

THIS AGREEMENT made this ____ day of _____, 2020.

B E T W E E N:

THE CORPORATION OF THE COUNTY OF WELLINGTON
(hereinafter called “Wellington”)

-and-

THE CORPORATION OF THE TOWN OF HALTON HILLS
(hereinafter called “Halton Hills”)

WHEREAS Wellington and Halton Hills are adjoining municipalities and are desirous of entering into an agreement for the maintenance and repair of the highway forming part of the boundary line between Wellington and Halton Hills (the “Highway”);

AND WHEREAS the Council of The Corporation of the Town of Halton Hills has enacted By-law No. (INSERT) that authorizes the execution of an agreement for the maintenance and repair of the Highway;

AND WHEREAS the Council of The Corporation of the County of Wellington has enacted By-law No. 3733-90 that authorizes the execution of an agreement for the maintenance and repair of the Highway;

AND WHEREAS pursuant to subsection 29.1(2) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, if municipalities enter into an agreement for the repair of a highway forming a boundary line, 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 failure to keep the highway in repair and the other municipality is relieved from all liability in respect of the repair of that part;

NOW THEREFORE, in consideration of the mutual covenants, agreements, terms and conditions expressed herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree with each other as follows:

TERM

1. The term of this Agreement (hereinafter “Term”) shall be ten (10) years from the last date of execution of this agreement whereupon this Agreement shall be fully complete and ended.

DEFINITIONS

2. “Highway” shall mean the full width of the boundary road known as Halton Hills 32 Side Road and Wellington Road 42 under the joint jurisdiction of, and forming the boundary between, Halton Hills and Wellington, commencing from the westerly limit of the road between Concession VII and Concession VIII, Town of Erin (being Wellington Road 24), thence easterly along the said boundary road to the easterly limit of the road between Concession XI, Township of Erin, and the Regional Municipality of Peel (being Wellington Road 25), a total distance of 5.5 kilometres. “Highway” shall be deemed to include, but shall not be limited to, all bridges, culverts, guiderails, pavement markings, traffic signage, trees, and traffic control devices, but shall exclude all non-transportation related infrastructure including potable water and wastewater systems, located in the Highway right-of-way.

3. "Maintenance and Repair" and "to maintain and keep in repair" shall include in respect of the Highway, but not be limited to, the repair and maintenance of roadway surface, shoulders, traffic control signals, signage, guide rails, line marking, intersection and roadway illumination; removal and disposal of debris; sweeping; and winter operations.
4. "Routine and Winter Road Patrol" shall include the process of driving the section of the Highway at the determined frequency based on the Minimum Maintenance Standards.

MAINTENANCE

5. Wellington hereby covenants and agrees:
 - a. to maintain and keep in repair the Highway; and
 - b. to conduct all Routine and Winter Road Patrol;throughout the Term of this Agreement.
6. Subject to Section 5, Wellington hereby covenants and agrees to pay all costs associated with its duties under Section 5 of this Agreement.
7. Halton Hills covenants and agrees to pay to Wellington one-half of the costs and expenses paid by Wellington under Section 6 of this Agreement within 60 days after receipt of an account itemizing the work completed.
8. Wellington shall invoice Halton Hills four (4) times each year for the cost of maintenance and repair provided under this Agreement, together with an eight percent (8%) administrative overhead charge on all such costs, which may be added by Wellington to each invoice.
9. Wellington agrees that, upon request by Halton Hills, to the best of Wellington's ability acting reasonably, Wellington shall submit to Halton Hills, maintenance records, including but not limited to service requests, associated work orders, patrol logs, inspection reports and contractor invoices for all works carried out by Wellington under Section 5
10. Wellington shall be responsible for the issuance of all sign installation approvals and approvals for entrance permits involving residential and farm access to and from the Highway.
11. Halton Hills shall be responsible for the issuance of all site plan approvals involving lands fronting on the south side of the Highway within its jurisdiction.
12. Wellington shall co-ordinate the review and approval for utility installations within the Highway with input from Halton Hills.
13. Wellington, in consultation with Halton Hills shall be responsible for establishing the speed limits on the Highway.
14. Wellington, in consultation with Halton Hills, shall be responsible for administering any and all development application approvals respecting lands located within the geographical limits of Wellington County that abut the Highway, including all costs associated with the approvals and execution of any development agreement.

