

THIS AMENDING WATER SUPPLY AGREEMENT (2023) made with effect as of the ___th day of _____, 2023 **BETWEEN:**

CITY OF HAMILTON

(hereinafter called "**Hamilton**")

- and -

THE REGIONAL MUNICIPALITY OF HALTON

(hereinafter called "**Halton**")

RECITALS

- a. Halton and Hamilton entered into an agreement dated November 17, 2011 for the supply of water to Halton Communities (the "**2011 Water Supply Agreement**"). Subsequently, the 2011 Water Supply Agreement was renewed in accordance with the renewal terms of that agreement for the term of November 17, 2021 to November 16, 2031 on the same terms and conditions.
- b. Halton Regional Council endorsed the recommendations of Report LPS94-20/PW-31-20 for amendments to the renewed 2011 Water Supply Agreement. The 2011 Water Supply Agreement was amended by an Amending Water Supply Agreement made with effect as of the 24th of June, 2021 hereinafter and collectively referred to as the "**Water Supply Agreement.**"
- c. Halton has requested that the Water Supply Agreement be amended to permit an increase in flow rate that would ensure Halton's fire flow requirements are met in the North Aldershot Community through this "**Amending Water Supply Agreement (2023)**".

NOW THEREFORE, in consideration of the mutual covenants and obligations contained herein and subject to the terms and conditions hereinafter set out, Hamilton and Halton agree as follows:

1. The Water Supply Agreement shall be amended by deleting section 2.05:

2.05 Maximum Water Consumption Amount

Halton shall not withdraw water at any time that exceeds: (a) a maximum daily volume of 1,000,000 litres; or (b) a flow rate of 5,500 litres/minute.

The deleted section shall be replaced with:

2.05 Maximum Water Consumption Amount

In the Bridgeview and Snake Road Communities and at 720, 768 and 780 Mountain Brow Road West, Halton shall not withdraw water at any time that exceeds: (a) a maximum daily volume of 1,000,000 litres; or (b) a flow rate of 92 litres/second.

In the North Aldershot Community at the Waterdown Road point of delivery, Halton shall not withdraw water at any time that exceeds: (a) a maximum daily volume of 1,000,000 litres; or (b) a flow rate of 150 litres/second.

2. The Water Supply Agreement shall be amended by deleting subsection 3.03 (d):
 - d) a supply of water not greater than 1,000,000 litres per day in volume at a flow rate not greater than 5,500 litres/minute.

The deleted subsection shall be replaced with:

- d) In the Bridgeview and Snake Road Communities and at 720, 768 and 780 Mountain Brow Road West, a supply of water not greater than (a) 1,000,000 litres per day in volume; or (b) a flow rate not greater than 92 litres/second. It is acknowledged that high flow rates are not sustainable for an extended time. For instance, the maximum flow rate of 92 litres/second is available for a maximum of 2 hours, and is anticipated to be used for only firefighting and water quality flushing purposes.

3. The Water Supply Agreement is amended by adding the following subsection 3.03 (e):

- e) In the North Aldershot Community at the Waterdown Road point of delivery, (a) a maximum supply of water not greater than 1,000,000 litres per day in volume; or (b) a flow rate not greater than 150 litres/second. It is acknowledged that high flow rates are not sustainable for an extended time. For instance, the maximum flow rate of 150 litres/second is available for a maximum of 2 hours, and is anticipated to be used for only firefighting and water quality flushing purposes.

4. The Water Supply Agreement shall be amended by deleting subsection 3.05 Temporary Discontinuations

Hamilton shall be permitted to temporarily discontinue the delivery of water at the Delivery Points if an emergency, as determined in Hamilton's sole discretion, acting reasonably, exists in Hamilton or upon receiving the prior written consent of Halton, it being understood that in either event, any such discontinuance shall be of the minimum duration possible in the circumstances. Hamilton shall use its reasonable efforts to provide Halton with prior notice of any such discontinuance given the circumstances of each event.

The deleted subsection shall be replaced with:

3.05 Temporary Discontinuations and Reductions To Service

Hamilton shall be permitted to temporarily discontinue the delivery, reduce the quantity and/or reduce the rate of flow of water at the Delivery Points when necessary, arising out of any of the following circumstances:

- a) If an emergency, as determined in Hamilton's sole discretion, acting reasonably exists;
- b) If the prior written consent of the Halton is obtained; or
- c) If Hamilton is performing planned or unplanned maintenance, rehabilitation, or repairs,

it is being understood that any such discontinuation or reduction shall be of the minimum duration reasonably possible in the circumstances. Hamilton shall use its reasonable efforts to provide Halton with prior notice of any such discontinuance given the circumstances of each event.

