order to maintain water conveyance shall be included under Routine Maintenance and Repair.

6.0 TREES

6.1 Milton shall be responsible for all planting, non-urgent pruning and clearing of trees on the Milton side of any Joint Jurisdiction Highway to the centre of the Highway.

6.2 Oakville shall be responsible for all planting, non-urgent pruning and clearing of trees on the Oakville side of any Joint Jurisdiction Highway to the centre of the Highway.

6.3 Notwithstanding anything contained in s.6.1 and 6.2, in the event that a tree, or any part thereof, falls onto, or is otherwise situated on, any part of a shared Highway such that the tree is blocking or otherwise causing an obstruction or potential hazard in the Highway, either party may immediately remove said tree and, if applicable, invoice the party responsible for the tree under s.6.1 or 6.2 for said removal. The party performing the removal in accordance with this s.6.3 shall not be responsible for, or liable for, anything related to said tree and/or its removal simply by virtue of performing said removal.

6.4 Milton is 100% responsible for all planting, non-urgent pruning and clearing of trees on Sixth Line from the Oakville/Milton town limits at Highway #407 northerly to the southerly limit of the intersection at Lower Base Line (located completely within Milton Town limits).

7.0 CAPITAL WORKS

7.1 Notwithstanding any other provision in this Agreement, Capital Improvement work of any kind relating to any Highway in this Agreement shall not be undertaken by either party without the prior budget approval of both municipalities. What constitutes a Capital Improvement for the purposes of this Agreement shall be as agreed between the parties on a project-by-project basis. The parties agree that in the event a project is agreed to be a Capital Improvement, the parties shall agree in writing upon the basis of cost sharing and project management for that project, prior to the implementation of said project.

7.2 Milton is 100% responsible for Capital Improvement work to Sixth Line from the Oakville/Milton town limits at Highway #407 northerly to the southerly limit of the intersection at Lower Base Line (located completely within Milton Town limits).

8.0 INTERPRETATION

8.1 This Agreement contains the entire understanding between the parties with respect to the subject matter contained herein. All other responsibilities, duties, liabilities or other rights and/or powers of the respective jurisdictions, statutory or otherwise, remain unaffected unless specifically addressed herein.

8.2 Where there is any conflict between any provision of this Agreement and the provisions of the Municipal Act, 2001 as amended, the provision of the Municipal Act, 2001 shall prevail to the extent of the conflict.

9.0 COST OF WORK REQUIRED BY THIS AGREEMENT

9.1 Except as specifically set out in this Agreement, each municipality will share equally in the cost of maintaining the Joint Jurisdiction and Connecting Highways described in this Agreement.

9.2 The parties agree that each invoice will include an administration fee equal to 10% of the value of the invoice.

9.3 The parties agree to pay invoices within thirty (30) days of receipt of said invoices.

10.0 INDEMNIFICATION

10.1 Milton covenants and agrees that it shall indemnify, defend and save harmless Oakville from any liability, cost, demands, damages, expenses, claims and suits arising out of or in any way related to the obligations of Milton to carry out the work or otherwise meet the obligations provided for in this Agreement, including the failure to perform such work adequately or at all, except to the extent that same is caused by the negligence or wilful misconduct of Oakville. This indemnity shall survive the early termination or expiry of this Agreement.

10.2 Oakville covenants and agrees that it shall indemnify, defend and save harmless Milton from any liability, cost, demands, damages, expenses, claims and suits arising out of or in any way related to the obligations of Oakville to carry out the work or otherwise meet the obligations provided for in this Agreement, including the failure to perform such work adequately or at all, except to the extent that same is caused by the negligence or wilful misconduct of Milton. This indemnity shall survive the early termination or expiry of this Agreement.

10.3 Notwithstanding anything to the contrary contained in this Agreement, and subject to any applicable legislation and the ability of a party to protect its own rights in the face of litigation against that party, each party agrees to assist the other party in a timely manner in terms of the provision of information relevant to any claims that are made against the other party with respect to either party's obligations assumed under this Agreement.

11.0 RECIPROCAL INSURANCE

11.1 No less than ten (10) days prior to the start of the Agreement, each party shall provide the other with proof of insurance, as set out below. Proof of insurance shall be in a form of Certificate of Insurance, signed by an authorized representative of the insurer. The parties will make available complete certified copies of all applicable insurance policies for examination, if required by the other.

