

C O R P O R A T I O N
O F T H E
T O W N O F N I A G A R A - O N - T H E - L A K E
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**A BY-LAW TO AUTHORIZE A SERVICING AGREEMENT BETWEEN
THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE
AND CRAIG TUNNICLIFF**

**BE IT ENACTED AS A BY-LAW OF THE CORPORATION OF THE TOWN OF
NIAGARA-ON-THE-LAKE as follows:**

1. **THAT** the agreement dated the 30th day of August 30. 2021 between the Corporation of The Town of Niagara-on-the-Lake and Craig Tunnicliff, be and it is hereby approved.
2. **THAT** the Lord Mayor and Clerk be and they are hereby authorized to affix their hands and the Corporate Seal thereto.
3. **THAT** this by-law shall come into force and take effect immediately upon the passing thereof.

**READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS 30TH DAY
OF AUGUST 2021**

LORD MAYOR BETTY DISERO

ACTING TOWN CLERK COLLEEN HUTT

THIS INDENTURE made in triplicates this 30TH day of August, 2021

BETWEEN:

THE CORPORATION OF THE TOWN
OF NIAGARA-ON-THE-LAKE
(Hereinafter called the 'Town')

AND:

Craig Tunnicliff
(The "Developer")

WHEREAS the Town of Niagara-on-the-Lake is the registered Owner of the lands described in Schedule "A" attached hereto and forming part of this Agreement (the "Lands");

AND WHEREAS the Developer has requested the Town enter into a Servicing Agreement to extend Line 4 Road east of Concession 1 Road in order to construct a residential dwelling on an existing lot;

AND WHEREAS the Town, has agreed to permit the said road extension subject to the terms and conditions prescribed herein;

AND WHEREAS the Council of the Town has adopted this Agreement and authorized its execution by By-Law No. 5355-21, passed by the Corporation of the Town of Niagara-on-the-Lake on the 30th day of August 2021

NOW THEREFORE THIS AGREEMENT WITNESSES that the parties hereto, in consideration of the premises and the sum of One Dollar (\$1.00) of lawful money of Canada now paid by each of the said parties to the other (the receipt and sufficiency of which is hereby acknowledged), covenant and agree as follows:

1. DEFINITIONS

- 1.1 Certificate of Completion** means the certificate of completion when all works under the Agreement have been completed, the maintenance period for Operations has expired, and no other obligations under the Agreement remain outstanding other than as may be specified on the date of assumption.
- 1.2 Lands** means all the lands described in Schedule 'A'.
- 1.3 Letter of Credit** means a standby municipal, irrevocable letter of credit issued by a major chartered bank or credit union, posted with the Town pursuant to the terms of this Agreement.
- 1.4 Preliminary Certificate of Completion** means the certificate issued by the Director of Operations upon satisfactory completion of all Services prior to commencement of the maintenance period.
- 1.5 Public Utilities** mean telephone, hydroelectric system, natural gas systems and cable television.
- 1.6 Works** shall mean and include any and all works, services, things, actions and other matters without limitation required to be completed or performed by the Developer as per the approved drawings and pursuant to this Agreement.

2. GENERAL PROVISIONS

- 2.1** The Developer covenants and agrees to commute and pay, upon execution of this Agreement, all designated charges.
- 2.2** The Developer shall prepare cost estimates for the construction of all services and estimate the number of working days associated with the construction of such services upon which the calculation for inspections, Letter of Credit and security deposits shall be based
- 2.3** As per the Town's Street Cleaning Policy, all streets abutting on the Lands or used for access to the Lands during the installation or construction of the Works shall, at all times, be kept by the Developer in a good, clean and usable condition and, if damaged or littered, shall be restored immediately to the Town's requirements.
- 2.4** The Developer shall ensure that all trucks making deliveries to or taking materials from the Lands shall be adequately covered and not unreasonably loaded so as to scatter refuse, rubbish, dust or debris on abutting streets or properties.
- 2.5** The Developer does hereby agree to indemnify and save harmless the Town from any liability for the cost of the Works described in any of the Schedules.

