

THIS AGREEMENT made is this 18th day of November, 2008.

B E T W E E N:

HER MAJESTY THE QUEEN in right of the Province of Ontario,
represented by the **Minister of Transportation for the Province of Ontario**,
(hereinafter referred to as the "Ministry")

OF THE FIRST PART

- and -

CITY OF HAMILTON,
(hereinafter referred to as the "City")

OF THE SECOND PART.

WHEREAS the Ministry has jurisdiction and control of the King's Highway No. 6 ("Highway 6") and King's Highway No. 5 ("Highway 5"), west of Highway 6;

WHEREAS the City has jurisdiction and control of Regional Road No. 5 (formerly Kings' Highway No. 5), east of Highway 6;

WHEREAS the Ministry intends to construct a grade separated interchange at the Highway 6 and Highway 5/Regional road 5 intersection, all within the City of Hamilton, as shown in Schedule 'A' attached to this Agreement ("Interchange");

AND WHEREAS the City has agreed to contribute and pay to the Ministry, twenty five (25%) percent of the actual design, property acquisition and contract administration of the Interchange, as detailed in Schedule 'B' attached to this Agreement;

AND WHEREAS the City has agreed to contribute and pay to the Ministry, twenty five (25%) percent of the construction cost (including, utility relocation costs) to a maximum of seven million five hundred thousand (\$7,500,000.00) Dollars for the Interchange, as detailed in Schedule 'B' attached to this Agreement;

AND WHEREAS the Ministry also intends to design and construct with the cooperation and assistance of the City such municipal roads, as may be necessary to facilitate the Interchange;

AND WHEREAS the City has agreed to contribute and pay to the Ministry twenty five (25%) percent of the actual costs as detailed in Schedule 'C' attached to this Agreement, in order to design and construct the municipal road improvements as shown in Schedules 'A' attached to this Agreement, in order to facilitate the Interchange;

AND WHEREAS it is deemed expedient to enter into this Agreement to set out the mutually agreed upon terms and conditions for the cost sharing of the design, property acquisition, utility relocations, contract administration and the construction of the Interchange and municipal road improvements.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the covenants herein contained, the Parties hereto, for themselves and their respective successors and assigns, hereby mutually agree as follows:

DEFINITIONS

1. In this Agreement:
 - a) "Director" means the Regional Director of the Central Region of the Ministry or his nominee;
 - b) "Interchange" means that grade separated portion of the Highway 6 and Highway 5/Regional Road 5 within the designated right-of-way of Highway 6, as shown in Schedule 'A' to this Agreement; and,
 - c) "Municipal Roads" means new and existing road re-alignments or improvements, shown as M1, M2, M3, M4 and M5, in Schedule 'A' to this Agreement, required to facilitate the Interchange.

SCOPE OF WORK

2. It is understood and agreed by the parties that the work consists of the detailed design, environmental approval, property acquisition, utility relocations, construction and construction administration of:
 - a) a new interchange at the present intersection of Highway 6 and Highway 5 / Regional Road 5.
 - b) the municipal roads in order to facilitate the grade separated interchange at the Highway 6 and Highway 5/Regional Road 5 intersection

DESIGN AND CONSTRUCTION

3. It is understood and agreed by the parties that the proposed design of the Interchange is in accordance with Ministry standards, specifications, policies and practices.
4. The Ministry will undertake all surveying, engineering investigations, environmental studies, engineering design and other duties associated with the design of the Interchange.
5. The Ministry will undertake all surveying, engineering investigations, environmental studies, engineering design and other duties associated with the design of the Municipal Roads. The City shall facilitate and assist in obtaining any municipal approvals for this work.
6. The Ministry shall obtain Environmental Approvals and such other approvals as required for the construction of the Interchange.
7. The Ministry shall obtain Environmental Approvals and such other approvals as required for the construction of the Municipal Roads shown as M1, M2, M3 and M5 in Schedule A to this Agreement. The City shall facilitate and assist in obtaining any municipal approvals that may be required for such work. The City will obtain Environmental Approvals and any other approvals for the construction of any roadway in the northwest quadrant for access to lands between Hwy 5 and the Creek, being the municipal road shown as M4 in Schedule A to this Agreement

