



**PUBLIC WORKS COMMITTEE  
REPORT 23-008**

1:30 p.m.

Monday, May 29, 2023

Council Chambers

Hamilton City Hall

71 Main Street West

**Present:** Councillors N. Nann (Chair), E. Pauls (Vice-Chair), J. Beattie, C. Cassar, J. P. Danko, M. Francis, T. Jackson, C. Kroetsch, T. McMeekin, M. Spadafora, M. Tadeson, A. Wilson and M. Wilson

**THE PUBLIC WORKS COMMITTEE PRESENTS REPORT 23-008 AND  
RESPECTFULLY RECOMMENDS:**

- 1. In-Service Road Safety Review of the Intersections of Main Street West and King Street West at Dundurn Street South and Main Street East at King Street East (Delta) (PW23033) (Wards 1 and 3) (Outstanding Business List Item) (Item 9.1)**

That Report PW23033, respecting In-Service Road Safety Review of the Intersections of Main Street West and King Street West at Dundurn Street South and Main Street East at King Street East (Delta), be received.

- 2. Improving Truck Route Detouring During Construction Closures (PW23035) (City Wide) (Outstanding Business List Item) (Item 9.2)**

That Report PW23035, respecting Improving Truck Route Detouring During Construction Closures (City Wide) (Outstanding Business List Item), be received.

- 3. Construction Agreement with Town of Milton for the Rehabilitation of Milborough Line (PW23034) (Ward 15) (Item 11.1)**

That Council provide approval for the General Manager of Public Works, or designate, to execute the Construction Agreement between the City of Hamilton and the Corporation of the Town of Milton (hereinafter referred to as the "Town of Milton"), attached as Appendix "A" to Public Works Committee Report 23-008, and all amendments and ancillary documents, respecting the cost shared Milborough Line capital road improvement project.

**4. Expansion of Pollinator Beds and Addition of Murals at York Boulevard Parkette 2, Hamilton (Ward 1) (Item 12.1)**

WHEREAS, York Boulevard is a gateway into the City of Hamilton and currently includes several pollinator patches in the parkettes and medians;

WHEREAS, the Hamilton Naturalist's club has been actively creating and maintaining garden beds and promoting pollinator education at York Boulevard Parkette 2;

WHEREAS, the City of Hamilton has achieved Bee City status and is committed to upkeep the Bee City Vision through the protection and support of pollinators and habitat creation; and

WHEREAS, the planting of perennials and native plants contributes to biodiversity across the City and community murals help to celebrate and inform residents about nature and pollinator habitat.

THEREFORE, BE IT RESOLVED:

- (a) That funding in the amount of \$30,000 to the Hamilton Naturalist's club for the expansion of garden beds and addition of murals at York Boulevard Parkette 2 in order to contribute to pollinator habitat and community education, to be funded from the Ward 1 Special Capital Re- Investment Discretionary Fund (#3302109100) be approved;
- (b) That the Mayor and City Clerk be authorized and directed to approve and execute all required agreements and ancillary documents, with such terms and conditions in a form satisfactory to the City Solicitor.

**5. Active and Sustainable School Travel Project (Ward 9) (Item 12.2)**

WHEREAS, the Active and Sustainable School Travel (ASST) program has been operating in Hamilton schools for 20 years and throughout this time, Transportation Planning – Sustainable Mobility and Public Health have been the partners in leading this work for the City in partnership with School Boards as guided by the Active and Safe School Travel Charter;

WHEREAS, many partners have participated in the ASST initiative including McMaster University, Mohawk College, Civic Plan, LURA, Hamilton Police Services, Bike for Mike and the Daily School Route (DSR), and each has contributed to implementation, research and partnerships that have evolved the program over time;

WHEREAS, the City and its partners are at a point where it is appropriate to re-confirm and extend partnerships and programs to better serve our school communities and have full alignment in meeting future goals and milestones, while further testing the school travel approach on a larger scale;

WHEREAS, the DSR, a part of the Bike for Mike not-for-profit organization, has developed a structured and robust approach to school travel that creates active transportation systems for kids with the aspiration of 100% of students walking/wheeling to/from school daily, which has been tested in multiple schools and has involved the City, School Boards and Civic Plan as partners;

WHEREAS, Ward 9 has ten elementary schools located in areas with a variety of land-use and transportation network characteristics, with many experiencing safety, traffic and parking challenges that could be addressed through active and safe school travel initiatives; and

WHEREAS, the DSR approach to active and safe school travel involving a comprehensive route strategy and safety review, has strong potential to address the school travel challenges in Ward 9 with a high potential for sustainable change.

THEREFORE, BE IT RESOLVED:

- (a) That the General Manager of Planning and Economic Development be given the delegated authority to establish an agreement with Daily School Route (DSR), a part of the Bike For Mike not-for-profit organization, to deliver school engagement and behaviour change programs on behalf of the Active and Sustainable School Travel (ASST) program in partnership with Transportation Planning - Sustainable Mobility, the lead coordinating group, Public Health Services - Chronic Disease Prevention and Transportation Operations - Road Safety, in a form satisfactory to the City Solicitor;
- (b) That Ward 9 be selected as an initial test case for the application of the Daily School Route (DSR) approach under the proposed agreement outlined in recommendation (a) between the City and the DSR;
- (c) That the estimated cost of \$85,000 to fund the Daily School Route (DSR) work to provide school travel planning services and tools for schools in Ward 9 be funded through S.C. Compensation Royalties (Terrapure Landfill) Reserve 117036; and

- (d) That staff report back to Public Works Committee on the outcomes of the Ward 9 school travel planning initiatives undertaken by the City and the Daily School Route (DSR) following implementation.