- 3 In all other respects, the Water Supply Agreement shall remain in full force and unamended.
- 4 This Amending Water Supply Agreement (2023) may be executed by the parties in separate counterparts each of which when so executed and delivered to all of the parties shall be deemed to be and shall be read as a single agreement among the parties and may be executed and delivered by means of electronic transmission.
- 5 This Amending Water Supply Agreement (2023) shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK TENTIONALLY

SIGNATURES ARE ON PAGE 3 OF THIS AGREEMENT

IN WITNESS WHEREOF the parties have, by the signature of their representatives duly authorized in that behalf entered into this Amending Water Supply Agreement (2023).

SIGNED, SEALED AND DELIVERED)

CITY OF HAMILTON

this day of , 2023)

Per: _____

at the City of Hamilton,)

Name: Andrea Horwath

Province of Ontario)

Title: Mayor

Per: _____

Name: Andrea Holland

Title: City Clerk

this²⁷ day of June , 2023)

THE REGIONAL MUNICIPALITY OF HALTON

at the Town of Oakville,)

DocuSigned by: Andrew Farr

Province of Ontario)

Name: Andrew Farr

Title: Commissioner of Public Works

THIS AMENDING WATER SUPPLY AGREEMENT made with effect as of the 21th day of June, 2021 **BETWEEN:**

CITY OF HAMILTON

(hereinafter called "Hamilton")

- and -

THE REGIONAL MUNICIPALITY OF HALTON

(hereinafter called "Halton")

RECITALS

- a. Halton and Hamilton entered into an agreement dated November 17, 2011 for the supply of water to Halton Communities (the "2011 Water Supply Agreement"). Subsequently, the 2011 Water Supply Agreement was renewed in accordance with the renewal terms of that Agreement for the term of November 17, 2021 to November 16, 2031 on the same terms and conditions.
- b. Halton Regional Council has endorsed the recommendations in LPS94-20/PW-31-20 directing the Commissioner of Public Works to enter the necessary agreements with the City of Hamilton.
- c. Halton and Hamilton have, in accordance with the terms and conditions of that agreement, agreed to amend the 2011 Water Supply Agreement as hereinafter set out.
- d. The 2011 Water Supply Agreement as amended by this Amending Water Supply Agreement is hereinafter referred to as the "Water Supply Agreement."

NOW THEREFORE, in consideration of the mutual covenants and obligations contained herein and subject to the terms and conditions hereinafter set out, Hamilton and Halton agree as follows:

- 1. The Water Supply Agreement shall be amended by deleting the following recital on page 1:

AND WHEREAS pursuant to the provisions of section 20 of the Municipal Act, 2001 S.O. 2001, c. 25, Halton and Hamilton are permitted to enter into this Agreement for the supply of water to an adjoining municipality

The deleted recital shall be replaced with:

AND WHEREAS pursuant to the provisions of sections 19 and 20 of the Municipal Act, 2001 S.O. 2001, c. 25, Halton and Hamilton are permitted to enter into this Agreement for the supply of water to an adjoining municipality

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2. The Water Supply Agreement shall be amended by adding the following recitals at the end of page 1:

AND WHEREAS Halton and Hamilton intend that Hamilton would service the properties at 720, 768 and 780 Mountain Brow Road West (the "**New Mountain Brow Properties**") with a secure supply of water and no future main pipeline is required to service the properties at 720, 768 and 780 Mountain Brow Road West, subject to Halton or the owners of the New Mountain Brow Properties paying Hamilton for all costs for any service line and connection between the main pipeline and the New Mountain Brow Properties.

AND WHEREAS Halton and Hamilton acknowledge that Hamilton has and intends to continue to service the properties at 8, 24, 38 Mountain Brow Road West (the "**Existing Mountain Brow Properties**") with a secure supply of water and Hamilton constructed the necessary infrastructure to provide water service to 8, 24, 38 Mountain Brow Road West.

AND WHEREAS the Water Supply Agreement was renewed in accordance with the renewal terms of that Agreement for the term of November 17, 2021 to November 16, 2031 on the same terms and conditions.

3. The Water Supply Agreement shall be amended by deleting section 1.01 on page 2:

1.01 Pipeline

All water provided by Hamilton to the Bridgeview, North Aldershot and Snake Road communities (the "**Communities**") with respect to this Agreement shall be provided through pipelines constructed by Halton (the "**Pipelines**").

