



# The Corporation of the TOWN OF MILTON

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Report to: Mayor G. A. Krantz and Members of Council

From: Jennifer Reynolds, Director, Community Services

Date: December 17, 2007

Report No. COMS-066-07

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Subject: Transit Service Agreement

**RECOMMENDATION:** THAT the Mayor and Clerk be authorized to enter into a new Service Contract Agreement for conventional transit services with Oakville Transit for a three year period, effective March 1, 2008 (as outlined in Schedule A – DRAFT);

**AND THAT** the Town Solicitor be authorized to make necessary minor adjustments to the Agreement which do not affect the substance of the Agreement;

**AND THAT** the Town of Milton Purchasing By-Law be waived to permit a single supplier negotiation.

## **EXECUTIVE SUMMARY**

In 2004, Council approved the commencement of conventional, fixed route transit service, operated by Oakville Transit. Upon the investment into Town-owned fleet, staff is recommending that Oakville Transit continue to provide transit service to the Town by means of a new Service Contract Agreement. The report reviews the rationale for continuing a business relationship with Oakville Transit for service delivery, while outlining specific terms of the supporting Draft Transit Service Agreement.

## **REPORT**

### **Background**

In August 2004, the Town of Milton adopted the recommendations of the North Halton Transit Strategy (COMS-001-04) and implemented a fixed route conventional transit service. The Town entered into an agreement with the Town of Oakville to provide conventional transit services using Oakville-owned fleet.



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Following the decision making framework of the Transit Business Plan (2006), the Town purchased four (4) new 30' fully accessible transit buses to replace aging Oakville-owned fleet. The investment into transit fleet has initiated discussion and negotiation of a new agreement with the Town of Oakville. Milton-owned buses are expected to be received and operational between December 2007 and February 2008.

## **Discussion**

Over the last three (3) years, the Town of Oakville and the Town of Milton have established a positive business relationship delivering public transit services for Milton residents. Oakville's expertise and support have helped Milton Transit initiate an efficient and effective fixed route transit system. Their approach to service delivery has elevated Milton Transit into a viable transit brand, with continued excellence in customer and value-added service. It is therefore recommended that this relationship continue as a sole source solution for delivering transit services, as per the terms of a negotiated Draft Transit Service Agreement (Schedule A).

The significant business terms of the new Agreement with Oakville Transit include the following:

- The Town of Milton, while owning fleet, will continue to contract out all elements of transit service operations to Oakville Transit.
- The length of the Agreement is for a three (3) year period, with an option for further extension.
- Oakville Transit will continue to provide professional drivers having the required training and licensing for transit vehicle operation.
- Oakville Transit will ensure weekday, on-street transit service supervision and monitoring.
- Oakville Transit will comply with all applicable laws, bylaws, rules, orders, and regulations of any governmental or regulatory authority in the performance of the transit services, as well as Town operating policies. As the service provider, Oakville Transit will comply with the Accessibility for Ontarians with Disabilities Act (AODA) while supporting all subsequent legislative standards.
- Oakville Transit staff will continue to be supportive in planning and scheduling route options, timing for stops, service considerations, attending Transit Advisory Committee meetings, and providing general expertise and guidance to Town staff.



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- Oakville Transit will continue to respond to customer service issues/concerns and advise the Town on a regular basis. They have an established customer service centre that has been able to meet the needs of residents with respect to general inquiries, trip information, and customer complaints.
- All farebox revenues will be collected on Town-owned buses, but will continue to be counted, deposited, and processed by Oakville Transit, with a monthly invoice being issued net of the revenue collected.
- Performance reports and reconciliation will be done on a monthly basis.
- Milton Transit service will be invoiced monthly, based upon an agreed hourly rate. The rate will also be adjusted from time-to-time to reflect changes in labour costs.
- Oakville Transit will provide applicable maintenance services on Town-owned fleet when required, until the Town has reviewed all options for maintenance service delivery which will minimize transit service/scheduling disruptions.

## **Summary**

Staff recommend a continuation of service delivery using Oakville Transit as the service provider for a three (3) year period. In 2008, a Capital Project has been identified to conduct a comprehensive Transit Services Review. This study will assist in defining future transit service delivery needs. It will also assist and inform decision making for operating and capital budgets, and will be used as a framework as Milton Transit monitors service delivery and expansion. Options for the service may be considered pending the results of the Services Review.