15. Wellington hereby covenants and agrees that for the duration of the Term, it shall maintain the Highway and keep same in good repair, in accordance with Wellington Performance Standards. The standards of maintenance provided by Wellington shall at all times meet or exceed the *Minimum Maintenance Standards for Municipal Highways*, O. Reg. 239/02, as amended.
16. Wellington shall indemnify and save harmless Halton Hills from and against any claim, demand, action, cause of action, suit or other proceeding and also from and against any and all liability for costs, loss, damages, interest, expense, accident or injury in any manner arising due to, out of, from, or in connection with, the work undertaken, performed or failing to be performed by Wellington or its agents pursuant to this Agreement.

CAPITAL PROJECTS

17. Wellington and Halton Hills agree that any and all major joint capital projects respecting the Highway shall be included in the scope of this Agreement and shall include road resurfacing, reconstruction, intersection improvements, traffic control devices, widening and major rehabilitation and/or expansion of bridges and culverts. Execution of all major joint capital projects shall be carried out in accordance with the Terms of this Agreement.
18. For all major joint capital projects subject to this Agreement, Wellington shall invoice Halton Hills for Halton Hill's portion of the costs as those costs are incurred for the works specified in Section 17, together with an eight (8%) per cent administrative overhead charge. Halton Hills covenants and agrees to pay to Wellington one-half of the costs and expenses paid by Wellington under Section 17 of this Agreement within 60 days after receipt of an account itemizing the work completed.
19. Wellington and Halton Hills shall co-ordinate their long term capital budget and annual operating budget to adequately address the requirements of this Agreement.
20. Wellington shall identify major needs for Environmental Assessments ("EAs"), reconstruction, widening and resurfacing of the Highway as soon as such needs are known; however emergency works will be scheduled as required.
21. A review and update of all future major joint capital projects respecting the Highway, including scheduled timelines and funding requirements, will be provided by Wellington to Halton Hills annually at the time the capital budget is prepared.
22. Wellington and Halton Hills shall allocate sufficient funding for all future major joint capital projects respecting the Highway in their upcoming capital budget and future forecast, as well as in each capital budget and future forecast during the Term of this Agreement; however, Wellington and Halton Hills acknowledge and agree that all project funding shall be subject to the approval of their respective Councils.

ENVIRONMENTAL ASSESSMENTS AND STUDIES

23. Cost sharing between Wellington and Halton Hills for all work undertaken related to any Environmental Assessments (EA) requirements and studies for all major joint capital projects on the Highway will be limited to work undertaken directly related to the hard engineering and final design aspects such as storm water management, geotechnical investigations, surveying and preparation of base plans, such work to be negotiated by written agreement between Wellington and Halton Hills prior to the commencement of such work.

24. In conducting any EA or study, Wellington shall:

- a. Circulate to Halton Hills the draft terms of reference for information; and
- b. Circulate to Halton Hills the Environmental Study Report (ESR) for information.

INSURANCE

25. During the Term of this Agreement, Wellington 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 Wellington and by those for whom Wellington is responsible in law. The policy will be written on an occurrence basis coverage for any one occurrence of not less than ten million (\$10,000,000.00), name Halton Hills 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 for both owned and leased vehicles with inclusive limits of no less than ten million dollars (\$10,000,000.00).

Upon the execution of this Agreement, Wellington 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 Halton Hills, Wellington shall make available to Halton Hills complete certified copies of all applicable insurance policies.