3. ENGINEERING AND INSPECTION

- 3.1** The Developer shall, with the approval of the Town, retain or employ a competent and qualified Consulting Engineering Firm licensed in Ontario, to carry out any professional engineering services required herein, in accordance with the Town's Municipal Design Standards Manual, and approved by the Director of Operations. The Consulting Engineering Firm shall undertake and/or prepare and execute the following:
- 3.2**
- (a) Detailed estimates of costs;
 - (b) Plans, profiles and specifications for the Works;
 - (c) A Geodetic Bench Mark at such locations required by the Director of Operations;
 - (d) Applications for submission to the necessary authorities for approval of the Works prior to their construction;
 - (e) Call tenders for the Works, analysis of bids and recommendations to the Owner including the provision of adequate bonding or other security for the performance of all Works;
 - (f) Construction layout of the Works;
 - (g) Provide full-time competent field supervision of the construction of the Works to the satisfaction of the Director of Operations;
 - (h) Maintain all records of the installation or construction of the Works and submit a copy to the Director of Operations;
 - (i) Supply the Town with a set of the "as constructed" final drawings in a reproducible PDF form (AutoCAD format) of all Works, to the satisfaction of the Director of Operations at the time of the completion of the Primary Services;
- 3.3** The Developer shall be liable for any loss, costs or damages arising out of or attributable to failure by the Consulting Engineering Firm to provide or fulfil the requirements set forth in Sections 3.1 and 3.2 herein and any other requirements arising from the performance of the Consulting Engineering Firm's obligations pursuant to or arising from this Agreement. Prior to any construction of Works, the Consulting Engineering Firm shall provide to the Town proof, satisfactory to the Town,

of the Consulting Engineering Firm's liability coverage for the minimum amount of Five Million (\$5,000,000.00) Dollars per occurrence and that it has errors and omissions insurance in the amount of Five Million (\$5,000,000.00) Dollars per occurrence.

- 3.4** The Developer shall pay the full cost of all inspections and testing, including geotechnical, and all corrective work called for herein and required by emergency conditions, whether performed by the Developer and its agents or performed by the employees or consultants of the Town including overhead. An inspector or inspectors will be assigned to the Lands by the Director of Operations on such basis either full or part-time as at the Director of Operations sole discretion is deemed appropriate during installation of the Works, regardless of who designs the Works. The costs of all Works, testing and inspections done by such inspector or inspectors, shall be solely at the expense of the Developer. The Developer agrees to obey all orders and directives made by the Director of Operations.

4. TENDERS AND CONTRACTORS

- 4.1** All contractors must be approved by the Director of Operations before commencement of any Works and the Director of Operations shall provide his reasons in writing should the proposed contractor not be recommended for approval.
- 4.2** Before commencement of any Works, the Developer shall provide documentary proof to the Town that the proposed contractor has sufficient and valid insurance liability policies for the minimum amount of Five Million (\$5,000,000.00) Dollars per occurrence; a certificate from the Workers' Compensation Board showing that the contractor is in good standing; and, satisfactory evidence that the contractor is qualified, experienced and has all necessary equipment to successfully complete the Works.
- 4.3** The Developer shall give seven (7) days' notice to the Director of Operations prior to the commencement of construction. The Developer agrees to hold a preconstruction meeting in accordance with the Town's Municipal Design Standards Manual, prior to commencement of any Works contemplated by this Agreement. It is the responsibility of the Developer, or his contractors, to notify adjacent and abutting property owners of the work schedule.