## **Relationship to the Strategic Plan**

### **Goal – Well managed growth, well planned spaces**

*Direction – Facilitate the safe movement of people and goods, and enhanced travel to, from and within the community.*

### **Goal – A responsible, cost effective and accountable local government**

*Direction – Efficient service delivery*

## **Financial Impact**

The budget is based on the Draft Transit Service Agreement as attached, reflecting fair costs as reviewed by Milton Transit and finance staff. The budget also permits phased integration of new fleet upon arrival.



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Respectfully submitted,

Jennifer Reynolds  
Director, Community Services

If you have any questions on the content of this report: Tony D'Alessandro, 905-878-7252 ext 2548

Attachments: Schedule A: DRAFT Transit Services Agreement

CAO Approval: \_\_\_\_\_

## TRANSIT SERVICES AGREEMENT

THIS AGREEMENT made as of the 1<sup>st</sup> day of February, 2008

B E T W E E N:

THE CORPORATION OF THE TOWN OF MILTON  
(hereinafter referred to as “Milton”)

- and -

THE CORPORATION OF THE TOWN OF OAKVILLE  
(hereinafter referred to as “Oakville”)

WHEREAS, Oakville is currently providing transit services to Milton under the terms and conditions of a Transit Services Agreement dated August 15, 2004; and

AND WHEREAS, the expiry date of the Transit Services Agreement was extended to February 28, 2008, by mutual agreement as per Section 6.01 of that Agreement;

AND WHEREAS, Oakville currently has equipment, facilities, labour, infrastructure and expertise which are capable of being used to provide public transit services on behalf of Milton;

AND WHEREAS, Milton wishes to contract with Oakville for the provision of such transit and other related services subject to the provisions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties to this Agreement agree as follows:

### SECTION 1 DEFINITIONS AND INTERPRETATION

1.01 **Definitions.** In this Agreement, unless the context otherwise requires, the following terms shall have the following meanings:

- (a) “Agreement” means this Agreement including any recitals and schedules to this Agreement, all as amended, supplemented or restated from time to time by mutual agreement between the parties;
- (b) “Business Day” means a day other than a Saturday, Sunday or statutory holiday as defined in the Employment Standards Act, 2000 in the Province of Ontario;
- (c) “Commencement Date” shall be the date determined in accordance with Section 6.01 of this Agreement;

- (d) “Farebox Revenue” means all cash fares deposited by passengers in fareboxes located on the buses operated by Oakville in providing the Services plus all revenue generated by Oakville under the Go Transit Fare Integration Program with respect to passengers using the Services;
  - (e) “Party” means either party to this Agreement and “Parties” means both parties to this Agreement;
  - (f) “Services” means the public transit services to be provided by Oakville to Milton as described in Section 2.01 of this Agreement as may be subsequently amended or supplemented from time to time by written agreement of the Parties;
  - (g) “Services Fee” means the fee to be paid to Oakville pursuant to Section 3.01 of this Agreement as may be adjusted pursuant to Section 3.03 of this Agreement;
  - (h) “Maintenance” means any scheduled or unscheduled servicing of the Milton vehicles (buses and support vehicles) performed by Oakville;
  - (i) “Maintenance Fee” means the fee to be paid to Oakville pursuant to Section 3.02 of this Agreement as may be adjusted pursuant to Section 3.04 of this Agreement;
  - (j) “Term” means the term of this Agreement as provided for in Section 6.01 of this Agreement.
  - (k) “Oakville Drivers” means the bus drivers employed by the Oakville Transit to provide the Services.
  - (l) “Major Change” means a change that affects a signed Service Board to the extent that Union and/or individual drivers must be requested to agree with and abide by the change and that such change does not result in any additional non-recoverable expenses to Oakville.
  - (m) “Minor Change” means a change that is not a Major Change.
  - (n) “Service Board” means the work assignment board that is signed by all Oakville Drivers, in advance of service implementation, for the purpose of confirming the specifics of their work for a period of time normally between two (2) and four (4) months in duration.
- 1.02 **Headings.** The division of this Agreement into sections and the insertion of headings are for convenience of reference only and are not to affect the construction or interpretation of this Agreement.
- 1.03 **Number and Gender.** Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.
- 1.04 **Governing Law.** This Agreement is governed by and shall be construed and interpreted in accordance with the laws of the Province of Ontario.

