

## APPENDIX A

THIS AGREEMENT respecting the maintenance of the Regional Road System made in triplicate this 15th<sup>th</sup> day of November, 2012.

B E T W E E N:

THE REGIONAL MUNICIPALITY OF HALTON  
(hereinafter called the "Region")

OF THE FIRST PART,

-and –

THE CORPORATION OF THE TOWN OF OAKVILLE  
(hereinafter called "the Town")

OF THE SECOND PART.

**WHEREAS** the Region is authorized pursuant to section 52 of the *Municipal Act, 2001*, S.O 2001, c. 24, as the same may be amended, restated or replaced from time to time, (the "Municipal Act") to enact a by-law to include roads or public highways or remove roads or public highways from the Regional Road System. The Region has enacted By-law 10-01, By-Law 48-93, and By-law 80-101 which establish the roads or public highways located within the boundaries of the Region that are included in the Regional Road System;

**AND WHEREAS** certain roads located in the Town are included within the Regional Road System and are identified in this Agreement;

**AND WHEREAS** section 11 and section 20(1) of the Municipal Act permit municipalities to enter into an agreement to provide for the operation and maintenance of roads. The Town and the Region are desirous of entering into an agreement pursuant to the provisions of section 11 and section 20(1) of the Municipal Act, the subject of which shall be the performance of Maintenance Services on Regional Roads by the Town on behalf of the Region;

**AND WHEREAS** section 44(1) of the Municipal Act requires municipalities to maintain their roadways in a reasonable state of repair;

**AND WHEREAS** on the \_\_\_\_ day of \_\_\_\_\_, 2012, Regional Council adopted the resolution authorizing the Region to enter into an agreement with the Town wherein the Town would undertake to provide Maintenance Services on certain roads included in the Regional Road System located within the boundaries of the Town;

**AND WHEREAS** on the \_\_\_\_ day of \_\_\_\_\_, 2012, Town Council adopted the resolution that the Town enter into an agreement with the Region wherein the Town would undertake agreed upon Maintenance Services on Regional Roads located within the boundaries of the Town in exchange for payment by the Region to the Town for the agreed upon Maintenance Services;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN CONTAINED AND UPON THE TERMS AND CONDITIONS EXPRESSED HEREIN THE PARTIES HERETO AGREE WITH EACH OTHER AND THEIR RESPECTIVE ADMINISTRATORS, SUCCESSORS AND ASSIGNS AS FOLLOWS:

ARTICLE I

DEFINITIONS

1.1 Defined Terms

The parties agree that the following terms shall have the meanings set out below in this Agreement:

“Commissioner” means the Region’s Commissioner of Public Works or his or her designate.

“Town” means the party with whom Halton Region has contracted with to perform the Contractors Maintenance Services.

“Contractor’s Maintenance Services” means the activities standards, policies and procedures prescribed by the Region set out in Schedule “B.”

“Director” means Director of Roads and Works Operations for the Town or his or her designate.

“Emergency Maintenance” means maintenance carried out on a reactionary or emergency basis to ensure that the cause of concern does not unduly affect public safety. Emergency Maintenance is carried out by the Town without a Work Order and without advance notice to the Region.

“Maintenance Services” means the Contractor’s Maintenance Services (including Winter Road Patrol, but excluding Routine Road Patrol as referenced under section 3.3), works performed under a work order issued pursuant to the provisions of the Contractor’s Maintenance Services , Supplemental Maintenance pursuant to section 3.7 and Emergency Maintenance pursuant to section 3.8, in accordance with this Agreement.

“Regional Roads” means those roads that form part of the Regional Road System and which are identified in Schedule “A” hereto.

“Routine Road Patrol” means the process of driving each section of Highway in one direction, even if it is a divided Highway, to monitor road conditions for all purposes other than Winter Road Patrol.

“Supplemental Maintenance” has the meaning set out in section 3.7.

“Work Order” means any written directive from the Region to the Town to perform Maintenance Services which contains sufficient information to enable the Town to perform the Maintenance Services.

“Winter Road Patrol” means the process of driving each section of Highway in one direction, even if it is a divided Highway, at the determined frequency, in accordance with Chapter 2 of the Contractor’s Maintenance Services, to monitor winter road conditions and assess the need for winter maintenance under the said Chapter, and shall not include Routine Road Patrol.