**6. Non-Verbal Communication Panels in Parks (Ward 1) (Item 12.3)**

WHEREAS, a non-verbal communication panel is a board with images that assists non-verbal individuals to communicate more easily;

WHEREAS, these types of panels are being more widely integrated into playgrounds in the City and beyond;

WHEREAS, there are several community parks in Ward 1 that would benefit from this type of panel as part of the playground; and

WHEREAS, the addition of the panels supports enhanced inclusivity at playgrounds.

THEREFORE, BE IT RESOLVED:

- (a) That the purchase and installation of Non-Verbal Communication Panels for Parks in Ward 1, to be funded from the Ward 1 Capital Discretionary Account #3302109100 at an upset limit, including contingency, not to exceed \$21,000, be approved;
- (b) That the Mayor and City Clerk be authorized and directed to execute any required agreement(s) and ancillary documents, with such terms and conditions in a form satisfactory to the City Solicitor.

**7. Dedication of the Sun Shelter in Honour of Dona Campbell and a Park Bench in Honour of Glen Campbell at Templemead Park, 30 Independence Drive (Ward 6) (Item 12.4)**

WHEREAS, the Environmental Services Division of Public Works offers a Commemorative Park Bench & Tree Program;

WHEREAS, the Commemorative Park Bench & Tree Program provides options to honour an individual or group by donating a bench or tree to a City park which allows for improvements to our parks and inspires community pride and a sense of place;

WHEREAS, the Commemorative Park Bench & Tree Program is operated at full cost recovery through the donations provided;

WHEREAS, Dona Campbell was the first Chairperson of the Templemead Community Council and in 1990 fulfilled the goal of a neighbourhood park in the Templemead Community complete with a play structure for children of all physical abilities and a sun shelter to protect families from the hot sun while at the park;

WHEREAS, Glen Campbell was the behind-the-scenes member of the building of the park, always at Dona's side and helping at all the fundraisers for Templemead Park;

WHEREAS, Glen Campbell passed away on February 2, 2019, and Dona Campbell passed away on January 23, 2021.

WHEREAS, a memorial will be dedicated to Dona Campbell and to Glen Campbell at Templemead Park in remembrance of their love of community and family; and

WHEREAS, a donation to the Commemorative Park Bench & Tree Program in Ward 6 requires funding approval.

THEREFORE, BE IT RESOLVED:

- (a) That a contribution to the Commemorative Park Bench & Tree Program be funded from the Ward 6 Special Capital Re-Investment Discretionary Fund (# 3302209300) for the purchase of a Plaque at the Sun Shelter in honour of Dona Campbell and a Park Bench and Plaque in honour of Glen Campbell and Dona Campbell at Templemead Park, 30 Independence Drive, with an upset limit of \$5,000, be approved; and
- (b) That the Mayor and City Clerk be authorized and directed to approve and execute any and all required agreements and ancillary documents, with such terms and conditions in a form satisfactory to the City Solicitor.

**FOR INFORMATION:**

**(a) APPROVAL OF AGENDA (Item 2)**

The Agenda for the May 29, 2023 Public Works Committee meeting was approved, as presented.

**(b) DECLARATIONS OF INTEREST (Item 3)**

There were no declarations of interest.

**(c) APPROVAL OF MINUTES OF PREVIOUS MEETING (Item 4)**

**(i) May 15, 2023 (Item 4.1)**

The Minutes of the May 15, 2023 meeting of the Public Works Committee were approved, as presented.

**(d) GENERAL INFORMATION / OTHER BUSINESS (Item 14)**

**(i) Amendments to the Outstanding Business List (Item 14.1)**

The following amendments to the Public Works Committee's Outstanding Business List, were approved:

- (1) Items Considered Complete and Needing to be Removed (Item 14.1(a)):
  - (i) Main Street East and King Street East (Delta) In-Service Road Safety Review (Item 14.1(a)(a))  
Addressed as Item 9.1 (PW23033) (today's agenda)  
Item on OBL: ACR
  - (ii) Main Street West at Dundurn Street South and King Street West at Dundurn Street South Intersection Road Safety Plan (Item 14.1(a)(b))  
Addressed as Item 9.1 (PW23033) (today's agenda)  
Item on OBL: ACS
  - (iii) Improving Truck Route Detouring during Construction Closures (Item 14.1(a)(c))  
Addressed as Item 9.2 (PW23035) (today's agenda)  
Item on OBL: ABY
- (2) Items Requiring a New Due Date (Item 14.1(b)):
  - (i) Free-Floating Carshare Pilot Program (Item 14.1(b)(a))  
Item on OBL: ABW  
Current Due Date: June 12, 2023  
Proposed New Due Date: August 16, 2023
  - (ii) Impact of On-Site and Excess Soils Management Regulation (O. Reg 406/19) and other pressures on Capital Program Costs (Item 14.1(b)(b))