- 1.05 **Severability.** If any provision of this Agreement is or becomes illegal, invalid or unenforceable, the illegality, invalidity or unenforceability of that provision shall not affect the legality, validity or enforceability of the remaining provisions of this Agreement.
- 1.06 **Time of the Essence.** For every provision of this Agreement time is of the essence.
- 1.07 **Entire Agreement.** This Agreement constitutes the entire Agreement between the Parties with respect to subject matter and supersedes all prior Agreements, negotiations, discussions, representations and understandings whether written or oral.
- 1.08 **Schedules.** The following Schedules are attached to this Agreement:

Schedule "A" – Transit Routes

Schedule "B" – Transit Route Schedules

Schedule "C" – Oakville Transit Policies and Procedures

## SECTION 2 PROVISION OF SERVICES

- 2.01 **Description of Services.** Milton hereby retains and authorizes Oakville and Oakville hereby agrees, for the Term and in accordance with the provisions of this Agreement, to perform and provide public transit services for the fixed routes set forth in Schedule "A" on the days, times and scheduling set forth in Schedule "B", which schedules and the information contained therein can be changed by Milton upon 30 days notice to Oakville, if such change can be made without impacting a signed Service Board and unless such change is a Major Change in which case the change shall only be made after Milton provides Oakville with 180 days notice of the change. Milton shall provide all buses (primary and replacement), cleaning, fuel, farebox equipment and communications equipment. Such farebox and communications equipment must be consistent with that used on Oakville buses. Oakville shall provide sufficient licensed drivers having the required training, skill and supervision to operate the Services safely and efficiently. Oakville shall, until such time as Milton accepts responsibility for the collection, processing and depositing of its own farebox revenue, secure and retain all Farebox Revenue which shall be credited against Service Fees in accordance with Section 3.01.
- 2.02 **Standards.** In the performance of the Services, Oakville agrees to:
- (a) Observe and comply with Oakville's transit operating policies and procedures as are outlined in Schedule "C" herein and with Milton's transit operating policies as the same may be developed from time to time, to the extent the same do not conflict with Oakville's transit operating policies;

- (b) Obtain and maintain all licenses and permits it requires to enable it to properly perform the Services. Milton shall co-operate fully with Oakville to assist in securing all such licenses and permits;
- (c) Ensure that it complies at all times during the Term with applicable laws, bylaws, rules, orders and regulations of any governmental or regulatory authority in the performance of the Services. Where necessary or desirable to ensure compliance, Milton agrees to provide its assistance and co-operation to Oakville;
- (d) Provide and be responsible for all bus drivers, dispatchers, supervision, administration staffing and management required to carry out the Services in accordance with this Agreement;
- (e) Provide, at the agreed to “maintenance fee” pursuant to Section 3.02, any scheduled or unscheduled maintenance and servicing functions, as requested by Milton, that are required for the buses and other equipment used in the Services.
- (f) Provide, as part of the Services, related administrative services which shall include: sorting, counting and depositing Farebox Revenue (deposits to be made using Oakville’s Brinks service); providing weekly deposit reports; providing monthly data reports; providing on-street service supervision, assistance in provision of tickets, passes and schedules; customer service and schedule information using Oakville Transit information clerks including a customer service phone line with a Milton link; post Milton routes and schedules on its web-site with a web-site for transit inquiries and service questions; provide a link from the Milton transit information page of its web-site to Milton’s web-site; manage GO Transit billings as part of the Fare Integration Program; and assistance in scheduling and planning of routes, stops and shelters;
- (g) Pay all expenses associated or connected with providing the Services except as may be otherwise expressly provided in this Agreement; and
- (h) Observe and comply with all other provisions of this Agreement binding upon Oakville.

2.03 **Milton Responsibilities.** Milton will have responsibility for and pay the costs of:

- (a) Establishing the fare rates for users of the transit system, including differing categories of users with differing rates;
- (b) Design and printing of transit tickets, passes and transfers and the design and printing of route maps, schedules and promotional launch materials; provided, however, that Milton will not institute any major changes to routes or schedules without providing Oakville with 180 days prior written notice thereof, or in the case of a change that is not a Major Change, by providing Oakville with 30 days prior written notice.