The deleted section shall be replaced with:

1.01 Pipeline & Services

All water provided by Hamilton to the Bridgeview, North Aldershot, Snake Road communities (the "**Communities**") with respect to this Agreement shall be provided through pipelines that have been constructed by Halton (the "**Pipelines**").

All water provided by Hamilton to the New Mountain Brow Properties and the Existing Mountain Brow Properties (collectively the "**Mountain Brow Properties**") with respect to this Agreement shall be provided through water service pipes, which for the Existing Mountain Brow Properties, have already been constructed by Hamilton, and for the New Mountain Brow Properties, shall be constructed by Halton, the benefitting property owners or their agents (the "**Mountain Brow Services**").

Notwithstanding anything else in this Agreement, neither party shall be obligated to provide any water, unless a water service pipe is in place, meeting all applicable

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laws, regulations, standards, codes and other rules. For clarity, Hamilton shall not be obligated to provide any service to the New Mountain Brow Properties, unless and until a service line and connection between the pipeline and the New Mountain Brow Properties has been installed. Halton or the owners of the New Mountain Brow Properties shall be responsible for the cost of any such service line and/or connection.

4. The Water Supply Agreement shall be amended by deleting section 1.02 on page 2:

1.02 Ownership of the Pipeline

All right, title and interest in the Pipelines and any related infrastructure located within Hamilton, together with any water meters supplied by Hamilton, shall be and remain vested in Hamilton. The chamber and valves related to each water meter shall be owned and maintained by Halton. The water meter shall be owned and maintained by Hamilton.

The deleted section shall be replaced with:

1.02 Pipeline & Mountain Brow Services

All right, title and interest in the Pipelines, all infrastructure located solely within Hamilton, and any water meters supplied by Hamilton shall be owned by Hamilton. All right, title and interest in the Pipelines located within a boundary road shall be owned by Hamilton.

All right, title and interest in the Mountain Brow Services and any related infrastructure located within a boundary road shall be owned by Hamilton. Any service lines to Halton Residents within the boundary road, any chamber and any valves related to each water meter shall be owned and maintained by Halton.

The delivery point for the Communities is agreed to be the water meter that adjoins the Hamilton drinking water system to the Halton Pipeline. The delivery point for the Mountain Brow Properties is agreed to be the Mountain Brow Service connection to the Hamilton drinking water system, subject to Section 1.01.

Hamilton and Halton acknowledge and agree that water pressures are expected to be near or above 100 psi in some Hamilton pipelines, including near the New Mountain Brow Properties. Where such water pressures are measured or discovered, Halton shall ensure that a residential pressure reduction management valve, or similar equipment, is installed and maintained, and Hamilton shall not be responsible for any damage caused by any pressure within a Hamilton pipeline in excess of 100 psi. Additionally, Halton shall include a clause in its agreements with the Mountain Brow Properties for the supply of water that gives Hamilton third-party beneficiary rights to defend, release, indemnify and hold harmless Hamilton on the same basis as Halton.

Hamilton and Halton agree to exchange, free of any fee or charge, any and all designs, drawings, manuals, warranties, agreements or other documents for the Pipelines arising from the normal course of construction within a reasonable amount of time, upon request of the other party. The parties further agree to denote all delivery points on any drawing.

5. The Water Supply Agreement shall be amended by deleting section 2.03 on page 3:

2.03 Maintenance

Halton covenants and agrees to be fully responsible for: (a) all water meter chambers; and (b) the maintenance of all works and/or infrastructure associated with the said water supply which are located within Halton. Hamilton hereby agrees to provide access within a reasonable period of time to Halton for the said maintenance and Halton agrees to defend, indemnify and save harmless Hamilton from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever arising as a result of such maintenance by Halton.

The deleted section shall be replaced with:

2.03 Maintenance

Halton covenants and agrees to be fully responsible for: (a) all water meter chambers and valves; and (b) the maintenance of all works and/or infrastructure associated with the said water supply which are located within Halton. Hamilton hereby agrees to provide access within a reasonable period of time to Halton for the said maintenance and Halton agrees to defend, indemnify and save harmless Hamilton from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever arising as a result of such maintenance by Halton.

Subject to Sections 1.01 and this 2.03, Hamilton covenants and agrees to be fully responsible for: (a) all water service pipes to the Mountain Brow Properties; and (b) the maintenance of all water service pipe works and/or infrastructure associated with the said Mountain Brow Services that are located within boundary roads. Halton hereby agrees to provide access within a reasonable period of time to Hamilton for the said maintenance, as may be required. Halton shall pay Hamilton for all costs related to the maintenance of Mountain Brow Services within boundary roads.

