

THIS AGREEMENT made this      day of      ,  
1991.

B E T W E E N:

THE CORPORATION OF THE TOWN OF PELHAM

Hereinafter called the "TOWN"

- AND -

KIMBERLEY DUFFIN

Hereinafter called the "PROPONENT"

WHEREAS the Proponent is desirous of constructing a road and all appurtenances thereto (hereinafter referred to as the "works") within a municipal road allowance located between Lots 17 and 18 in Concession 3 of the former Township of Pelham now in the Town of Pelham in accordance with the conditions and specifications as set out in Schedules "A" and "B" attached hereto;

AND WHEREAS the Town has agreed to allow the said construction subject to certain terms and conditions;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the covenants herein contained, the Town and the Proponent covenant and agree as follows:

1. The Proponent shall be allowed by the Town to construct the works within the Town's road allowance located between Lots 17 and 18 in Concession 3 in the former Township of Pelham, now the Town of Pelham, from its intersection with Sixteen Road to a point approximately 300 metres north of the said intersection.

2. ENGINEERING SERVICES AND INSPECTION:

(a) The works herein shall be undertaken by the Proponent at his own expense and will engage, at his own expense, the services of Profession Engineers who are members of the Professional Engineers Association of Ontario to perform the following engineering services, which require prior approval of the Town's Engineer:

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- (i) preliminary investigation;
  - (ii) lay-out drawings and design criteria of roads and services;
  - (iii) detailed estimates of cost;
  - (iv) contract drawings and specifications;
  - (v) application to the Ministry of the Environment for necessary approvals;
  - (vi) calling of tenders if so requested by the Town;
  - (vii) analysis of bids and recommendations of the Town;
  - (viii) setting out the work;
  - (ix) supervision of construction; and
  - (x) preparation of progress certificates on the works undertaken by the Proponent and supply copies of each certificate to the Town Engineer (having regard to utility agencies, e.g. hydro, gas, telephone, etc.)
- (b) The said Professional Engineer shall file with the Town Engineer prior to registration of the Agreement, a written undertaking:
- (i) that he has been engaged by the Proponent to inspect all works on a regular basis from time to time so often as he deems necessary.
  - (ii) that to the best of his ability he will ensure that the works will be done in accordance with the contract drawings and specifications and all other provisions of this Agreement;
  - (iii) that all phases of the works will be subject to the approval of the Town Engineer, and
  - (iv) that he will provide the Town Engineer, prior to the acceptance of the works by the Town Engineer on behalf of the Town, with a complete set of mylar drawings or certified true copies thereof suitable for making reproductions of the works as constructed pursuant to this Agreement, as well detailed engineering data.

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The tracings or certified true copies and detailed engineering design shall be in the following form:

- (1) tracings shall be plan-profile reproducible A1 size sheets and ink lettering;
- (2) title blocks to be placed in lower right-hand corner and shall indicate nature of work, location, limits and scales;
- (3) plan profiles shall be fully detailed and where reference is made to other construction drawings, specific reference to those drawing numbers shall be made;
- (4) horizontal ties shall be made to property lines;
- (5) levels shall be to datum and all field surveys shall be tied into Geodetic Bench Marks.

(v) that he understands that any contractor employed by the Proponent shall, as a condition of such employment, be approved by the Town Engineer.

(vi) that he will provide a certificate at the completion of the construction indicating that the works have been installed in general accordance with the plans and specifications as hereinafter set out.

3. INSPECTION BY TOWN ENGINEER:

All works undertaken by the Owner pursuant to this Agreement shall be inspected by the Town Engineer from time to time and so often as he shall deem necessary.

4. ENGINEERING:

(a) The Proponent shall deposit with the Town, cash in an amount equal to the estimated fees and disbursements billed to the Town by its Engineer for services performed by its Engineer in connection with the construction of the works, which will include the costs of administration, engineering and supervision. All such fees shall be as set out in the Schedule of Fees for Consulting Engineers Services recommended by the Association of Professional Engineers of Ontario.

(b) Such deposit will also include wages of the Town Inspector including overhead and the cost of subsequent compaction testing and shall be at the rate as set out.

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(c) The total costs as set out above are estimated to be \$5,000.00; however, it is agreed that if the total actual fees & disbursements are less than the estimated amount, the balance will be returned to the Proponent. If the fees and disbursements are more than \$5,000.00 the difference will be paid by the Proponent to the Town within 30 days of the invoice date.