- (c) Design, installation and maintenance of bus route signage, posts, benches, landing pads and shelters;
- (d) Ticket and pass sales other than on-bus fare collection;
- (e) Determining and advising Oakville of any road construction route delays or detours, in writing, at least 30 days prior to the commencement of any such construction or detours;
- (f) Marketing and advertising with respect to the transit services, including promotional material and any bus shelter or bench advertising arrangements;
- (g) All buses and equipment, including bus detailing, required to provide the services in accordance with this Agreement; and
- (h) All fuel required by Milton's buses and ensuring the buses are kept in clean and sanitary condition.
- (i) Ensuring that all scheduled and unscheduled maintenance is performed on the buses by a qualified maintenance service provider. Should Milton request that any such maintenance services be performed by Oakville such maintenance will be completed at a rate in accordance with Section 3.02
- (j) Ensuring that a minimum of 8 parking spaces are available at the Milton GO Station, or at any future location identified as the Milton bus storage location, for Oakville Drivers assigned to providing the Services.
- (k) Ensuring that Oakville Drivers assigned to the service have access to lunchroom and washroom facilities at the Milton GO Station.

2.04 **Labour.** In providing the Services, during the term of this Agreement and any renewal thereof, Oakville shall be solely responsible for all matters relating to the personnel required to provide the Services, for hiring, training, supervising, paying and, where necessary, discharging, for keeping and maintaining all records required by law or by prudent management and for complying with the requirements of applicable collective agreements, all statutes, regulations, by-laws and other lawful requirements of Federal, Provincial, Regional and Municipal authorities in any way relating to workers' compensation, occupational health and safety, income and other taxes and to similar matters implicit in or required at law by the employer/ employee relationship. Such personnel shall not be deemed to be employees of Milton. However, and in accordance with Section 6.03 (c), Milton will be responsible for all costs associated with any employment termination that may result from the termination of this Agreement by Milton. Milton further agrees to fully indemnify and save harmless Oakville from and against any and all claims, complaints or liabilities of whatever kind, which

Oakville may incur or suffer or which be made against Oakville by or relating to the termination of any employment of personnel resulting from Milton's termination of this Agreement.

### SECTION 3 COMPENSATION

- 3.01 **Services Fee.** For the Services provided hereunder, Milton shall pay to Oakville a fee calculated as \$47.00 for each hour of service. Service hours shall be based upon the total time required for the provision of the Services calculated from the time the driver starts his/her shift until the time the driver returns to Milton's bus storage area. The service hour fee includes a per shift premium for travel from and to Oakville's transit facility as per agreement with CAW Local 1256. Service Farebox Revenues and Go Transit Billings as part of the Fare Integration Program shall be credited by Oakville against the Services Fee payable hereunder. A copy of all designated Milton shifts is to be provided by Oakville to Milton prior to commencement of a new Service Board along with a confirmation of the applicable per shift travel premium.
- 3.02 **Fee for Maintenance Services.** Recognizing that Milton owns, is responsible for, and may enter into a maintenance agreement with any maintenance service provider for the provision of scheduled and/or unscheduled maintenance of the buses utilized on the Service, Milton may request that Oakville provide some or all scheduled and/or unscheduled maintenance of these vehicles. Should Milton elect to utilize Oakville maintenance services for its buses, Milton will pay Oakville a fee calculated as \$90.11 (not including parts) for each shop hour. This fee will apply to the total of each hour or part thereof during which Oakville maintenance staff is actively engaged in maintenance services. This service includes but is not restricted to scheduled maintenance, unscheduled maintenance, and time required by Oakville staff to transport any bus between Milton and Oakville. Milton will be charged on a cost recovery basis for any parts required for the repair or servicing of the buses. Milton will also be charged on a cost recovery basis for any third party maintenance of Milton vehicles performed at Milton's request and for which Oakville is invoiced. Milton agrees that the hourly maintenance Service Fee shall be adjusted annually, effective January 1 of each year, for any increase in these operating costs as approved in the Town's annual operating budget.
- 3.03 **Fee Adjustment for Hourly Wage Increases.** Recognizing that the hourly Services Fee is based partially upon the current hourly wage rate which Oakville is required under the terms of its collective agreement to pay its bus drivers and mechanics, Milton agrees that the hourly Services Fee shall be adjusted by the increase in base hourly wage rates and/or benefits which may be agreed to by Oakville upon expiry of the current collective agreement on May 16, 2008. Any such change shall be effective retroactive to May 16, 2008. Subsequent wage rate

adjustments shall be applied consistent with any annual or other wage rates that are required under the terms of the collective agreement.