5. INSTALLATION OF SERVICES

5.1 General

- (a) The Developer covenants and agrees to carry out all Works in such a manner as to prevent erosion as well as earth, debris and other material from being washed or carried in any manner onto any road, road allowance or highway whether opened or unopened or onto the property of any other Person or Persons. If such earth, debris or other material is washed or carried onto such road, road allowance or highway, whether opened or unopened, or onto the property of any Person or Persons, the Town, its servants or agents, may at its sole and absolute discretion clean and remove such material, rectify any damage caused as aforesaid, and abate any nuisance created by the Developer. The cost of any such Works performed by or at the instructions of the Town shall be paid by the Developer on demand, and this cost may be paid out of any money the Developer may have deposited with or paid to the Town for any purpose whatsoever.

5.2 Roads

- (a) The Developer shall construct all roads in accordance with the plans approved by the Director of Operations. The Developer agrees that no Works shall commence until such time as the designs, plans and specifications have been submitted to and approved by the Director of Operations in writing.
- (b) The Developer agrees to pave all driveways between the edge of the

pavement of the street and to the property line

- (c) The Developer agrees to install all required regulatory, warning and street signage as well as the required line painting.

5.5 Public Utilities

The design and installation of all Public Utilities shall be at the sole cost of the Developer and shall be subject to the terms and conditions of the utility company or commission

5.6 Geotechnical Report and Inspections

The Developer shall prepare and submit to the Town prior to the execution of this Agreement, a report from an independent professional geotechnical soils consultant. The details to be included within the geotechnical soils report are to be reviewed and approved by the Town. The Developer agrees that the Director of Operations may increase the number and/or frequency of any inspections relating to the geotechnical report and the Developer shall pay the full cost of all such inspections.

6. LANDSCAPING AND DRAINAGE

- 6.1** The Developer shall grade and place a minimum of one-hundred millimetres (100 mm) of topsoil, together with hydro-seed, on all portions of road allowances not covered by asphalt or gravel shoulder.

- 6.2** All drainage ditches, swales or depressions shall be final graded, seeded and maintained with approved silt traps prior to the issuance of the Preliminary Certificate of Completion. If the Town determines that the said surface drainage Works have not been maintained and the Developer does not repair the Works within three (3) days of written notice to the Developer, the Town may have the Works repaired and the Developer agrees to pay to the Town the cost incurred thereby.

7. COMPLETION OF SERVICES

- (a) The Developer shall proceed with the installation or construction of the Works required hereunder with all reasonable dispatch and shall complete all of the Services within one (1) year after the date of the registration of this Agreement. The Director of Operations may extend the time for completion of the Services, as he may deem expedient upon the written application of the Developer.
- (b) Prior to the issuance by the Town of the Preliminary Certificate of Completion, the Developer shall:
 - (i) Provide the Director of Operations with a Statutory Declaration in a form satisfactory to the Director of Operations, that all accounts for the installation, construction and maintenance of the Services required to be installed or constructed hereunder have been paid and that there are no outstanding debts, claims or liens in respect of the Services; and,
 - (ii) Provide the Director of Operations with a Certificate signed by the Consulting Engineering Firm certifying that the Services have been fully completed, inspected, tested and maintained in accordance with the provisions of this Agreement hereof and the standards and specifications of the Town and in accordance with the approved plans and specifications as approved by the Director of Operations.
- (c) Upon the completion by the Developer, to the satisfaction of the Director of Operations, of the installation or construction of all of the Services and upon the

satisfaction by the Developer of all other relevant requirements herein, the Director of Operations shall provide the Developer with a Preliminary Certificate of Completion.