11.2 General Liability insurance shall insure all services, operations, products and work, as described in the Agreement. The policy will be extended to include bodily injury and property damage, personal injury and advertising injury, products and completed operations and contractual liability, to a limit of no less than five million dollars (\$5,000,000) per occurrence.

- 11.3 The policy shall include a cross liability clause and be endorsed to include the other party as an additional insured.
- 11.4 Non-owned automobile insurance shall be to a limit of no less than five million dollars (\$5,000,000).
- 11.5 Automobile Insurance (OAP1), for both owned and leased vehicles, shall be with inclusive limits of no less than five million dollars (\$5,000,000).
- 11.6 All policies of insurance shall: (a) be written with an insurer licensed to do business in Ontario, (b) be non-contributing with and will apply only as primary and not excess to any other insurance or self-insurance available to each respective party, and (c) contain an undertaking by the insurers to notify the other party in writing not less than thirty (30) days before any material change in coverage or cancellation of coverage.
- 11.7 Each party shall be responsible for their respective deductible.
- 11.8 Certificates of Insurance evidencing renewal or replacement of policies shall be delivered to each party within fifteen (15) days prior to the expiration or replacement of the current policies, without demand by the other party.”
- 11.9 The insurance coverage shall in no manner discharge, restrict or limit the liabilities and obligations assumed by the parties under this Agreement.

12.0 **CONTRACT ADMINISTRATION AND AMENDMENT**

- 12.1 Each party agrees to appoint at least one (1) representative, who will act as Contract Administrator for that party within one (1) week of execution of this Agreement. Each Contract Administrator shall provide his/her contact particulars in writing to the other party within two (2) weeks of execution of this Agreement.
- 12.2 Each Contract Administrator shall ensure that detailed maintenance and communications logs and other records relevant to the Routine Maintenance and Repair requirements of this Agreement (“Maintenance Records”) are maintained with respect to the respective parties’ obligations under this Agreement. These Maintenance Records shall be available for review and/or copying by the other municipality upon request and during regular business hours. Any records reviewed and/or copied pursuant to this provision shall be kept in the strictest of confidence, subject only to the requirements of applicable privacy and freedom of information laws and any other provision of this Agreement.
- 12.3 The Contract Administrators shall meet, as required, in order to discuss issues arising due to the obligations contained in this Agreement.
- 12.4 For greater certainty, any changes or amendments to this Agreement shall be approved by the Council of each party respectively and shall be authorized by By-law amending this Agreement.

13.0 **DISPUTE RESOLUTION**

- 13.1 In the event of a dispute between the parties to the Agreement arising pursuant to this Agreement, the Contract Administrators agree to engage in good faith negotiations with a view to resolving the dispute.
- 13.2 In the event the Contract Administrators are unable to resolve a dispute within thirty (30) days as of the date the dispute arose, the parties agree to appoint a Committee comprised of three (3) members per party (“Dispute Committee”) in order to resolve the dispute.
- 13.3 In the event the Dispute Committee is unable to resolve the dispute within sixty (60) days as of the date the dispute was brought before the Dispute Committee, the parties agree to submit to arbitration under the rules of the Arbitration Act, 1991, S.O. 1991, c.17, as amended and as it exists from time to time.

13.4 Nothing contained herein shall be construed as waiving any additional rights in law or in equity of either party with respect to this Agreement.

14.0 **GENERAL PROVISIONS**

14.1 The parties agree that the Boundary and Connecting Highway Maintenance and Repair Agreement between Milton and Oakville, dated XXXXXX, expires on August 31, 2021, unless earlier terminated in accordance with the agreement dated XXXXXXXXX.

14.2 This Agreement comes into force on September 1, 2016 and shall continue in force until August 31, 2021. This Agreement shall automatically renew for another five (5) years unless one of the parties provides the other party with thirty (30) days written notice prior to the renewal date, or otherwise terminates this Agreement in accordance with s.14.4.

14.3 No amendment or variation to this Agreement or of any of the terms hereof shall be binding upon the parties hereto, unless the same is in writing and properly authorized and executed by both parties to this Agreement.

14.4 Notwithstanding s.14.2 of this Agreement, this Agreement may be terminated by either party upon sixty (60) days prior written notice to the other party for any reason whatsoever.

