

CITY OF HAMILTON

***PUBLIC WORKS DEPARTMENT
Red Hill Valley Project***

Report to:	Chair and Members Public Works, Infrastructure & Environment Committee	Submitted by:	Peter M. Crockett, P.Eng. General Manager
Date:	April 28, 2004	Prepared by:	Chris Murray Extension 2343 Guy Paparella Extension 5807

**SUBJECT: Haudenosaunee - Hamilton Red Hill Agreements
(PW04055) - (City Wide)**

RECOMMENDATION:

- (a) That Council approve the Haudenosaunee - Hamilton Red Hill Agreements (the Agreements).
- (b) That Council authorize and direct the Mayor and City Clerk to formally ratify and sign the Agreements subject to item (d).
- (c) That the Public Works, Infrastructure & Environment Committee review and endorse all potential contracts described in the Economic Opportunities Sub-Agreement before coming into effect.
- (d) That the City of Hamilton develop an implementation process with the Six Nations community that accepts the Agreements, clarifies key terms and concepts found in the Agreements, and addresses implementation roles and responsibilities.

Peter M. Crockett, P.Eng.
General Manager
Public Works

EXECUTIVE SUMMARY:

The Haudenosaunee - Hamilton Red Hill Agreements (the Agreements) represent an expression of co-operation, respect and good faith, intended to govern the conduct of the Parties in their work together, and is not intended to prejudice any rights of the Parties.

The Agreements speak to the issues of:

- Archaeology and Burials
- Joint Stewardship of Red Hill Valley
- Hunting, Fishing, Gathering, and Trapping
- Medicine Plants
- Tolling
- Human Heritage
- Economic Opportunities

A General Agreement confirms that the aforementioned agreements (also called sub-agreements) are made in the context of the treaties between the Haudenosaunee and the Crown, but that these agreements are not treaties, and will not affect treaty rights. The Agreements are not admissible in a Court of law.

Details of each agreement are summarized in the background section of this report. Financial, staffing and legal implications and policy consequences are also documented at the end.

The Agreements have been approved by the Haudenosaunee Council at the Grand River Territory and await similar support from Hamilton City Council (see Attachment A).

In recent weeks City staff has met with representatives of the Elected Council to understand and where possible resolve expressed concerns. In general, representatives indicate they support the principles and values put forward in the Agreements but also offer other important suggestions. They include:

- Opportunities/benefits that accrue from the Agreements to the Six Nations community should be made clearer.
- Support that might occur from other levels of government for the Agreements would benefit from the three parties working together.
- Mayor Robert Wade of Hamilton and Chief Roberta Jamieson of Six Nations signed a facilitation agreement that represents a commitment that should be brought to a conclusion.

Whether it is necessary or not for the Elected Council to sign the Agreements some might argue it is a matter of politics, a topic City representatives have been told not to get too involved in. With this in mind, staff recommends that an implementation process be developed by the City and the Six Nations community to allow all parties to continue moving forward and working together.

Finally, with respect to Economic Opportunities that may be realized by Six Nations, Expressway Implementation Committee members raised concerns over the approach to contracting such work at their February 24th, 2004 meeting. The intent of recommendation (c) is to make transparent the benefits of completing the necessary work in this manner and to provide information to Committee members that assures them contracts address the interests of this City (e.g., undertaken by qualified parties,

**SUBJECT: Haudenosaunee - Hamilton Red Hill Agreements
(PW04055) - (City Wide) - Page 3 of 8**

reasonably priced, guarantee acceptable quality and meet all necessary insurance/bonding requirements).

BACKGROUND:

The information provided in this report has City wide implications.

In April of 2002, the City of Hamilton and Six Nations community initiated an in-depth and focused dialogue to understand and address important cultural issues centred on the Red Hill Valley. Rather than engage in debate or dispute about the nature of their rights in the Valley the Parties resolved instead to concentrate on agreeing about the nature of their responsibilities and about how those responsibilities will be fulfilled. These agreements reflect those objectives.

From the beginning, the dialogue involved representatives of the Six Nations community (i.e., Haudenosaunee Council at the Grand River and Six Nations Elected Council) and the City of Hamilton. In June of 2003, on behalf of their respective Councils, Mayor Wade of Hamilton and Chief Jamieson of Six Nations signed a facilitation agreement that provided a forum to discuss and resolve matters of shared interest. Shortly after events at Greenhill Avenue began unfolding, Chief Jamieson invited the Confederacy Chiefs to take a lead role in the resolution of key concerns with the understanding that Elected Council representatives would be kept informed and have input to the progress being made. This was confirmed in correspondence dated August 22, 2003 (see Attachment B) wherein the Six Nations Elected Council stated their "willingness to work cooperatively with the Confederacy Council on this matter, as it is critical that our people speak with one voice". In addition, the correspondence "assured that whatever role you decide to play the Six Nations Elected Council will lend its expertise and support to your efforts". With that offer, the Confederacy Council appointed a team of negotiators to work with City representatives. In September of 2003 a second Facilitation Agreement was signed by the negotiators which set out the rules for negotiating.

After many months of dialogue, many hours of seeking common ground, examining best practices, and addressing each other's needs, landmark agreements were produced (see Attachment C). Throughout the discussions, the City representatives were continuously assured by the Confederacy Council representatives that the Six Nations Elected Council was being kept informed and had input into the progress of the discussions. Moreover, the City representatives were told on numerous occasions that the City should not get too involved in the internal politics of the Six Nations community. As such, the Agreements were subsequently approved by the Haudenosaunee Council at the Grand River on January 10, 2004. Therefore, staff recommend the following:

That Council approve the Haudenosaunee - Hamilton Red Hill Agreements (the Agreements).

A brief overview of each agreement follows:

The Facilitation Agreement sets out the rules for the negotiations. It expires when the negotiations are completed.

The General Agreement governs all other sub-agreements listed below. It confirms that the agreements are made in the context of the treaties between the Haudenosaunee and the Crown, but that these agreements are not treaties, and will not affect treaty rights. It sets out how the agreements will be confirmed. It provides definitions for key

**SUBJECT: Haudenosaunee - Hamilton Red Hill Agreements
(PW04055) - (City Wide) - Page 4 of 8**

words. It contains a dispute resolution clause. The agreements are an expression of co-operation, respect and good faith, intended to govern the conduct of the Parties in their work together, and not intended to prejudice any rights of the Parties. They shall not be used as evidence in any Court.

Please note: an earlier ratification process agreement was signed but its requirements were later included in Section 7 the General Agreement.