## ARTICLE II

### INTERPRETATION

#### 2.1 Schedules

The following Schedules are attached to and shall form part of this Agreement:

- (i) Schedule “A” referred to as the “Regional Roads and Sketch Identifying the Location of Regional Roads”, which Roads are the subject of this Agreement;
- (ii) Schedule “B” referred to as “Contractor’s Maintenance Services” for the Regional Roads;
- (iii) Schedule “C” referred to as “Approved Budget”; and
- (iv) Schedule “D” referred to as “Traffic Signals”.

#### 2.2 Headings and Captions

In this Agreement, headings are for convenience of reference and are not to be used to interpret the Agreement, and words in the singular include the plural and vice versa.

#### 2.3 Amendments

Amendments to this Agreement shall be in writing in the form of an Amending Agreement executed by both parties, save and except for amendments to Schedules “A”, “B”, “C” and “D” which may be amended in accordance with the provisions of sections 3.4 (Road Classifications) 3.5 (Amendments to Contractor’s Maintenance Services), 6.2 (Budget) and 7.2 (Traffic Signal Additions, Deletions and Substitutions) respectively.

2.4 Severability

All paragraphs, terms and conditions of this Agreement are severable, and the invalidity, illegality or unenforceability of any such paragraph, term or condition shall be deemed not to affect the validity, enforceability or legality of the remaining paragraphs, terms and conditions.

2.5 Entire Agreement

This Agreement includes the Schedules set out as Schedule “A” to “D” inclusive, and constitutes the entire agreement between the parties and supersedes all prior agreements, negotiations and discussions, whether oral or written, with respect to the subject matter of road maintenance for those roads as set out in this Agreement.

2.6 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

2.7 Time of the Essence

Time is of the essence of this Agreement.

2.8 Enurement

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

2.9 Further Performance

The parties hereto agree that each of them shall, upon reasonable request of the other, do or cause to be done all such further lawful acts, deeds and assurances whatever for the better performance of the terms and conditions of this Agreement, and execute such further documents as may be necessary or expedient in order to carry out the purpose and intent of this Agreement.

ARTICLE III

ADMINISTRATION AND MAINTENANCE SERVICES

3.1 Maintenance Services

The Town agrees to provide Maintenance Services on the Regional Roads.

Sketches identifying the Regional Roads that are the subject of this Agreement form part of Schedule “A”.

Where a Regional Road intersects a road under the jurisdiction and control of the Town, the continuation of the Regional Road to its full width across the road so intersected is part of the Regional Road System as established by section 56 of the Municipal Act.

### 3.2 Performance of the Maintenance Services

The Town covenants to perform Maintenance Services on Regional Roads on behalf of the Region in accordance with the Contractor's Maintenance Services attached hereto as Schedule "B" to this Agreement.

### 3.3 Interpretation of Contractor's Maintenance Services

In the event that there is a dispute as to the interpretation or application of the Contractor's Maintenance Services, the work shall be performed by the Town as directed by the Region in writing, and the dispute shall be determined in accordance with the alternative dispute resolution provisions contained in Article XIII of this Agreement, without prejudice to the right of the Town to claim additional compensation pursuant to Article VI of this Agreement.

### 3.4 Road Classification

Schedule A identifies the appropriate class of each Regional Road or portion thereof. The Region will provide the Town with a revised Schedule A on an annual basis.

### 3.5 Amendments to Contractor's Maintenance Services

Amendments to the Contractor's Maintenance Services shall only be effective if made by mutual written agreement between the parties.. When an amendment to the Contractor's Maintenance Services becomes effective, such amendment shall effect a corresponding amendment to the Approved Budget in Schedule "C".

On or before June 1 in each calendar year, the Commissioner shall consult with the Director in the preparation of any revisions to the Contractor's Maintenance Services, prior to consideration by Regional Council. This consultation shall include any amendments to Schedule "C", the Approved Budget, and shall be implemented in accordance with section 6.2 of this Agreement.

### 3.6 Review of Contractor's Maintenance Services

The Director and the Commissioner, together, shall undertake a review of the Contractor's Maintenance Services as reasonably required. Either the Director or the Commissioner may initiate a review of the Contractor's Maintenance Services by providing written notice to the other party requesting such review. The Director and the Commissioner shall undertake such review within thirty (30) days of the delivery of such notice. In the event that Provincial Regulation O. Reg. 239/02 is amended after the date of this Agreement, both parties agree to undertake a review of the provisions of the Contractor's Maintenance Services to address the

impact of the amendment of the Regulation on the provisions of the Contractor's Maintenance Services.