8. The City shall not object to the Ministry proposing the closure of any municipal road or portion thereof required to facilitate the construction of the Interchange or the improvements to the Municipal Roads, subject to the Ministry receiving environmental clearance through the Ministry's environmental approval process. The City will initiate the process to pass the necessary by-laws when required to do so.
9. The Ministry, or another person, shall undertake the relocation of any and all utilities that may be necessary for the Interchange. The City will facilitate and assist in obtaining and relocating utilities as required.
10. The Ministry, or another person, shall also undertake the relocation of any and all utilities that may be necessary for the Municipal Roads. The City will facilitate and assist in obtaining utility approvals and clearances, if required.
11. Prior to the commencement of construction of the Interchange, the Ministry shall acquire the lands necessary for the Interchange.
12. Prior to the commencement of construction of the Municipal Roads, the Ministry shall also acquire the lands necessary for the Municipal Roads. The City will facilitate and assist, if required.
13. The Ministry, at its sole discretion, may undertake the construction of the Interchange and the Municipal Roads by means of a series of suitable construction contracts that may be smaller by the cost or amount of work to be performed.
14. Prior to tendering a contract, the Ministry shall prepare a final cost estimate for the City's information.
15. The Ministry shall tender the Interchange construction contract in such a way that the Municipal Road improvements shall be substantially completed and constructed prior to the commencement of construction of the Interchange in order to ensure safe traffic movement.
16. The Ministry shall tender, advertise, award, administer the construction and construct the Interchange in accordance with Ministry standards, specifications, policies and practices.
17. If in the opinion of the Ministry, the unit prices or total bid tender are excessive, the Ministry reserves the right to refuse to approve the award of the construction contract and may re-tender and advertise the contract.
18. The Ministry shall ensure that the City is kept informed about the progress of design, construction and other associated activity for the construction of the Interchange and the Municipal Road improvements.
19. a) If the City determines that any of the Municipal Roads should be reconstructed sooner than anticipated by this Agreement, because of the need of the City to construct a municipal recreational building or other public building to be used by the City, than it is agreed that the City may reconstruct any or all those Municipal Roads in accordance with the applicable Ministry standards, specifications, policies and practices. The City shall pay 100% for the construction costs when incurred and 75% of the actual construction costs shall be deemed to be a credit in favour of the City toward its share of the payment for the construction costs for the Interchange as described in this Agreement. It is understood and agreed by the City that actual construction costs deemed to be a credit by this clause shall not include any amounts associated with its staff working on or providing administrative support for the Municipal Roads.
b) If the City determines that any of the Municipal Roads should be reconstructed sooner than

anticipated by this Agreement, because a person seeks to develop its lands pursuant to the planning process, than it is agreed that the City may reconstruct any or all those Municipal Roads in accordance with the applicable Ministry standards, specifications, policies and practices, but without any financial contribution from the Ministry

FINANCIAL CONTRIBUTION

20. Subject to paragraph 19 of this Agreement, the Ministry and the City agree that the costs for the Interchange and the Municipal Roads, as detailed in Schedules 'B' and 'C' attached to this Agreement, are for estimating purposes only and that it is the intention of the parties to pay the actual costs in accordance with the terms and conditions set out in this Agreement. For additional clarity, it is understood and agreed by the City that it will not seek to recover from the Ministry any amounts for Administrative Overheads, meaning any amounts associated with its staff working on or providing administrative support for either the Municipal Roads or the Interchange, and this is indicated by a zero amount in both Schedules 'B' and 'C'.
21. The City shall pay twenty five (25%) percent of the actual costs for the design, property acquisition (including the cost for the lands and any and all expropriation costs), construction administration, resolution of liens and claims, plus Goods and Services Tax ("GST") for the Interchange, as shown in Schedule 'B' attached to this Agreement.
22. The City shall pay for construction cost, including all utility relocations for the Interchange to a maximum of Seven Million Five Hundred Thousand (\$7,500,000.00) Dollars, plus GST, as shown in Schedule 'B' attached to this Agreement.
23. Subject to paragraph 19 of this Agreement, the City shall pay the costs as stated in Schedules 'C' attached to this Agreement, as well as all applicable GST, towards the design, property acquisition, (including the cost for the lands and any and all expropriation costs), utility relocations, construction administration and construction costs of the Municipal Roads.
24. In the event the City requests the Ministry to complete additional work with regard to the Interchange or the Municipal Roads, and the Ministry agrees to such a request, then the City shall pay the Ministry:
- a) the cost incurred by the Ministry in carrying out the request; and
 - b) the cost of materials, labour, force account work, surcharges and other expenses associated with carrying out the request.

INVOICING

25. The Ministry shall, invoice the City for payments for the actual cost of the Interchange and the Municipal Roads, annually, in the Fall of each year for that year's costs for the accrued amounts from the preceding invoice, until construction is completed and final accounts are settled. The City shall pay the Ministry the invoiced amount within sixty (60) days of receipt of the invoice or by 31st December, whichever is later. Invoicing for the cost of the property acquisitions to facilitate the construction of the interchange and the municipal roads will commence in 2008. Invoicing for design and construction of the interchange and the

municipal roads will commence in 2010 or later

COMPLETION

26. The Ministry shall report the completion date of the Interchange and the Municipal Roads to the City
27. The Ministry shall seek to resolve any and all construction liens filed with respect to the Municipal Roads as may be reasonably possible.