(d) Any work performed by the Town Engineer pursuant to the provisions of this Agreement shall not be deemed to be an assumption by the Town Engineer of any liability of any nature or kind in connection with such work or release of the Proponent, by the Town, from his obligations pursuant to this Agreement.

5. REGIONAL INSPECTION:

The Regional Municipality of Niagara shall have the right at any time to inspect any of the works in progress, at no cost to the Proponent. Since the proposed road intersects a Regional Road it will be necessary for the proposed works to be reviewed by the Region.

6. CONSTRUCTION OF SERVICES:

The Proponent agrees to construct and pay the whole cost of such construction and materials required for all of the works referred to in Schedules "A" and "B" attached, hereto, and in accordance with the conditions and specifications contained in such schedules.

7. CONTRACTORS:

Before commencement of any works, the Proponent shall show satisfactory proof to the Town Engineer that the proposed contractors or sub-contractors, to whom the Proponent proposes to let or submit any part of the works, have, in the opinion of the Town Engineer, sufficient and valid liability insurance policies, a certificate from the Workers' Compensation Board showing that the contractor is in good standing; and, evidence satisfactory to the Town Engineer that the contractor is qualified, experienced and has equipment to successfully complete the works. Any contractor employed by the Proponent shall, as a condition of such employment, be approved by the Town Engineer.

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8. PERFORMANCE BONDS:

The Proponent shall obtain from its contractor(s) a performance bond to ensure the completion of all the works that are called for by this Agreement and each bond shall cover any corrective work required for the maintenance period as defined in Clause 22. Each bond shall be in the amount of fifty percent (50%) of construction value.

9. LETTER OF CREDIT:

The Proponent shall provide the Town with an Irrevocable Letter of Credit or Cash from a Canadian Chartered Bank or Trust Company for an amount equal to 100% of the estimated costs of construction of the works. The Letter of Credit shall be valid for a period of at least one year. Upon application by the Proponent, the Town may reduce the amount of the Letter of Credit or cash from time to time, provided that the remaining security held by the Town shall at least equal 110% of the estimated cost of the works still to be constructed. The Letter of Credit shall be renewed by the Proponent as necessary and any such renewal shall be confirmed at least 14 days prior to expiry. If such renewal is not confirmed, the Town shall draw on the Letter of Credit. At the time of final acceptance of the works by the Town, the Letter of Credit or remaining cash shall be returned to the Proponent.

10. CONSTRUCTION LIEN ACT SECURITY DEPOSIT

In order to secure the Town with respect to its obligations under the Construction Lien Act, the Proponent shall deposit with the Treasurer, upon the execution of this Agreement, a letter of credit or cash in the amount of 10% of the cost of the design and construction of the works as estimated by the Town Engineer. Upon the receipt of claims for liens filed pursuant to the provisions of the Construction Lien Act with respect to the construction of the works, the Town shall be entitled to call upon the said Letter of Credit or Cash in order to meet the Town's obligations pursuant to the provisions of the Construction Lien Act.

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11. CASH DEPOSITS AND LETTERS OF CREDIT

(A) CASH DEPOSITS

The Proponent will be required to deposit cash equal to the sum of:

(a) engineering fees (Clause 4)	\$5,000.00
(b) the cost of power and lighting installation unless other satisfactory arrangements have been made with Ontario Hydro (Clause 17)	<u>NIL</u>
TOTAL .....	\$ 5,000.00

(B) LETTERS OF CREDIT, CASH OR CERTIFIED CHEQUE

(a) construction of services	\$50,000.00
(b) Construction Lien Act Deposit	<u>\$ 5,500.00</u>
TOTAL .....	\$55,500.00

12. RETURN OF DEPOSITS:

Unless otherwise directed by the Town Council, the Town shall, upon satisfactory completion of all of the works and subject to the provisions of this Agreement authorizing deductions therefrom, return upon the written application of the Proponent the remainder of the cash deposit or Letter of Credit provided in paragraphs 11 (a) and 11(b) herein. The Treasurer, after receipt of satisfactory securities, shall, out of the monies on deposit, pay any engineering fees and maintenance costs still owing and shall return the balance, if any, to the Proponent. Should the deposit provided in paragraphs 11 (a) and 11 (b) be insufficient to pay the inspection and administration fees or other charges payable by the Proponent, the Town shall invoice the Proponent for the balance and the Proponent shall pay such balance within thirty (30) days of the invoice date.

13. MATERIALS:

All the works required hereunder shall be done and performed to the satisfaction of the Town Engineer, and all materials required for the said works shall be supplied to the specifications and directions of the Town Engineer.