14.5 This Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

14.6 This Agreement shall not be assigned by either party without the prior written consent of the other party.

14.7 It is understood and agreed by the parties hereto that they are and shall be acting independently in the performance of their duties under this agreement. Nothing in this agreement is intended to make either party an agent, legal representative, subsidiary, joint venture, partner, fiduciary, employee or servant of the other for any purpose.

14.8 Time shall be of the essence of this Agreement and of every part hereof and no extension or variation of this Agreement shall operate as a waiver of this provision.

14.9 If any provision of this Agreement is held to be invalid, void or unenforceable, then the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

14.10 No consent or waiver, express or implied, by any party hereto of any breach or default by any other party hereto in the performance of its obligations hereunder shall be deemed to or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of any party to complain of any act or failure to act of any other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by the first-mentioned party of its rights hereunder.

14.11 The insertion of headings in this Agreement is for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

14.12 All references to a day or days in this Agreement shall mean a calendar day or calendar days.

14.13 Any notice provided for under this Agreement shall be in writing and shall be sufficiently given if delivered personally, or if transmitted by facsimile with an original signed copy sent by prepaid registered mail within forty-eight (48) hours thereafter, or if mailed by prepaid registered mail to the parties, as follows:

(a) to Milton, at:

Corporation of the Town of Milton
150 Mary Street
Milton ON L9T 6Z5
Attention: Director, Engineering Services

(b) to Oakville, at:

Corporation of the Town of Oakville
P.O. Box 310
Oakville ON L6J 3A6
Attention: Director, Department of Roads & Works Operations

or at such other address as the party to whom such notice is to be given otherwise directs in writing. Any notice delivered aforesaid shall be effective on the date of personal delivery, or on the date of facsimile transmission, and any notice mailed as aforesaid shall be effective three (3) days after the mailing thereof, provided that where interruption of mail services is likely by reason of any strike or other labour dispute, notice shall be given by personal delivery or facsimile transmission.

15.0 DEFAULT

Notwithstanding any of the foregoing, in addition to any other remedies available at law or in equity, in the event that one party defaults in the performance of its Routine Maintenance and Repair obligations under this Agreement, the other party has the option of performing said Routine Maintenance and Repair to the extent of the deficiency and charging the defaulting party for said services, including without limitation, all personnel, administrative and/or other related costs thereto.

IN WITNESS WHEREOF the Corporate Seals of each of the parties hereto have been affixed duly attested by the respective authorized signing officers:

EXECUTED IN QUADRUPPLICATE

THE CORPORATION OF THE TOWN OF MILTON

Per: _____
Mayor

Per: _____
City Clerk

[We have authority to bind the corporation]

THE CORPORATION OF THE TOWN OF OAKVILLE

Per: _____
R.G. (Ray) Green, P. Eng., CAO

Per: _____
Vicki Tytaneck, Town Clerk

[We have authority to bind the corporation]

SCHEDULE A

Town of Milton Joint Jurisdiction and Connecting Highways Routine Maintenance and Repair Responsibility

Milton to carry-out all Routine Maintenance and Repair activities on the following roadways:

1. Burnhamthorpe Road, from the easterly limit of the intersection of Tremaine Road to the westerly limit of the intersection of Highway #25 (Bronte Road).
2. Lower Base Line, from the easterly limit of the intersection of Highway #25 (Bronte Road) to the easterly limit of the intersection of Fourth Line.
3. Fourth Line from the northerly limit of the intersection with Lower Base Line South to the terminus of Fourth Line (North of Highway #407).

Milton to carry-out all non-winter Routine Maintenance and Repair activities, on the following roadways:

1. Sixth Line from the Oakville/Milton town limits at Highway #407 northerly to the southerly limit of the intersection at Lower Base Line (located completely within Milton Town limits).

SCHEDULE B

Town of Oakville Joint Jurisdiction and Connecting Highways Routine Maintenance and Repair Responsibility

Oakville to carry-out all winter-only Routine Maintenance and Repair activities on the following roadways:

1. Sixth Line from the Oakville/Milton town limits at Highway #407 northerly to the southerly limit of the intersection at Lower Base Line (located completely within Milton Town limits).

SCHEDULE C

Sketch of Joint Jurisdiction and Connecting Highways