8. MAINTENANCE AND ASSUMPTION OF THE WORKS

- 8.1** The Developer shall, at its own expense and to the satisfaction of the Director of Operations, repair and maintain all Works required to be installed or constructed pursuant to this Agreement for the minimum period of one (1) year from the date of the Preliminary Certificate of Completion.
- 8.2** The Town shall, notwithstanding the obligations of the Developer to maintain all Works set out in this Agreement, have the right to enter on the Lands and carry out the necessary maintenance and repairs:
- (a) Without notice to the Developer where, in the sole opinion of the Director of Operations, an emergency condition exists or where the streets have not been kept free of mud, dust and building materials, as per the Town's Street Cleaning Policy; and,
 - (b) Where repairs to or maintenance of the Works have not been completed within twenty-four (24) hours after a notice requiring such repairs or maintenance has been forwarded to the Developer.
- 8.3** The cost of any repair to or maintenance of the Works undertaken by the Town pursuant to the provisions hereof shall be borne by the Developer and the amount thereof shall be paid to the Town within thirty (30) days after a statement of account has been forwarded to the Developer. If the Developer fails to pay the amount due to the Town within such thirty (30) day period, then the Town may, and is hereby expressly authorized by the Developer to, deduct the amount owing to it for such repairs or maintenance from any monies or letters of credit deposited by the Developer with the Town pursuant to the provisions hereof, or to add such sum to the assessment roll for the Lands and collect such monies in the same manner and with the same priority and remedies as taxes.
- 8.4** The Developer agrees that the decision of the Director of Operations regarding required repairs or maintenance to the Works or an emergency state requiring immediate repair or maintenance to such Works shall be final, conclusive and incontestable.
- 8.5** After expiry of the maintenance period provided for in Section 8.1 herein, and provided that all Works required to be constructed, installed or done by the Developer have been completed to the satisfaction of the Town, the Town will issue a Final Certificate of Completion of Services, upon the application of the Developer, and provided that the following items have been submitted to and approved by the Director of Operations:
- (a) A Statutory Declaration in a form satisfactory to the Director of Operations stating that all accounts for the installation, construction and maintenance of all the Works required to be installed or constructed hereunder have been paid and that there are no outstanding debts, claims or liens in respect of all the Works or any of them;
 - (b) A certificate signed by the Consulting Engineering Firm certifying that all the Works have been fully completed, inspected, tested and maintained in accordance with the provisions hereof and the standards and specifications of the Town and the plans as approved by the Director of Operations;
 - (c) The "as constructed" final AutoCAD format (in PDF) construction drawings showing each of the Works as constructed; and,
 - (d) The certificate of a registered Ontario Land Surveyor certifying that he has currently found and replaced, as necessary, all pins or standard iron bars.

The Town may withhold the issuance of the Final Certificate of Completion of Services if, in the sole opinion of the Director of Operations, the Developer is in default of his obligations to repair, construct or maintain any of the Works pursuant to this Agreement

9. INSURANCE

Before commencing the construction of any Works, the Developer shall provide to the Town with evidence of a public liability insurance policy in a form satisfactory to the Town, in an amount of no less than five million dollars (\$5,000,000.00) per occurrence, naming the Town as an insured party and indemnifying the Town and all of its employees, contractors, servants, agents, officials and Council members from any liability arising from claims for damage, injury or loss to Persons or property in connection with the work done or materials furnished by the Developer, its contractors, servants or agents under this Agreement and said policy shall not contain an exclusion for blasting. The Developer shall continue such insurance in force continuously throughout the term of this Agreement and shall submit evidence thereof satisfactory to the Town from time to time, as may be required, that all premiums on such policy or policies have been paid and that the insurance is in full force and effect. Furthermore, the Developer shall provide an endorsement to the effect that the policy or policies will not be altered, cancelled or allowed to lapse without thirty (30) days prior written notice being given to the Town. The issuance of such a policy of insurance shall not be construed as relieving the Developer from responsibility for other or larger claims, if any, for which it may be responsible to indemnify the Town pursuant to the terms of this Agreement.