- 3.04 **Fuel Cost.** Recognizing that Milton will be responsible for the supply of all fuel requirements, there may be occasions requiring supply of fuel by Oakville. In these instances Milton will be charged for the actual amount of fuel supplied at the cost charged to Oakville for the purchase of said fuel (including taxes) plus a 5% dispensing fee.
- 3.05 **Cost of Support Vehicles and Equipment.** Recognizing that Milton requires additional transit buses to serve as back-up for its fleet and that these buses would require communications and farebox equipment consistent with that found on Oakville buses, Oakville agrees to sell to Milton two of its Girardin small capacity buses (currently used to provide Milton service) at the cost to Milton of \$5,000 each. The specific buses will be selected by Milton from Oakville's Girardin fleet and these buses will be confirmed as road ready by Oakville prior to transfer of ownership, but the buses shall otherwise be assumed 'as is' by Milton. The farebox and communication equipment required by Milton for two replacement buses will be sold by Oakville at a cost to Milton of \$34,234.00 (\$21,540 for two fareboxes and \$12,694 for two bus radios).
- 3.06 **Time for Payment.** The Services Fee shall be calculated and invoiced to Milton monthly in arrears and be due and payable by Milton on the 15<sup>th</sup> day of the following month. All vehicle and equipment costs pursuant to Section 3.05 are due and payable upon the commencement date of this agreement.
- 3.07 **Cost of Supervision.** The "Services Fee" in section 3.01 is based in part on the cost of dedicating one supervisor to the duties associated with supervision of the Milton service. These costs were calculated based on Monday to Friday service, eight (8) hours per day. Milton may determine the time period during which the 8 hours will apply. However, no Milton supervisory shift will exceed a 12 hour spread during a single day. Should circumstances arise, outside of the normal daily 8 hours, that require additional or emergency supervisory attendance, Milton will be charged a fee equivalent to the average hourly wage of an Oakville Transit Supervisor. Should such a situation require any Supervisor to work beyond their normal 8 hour shift the fee will be charged at the rate of one and one half times the hourly rate. At the start of this Agreement, the base fee for supervisory services outside of the hours provided for in this agreement will be \$35.86 per hour. This fee will be adjusted annually to reflect any supervisory salary increase.
- 3.08 **Fee Adjustment for Changes to Operating Costs.** The Services Fee in Section 3.01 is calculated using 2007 budgeted operating costs for Oakville Transit and includes a portion of Oakville Transit and Corporate overhead. Milton agrees that the hourly Services Fee shall be adjusted annually, effective January 1 of each

year, for any increase in these operating costs as approved in the Town's annual operating budget.

## **SECTION 4 RECORDS, REPORTS AND COMMUNICATION**

- 4.01 **Records.** Oakville shall maintain complete and accurate accounts and records in connection with the provision of the Services including, without limitation, service hours, Farebox Revenue and Services Fees, health and safety matters, incident reports and regulatory compliance. Oakville shall make such records available at all reasonable times during business hours to Milton or its authorized representatives to examine and / or take copies.
- 4.02 **Monthly Reports.** On a monthly basis, Oakville shall provide Milton with reports on ridership by route, financial analysis by route and total revenue by route for the routes being operated with Milton. Should additional reports be requested by Milton, they shall be provided by Oakville within one week of such request being received.
- 4.03 **Meetings.** Meetings shall be held as reasonably required and at the request of either Party. At a minimum, monthly meetings shall be held between representatives of both Parties to review and evaluate the Services and where appropriate to determine necessary adjustments to enhance performance or productivity. Oakville will ensure that at least one transit staff member is in attendance at each Milton Transit Advisory Committee meeting and that other Oakville staff will be available to attend as specific needs arise.
- 4.04 **Communication.** Each Party shall ensure that it immediately communicates to the other any material changes or facts of which they become aware and which may impact on the provision of the Services or the performance by either Party of its obligations under this Agreement.
- 4.05 **Access to Transit Facilities.** Oakville agrees to provide access to equipment and facilities used in providing the Services to Milton representatives to conduct condition and quality assurance inspections with reasonable notice and provided that such visits and inspections occur on a Business Day and are supervised and accompanied by a designated representative of Oakville.