The Sub-Agreement on Joint Stewardship provides that, instead of debating who has title to the Valley, the Haudenosaunee and Hamilton will work together there. A Joint Stewardship Board, composed of three members of each side, will be responsible for creating and implementing a Master Plan for the Valley. It will have significant control over what happens in the Valley in the future. While the Board will not be able to stop the construction of the expressway, it will have the authority to review – including conducting research and holding public hearings about – any changes to the expressway in the future. The Board will have at least one full-time staff person. The salaries of Board Staff and Board operations will be funded directly or indirectly by Hamilton at a level appropriate to their work and skill level. The Board may also seek its own sources of funding to carry out any of its purposes or projects. Funds from the Red Hill Valley Project will be used to pay the aforementioned costs until the end of 2007 when the Project is open to traffic. Beyond that period, other sources of funds will have to be investigated by all parties involved.

The Sub-Agreement on Burials and Archaeology keeps those two concepts quite separate. The intention is to conduct archaeological work in the Valley to ensure that there are no burials in the path of the Project, and if feasible to have the project planned around any burials that are found. The agreement exceeds the standards of the provincial Cemeteries Act, but allows Hamilton to comply with its terms. The degree of Haudenosaunee control over archaeology – including a permanent presence during all work - sets a standard for future archaeological work.

The Sub-Agreement on Hunting, Fishing, Trapping and Gathering affirms the treaty rights of the Haudenosaunee, and then provides that those rights will be exercised in the Valley subject to rules made by the Joint Stewardship Board for conservation and safety. It also provides for Haudenosaunee priority in certain harvesting of trees, and for the provision of firewood to the Longhouses and elders.

The Sub-Agreement on Tolls provides that there shall be no tolls on Haudenosaunee for using the expressway and that if there are tolls, part of the money will be used to pay for the work of the Joint Stewardship Board.

The Sub-Agreement on Medicine Plants protects the right of Haudenosaunee medicine gatherers to gather in the Valley, but it also provides that they will designate areas where no development should take place because of the medicine plant populations, and provides strategies for the protection of the plants.

The Sub-Agreement on Economic Opportunities will provide for partnerships between Hamilton and the Haudenosaunee on specific work (i.e., contract growing of ecological restoration material, creek construction and other cultural features built into the landscape) in the Valley, as well as for the advertisement of other economic opportunities in local Six Nations papers.

It is important to clarify that these are opportunities and not guarantees of work.

**SUBJECT: Haudenosaunee - Hamilton Red Hill Agreements
(PW04055) - (City Wide) - Page 5 of 8**

Parties recognize that Haudenosaunee sharing in these opportunities may foster Haudenosaunee enterprises that will be mutually beneficial to the Parties in the future. The Parties also intend that the results of their partnership with respect to plants shall be the creation of a viable Haudenosaunee enterprise, and the sustaining of Hamilton's horticultural capabilities. The latter will be positioned to produce plant material that extends beyond the Red Hill Valley Project and into parks and streetscapes managed by the City of Hamilton.

However, as stated in Section 2.9 of the Economic Opportunities Agreement, if despite best efforts no Haudenosaunee contractor is available to undertake an aspect of the work identified for a reasonable cost, with reasonable quality, then Hamilton may make other arrangements for the work in question.

The following adds some of the needed context to understand the Economic Opportunities Agreement:

1. *The growing, planting, monitoring and maintenance of plant materials in the Valley*

The Project's ecological restoration program calls for native plant material to be used (i.e., Carolinian tree, shrub and grass species), and with the Six Nations Grand River Territory holding the largest viable tract of Carolinian forest in Ontario it's clear they have an important resource to offer in close proximity to the Project. As well, because of the limited number of specialized businesses who can provide the amount and type of material needed, it becomes clear that the Six Nations can play a strong role in this endeavour and in time work to become a competitive entity in this burgeoning industry.

2. *The re-alignment, natural channel design and restoration work on the upper two kilometres of the Red Hill Creek*

The current supply of individuals qualified to construct natural channels is very limited in Southern Ontario. We expect that over time the opportunities for natural channel construction will increase and thus the demand for this skilled expertise. The award of this work to a Haudenosaunee contractor is predicated on individuals meeting specific qualifications and the submission of a fair price for the work being offered. The parties will ensure that contractor is qualified and the price for this contract is demonstrably fair and will be stringent in process, transparency and accountability by having one representative from the City of Hamilton and one representative from the Six Nations to peer review contract proposals, with final signing authority by the General Manager, Public Works.

3. *The building of cultural features into the landscape*

The detail design and building of cultural features in the Valley that serve to protect and commemorate 11,000 years of human heritage will provide an important educational experience for people returning to the Valley after the project is completed. Six Nations is home to a number of individuals who are uniquely educated, qualified and skilled to produce such an experience in a respectful way.

Through discussions with the Expressway Implementation Committee, members raised concerns over the approach to contracting such work. The intent of recommendation (c) is to make transparent the benefits of completing the necessary work in this manner and to provide information to Committee members that assures them contracts address the interests of this City (e.g., undertaken by qualified parties, reasonably priced,

**SUBJECT: Haudenosaunee - Hamilton Red Hill Agreements
(PW04055) - (City Wide) - Page 6 of 8**

guarantee acceptable quality and meet all necessary insurance/bonding requirements). As such, staff recommend the following:

That the Expressway Implementation Committee review and endorse all potential contracts described in the Sub-Agreement on Economic Opportunities before coming into effect.

The Sub-Agreement on Human Heritage will confirm Haudenosaunee influence over indigenous heritage sites in the Valley, provide for control over objects that are found as a result of archaeological work, and provide for a heritage complex in the Valley, subject to support from other government and non-government sources.

Some Expressway Implementation Committee members also questioned if the Elected Council needed to ratify the Agreements given their legislated authority at Six Nations. Counsel for the City of Hamilton indicated the City is capable of legally entering into this agreement with the Confederacy Council given that this is not a treaty. However, there remain at this point a number of implementation questions that the Elected Council feel must be addressed so that the Agreements can be clearly understood at Six Nations. More specifically, the terms Haudenosaunee and Haudenosaunee contractor must be clearly defined. Other concerns such as the make-up of the Joint Stewardship Board and transparency surrounding contract opportunities at Six Nations also need to be made clearer.