### 3.7 Supplemental Maintenance

Maintenance, other than maintenance prescribed by the Contractor's Maintenance Services, may be performed by the Town subject to agreement in writing between the Director and the Commissioner. Such maintenance shall be referred to as "Supplemental Maintenance". The Town shall obtain the written consent of the Commissioner before undertaking any Supplemental Maintenance, save and except in those instances where the Director is of the opinion that Emergency Maintenance is necessary such that notice to the Commissioner is not practical.

Supplemental Maintenance shall be performed by the Town only upon receipt of a Work Order.

### 3.8 Emergency Maintenance

When the Town becomes aware through day-to-day operations and observation of a condition that unduly affects public safety, the Town shall perform Emergency Maintenance. Emergency Maintenance may be temporary in nature. Upon completing Emergency Maintenance, the Town shall contact the Region to notify the Region that Emergency Maintenance has been performed. The Town shall be reimbursed for the costs incurred to perform the Emergency Maintenance in accordance with Article VI of this Agreement and, should the Region wish to have permanent repairs / maintenance performed by the Town, a Work Order shall be issued.

### 3.9 Road Construction

The Commissioner shall advise the Director of repair and construction works that are scheduled along Regional Roads on an annual basis to permit the Town the opportunity to arrange its work schedule in anticipation of these Regional Road works. The Commissioner shall also provide to the Town, for information purposes only, copies of written permits or approvals which are granted to third parties by the Commissioner, that allow works to be undertaken within the Region's road allowances.

### 3.10 Record Keeping

The Director will maintain accurate records of all activities carried out under this Agreement in accordance with the Contractors Maintenance Services. Such maintenance records will be retained by the Director in accordance with the Region's Retention By-law no. xxxxxx as amended from time to time.

Should the Town not be able to comply with the Region's Retention By-law no. xxxxxx as of the effective date of this Agreement, the Town shall be granted a one-year grace period to conform with its requirements.

## APPENDIX A

The Director shall provide to the Commissioner a copy of any maintenance records upon written request.

The City shall ensure compliance with applicable MTO and CVOR legislation, as amended and maintain accurate records of such compliance.

The Commissioner may, in written agreement with the Director, add to or reduce these reporting requirements during the term of the Agreement. Any changes to the reporting requirements will be accompanied by a one-year grace period.

The Region shall be responsible for any reasonable additional costs that may result from any amendments to these reporting requirements.

### ARTICLE IV

#### ROUTINE PATROL

##### 4.1 Routine Road Patrol

The Region shall perform Routine Road Patrol on Regional roads, throughout the entire year. For clarity purposes, Routine Road Patrol does not form part of the Contractor's Maintenance Services.

##### 4.2 Work Assigned by the Region

If, as a result of its obligations in section 4.1, the Region becomes aware of an item requiring maintenance as identified in the Contractor's Maintenance Services, the Region shall transmit a Work Order to the Director electronically by email. Upon receipt of the Work Order the Director shall acknowledge the receipt of same, by return email. The Town shall complete the ordered work within the time-frame specified in the Contractor's Maintenance Services and, upon completion of the work, the Director will confirm by email the completion of the Work Order.

### ARTICLE V

#### TERM AND TERMINATION

##### 5.1 Term

The term of this Agreement commences on the 15th day of November, 2012 and ends on the 1<sup>st</sup> day of June, 2015, unless earlier terminated in accordance with section 5.2 below. Upon the commencement of the term of this Agreement, the Agreement dated August 8, 2006, between the parties with respect to maintenance of Regional Roads, is terminated.

##### 5.2 Termination

The parties agree that the Town or the Region may terminate this Agreement upon providing prior written notice to the other party of at least one hundred-eighty (180) calendar days in accordance with the notice provisions in Article XIII of this Agreement.

5.3 Winding Up

Notwithstanding the termination of this Agreement for any cause, the obligation of the Region to pay the Town for Maintenance Services performed prior to the effective date of the termination shall survive any such termination and shall remain in force until discharged. Further, the Insurance and Indemnity provisions of this Agreement shall also survive any such termination, insofar as they relate to the Maintenance Services performed by the Town prior to the date of termination.