GENERAL PROVISIONS

28. The rights, duties and powers of the Minister of Transportation for the Province of Ontario under this Agreement may be exercised by:
 - a) the Director, or
 - b) a nominee.
29. All notices, demands or requests sent to a party to this Agreement may be served personally or mailed by registered mail, postage prepaid (at any time other than during a general discontinuance of postal services due to a strike, lockout or otherwise) or sent by facsimile transmission and addressed to the party to whom it is given as follows:

If to the Ministry: Roger Hanmer
Regional Director, Central Region
Ministry of Transportation
2nd Floor, Atrium Tower (Building "D")
1201 Wilson Avenue
Downsview, Ontario
M3M 1J8
Tel. No.: 416-235-5400
Fax No.: 416-235-5266

If to the City: Scott Stewart
General Manager
Public works Department
City of Hamilton
77 James St. North, Suite 320
Hamilton, Ontario
L8R 2K3
Tel. No.: 905-546-2424 ext. 2313
Fax No.: 905-546-4481

Any notice shall be deemed to have been given to and received by the party to whom it is addressed:

- (a) if delivered, on the date of delivery;
- (b) if mailed, then on the fifth business day after being deposited in the mail;
- (c) if faxed, on the day after facsimile transmission.

The address for each party hereunder may be changed upon written notice to the other party.

30. All Schedules referred to in this Agreement and attached hereto form part of this Agreement.
31. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
32. The City warrants that it has taken all necessary steps, done all acts, passed all by-laws and obtained all approvals within its power legally required to give it the authority to enter into this agreement.
33. Any changes, alterations or amendments to this Agreement shall be made in writing and

mutually agreed upon by the Parties. The Director may execute any such amendment on behalf of the Ministry.

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

IN WITNESS WHEREOF the Minister of Transportation for the Province of Ontario on behalf of the Party of the First Part has hereunto set his hand and the Party of the Second Part has hereunder affixed its Corporate Seal under the hands of its proper officers duly authorized in that behalf.

SIGNED this 18 day of November, 2008.

HER MAJESTY THE QUEEN in right of the
Province of Ontario, represented by the Minister
of Transportation for the Province of Ontario

MINISTER OF TRANSPORTATION (ONTARIO)

SIGNED AND SEALED this _____ day of _____, 2008.

~~THE~~ CITY OF HAMILTON

APPROVED
AS TO FORM
LEGAL SERVICES

(08-0528)

A. Mayor SAM Merulla

City Clerk

FINANCIAL
CONTENT
APPROVED
BY

FINANCE

OFFICE OF THE CLERK
APPROVED BY COUNCIL
DATE April 23, 2008
REPORT 08-005 ITEM 10
INTL B YEAR/FILE 2008-5825

SCHEDULE "A"

To a Legal Agreement between the Ministry of Transportation and The City of Hamilton
Highway 6 and Highway 5/Regional Road 5 Interchange

Map showing New Interchange and Municipal Roads



SCHEDULE "B"**to a Legal Agreement between the Ministry of Transportation and The City of Hamilton
Highway 6 and Highway 5/Regional Road 5 Interchange****SUMMARY OF COST SHARING DETAILS - INTERCHANGE**

(Estimate as of December 2006)

Item	Total Cost	Ministry of Transportation (75% share)	City of Hamilton (25% share)
Property	\$30,500,000.	\$22,875,000.	\$7,625,000.
Utilities	\$1,500,000.	\$1,125,000.	\$375,000. (See Note 2)
Construction	\$25,300,000.	\$18,975,000.	\$6,325,000. (See Note 2)
Design (5% of Construction)	\$1,265,000.	\$948,750.	\$316,250.
Construction Administration (8% of Construction)	\$2,024,000.	\$1,518,000.	\$506,000.
Subtotal	\$60,589,000.	\$45,441,750.	\$15,147,250.
Admin Overheads (7%)			\$0
GST			(5% x Subtotal) See Note 3

Notes:

1. The above costs are estimates only; the actual costs will also include the resolution of additional work, change orders, claims and liens.
2. The sum total of the City's share of the Utility relocation costs and the Construction Costs shall be capped at \$7,500,000.00
3. For monies owed to the ministry.

SCHEDULE "C"**to a Legal Agreement between the Ministry of Transportation and The City of Hamilton
Highway 6 and Highway 5/Regional Road 5 Interchange****SUMMARY OF COST SHARING DETAILS – MUNICIPAL ROADS****(Estimated Construction and Property costs of Municipal roads, based on Hamilton's estimates of
April 2008)**

Item	Total Cost	Ministry of Transportation (75% share)	City of Hamilton (25% share)
Property	\$6,409,000.	\$4,806,750.	\$1,602,250.
Utilities	See note 2 below	See note 2 below	See note 2 below
Construction	\$8,193,000.	\$6,144,750.	\$2,048,250.
Design (5% of Construction)	\$409,650.	\$307,238.	\$102,412.
Construction Administration (8% of Construction)	\$655,440.	\$491,580.	\$163,860.
Subtotal			
Admin Overheads (7%)			\$0
GST			(5% x Subtotal) See Note 4

Notes:

1. The above costs are estimates only; the actual costs will also include the resolution of additional work, change orders, claims and liens.
2. Utility costs when determined will be split on a 75/25 basis (75% Ministry; 25% City)
3. If signals are warranted at Highway 5 and the proposed new municipal road intersection, west of the proposed N-E/W ramp terminal (the intersection of Highway 5 and municipal roads M3/M4, shown in Schedule A), the cost for this will be split on a 75/25 basis (75% Ministry; 25% City)
4. For monies owed to the ministry.