In recent weeks, City staff has met with representatives of both Councils and has encouraged the development of an implementation process or plan which might potentially resolve the aforementioned concerns. City staff has attended a public meeting with the Six Nations community and has formally requested the Confederacy Council to respond to these concerns and clarify certain terms. The attached correspondence is their response (see Attachment A). Whether it is necessary or not for the Elected Council to sign the Agreements some might argue is a matter of politics, a topic City representatives have been told not to get too involved in. What is important is:

- Mayor Wade of Hamilton and Chief Jamieson of Six Nations signed a facilitation agreement that represents a commitment to formulating a better community relationship.
- The pillars of the community relationship will be based on mutual respect, openness, transparency, and inclusiveness.
- Opportunities/benefits that accrue from the Agreements to the Six Nations community should be made clearer to all.
- Support that might occur from other levels of government for the Agreements would benefit from all parties working together.

With this in mind, staff submits the following recommendation:

That the City of Hamilton develop an implementation process with the Six Nations community that accepts the Agreements, clarifies key terms and concepts found in the Agreements, and addresses implementation roles and responsibilities.

In addition, staff recommend:

That Council authorize and direct the Mayor and City Clerk to formally ratify and sign the Agreements subject to the above implementation process.

ANALYSIS OF ALTERNATIVES:

The Haudenosaunee - Hamilton Red Hill Agreements represent an expression of co-operation, respect and good faith, intended to govern the conduct of the Parties in their work together. They represent a model for resolving controversy through mature, respectful dialogue that focuses on the interests of each community.

In this instance, there are no reasonable alternatives.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial:

Joint Stewardship Board

The Board will have at least one full-time staff person. The salaries of Board Staff will be funded directly or indirectly by Hamilton at a level appropriate to their work and skill level. Additionally, Hamilton will ensure adequate financial support is provided to the Board to enable it to operate effectively and to consult with the Parties and with specialist advisors, and with others. The Board will prepare and submit annual budgets in time with Hamilton's budget process. The Board may also seek its own sources of funding to carry out any of its purposes or projects.

Annual cost is estimated in the order of \$150,000 per year. Funds will be made available through the capital budget of the Red Hill Valley Project to the end of 2007.

Burials and Archaeological Sub-Agreement

Hamilton will continue to fund archaeological and bio-archaeological monitors where such work continues in the Valley (i.e., at sites including Mount Albion Road, Kings Forest Park and Recliner). The latter two sites require a bio-archaeologist. Costs are expected to be in the order of \$30,000.

Tolling Sub-Agreement

The cost (or revenue forgone) is zero unless the concept of tolling is approved by Council under a separate report (see PW04037/FC04050).

Economic Opportunities Sub-Agreement

The potential results of this agreement will require the City to enter into contract arrangements with qualified parties.

Staffing:

No additional staff is required to administer the Agreements.

Legal Implications:

The Haudenosaunee - Hamilton Red Hill Agreements (the Agreements) are not intended to prejudice any rights of the Parties. They are not admissible in a Court of law. The agreements also recognize Hamilton is bound by the applicable laws of Canada and Ontario and are therefore compelled to uphold them.

POLICIES AFFECTING PROPOSAL:

The development of a master plan for the Valley should be reflected in the City's Official Plan.

**SUBJECT: Haudenosaunee - Hamilton Red Hill Agreements
(PW04055) - (City Wide) - Page 8 of 8**

Purchasing Policy #11 will be used where contracting of services is required.

**CONSULTATION WITH RELEVANT
DEPARTMENTS/AGENCIES:**

Copies of the Agreements were circulated to the Expressway Technical Advisory Committee for comment on February 3.

City Manager's Office - Guy Paparella

Planning and Development - Bill Janssen

Finance - Joe Rinaldo/Tony Tollis

Legal - Peter Barkwell/Nancy Smith

Communications - John Gosgnach

Ministry of Transportation - Glenn Higgins (Environmental Planner)

CITY STRATEGIC COMMITMENT:

The Agreements represent a model for resolving controversy through mature, respectful dialogue that focuses on the interests of each community.



Six Nations "Iroquois" Confederacy
GRAND RIVER COUNTRY

Mr. Chris Murray
Acting Director
Red Hill Project
City of Hamilton

Mr. Guy Paparella
Director, Strategic Initiatives
City of Hamilton
City Hall, 71 Main Street West
Hamilton, Ontario L8P 4Y5

Friday, April 23, 2004

Sgé:no Mr. Murray and Paparella,

Thank you for your letter of April 2, 2004.

I would like to respond to the issues you raise, and clarify the terms used in the Red Hill Project Agreement. The term "Haudenosaunee" includes the people of all Haudenosaunee communities, who are of the Six Nations (Mohawk, Oneida, Onondaga, Cayuga, Seneca, Tuscarora) by matrilineal descent or adoption, including the Six Nations of the Grand River.

The term "Haudenosaunee contractor" is used within the Red Hill Project Agreement to ensure that the economic opportunities were made available to genuine Haudenosaunee people, and to avoid situations in which there was only token Haudenosaunee participation in a business or where Haudenosaunee participation in an enterprise was not genuine. The term "Haudenosaunee contractor" will be applied without regard to a person's political affiliation, religion or place of residence.

Be assured that the people who will be appointed to the Joint Stewardship Board will be able to continue the spirit of responsibility, vision and capability that is reflected in the agreements. They will be chosen after the positions have been advertised and all

applicants have been interviewed. As in the implementation of all aspects of our agreement, care will be taken to avoid any possibility of conflicts of interest.

You may be assured that the people appointed to conduct the implementation of the agreements will carry the same integrity and professionalism that Kanowakeron and Gayanesenh have shown during the negotiation of the agreements.

Expressions of support from other governments and entities would be appreciated, and our negotiators will be pleased to discuss with you how this may take place as part of the process of ratification and implementation.

I can confirm that on January 10, 2004, the Confederacy Council at Grand River approved the agreements that had been made with Hamilton, and that the Council expects formal ratification to take place upon the signing of the agreements.

Hopefully I have answered your questions satisfactorily. If you have any further questions, issues I may clarify or bring before the Confederacy Council, feel free to contact me at the following address.

Haudenosaunee Resource Centre
2634 6th Line
R.R. 2
Ohsweken, Ontario
NOA 1MO
Attention: Confederacy Council Secretary

Ph. 905-765-1749
Fax. 905-765-9193

Nyá:węh

A handwritten signature in black ink, appearing to read 'Tom Deer', written in a cursive style.