ARTICLE VI

BUDGET AND PAYMENT

6.1 Payment to the City

The Region covenants to pay the Town for the actual cost of all Maintenance Services provided under this Agreement.

If the Commissioner contends that any particular work was unnecessary or the cost of such work was excessive, then the parties may engage the dispute resolution mechanism described in Article XIII.

6.2 Budget

The proposed budget for Maintenance Services for the year 2013 is attached as Schedule “C” to this Agreement. The parties agree that during the term of this Agreement, Schedule “C” shall be amended and replaced immediately after Regional Council approves its annual budget for each fiscal year of the Agreement, or at any other time that Regional Council approves amendments to the budget to perform the Maintenance Services in Schedule “C”. On or before April 15<sup>th</sup> of each calendar year the Commissioner will provide the Director with a draft description of any proposed changes to the Maintenance Services and a corresponding proposed budget for the next fiscal year.

On or before June 1st of each year the Director shall respond to the Commissioner with a line-by-line budget of the estimated cost to perform the Maintenance Services, and any proposed changes to the Maintenance Services as described in the draft description received from the Commissioner, for the next fiscal year. This budget shall identify the cost to provide each service that is identified in Schedule “C.” The Commissioner agrees to review and comment on this budget within thirty days of receipt and thereafter the Commissioner shall prepare a report to Regional Council for review and approval of this budget. Where the Approved Budget for

Maintenance Services is less than the budget submitted by the Town, the Region will notify the City in writing within thirty (30) days of Regional budget approval.

### 6.3 Obligation of the Town

The Town shall have regard to Schedule “C” in performing the Maintenance Services and shall use its best efforts to adhere to the Approved Budget. Nothing in this paragraph shall relieve the Town of the obligation to perform any prescribed works in the Maintenance Services in accordance with this Agreement unless the written authorization of the Commissioner is first obtained. The Director agrees to notify the Commissioner in writing, as soon as practically possible, of any significant anticipated budget overrun so that the Commissioner can ensure that sufficient monies are available to undertake this service. The Commissioner may advise the Director of the need to prepare a mitigation plan to respond to an anticipated budget overrun and both parties agree to develop this mitigation plan when the Commissioner determines that it is necessary. Notwithstanding the Approved Budget and the development of this mitigation plan, the Region shall remain obligated to pay the Town for the actual cost of all Maintenance Services provided by the Town, in accordance with section 6.1.

### 6.4 Invoicing

Within 60 days of the end of the month in which Maintenance Services are performed, the Director shall submit the Town’s invoices to the Commissioner in the currently accepted form and detail, including any applicable Federal or Provincial taxes that were incurred by the Town to perform these Maintenance Services.

The Director shall submit all year-end detailed estimates to the Region by January 15 of the following year and will endeavour to submit final year-end invoices by January 31 of the following year.

Should the Town be required to modify the invoice format at the request of the Region, the Town shall be granted a one-year grace period to conform to the new requirements.

### 6.5 Administration Fee

The parties agree that each monthly invoice to the Region shall include an administration fee that reflects the actual administrative costs incurred by the Town to perform the services associated with this Agreement. The parties agree that the administration fee shall be fifteen percent (15%) of each invoice.

Notwithstanding the foregoing, an administration fee for an invoice, or a portion of an invoice, that includes the cost of road salt material purchased from a third party for use in winter control maintenance provided by the Town shall not exceed ten percent (10%) of such invoice or portion thereof. Invoices will include all applicable taxes chargeable under law.

### 6.6 Payment of Invoice

## APPENDIX A

The Region shall pay the monthly invoices submitted by the Town within thirty (30) days of receipt of the said invoices.

If Supplemental Maintenance is performed by the Town under section 3.7, the Town shall be paid for such Supplemental Maintenance at the agreed upon price specified in the Work Order.

In the event that Emergency Maintenance is performed under direction of the Director as described in section 3.8, the Town shall be reimbursed for the actual cost of such Emergency Maintenance. The Town shall invoice the Region in the same manner as described in Article VI above and the Region shall pay the invoice as described in Article VI.