Item on OBL: ACZ  
Current Due Date: June 12, 2023  
Proposed New Due Date: July 12, 2023

- (3) Items to be Referred to the General Issues Committee (Item 14.1(c)):
  - (i) Redevelopment / Reuse of the former King George School Site, at 77 Gage Avenue North (Item 14.1(c)(a))  
Item on OBL: V
- (4) Items to be Removed (Item 14.1(d)):
  - (i) Correspondence from the Town of Fort Erie requesting support for their resolution in support of the Township of The Archipelago respecting Road Management Action on Invasive Phragmites (Item 14.1(d)(a))  
Item on OBL: ABU

**(e) ADJOURNMENT (Item 16)**

There being no further business, the meeting adjourned at 2:47 p.m.

Respectfully submitted,

Councillor N. Nann, Chair,  
Public Works Committee

Carrie McIntosh  
Legislative Coordinator  
Office of the City Clerk

This Agreement effective as of the \_\_\_\_ day of \_\_\_\_\_ 2023.

BETWEEN:

**THE CORPORATION OF THE TOWN OF MILTON**  
(hereinafter called "Milton")

-and-

**CITY OF HAMILTON**  
(hereinafter called "Participant")

**WHEREAS** Milton and the Participant share Joint Jurisdiction of certain lands more particularly described as *Milborough Line (Regional Road 7-Derry Road to Concession Road 10 East (Hamilton))* (the "Lands");

**AND WHEREAS** Milton and the Participant are desirous of constructing certain works over the Lands subject to Milton's specifications, design and construction detail for the road (the "Works"), more particularly described in Schedule "B" attached hereto and as agreed to by the Participant;

**AND WHEREAS** Milton and the Participant are adjoining jurisdictions that have entered into a Boundary Highway Maintenance and Repair Agreement ("Boundary Road Agreement") related to the Lands;

**AND WHEREAS** the Works constitute a Capital Improvement as contemplated in the Boundary Road Agreement;

**AND WHEREAS** Milton and the Participant are desirous of entering into this further agreement for cost sharing and project management of the Works as contemplated by Section 5.2 of the Boundary Road Agreement;

**AND WHEREAS** the Participant and Milton have mutually agreed that Milton will arrange on the Parties' behalf, the installation of the Works by Milton's Contractor pursuant to the terms and conditions set forth in this Agreement;

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT** in consideration of the mutual covenants herein contained and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the Parties agree as follows:

#### ARTICLE 1 – DEFINITIONS

1.1 Definitions - Capitalized terms used herein shall have the meanings set forth in Schedule "A".



## ARTICLE 2 - THE WORK

2.1 Scope of Work – Milton shall, through its Contractor, and only as in accordance with the Tender, cause to be performed the foregoing:

- (i) all procurement, oversight, coordination, inspection and construction activities and services necessary to perform and complete the Works, including without limitation preparation, excavation and grading of the Lands, and proper disposal of all excavated materials if and as required in connection with performance of the Works;
- (ii) providing or procuring all materials necessary to perform and complete the Works; and
- (iii) all work forces necessary to perform and complete the Works, including without limitation all skilled and unskilled labour, supervisory, quality assurance and support service personnel.

2.2 Cost of Work

- (i) Subject to sections 2.3 and 2.4, the Participant shall be solely liable and responsible for 50% of any and all costs or expenses of any kind relating to the Works (the “Participant Costs”), as estimated in Schedule E attached hereto, and to be updated as necessary as information becomes available regarding actual costs. It is understood and agreed that the costs outlined in Schedule E are estimates only and that Participant Costs will be based on 50% of the actual costs to complete the Works and that those actual costs will be determined at the time of Tender. It is furthermore understood and agreed that Milton will provide the Participant with written notification of actual project costs once they are determined and that Milton will obtain the Participant’s written approval of actual costs before Tender award.

2.3 Approval of the Participant

- (i) Prior to commencing any of the Works, Milton shall provide the Participant with a schedule (the “Works Installation Schedule”) and the Tender for the work related to the Works. Milton shall not commence any of the Works without obtaining the Participant’s prior written approval of the Works Installation Schedule and the Tender, which approval will not be unreasonably withheld. The Participant shall provide its written approval or rejection of the Works Installation Schedule and the Tender to Milton within five (5) Construction Days of receiving the Works Installation Schedule and the Tender from Milton. Any dispute arising from this Section 2.3(i), including

but not limited to, the rejection of the Works Installation Schedule and Tender, shall be subject to the dispute resolution procedures in Article 9.

#### 2.4 Changes to the Work

- (i) The Participant may request additions, deletions or other revisions to the Works by written notice to Milton requesting such change (the "Participant Change Request"). Milton shall within one (1) Construction Day of receipt of the Participant Change Request acknowledge to the Participant receipt of the Participant Change Request, and within two (2) Construction Days of the receipt of the Participant Change Request, provide a written acceptance or rejection of the Participant Change Request to the Participant. Milton shall not unreasonably withhold its approval to a Participant Change Request. In the event the Participant Change Request is accepted by Milton, the Parties will share the cost of the Participant Change Request according to the cost share formula of this Agreement (50% Participant /50% Milton).