Tom Deer
Confederacy Council Secretary



City Hall, 71 Main Street West
Hamilton, ON
Canada L8P 4Y6
www.city.hamilton.on.ca

Hamilton

April 2, 2004

Secretary of the Haudenosaunee Council
c/o Paul Williams

Re: Ratification of Red Hill Project Agreements

Greetings:

As we discussed in our meeting of March 31, 2004, it would be helpful to Hamilton City Council in proceeding to ratify and implement our agreements if you could confirm your clarification of certain terms and matters. These are:

1. The inclusiveness of the term "Haudenosaunee"
2. The intent of the use of the term "Haudenosaunee contractor"
3. The intended process of selection of the Haudenosaunee members of the Joint Stewardship Board.

It would also be helpful if you could reiterate your common understandings of how the principles of transparency, accountability to the community, conflict of interest avoidance and due diligence, will guide us in the implementation of the negotiated agreements. Further, it is important to restate our mutual commitment to do everything within our power to ensure that the agreements are implemented effectively, in order that the maximum benefits are received by both communities and that the spirit of cooperation continues into the future.

As you know, we also entered into a facilitation agreement with the Elected Council in July 2003, relating to the Red Hill Project. We are expected to continue that dialogue with the Elected Council in relation to Red Hill issues generally and the implementation of the agreements in particular, so they too can support our achievements.

Finally, could you please forward to us with your response, a copy of the resolution or minutes of the Confederacy confirming the ratification of these Agreements of January 10, 2004.

We look forward to your immediate attention to these significant issues.

Yours truly,

Guy Paparella

Chris Murray



HAUDENOSAUNEE

JAN 12 2004

Mohawk • Oneida • Onondaga • Cayuga • Seneca • Tuscarora

HAUDENOSAUNEE STANDING COMMITTEE ON BURIAL RULES AND REGULATIONS

Head Office

Tonawanda Seneca Nation

7027 Meadville Road via Basom, New York 14013

Tel: (716) 542-424

Fax: (716) 542-424

Box 91

Grand River Territory
Ohsweken, ON NOA 1MO

Tel. [905] 765-4248

Fax. [905] 765-1999

Mr. Chris Murray
Director, Red Hill Project

Mr. Guy Paparella
Director, Strategic Initiatives

January 10, 2004

Dear Sirs;

The Haudenosaunee Council at the Grand River today ratified the suite of Red Hill Valley agreements, as signed by the Haudenosaunee negotiators.

If as part of Hamilton's ratification process it would be helpful for Brian Doolittle or myself to meet with Hamilton councillors or officials, as a means of providing information, please let us know.

Thank you again for the hard work. It has been a pleasure working with you both.

Sincerely,



August 22, 2003

Greetings to the Confederacy Council:

I address you as the historic and continuing guardians of the Treaty rights of the people of the Six Nations.

As you know the elected Council has publicly called upon the City of Hamilton and the Province of Ontario to address the outstanding rights of our people as they relate to the proposed Red Hill Creek Expressway. Unless these rights are addressed we have stated our opposition to any construction activity.

I have also written to you recently stating our willingness to work cooperatively with the Confederacy Council on this matter, as it is critical that our people speak with one voice. It is also important that our people understand and act upon a complete understanding of our history, rights and responsibilities. I believe that in order for this to be achieved most effectively your leadership and support is needed.

Please be assured that in whatever role you decide to play the Six Nations Elected Council will lend its expertise and support to your efforts.

Together with your appointed representatives Norman Jacobs and Chief Arnie General we have already obtained important commitments from the City of Hamilton relating to the protection of our ancestor's archeological materials including the handling of any burial sites in the Red Hill Valley. We have taken the first steps together. However, much more remains to be done and we must use the time available to our best advantage.

For your information we have arranged a public meeting on August 27th at Six Nations Polytechnic to provide the community with information about the 1701 Nanfan Treaty and the impact the Red Hill Creek Expressway and similar developments will have on the territory covered by the treaty. We invite your participation in this information session. As you know as Lands and Resources Portfolio Holder Dave General is our appointed representative in this matter. He has attended the majority of the Red Hill Creek meetings.

I stand ready to meet with you to explore how we can best work together to advance the rights and concerns of the Six Nations People in the Red Hill Valley.

In Unity and Support



Chief Roberta Jamieson
Six Nations of the Grand River Territory

cc. Norman Jacobs
Chief Arnie General

HAUDENOSAUNEE – HAMILTON RED HILL AGREEMENTS

AGREEMENT ABOUT FACILITATED NEGOTIATIONS

Preamble

The Haudenosaunee and the City of Hamilton share concerns and obligations with respect to the stream known as Red Hill Creek, and with respect to its Valley (the Creek and the Valley, in this Agreement, will be called "the Valley");

The City of Hamilton is undertaking a Project in the Valley that will include the construction of a roadway and the relocation and remediation of parts of Red Hill Creek, and will affect vegetation and wildlife. The Haudenosaunee and the City of Hamilton wish to resolve, through negotiations, concerns about the impact of the Project on the Valley.

The Haudenosaunee and the City of Hamilton also share concerns about the protection of burials of indigenous people in the Hamilton area, and about the conduct of archaeological work on aboriginal sites in Hamilton;

In the negotiations, the Haudenosaunee will be represented by negotiators appointed by the Council of the Haudenosaunee at the Grand River Territory;

The Haudenosaunee and the City of Hamilton agree that it is in their mutual interest to have their negotiations facilitated by an independent third party;

The Parties and Michael Coyle (the "Facilitator") agree as follows:

1. Purpose and Context of the Facilitation

The Parties will seek to resolve in good faith matters of mutual interest and, more generally, to improve their working relationship. The first priority of the facilitated negotiations will be to arrive at an agreement on an agenda and a timetable for the negotiations.

The Haudenosaunee have a relationship with the Crown, protected by Treaties. The City of Hamilton does not represent the Crown, but it is a municipal government created pursuant to Crown legislation. This agreement, the negotiations, and any agreement resulting from the negotiations will not affect the Treaty rights of the Haudenosaunee. The resulting agreements will, however, be made consistent with the Treaty relationship and may provide terms for the current implementation and recognition of that relationship.

This Facilitation Agreement does not create any legally enforceable rights or obligations. In any legal proceeding between the Parties, either Party may take the position that statements made in the Preamble or Section 1 were made on a without prejudice basis. Any legal rights arising from the negotiations will be set out in writing in a separate agreement between the Parties.

The Parties acknowledge that the main responsibility for resolving the matters rests with them and not with the Facilitator. The Parties will in good faith make a serious effort throughout the negotiations to resolve the matters under consideration fairly and expeditiously.

2. Role and Responsibilities of the Facilitator

The Facilitator is an independent third party. His role is to help the Parties in the negotiations. He does not represent either Party. Although he is a lawyer, the Facilitator will not give both or either of the Parties any legal advice or opinions.

