



# The Corporation of the Town of Milton

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Report To: Council

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From: Barbara Koopmans, Commissioner, Development Services  
Glen Cowan, Chief Financial Officer / Treasurer

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Date: April 12, 2021

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Report No: DS-025-21

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Subject: Construction and Funding Agreement with OPG Derry Green Lands Inc. to advance the construction of Louis St. Laurent Avenue from James Snow Parkway to Fifth Line

**Recommendation:** **THAT Council authorize the Mayor and Clerk to execute a funding agreement between the Town and OPG Derry Green Lands Inc. (OPGDL) for the acceleration of the construction of Louis St. Laurent Ave. from James Snow Parkway to Fifth Line;**

**AND THAT Council approve a new capital project for the advancement of the Construction from the 2021 Capital Budget Forecast in support of the Derry Green Corporate Business Park Area, C34003821 Louis St. Laurent (James Snow Pkwy to Fifth Line), in the amount of \$6,827,911 funded from Developer Liabilities of \$6,807,911 and Developer Recovery of \$20,000;**

**AND FURTHER THAT the Commissioner of Development Services be given delegated authority to negotiate and make changes to an agreement detailing terms and conditions of this endeavor, as may be necessary, prior to execution.**

## EXECUTIVE SUMMARY

The extension of Louis St. Laurent Avenue, from James Snow Parkway to Fifth Line, is identified through the Derry Green Corporate Business Park Secondary Plan (Secondary Plan) work and the Town's Transportation Master Plan (2018) as a requirement to provide sufficient capacity for traffic associated with future growth.

The extension of Louis St. Laurent Avenue is classified as a Schedule C project, as defined in the Municipal Class Environmental Assessment (MCEA) process. Therefore, Phases 1 through 5 of the MCEA have been completed.



## EXECUTIVE SUMMARY

The Town has entered into an agreement with OPG Derry Green Lands Inc. (Oxford) (ref: Council Report ENG-035-19), to allow Oxford to complete the Municipal Class Environmental Assessment (MCEA) and subsequent detailed design of Louis St. Laurent Avenue, to better align the timing of this work with the Oxford development within the Derry Green Business Park. The MCEA has now been completed (ref: Council Report DS-019-20) and the project is currently in the detailed design phase, with construction anticipated to start late spring 2021.

The purpose of this report is to obtain Council approval to enter into an agreement with Oxford to facilitate the construction of Louis St. Laurent Avenue and associated funding and reimbursement, as well as Council approval for the creation of a capital job related to the construction.

## REPORT

### Background

OPG Derry Green Lands Inc. (Oxford) owns lands that front upon either side of the future Louis St Laurent Avenue road allowance from James Snow Parkway to Fifth Line.

Currently this section of road is scheduled in the Town's Capital Forecast for design in 2021 and construction in 2023. It should be noted that the lands for the Louis St. Laurent right-of-way will be conveyed to the Town from Oxford, as part of the development approval process - resulting in a significant savings with respect to land acquisition for this project.

Oxford has approached the Town and wishes to advance the design and construction of the road to suit Oxford's timeframe for development. An agreement is already in place regarding the MCEA and the detailed design of the project, however, a separate agreement is required to address advancing the construction and the associated reimbursement details.

### Discussion

In order to advance construction of Louis St Laurent Avenue from James Snow Parkway to Fifth Line, an agreement is required between the Town and Oxford.

Oxford will front end the cost of the construction and the Town will reimburse Oxford for costs associated in a future budget. This report seeks Council's approval to enter into an agreement to advance the construction of Louis St Laurent Avenue from James Snow Parkway to Fifth Line.

A draft agreement is attached as Appendix I and has been developed by staff as well as the Town's legal counsel. Oxford will be responsible for the completion of the works as



## Discussion

defined by the Town through the Terms of Reference, including the procurement of a construction contractor, subject to the Town's approval. Oxford is required to provide the Commissioner, Development Services (and delegates) direct access to the construction site and all associated inspection reports, services and contract documents. Oxford is responsible for 100% of the construction costs until such time as the project and reimbursement is approved by Council through the annual budget process.

For the Town, this arrangement will allow the accelerated provision of infrastructure to service the Derry Green Business Park Secondary Plan area and provide alternative access to this phase of development, while keeping within expected budget. For the developer, the arrangement allows the provision of infrastructure in a timeframe that aligns with their development schedule. Overall, this is a mutually beneficial partnership that will accelerate the development of important employment lands in Milton.

## Financial Impact

The 2021 Capital Budget and Forecast projected construction of Louis St. Laurent Avenue, from James Snow Parkway to Fifth Line, in the year 2023. This funding agreement will permit OPGDL to proceed with construction in 2021. Through the agreement, OPGDL will initially fund 100% of the costs of construction of Louis St. Laurent Avenue, from James Snow Parkway to Fifth Line. Following Council approval of funding for the works through the annual budget process, OPGDL will be reimbursed through Roads Development Charges for actual costs, excluding peer reviews and any other costs identified through the agreement as being the sole responsibility of OPGDL.

It is recommended a new capital project, C34003821 Louis St. Laurent Ave. (James Snow Pkwy to Fifth Line), be approved in the amount of \$6,827,911 as detailed below:

Expense	Amount*
Roadworks	5,521,337
Contract Administration and Inspection	386,494
Contingency	590,783
Other Professional Fees (Consultant Peer Review)	20,000
Project Management Fees	110,427
Capital Surcharge	198,871
<b>Total Expense</b>	<b>6,827,911</b>
<b>Funding</b>	
LT Developer Liability	6,807,911
Developer Recovery	20,000
<b>Total Funding</b>	<b>6,827,911</b>

\*Inclusive of non-recoverable HST



# The Corporation of the Town of Milton

Report #:  
DS-025-21  
Page 4 of 4

Operating costs of the roadway including winter maintenance, hydro and maintenance on streetlights and traffic signals will be reimbursed by OPGDL based on rates outlined in the Town's User Fee By-law until the roadworks are assumed by the Town.

Respectfully submitted,

Barbara Koopmans, MPA, MCIP, RPP, CMO  
Commissioner, Development Services

Glen Cowan  
Chief Financial Officer / Treasurer

For questions, please contact: Diana Jiona

905-878-7252 x 2513

Attachments
Appendix I: Draft Agreement

CAO Approval  
Andrew M. Siltala  
Chief Administrative Officer

**DERRY GREEN LANDS LP.  
LOUIS ST. LAURENT AVENUE (JAMES SNOW PARKWAY TO FIFTH LINE)  
CONSTRUCTION  
FUNDING AND REIMBURSEMENT AGREEMENT**

THIS AGREEMENT made this **X** day of **(Month)**, 2021.

B E T W E E N:

**THE CORPORATION OF THE TOWN OF MILTON**

(the "Town")

-and-

**OPG DERRY GREEN LANDS INCLP.**

(the "Owner")

**RECITALS**

**WHEREAS:**

- A. The Owner is the registered owner of the certain lands, as defined herein, located within the Derry Green Corporate Business Park Secondary Plan as herein defined;
- B. The Derry Green Corporate Business Park Secondary Plan Area requires an extension of Louis St. Laurent Avenue from James Snow Parkway to Fifth Line (referred to and subsequently defined herein as the "Roadworks") in order for development to proceed,
- C. The Owner has requested authorization to construct and fund the Roadworks itself, as the Owner's intended timeframe for developing the Owner's Lands, could otherwise be impacted by the timing of Council approval of the funding of the Roadworks; and
- D. The Actual Roadworks Costs, as herein defined, will be reimbursed by the Town upon Council approval in a future Town capital budget, in accordance with this Agreement; except such costs as arise as a result of the Owner undertaking the Roadworks instead of the Town as further specified in this Agreement;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of good and other valuable consideration and the sum of TWO DOLLARS (\$2.00) of lawful money of Canada now paid by each of the parties hereto to each of the other parties hereto, the receipt whereof is hereby acknowledged, the parties hereto hereby covenant, promise and agree with each other as follows:

**DEFINITIONS AND INTERPRETATION**

1. (a) In this Agreement, including in the Recitals and Definitions:

**Actual Roadworks Costs:** means the actual costs associated with the construction of the Roadworks, and includes, but is not limited to, any capital surcharge and Project Management Fees incurred by the Town in relation to the Roadworks, the construction contract costs, and consultant fees (contract administration and inspection, etc.) but does not include the **Owner's Costs**.

**Agreement:** means this Agreement;

**Assumption:** means the point in time, when the **Town** takes over full responsibility and ownership of the Roadworks, including all maintenance and operations of the roadworks in accordance with the terms of this Agreement. Ownership of the land upon which the roadworks sit may transfer to the Town ahead of Assumption.

**Commissioner:** means the Commissioner of Development Services for the Town or his/her designate;

**Consultant(s):** means the consultant(s) or consulting firm or firms retained by the Owner to carry out the Roadworks, including the Project Engineer (to be a qualified Professional Engineer, licensed and in good standing with Professional Engineers Ontario and a member of Consultants of Ontario) and any Landscape Architects (to be registered with

the Ontario Association of Landscape Architects);

**Council:** means Council of the Town;

**Detailed Design** means all work required to complete the engineering design (including all underground works) to the satisfaction of the Town of Milton and in accordance with Town Standards and the Environmental Study Report completed in support of the Roadworks, up to and including 100% design. 100% design includes all construction plans, drawings, specifications, calculations and contours, reports and associated tender documents. All design drawings shall carry the seal and signature of the Project Engineer who is responsible for the designs.

**Engineering and Construction Plans:** means all approved **Detailed Design** all construction plans, drawings, specifications, calculations and contours, reports and associated tender documents, prepared in accordance with the Town of Milton's Standards, the Environmental Study Report completed in support of the Roadworks, and which illustrate and specify the manner in which the Roadworks are to be constructed, as prepared and sealed by the Project Engineer, and as reviewed and approved by the Commissioner.

**Estimated Roadworks Costs:** means the estimated Actual Roadworks Costs as set out in Schedule E, subject to such updates and revisions as provided for in this Agreement;

**Event of Default:** shall have the meaning set out in the Default provisions of this Agreement.

**Legal and Administration Fees:** means the legal & administration fees related to the preparation, drafting, negotiations, execution, amendment or administration of this Agreement as outlined the Town's User Fee By-law (By-law 072-2020 as amended or successor by-laws thereto) as well as all other legal fees incurred by the Town in relation to Owner's construction of the Roadworks, howsoever arising.