Milton may, without invalidating this Agreement, make additions, deletions or other revisions to the Works, and Works Installation Schedule, provided that such additions, deletions or other revisions shall be by way of written change order or change directive issued and agreed upon in writing by both Parties. Milton shall submit a notice to the Participant requesting such change (the "Change Request") and the Participant shall within one (1) Construction Day of receipt of the Change Request acknowledge to Milton receipt of the Change Request, and within two (2) Construction Days of the receipt of the Change Request, provide a written acceptance or rejection of the Change Request to Milton. If the Participant rejects any Change Request, the Participant shall provide written notice of the reason for rejecting the Change Request and any dispute arising from the rejection of a Change Request shall be subject to the dispute resolution procedures in Article 9.

- (ii) Milton may, without invalidating this Agreement, make additions, deletions or other revisions to the Works without the prior approval of the Participant in the event of an emergency, where the failure to make such change would cause a material delay in the Works, or where the delay in obtaining consent would result in significant damages to the Works, whether physical or financial, each as determined by Milton (the "Proposed Change"). Milton shall submit any Proposed Change to the Participant as soon as possible and will use best efforts to obtain the Participant's prior approval for the Proposed Change, however Milton shall not be required to obtain the Participant's prior approval for a Proposed Change if any delay in obtaining such approval would result in such significant physical or financial damage to the Works.

#### 2.5 Acceptance of Completed Work – When, in the opinion of Milton, one or more of items of the Works has been satisfactorily completed, Milton shall, in writing, notify the Participant to inspect the Works within one (1) Construction Day or as

otherwise agreed, of the notice("Completion Notice).The Participant shall advise Milton in writing within two (2) Construction Days of the Construction Notice that the Work has been satisfactorily completed in accordance with the contract drawings and documents or that there are deficiencies. In the event that deficiencies are identified by the Participant, Milton will cause Milton's Contractor to rectify the deficiencies. Following notification from Milton's Contractor to Milton that the deficiencies have been rectified, Milton will again provide the Completion Notice as set out earlier in this paragraph.

When in the opinion of Milton, the Works is ready for final acceptance, Milton shall notify the Participant of same. The Participant shall advise Milton within five (5) Construction Days if the Participant has an objection to final acceptance of the Works, acting reasonably. If the Participant does not advise Milton within said period, the Participant shall be deemed to have no objection to final acceptance of the Works.

### ARTICLE 3 - RESPONSIBILITIES

#### Milton Responsibilities

- 3.1 Engagement of Milton – Milton shall be responsible for the overall oversight and coordination of the work and the construction of the Works in accordance with: (a) the Authorizations for the Works; (b) the terms of this Agreement; and (c) all applicable Laws.

#### Participant Responsibilities

- 3.2 No Other Work – The Participant shall not, without the prior approval written approval of Milton, undertake or cause to be undertaken, any work on the Lands during the term of this Agreement, except in accordance with this Agreement, and as approved by Milton, acting reasonably.

#### Joint Responsibilities

- 3.3 Health and Safety – Milton and the Participant acknowledge that the Contractor shall act as "constructor" within the meaning of the *Occupational Health and Safety Act* ("OHSA"), and the Contractor shall be solely responsible for all of the duties, liabilities, obligations, and responsibilities of the "constructor" under the OHSA with respect to the Works and Site.
- 3.4 Insurance - During the term of this Agreement, Milton and the Participant shall obtain and maintain insurance as set forth in Schedule "C".

## ARTICLE 4 - OWNERSHIP OF ASSETS

- 4.1 Ownership of the Works – The Parties acknowledge and agree that Milton and the Participant shall have joint ownership of the Works, and of each item of material, equipment, machinery, supplies and other items incorporated therein and shall have all rights, title and interests arising from the Works, in accordance with the Boundary Road Agreement.
- 4.2 Assignment of Warranty – Milton shall use reasonable efforts to assign all warranties for the Works to the Participant.

## ARTICLE 5 – PAYMENT

- 5.1 Payment Certificates – Milton will provide the Participant with monthly payment certificates for work related to the Works. Payment certificates will itemize all costs. The Participant will make payment to Milton within thirty (30) days after receiving a payment certificate (the “Due Date”).
- 5.2 The Participant may inspect Milton’s records relating to the Works and observe Milton’s practices in carrying out its responsibilities hereunder. Milton shall provide the Participant with all information and access to all facilities necessary for this purpose, as well as copies of any records as requested by the Participant. Milton shall cause all records relating to its responsibilities hereunder to be preserved and kept available for audit and inspection at any reasonable time, and from time to time, until the expiration of two (2) years from the date of termination or expiration of this Agreement, or until the expiration of such lesser or greater period of time as shall be approved in writing by the Participant.