The Facilitator's responsibilities will include:

- a) reviewing relevant background documents as identified and provided by each of the Parties;
- b) chairing negotiating meetings between the Parties;
- c) drafting meeting agendas in consultation with the Parties, and, if requested, preparing and circulating reports of agreements reached and tasks undertaken;
- d) if requested by both Parties, indicating options for bridging any remaining differences after matters have been fully discussed; and
- e) such other duties consistent with the Facilitator's role as the Parties and the Facilitator agree.

3. Meeting Procedure

The procedure to be followed in negotiating meetings will be as agreed by the Parties and the Facilitator. Unless the Parties agree otherwise, the meetings will be limited to the representatives of the Parties.

4. Confidentiality

a) Facilitation Private

Unless both Parties agree otherwise in writing, the Parties will not disclose anything said or done during the Facilitation, or any records of the negotiations to anyone who is not a Party or their counsel.

The Facilitator will not voluntarily disclose to any person other than a Party or their Counsel, without the permission of the Parties, anything that is said or done during the Facilitation, or any records of the Facilitation.

b) Confidentiality Between the Parties

The Facilitator may share with either Party all information and documents provided by one Party, unless clearly and specifically asked by a Party to keep certain information or documents confidential.

c) Not Evidence For Legal Proceedings

Unless both Parties agree otherwise in writing, neither the existence of this Agreement nor any statements made during, or documents prepared for the negotiations will be introduced by either Party as evidence in any legal proceeding, except that this Agreement may be introduced by either Party in a legal proceeding between them concerning whether there has been consultation between the Parties concerning the Project.

d) Facilitator Not to be Compelled in Legal Proceedings

Neither of the Parties may compel the Facilitator to give evidence in any legal proceedings regarding information disclosed or the Parties' conduct during the negotiations. Neither Party will seek to compel the Facilitator to disclose any documents or records received or prepared by him in his work pursuant to this Agreement.

5. Costs of the Facilitation

The City of Hamilton will pay the Facilitator's fees and reasonable expenses in connection with the Facilitation.

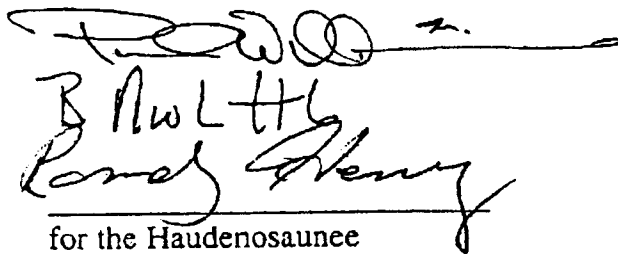
6. Participation Voluntary

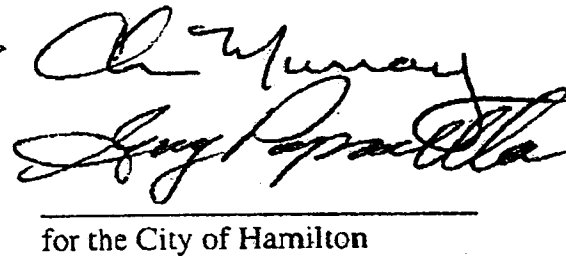
Either Party or the Facilitator may withdraw from continuing to participate in the Facilitation at any time, provided that they give the other participants 30 days' proper written notice that they will be withdrawing.

7. Authority to Sign

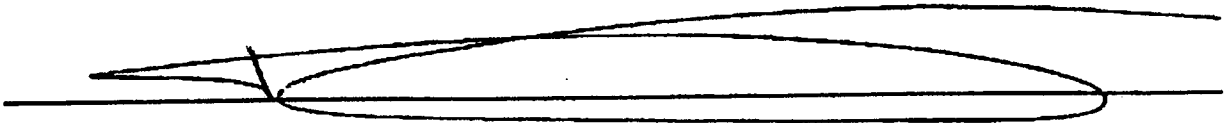
The signatories below warrant that they have authority to enter into this Agreement and the Facilitation on behalf of the Party they represent.

Agreed this 19th day of September, 2003


for the Haudenosaunee


for the City of Hamilton

Michael Coyle



GENERAL AGREEMENT

1. Haudenosaunee Perspectives

Before all else, the Haudenosaunee give thanks. We are reminded that humans are a small part of this world, and that we have been given instructions and responsibilities as part of the web of life. We say:

Today we have gathered and we see that the cycles of life continue. We have been given the duty to live in balance and harmony with each other and all living things. So now, we bring our minds together as one as we give greetings and thanks to each other as People. Now our minds are one.

We are all thankful to our Mother, the Earth, for she gives us what we need for life. She supports our feet as we walk about upon her. It gives us joy that she continues to care for us as she has from the beginning of time. To our Mother, we send greetings and thanks. Now our minds are one.

We give thanks to all the Waters of the world for quenching our thirst and providing us with strength. Water is life. We know its power in many forms—waterfalls and rain, mists and streams, rivers and oceans. With one mind, we send greetings and thanks to the Waters. Now our minds are one.

We turn our minds to all the Fish in the waters. They were instructed to cleanse and purify the water. They also give themselves to us as food. We are grateful we can still find pure water. So we turn now to the fish to send our greetings and thanks. Now our minds are one.

Now we turn towards the vast fields of Plant life. As far as the eye can see, the Plants grow, working many wonders. They sustain many life forms. With our minds gathered together, we give thanks and look forward to seeing Plant life for many generations to come. Now our minds are one.

With one mind, we turn to honour and thank all the Food Plants we harvest from the garden. Since the beginning of time, the grains, vegetables, beans and berries have helped the people survive. Many other living things draw strength from them, too. We gather all the Plant Foods together as one and send them a greeting and thanks. Now our minds are one.

Now we turn to all the Medicine Herbs of the world. From the beginning, they were instructed to take away sickness. They are always waiting and ready to heal us. We are happy there are still among us those special few who remember how to use these plants for healing. With one mind, we send greetings and thanks to the Medicines and to the keepers of the Medicines.

Now our minds are one.

We gather our minds together to send greetings and thanks to all the Animal life in the world. They have many things to teach us as people. We see them near our homes and in the deep forests. We are glad they are still here and we hope that it will always be so.

Now our minds are one.

We now turn our thoughts to the Trees. The earth has many families of trees who have their own instructions and uses. Some provide us with shelter and shade; others with fruit, beauty and other useful things. Many peoples of the world use a tree as a symbol of peace and strength. With one mind, we greet and thank the tree of life.