## **SECTION 5 INDEMNITY, LIMITATION, INSURANCE**

- 5.01 **Indemnification.**
- (a) Each party hereby agrees to indemnify and save harmless the other and their respective councillors, officers, employees and agents for any claims, demands, costs, expenses or liabilities (including legal fees) arising out of,

from or in connection with the breach or non-performance by them or their respective councillors, officers, employees or agents of their respective obligations under this Agreement, subject to the limitations set forth in Section 5.02; and

- (b) Oakville agrees to indemnify and save harmless Milton for any claims, demands, costs, expenses or liabilities (including legal fees) arising out of, from or in connection with the operation or provision of the Services.

5.02 **Limitation of Liability.** In no event shall either Party be liable to the other for any indirect, special or consequential damages including lost profit, arising from or in connection with the breach, non-performance or termination of this Agreement or any of the rights or obligations hereunder.

5.03 **Insurance.** Oakville shall, at its expense, maintain in force during the Term and any renewals hereof, naming Milton as an additional insured, the following insurance: comprehensive general liability insurance against claims for personal injury, death or property damage arising out of all operations with respect to the transit services, in amounts not less than Ten Million Dollars (\$10,000,000.00) per occurrence.

## SECTION 6 TERM AND TERMINATION

6.01 **Term.** Unless sooner terminated pursuant to Section 6.02 below, the Services shall commence March 1, 2008 (the "Commencement Date") and shall continue thereafter for an initial term ending February 28, 2011 (the Term). Upon expiry of the initial term, this Agreement shall automatically renew for a further term of one (1) year on the same terms and conditions unless either Party shall have delivered written notice to the other Party no less than four months (4 months) prior to the expiry of the initial term that it elects not to extend or renew this Agreement. If the Parties continue to operate the Services after February 28, 2012 without entering into a renewal agreement, this Agreement shall be deemed to have been renewed on the same terms and conditions as set out herein until such time as a renewal agreement or new agreement is executed by the Parties or the Agreement is otherwise terminated in accordance with the terms of this Agreement.

6.02 **Termination.**

- (a) The Party in respect of which such event has not occurred shall have the right to terminate this Agreement on the happening of any of the following events:
  - i) Oakville fails or is unable to provide the Services in accordance with the requirements set forth in Section 2 and does not correct or remedy

such failure within 60 days after being requested to do so in writing by Milton.

- ii) Milton fails to pay Services Fees due hereunder to Oakville within 30 days following the date the same are due and payable.
  - iii) A Party fails to observe or perform any other of the terms, covenants or conditions of this Agreement to be observed or performed by such Party, provided the other Party first gives the other 30 days written notice of the same, setting forth in detail such breach, and the Party in breach fails to commence diligently and thereafter to proceed diligently and continuously to cure any such failure. In the event such breach cannot be remedied within such 30 day period, such period to remedy shall be extended so long as the Party who breached the same is diligently attempting to remedy such breach; provided that in any event, such breach must have been remedied within 60 days of receipt of notice of breach.
- (b) Either Party may terminate this Agreement for any reason upon nine (9) months written notice to the other Party.

**6.03 Obligations Upon Termination and Expiry.** The following provisions shall take effect upon the occurrence of an event of termination set forth above or on the expiry of this Agreement (subject to any contrary agreement made between the Parties):

- (a) Such termination shall not release a Party from its obligations to make payments due to the date of termination;
- (b) The rights and obligations of indemnification and confidentiality and the limitation of liability contained in Sections 5.01, 5.02 and 7.01 of this Agreement shall survive and continue to bind and or enure to the benefit of the Parties;
- (c) Recognizing that Oakville is required to recruit and retain sufficient labour resources to deliver the Services and that these resources would not be required by Oakville should Milton terminate this Agreement, Milton will be responsible for all costs associated with any employment termination that may result from their termination of this Agreement. Such costs would be limited to employment relationships entered into on or after the August 15, 2004 commencement of the initial Transit Service Agreement.
- (d) The Parties shall immediately return to each other all property in their possession or control which belongs to the other.