## ARTICLE 6 - COMMENCEMENT AND COMPLETION OF WORK

- 6.1 Commencement – Milton shall commence performance of the Works in accordance with the Works Installation Schedule and Section 2.3.
- 6.2 Full Completion – “Full Completion” shall occur when all of the Works have been fully completed including, without limitation when all materials, documentation (warranty, manuals, specifications) and equipment for the Works have been installed and provided. Milton shall provide the Participant notice of Full Completion. If the Participant disputes that Full Completion has occurred, it shall provide written notice to that effect to Milton, specifying the basis for disputing Full Completion. In the event of dispute regarding Full Completion, the Parties shall utilize the dispute resolution procedures in Article 9 to resolve the dispute.

## ARTICLE 7 - WARRANTIES; LIMITATION OF LIABILITY

- 7.1 Limitation of Liability – The Parties agree that, in no event or circumstance shall either Party be liable for any loss of business, lost profits or indirect, consequential, special, multiple, or punitive damages of the other Party or those for whom in law the other Party is responsible. Except to the extent directly caused by either Party or otherwise set out in this Agreement, neither Party shall be responsible in any way for any injury to any person (including death).
- 7.2 Delay – If there is additional work for the benefit of a sole party and such work is added, and which has been agreed to by the Parties, the Party making such additional work would assume the costs associated with that work (delay time, construction costs etc) as the sole beneficiary of this work.

#### ARTICLE 8 - INDEMNIFICATION

- 8.1 Indemnification of Milton – Except to the extent caused by Milton, given its role and responsibilities providing the specifications, design and construction detail for the Works as well as the responsibility for the overall oversight, and coordination of the Work and the construction of the Works, and subject to Article 7, the Participant shall indemnify Milton, its elected officials, officers, directors, employees, agents, contractors, servants, and those for whom Milton is in law responsible, and save Milton harmless from any and all losses, costs, claims, actions, demands, liabilities, damages and expenses (including, without limitation, legal expenses) of every kind and description, including without limitation in connection with loss of life, personal injury and/or damage to or loss of property, arising out of or in any way related to, the construction of the Works, or any default, non-performance, or breach by the Participant of any of its obligations under this Agreement.
- 8.2 Indemnification of Participant – Except to the extent caused by the Participant, and subject to Article 7, Milton shall indemnify the Participant, its elected officials, officers, directors, employees, agents, contractors, servants, and those for whom the Participant is in law responsible, and save the Participant harmless from any and all losses, costs, claims, actions, demands, liabilities, damages and expenses (including, without limitation, legal expenses) of every kind and description, including without limitation in connection with loss of life, personal injury and/or damage to or loss of property, arising out of or in any way related to, the construction of the Works, any default, non-performance, or breach by Milton of any of its obligations under this Agreement.

#### ARTICLE 9 - DISPUTE RESOLUTION

- 9.1 General – If any difference of opinion or dispute (“Dispute”) shall arise between the parties hereto in the interpretation, or carrying out, of this Agreement, or any

of its provisions, the Parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, open and timely disclosure of relevant facts, information, and documents to facilitate these negotiations. Any Party may initiate this dispute resolution process by providing the other party written notice of the Dispute (the "Dispute Notice").

- (i) Mutual Discussions – If any Dispute arises between the Parties in connection with, or arising out of, this Agreement, the Parties, within ten (10) Construction Days of receipt of the Dispute Notice shall attempt to settle such Dispute in the first instance by mutual discussions between the project managers for Milton and the Participant. In the event, the Dispute is not settled within twenty (20) Construction Days of receipt of the Dispute Notice, the Parties shall attempt to settle the Dispute by mutual discussion between the chief administrative officers for Milton and the Participant.

- 9.2 Arbitration – Subject as hereinafter provided, any Dispute arising out of or in connection with, this Agreement and not settled by Subsection 9.1(i) of this Agreement within thirty (30) Construction Days of receipt of the Dispute Notice shall (regardless of the nature of the Dispute), at the option of either Party, be submitted and resolved by binding arbitration pursuant to the provisions of the *Arbitration Act*, 1991, S.O. 1991, c. 17 (the "Arbitration Act"), as amended or any successor legislation thereto, and in accordance with the following provisions: (i) the reference to arbitration shall be to one (1) arbitrator if the Parties are able to agree to the appointment of same, failing which the reference to arbitration shall be to three (3) arbitrators, one of whom shall be chosen by each of the Parties, and the third shall be chosen by the two (2) so chosen, and the third so chosen shall be the chairman of the arbitration and any decision or award shall be made by a majority of the arbitrators. In the absence of an agreement between the two arbitrators chosen by the Parties regarding the third arbitrator, within ten (10) Construction Days after the appointment of an arbitrator by each of the Parties, the third arbitrator shall be appointed in accordance with the provisions of the *Arbitration Act*; (ii) the arbitrator or arbitrators, as the case may be, shall resolve the dispute by majority vote which shall be binding upon the Parties; (iii) there shall be no appeal from any award or decision of the arbitrator(s) and the costs of any such arbitration shall be shared equally between the Parties hereto, or as otherwise determined by arbitration agree that the dispute resolution provisions in section 12 of the Boundary Road Agreement shall apply to the resolution of such Dispute.