**Derry Green Business Park:** means the Derry Green Corporate Business Park development area, being an area designated for development as shown on Schedule "A";

**Owner's Lands:** means the lands depicted on Schedule "B" in the Town of Milton, in the Regional Municipality of Halton;

**Owner's Cost(s):** means such costs as arise as a result of the Owner undertaking the Roadworks instead of the Town or undertaking the Roadworks in advance of the time that the Town would have normally proceeded with the Roadworks and includes Peer Review Costs and Legal and Administration Fees, as well as any other costs identified in this Agreement as **Owner's Costs**. For clarity, wherever this Agreement refers to a cost being "at the Owner's expense" or at the "Owner's sole expense" or otherwise uses words that indicate a cost is the Owner's, such cost shall be interpreted as the **Owner's Cost**. Owner's Costs do not form part of the Actual Roadwork Costs and shall not be reimbursed by the Town.

**Peer Review Costs:** means the costs incurred by the Town to retain consultants (including, but not limited to, Professional Engineers, Landscape Architects, Inspectors, and material testers) to assist the Commissioner in the review, inspections and testing, as more particularly set out in herein, all of which are the **Owner's Costs**;

**Project EA:** means the Environmental Study Report completed for the Municipal Class Environmental Assessment for the Roadworks which was completed by Stantec Consulting Limited in October, 2020, as well as any alteration, amendment or addendum thereto;

**Project Management Fee:** means a fee to cover the Town's actual staff time in managing the Roadworks until Assumption;

**Reimbursement:** means the monies to be provided by the Town to the Owner for the **Actual Roadworks Costs** in accordance with the Assumption and Reimbursement provisions of this agreement, except in the Event of a Default. For clarity, **Reimbursement** shall not include **Owner's Cost(s)**;

**Roadworks:** means the construction of the extension of Louis St. Laurent Avenue from James Snow Parkway to Fifth Line, to a 35m right of way, as outlined in Schedule "C";

**Town** means The Corporation of the Town of Milton, and includes consultants, agents or representatives acting on behalf of the Town;

(b) References in this Agreement to legislation, regulations, by-laws, policies, guidelines and standards shall be deemed to include the words "as amended, revised, updated, re-enacted and/or consolidated from time to time and any successor thereto."

## GENERAL MATTERS

2. (a) The statements contained in the Recitals, which are to be read as an integral part of this Agreement, are true and correct.
- (b) The Owner has requested that the Roadworks proceed at this time and has voluntarily entered into this Agreement to allow for same.
- (c) Schedule, section, subsection or clause numbers referred to herein shall mean schedules, section or subsection or clause numbers in this Agreement unless otherwise specified.
- (d) The lands affected by this Agreement are those lands depicted in Schedule "A" and "B".
- (e) The approximate location of the Roadworks at the time of execution of this agreement is shown on Schedule "B".
- (f) Unless otherwise specified, all amounts payable pursuant to this Agreement and in respect of the Roadworks are exclusive of Harmonized Sales Tax (HST) and the Owners shall pay all applicable HST in addition to the amounts set out herein. The Owner acknowledges that no Reimbursement shall be received and/or payable in respect of HST for the Roadworks.
- (g) The following HST provisions apply:
  - (i) The Town will, at all times, be complying with Revenue Canada's applicable HST legislation and rules. The Town will be self-assessing and remitting HST to Revenue Canada. Any HST amount not eligible for full Input Tax Credits, including any portion of the non-refundable rebate will be funded from the Town's development charges Services Related to a Highway reserve fund and
  - (ii) The eligible input tax credit for the HST paid by the Owner for any and all of the contracts anticipated to be awarded for the Roadworks is to be reported to Revenue Canada by the Owners.
- (h) The parties agree that, notwithstanding any other provision herein, the scope of this Agreement and the Roadworks to be conducted and funded hereunder will be only for the tender, contract administration, inspection, certification and construction of the Roadworks. The scope may be extended, by duly authorized written amendment to this Agreement.

## DETAILED DESIGN AND PROCUREMENT

3. The Owner shall be responsible for the completion of the Roadworks, set out in Schedule "C" in accordance with the requirements of Schedules "D" including, contract administration, inspection, construction, retaining all consultants, contractors and engineers, obtaining all necessary Town and other regulatory approvals, and certification.
4. The Roadworks shall be constructed, installed, inspected and maintained in accordance with Town standards and specifications as set out in the Town's Engineering & Parks Standards Manual, and the Town's Inspection Policy, and in accordance with the Engineering and Construction Plans, to the satisfaction of the Commissioner. All materials used to complete the Roadworks shall comply with the Ontario Provincial Standards specifications for Roads and Public Works ( OPS).
5. The Owners acknowledge and agree that the Project EA will apply to the Roadworks. The location for the Roadworks shall generally be that location generally identified in the Project EA, or such other location/alignment as ultimately approved by the Town and applicable agencies, The Town acknowledges that the final location of the Roadworks is to be refined through the Detailed Design process.
6. Prior to any procurement process for the construction of the Roadworks, all necessary approvals by other public authorities must have been obtained and submitted to the Town, and the Detailed Design for the Roadworks must have been submitted to the Commissioner reviewed, approved and signed by the Commissioner at which point the Detailed Design (referred to herein, post-approval as the Engineering and Construction Plans). The Town may retain its own consultants to review all submissions by the Owner or its consultants at the Owner's sole cost and such costs shall be considered part of the Town's Peer Review Costs.

7. The approval of the Engineering and Construction Plans by the Commissioner shall not absolve the Owner of the responsibility for errors in and omissions from these plans as submitted by the Consultant on behalf of the Owner.
8. The Owner will consult with the Town on an active and ongoing basis during the respective bid processes and awards of contract, and throughout the administration of the contracts and completion of the Roadworks, including without limitation, with respect to the review, negotiation and approval of any unforeseen costs or contingencies which may arise during the Roadworks in excess of fifty thousand dollars (\$50,000.00). In particular, the Owners shall forthwith produce copies of all contracts and change orders for the Town's approval before any work commences on any contract or change order in excess of fifty thousand dollars (\$50,000.00). The Town shall provide its approval within five (5) Business Days of receipt of a request for such approval. In the event that the Town does not respond to the request for approval within this period, the Town shall be deemed to have approved such contract or change order (as the case may be). Notwithstanding the foregoing, the Town's prior approval shall not be required in the event of work that is an Owner's Cost or required in an emergency situation, provided that the Owner shall provide notice of such work to the Town as soon as reasonably possible upon it becoming known to the Owner and the Owner shall provide copies of the contract or change order in respect of same within two (2) Business Days following the date of signing of such contract or change order. **Under no circumstances shall Town approval of a change be construed as an acknowledgment that a cost is subject to Reimbursement if such cost is in relation to an Owner's Cost.**
9. As of the date of this Agreement the Owner has retained Stantec Consulting Ltd. as the Consultant to manage the construction of the Roadworks, including issuing the tender documents and administering the contract(s) for construction of the Roadworks. The Owner's contract with the Consultant shall include general supervision and resident supervision and require the Consultant to certify to the Town that the Roadworks have been installed in accordance with the Engineering and Construction Plans and specifications approved by the Town and good engineering practice.
10. If the Owner changes the Consultant for any reason during the Roadworks they shall ensure that the new Consultant is a consulting engineering firm, with demonstrated experience in managing a project of this nature, with the principal responsible for the Roadworks licensed to practice engineering in the province of Ontario and shall immediately notify the Commissioner of such change. The contract with the new Consultant shall meet all applicable requirements of this agreement.
11. The Owner shall ensure the Ontario Provincial Standards for Roads and Public Works (OPS) will form part of the tender documents and the Town shall have the right, but not the obligation, to approve all insurance clauses within any tender document, related contracts, and any certificates of insurance when issued.
12. All contracts, including the contract with the Consultant, shall provide that the Commissioner and/or by such persons as the Commissioner deems appropriate may inspect the installation of the Roadworks and shall have the power to stop the work for any reason provided in this Agreement, including without restriction, if in the event that, in the inspector's reasonable opinion, adjustment to the design is required to suit actual conditions not known at the time of approval, the work is being performed in a manner that may result in a completed installation that would not be satisfactory to the Town, or the work has been commenced without the Town's approval.
13. The Owner shall ensure an open bidding process, in accordance with all applicable legal requirements in respect of bidding processes, to be carried out on such terms as shall be approved by the Owner and the Town. The bidding process shall be carried out by (or on behalf of) the Owner and any contract shall be awarded by the Owner and shall be between the Owner and the successful bidder.
14. No contractor or sub-contractor shall be permitted to bid or awarded a contract that is prohibited from bidding on Town projects.
15. All contracts, including the contract with the Consultant, shall provide that they are assignable to Town, if the Town elects to take over the construction and installation of the Roadworks in accordance with this Agreement. Whether or not a contract is assigned to the Town shall be at the Town's sole discretion, and any amounts due or liabilities incurred prior to the assignment shall remain the Owner's responsibility and be subject to the Default provisions of this Agreement.
16. The selected bid(s) shall be subject to approval by the Commissioner and the Chief Financial Officer & Treasurer. No contracts shall be awarded by the Owner without written approval by the Town.



17. Prior to awarding any contract for the installation of the Roadworks, the Owners shall file with the Town's Commissioner a list of the contractors and subcontractors or persons to be engaged in the installation of the Roadworks and obtain the Town's written approval prior to the commencement of any work, provided that such approval shall not be withheld unreasonably. The Owner agrees that they shall proceed with the lowest compliant tendered bid for the Roadworks, save and except in the event of extenuating circumstances (as determined by the Town acting reasonably). For clarity, if the Roadworks are tendered together with or as part of other works or projects for the Owner, the Town may review the cost of the Roadworks component of the bid, and in its sole discretion reject any bid where it determines that the Roadworks component is substantially higher than the Roadworks component in a competing bid, regardless of whether the overall blended bid is the lowest compliant tendered bid.
18. No work shall be commenced by any contractor or sub-contractor on the Roadworks until it has filed with the Town a certificate of general liability insurance in an amount satisfactory to the Chief Financial Officer & Treasurer, and in full compliance with the requirements of this Agreement.

## CONSTRUCTION OF THE ROADWORKS

19. In constructing, installing and inspecting the Roadworks, the Owner shall employ the Consultant.
20. The Owner shall commence construction of the Roadworks within **90 days** of the date of execution of this Agreement. If the Owner fails to commence construction within that time, the Town may, at its option:
- (a) require the Owner to enter into a revised agreement;
  - (b) require the Owner to resubmit the Engineering and Construction Plans, estimate of costs (Schedule "E"), and update applicable financial securities, for the approval of the Commissioner; and/or
  - (c) require the Owner to restore the Roadworks site and abutting lands, to a safe condition at the Owner's expense; and/or

provided that the Town shall consent to any reasonable request for an extension of the date of commencement of construction which the Owner requests, where the extension is required due to events beyond the reasonable control of the Owner.