6. In all other respects, the Water Supply Agreement shall remain in full force and unamended.
7. This Water Supply Agreement may be executed by the parties in separate counterparts each of which when so executed and delivered to all of the parties shall be deemed to be and

shall be read as a single agreement among the parties and may be executed and delivered by means of electronic transmission.

- 8. This Water Supply Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties have, by the signature of their representatives duly authorized in that behalf entered into this Amending Water Supply Agreement.

SIGNED, SEALED AND DELIVERED)

this 24 day of June , 2021)

at the City of Hamilton,)

Province of Ontario)

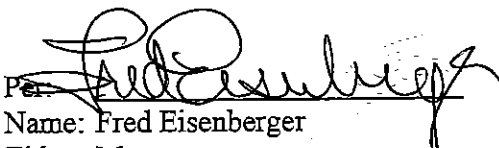
June 9, 2021)

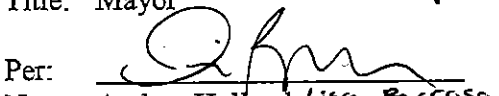
this day of , 2021)

at the Town of Oakville,)

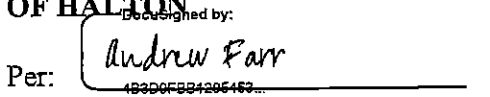
Province of Ontario)

CITY OF HAMILTON

Per: 
Name: Fred Eisenberger
Title: Mayor

Per: 
Name: ~~Andrea Holland~~ Lisa Barroso
Title: City Clerk

THE REGIONAL MUNICIPALITY OF HALTON

Designated by:
Per: 
Name: Andrew Farr
Title: Commissioner of Public Works

OFFICE OF THE CLERK	
APPROVED BY COUNCIL	
DATE	June 23 2021
AUTHORITY	ACA report 21-010
INTL	PR YEAR FILE 21/15316

WATER SUPPLY AGREEMENT

DATED: November 17, 2011

BETWEEN:

CITY OF HAMILTON

- and -

THE REGIONAL MUNICIPALITY OF HALTON

**WATER SUPPLY AGREEMENT
BETWEEN CITY OF HAMILTON
AND
THE REGIONAL MUNICIPALITY OF HALTON**

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THIS AGREEMENT made in sextuplicate this 17th day of November 2011
BETWEEN:

CITY OF HAMILTON
(hereinafter called "Hamilton")

OF THE FIRST PART,

-and-

THE REGIONAL MUNICIPALITY OF HALTON,
(hereinafter called "Halton")

OF THE SECOND PART.

WHEREAS Halton and Hamilton are both municipal corporations governed in accordance with the Municipal Act, 2001 S.O. 2001, c. 25;

AND WHEREAS pursuant to the provisions of section 11 of the Municipal Act, 2001 S.O. 2001, c. 25, Halton has the exclusive responsibility in its jurisdiction for public utilities, including water distribution, production, treatment and storage;

AND WHEREAS pursuant to the provisions of section 10 of the Municipal Act, 2001 S.O. 2001, c. 25, Hamilton has the exclusive responsibility in its jurisdiction for public utilities, including water distribution, production, treatment and storage;

AND WHEREAS pursuant to the provisions of section 20 of the Municipal Act, 2001 S.O. 2001, c. 25, Halton and Hamilton are permitted to enter into this Agreement for the supply of water to an adjoining municipality;

AND WHEREAS Halton was in need of a secure supply of water to service the Bridgeview Community in the City of Burlington, in the Regional Municipality of Halton and entered into an Agreement with Hamilton for the provision of water to the Bridgeview Community in 1998;

AND WHEREAS Halton and Hamilton further agreed that Hamilton would service the North Aldershot and Snake Road Communities with a secure supply of water;

AND WHEREAS Halton constructed the necessary infrastructure to provide water service to the North Aldershot and Snake Road Communities;

AND WHEREAS Halton and Hamilton wish to amend and renew the agreements for the supply of water to the Communities (as defined below);

AND WHEREAS at a meeting held on September 14, 2011 Halton Regional Council resolved to approve Report No. PW-49-11 of the Planning & Public Works Committee;

AND WHEREAS at a meeting held on June 29, 2011 Hamilton City Council resolved to approve Item No. 14 of the Audit, Finance and Administration Committee Report No. 11-009;

NOW THEREFORE, WITNESSETH THAT in consideration of the mutual covenants and obligations contained herein and subject to the terms and conditions hereinafter set out, Hamilton and Halton hereto agree as follows:

ARTICLE - I

PIPELINE AND APPERTNANCES

1.01 Pipeline

All water provided by Hamilton to the Bridgeview, North Aldershot and Snake Road communities (the "**Communities**") with respect to this Agreement shall be provided through pipelines constructed by Halton (the "**Pipelines**").