In the event that an invoice is not sufficiently detailed to the satisfaction of the Region acting reasonably, the Region shall, within 15 days of its receipt thereof, request further documentation from the Town. The Town shall ensure that the information in support of the invoice complies with its obligations under the Agreement and the Contractor's Maintenance Services, and shall provide such additional information as requested by the Region with respect to the invoice, as it can reasonably provide. Any additional cost incurred by the Town to provide such information shall be paid by the Region. Notwithstanding any request for additional information from the Region, the Region shall pay the invoice within 30 days of receipt of the invoice. In the event of any dispute with respect to the information provided or requested in support of an invoice, either party may have recourse to the provisions of Article XII.

### ARTICLE VII

#### TRAFFIC SIGNALS

##### 7.1 Traffic Signal Maintenance

The Town will maintain all traffic control signals or devices on Regional Roads as set out in Schedule "D".

##### 7.2 Traffic Signal Additions, Deletions and Substitutions

The Commissioner may add, delete or substitute traffic control signals or devices and amend Schedule "D" during the term by written correspondence signed by the Commissioner and acknowledged by the Town.

##### 7.3 Town of Halton Hills and Town of Milton

The parties agree that this Article VII does not apply to the Town of Halton Hills and the Town of Milton.

### ARTICLE VIII

ASSIGNMENT AND SUBCONTRACTORS8.1 Notice to the Region

Where practicable, in advance of entering into a contract with a subcontractor for the purposes of performing all or part of the Maintenance Services described herein, the Town shall provide the Region with written notice of its intention to subcontract or assign the Maintenance Services.

It is agreed that the Town shall provide the Region with a list of subcontractors on or before May 1<sup>st</sup> and November 1<sup>st</sup> of each year, and shall also provide to the Region an updated list of subcontractors within 30 days of receipt by the Town of a written request therefor from the Region.

8.2 Termination

Notwithstanding the Town's right to subcontract or assign the Maintenance Services, the Region, acting reasonably, shall have the option to terminate this Agreement in accordance with section 5.2 in the event the Region is of the opinion that the party with whom the Town has subcontracted is not suitable to perform the Maintenance Services.

8.3 Construction Lien Act

In the event the Town assigns or sub-contracts this Agreement or employs sub-contractors, the Town shall be responsible for all payment requirements or other obligations of an owner pursuant to the *Construction Lien Act*, R.S.O. 1990, c. C.30. Without limiting the foregoing, the Town shall be responsible to quantify the value of work performed and materials supplied and prepare progress certificates to show the amount of statutory holdbacks and liens as may apply. A copy of each progress payment certificate shall be directed to the Commissioner. The Town shall be responsible for obligations to a sub-contractor to certify the completion of the works as required under the *Construction Lien Act*. The Commissioner shall receive a copy of the certificate of substantial performance as issued by the Town and the Town shall comply with all notice requirement as set out in the *Construction Lien Act* for the said certificate.

8.4 Documentation

When the Town has engaged the services of a third party to perform all or part of the Contractor's Maintenance Services, it shall, when requested, provide the Region with the contract specifications with said third party, unit prices as specified in the contract, and all associated invoices issued from the third party to the Town which relate to works on Regional Roads.

Notwithstanding the above, the parties agree that the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, Chapter M.56 as amended, shall apply to this Agreement in all respects.

The parties acknowledge that this section 8.4 shall only apply to contracts entered into after the effective date of this Agreement.

8.5 Assignment

Neither party may assign this Agreement without the prior written consent of the other party.

ARTICLE IX

EVENT OF DEFAULT

9.1 Default

Upon default by either party (the “Defaulting Party”) under any terms of this Agreement, and at any time after the default, the other party (the “Non-Defaulting Party”) shall have all the rights and remedies provided by law and by this Agreement.

No delay or omission by the Non-Defaulting Party in exercising any right or remedy, and no single or partial exercise of a right or remedy shall preclude any other or further exercise of such right or remedy, or the exercise of any other right or remedy. Furthermore, the Non-Defaulting Party may, but is not required to, remedy any default by the Defaulting Party in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by the Defaulting Party. All rights and remedies of the Non-Defaulting Party granted or recognized in this Agreement are cumulative and may be exercised at any time and from time to time independently or in combination.