#### ARTICLE 10 - INTERPRETATION

- 10.1 Governing Law – This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 10.2 Interpretation – The Schedules form a part of this Agreement. This Agreement includes the attached Schedules "A" through "E".

- 10.3 Entire Agreement – This Agreement, together with the Schedules attached hereto, constitutes the entire agreement and complete understanding between the Participant and Milton with respect to the subject matter described herein. Nothing in this Agreement shall be deemed to amend, modify or otherwise alter the Boundary Road Agreement and the Boundary Road Agreement shall continue to apply in respect of the subject matter therein in accordance with the terms of that agreement.
- 10.4 Headings and References – The division of this Agreement into articles, sections, subsections and schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The article, section, subsection and schedule headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and are not to be considered part of this Agreement. All uses of the words “hereto”, “herein”, “hereof”, “hereby” and “hereunder” and similar expressions refer to this Agreement as a whole and not to any particular section or portion of it. References to an article, section, subsection or schedule refer to the applicable article, section, subsection or schedule of this Agreement unless otherwise specifically provided.
- 10.5 Drafting Ambiguities – Each Party to the Agreement and its counsel have reviewed and revised the Agreement. The rule of construction that any ambiguities are to be resolved against the drafting parties shall not be employed in the interpretation of the Agreement, or any amendment thereto.

#### ARTICLE 11 - MISCELLANEOUS

- 11.1 Invalidity of Provisions – Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the Parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.
- 11.2 Survival – Notwithstanding anything in this Agreement to the contrary, any provisions of this Agreement which are intended to survive termination or expiry of this Agreement shall survive the termination or expiry of this Agreement.
- 11.3 Technical or Trade Usage – When words that have a well-known technical or trade meaning are used to describe materials, equipment or services, such words will be interpreted in accordance with such meaning. Reference to such standard specifications, manuals, or codes of any technical society, organization or association, or to the code of any governmental authority, whether such references

be specific or by implication, shall mean the latest standard specification, manual or code (whether or not specifically incorporated by reference in the contract documents). Performance shall conform to the standards in effect at the time of performance and may change the duties and responsibilities of the Participant or Milton, or any of their agents, consultants, or employees from those set forth in the Agreement.

- 11.4 Amendments and Waivers – This Agreement may be amended only by a written instrument signed by a duly authorized representative of each Party. The failure of any Party to insist on one or more occasions upon strict performance of the obligations owed it by the other Party shall not waive or release such Party's right to insist on strict performance of such obligation or any other obligation in the future. No waiver of any rights or recourses shall be inferred from or implied by anything done or omitted to be done by either Party unless such waiver is expressed in writing.
- 11.5 Notices – Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be given by prepaid mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, shall be deemed to have been received on the fourth Construction Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the Construction Day following the sending, or if delivered by hand shall be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address shall also be governed by this section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications shall be delivered by hand or sent by facsimile or other means of electronic communication and shall be deemed to have been received in accordance with this section. Notices and other communications shall be addressed as follows:

If to the Participant: Corporation of the City of Hamilton  
77 James Street  
Hamilton, Ontario L8R 2K3  
Attention: Greg Wuisman  
E-mail: [Greg.Wuisman@hamilton.ca](mailto:Greg.Wuisman@hamilton.ca)

If to Milton: Corporation of the Town of Milton  
150 Mary Street, Milton, Ontario, L9T 6Z5  
Attention: Diana Betancour  
E-mail : [diana.betancour@milton.ca](mailto:diana.betancour@milton.ca)



- 11.6 Successors; Assignment – This Agreement shall be binding upon the Parties and their respective successors and permitted assigns. Neither Party shall make any sale, assignment, mortgage, pledge or other transfer of all or any portion of its rights or obligations under this Agreement, whether voluntarily or involuntarily, by operation of law or otherwise, without the prior written consent of the other Party.
- 11.7 Counterparts – This Agreement may be executed in any number of counterparts (including counterparts by facsimile and PDF) and all such counterparts taken together shall be deemed to constitute one and the same instrument.
- 11.8 Further Assurances – Each Party agrees to execute and deliver any such instruments and to perform any such acts as may be necessary or reasonably requested by the other Party in order to give full effect to the terms of this Agreement.
- 11.9 No Partnership – The Parties hereby expressly disclaim any intention to create a joint venture or partnership relation between the Parties.
- 11.10 Time is of the Essence – Time is of the essence in this agreement.

*- Signature page follows -*

**IN WITNESS WHEREOF** the Parties have duly executed this Agreement as of the date first written above.

**THE CORPORATION OF THE TOWN  
OF MILTON**

\_\_\_\_\_  
Name:

Title:

\_\_\_\_\_  
Name:

Title:

We have authority to bind the Corporation.

**CITY OF HAMILTON**

\_\_\_\_\_  
Name:

Title:

\_\_\_\_\_  
Name:

Title:

We have authority to bind the Corporation.

Schedule "A"  
Definitions

**"Agreement"** shall mean this agreement and all schedules attached to this agreement, in each case as they may be amended or supplemented from time to time.

**"Authorization"** shall mean any license, permit, approval, filing, waiver, exemption, variance, clearance, entitlement, allowance, franchise, or other authorization, whether from any Governmental Authority, corporate or otherwise.