1.02 Ownership of the Pipeline

All right, title and interest in the Pipelines and any related infrastructure located within Hamilton, together with any water meters supplied by Hamilton, shall be and remain vested in Hamilton. The chamber and valves related to each water meter shall be owned and maintained by Halton. The water meter shall be owned and maintained by Hamilton.

1.03 Future Pipelines

It is the intention of Hamilton and Halton that the terms of this Agreement shall apply to any communities that may need a supply of water from Hamilton in the future (in each case, a "**Future Community**").

In the event that Halton determines that the terms of this Agreement should apply to a Future Community:

- (a) Halton shall request of Hamilton that this Agreement apply to a future agreement;
- (b) Hamilton shall agree to such request, provided that:

- (i) such application to a Future Community shall not affect Hamilton's ability to supply water to Hamilton's ratepayer in the same manner as then currently provided, in Hamilton's sole and absolute discretion;
- (ii) an engineer shall confirm on Halton's behalf that such application to a Future Community will not result in an increase in the volume and flow rates described in section 2.05 of this Agreement;
- (iii) Halton shall be responsible for all capital costs associated with the installation of Pipelines, related infrastructure and water meters required to serve a Future Community; and
- (iv) this Agreement shall be read with all necessary grammatical and interpretive changes required such that all references herein shall also be a reference to the supply of water by Hamilton to any such Future Community.

ARTICLE – II

COVENANTS OF HALTON

2.01 Payment for Supply of Water

Halton shall pay for all water delivered through the Pipelines at the rate set out at subsection 4.02 of this Agreement.

2.02 Installation of Backflow Prevention Device

Halton shall be permitted to install a backflow prevention device at all Pipeline delivery points. The maintenance and operation of the backflow prevention device shall be the exclusive responsibility of Halton and it shall be the responsibility of Halton to ensure that said backflow prevention device meets any applicable standards (i.e. CSA.64.10).

2.03 Maintenance

Halton covenants and agrees to be fully responsible for: (a) all water meter chambers; and (b) the maintenance of all works and/or infrastructure associated with the said water supply which are located within Halton. Hamilton hereby agrees to provide access within a reasonable period of time to Halton for the said maintenance and Halton agrees to defend, indemnify and save harmless Hamilton from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever arising as a result of such maintenance by Halton.

2.04 Connection Rights

Halton agrees and understands that Hamilton (including parties acting at the direction or request of Hamilton) shall at all times be permitted to connect service lines and lateral mains to the Pipelines.

2.05 Maximum Water Consumption Amount

Halton shall not withdraw water at any time that exceeds: (a) a maximum daily volume of 1,000,000 litres; or (b) a flow rate of 5,500 litres/minute.

2.06 Water Testing

Upon provision of not less than seven days prior written notice delivered to Hamilton, Halton shall be permitted access to the water meter(s) used in relation to the supply of water pursuant to this Agreement for the purposes of testing them and inspecting their operation.

ARTICLE – III

COVENANTS OF HAMILTON

3.01 Suitability of Pipelines

Hamilton warrants that the Pipelines are in good working order and are suitable for the purposes of this Agreement.

3.02 Maintenance of the Pipelines

Hamilton covenants and agrees to be fully responsible for the maintenance of all works and/or infrastructure associated with the said water supply which are located within Hamilton. Such maintenance shall be to the generally accepted standard for water pipeline maintenance in Hamilton.

3.03 Water Supply

Hamilton shall deliver water having the following characteristics and quality to the Delivery Point:

- a) water meeting the Ministry of the Environment's water quality standards, as amended from time to time;
- b) water meeting all standards of the *Safe Drinking Water Act, 2002*, S.O. 2002, c. 32, as amended from time to time;
- c) water of the same quality as that supplied to consumers in Hamilton; and

- d) a supply of water not greater than 1,000,000 litres per day in volume at a flow rate not greater than 5,500 litres/minute.

3.04 Interruption of Supply

In the event that Hamilton is prevented from carrying out its obligations for supply under this Agreement for reason of any industrial disturbance, insurrection, riot, embargo, fire or explosion, act of God or war or by order of any legislative or federal authority or commission having jurisdiction over it, or by any other similar acts over which Hamilton has no control and cannot reasonably prevent; Hamilton shall, to the extent to which it is so prevented from carrying out any such obligation, be relieved from same while such disability continues.

3.05 Temporary Discontinuations

Hamilton shall be permitted to temporarily discontinue the delivery of water at the Delivery Points if an emergency, as determined in Hamilton's sole discretion, acting reasonably, exists in Hamilton or upon receiving the prior written consent of Halton, it being understood that in either event, any such discontinuance shall be of the minimum duration possible in the circumstances. Hamilton shall use its reasonable efforts to provide Halton with prior notice of any such discontinuance given the circumstances of each event.

3.06 Emergency Backup

In the event Hamilton discontinues or interrupts the delivery of water at the Delivery Points, Halton shall, at its sole cost and expense, be responsible to supply the Communities with an emergency supply of water until the regular water supply is restored.

3.07 Communication Protocol

In the event of any issue with respect to the supply (including the flow) of water arises during the Term, Halton and Hamilton shall follow the protocols outlined in the Memorandum of Understanding (the "MOU") entered into from time to time during the term of this Agreement by Hamilton and Halton. A copy of the MOU in effect as of the date hereof, signed by City of Hamilton Water & Wastewater Division on March 17, 2008 and by Region of Halton Water & Wastewater Division on April 29, 2008, including the appendix thereto, is attached hereto as Appendix "A".

In the event of any contradiction between the terms of the body of this Agreement and the MOU, the terms of the MOU shall govern.

ARTICLE - IV

BILLING

4.01 Invoice Frequency

Hamilton shall invoice Halton for water actually supplied to Halton on a monthly basis.

4.02 Billing Amount

Hamilton shall invoice Halton at 1.5 times the current rate that from time to time Hamilton charges for the supply of water to its consumers within the City of Hamilton. The billing amount shall include all charges relating to the operation and maintenance of the water meter(s) and appurtenances thereto that are located within the boundaries of Hamilton. Halton covenants and agrees that it shall be fully responsible for the cost of the hydro and maintenance of the water meter chambers in accordance with the City Waterworks By-law R84-026, as amended, re-enacted or replaced from time to time.

4.03 Interest

Halton shall pay interest on overdue accounts calculated at the same rate as charged on overdue accounts to consumers within the City of Hamilton.

4.04 Inaccuracies of Meter Readings

In the event that Hamilton or Halton determine that the water supplied to the Delivery Points is not being recorded or has not been recorded accurately for a period of time, Hamilton shall estimate the volume of said water delivered during comparable periods and such determinations and estimates shall be final and binding, and rates as provided in this Agreement shall be charged thereon. The volume estimated must be within 5% of the maximum billed volume for comparable periods. Monetary adjustments for any water supplied but not recorded accurately shall not exceed 90 days of supply in any given period.

ARTICLE - V

LIMITATION OF LIABILITY

5.01 Disclaimer

Hamilton shall not be responsible for any loss or damage sustained directly or indirectly by reason of any variation or temporary interruption in the water supply delivered hereunder or the failure to supply such water or to supply sufficient water to Halton by reason of the construction, administration, operation, repair, replacement or maintenance

of its water works system and, except as otherwise provided in this Agreement, Hamilton shall not be responsible or liable for any loss suffered by Halton that is related to or that would not arise, but for this Agreement and anything done under by reason of this Agreement. For added certainty, and without limiting the generality of the foregoing, it is agreed that due to weather and other circumstances beyond the control of Hamilton, the pressure at the Delivery Points may vary and Hamilton shall not be responsible for such variations in pressure.

5.02 Standard of Care

When undertaking the construction, administration, operation, repair, replacement or maintenance of the water works system contemplated by this Agreement, Hamilton shall use the same standard of care used in relation to the construction, administration, operation, repair, replacement or maintenance of the water works systems in Hamilton generally.

5.03 Notice to Halton

Hamilton shall also be responsible to provide Halton with sufficient notice when undertaking any works which may impact the pressure at the Delivery Points so that Halton may in turn notify the Communities.

5.04 Exception

In the event that Hamilton does not properly notify Halton as set forth in section 5.03 above, Halton will be permitted to seek indemnification from Hamilton from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever to the extent that Hamilton is liable for not properly notifying Halton.

ARTICLE - VI

INDEMNITY

6.01 Indemnity to Hamilton

Halton shall and does hereby for all times covenant to defend, indemnify and save harmless Hamilton, its elected officials, officers, employees and agents, from and against any and all actions, causes of action, interest, claims, demands, costs, damages, expenses, loss or other proceedings however arising which Hamilton may bear, suffer or be put to by reason of this Agreement except to the extent such proceedings are due to the negligence of Hamilton, its elected officials, officers, employees or agents.

6.02 Indemnity to Halton

Hamilton shall and does hereby for all times covenant to defend, indemnify and save harmless Halton, its elected officials, officers, employees and agents, from and against any and all actions, causes of action, interest, claims, demands, costs, damages, expenses, loss or other proceedings however arising which Halton may bear, suffer or be put to by reason of this Agreement except to the extent such proceedings are due to the negligence of Halton, its elected officials, officers, employees or agents.

ARTICLE - VII

INSURANCE

7.01 Commercial General Liability Insurance

Halton shall effect at its own expense (including the cost of deductibles), and maintain and keep in force during the Term, insurance coverage naming as additional insureds, the City of Hamilton and the Ministry of Transportation of Ontario including a Cross Liability Provision, against all claims for personal injury, death, property damage or loss, arising from any accident or occurrence relating to this Agreement in an amount not less than Ten Million Dollars (\$10,000,000.00) in respect of each claim or occurrence.

Hamilton shall effect at its own expense (including the cost of deductibles), and maintain and keep in force during the Term, insurance coverage naming as additional insureds, The Regional Municipality of Halton and the Ministry of Transportation of Ontario including a Cross Liability Provision, against all claims for personal injury, death, property damage or loss, arising from any accident or occurrence relating to this Agreement in an amount not less than Ten Million Dollars (\$10,000,000.00) in respect of each claim or occurrence.

7.02 Acceptability, Termination, Cancellation

All insurers shall be licensed to do business in Ontario. Certificates of Insurance originally signed by authorized representatives, or, if required by Hamilton, certified copies of policies, shall be delivered to Hamilton, at Halton's cost, prior to the commencement of this Agreement, and for all policy renewals thereafter.

The insurance certificates/policies shall contain a clause that the insurers shall not cancel or materially change coverage as would affect this Agreement, without providing Hamilton at least thirty (30) days prior written notice.

If Halton fails to ensure any such policies are maintained, Hamilton may do so (but it is not obliged to) and pay the premium, and in that event Halton will reimburse Hamilton the amount so paid as premium.

7.03 Primary Coverage

All insurance coverages referred to in this Agreement shall be primary and not call into contribution any other insurance coverages.

ARTICLE – VIII

TERM

8.01 Term of Agreement

Subject to the other terms of this Article VIII, this Agreement shall remain in full force and effect for a term of ten (10) years from the date of execution of this Agreement (together with any renewal term, the "Term").

8.02 Early Termination by Halton

In the event that the supply of water from Hamilton pursuant to this Agreement is no longer required by Halton, in Halton's sole discretion, then upon providing Hamilton with not less than 120 days notice in accordance with the notice provisions contained at subsection 10.01 of this Agreement, Halton may terminate this Agreement. In so terminating this Agreement, Halton shall remove or disconnect the Pipelines and the water meter(s), water meter chamber(s) and all appurtenances and restore the lands associated therewith to a reasonable condition, in the opinion of Hamilton, and that Halton shall be responsible for all expenses associated with such removal, disconnection and restoration.

8.03 Early Termination by Hamilton

In the event that during the Term, there is not sufficient capacity in Hamilton's waterworks system to continue to supply Halton the volumes and rates of water referred to herein, in Hamilton's sole opinion, acting reasonably, then upon Hamilton providing Halton with not less than two years notice, in accordance with the notice provisions contained at subsection 10.01 of this Agreement, Hamilton may terminate this Agreement. Hamilton shall not be responsible for any loss, expense or damage sustained directly or indirectly by Halton by reason of Hamilton exercising its right to terminate this Agreement as set out in this subsection 8.03. Further, in so terminating this Agreement, Halton shall remove or disconnect the Pipelines and the water meter(s), water meter chamber(s) and all appurtenances and restore the lands associated therewith to a reasonable condition, in the opinion of Hamilton, and that Halton shall be responsible for all expenses associated with such removal, disconnection and restoration.

8.04 Renewal

Either party may, by giving written notice to the other in accordance with the notice provisions contained at subsection 10.01 of this Agreement, not less two years before

expiry of the Term to extend the Term for a renewal period of ten years. An extension for any renewal period shall be on the same terms and conditions as set out in this Agreement unless otherwise agreed upon by the Parties.

ARTICLE - IX

DISPUTES

9.01 Dispute Resolution

If a dispute arises under this Agreement which is not resolved by the operational personnel involved, Halton's Director of Water Services and Hamilton's Senior Director of Environment and Sustainable Infrastructure shall be notified and shall meet within fifteen (15) business days in attempt to resolve the dispute. In the event they are unable to resolve the dispute, they shall notify Halton's Commissioner of Public Works and Hamilton's General Manager of Public Works who shall meet as promptly as possible in attempt to resolve the dispute. In the event that they are unable to resolve the dispute, the parties may proceed to rely upon subsection 9.02 or take any other steps available at law to protect their interests.

9.02 Mediation and Arbitration

Should the parties not be able to resolve their dispute between themselves, the parties may upon mutual agreement, utilize the services of an independent third party mediator and/or arbitrator.

The mediator/arbitrator shall be mutually agreed upon by Halton and Hamilton. Each party shall be responsible for its use of the third party mediation/arbitration process however the cost of the third party mediator/arbitrator shall be shared equally between Halton and Hamilton.

Halton and Hamilton agree that the rules and procedures of the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended, shall apply. The Parties expressly agree that the provisions of the *Municipal Arbitrations Act*, R.S.O. 1990, c.M.48, shall not apply at any time to any arbitration initiated pursuant to this Agreement.

ARTICLE - X

NOTICE

10.01 Notice

Any notice required to be given under this Agreement shall be in writing, and may be given personally, by facsimile or by prepaid first class mail, in which case receipt shall be

deemed five business days after the mailing.

Notice to the parties may be delivered to the following addresses:

Halton: 1151 Bronte Road
Oakville, Ontario
L6M 3L1

Fax: 905-825-0267

Attn: Director of Water Services

Hamilton: 71 Main St. West
Hamilton, ON
L8P 4Y5

Fax: 905-546-4481

Attn: Senior Director of Environment and Sustainable
Infrastructure, Public Works Department

ARTICLE - XI

GENERAL PROVISIONS

11.01 Compliance with Laws

The rights and privileges, duties and obligations arising out of this Agreement shall be subject to any applicable statute, regulation, law, order and direction of any governmental authority having jurisdiction over the parties and now or hereafter in effect during the Term.

11.02 Binding Agreement

This Agreement shall not be in force, or bind any of the parties, until executed by both Halton and Hamilton. This Agreement shall ensure the benefit of and be binding upon the parties hereto and their successors, but shall not be assigned in whole or in part.

11.03 Time of the Essence

Time shall be of the essence of this Agreement

11.04 Applicable Law

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

11.05 Amendments Must Be Equally Formal

This Agreement may not be amended except by an instrument in writing of equal formality signed by the parties to this Agreement or by their successors or assigns as limited in this Agreement.

11.06 Independent Legal Advice

Both parties acknowledge that it has read, understood and obtained independent legal advice respecting this Agreement and the terms thereof.

11.07 Waiver

Halton and Hamilton agree that any actions of either or both parties hereto in contravention of this Agreement shall not be relied upon as a waiver of any term of this Agreement and no approvals given by any employee of either party shall constitute a waiver by the respective party of its rights under this Agreement.

11.08 Further Assurances

Halton and Hamilton agree that they will, upon the reasonable request of each other, make, do, execute or cause to be made, done or executed all such further and other lawful acts, deeds, things, devices and assurances whatsoever to effect all of the terms, provisions and conditions of this Agreement.

11.09 Entire Agreement

This Agreement and the documents and instruments to be executed and delivered under it constitute the entire agreement between the parties and supersedes any previous agreement or arrangement, oral or written, between the parties. This Agreement and the documents and instruments to be executed and delivered under it, contain all the covenants, representations, and warranties of the respective parties. There are no oral representations or warranties between the parties of any kind.

[Execution pages follow.]

IN WITNESS WHEREOF the parties have, by the signature of their representatives duly authorized in that behalf, entered into this Agreement.

SIGNED, SEALED AND DELIVERED

This 17th day of November, 2011
at the City of Hamilton, Province
of Ontario.

Approved
as to form
[Signature]
Legal
Services

CITY OF HAMILTON

[Signature: R. Bratina]
Mayor, R. Bratina

[Signature: R. Caterini]
City Clerk, R. Caterini

This 4th day of October, 2011
at the Town of Oakville, Province
of Ontario.

THE REGIONAL MUNICIPALITY
OF HALTON

[Signature: Gary Carr]
Regional Chair, Gary Carr

[Signature: Susan Lathan]
Regional Clerk, Susan Lathan

RISK MANAGEMENT SERVICES

PER *[Signature]*

OFFICE OF THE CLERK
APPROVED BY COUNCIL
DATE June 29, 2011
REP. AP-PA 11-007 ITEM 14
EXT. 2011-7922