26. During the Term of this Agreement, Halton Hills 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 Halton Hills and by those for whom Halton Hills is responsible in law. The policy will be written on an occurrence basis coverage for any one occurrence of not less than ten million (\$10,000,000.00), name Wellington 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 for both owned and leased vehicles with inclusive limits of no less than ten million dollars (\$10,000,000.00).

Upon the execution of this Agreement, Halton Hills 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 Wellington, Halton Hills shall make available to Wellington complete certified copies of all applicable insurance policies.

PAYMENT/INVOICING

27. Subject to the provisions of Section 8 in relation to invoicing for maintenance and repair cost and Section 18 in relation to invoicing for major joint capital projects, Wellington, shall invoice Halton Hills on a quarterly basis. Each invoice shall be accompanied by supporting documentation (e.g. payment certificates) evidencing the amount of work performed by Wellington. Halton Hills shall be permitted to review any reasonably available supporting documentation in advance of payment.
28. Payment of any undisputed invoices shall be made to Wellington within sixty (60) days of receipt of each quarterly invoice. Invoices for real property and utility relocations may be issued prior to construction.
29. In the event of a disputed invoice, Halton Hills shall be responsible to pay all undisputed portions of said invoice to Wellington in accordance with Section 28 above.
30. Any and all contributions toward the road improvement, from a third party, shall be accounted for and credited to each party prior to any invoicing.

GENERAL PROVISIONS

31. During the Term of this Agreement, each of Wellington and Halton Hills shall have the right to call a joint meeting for the consideration of the construction, reconstruction, maintenance and/or repair of all or any portion or portions of the Highway, the condition of which is unsatisfactory to one or both of the parties and disputed invoices.
32. 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 including disputed invoices, 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 documentation to facilitate these negotiations. If any difference of opinion or dispute is not satisfactorily resolved through negotiations, the parties may upon mutual agreement, utilize the services of an independent third-party mediator, the cost of which shall be shared equally.
33. This Agreement binds and benefits the parties and their respective administrators, successors and assigns as limited in this Agreement.
34. Either party may terminate this Agreement upon sixty (60) days' written notice to the other party.
35. Notwithstanding early termination of this Agreement, the obligations of Wellington and Halton Hills stated herein shall not expire upon the termination of this Agreement in respect of claims or actions that arise from the maintenance and repair of the Highway or lack of the same provided that the cause of the actions or claims arise prior to the termination date.

36. Any written notice required to be given under this Agreement may be given personally or by registered mail (in which case receipt shall be deemed to have occurred five business days after the mailing thereof). Notice to the parties may be delivered at the following addresses:

Wellington: County of Wellington
Engineering Services Department
74 Woolwich Street
Guelph, ON N1H 3T9
Attention: County Engineer

Halton Hills: Town of Halton Hills
1 Halton Hills Drive
Georgetown, ON L7G 2C6
Attention: Commissioner of Transportation and Public Works

37. If for any reason, any provision of this Agreement is, to any extent, held or rendered invalid, void, illegal, or unenforceable for any reason whatsoever, then the particular provision shall be deemed independent of and severed from the remainder of this Agreement and all of the other provisions of this Agreement shall nevertheless continue in force and effect.

38. Neither Wellington nor Halton Hills shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

39. Time shall be of the essence of this Agreement.

40. The laws of Ontario and Canada apply to this Agreement.

41. Each of the parties hereby consents to the registration of this Agreement in the Land Registry Offices for the Land Titles Division of Halton (No. 20) and for the Land Titles Division of Wellington (No. 61).

IN WITNESS WHEREOF the parties have affixed their respective corporate seals, attested by the hands of their respective officers duly authorized in that behalf, effective as at the date recorded at the beginning of this Agreement.

SIGNATURES ON NEXT PAGE

**THE CORPORATION OF THE COUNTY OF
WELLINGTON**

_____, Warden

_____, Clerk
We have authority to bind the Corporation

**THE CORPORATION OF THE TOWN OF
HALTON HILLS**

Rick Bonnette, Mayor

Suzanne Jones,
Clerk & Director of Legislative Services

We have authority to bind the Corporation