ARTICLE X

INDEMNITY

10.1 Obligation of the Town

The Town hereby agrees to indemnify and save harmless the Region, its employees, agents, councillors, from any and all claims, demands, losses, costs, damages, actions, lawsuits or other proceedings by whomsoever made, sustained, or prosecuted, which may arise either directly or indirectly from the provision of, or neglect or refusal to provide, Maintenance Services in accordance with this Agreement or any other works the Town covenants to perform on Regional Roads, by the Town its servants, employees, agents, invitees or contractors, save and except any and all claims, demands, losses, costs, damages, actions, lawsuits or other proceedings by whomsoever made, sustained, or prosecuted resulting from the negligence or wilful misconduct of the Region. The Town shall manage, defend and bear the cost of all claims, actions, lawsuits or other proceedings made against it and the Region resulting from its obligation to provide Maintenance Services pursuant to this Agreement. The Town further agrees that the indemnity contained in section 10.1 herein, survives the term of this Agreement, provided that any claims,

demands, losses, costs, damages, actions, lawsuits or other proceedings result from an incident occurring within the term of the Agreement.

## 10.2 Obligation of the Region

- (a) The Region hereby agrees to indemnify and save harmless the Town, its employees, agents, councillors, from any and all claims, demands, losses, costs, damages, actions, lawsuits or other proceedings by whomsoever made, sustained, or prosecuted, which may arise either directly or indirectly from the provision of, or neglect or refusal to provide, services that are the responsibility of the Region to provide, whether pursuant to this Agreement or otherwise, ***save and except any and all claims, demands, losses, costs, damages, actions, lawsuits or other proceedings by whomsoever made, sustained, or prosecuted resulting from the negligence or wilful misconduct of the Town.*** The Region shall manage, defend and bear the cost of all claims, actions, lawsuits or other proceedings made against it and the Town resulting from its obligation to provide services pursuant to this Agreement or otherwise. The Region further agrees that the indemnity contained in section 10.2 herein, survives the term of this Agreement, provided that any claims, demands, losses, costs, damages, actions, lawsuits or other proceedings result from an incident occurring within the term of the Agreement.
- (b) The Region further acknowledges that the Town shall not have any obligation whatsoever to manage, defend or bear the cost of claims, actions, lawsuits or other proceedings made against it or the Region which pertain to obligations of the Region pursuant to this Agreement or otherwise, exclusive of the Town's maintenance obligations under this Agreement or other works which the Town covenants to perform on Regional Roads.
- (c) Notwithstanding the generality of Paragraph (a), and excepting therefrom the highlighted "save and except" clause, the Region's indemnity under this section 10.2 shall include indemnification for liabilities arising from: (i) the inability of the Town, acting reasonably, to perform winter control services under Section 2 of the Contractor's Maintenance Services outside the dates specified in Section 2.1 thereof; and (ii) Emergency Maintenance performed by the Town pursuant to this Agreement. The indemnities under this Paragraph (c) shall be save and except any and all claims, demands, losses, costs, damages, actions, lawsuits or other proceedings by whomsoever made, sustained, or prosecuted resulting from the wilful misconduct of the Town.

## 10.3 Dispute Regarding the Management of a Claim

In the event of a dispute or disagreement between the parties respecting their respective responsibilities to manage, defend and bear the cost of a particular claim or claims, either party may initiate the dispute resolution process prescribed by Article XII for a determination of their respective responsibilities to manage, defend and bear the cost of such claim or claims.

10.4 Exchange of Documentation

Upon receipt of a claim, the parties shall, as soon as practicable, exchange all relevant records, documents and other information which may be required in order to assist the parties in determining responsibility for carriage of the claim.

Neither party shall be obliged to disclose any records, documents or other information which is privileged or otherwise exempted from disclosure under relevant freedom of information legislation.

10.5 Notice of Claims

The Region and the Town shall notify each other forthwith of potential claims arising from the responsibilities set out in this Agreement, and shall provide each other with copies of any correspondence with the claimant or the claimant's representatives upon request.

All notices of claim pertaining to Regional Roads, whether addressed to the Region, or to the Town, or to both, shall be copied to each other by fax within 10 days of receipt,

To assist in this process, the following are the fax numbers of the appropriate claims personnel:

For the Region: Risk Management Coordinator  
905-825-8838

For the City : Administrative Assistant, Insurance Claims  
Finance Department  
City of Burlington  
P.O Box 5013  
Burlington, ON L7R 3Z6  
905-335-7877

10.6 Survival

All of the indemnities that arise from this Agreement apply only to incidents, activities, errors or omissions which occur during the term of this Agreement. These indemnities shall survive the termination of this Agreement.