Now our minds are one.

We put our minds together as one and thank all the Birds who move and fly about over our heads. The Creator gave them beautiful songs. Each day they remind us to enjoy and appreciate life. The Eagle was chosen to be their leader. To all the birds—from the smallest to the largest—we send our joyful greetings and thanks. ———

Now our minds are one.

We are all thankful to the powers we know as the Four Winds. We hear their voices in the moving air as they refresh us and purify the air we breathe. They help to bring the change of seasons. From the four directions they come, bringing us messengers and giving us strength. With one mind, we send our greetings and thanks to the four winds.

Now our minds are one.

Now we turn to the west where our Grandfathers, the Thunder Beings, live. With lightning and thundering voices, they bring with them the water that renews life. We bring our minds together as one to send greetings and thanks to our Grandfathers, the Thunders.

Now our minds are one.

We now send the greetings and thanks to our eldest Brother, the Sun. Each day without fail he travels the sky from east to west, bringing the light of a new day. He is the source of all the fires of life. With one mind, we send greetings and thanks to our Brother the Sun.

Now our minds are one.

We put our minds together and give thanks to our oldest Grandmother, the Moon, who lights the nighttime sky. She is the leader of women all over the world, and she governs the movement of the ocean tides. By her changing face we measure time, and it is the Moon who watches over the arrival of children here on Earth. With one mind, we send greetings and thanks to our Grandmother.

Now our minds are one.

We give thanks to the stars who are spread across the sky like silver. We see them in the night, helping the Moon to light the darkness and bringing dew to the gardens and growing things. When we travel at night, they guide us home. With our minds gathered together as one, we send greetings and thanks to all the stars.

Now our minds are one.

We gather our minds to greet and thank the enlightened Teachers who have come to help throughout the ages. When we forget to live in harmony, they remind us of the way we were instructed to live as people. With one mind, we send greetings and thanks to these caring teachers.

Now our minds are one.

We turn our thoughts to the Creator and send greetings and thanks for all the gifts of Creation. Everything we need to live a good life is here on this Mother Earth. For all the love that is still around us, we gather our minds together as one and send our choicest words of greeting and thanks to our Creator.

Now our minds are one.

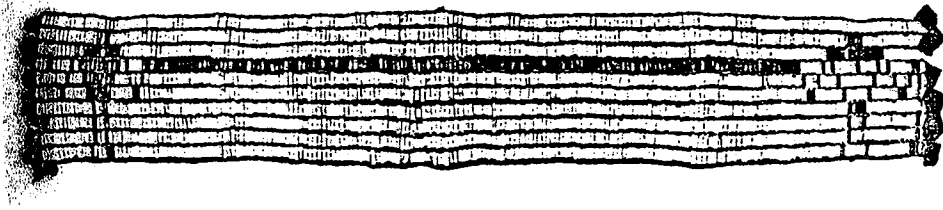
We have now arrived at the place where we end our words. Of all the things that we have named, it was not our intent to leave anything out. If something was forgotten, we leave it to each individual to send such greetings and thanks in their own way.

Now our minds are one.

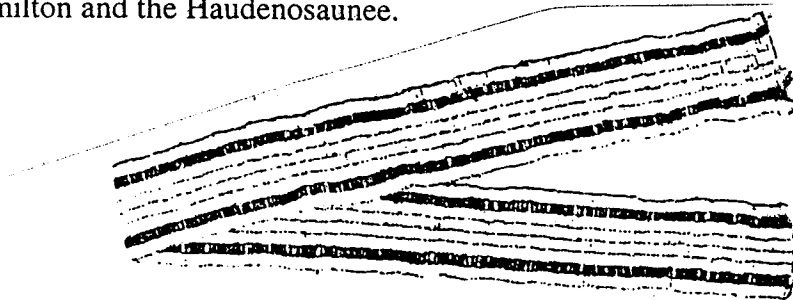
- 1.1 In Haudenosaunee tradition, the Earth is our mother. It is said that we should treat the Earth with kindness and respect, because our walking upon her is like walking upon the face of our own mother. It is also said that we should walk gently upon the Earth, for we are treading upon the faces of our own unborn generations.
- 1.2 Haudenosaunee lawmakers are obliged, by the terms of the *Kaianeren:kowa*, the Great Law of Peace, to consider the impact of any decision on the coming generations.
- 1.3 Haudenosaunee law instructs us that everything should be balanced. Every authority is balanced by responsibility. For example, a right to hunt animals is balanced by the responsibility of protecting the animals from endangerment or extermination. This sense of balance extends to the use of land: the authority to use land or resources includes the responsibility to protect them.
- 1.4 Haudenosaunee law acknowledges the land and living things, not as resources or assets intended for the use and enjoyment of humans, but as vital parts of a larger circle of life, each entitled to respect and protection. In Haudenosaunee thought, it is not possible to separate “land” from the rest of the circle of life—the waters, grasses, medicine plants, food plants, berries and trees; the insects, animals, birds and people; the winds and other unseen forces that benefit the world. Our relationship with all these is one of gratitude and humility. We acknowledge that each part of the natural world seeks to fulfil its responsibility, as we humans do.
- 1.5 Haudenosaunee law, which is inseparable from Haudenosaunee spiritual beliefs and traditions, acknowledges the rights and presence of the ancestors, the people who lived with and on this land for thousands of years. We understand that our obligation, as the indigenous people of this land today, is to respect the legacy of the ancestors; to protect their remains from disturbance; and to avoid engaging in, or permitting any activities that would disturb or disrespect the ancestors.

2. The Treaty Relationship

- 2.1 The Haudenosaunee and the Crown have a treaty relationship that has lasted several centuries. Hamilton, as a municipality created by the Crown's laws, respects and shares in that relationship. The central symbol of that relationship, the Silver Covenant Chain, signifies mutual respect, sharing and help. The Covenant Chain relationship forms the basis and informs the principles of this Agreement.



- 2.2 The Two Row Wampum, *Tekini Tiiohate*, is another symbol of the Treaty relations between the Crown and the Haudenosaunee. The wampum belt bears two parallel dark rows, symbolizing the Crown's sailing ship and the Haudenosaunee canoe. The two watercraft are to navigate the River of Life together, side by side. The two lines do not cross or meet: this symbolizes that the two systems of government are to remain separate, and neither is to seek to control the other. There are three rows of pure white wampum between the dark rows. These symbolize peace, friendship and respect—the principles that keep the two watercraft close together, as well as at a respectful distance. The principles of the Two Row Wampum also inform the principles of this Agreement between Hamilton and the Haudenosaunee.