## SECTION 7 CONFIDENTIALITY

7.01 **Confidentiality.** Each of the Parties hereto mutually undertakes with each other that, subject to the requirements of the Municipal Freedom of Information Act or unless consent to such use or disclosure is provided, it will not during the continuance of this Agreement or at any time thereafter;

- (a) Itself use, other than in accordance with and for the purposes of this Agreement; or
- (b) Divulge or communicate to any person;

any confidential information relating to the other Party or any personal information relating to an employee or representative of the other Party which it may have received or obtained in the performance of its obligations or privileges hereunder provided that this restriction shall cease to apply to information which is or may hereafter come into the public domain otherwise than by breach of this Agreement. Each Party shall adopt such measures as are reasonably required to prevent the unauthorized use or disclosure of such confidential information.

## SECTION 8 FORCE MAJEURE

8.01 **Force Majeure.** Neither Party shall be responsible to the other for the non-performance of or for delay in performance occasioned by any cause beyond its control, including acts of civil or military authority, embargoes, acts of God, delay of suppliers or inability to obtain or shortages of materials or supplies but, for greater certainty, the shortage of funds by a party thereto, thereby preventing it from discharging its obligations hereunder shall be deemed to be a cause within its control. During the period of such delay, Milton shall have the right to source the Services elsewhere. Milton and Oakville, acting reasonably and in good faith, shall jointly decide whether any such situation is likely to continue for a period exceeding ninety (90) days and if so then either Party shall have the right to terminate this Agreement.

## SECTION 9 RELATIONSHIP

9.01 **Relationship of the Parties.** The Parties are not and shall not be considered to be joint ventures or partners of each other and neither of them shall have the power to bind or obligate the other except as set forth in this Agreement. Oakville shall at all times be an independent contractor to Milton and no other relationship shall be created between the Parties by virtue of this Agreement or any of the acts of the Parties in the performance of this Agreement.

## SECTION 10 NOTICES

10.01 **Notices.** All notices, demands or other communications required to be made or given pursuant to the terms of this Agreement shall be in writing and shall be delivered personally, by courier, by prepaid first class post or facsimile transmission, to the Parties at their respective addresses set forth as follows:

The Corporation of the  
Town of Milton  
43 Brown Street  
Milton, Ontario  
L9T 5H2

Fax: 905-878-6995  
Attention: Jennifer Reynolds

The Corporation of the  
Town of Oakville  
1225 Trafalgar Road  
P.O. Box 310  
Oakville, Ontario  
L6J 5A6

Fax: 905-338-4184  
Attention: Barry Cole

or such other addresses as the Parties may subsequently advise in writing. Any notice, demand or other communication mailed shall be deemed to be received on this fifth (5<sup>th</sup>) Business Day following the date of mailing, if delivered personally or by courier, shall be deemed to have been received on the actual day of delivery provided such day is a Business Day and on the next Business Day if the day of delivery is not a Business Day, and if delivered by facsimile transmission, shall be deemed to have been received on the Business Day following the date the same was delivered. In the event that postal services shall be disrupted due to strike, lockout or otherwise, all notices, demands or other communication shall be delivered personally, by courier or facsimile transmission.

## SECTION 11 MISCELLANEOUS

11.01 **Assignment and Enurement.** No Party may assign this Agreement without the prior written consent of the other Party. This Agreement shall enure to the benefit of and bind the Parties and their respective successors and permitted assigns.

11.02 **Currency.** Amounts to be paid under this Agreement are to be paid in Canadian dollars.

11.03 **Waivers.** No waiver of any provision of this Agreement is binding unless it is in writing and signed by the Party to this Agreement entitled to grant the waiver. No failure to exercise and no delay in exercising, any right to remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of



any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision.

11.04 **Further Assurances.** Each party shall from time to time promptly execute and deliver all further documents and take all further action reasonably necessary or appropriate to give effect to the provisions and intent of this Agreement.

11.05 **Amendments.** No amendment, supplement, restatement or termination of any provision of this Agreement is binding unless the same shall be in writing and executed by both Parties.

SIGNED, SEALED AND DELIVERED )

In the presence of )

) THE CORPORATION OF THE  
) TOWN OF MILTON  
)

) Per: \_\_\_\_\_

) Name:

) Title:

) Per: \_\_\_\_\_

) Name:

) Title:

) THE CORPORATION OF THE  
) TOWN OF OAKVILLE  
)

) Per: \_\_\_\_\_

) Name:

) Title:

) Per: \_\_\_\_\_

) Name:

) Title: