

THIS AMENDMENT AGREEMENT made in triplicate this (fifteen day of) (August, two thousand)

BETWEEN:

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

403 I/C
1st Amendment
August 15, 2000

OF THE FIRST PART:

-AND-

THE REGIONAL MUNICIPALITY OF HAMILTON-WENTWORTH, hereinafter referred to as "the Region",

OF THE SECOND PART:

WHEREAS by an Agreement made between the Ministry and the Region, dated October 11, 1998, (herein called "the Agreement" and as shown in Schedule "D" of this Amendment Agreement), the Parties agreed upon the cost sharing arrangements for the construction of the Red Hill Creek Expressway, whereby the Region would be financially responsible for the design and construction of the first phase of the expansion of the interchange at King's Highway 403, Hohawk Road and Lincoln M. Alexander Parkway, in the Town of Ancaster, Regional Municipality of Hamilton-Wentworth, (hereinafter, the "403 Interchange") as more particularly shown in Part 3 of Schedule "A" of the Agreement.

AND WHEREAS the Parties have since (agreed upon changes to the) reconstruction of the 403 Interchange, the particulars of such changes are set out in this Amendment Agreement.

AND WHEREAS the Ministry has the jurisdiction and control of the highways comprising the 403 Interchange, except for those highways that are under the jurisdiction and control of the Region or local municipality.

AND WHEREAS the Region now wishes to complete the reconstruction of the 403 Interchange in accordance with the modifications for the final stage of reconstruction.

AND WHEREAS the Region wishes to amend the Ministry's Preliminary Design Report (PDR) recommendations as depicted under W.P. 522-90-00, dated November 1997, to combine both the initial and final construction phases into one single phase of reconstruction and to modify the 403 Interchange configuration with a new layout design, as shown in Schedule "A" of this Amendment Agreement, which shall amend Part 3 of Schedule "A" of the Agreement, as provided for in this Amendment Agreement, hereinafter referred to as "the Project".

AND WHEREAS the Ministry is the proponent of the Project as defined in the *Environmental Assessment Act*, R.S.O. 1990, and amendments thereto and the Project will comply with the Provincial Highways Class Environmental Assessment.

AND WHEREAS the Region is the funding partner of the Project and has agreed to carry out all works required to design, tender and construct the Project at the 403 Interchange.

AND WHEREAS it is desirable to set out the details of the work for the Project and incidental work thereto.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and covenants herein contained and the sum of Ten (\$10.00) Dollars paid by each of the parties to the other, the receipt and sufficiency whereof is acknowledged, the parties hereto for themselves and their respective successors and assigns agree each with the other as follows:

1. Paragraph 2 of the Agreement is deleted and the following substituted therefore:

"2. The (Ministry) will be (financially responsible) for the (design and construction of the Q.E.Q, from west of the) (Burlington Street interchange to east of the Centennial) (Parkway interchange, including a new interchange with the Red) (Hill Creek Expressway, while the Region will be financially responsible for the design, tendering and construction of the first and final phase of the expansion of the 403 interchange as more particularly set out in Schedule ~~"B"~~ to this Agreement."

- 2. Paragraph 7 of the Agreement is deleted and the following substituted therefore:

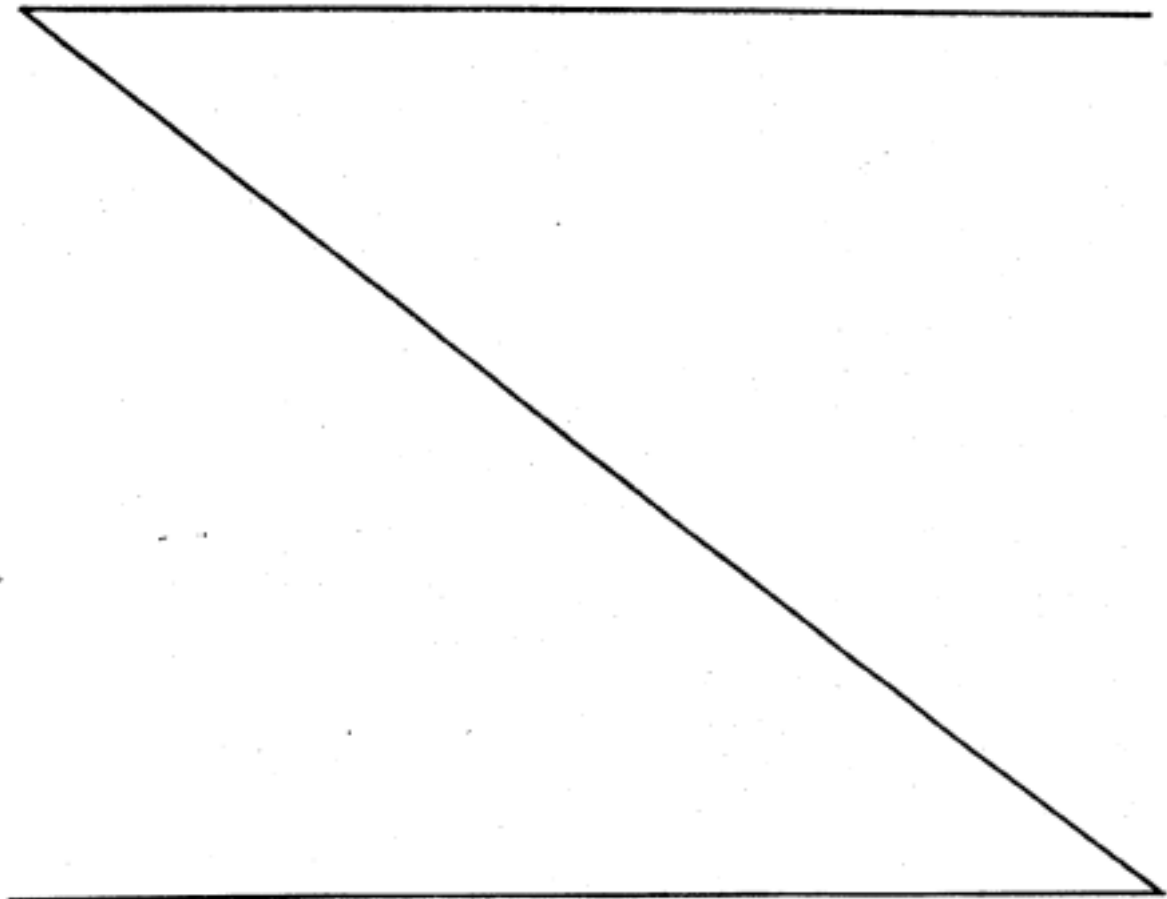
"7. The Ministry concurs with the Region's desired objective ~~(to complete) the design, tendering and construction of the 403 interchange as soon as reasonably possible and preferably by the end of year 2001.~~"

Complete? Not yet. GM reviewing some deficiencies

- 3. Paragraph 14 of the Agreement is deleted and the following substituted therefore:

"14. The (Region) will be (100% responsible) for the (cost of) (design, tendering and construction of the 403 interchange.)"

- 4. The foregoing recitals are true and accurate.
- 5. Part 3 of Schedule "A" to the Agreement is deleted and Schedule "A" attached to this Amendment Agreement is substituted therefore.
- 6. The Agreement is amended by attaching Schedule "B" attached to this Amendment Agreement to the Agreement.

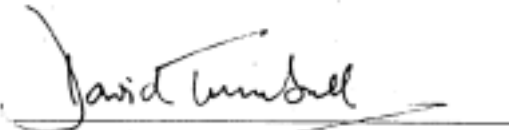


- 7. The parties agree that all of the terms and conditions of the Agreement, save as amended by this Agreement, shall be binding upon the parties.

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

SIGNED AND SEALED this 30th day of NOVEMBER, A.D. 2000

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO, REPRESENTED BY THE MINISTER OF TRANSPORTATION FOR THE PROVINCE OF ONTARIO

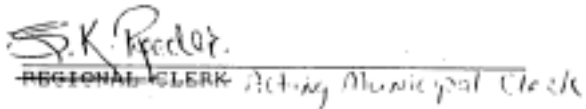


MINISTER OF TRANSPORTATION (ONTARIO)

THE REGIONAL MUNICIPALITY OF HAMILTON-WENTWORTH



REGIONAL CHAIRMAN

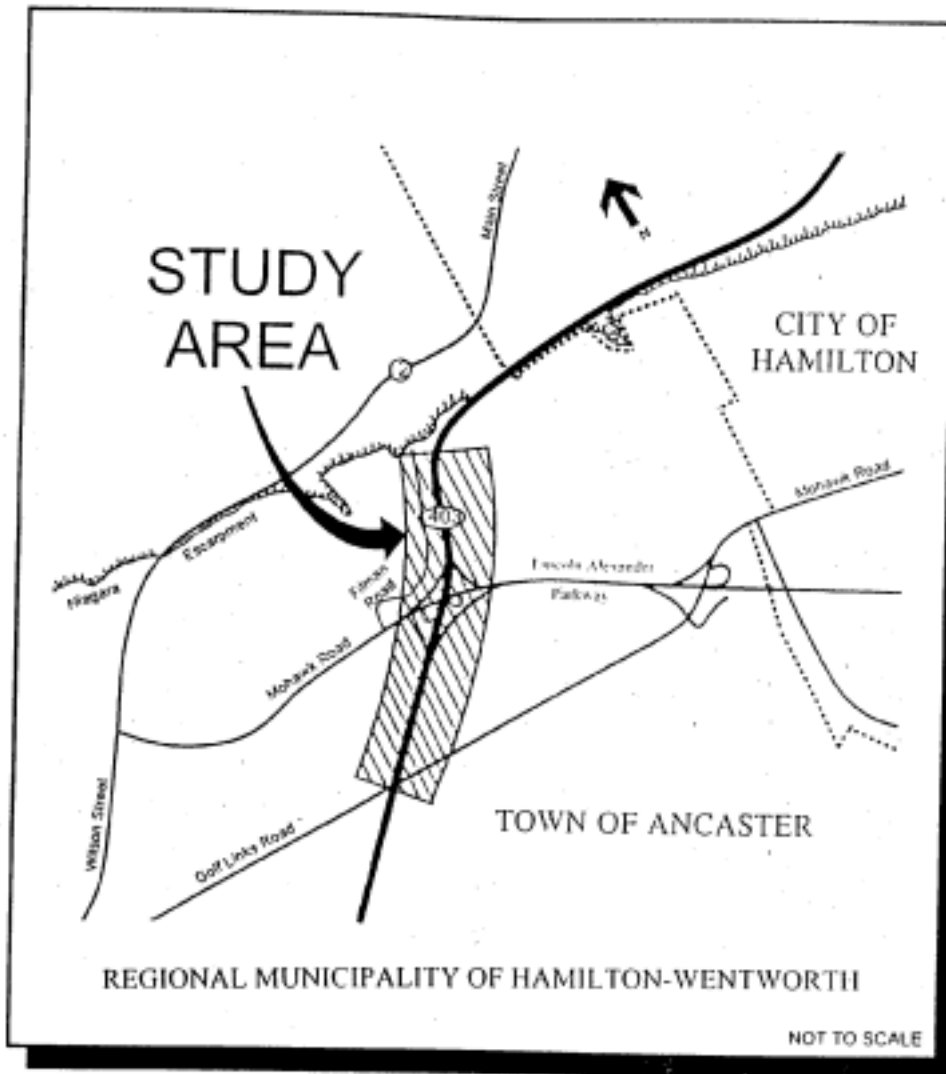


REGIONAL CLERK Acting Municipal Clerk

Handwritten notes and initials:
 CH
 TR
 10/10/00

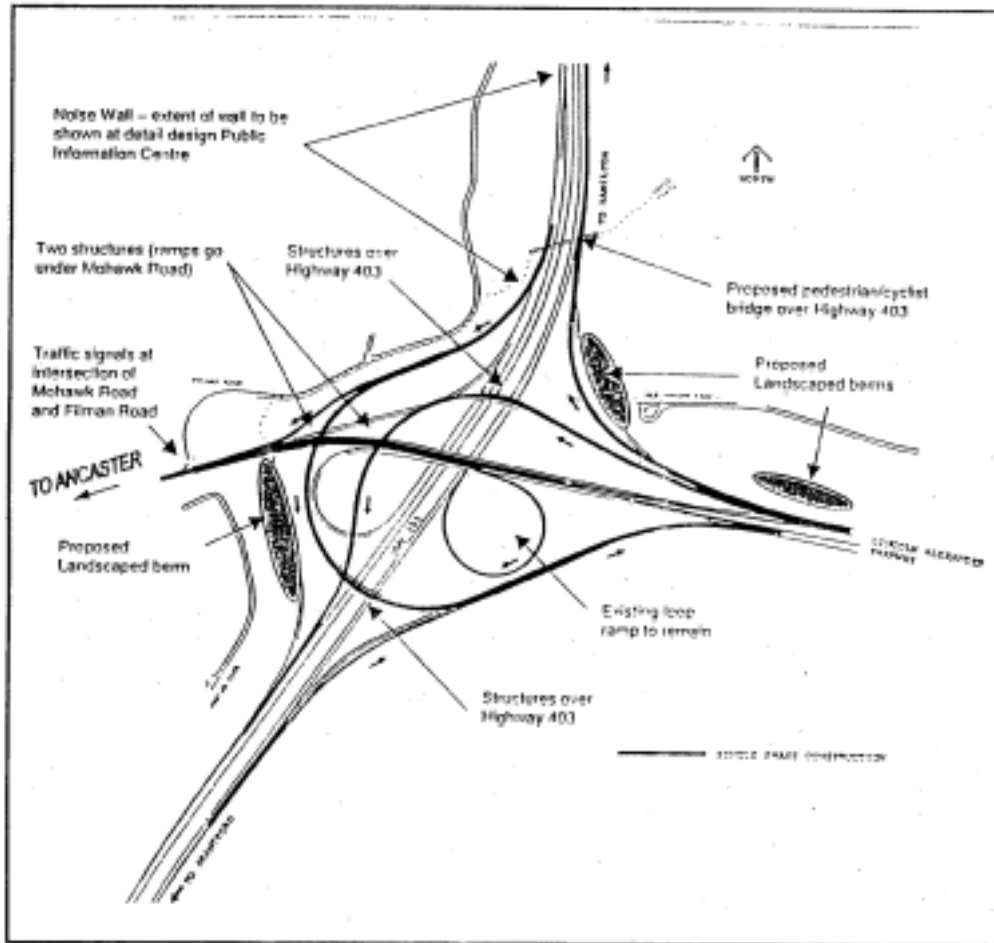
Handwritten notes:
 All copies of 2000
 copies of 2000 11/15/00 S.T.C.
 10/10/00 2000-396
 Approval Transition Board Oct. 10/2000

SCHEDULE "A" OF THE AMENDMENT AGREEMENT
PART I



KEY MAP

**SCHEDULE "A" OF THE AMENDMENT AGREEMENT
PART 2**



Highway 403/LINC Interchange
Modified Ultimate Layout Design
(Not to Scale)

SCHEDULE "B" OF THE AMENDMENT AGREEMENT

Being Additional Paragraphs to be Added to the Agreement
Made between the Parties on October 11, 1998

1. In this Agreement,

"403 Interchange" means the interchange at King's Highway 403, Mohawk Road and Lincoln M. Alexander Parkway, in the Town of Ancaster, Regional Municipality of Hamilton-Wentworth, as more particularly shown in Part 3 of Schedule "A" of the Agreement;

"Contract Administrator" means the consultant retained by the Region, as approved by the Ministry in accordance with this Agreement, for the provision of design and construction administration services in relation to this Project;

"Director" means the Director of the Central Region of the Ministry of Transportation, or his nominee;

"Project" means the work, including design and construction work, to combine both the initial and final construction phases into one single phase of reconstruction and to modify the 403 Interchange configuration with a new layout design, as shown in Schedule "A" of this Agreement.

2. a) The ~~Region~~ shall endeavour ~~to~~ acquire all the property ~~(required)~~ for the completion of the Project. All property, including municipal lands and right-of-way, required for the Project shall be ~~transferred to the Ministry~~ at no cost to the Ministry, ~~upon certification of the Project completion~~ as stipulated in paragraph 11.
 - b) The Ministry will transfer, at no cost to the Region, the ~~Mohawk Road allowance~~ that was abandoned when the Lincoln M. Alexander Parkway was constructed and any other lands the Ministry will deem not required from their purposes.
3. The Region shall carry out the following activities on behalf of the Ministry:
- a) The Region shall be responsible for obtaining the necessary reference plans for the acquisition of property for the Project;

- b) The Region shall inform the Ministry, in writing, when it acquires land for the Project and of all issues regarding such property acquisition;
- c) In the event the Region is not successful in acquiring the necessary property by gratuitous dedication or purchase, such acquisition shall be the responsibility of the Region and the Region shall proceed by way of expropriation in accordance with the Expropriations Act; and
- d) The Region shall pay 100% of the cost of land acquired by purchase or expropriation, including its costs, any purchase costs, surveying costs, appraisal costs, legal fees and disbursements, and all amounts paid by settlement or awarded by tribunal or court under an expropriation. The Region shall also pay 100% of any costs necessary to secure gratuitous dedication of land excluding in that amount the value of the gratuitous dedicated land itself.

4. The [scope] of the Project shall include, but is not to be limited to, all work required to design and construct the 403 [interchange], including grading, structures, drainage, full illumination, traffic signals, utility relocations, hot mix paving, granular, landscaping, staging, detours, signs, pavement markings, property acquisitions, negotiations, and any necessary expropriations, and other miscellaneous work.

5. As part of the Project, [the] Ministry wishes to include a noise [barrier wall] construction [along] King's Highway [403, adjacent] to Filman Road. [The Ministry will provide to the Region the design requirements of the noise barrier and will supply pre-purchased noise barrier materials necessary for the construction of the noise barrier. Such noise barrier materials include only concrete panels and steel posts.]

Noise
BARRIER

Feb
2001

6. The Region, on behalf of the Ministry, shall undertake the design and construction of the noise barrier. The [Ministry] shall [pay] the Region [for the design, site administration &] [inspection and the construction cost] of the noise barrier at a total estimated cost of One Hundred and Forty Nine Thousand only, (\$149,000.00), as shown in Schedule [C]. This is an estimate only and payment shall be made by the Ministry to the Region for the actual costs incurred.

7. The Region will be 100% financial responsible for the design, tendering and construction of this Project, with exception of the noise barrier wall in which the Ministry will be 100% financially responsible for the design and construction.
8. The Region, at its cost, agrees to undertake the following to complete the Project:
- a) The Region shall be responsible for the engineering design, including contract preparation to Ministry specifications and standards. The Region shall tender, award, administer and construct the Project;
 - b) *done* The Region shall undertake the Project in accordance with the Ministry's Provincial Highways Class Environmental Assessment process (Group 'B'), and, on behalf of the Ministry, shall prepare and file an Environmental Study Report Addendum for the Project on the public record.
 - c) As part of the design process, the Region shall determine all utility conflicts and relocation requirements, and co-ordinate all relocations with the affected utility companies. The Region will be responsible for all invoice payments for the relocation of the utility works. Utility companies are to obtain Encroachment Permits from the Ministry for relocation of their utility within the 403 Interchange;
 - d) The Region shall submit design drawings and documents for the Project to the Ministry at least two (2) times during the design process (60% and 90% Reviews) for the Ministry's review and approval, unless otherwise agreed to by both parties. A final design submission shall be forwarded to the Ministry at least three (3) weeks prior to tendering. Upon a satisfactory design package submission, final written design approval shall be given by the Director.
 - e) The Region shall submit details of construction and traffic staging for the Project to the Ministry for written approval prior to tendering, and the details shall be in accordance with all Ministry policies, standards (Manual of Uniform Traffic Control Devices - M.U.T.C.D. and the Ontario Traffic Manual (OTM) Book 7

Temporary Conditions) and procedures.

9. The Region acknowledges and agrees that the Ministry shall provide design and construction liaison for the Project, and provide guidance and assistance with respect to Ministry standards, specifications and materials testing as the Ministry deems necessary. The Region through its Contract Administrator shall be responsible for all materials testing and quality assurance for mix designs, electrical work and appurtenances, granulars, asphalt, concrete and electrical items, in accordance with the applicable Ministry guidelines or standards. Testing will be conducted at a Ministry approved lab facility or equivalent. The Ministry's Construction Office shall monitor the overall construction of the Project for compliance with the Ministry's specifications and the Contract's requirements, and in taking receipt of QA/QC reports.

10. The Region shall:
 - a) design, tender and administer the contract for the construction of the work;
 - b) accept tender submissions only from qualified contractors under the Ministry's pre-qualification system;
 - c) submit to the Ministry, prior to award of the contract, the details of all tenders including bid prices and the Region's award recommendations;
 - d) give the Director at least two (2) weeks written notice prior to commencement of construction of the Project;
 - e) inform the Ministry of any changes to the Project which affect the scope of the Project and shall be subject to the approval of the Director;
 - f) ensure that the Ministry is satisfied with the Region's choice of Contract Administrator and that an approved plan or strategy for supervision, traffic control, administration and quality assurance and quality control is submitted by the selected Contract Administrator for the Ministry's approval. The Contract Administrator must be on the Ministry's approved Consultant Administration Vendor's list for high complexity assignments;
 - g) supervise and direct, through its Contract Administrator, all work to the extent necessary to ensure the fulfilment of the construction of the Project and the completion of the work in accordance with the contract drawings, documents, and plans approved by the Director, and in accordance with Ministry specifications and standards;

- h) determine the quantities of the different kinds of work which are to be paid for under the Project contract;
- i) decide all questions related to the work and construction of the work in compliance with the terms and conditions of this Agreement and, if required, liaise with the Ministry on issues or concerns related to traffic, detours, staging, signing and electrical works. The level of authority of the Contract Administrator and scope change requirements shall be specified by the Ministry as part of the approval of the Quality Assurance and Quality Control proposal. The Ministry shall have ultimate and final control regarding all traffic and staging issues on the 403 Interchange and on the King's Highway 403;
- j) maintain in form and detail satisfactory to the Ministry, records pertaining to the inspection of materials and workmanship, and as requested make the records available for Ministry review and inspection;
- k) be responsible for construction quality assurance in accordance with Ministry standards and specifications and provide quality assurance tests and results in accordance with the Ministry's requirements and provide material summaries at completion of construction;
- l) provide "as built" drawings to the Ministry within 6 months after completion of the Project; and
- m) upon completion of construction, undertake post-construction legal survey of the "fenced-in" Controlled Access Highway (C.A.H.) limits and provide the Ministry with legal survey plans for the lands comprising the 403 Interchange. The limits of the "fenced-in" C.A.H. limits shall be determined by the Ministry at the end of the detailed design phase of the Project.

11. When in the opinion of the Region the Project in this Agreement has been satisfactorily completed the Region shall, in writing, notify the Director, who shall cause the Project to be inspected. At the time of notification by the Region, the Region shall also provide a summary of legal description, which itemizes all property acquisitions for conveyance to the Ministry. If the Director finds the Project has been satisfactorily completed in accordance with the contract drawings and documents, the Director will give the Region written notice that the Ministry approves the Project and certifies the contract complete. Thereafter, the Ministry will be responsible for the maintenance, thereof except as otherwise provided in this Amendment Agreement or in the

Done?

contract documents.

12. This Agreement shall allow the Region to undertake field investigation and construction of this Project without the requirement of a Ministry Encroachment Permit. The field investigation and construction of the Project shall be carried out in accordance with Ministry specifications and standards;
13. The Region shall complete the construction of the Project in conformity with all Ministry policies as disclosed to the Region by the Ministry prior to the execution of the Agreement by the Region.
14. For infrastructure that are under the jurisdiction of the Region, whether within or outside of the Ministry's right-of-way, the Region shall at all times, both during and after construction of this Project, be responsible for the costs of maintenance and/or operations and repair of:
 - a) all bikeway and sidewalk facilities, including the proposed pedestrian/bicycle structure over Highway 403;
 - b) summer and winter maintenance of both the Mohawk Road and the Lincoln M. Alexander Parkway, as per the Ministry's Provincial Highways Directive B-101;
 - c) all sanitary sewers and storm sewers;
 - d) the Region's illumination systems on Mohawk Road and the Lincoln M. Alexander Parkway, including all energy and maintenance costs;
 - e) traffic signals at the intersection of Mohawk Road and Filman Road; and
 - f) all landscaping along Mohawk Road and the Lincoln M. Alexander Parkway.
15. The Region, at the Region's cost and expense, shall be responsible for providing and maintaining for the duration of the construction, a safe roadway condition through the 403 Interchange and the King's Highway 403, within the limits of the Project, and until the construction of the Project is completed and Ministry certification of completion is provided in accordance with paragraph 11. During construction winter shutdown, both the Ministry and the Region shall be responsible for winter maintenance of their own respective roadway facilities.
16. Following the completion of the Project and the Ministry

- After*
 certification of completion as described in paragraph 11, the Ministry shall be responsible for the maintenance of the reconstructed interchange within new C.A.H. limits for the Project. The Ministry shall not be responsible for the maintenance of the infrastructure that are under the jurisdiction of the Region as stipulated in paragraph 14.
17. The Region shall warranty for two (2) years from the day of the issuance of the certificate of completion the quality and workmanship of the Project. If, in the opinion of the Ministry, any deficiencies are found within aforementioned two (2) year warranty, the Region shall repair the deficiency at the expense and cost of the Region.
 18. The Region shall indemnify and save harmless the Ministry from and against any claim, action, cause of action or liability for loss, damage, accident or injury in any manner arising due to, out of, from or in connection with work undertaken and performed by the Region or by its servants, agents or contractors under this Agreement.
 19. Any changes, alterations or amendments hereto, other than as herein specifically authorized shall be made in writing signed by the Region and by the Director.
 20. All notices, demands or requests sent to a party to this Agreement may be served personally or mailed by registered mail, postage prepaid (at any time other than during a general discontinuance of postal services due to a strike, lockout or otherwise or sent by facsimile transmission) and addressed to the party to whom it is given as follows:

If to the Ministry:

The Regional Director
 Central Region
 Ministry of Transportation
 2nd Floor, Building 'D'
 1201 Wilson Avenue
 Downsview, Ontario
 M3H 1J8

If to the Region:

Director of Predesign and Special Projects
 Regional Municipality of Hamilton-Wentworth
 77 James Street North, Suite 320

** Address & title changed*

Hamilton, Ontario
L8R 2K3

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

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

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

21. The Region warrants that it has taken all necessary steps, done all acts, passed all by-laws and obtained all approvals within its powers required to give it the authority to enter into this Agreement.

SCHEDULE "C" OF THE AMENDMENT AGREEMENT
Estimated Cost of Noise Barrier to the Ministry

Estimated Design Fees	= \$ 17,500.00
Estimated Construction Cost of Noise Barrier	= \$100,000.00
Estimated Site Administration & Inspection Fees	= <u>\$ 31,500.00</u>
Estimated Total Cost of Noise Barrier	= \$149,000.00

Note: Site Administration & Inspection Fees for the Noise Barrier is determined from the formula as shown below.

$$\text{Noise Barrier Site Admin. \& Inspection Fees} = \frac{\text{Total Contract Cost of Admin. \& Inspection Fees} \times \text{Const. Cost of Noise Barrier}}{\text{Total Const. Cost of Contract}}$$

SCHEDULE "D" OF THE AMENDMENT AGREEMENT

Aug 2000

MTO/H-W RHCE Agreement

MTO-HAMILTON-WENTWORTH
RED HILL CREEK EXPRESSWAY PROGRAM

THIS AGREEMENT made this 11 day of October, 1998

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO (herein referred to as "Ministry")
represented by the Minister of Transportation for
Ontario.

- and -

THE REGION OF HAMILTON-WENTWORTH (herein
referred to as "Region") represented by the Regional
Chairman for Hamilton Wentworth.

On November 29, 1995 the Province announced an important program to assist the Region of Hamilton-Wentworth in the completion of the Red Hill Creek Expressway (RHCE). Since the time of this announcement significant progress has occurred, including the completion of the East-West portion of the expressway in the fall of last year, attainment of an Environmental Exemption Order for the project and agreement on a process to go forward with a number of initiatives on the North-South section and the interchanges of the RHCE at the QEW and Highway 403.

The Ministry and the Region have now concurred on a set of principles and conditions which will form the basis of an agreement between the two parties to effect the completion of the RHCE. These conditions are listed below.

Principles

1. The Ministry and Region agree to enter into an agreement whereby the Ministry will contribute \$106.75M towards the implementation costs of the RHCE beyond those expended to December 31, 1995.
2. The Ministry will be financially responsible for the design and construction of the interchange at the Q.E.W. while the Region will be financially responsible for the design and construction of the first phase of the expansion of the interchange at Highway 403 referred to as the Initial Phase in the Ministry's Preliminary Design Report W.P. 522-90-00, dated November 1997.
3. The Ministry and Hamilton Wentworth agree that subject to the terms and conditions of the EEO, the target for completion of the RHCE project shall be 2002.

Principles (con't)

4. The Ministry reserves the right to withdraw from the provisions for funding of the RHCE at any time, should the Region not make every reasonable effort to meet the completion date of the project recognizing the terms and conditions of the EEO and subject to the terms of the final agreement.
5. Schedule "A" attached will form the basis of work to be completed on the RHCE showing the proposed highway and interchanges.

Scope

6. The Region as proponent, plans to complete, own, and operate the RHCE from the Highway 403 to the south limit of the interchange with the Q.E.W. Construction of the N-S portion is as described in the EEO, and as shown in Figure 8 of the Region's submission for the EEO.
7. The Ministry and Region agree that it is a desirable objective to proceed immediately with the design and construction of the Highway 403 interchange (Phase I) to connect to the recently opened E-W expressway, the target for completion being December 31, 2000.
8. The Ministry agrees to design and construct the interchange of the Q.E.W. with the RHCE. The Region will act as the proponent within the study limits tentatively defined as Brampton Street in the south and the westerly and easterly limits as indicated in the EEO. The final limits of the interchange will be mutually defined by the staff of the Ministry and the Region.
9. The Region shall arrange for the acquisition of land or such interest in land as may be necessary for the implementation of this agreement.

Administration

10. The Region will submit a Project Plan indicating a contract schedule, contract content, estimated costs, and a cash flow scenario over the expected life of the project. The Region will submit updates of this schedule on a semi-annual basis to Ministry, indicating completed contracts and any proposed revisions.
11. The Region will submit, in a timely fashion, the contract documents, including plans, general specifications, item form, cost estimates, details of property acquisition, and the bidders summary to the Ministry for information and file purposes.
12. The Ministry will contribute to direct costs for purposes of design, construction and administration of the RHCE, but will not contribute to other unrelated work that may be included in these contracts, due to the convenience that the circumstances may afford.

Financial Arrangements

13. The Ministry will be 100% financially responsible for the cost of design and construction of the Q.E.W. interchange with the RHCE.

Financial Arrangements (cont.)

14. The Region will be 100% responsible for the cost of design and construction of Phase I of the Highway 403 interchange with the RHCE.
15. In the event that the project has reached completion and the total provincial contribution of \$106.75 M towards the RHCE has not been exhausted, the Ministry will pay to the Region the remaining funds to the limit of the overall maximum within one calendar year of final RHCE project completion.

Payment Procedures

16. The Ministry will contribute 60% of the total costs of all projects approved and implemented under this agreement effective starting in the fiscal year 1997, subject to the maximum Ministry contribution of \$106.75 M.
17. The Ministry will pay the Region, in addition to the RHCE project construction costs, sixty (60) percent of the reasonable costs for in-year design engineering, field engineering and supervision provided by qualified consultants.
18. The Ministry will pay the Region seven (7) percent of the Ministry portion of the in-year construction, design engineering, field engineering and supervision costs for the Region's administrative overheads.
19. In the absence of this agreement, the Ministry previously paid to the Region in excess of 60% of the RHCE related costs in fiscal 1996/97 and 1997/98, less development charges. To better reflect the estimated 60% contribution by the Ministry to the RHCE portion of the project, both parties agree to reduce Ministry's total contribution to 60% of actual expenditure by the end of fiscal year 1999.
20. Payment will be provided annually based on reported expenditures submitted to the Ministry by February 1st of each year following the year of incurred expenditures. The Ministry will provide payment to the Region by March 31st of each year.
21. Upon written request by the Region, the Ministry will provide a mid-year payment to a maximum of 60% of the actual expenditure incurred for purposes of RHCE up to June 30 of each year. The request must include an invoice and appropriately supported expenditure summary. The balance of the year's financial commitment would then be provided as the year-end payment.
22. The Region will provide to Ministry an affidavit at year-end (December 31) prepared by Region audit staff verifying that all submitted expenditures were incurred exclusively for the RHCE project. Any discrepancy between amounts paid by either party, and the amounts payable by either party as disclosed by audit, shall be promptly adjusted between the parties.

THIS AGREEMENT shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the Minister of Transportation on behalf of the Ministry has hereunto set his hand and the Region has hereunto affixed its Corporate Seal under the hands of its proper officers duly authorized in that behalf.

SIGNED AND SEALED this 22 day of October, 1998.

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

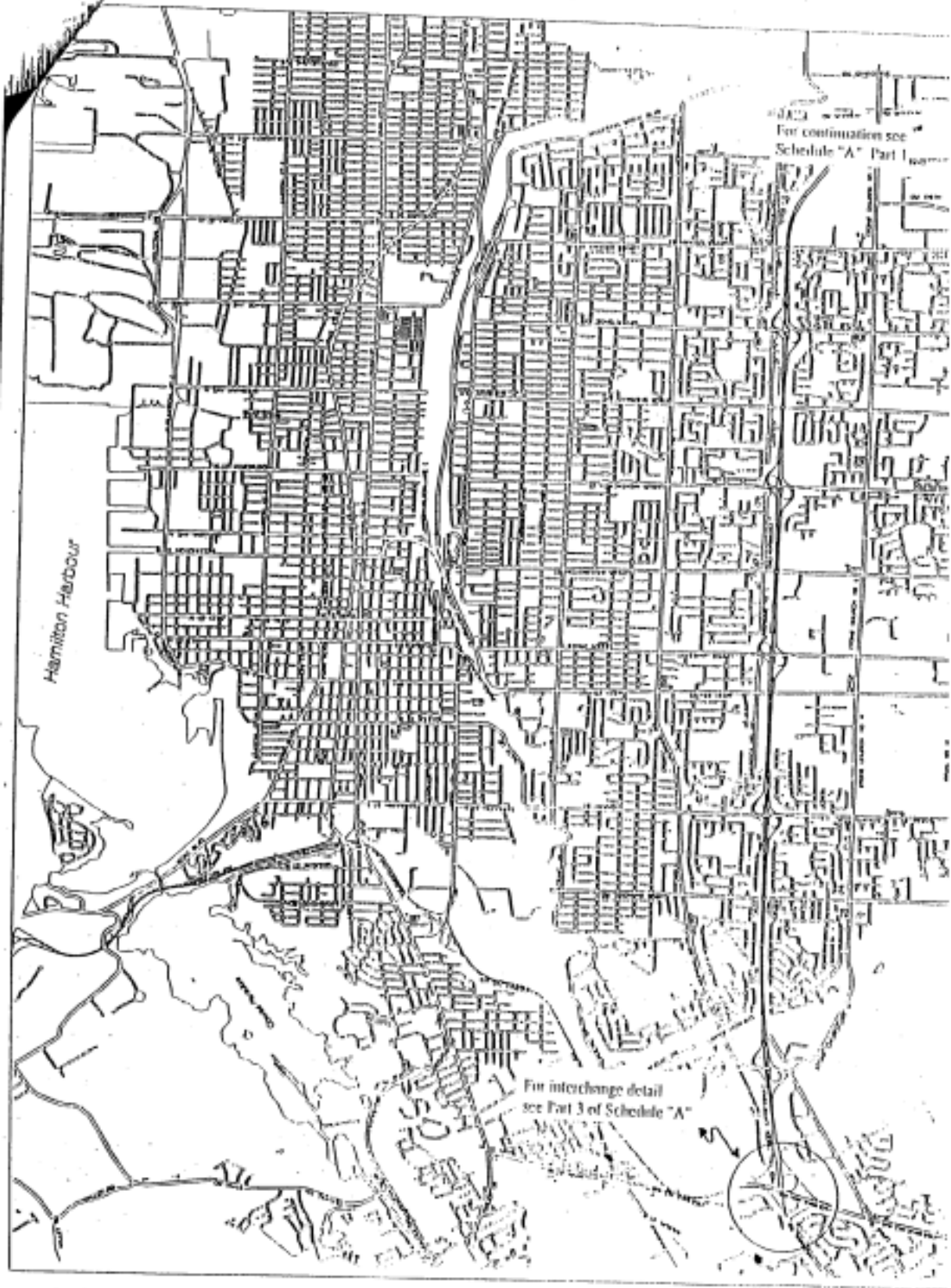

Minister of Transportation

SIGNED AND SEALED this day of , 1998.

The REGIONAL MUNICIPALITY OF HAMILTON-WENTWORTH


Regional Chair

SCHEDULE "A"
PART 2



Red Hill Creek Expressway
Region of Hamilton-Kentworth
Features:

- Minimum 4-lane facility
- Fully Grade Separated
- Controlled Access Highway