**"Construction Day"** shall mean any day, other than Sunday or any statutory holiday in the Province of Ontario.

**"CA"** shall mean the Construction Act, R.S.O. 1990, c. C.30

**"Claim for Lien"** shall mean a lien, notice of lien or claim for lien under the CA.

**"Contractor"** shall mean the contractor retained to perform the construction work within the scope of the Participant Works.

**"Dispute"** shall have the meaning given it in Section 9.1.

**"Dispute Notice"** shall have the meaning given it in Section 9.1.

**"Full Completion"** shall have the meaning given it in Section 6.2.

**"Governmental Authority"** shall mean any: (i) multinational, federal, provincial, state, municipal, local or other governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign; (ii) any subdivision or authority of any of the foregoing; (iii) any quasi-governmental, self-regulatory organization or private body exercising any regulatory, expropriation or taxing authority under or for the account of its members or any of the above; or (iv) any arbitrator exercising jurisdiction over the affairs of the applicable Party, asset, obligation or other matter, or the Site, whether acting under actual or assumed authority. Permits, orders or other approvals given by such bodies are **"Governmental Authorizations"**.

**"Hazardous Substances"** shall mean, collectively, any petroleum or petroleum product, asbestos in any form that is or could become friable, transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls (PCBs), hazardous waste, hazardous material, hazardous substance, toxic substance, contaminant or pollutant, as defined or regulated under any federal, provincial or local law relating to the protection of the environment.

**"Indemnified Party"** shall have the meaning given it in Section 8.1.

“**Indemnifying Party**” shall have the meaning given it in Section 8.1.

“**Lands**” shall have the meaning given it in the recitals of this Agreement.

“**Law**” shall mean (i) any law, by-law, legislation, statute, act, rule, ordinance, decree, treaty, regulation, order, judgment, or other similar legal requirement, or (ii) any legally binding announcement, directive or published practice or interpretation thereof, enacted, issued or promulgated by any Governmental Authority.

“**Milton**” shall mean the Corporation of the Town of Milton.

“**Participant**” shall mean the City of Hamilton

“**Participant Costs**” shall have the meaning given it in Section 2.2.

“**Parties**” shall mean the Participant and Milton when referred to collectively and

“**Party**” shall mean any one of the Parties referred to singly.

“**Person**” shall mean any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or Governmental Entity, however designated or constituted.

“**Project**” shall mean the construction of the Works.

“**Proposed Change**” shall have the meaning given it in Section 2.4.

“**Site**” shall mean a portion of the parcel of land as shown on Schedule “D”, the description of which is:

Description    *Milborough Line (Regional Road 7-Derry Road to Concession Road 10 East -Hamilton)*

“**Tender**” shall mean a bid / tender which Milton is prepared to accept.

“**Works**” shall have the meaning given it in the recitals of this Agreement.

“**Works Installation Schedule**” shall have the meaning given it in Section 2.3

Schedule "B"  
Works

Rehabilitation of Milborough Line (Regional Road 7-Derry Road to Concession Road 10 East -Hamilton). The scope of this work includes:

Milborough Line was identified in the 2018 State Infrastructure of Roads for Reconstruction (REC). It is proposed to implement the Expanded Asphalt (EAP) for this road segment. The exact method of rehabilitation although initially assumed to be full depth reclamation with expanded asphalt stabilization (pulverize and resurface) will be determined based on an in-depth Geotechnical investigation.

The expanded asphalt has typically included the following within the scope of the work: Culvert replacements where required (and associated Conservation Authority permits/approvals as required), road works as per recommendations in the Geotechnical investigation (with the initial that cold-in-place recycled expanded asphalt will be implemented) and associated shouldering (if existing property allows it, ideally a 1m paved shoulder on both sides of the road) and driveway transitions. All work to remain within existing property limits.

Final rehabilitation method to be agreed to with participant, and will be determined through detailed design

Schedule "C"  
Insurance

1. Milton shall take out or cause to be taken out and maintain during the construction of the Works and until Full Completion:
  - (a) Commercial General Liability (C.G.L) insurance with a limit of not less than Five Million Dollars (\$5,000,000) for any one loss or occurrence for personal injury, bodily injury, or damage to property including loss of use thereof. This policy shall by its wording or by endorsement include but not be limited to the following:
    - (i) "cross liability" or "severability of interest" clause;
    - (ii) blanket contractual liability;
    - (iii) non-owned auto liability.
  - (b) Environmental impairment policy covering sudden and accidental pollution liability arising out of the construction operations under this Agreement.
  - (c) Automobile Liability insurance covering bodily injury and property damage in an amount not less than Two Million Dollars (\$5,000,000) per accident, covering the ownership, use and operation of any motor vehicles and trailers which are owned, leased or controlled by Milton and used in regards to this Agreement.
  - (d) Professional Liability Insurance in the amount of not less than \$1,000,000 per claim covering losses arising out of an insurable error or omission in the rendering of, or failure to render, professional services in connection with the Work described herein.