10. LETTER OF CREDIT

- 10.1** Upon execution of this Agreement and before commencing any of the Works provided for in this Agreement, the Developer shall deposit with the Town a cash deposit or Letter of Credit, as outlined in Schedule "B", in an amount approved by the Director of Operations which cash deposit or Letter of Credit shall be sufficient to guarantee the satisfactory completion of the Works and payments required to be made by this Agreement.
- 10.2** A Letter of Credit, drawn upon a chartered bank or credit union in favour of the Town shall be in the amount referred to in Schedule "B", shall be provided to the Town at the time of the execution of this Agreement, and shall be held by the Town as security for the obligations of the Developer pursuant to any of the provisions of this Agreement. If in the opinion of the Director of Operations, at any time and from time to time, such amounts are required to be increased, the Developer shall pay such additional sum or provide such additional security as may be required as a result of such increase. In determining the sufficiency of the amount, regard need not be had solely to the particulars outlined in Schedule "B", but to the total cost of satisfying all of the obligations of the Developer pursuant to any of the provisions of the Agreement.
- 10.3** A Letter of Credit, as referred to in Schedule "B" shall be in a form acceptable to the Treasurer and contain the following provisions:
- (a) The Letter of Credit shall be security for any obligations of the Developer pursuant to the provisions of this Agreement, without any limitations whatsoever;
 - (b) Drawings on the Letter of Credit shall be permitted upon presentation of a letter from the Town to the credit union or chartered bank claiming default by the Developer under the terms of this Agreement, and such default shall not be limited to the actions of the Developer,
 - (c) Partial drawings shall be permitted; and,
 - (d) If the Town has not determined the extent of the default or the amount required to rectify the default or compensate the Town or third parties as a result thereof, the Town may draw on the full amount of the Letter of Credit without

any requirement to justify the amount of the Letter of Credit.

If the Town is not provided with a renewal of the Letter of Credit at least thirty (30) days prior to its date of expiry, the Town may forthwith draw the full amount secured and hold it upon the same terms that applied to the Letter of Credit.

- 10.4** The Director of Operations will not consider any application for reduction of any Letter of Credit unless and until all Services required by this Agreement have been fully completed to the satisfaction of the Director of Operations and a Preliminary Certificate of Completion has been issued. The amount of the cash deposit or Letter of Credit may, in the sole discretion of the Director of Operations and subject to the review and approval by the Treasurer, be reduced to an amount not less than twenty-five percent (25%) of the original estimate plus the current cost of all uncompleted Works and any outstanding payments required by this Agreement (collectively the "Minimum Letter of Credit Amount Notwithstanding anything herein contained, the amount of the cash deposit or Letter of Credit shall at all times be sufficient to cover the balance of the cost of completion of the unfinished Works, including Works deferred for extended periods and the requirements of the *Construction Lien Act*).
- 10.5** The Developer expressly agrees that the Town shall have the right to utilize and cash any Letters of Credit for purposes of rectifying any and all defaults in any Works commenced under any provisions of, or in any payments required by this Agreement.

11. MAINTENANCE GUARANTEE

- 11.1** The cash deposit or Letter of Credit deposited by the Developer pursuant to Section 10 herein shall, upon the completion of the work and upon the issuance of Preliminary Certificate of Completion by the Town, be reduced in accordance with Section 10.4 and the minimum Letter of Credit amount shall be retained by the Town as a maintenance guarantee to guarantee the workmanship and materials of the Works for a minimum period of one (1) year from the date of the Preliminary Certificate of Completion.

12. DEFAULT

- 12.1** Upon breach by the Developer of any covenant, term, condition or requirement of this Agreement, or upon the Developer becoming insolvent or making an assignment for the benefit of creditors, the Town, at its option, may declare that the Developer is in default. Notice of such default shall be given by the Town in writing to the Developer and, if the Developer does not remedy such default within such time, as provided in the notice, the Town may declare that the Developer is in final default under this Agreement and shall then forthwith give notice thereof to the Developer. Provided that if, in his or her sole discretion, the Director of Operations deems that the failure creates an emergency situation, then the Town can effect the remedies available to it in this Section of the Agreement, without notice to the Developer and without complying with any of the provisions of this Agreement regarding notice to the Developer.

Upon notice of default having been given, the Town may require all Works by the Developer, its servants, , independent contractors and subcontractors to cease (other than any Works necessary to remedy such default) until such default has been remedied and, in the event of final default, all Works as aforesaid may be required to cease. Upon final default of the Town may, at its option, adopt or pursue any or all of, but not be bound by or limited to, the following remedies:

- (a) Have its employees, servants, agents and contractors enter upon the Lands to complete any Works, services, repairs or maintenance wholly or in part required herein to be done by the Developer, and recover the costs thereof from the Developer by action or, in the same manner and with the same priority and remedies as municipal taxes, or draw upon or cash any Letter of Credit or security available to it;
- (b) Make any payment which ought to have been made by the Developer and upon demand recover the amount thereof from the Developer by action or, in

the same manner and with the same priority and remedies as municipal taxes, or draw upon or cash, any Letter of Credit or security available to it;

- (c) Retain any sum of money or cash and Letters of Credit heretofore paid or rendered by the Developer to the Town, for any purpose, and apply the same in payment or part payment for any Works which the Town may undertake or to pay off any construction or other liens against the Lands attributable to work and materials supplied by the Town or others, or otherwise;
- (d) Assume any Works at its option, whether the same are completed or not, and thereafter the Developer shall have no claim or title thereto or remuneration thereto;
- (e) Bring action for damages or to compel specific performance of all or any part of this Agreement; and,
- (f) Exercise any other remedy granted to the Town under the terms of this Agreement or available to the Town in law or equity.

13. INDEMNIFICATION

The Developer hereby agrees, for itself, its successors and assigns to indemnify, save harmless and keep indemnified the Town, its successors and assigns from and against any and all manner of actions, suits, accounts, bonds, claims and demands whatsoever for any loss, charges, damages, injuries, expense or other liability whatsoever to any Person or to any property arising, accruing or happening before the issuance of the Final Certificate of Completion of Services (or after the issuance of such Final Certificate of Completion if such loss, costs, charges, damages, injuries, expenses or other liability is directly or indirectly attributable to the error, nuisance, omission or negligence of the Developer in connection with or arising out of anything done or omitted to be done by the Developer, his contractors, servants or agents pursuant to the terms of this Agreement.

14. CONSTRUCTION STANDARDS

It is agreed that notwithstanding any other provision of this Agreement, all construction undertaken by the Developer pursuant to the terms of this Agreement shall be in accordance with Town standards as interpreted by the Director of Operations.

15. SCHEDULES

- 15.1** All Schedules to this Agreement and all documentation referred to in the Agreement and Schedules (whether attached to this Agreement or not) shall form an integral part of this Agreement.

16. ASSIGNMENT OF AGREEMENT

The Developer shall not assign this Agreement except with the prior written agreement of the Town

IN WITNESS WHEREOF the parties hereto have hereunto affixed their respective corporate seals under the hands of their respective authorized officers in that behalf.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

**THE CORPORATION OF THE TOWN OF
NIAGARA-ON-THE-LAKE**

LORD MAYOR BETTY DISERO

ACTING TOWN CLERK COLLEEN HUTT

WITNESSED BY:

DEVELOPER (Insert Developer's Name)

Signature

Name: _____(print)

Position: _____(print)

I have the authority to bind the Corporation

SCHEDULE "A"
TO A SERVICING AGREEMENT BETWEEN
CRAIG TUNNICLIFF
AND
THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE

Line 4 Road east of Concession 1 Road

SCHEDULE "B"
ESTIMATED COST OF WORKS
TO A SERVICING AGREEMENT BETWEEN
CRAIG TUNNICLIFF
AND
THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE

Item	Reference	Subject	Est. Cost	L of C	Cash
Total					
Preconditions of the Construction of Services:					
1.		Services	\$79,239	\$79,239	
2.					
3.		Public Works Inspection	\$6,000		\$6,000
4.		Maintenance of Public Roads during construction	\$2,000		\$2,000
Total					
				\$79,239	\$8,000