21. Rough grading of the Roadworks must be completed by the Owner, and approved by the Commissioner, before the installation of any other of the Roadworks.
22. No gravel or stone base shall be spread on Louis St. Laurent or sod laid as part of the Roadworks until:
- (a) the grading and condition of the subgrade has been inspected and a proof roll conducted, in accordance with the Town's Inspection Policy, and the Owner's Project Engineer and geotechnical consulting engineer, have provided certification in this regard to the Town, and the Commissioner is satisfied with respect to such certification; and
  - (b) all of the Roadworks constructed or installed to that point, are in compliance with the Engineering and Construction Plans and the Owner's Project Engineer and geotechnical consulting engineer, have provided certification in this regard to the Town, and the Commissioner is satisfied with respect to such certification
23. The Owner shall, until the base course of asphalt is applied, maintain the gravel and stone base in a condition suitable, in the opinion of the Commissioner, for vehicular traffic and free from dust at all times; and, weather permitting, shall repair any such roadway within six (6) hours of receiving written notice to do so from the Commissioner. In an emergency, as determined by the Commissioner, in her or his sole discretion, the Town may complete such maintenance or repairs without notice to the Owner and at the expense of the Owner
24. The Owner agrees to install the final top course of asphalt not less than one (1) year and not more than two (2) years after acceptance of the base course asphalt by the Commissioner, unless otherwise agreed to by the Town. The Owner shall make any request for delay in completing the final asphalt to the Commissioner in writing, stipulating the reason for delaying the completion of the final course and requesting a specific time frame for extension of the obligation. Prior to installing the final top course of asphalt, the Owner agrees to comply with the Town's Inspection Policy and Engineering and Parks Development Standards Manual and without limiting the

foregoing, complete a storm sewer video inspection, all of which inspections must be done to the satisfaction of the Commissioner. Any deficiencies or other problems identified shall be rectified to the satisfaction of the Town prior to installing the final top course asphalt, at the Owner's Cost.

25. The Town's Engineering and Parks Standards shall be considered minimum standards for Roadworks and the Town neither warrants nor makes any claims as to the adequacy of such specifications. It shall be the sole responsibility of the Owner and the Consultant to provide adequate design, supervision and inspection to ensure the Roadworks are installed in a good and workmanlike manner and will withstand reasonable time and usage.
26. In carrying out the Roadworks, the Owner shall adhere to all Town and other governmental requirements, including, but not limited, to those of Conservation Halton and the Ontario Ministry of Natural Resources and Forestry ("MNRF"), with respect to the comprehensive monitoring and mitigation of all construction impacts. The cost of such work is to be included in the Actual Roadworks Cost.
27. If any environmental issues arise or environmental restrictions are or become applicable and the Owners are so advised by any agencies or ministries (i.e. Conservation Halton, MNRF) then Owners will provide copies of such correspondence to the Commissioner within two (2) Business Days of the receipt of such correspondence.

The Owner shall be responsible for compliance with all statutes and regulations, including but not limited to the Construction Act, R.S.O. 1990, c. C.30 and the Occupational Health and Safety Act, R.S.O. 1990, c. 0.1 (the "OHS").

28. The contractor to whom the Owner awards the tender for the Roadworks, shall be designated as a constructor, as defined in the OHS and shall assume all of the responsibilities and obligations of the constructor as set out in the OHS and its regulations. The Owner shall require the contractor to carry out or cause to be carried out all construction work in accordance with the requirements of the OHS and regulations for construction projects. The Owner shall delegate any or all duties of the constructor to the contractor through the construction contract and adequate insurance provisions shall be included in the contract.
29. Inspections and Correction of Deficiencies:
  - (a) The Roadworks shall be subject to the inspection and approval of the Commissioner, as follows:
    - (i) such inspections may be made at such times and so often as the Commissioner, in her/his sole discretion, deem proper by such persons as the Commissioner deems appropriate;
    - (ii) the Town may retain, its own consulting engineer to perform general inspections of the required Roadworks. The Owner agrees that the Commissioner, or the said consulting engineer may personally inspect the installation of the Roadworks and shall have the power to stop the work in the event that, in his or her opinion, adjustments to the design are required to suit actual conditions not known or understood at the time of approval and that adjustments to the design require work to be stopped.
    - (iii) any costs incurred by the Town in relation to any inspections of the Roadworks shall be the Owner's Costs.
    - (iv) the Owner acknowledges that the role of an inspector working on behalf of the Town does not entail any activity of a supervisory nature. The Town's inspector shall not, either by his presence or action, be deemed to have assumed or accepted any work performed by the Owner or his agents and has no authority to do so;
    - (v) the Commissioner shall have the right to demand such changes or alterations to the Roadworks as she/he deems necessary to ensure conformity to the Engineering and Construction Plans and Town standards and specifications and such changes or alterations shall be made and performed at the Owner's Cost.
    - (vi) the Owner shall comply with all orders, instructions and directives made pursuant to and within the scope of this Agreement by the Commissioner, pertaining to construction activities; and
    - (vii) if, in the opinion of the Commissioner, any of the Roadworks are not satisfactory, the Commissioner shall have the right to stop any such Roadworks by the issuance of a stop work order in person or by prepaid registered post. The Owner shall stop work immediately and shall not recommence work until there is written withdrawal of the stop work order. Until such withdrawal, neither the Owner nor anyone acting

on its behalf shall do anything further towards construction of the Roadworks except to rectify the complaint.

- (b) Prior to Assumption of the Roadworks, the failure of any Roadworks to withstand reasonable time and usage shall be the Owner's responsibility and the Owner shall repair any such failure at its expense within 30 days of receipt of notice from the Town to do so, unless the need for such repair, as determined by the Commissioner, requires more immediate repair, in which case the Town may require the Owner to complete the repair immediately or within such other time period as the Commissioner deems appropriate. Failure of the Owner to undertake any such repairs as requested in writing by the Commissioner, shall constitute an Event of Default, within the meaning of the Default provisions of this Agreement. In addition to any other remedy available under this Agreement, the Town may undertake such repairs as the Town deems necessary, at the sole expense of the Owner. The costs of repairs, regardless of whether the repairs are conducted by the Owner or the Town, shall be the Owner's Costs.
  - (c) Prior to Assumption of the Roadworks, the Town may require or undertake inspection or testing, by whatever means the Town may consider necessary of any or all the Roadworks and the costs of such inspection testing shall be borne solely by the Owner. If any inspection or testing indicates that the Roadworks are unsatisfactory or deficient, in addition to the Town having the right to refuse to accept or Assume the Roadworks, the problem shall be corrected by the Owner upon written notice from the Town to do so. In the event the Owner does not undertake the corrections of deficiencies or repairs required within seven (7) days after receipt of the written notice, in addition to any other remedy available under this Agreement, the Town shall have the right to perform the corrections of deficiencies or repairs with entitlement to reimbursement of its costs and/or the right to any other remedy provided for in this Agreement. The costs of any inspection or testing, together with costs of any corrections of deficiencies or repairs, regardless of whether conducted by the Owner or the Town, shall be the Owner's Costs.
30. In carrying out the Roadworks, the Owners shall use reasonable efforts to adhere to the schedule set out in Schedule F of this Agreement and will provide a quarterly written update to the Town's Commissioner of Development Services about progress of the Roadworks, including a list of outstanding items for completion and their estimate for timing of completion. In any event, the Roadworks shall achieve Substantial Completion no later than July 31, 2022, subject to delays arising from force majeure or other delay beyond the Owner's reasonable control.
31. The Town may take over responsibility for construction of all or part of the Roadworks if in the reasonable opinion of the Commissioner the work is not proceeding according to schedule or specifications or is proceeding in a manner that may result in deficiencies unacceptable to the Town, and such Default, delay and/or deficiency is not cured (or commenced to be cured) by the Owner within thirty (30) Business Days of delivery of written notice to the Owner or such greater period in time as the Commissioner in her/his sole discretion determines is reasonable. Failure to cure such Default, delay and/or deficiency within the period provided, shall constitute an Event Default, within the meaning of the Default provisions of this Agreement. If the Town take over responsibility for construction of all or part of the Roadworks, cost of such work shall be reimbursed through a draw on the Security.

#### **CONSTRUCTION PERIOD ACCESS, MAINTENANCE & SECURITY**

32. During construction of the Roadworks, the Owner shall take steps to ensure security of the construction site and that no access is available by the public to the Roadworks and that signage satisfactory to the Town's Commissioner of Development Services is in place on and around the Roadworks indicating that no trespassing or passage is permitted. All costs related to such security and signage shall form part of the Actual Cost of the Roadworks.
33. During the construction of the Roadworks and until the Roadworks are assumed by the Town, the Owner shall:
- (a) be responsible to ensure that earth, debris and building materials are not tracked onto the Roadworks or any other of the Town's or Region of Halton's roads. If earth, debris and building materials are allowed to accumulate on the Roadworks or other Town or Region of Halton roads, the Owner shall clean the said roads and remove the earth, debris and materials forthwith and if it fails to do so the Commissioner, may have this work done at the Owner's sole expense.
  - (b) maintain reasonable access at all times to the Owner's Lands so that the Town is able to provide all applicable Town services and emergency services access, and the Commissioner shall be the sole judge of the reasonableness of such access;

and

- (c) maintain the Roadworks to the satisfaction of the Commissioner, but after the opening of the Roadworks to vehicular and pedestrian traffic, the Town may provide winter maintenance in accordance with the winter maintenance provisions of this Agreement.
34. The Roadworks shall not be open to vehicular and pedestrian traffic until Substantial Completion has occurred and all safety measures and road signage are in place, pursuant to the "Ontario Traffic Manual, Book 7 -Temporary Conditions", Once so opened to vehicular and pedestrian traffic until Assumption of the Roadworks by the Town, the Owners shall ensure that signage satisfactory to the Town's Commissioner of Development Services is placed along the Roadworks to indicate that the Roadworks are not Assumed by the Town and users are so using at their own risk. All costs related to such signage shall be included in the Actual Roadworks Costs.

#### **GUARANTEED MAINTENANCE PERIOD**

35. A Guaranteed Maintenance Period shall commence upon publication of the certificate of substantial performance for the Roadworks in accordance with with the *Construction Act*, R.S.O. 1990, c. C.30 and shall run for a minimum period of two (2) years ("Guaranteed Maintenance Period"). During the Guaranteed Maintenance Period, and until such time as the Town Assumes the Roadworks, the Owner shall maintain the Roadworks in accordance with the approved drawings and specifications, and shall make good any deficiencies, imperfection or damage resulting from any cause whatsoever other than the negligence of the Town or its employees. The decision of the Commissioner is final as to the nature and cause of such deficiencies, imperfections or damage and the necessity for remedial action. The Owner shall commence the necessary remedial work within ten (10) Business Days of written notice from the Town and continue to work diligently to complete the remedial work. If the Owner does not commence the remedial work within ten (10) Business Days or, in the opinion of the Commissioner, is not work diligently, the Town may enter on the lands and complete the work and, in such case, the reasonable cost of the work undertaken by the Town will be drawn from the Security then remaining. All costs related to the maintenance of the Roadworks or repair of deficiencies during the Guaranteed Maintenance Period shall be the Owner's Costs.
36. The Owner agrees that, prior to the opening of the Roadworks to vehicular traffic, the Owner shall
- (a) ensure that the curbs and base course asphalt must be completed on the Roadway;
  - (b) ensure all catch basins are asphalt ramped;
  - (c) ensure all other services and appurtenances, including manholes are installed flush with the base course, to be raised at the time of application of the final course of asphalt;
  - (d) arrange for an inspection by the Town or its representative of all of the Roadworks. Prior to the inspection, all services shall be cleaned and all sewers flushed. A representative from the Town, the Owner's Project Engineer, and the contractor who installed the services in question, shall be present for the inspection. Such inspection shall include an inspection of the storm sewers by video camera, in a manner satisfactory to the Commissioner, a copy of which video inspection and associated report shall be provided to the Town for review; and
  - (e) ensure that all noted deficiencies are rectified to the satisfaction of the Town.
37. Once the Roadworks are open to vehicular traffic, the Town shall carry out winter maintenance of the Roadworks, consisting only of snow removal and plowing, salting and sanding of the travelled portion of the Roadworks, other than sidewalks, at the Owner's Cost.
38. If the winter maintenance performed by the Town pursuant to this Agreement interferes with and/or causes damage to the Roadworks, the Owner waives all claims against the Town that they might have arising therefrom and covenants that they will make no claim against the Town for such interference or damage which was not caused negligently, intentionally or recklessly by the Town, its servants, contractors or agents. Notwithstanding the Town's carrying out of winter maintenance of the Roadworks, the Owner shall be responsible for the rectification of any deficiencies, imperfection or damage resulting therefrom. The cost of rectification is an Owner's Cost, except where damage to the Roadworks has been caused solely by the negligence of the Town, its servants, contractors or agents.
39. The Owner agrees that upon completion of a sidewalk, or portion thereof, the Town,

through its servants, contractors or agents, may, at its sole discretion, provide winter maintenance at the Owner's Cost.

40. The Owner agrees that the Town, in providing the aforementioned winter maintenance, shall be deemed to be acting as an agent for the Owner and shall not be considered in any way to have Assumed the road and sidewalks upon which such maintenance work is performed.
41. The Owner shall pay to the Town a user fee equal to the rate set out in the Town's annual user fee report and By-law for winter maintenance. The Town will send a bill for winter maintenance activities to the Owner annually and such bill shall be due and payable within thirty (30) days of the date of the invoice. Such billing will commence from the date the winter maintenance is first provided and will continue until the Town's Assumption of the Roadworks.
42. The Owner shall pay to the Town a user fee equal to the rate set out in the Town's annual user fee report and By-law for streetlight power and maintenance, commencing on the first day the streetlights are operational and continuing until assumption of the Roadworks. The Owner will also be required to clean and re-lamp all streetlights within 90 days prior to assumption and to provide documentation thereof. Prior to Assumption all costs related to street light power and maintenance shall be an Owner's Cost. The Owner shall provide to the Town with the warranty information related to the LED streetlight fixtures including the date of install.
43. A set of Traffic Control Signals will be installed on Louis St Laurent Avenue approximately 229m west of Fifth Line at the Owner's Cost as part of the works associated with the Owner's future plan of subdivision. The Owner will be responsible for the design and installation of the traffic control signals. The Owner must provide the design and electrical layout to the Town for approval before construction commences. The Owner will be responsible to purchase the traffic signal cabinet/controller, Accessible Pedestrian Pushbuttons, Miovision Equipment and Fire Preemption Equipment from the Town at the Owner's Cost.
44. The Owner shall pay to the Town a user fee equal to the rate set out in the Town's annual user fee report and By-law for streetlight power and maintenance, commencing on the first day the streetlights are operational and continuing until assumption of the Roadworks. Such fee shall be an Owner's Cost.
45. At any time prior to Assumption where the Town's Commissioner of Development Services determines that any road clearing work is necessary due to an unclean condition, notice of such work required will be sent to the Owner, and the Owner will have ten (10) days from the date of such notice to complete the work to the satisfaction of the Town's Commissioner of Development Services. If such work is not complete after the tenth (10th) day following such notice, the Town may enter upon the land whereupon the Roadworks is located, and upon any of the land immediately adjacent to such location, without prior permission of the Owner, and take whatever corrective action or make whatever repairs the Town's Commissioner may deem necessary, and the Owner agrees to reimburse the Town for all expenses incurred in making such repairs, including an amount equal to forty percent ( 40%) of such costs in relation to the management and administration of such repairs at the Owner's Cost. The Town will send such bill to the Owner and such bill shall be due and payable within thirty (30) days of the date of the invoice.
46. At any time prior to Assumption, if the Town's Commissioner determines that any repair, replacement or other work is required to be performed to ensure the satisfactory functioning of the Roadworks, the Owner shall commence the necessary work within ten (10) Business Days of written notice from the Town and continue in the opinion of the Town to work diligently to complete the work. If the Owner does not commence the work within ten (10) Business Days or work diligently in the manner aforesaid, the Town may in its sole discretion, enter upon the land whereupon the Roadworks is located, and upon any of the land immediately adjacent to such location, without prior permission of the Owner, and complete the work necessary and the costs of such work will be paid by the Owner at the Owner's Cost.

**EMERGENCY WORK**

47. At any time during construction of the Roadworks and during the Guaranteed Maintenance Period, if it is in the opinion of the Commissioner it is necessary to make repairs immediately to prevent damage or hardship to persons or property, the Town may enter upon the land whereupon the Roadworks is located, and upon any of the land immediately adjacent to such location without prior permission of the Owner, and make whatever repairs the Commissioner may deem necessary. In such situations the Town shall give notice to the Owner forthwith after such entry. The Owner agrees to reimburse the Town for all expenses incurred in making such repairs, including an amount equal to forty percent (40%) of such costs in relation to the management and administration of such repairs at the Owner's Cost.
48. The Owner agrees that the Town shall invoice the Owner for the foregoing amounts and that any such invoices shall be paid to the Town by the Owner within thirty (30) days of the invoice date.

**ACCESS TO LAND**

49. The Owner hereby grants to the Town, its servants, agents and contractors the right to enter upon the land where the Roadworks is located, and upon the land immediately adjacent to such location, to perform such work as may be required in accordance with this Agreement. Any entry upon such land by the Town shall be as an agent of the Owner and shall not be deemed for any purposes whatsoever as an acceptance or Assumption of the Roadworks by the Town. Except where this Agreement provides otherwise, the Town shall indemnify and hold the Owner harmless from and against all claims, actions, damages, costs, liabilities and obligations arising solely and directly as a result of a negligent act or omission during such entry by the Town, its servants, agents and contractors, or any others for whom it is responsible in law.

**FACILITATING THE ROADWORKS AND THE ASSUMPTION OF THE ROADWORKS BY THE TOWN**

50. Prior to Assumption, the Roadworks may be used by the Town, or any person authorized by the Town, for the purposes for which they are designed, but such use shall not be deemed to be an acceptance or Assumption by the Town of the Roadworks nor shall it in any way relieve the Owner from any of its obligations with respect to the construction, installation or maintenance of the Roadworks.
51. The Town shall Assume the Roadworks upon completion of all of the following steps:
  - (a) the expiration of the guaranteed maintenance period;
  - (b) Council approval of the funds for Reimbursement of the Actual Roadworks Costs and all requirements for Reimbursement have been met. The Owner acknowledges and agree that the Town may alter its capital forecast and/or its capital budget to either advance or delay funding of any or all of the Roadworks, as it deems necessary or desirable in its sole and absolute discretion and that if such advancement or delay occurs, then (i) the Owner will continue and complete the Roadworks ; (ii) the Reimbursement shall occur in such advanced or delayed year, subject to the availability of monies in the road component of the Town's development charges.; (iii) and the Guaranteed Maintenance Period and any other pre-Assumption obligation of the Owner under this Agreement will be extended accordingly;
  - (c) the Owner conveys and/or dedicate lands all lands necessary for the Roadworks to the Town free and clear of all liens and encumbrances and at no cost to the Town. Said conveyance and/or dedication may be dealt with through the normal draft plan of subdivision approval process at the time of the registration of the affected plan(s) of subdivision. However, the Town's may in its sole discretion, require conveyance of land from the Owner for any portion of the Roadworks at any time prior to registration of a plan or plans of subdivision including prior to the making of an application for draft approval of a plan subdivision, the Owner shall convey the lands required by the Town at the time required by the Town free and clear of all liens and encumbrances and at no cost to the Town;
  - (d) the Consultant determines the Roadworks are completed and acceptable and certified the Roadworks as complete in accordance with the *Construction Act*, R.S.O. 1990, c. C.30 and arranges for a final inspection by the Commissioner or

such persons as the Commissioner deems appropriate;

- (e) any deficiencies noted are rectified to the satisfaction of the Commissioner;
- (f) and all other pre-Assumption requirements of this Agreement or its Schedules have been met; and
- (g) the Owner provide a detailed payment certificate to the satisfaction of the Commissioner, and in a form approved by the Commissioner, which includes without limitation, a listing of the the items/asset installed and paid for related to the Roadworks, including item,. Description. size, material, asset type, quantity, and total value paid for each item.

52. Upon Assumption, the Roadworks shall form part of the Town's system of highways and shall be a highway as defined in the Municipal Act, 2001. To this effect, if the extent that the Roadworks have not been dedicated on a registered plan of subdivision prior to Assumption, the Town shall take steps to establish the Roadworks as highway, by taking steps to consider approval of a by-law for such purposes, as part of the Assumption process.
53. The Owner shall not directly or indirectly transfer or allow to be transferred the legal or beneficial interest in any part of lands required for the Roadworks to anyone other than the Town without the Town's express written consent and subject to any conditions the Town in its sole discretion considers appropriate to give effect to the purpose of this agreement, including without restrictions assignment of all the obligations of the Owner under this Agreement. Any transfer legal or beneficial interest in any part of lands required for the Roadworks to a party other than the Town without the express written consent of the Town or contrary to conditions set by the Town, whether directly or indirectly (including through a receivership, bankruptcy or insolvency) shall constitute and Event of Default within the meaning of the Default provisions of this Agreement.

## SECURITIES

54. The amount of the Estimated Roadworks Costs are **\$7,024,053**, as detailed in Schedule E.
55. The Estimated Roadworks Costs shall be revised to reflect the award of the construction contract(s) and/or associated Consultant contract(s) and/or change orders associated with same, with such revision or revisions to occur by way of notice in writing from the Owner to the Town, without amendment to this Agreement, after each award of contract (the "Notice"). Upon the issuance of any Notice to the Town, the Estimated Roadworks Costs shall be the amount set out in the Notice.
56. Prior to execution of this Agreement by the Mayor and Town Clerk, the Owner shall deposit with the Town as a performance guarantee to ensure the total performance of this Agreement by the Owner cash, certified cheque or letter of credit in a form acceptable to the Town Treasurer in the amount of the Estimated Roadworks Costs (the "Securities").
57. If at any time, the Estimated Roadworks Costs as set out in this agreement and as amended by any Notice exceeds the amount of the Securities then held by the Town, the Owner, upon receipt of written notice from the Town Treasurer shall supply additional Securities acceptable to the Town to cover the difference within thirty (30) days.
58. The parties acknowledge that the Securities provided to the Town shall be held by the Town as security for the performance of the Owner's obligations under this Agreement and may be drawn upon, in part or in whole, by the Town in order to fulfill the Owner's obligations upon the failure of the Owner to pay any fees (including Town fees) or Owner's Costs or to conduct any work, maintenance, repairs or corrections or deficiencies to the satisfaction of the Town or within the time stipulated in this Agreement or upon the occurrence of any other Event of Default.
59. The Security shall be reduced from time to time, subject to the Town's concurrence, equal to the amount(s) of progress payments made by the Owners in respect of the Roadworks as certified by the Consultant, and in accordance with the Town's policy governing securities. Prior to requesting a reduction of the Securities, the Consultant shall provide a revised and up to date table of Estimated Roadworks Costs. Upon the Security being reduced to an amount equal to the required 10% maintenance holdback. No further reductions shall occur until such time as the Roadworks are Assumed by the Town.

## OWNER FINANCING AND REIMBURSEMENT

60. The Owner shall at all-times be responsible to finance 100% of all costs incurred in relation to the Roadworks, including all Actual Roadworks Costs and all Owner's Costs.
61. At the time of execution of this Agreement, the Owner shall make payment to the Town in the amount of nine thousand dollars (\$9,000, no HST required)., representing a partial payment on account of Legal & Administrative Fees.
62. For all costs incurred directly by the Town related to the Roadworks (including both Actual Roadworks Costs and Owner's Costs), the Town will invoice the Owner as these costs are incurred and the Owner agrees to pay these invoices within 30 days of the date of the invoices. If the Owner fails to make payment within the time stipulated, the Town may draw upon the Security, and subsequently provide written notice from the Town Treasurer to the Owner to supply additional securities within thirty (30) days in the amount of the draw or such lesser amount as the Town in its sole discretion deems appropriate.
63. The Owner shall provide to the Town in writing every six (6) months during the term of this Agreement, a statement showing the following:
  - (a) the amount then incurred with respect to the Actual Roadworks Costs, and the estimated timing and costs to complete same; and
  - (b) the status of the Roadworks.
64. Following Assumption of the Roadworks, the Town shall provide a Reimbursement, which shall not exceed the Actual Roadworks Costs incurred by the Owner pursuant to this Agreement, by lump sum payment to the Owner within ninety (90) days of Assumption.

## DEFAULT

65. Failure by the Owner to proceed with the Roadworks in a timely fashion or failure of the Owner to meet any of the requirements of this Agreement shall constitute a default under the Agreement ("Default" or "Event of Default") and the Town may, in its sole and absolute discretion, terminate this Agreement.
66. In addition to the foregoing, following an Event of Default, the Town may, in its sole and absolute discretion, terminate or delay the work with respect to any or all of the Roadworks, or any or all parts thereof, that remain outstanding.
67. Where the Town terminates this Agreement for an Event of Default:
  - (a) the Owner shall make arrangements with the Town for the transfer of title to the Town of all lands required for the Roadworks, free and clear of all encumbrances and at no cost to the Town and upon a closing date as determined by the Town;
  - (b) despite any other provision or term of this Agreement, the Owner shall not be reimbursed for any of the Actual Roadworks Costs incurred, except for the reasonable costs of any work performed in furtherance of the Roadworks that the Town, in its sole discretion, elects to make use of and incorporate to complete the Roadworks. Such reimbursement shall not occur prior to (i) the completion of the Roadworks; (ii) the transfer of title to the Town of all lands required for the Roadworks free and clear of all encumbrances; (iii) Council approval of the capital budget for the Roadworks; and (iv) the opening of the Roadworks by the Town as a public highway; and
  - (c) the Town shall be entitled to set-off any increased costs incurred by the Town to complete the Roadworks against the reimbursement for the reasonable costs of any work performed by the Owner in furtherance of the Roadworks prior to the Event of Default.

## INSURANCE AND INDEMNIFICATION:

68. Prior to the execution of this agreement, the Owner shall at its sole expense, obtain and maintain, the following insurance coverages:
  - (a) Comprehensive general liability insurance on an occurrence basis with a limit of not less than Five Million (\$5,000,000) dollars. Such policy shall include coverage for bodily injury including death, non-owned automobile liability, personal injury, broad form property damage, contractual liability, owners' and contractors' protective liability, products and completed operations, contingent employers liability, cross liability and severability of interest clauses. The policy shall be endorsed to name the Town of Milton as an additional insured; and



- (b) Automobile liability insurance for an amount not less than Two Million (\$2,000,000) dollars on forms meeting statutory requirements covering all vehicles used in any manner in connection with the performance of the terms of this Agreement.
69. The required policies shall:
- (a) contain an undertaking by the insurers to notify the Town in writing not less than thirty (30) days before any material change in risk or cancellation of coverage;
  - (b) be written with an insurer licensed to do business in the Province of Ontario; and
  - (c) shall be primary, and shall not call into contribution any other insurance applicable to the Town.
70. A Certificate of Insurance originally signed by an authorized insurance representative shall be delivered to the Town upon execution of this Agreement, on a form of Certificate of Insurance which is acceptable to the Town. All subsequent policy renewals and certificates of insurance thereafter, during the time that this Agreement is in force, shall be forwarded to the Town within fifteen (15) days of their renewal date.
71. It is the Owner's responsibility to ensure that its contractors and subcontractors (including consultants), obtain and maintain the necessary insurance coverages so as to protect the Owner and the Town and satisfy the indemnifications contained within this agreement.
72. The Owner shall indemnify, defend and hold harmless the Town, its employees, officers, Council members, agents, consultants and contractors from and against any and all liabilities, statutory liabilities, losses, claims, damages, demands, costs orders, fines, penalties, costs, expenses and legal fees, occasioned wholly or in part by any acts or any omissions or any breaches of any contract of or by the Owner, it's contractors, subcontractors, consultants, agents, officers, employees or any other persons for whom the Owner is legally responsible, howsoever caused.

#### **WORKPLACE SAFETY AND INSURANCE BOARD**

73. The Owner shall ensure that the Consultant, and all contractors, subcontractors and consultants furnish to the Town Letter(s) of Good Standing from the Workplace Safety and Insurance Board. The Letter(s) shall be furnished prior to commencement of work. The Owner further agrees to ensure that the Consultant, and all contractors, subcontractors and consultants maintain that good standing throughout the contract period and shall forthwith inform the Town in writing of any failure by a Consultant to do so.
74. The Owner will be required to produce to the Town Certificate(s) of Clearance for Consultant(s) from the Workplace Safety and Insurance Board from time to time during the contract and/or prior to final payment.

#### **ADMINISTRATION AND MISCELLANEOUS**

75. Any notice, demand, acceptance or request required to be given hereunder:
- (a) Shall be in writing and be deemed to be given if either personally delivered, emailed or mailed by registered mail, postage prepaid, at any time other than during a general discontinuance of postal services due to a strike, lockout, emergency or otherwise, and addressed to the Owner and the Town at the addresses set out below:

##### **Town**

The Corporation of the Town of  
Milton 150 Mary Street  
Milton,  
Ontario L9T  
6Z5

Tel: 905 878-7252  
Fax: 905 878-6995

Attention: Commissioner Development Services

##### **Owner**

OPG Derry Green Lands Inc.  
EY Tower

100 Adelaide Street West, Suite 900  
Toronto, ON  
M5H OE2

Tel: 416 350 7819

Attention: Mr. Robert Wheler, Vice President - Development

or such change of address as the applicable party has by written notification forwarded to the Town and the other parties.

- (b) Any notice shall be deemed to have been given to and received by the party to which it is addressed:
  - (i) if delivered, on the date of delivery; or
  - (ii) if mailed, then on the fifth business day after the mailing thereof.
  
- 76. The Owner, which is a corporation represents and warrants as follows:
  - (a) it is a corporation validly subsisting under the laws of Ontario and has full corporate power and capacity to enter into this Agreement and any documents arising from this Agreement; and
  - (b) all necessary corporate action has been taken by the Owner to authorize the execution and delivery of this Agreement.
  
- 77. This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.
  
- 78. Notwithstanding anything in this Agreement to the contrary, the Owner acknowledges and agrees that official plan, subdivision, rezoning and site plan applications, pursuant to sections 22, 34, 41 and 50 of the *Planning Act*, R.S.O. 1990, c. P.13, may be required including but not limited to the payment of fees, in accordance with the Town's fee by-law in effect from time to time, for the processing of development applications on the Owner's Lands.
  
- 79. This Agreement shall not in any manner fetter the discretion or rights of Council or the Owner under the *Municipal Act*, 2001, S.O. 2001, c. 25, and/or the *Planning Act*, R.S.O. 1990, c. P.13, and/or the *Development Charges Act*, 1997, S.O. 1998, c. 27, as amended, over the Owners lands.
  
- 80. The Parties shall execute such further documents and cause the doing of such acts and cause the execution of such further documents as are within their power as the Parties may reasonably request be done or executed, in order to give full effect to the provisions of this Agreement.
  
- 81. Time shall be of the essence of this Agreement with respect to the Owner's obligations, including without limitation, the transfer of title to the lands required for the Roadworks to the Town.
  
- 82.
  
- 83. This Agreement is binding upon and shall be enforceable by and against the parties, their heirs, executors, administrators, successors, successors in title and assigns.
  
- 84. If any provision of this Agreement is determined by a Court of competent jurisdiction to be illegal or beyond the power, jurisdiction, or capacity of any party bound hereby, such provision shall be severed from this Agreement and the remainder of this Agreement shall continue in full force and effect and in such case the parties shall negotiate in good faith to amend this Agreement in order to implement the intentions as set out herein. It is agreed and acknowledged by the parties that each is satisfied as to the jurisdiction of each party to enter into this Agreement. The parties agree that they shall not question the jurisdiction of any party to enter into this Agreement nor question the legality of any portion hereof, nor question the legality of any obligation created hereunder and the parties, their successors and assigns are and shall be estopped from contending otherwise in any proceeding before a Court of competent jurisdiction or any administrative tribunal.
  
- 85. This Agreement may be executed in any number of counterparts and all such counterparts shall for all purposes constitute one agreement, binding on the parties hereto, provided each party hereto has executed at least one counterpart, and each shall be deemed to be an original, notwithstanding that all parties are not signatory to the same counterpart. Delivery of an executed copy of this Agreement by facsimile or by electronic transmission in portable document format (.pdf) or other similar electronic means is as effective as delivery of an original thereof.

**LIST OF SCHEDULES**

86. The following schedules are attached hereto and form part of this Agreement:

SCHEDULE "A"	Map Showing Derry Green Business Park Area
SCHEDULE "B"	Map Showing Owner's Lands and Approximate Roadworks Area
SCHEDULE "C"	Scope of Roadworks
SCHEDULE "D"	Additional Responsibilities During Construction
SCHEDULE "E"	Estimated Roadworks Cost
SCHEDULE "F"	Schedule for Roadworks

**[BALANCE OF PAGE LEFT INTENTIONALLY BLANK – SIGNATURE PAGES AND SCHEDULES TO FOLLOW**

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**IN WITNESS WHEREOF** the Parties hereto have hereunto executed this Agreement duly attested to by their proper signing officers in that behalf.

**THE CORPORATION OF  
THE TOWN OF MILTON**

\_\_\_\_\_  
Gordon Krantz – Mayor

\_\_\_\_\_  
Meaghen Reid – Clerk

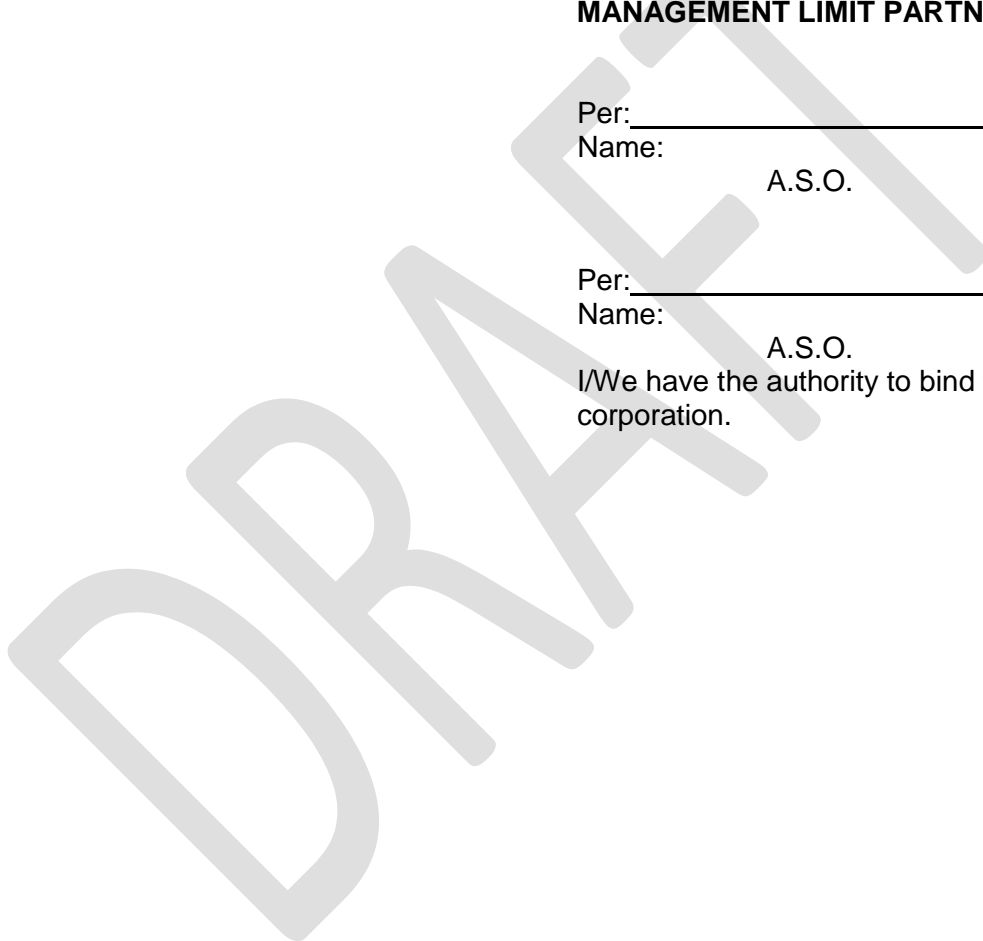
Authorized by By-law No.■

**OPG DERRY GREEN LANDS INC. by  
its manger, without personal liability,  
OPGI MANAGEMENT GP INC. as the  
general partner of OPGI  
MANAGEMENT LIMIT PARTNERHIP**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
A.S.O.

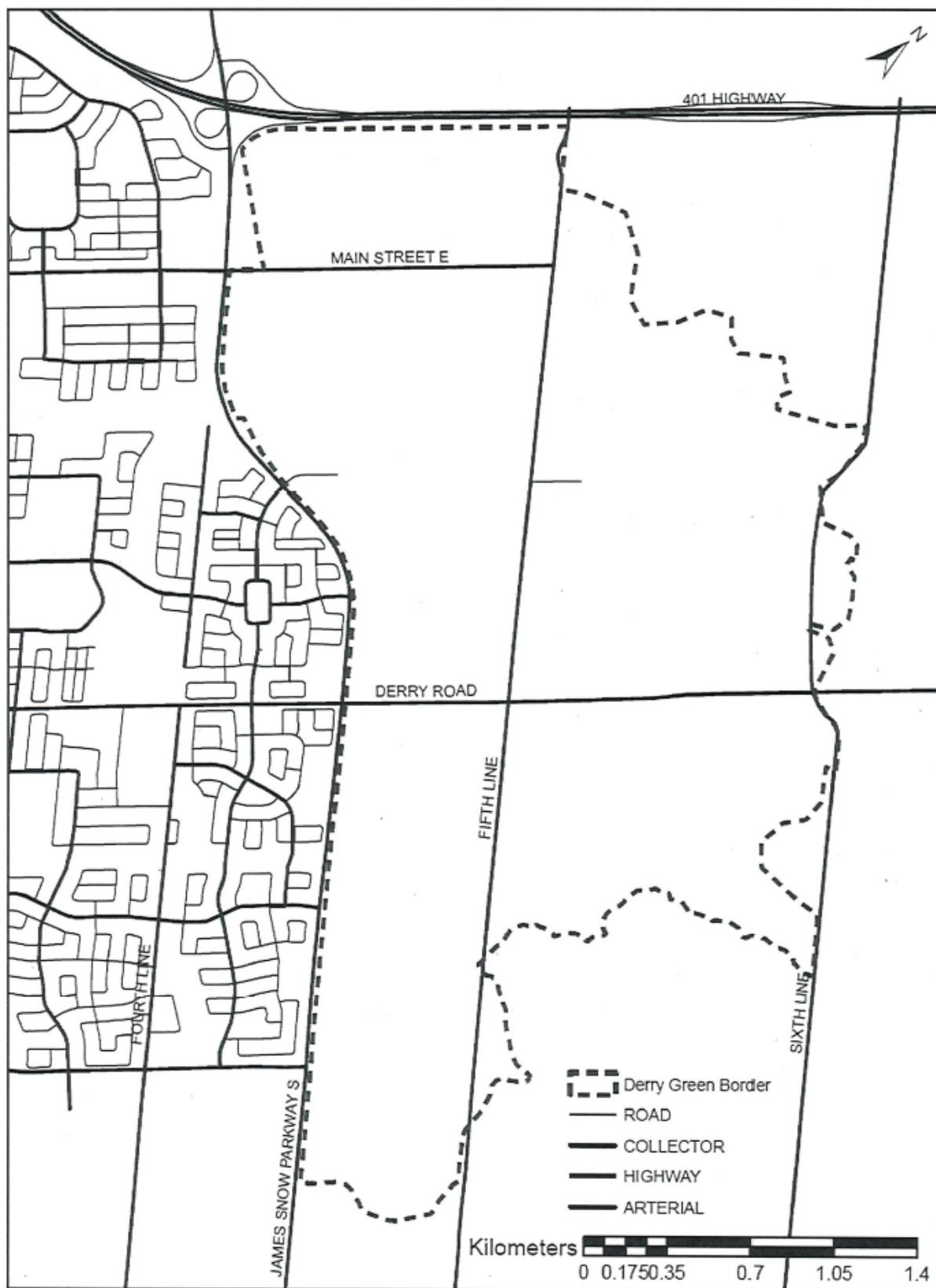
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A.S.O.

I/We have the authority to bind the  
corporation.