ARTICLE XI

INSURANCE

11.1 Insurance Requirements of the Region

## APPENDIX A

During the Term of this Agreement, the Region shall, at its expense, obtain and maintain in full force and effect the following insurance policies:

- (a) General liability insurance including bodily injury and property damage, personal and advertising liability, contractor's protective and contractual liability covering all obligations and services performed by the Region and by those for whom the Region is responsible in law. The policy will be written on an occurrence basis with coverage for any one occurrence of not less than ten million dollars (\$10,000,000.00), name the Town as an additional insured, and contain a severability and cross liability clause;
- (b) Non-owned automobile insurance to a limit of not less than five million dollars (\$5,000,000.00); and
- (c) Automobile insurance (OAP1) for both owned and leased vehicles with inclusive limits of no less than ten million dollars (\$10,000,000.00).

The policies of insurance will: (a) be written with an insurer licensed to do business in Ontario; and (b) contain an undertaking by the insurers to notify the Town in writing not less than thirty (30) days before any termination or cancellation of coverage. Any deductible amounts will be borne by the Region.

Upon the execution of this Agreement, the Region shall provide proof of insurance in the form of a Certificate of Insurance which has been signed by an authorized representative of the insurer. Upon the request of the Town, the Region shall make available to the Town complete certified copies of all applicable insurance policies.

The Region shall deliver to the Town Certificates of Insurance evidencing renewal or replacement of policies fifteen (15) days prior to the expiration or replacement of the current policy, without demand by the Town.

If the Region retains the services of a subcontractor to fulfill its obligations under this Agreement, then the Region shall endeavour to have its subcontractors obtain and maintain commercial general liability insurance insuring the subcontractors' operations to a limit of not less than two million dollars (\$2,000,000.00) per occurrence and name the Town as an additional insured. The Region shall also endeavour to have its subcontractors provide proof of such insurance upon the request of the Town.

The above insurance requirements will not be read to limit the liability of the Region and will not be deemed a waiver by the Town of its right to damages and indemnity from the Region under this Agreement.

### 11.2 Insurance Requirements of the Town

During the Term of this Agreement, the Town shall, at its expense, obtain and maintain in full force and effect the following insurance policies:

## APPENDIX A

- (a) General liability insurance including bodily injury and property damage, personal and advertising liability, contractor's protective and contractual liability covering all obligations and services performed by the Town and by those for whom the Town is responsible in law. The policy will be written on an occurrence basis with coverage for any one occurrence of not less than ten million dollars (\$10,000,000.00), name the Region as an additional insured, and contain a severability and cross liability clause;
- (b) Non-owned automobile insurance to a limit of not less than five million dollars (\$5,000,000.00) and;
- (c) Automobile insurance (OAP1) for both owned and leased vehicles with inclusive limits of no less than ten million dollars (\$10,000,000.00).

The policies of insurance will: (a) be written with an insurer licensed to do business in Ontario; and (b) contain an undertaking by the insurers to notify the Region in writing not less than thirty (30) days before any termination or cancellation of coverage. Any deductible amounts will be borne by the Town.

Upon the execution of this Agreement, the Town shall provide proof of insurance in the form of a Certificate of Insurance which has been signed by an authorized representative of the insurer. Upon the request of the Region, the Town shall make available to the Region complete certified copies of all applicable insurance policies.

The Town shall deliver to the Region Certificates of Insurance evidencing renewal or replacement of policies fifteen (15) days prior to the expiration or replacement of the current policy, without demand by the Region.

If the Town retains the services of a subcontractor to fulfill its obligations under this Agreement, then the Town shall endeavour to have its subcontractors obtain and maintain commercial general liability insurance insuring the subcontractors' operations to a limit of not less than two million dollars (\$2,000,000.00) per occurrence and name the Region as an additional insured. The Town shall also endeavour to have its subcontractors provide proof of such insurance upon the request of the Region.

The above insurance requirements will not be read to limit the liability of the Town and will not be deemed a waiver by the Region of its right to damages and indemnity from the Town under this Agreement.