- 2.3 This Agreement between the Haudenosaunee and Hamilton is an effort to implement the principles of the relationship in a specific context—the Valley—and is not a new Treaty.
- 2.4 While this Agreement is made in the context of the existing Treaty relationship between the Haudenosaunee and the Crown, it shall not in any way derogate from that relationship, nor from any rights of the Haudenosaunee or the Crown pursuant to any Treaty.

3. Rights and Responsibilities in the Red Hill Valley

- 3.1 We are human beings in an increasingly complex and crowded world. We cannot foresee everything, or think of every eventuality. In this Agreement, we are certain to make mistakes. Where this Agreement fails to meet our needs or goals, we are committed to working together to provide remedies. We recognize our limitations. We have done the best we could.
- 3.2 The Haudenosaunee and Hamilton together recognize that the Red Hill Valley is a place of natural and ecological significance, which should, to the extent possible, be protected for future generations.
- 3.3 Both the Haudenosaunee and Hamilton affirm that they have rights in the Valley and acknowledge that they have responsibilities in the Valley.
- (a) The Haudenosaunee affirm that their legal rights in land in the Valley exist as a result of an ancestral and spiritual connection with the land, and a use and occupation of the land, which existed before the arrival of European settlers. The Haudenosaunee are among the descendants of the people who have lived in the Valley for thousands of years. The rights and responsibilities exist in Haudenosaunee law as well as in the laws of Canada.
- (b) Hamilton affirms that its legal rights to land in the Valley exist as a result of the Crown's claims to sovereignty, as a result of Crown grants and patents of legal rights to hold and use the land, and as a result of deeds to Hamilton from individual landholders. Hamilton's jurisdiction over the Valley, as a municipal government, exists as a result of the delegation of authority from the Crown through provincial legislation.
- 3.4 Rather than approach their work in the Valley from the perspective of legal rights and title, the Parties have agreed that the concept of joint stewardship, as stated in this Agreement and its associated sub-agreements, shall be their guide. The Parties acknowledge that they each carry unique and different knowledge and resources, and that bringing these together is in their mutual best interests, as well as in the interests of the Valley.
- 3.5 Rather than engage in debate or dispute about the nature of their rights in the Valley, the Haudenosaunee and Hamilton have resolved instead to concentrate on agreeing about the nature of their responsibilities, and about how those responsibilities will be fulfilled.

- 3.6 The Haudenosaunee and Hamilton share a desire to come to one mind about the issues addressed by this Agreement, and to avoid any present or future conflict concerning those issues.
- 3.7 The Valley has presented the Haudenosaunee and Hamilton with both a challenge and an opportunity. For Hamilton, the challenge has been to find sustainable solutions to its transportation and development needs while respecting the rights of both the natural world and its own future generations. For the Haudenosaunee, the challenge has been to find ways to accommodate Hamilton's transportation and development needs consistent with Haudenosaunee obligations to the ancestors, to future generations, and to the natural world, and consistent with Haudenosaunee rights.

For both the Haudenosaunee and Hamilton, the opportunity lies within the relationship of mutual respect and assistance that has historically assisted the Haudenosaunee and their settler neighbours to find solutions that enable them to work together and to learn from each other.

4. The Valley

- 4.1 The Valley today is a place of important ecological functions and biodiversity, but its watershed is an area of intensive urban human activities, and the Valley reflects many of those activities and uses, and has been subject to their impact over the years.
- 4.2 Hamilton affirms that the Roadway is vital to Hamilton's social and economic life, and has made numerous environmental improvements to the design that received approval from the provincial government in 1985.
- 4.3 While the Haudenosaunee cannot agree with the environmental loss that may be caused by the Roadway aspects of Hamilton's Red Hill Valley Project, they are entering into this Agreement to help mitigate that loss and to help protect the Valley for the future.

5. The Nature of this Agreement

- 5.1 This Agreement is an expression of co-operation, respect and good faith, intended to govern the conduct of the Parties in their work together, and not intended to prejudice any rights of the Parties. It shall not be used as evidence in any court.
- 5.2 The Agreement is between the Haudenosaunee and Hamilton and shall not affect the rights of any other government or indigenous nation.
- 5.3 This General Agreement and the Sub-Agreements between the Haudenosaunee and Hamilton form a "suite" or assemblage of agreements. The terms of this General Agreement shall govern each Sub-Agreement.
- 5.4 The Haudenosaunee and Hamilton may make additional Sub-Agreements that can be added to or made subject to this General Agreement.
- 5.5 The Haudenosaunee acknowledge that Hamilton is bound by the applicable laws of Canada and Ontario, and therefore their joint stewardship in the Valley must be consistent with Hamilton's compliance with those laws.
- 5.6 It is not necessary, for the purposes of this Agreement or for the relations between the Parties, to resolve whether the Haudenosaunee are also bound by federal or provincial laws. The agreement of the Parties, with respect to the Valley, to meet or exceed the standards and processes required of Hamilton by those laws, in order to facilitate Hamilton's compliance with them, is sufficient.

6. Definitions

In this Agreement and all Sub-Agreements, unless a Sub-Agreement provides specifically otherwise, the following definitions shall be used:

“Agreement” shall mean the General Agreement and the Sub-Agreements together, unless the context otherwise requires;

“Board” means the Joint Stewardship Board described in the Joint Stewardship Sub-Agreement;

“Creek” means the Red Hill Creek;

“Hamilton” means the City of Hamilton, as represented by the Council of City of Hamilton;

“Haudenosaunee” means the Haudenosaunee, or Iroquois Confederacy, as represented by the Council of the Haudenosaunee at the Grand River Territory;

“Parties” means the Haudenosaunee and Hamilton;

“Project” means the Red Hill Valley Project, as generally described in the July 2003 *Impact Assessment and Design Process Summary Report* produced by Hamilton;

“Roadway” means that part of the Project known as the Red Hill Creek Expressway;

“Sub-agreement” means an agreement which is listed in Appendix “B” to this Agreement, and which has been attached to this Agreement as a separate Appendix;

“Valley” means the Red Hill Valley, the green area on the map which is Appendix “A” to this Agreement.

7. Ratification and Signing of This Agreement

7. This Agreement shall come into effect when the following three steps have been completed:
- (a) The Haudenosaunee will ratify the Agreement either in Council at the Grand River Territory or in the Grand Council at Onondaga. The decision to ratify the agreement will include the naming of representatives of each of the Six Nations to sign the agreement on behalf of the Haudenosaunee.
 - (b) Hamilton will ratify the Agreement by a vote of the Hamilton City Council.
 - (c) The Agreement will come into effect when it is signed by the authorized representatives of the Parties.