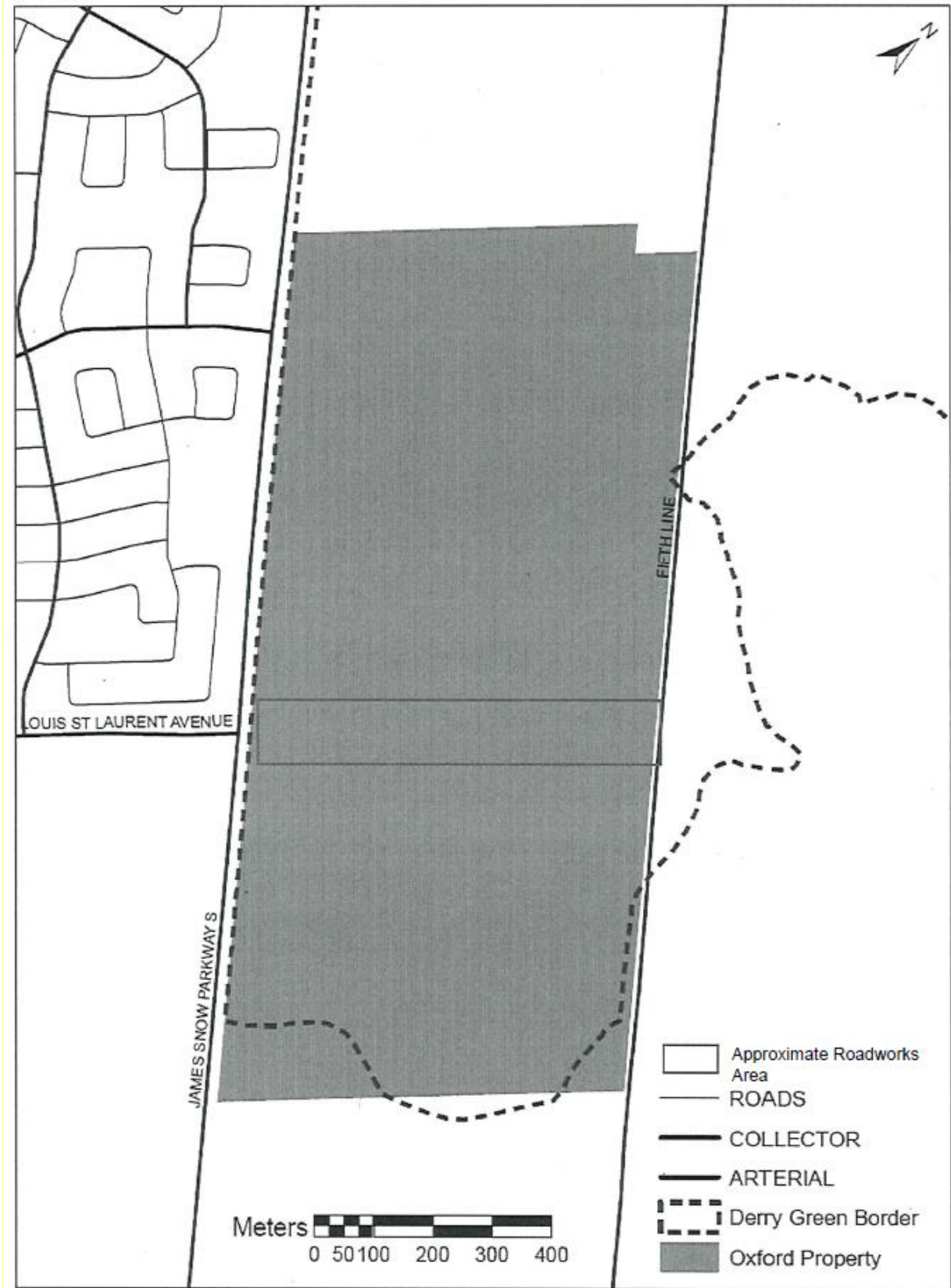
SCHEDULE "A"

Derry Green Business Park Area



SCHEDULE "B"

Map Showing Owner's Lands and Roadworks Area



## SCHEDULE "C"

### Scope of Roadworks

#### Roadworks Construction – Louis St. Laurent Avenue from James Snow Parkway to 5<sup>th</sup> Line.

All material, labour, equipment required to construct the following, to the satisfaction of the Town:

- 35m Right of Way, with additional lane tapers and daylighting as deemed required by the Town, through the detailed design
- 4 x 3.5m travel lanes, urban cross section with storm sewers and curb and gutter
- All required manholes and catchbasins within the road allowance
- 2m concrete median separation EB and WB traffic
- All boulevard facilities, including a 1.8m sidewalk, 0.5m stamped concrete buffer and a 2.0m bike path.
- Cross section to be in accordance with preferred option as determined through the municipal class EA work completed in October, 2020
- All associated street lighting, poles, pedestals, and all associated work to energize the street lighting system
- Any modifications that may be required to the intersection at James Snow Parkway and Louis St. Laurent, including any modifications to existing traffic signals
- New traffic signals at Louis St. Laurent Avenue and Fifth Line
- *A new traffic signal has been identified approximately mid-block on Louis St. Laurent Avenue between James Snow Parkway and Fifth Line – however this traffic signal shall be constructed in accordance with Town Standards and requirements, but will be constructed entirely at the Owner's Cost and will not be reimbursed by the Town.*
- Final pre-tender quantities and associated cost estimate to be determined through detailed design, however the estimated items and quantities as per the Municipal Class EA are as follows:

Item No.		Units	Unit Price	Quantity
<b>PART A - GENERAL</b>				
A1	Mobilization and Demobilization	LS	\$35,000	1
A2	Bonding & Insurance	LS	\$20,000	1
A3	Maintenance of Traffic (Road Closure)	LS	\$5,000	1
A4	Environmental Protection	LS	\$15,000	1
A5	Construction Layout	LS	\$30,000	1
A6	Field Office & On-Site Facilities	Per Month	\$5,000	14
<b>PART B - ELECTRICAL</b>				
B1	Lighting on Hydro Poles	ea.	\$3,000	15
B2	Street Lighting Pole	ea.	\$6,000	15
B3	Permanent Traffic Signals (3 Intersections - James Snow Parkway, Mid-Block, 5th Line)	ea.	\$200,000	3

PART C - ROADWAY/ STORM SEWERS/CULVERT STRUCTURE				
C1	Concrete Curb and Gutter	m	\$60	1400
C2	Concrete Traffic Median	m <sup>2</sup>	\$75	1400
C3	PVC Catchbasin Lead	m	\$200	200
C4	Concrete Storm Sewer (375mm to 525mm)	m	\$400	700
C5	Manholes	ea.	\$20,000	6
C6	600mm x 600mm Catch Basins	ea.	\$6,000	24
C7	150mm Rigid Pipe Subdrains	m	\$35	700
C8	Earth Fill	m <sup>3</sup>	\$25	61250
C9	50mm HL-1 - Roadway	Tonne	\$105	1365
C10	100mm HL-8 High Stability	Tonne	\$95	2730
C11	150mm 19mm Limestone Base	m <sup>3</sup>	\$45	1575
C12	550mm Granular 'B' Type II Sub-Base	m <sup>3</sup>	\$40	5775
C13	Culvert Structure	LS	\$450,000	1
C14	Steel Beam Guide Rail	m	\$175	120
C15	Sequential Kinking Terminal (SKT) System SBGR Energy End	ea.	\$15,000	4
C16	150mm Topsoil (Imported)	m <sup>3</sup>	\$13	840
C17	No. 1 Nursery Sod	m <sup>2</sup>	\$5	5600
C18	Tree Plantings	ea.	\$800	50
C19	Concrete Splash Pad	m <sup>2</sup>	\$90	700
C20	Stamped Concrete	m <sup>2</sup>	\$130	700
C21	2m Bike Path (100mm asphalt on 150mm granular base)	m	\$80	1400
C22	Concrete Sidewalk	m <sup>2</sup>	\$75	2520

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21  
SCHEDULE "D"**Additional Responsibilities  
During Construction of Roadworks****The Owner's Additional Responsibilities:**

- 1) The Owner is responsible to facilitate the tender and construction of the Roadworks, in accordance with this Agreement, and to the satisfaction of the Town.
- 2) During the construction and installation of the Roadworks, the Owner shall observe, or cause to be observed, all By-laws of the Town and the following provisions, and shall deliver a copy of this part of the Agreement to every contractor, including subcontractors, who may construct any of the Roadworks:
  - a. All streets abutting the Owner's Lands which are to be used for access to those Lands during the construction of the Roadworks shall be kept in good and usable condition and, if damaged, shall be repaired immediately to the satisfaction of the Commissioner at the expense of the Owner;
  - b. All trucks and vehicles making deliveries to or taking materials from the Owner's Lands or working on those Lands shall be both covered and loaded in such a manner as to not scatter refuse, rubbish, or debris on any road or highway whether within those Lands or not. Should any such refuse, rubbish or debris be so scattered, the Owner shall be responsible to immediately remove it and correct any damage caused thereby. Failing immediate removal of the refuse, rubbish or debris, the Town may remove it and the Town may correct any damage caused thereby, such removal and/or correction to be at the expense of the Owner;
  - c. All construction garbage shall be collected and disposed of in an orderly manner at the Municipal Waste Disposal Site, or at such other place as may be approved by the Commissioner. Under no circumstances shall garbage or rubbish of any kind be disposed of by burning on the site without written authorization of the Town's Fire Chief;
  - d. The Owner will neither dump nor permit to be dumped, any fill or debris on any lands, nor remove or permit to be removed any fill from any lands, without the written consent of the Town and only as permitted by a site alteration permit under By-law No. 33-2004, as amended and in accordance with O. Reg. 406/19: On-Site and Excess Soil Management under the *Environmental Protection Act*, R.S.O. 1990, c. E.19. Prior to the movement of any fill or excess material the Consultant shall complete and provide to the Town Ontario Provincial Standard Specification (OPSS) Form 180.
  - e. The Owner will neither dump or permit to be dumped any fill or debris on any lands, nor remove or permit to be removed any fill from any lands which are regulated by a Conservation Authority having jurisdiction pursuant to applicable Ontario Regulations, without the written permission of the Conservation Authority;
  - f. No blasting shall be carried on without the prior written consent of the Commissioner, Engineering Services and a variance to the Town's Noise By-law No. 133-2012, as amended. Construction of the Roadworks shall not occur between the hours of 9:00 p.m. on one day and 7:00 a.m. of the following day, save and except on Sundays and statutory holidays when construction shall not commence before 9:00 a.m.;
  - g. The Owner shall keep the Town Lands free and clear of all noxious weeds and weed seeds to the satisfaction of the Commissioner and local weed inspector, appointed by Town By-law. The Owner agrees that if ordered by either the Commissioner or local weed inspector, the Owner will immediately comply with the order;
  - h. No trees greater than 150 millimetres in calliper shall be removed, whether dead or alive, unless written permission to do so has first been obtained from the Commissioner, and no ground shall be disturbed and covered over within the dripline area of such trees for which permission to remove has not been obtained;
  - i. The construction of Roadworks shall conform to the applicable Town, Region, Government of Ontario, and other public agencies' legislation;
  - j. At any time the Commissioner may require the Owner, at its sole cost, to make qualitative or quantitative tests of any materials which have been or are proposed

to be used in the construction of the Roadworks;

- k. The Owner agrees that no building equipment, including contractors' equipment, vehicles or materials which are to be used in the construction of the Roadworks shall be parked or deposited at any time on any road in the Town;
- l. No building, fence or any other access obstructing structure, or materials shall be erected or placed closer than three (3) metres to any fire hydrant, connection, valve or stand-pipe unless approval, in writing, by the Town's Fire Chief, is first obtained;
- m. The Owner agrees that proper access for fire department equipment to all buildings shall be maintained at all times, to the satisfaction of the Town's Fire Chief;
- n. In addition to any other requirement under this Agreement, the Owner agrees that construction of the Roadworks shall not commence until the Consultant has filed an undertaking with the Commissioner stating that he/she/it is the Owner's Consultant as defined by this Agreement and a pre-construction meeting between the Commissioner and the Consultant has taken place;
- o. The Owner agrees that all construction traffic shall enter and leave the Owner's Lands using only the streets and other access points designated by the Town for this purpose. The Owner shall, when required by the Town, install barricades at the end of other streets providing access to the said Lands to prevent these streets from being used for construction traffic. The Owner shall maintain these barricades in place until the Commissioner instructs the Owner to remove them.