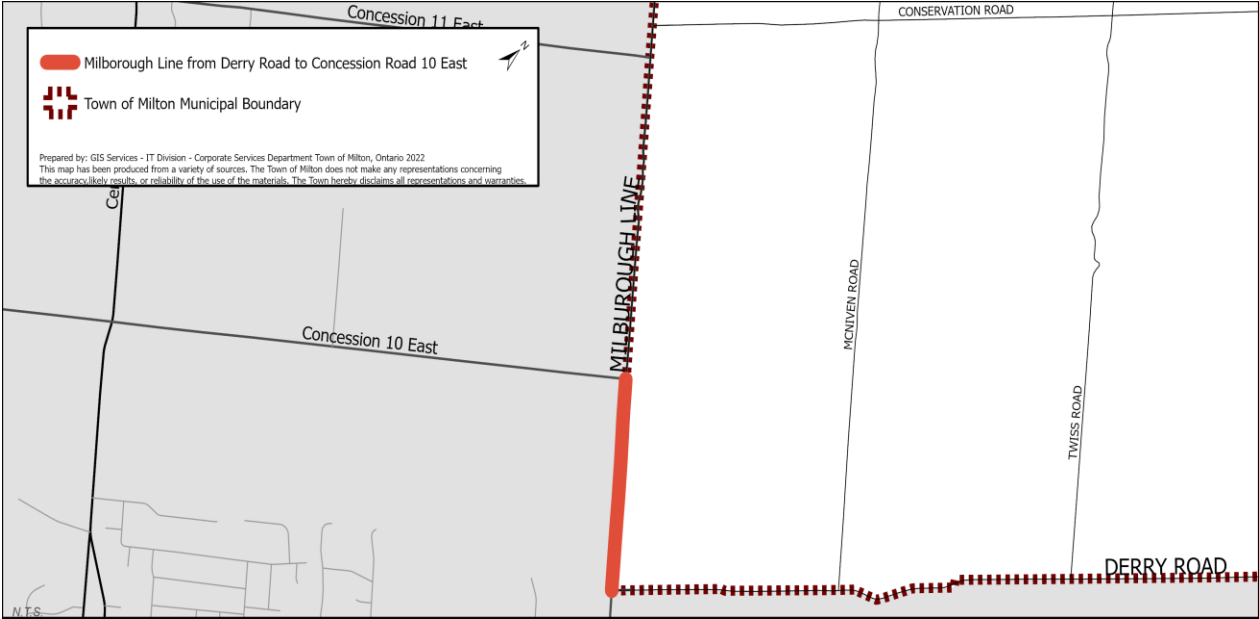
The policies shall be endorsed to provide the Participant with not less than thirty (30) days written notice in advance of cancellation, material change or amendments restricting coverage.

- 2 The Participant shall take out or cause to be taken out and maintain during the construction of the Works and until Full Completion:
  - (a) Commercial General Liability (C.G.L) insurance with a limit of not less than Five Million Dollars (\$5,000,000) any one loss or occurrence for personal injury, bodily injury, or damage to property including loss of use thereof. This policy shall by its wording or by endorsement include but not be limited to the following:
    - (i) "cross liability" or "severability of interest" clause;

- (ii) blanket contractual liability;
  - (iii) non-owned auto liability.
- (b) Environmental impairment policy covering sudden and accidental pollution liability arising out of the construction operations under this Agreement.
- (c) Automobile Liability insurance covering bodily injury and property damage in an amount not less than Two Million Dollars (\$2,000,000) per accident, covering the ownership, use and operation of any motor vehicles and trailers which are owned, leased or controlled by Milton and used in regards to this Agreement.
- (d) Professional Liability Insurance in the amount of not less than \$1,000,000 per claim covering losses arising out of an insurable error or omission in the rendering of, or failure to render, professional services in connection with the Work described herein.

The policies shall be endorsed to provide Milton with not less than thirty (30) days written notice in advance of cancellation, material change or amendments restricting coverage.

Schedule "D"  
Site





Schedule E  
Participant Costs

High Level Estimate - Cost Sharing  
Hamilton

Expanded Asphalt Program			
Milborough Line from Regional Road 7-Derry Road to Concession Road 10 East (Hamilton)			
Item	Cost	Hamilton Share (50%)	Notes
Design	\$71,500.00	\$35,750.00	Estimate. 50% of actual fees will be invoiced
Permits	\$10,000.00	\$5,000.00	Estimate. 50% of actual fees will be invoiced
Estimate Contract Administration	\$49,500.00	\$24,750.00	Estimate. 50% of actual fees will be invoiced
Estimate Construction	\$1,192,000.00	\$596,000.00	Based on 2022 EAP tender prices plus 15% per year . 50% of actual values will be invoiced
<b>Subtotal:</b>		<b>\$661,500.00</b>	
1.76% Non-Refundable HST		\$11,642.40	
<b>Subtotal:</b>		<b>\$673,142.40</b>	
2% Administration Fee		\$13,462.85	
<b>Total Estimated Cost to Hamilton</b>		<b>\$686,605.25</b>	<b>Exclusive of HST</b>

*\*note\* above costs are estimates only; Participant will be responsible for 50% of project costs, to be reviewed and confirmed with Participant.*