14. STRIPPING TOPSOIL:

The Proponent shall not remove any topsoil from the immediate area of the road allowance without first obtaining written approval from the Town.

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15. STRIPPING AND TREE REMOVAL:

The Proponent shall remove from the road allowance, any trees, brush, growth, or surplus earth, or other materials as may be designated by the Town Engineer.

16. SNOW PLOWING:

During the guarantee period, the Town agrees to provide any snow clearing and/or sanding services which may be required to provide access to properties abutting on the works.

17. NATURAL DRAINS:

The Proponent shall not change or do any work that will prejudicially affect any natural watercourse or drainage ditch without making full and proper provisions for the continuance of such drainage facilities. The proposed proper provision to be made by the Proponent shall be subject to approval of the Town Engineer. In the event changes are made, after having been approved by the Town Engineer, the Proponent nevertheless shall be solely responsible for any damage caused thereto, shall indemnify and save harmless the Town therefrom.

18. HYDRO:

The Proponent shall have the option of designing his own power distribution system, calling the tenders, and letting the contract for said work, subject to approval of all engineering design layouts by Ontario Hydro and subject to Ontario Hydro inspecting the installation.

19. REPLACING THE UTILITIES:

The Proponent shall assume complete responsibility and make all necessary arrangements for the moving or disturbance of any hydro-electric, gas or telephone pipes, conduits, wires or pole lines, or any other public utility works as required or approved by the Town Engineer, and shall be solely responsible for any damage caused to the said pipes, conduit, wires, pole lines, hydrants or other works.

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20. LIABILITY INSURANCE:

Before commencing any of the works provided for herein, the Proponent shall supply the Town with a Liability Insurance Policy (with no exclusions) in a form satisfactory to the Town, and in an amount not less than One Million Dollars (\$1,000,000.00), indemnifying the Town until the issue of the certificate referred to in Clause 23, from any loss arising from claims for damage, injury or otherwise in connection with all work done by the Proponent, his employees, servants or agents, or any independent contractor. The Proponent shall submit to the Town evidence from the Insurer that the premium for the said Policy has been paid for a period of one (1) year and thereafter on an annual basis during the term of this Agreement.

21. ACCEPTANCE OF WORKS COMPLETED:

The Town agrees to pass, within a reasonable period of time, the necessary by-law documents authorizing its acceptance of the works in accordance with Clause 22, upon rectification of any deficiencies discovered at an inspection by the Town Engineer, one (1) year after the Proponent's professional engineer has provided the Town with a certificate of completion in accordance with Clause 2 (b) (vi).

Should the Proponent not be able to meet the above criteria, he may apply to the Town for acceptance of the works and the Town, in its discretion, may modify the above criteria.

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22. MAINTENANCE:

The Proponent guarantees for a period of one (1) year from the date of the Proponent's engineer's certificate of completion (referred to in Clause 2 (b) (vi)), proper functioning of the works in a manner satisfactory to the Town Engineer, and undertake and agree with the Town to indemnify it from any and all costs, expenses, fees, disbursements or charges of any manner whatsoever whether direct or indirect incurred by the Town and occasioned by the failure or partial failure of any or all of the works during the guarantee period.

23. TOWN'S ENGINEER'S CERTIFICATE:

Upon compliance with the terms of this Agreement, and upon completion of all the said works in accordance with the specifications and direction of and to the satisfaction of the Town Engineer, and upon payment of all financial requirements herein, the Town Engineer under authority of resolution of Council shall at the expiration of the Proponent's maintenance period above defined and upon written application by the Proponent, issue a certificate stating same to the Proponent. Upon the said certificate being issued ownership of all the works referred to herein shall be vested in the Town.

24. INDEMNIFICATION:

The Proponent hereby agrees and undertakes to save harmless and keep indemnified the Town, its successors and assigns from and against all manner of actions or claims for loss, costs, charges, damages, injuries, expenses or otherwise, arising before the issue of the certificate referred to in Clause 23 hereof, in connection with the work required to be done herein by the Proponent, his contractors, servants or agents during the period of construction and during the guarantee period provided in Clause 22 of this Agreement.

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25. DEFAULT:

(a) If the Proponent shall fail to pay any monies payable pursuant to this Agreement and such monies shall be in arrears and unpaid for a period of thirty (30) days after they shall become due or if the Proponent shall be notified of any default in the observance or performance of any covenant on his part herein contained and fail to correct or rectify such default within thirty (30) days, the Town may terminate this Agreement at its sole discretion, by delivering to the Proponent notice in writing to that effect and upon such delivery, this Agreement shall cease, but without prejudice to any rights of the Town which had accrued hereunder before such cancellation.

(b) If the Proponent shall be in default in the performance of any covenant on his part herein contained, except the covenant to pay money, the Town may advise the Proponent and then perform such covenants for the account of the Proponent and shall not be liable for any loss or damage to the Proponent or his property or to the person or persons and property of his agents, invitees or licensees, caused by the acts of the Town in so remedying the default of the Proponent save such as are due to the negligence of the Town. If the Town is at any time compelled to elects to pay any sum of money, by reason of the failure of the Proponent to comply with or elects to incur any expense, including legal fees, any sum so paid by the Town shall be paid by the Proponent to the Town upon demand.

26. SCHEDULES:

The provision of all Schedules attached hereto shall form part of this Agreement.

27. ONTARIO HYDRO:

(a) The Proponent must provide Ontario Hydro with a copy of the plans of the proposed works for review and comment.

(b) The Proponent must provide 48 hours notice to Ontario Hydro prior to any physical alteration of the subject lands and further must notify Ontario Hydro when the grading and servicing has been finalized.

(c) The Proponent must not use Ontario Hydro lands for access purposes or for the storage of fill or materials during development or construction.

28. MINISTRY OF CITIZENSHIP AND CULTURE:

The Owner agrees to cease construction and immediately notify the Ministry of Citizenship and Culture, Heritage Branch if at any time during construction buried archaeological deposits are discovered and that construction will not recommence until such time as authorized by the Ministry of Citizenship and Culture, Heritage Branch.

29. NOTICE:

Any notice, demand, acceptance, or request provided for in the Agreement shall be in writing and shall be deemed to be sufficiently given if personally delivered by registered mail (postage prepaid) as follows:

To the Town at: -

The Corporation of the Town of Pelham  
20 Pelham Town Square  
P.O. Box 400  
Fonthill, Ontario  
LOS 1E0

Attention: Town Clerk

or such other address that the Town may from time to time designate in writing and to the Proponent by delivery to or by mailing by registered mail addressed to: -

Mrs. Kimberley Duffin  
P.O. Box 1427  
Fonthill, Ontario  
LOS 1E0

or any such address that the Proponent may from time to time designate in writing and every such notice shall be deemed to have been given upon the day it was so delivered or on the fifth day after the date upon which it is mailed by registered mail.

30. ENTIRE AGREEMENT:

This Agreement constitutes the entire Agreement between the Parties hereto pertaining to the subject matter hereof and there are no other written or verbal agreements or representations between the parties hereto pertaining to the subject matter hereof. Any amendments to the Agreement shall be in writing and signed by all parties hereto.

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31. VALIDITY OF TERMS:

If any term, clause or provision of this Agreement shall be adjudged to be invalid, the validity of any other term, clause, or provision shall not be affected, and such invalid term, clause, or provision shall be deleted from this Agreement.

32. LAWS OF ONTARIO:

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

33. SUCCESSORS:

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors and administrators, successors, transferees, and permitted assigns.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement by affixing their respective Corporate Seals duly attested by the proper officers in that behalf.

SIGNED, SEALED AND DELIVERED ( THE CORPORATION OF THE  
- In the Presence Of - ( OF PELHAM

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( Ind Collins  
( MAYOR

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( Mary Heckett  
( CLERK

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( Kimberley Duffin  
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Alan R. Munnell  
WITNESS

## S C H E D U L E

" A "

### ROADWAYS

#### PAVEMENT -

The road shall be designated in accordance with the C.G.R.A. publication "A Guide to the Standard Design of Flexible and Rigid Pavements in Canada". Pavements shall be designed for ADT = 1000 vehicles and an anticipated life of 20 years.

#### CROSS SECTION -

The roadway cross-section shall be typical rural road section as outlined in the current Town Standards.

#### SUB-SURFACE DRAINAGE -

Adequate sub-surface drainage shall be provided in soils where the percolation rate at road earth grade is slower than 25mm per hour.

#### DUST CONTROL -

The Proponent will be required to provide dust control adequate in the opinion of the Town Engineer during the period of road usage prior to the placing of the surface treatment.

## SCHEDULE

" B "

### STREET SIGNS

The Proponent shall supply and erect a checkerboard sign at the end of the road to the satisfaction of the Town. The Town shall install a stop sign, street sign and no exit sign to its standards and invoice the Proponent for the cost of the labour and materials. The Proponent shall pay the Town within thirty (30) days of the invoice date of the aforesaid.