#### **The Consultant's Additional Responsibilities:**

The Consultant and the Consultant's Project Engineer shall be retained by the Owner on a full-time basis throughout all stages of the construction and inspections of the Roadworks up to Assumption and shall:

- 1) design, lay-out, supervise and inspect the construction of the Roadworks;
- 2) certify that all submitted reports and drawings comply with the Town's Engineering and Parks Standards;
- 3) obtain the necessary approvals from the Town and from any other public agency, including, but not limited to, the Region of Halton, Conservation Halton or the Province.
- 4) provide full time field inspection, contract administration and supervision of construction to the satisfaction of the Town. The Town may, where reasonably necessary, require the Owner to provide a resident engineer, consultant or other qualified person at the work site in furtherance of the Owner's obligation aforesaid;
- 5) contract administration and inspection includes, but is not limited to, the following:
  - a) Chair a pre-construction meeting and subsequent bi-weekly construction meetings with the Town, Contractor and affected stakeholders (to include, but not be limited to, Conservation Halton, Utility agencies, Region, Developers as well as any external agencies that may wish to attend. Weekly site construction follow up visits with the Town (Contract Administrator & Town's Project Manager). The preparation of agenda and associated minutes for these meetings will also be required throughout the life of the project. The Town is to be provided with the opportunity to attend the pre-construction meeting and any of the bi-weekly meetings. The Town's Project Manager for the Roadworks is to be contacted directly in this regard. The contact information for the Project Manager will be provided to the Owner prior to construction start.
  - b) Full time (10 hour days) inspection is required throughout the length of the construction phase, and during any deficiency work that may be required during the Guaranteed Maintenance Period.
  - c) Preparation and delivery of advance notification of construction to affected homeowners and businesses. The Town's Project Manager is to be consulted with respect to appropriate delivery area.

- d) Review of all required submittals (schedules, shop drawings, esc plans, traffic plans etc.)
- e) ESC inspections and any required monitoring
- f) All required warranty inspections (warranty period of 2 years) and associated paperwork to bring project to close: assume at least three inspections required during warranty period.
- g) Provision of as-built construction drawings, in line with Town's Standards
- h) Public relations complaint investigations, follow up (site visits, communications), reports and dealing with the public and stakeholders through the duration of the project, including warranty period, (residents, developers etc.).
- i) The construction inspection shall include but are not limited to:
  - Summary of construction activities including photos
  - Tracking equipment, labour, Hours (Downtime/T&M)
  - Compliance with Book 7 Traffic Manual
  - Resident complaints/issues/resolutions,
  - General site-specific safety measures in place (OHSA).
  - Coordination for all geotechnical and environmental field services
  - On site materials verification and compliance with the Town standards and specifications
  - Daily red line mark ups documenting completed construction and field changes against contract drawings
  - Construction Inspection reports must be provided digitally to the Town PM at the end of each work week
- j) Geotechnical Field Inspection and Material testing and QA/QC Field Sample Collection and Materials Testing including but not limited to the following:
  - a. Grain Size Analysis
  - b. Standard Proctor
  - c. Mix design reviews
  - d. Full Depth Reclamation
  - e. Asphalt extraction and gradation
  - f. Full Marshall Verification
  - g. Ash test
  - h. Infrared Spectroscopy and X-ray Fluorescence
  - i. PGAC Verification and Extended Bending Beam Rheometer (BBR)
  - j. Asphalt Cement Content
  - k. Tensile Strength, Bulk Relative Density (BRD) and Moisture content

- l. Any material testing as may be required and as stipulated in the Town's Engineering & Parks Standards Manual (including but not limited to concrete testing, top soil testing, etc.)
  - m. All material testing results are to be provided to the Town's Project Manager for the Town's files.
- 6) provide Completion Certificates for approval and/or Assumption of the Roadworks, which may include recommendations for security reductions;
  - 7) obtain all records of construction of the Roadworks, deposit with the Town one complete set of "as constructed" plans of all the Roadworks, in a digital format to the satisfaction of the Town and in line with the Engineering and Parks Standards Manual – see below for as-built requirements.;
  - 8) prepare and provide the Town with a certificate of final grade elevation indicating that the Roadworks have been constructed in conformity with the Engineering and Construction Plans approved by the Town;
  - 9) act as the Owner's representative in all matters pertaining to construction of all the Roadworks specified in this Agreement;
  - 10) provide to the Town as and when required by it, copies of any or all contracts or subcontracts or both entered into by or on behalf of the Owner for the construction of any or all of the Roadworks, together with any or all of the following contract documentation:
    - i) certificates of progress payments,
    - ii) certificates of the substantial performance given pursuant to the provisions of the Construction Lien Act Amendment, and
    - iii) particulars of publication of such certificates of substantial performance;
  - 11) Provide a statutory declaration to certify to the Town that there are no lien claims relating to any of the completed Roadworks as and when the Owner requests the Town to reduce the security or Assume the Roadworks;
  - 12) provide a pre-engineering survey of the site and layout and provide all grades, to geodetic benchmarks, and to construct the site as per the approved designs; and

## TOWN AS BUILT REQUIREMENTS

The "as-built" drawings shall be submitted to the Town by the Consultant for the Town's permanent records upon completion of construction (at substantial completion). As-built requirements are as per the Town's Engineering & Parks Standards Manual (2019), as amended.

Engineering/Landscape drawings required:

- a. Full-size bond copies of the entire drawing set for review.
- b. One disc of the digital .pdf files of the approved as-built drawings.
- c. One disc of the digital .dwg files of the final approved as-built drawings

Road/Civil As-Built Requirements:

- a. Revisions to the Title Block with the "as-built" date.
- b. Removal of all "Construction" notes indicating proposed works.
- c. Storm sewer diameter, material, slope, as built lengths, inverts.
- d. Engineering stamp, date and signature.
- e. Centreline of road elevations (at 20 m intervals and where grade changes).
- f. All "as-built" elevations are to be shown beside the strike out design elevations.
- g. As built property line grades where private property abuts public ROW or future development lands.
- h. As built storm manhole inverts and top of grate elevation.
- i. House connection location and invert at property line for storm sewer, sanitary sewer and water connections.
- j. Street names
- k. Location of street trees
- l. Street light poles and street light luminaires (if on hydro poles) clearly shown
- m. Drawings numbered as per the Town's As-Constructed Drawings – Record Management System Guideline. See Appendix D.

Traffic Signal As-Built Requirements:

Within 30 days of the activation of the traffic signal, Metrolinx shall submit the following drawings:

- a. PH-M-125 (as built), showing the layout of poles, arms, heads, conduit, controller, Opticom, handwells, vehicle detection, power supply, hydro metre, signage and all pavement markings at a scale of 1:250.
- b. Wiring diagram for the intersection.

Digital Data/GIS Compatibility:

- a. The Consultant shall be required to prepare their documents and drawings using software compatible with the Town of Milton's standard software applications. It is the consultant's responsibility to ensure all documents can be successfully transferred to and accessed by the Town.
- b. The Town's standard CAD program is AutoCAD 2014.
- c. The Town's standard GIS program is ArcGIS version 10.3.
- d. The standard CAD and GIS program versions may be updated throughout the partnership between the consultant and the Town. Any updates will be communicated to the consultant by the Town.
- e. The Town's standard projection for digital submissions is Universal Transverse Mercator, Zone 17 North, North American Datum 1983. Data not conforming to this standard will be sent back to the consultant at the consultant's expense.
- f. CDs/DVD's need to include clear labels of the project name
- g. CD's/DVD's need to include AutoCAD drawings with clear, meaningful titles. Consultants providing AutoCAD submissions should make every effort to have the drawing in the standard project or location as defined above.
- h. AutoCAD drawings should include legible layer naming with only relevant layer information, and remove the usage of external references. The Town will not accept any drawings that have any reference maps attached or indecipherable layer names. These drawings will be sent back to the consultant at the consultant's expense.
- i. Consultants providing AutoCAD submissions should not use special fonts or colour tables. Consultants should avoid duplication of line colours.
- j. All drawings should include clear labels adjacent to the features represented/drawn.

## SCHEDULE "E"

Estimated Roadworks Costs

	Amount
Roadworks Construction Contract *	\$ 5,697,134
Contract Administration and Inspection**	398,799
Contingency***	609,593
Project Management Fees (2% of roadworks construction contract)	113,943
Capital Surcharge (3% of Roadworks Construction Contract, Contract Admin and Inspection, Contingency and Project Management Fees)	204,584
<b>Total Estimated Roadworks Costs</b>	<b>\$ 7,024,053</b>

Note: all costs noted include 5% HST allowance

\*based on 60% cost estimate provided by Stantec, dated March 3, 2021

\*\* 7% of Roadworks Construction Contract

\*\*\*10% of Roadworks Construction and Contract Administration and Inspection Contracts

**SCHEDULE "F"**  
**Roadworks Schedule**

<b><u>ACTIVITY</u></b>	<b><u>TO BE COMPLETED BY</u></b>
Construction Tender	June 30, 2021
Construction Start	July 15, 2021
Substantial Completion	July 31, 2022

DRAFT