### ARTICLE XII

#### ALTERNATIVE DISPUTE RESOLUTION

##### 12.1 Negotiation

If any difference of opinion or dispute shall arise between the parties hereto in the interpretation, or carrying out, of this Agreement, or any of its provisions, the Parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, open and timely disclosure of relevant facts, information, and documents to facilitate these negotiations.

Such negotiations shall occur within 10 business days of said the day on which the difference of opinion or dispute arose and shall conclude within 20 business days of the day on which the difference of opinion or dispute arose, at which point the parties may proceed to resolve the difference of opinion or dispute in accordance with subsection 12.2 – Mediation, or subsection 12.3 – Arbitration.

### 12.2 Mediation

If the difference of opinion or dispute is not satisfactorily resolved though the negotiation stage noted in section 12.1, the Parties may upon mutual agreement, utilize the services of an independent third party mediator.

The mediator shall be mutually agreed upon by the parties. Should the parties not be able to agree on a mediator, the Parties may proceed to subsection 12.3 – Arbitration. The cost of the third party mediator shall be shared equally between the Region and the City.

The mediation of any difference of opinion or dispute shall commence as soon as practicable following the failed negotiation or the expiry of the 20-day period described in subsection 12.1 above. The mediation shall conclude within 40 business days of its commencement and, should the difference of opinion or dispute remain unresolved, the Parties may proceed to subsection 12.3 – Arbitration.

### 12.3 Arbitration

If any difference of opinion or dispute is not resolved to the satisfaction of both parties through negotiation under section 12.1, or through mediation under section 12.2, or should either party wish to forego negotiation or mediation, either Party may invoke the provisions of section 12.3 – Arbitration, by giving notice to the other Party.

The arbitrator shall be mutually agreed upon by the parties and shall have significant experience in road maintenance, and municipal matters. Failing agreement, the parties will proceed to have an arbitrator appointed by the Court.

The parties shall equally share the cost of the arbitrator.

The arbitrator may, in his or her decision, award reasonable costs related to the arbitration. The arbitrator's decision and award shall be binding and conclusive upon the Region and the Town.

The rules and procedures of the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended, shall apply. The decision of the arbitrator shall be final and binding.

12.4 Performance of Maintenance Services

The City shall continue to perform Maintenance Services notwithstanding any dispute between the parties.

ARTICLE XIII

NOTICE

13.1 Notice to Parties

Excepting notices of claim under Article X, all communication between the parties with respect to the administration and operation of this Agreement shall be conducted with the following personnel:

For the Region: Commissioner of Public Works  
The Regional Municipality of Halton  
1151 Bronte Road  
Oakville ON L6M 3L1  
[email address]  
[facsimile number]

For the Town: Director of Roads and Works Operations  
Town of Oakville  
1225 Trafalgar Road  
Oakville, ON L6H 0H3  
[email address]  
[facsimile number]

13.2 Change in Personnel

Either party may advise the other party of a change in personnel for the purpose of receiving notice under either Article XIII or Article X by sending a notice to the other party in accordance with this Article XIII.

13.3 Delivery of Notice

Excepting notices of claim under section 10.5, any notice or written communication between the parties under this Agreement shall be delivered or sent by personal delivery, prepaid registered mail or email addressed to the relevant party at the respective addresses listed above, or their respective facsimile numbers as noted above.

13.5 Deemed Receipt

Notice sent pursuant to section 13.3 shall be deemed to have been received on the date on which notice was delivered to the address as designated or, in the case of mailing, on the fourth (4th) business day after the date of mailing or, in the case of facsimile or email, on the day after the facsimile or email has been sent.

IN WITNESS WHEREOF the parties have caused the Agreement to be executed by their respective officers who are duly authorized, as of the date first above written.

SIGNED, SEALED & DELIVERED	)	THE REGIONAL MUNICIPALITY
	)	OF HALTON
	)	
	)	
This        day of	)	Per _____
2012    ,	)	Regional Chair
	)	
at the Town of Oakville	)	
Province of Ontario	)	Per _____
	)	Regional Clerk
	)	
	)	
	)	
	)	THE CORPORATION OF
	)	THE TOWN OF OAKVILLE
This        day of	)	
2012    ,	)	
at	)	Per _____
Province of Ontario	)	Mayor
	)	
	)	
	)	Per _____
	)	Town Clerk