8. Resolving Issues

- 8.1 The spirit of mutual respect governs this Agreement. The Haudenosaunee and Hamilton are committed to ensuring that its spirit and intent are fulfilled over time.
- 8.2 If either the Haudenosaunee or Hamilton has a concern about the fulfilment of any part of this Agreement, the Parties shall first seek to resolve the matter directly and respectfully between themselves, in accordance with the spirit of this Agreement.
- 8.3 If the steps taken pursuant to paragraph 8.2 have not succeeded, either Party may state the issue in writing and deliver it to the other Party and to the Board.
- 8.4 Within one week of receiving the written notice pursuant to Paragraph 8.3, the Board shall meet with representatives of the Parties to help to resolve the issue. The Board may, in its discretion, invite a mediator or other persons to assist in the resolution of the issue.
- 8.5 If the process described in Paragraph 8.2 does not resolve the issue, either Party may, by notice in writing to the other Party and the Board, request formal mediation. The Board shall appoint a mediator and shall, together with the mediator, set rules for the mediation.

- 8.6 The Parties desire to avoid having any matter between them dealt with by the courts. If a mediation is unsuccessful, they will resolve the matter by arbitration. Each Party shall name one arbitrator, and the Board shall name a third. If the Board cannot agree on an arbitrator, the other two arbitrators shall choose one. The arbitrators shall set the rules for the arbitration. The arbitrators shall be guided by principles of fairness and respect, and by consideration of the impact of their decisions on the Valley, the natural world, future generations, and the needs of the Parties. The Parties will be bound by the decisions of the arbitrators. The Parties agree not to initiate legal action against each other with respect to this Agreement or any matter involving the Valley.

9. Notice

- 9.1 Written notice pursuant to this Agreement may be delivered by registered mail to the Parties at the following addresses:

To the Haudenosaunee at:

Box 98
Grand River Territory
Ohsweken, Ontario NOA 1MO


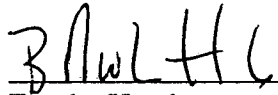
To Hamilton at:


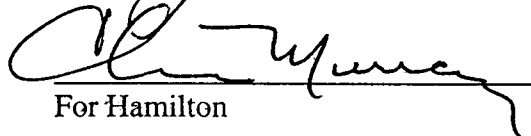
Office of the Mayor
71 Main Street West
Hamilton, Ontario L8P 4Y5

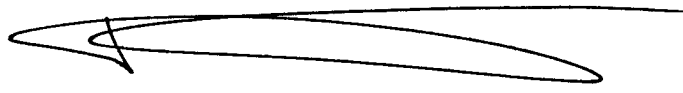
- 9.2 A notice sent by registered mail shall be deemed to have been received on the day that it is actually received.

10. Continuity

- 10.1 The Haudenosaunee and Hamilton are committed to ensuring that the spirit of this Agreement continues to be fulfilled in the future. To that end, this Agreement shall continue to be binding upon the Parties and their respective successors and assigns.
- 10.2 The Parties will accept the annual reports by the Board as an aspect of the renewal and maintenance of their commitment to the spirit of this Agreement.
- 10.3 So that the spirit of this Agreement is not neglected, the Parties agree that they will periodically and jointly meet to evaluate the effect of this Agreement and the state of the Valley. At such meetings, they will undertake to reaffirm and maintain the spirit of co-operation and respect in which this Agreement was made, and they will take any steps they consider advisable to renew and refine this Agreement.



For the Haudenosaunee

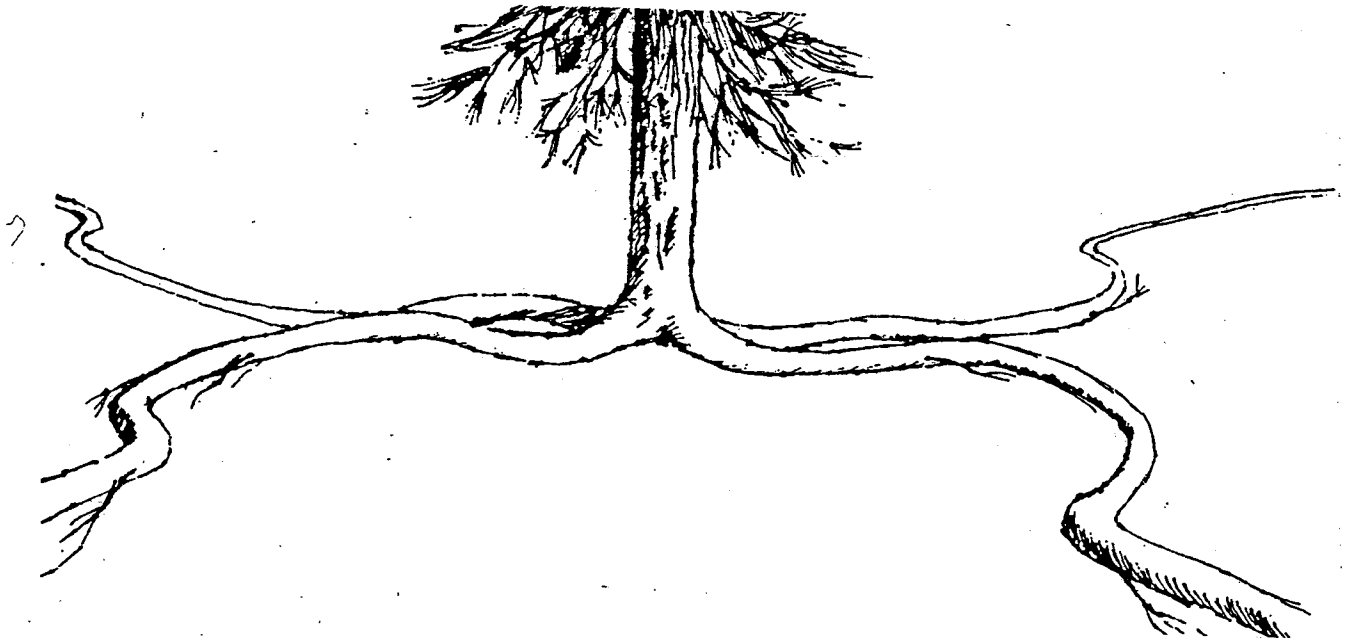


For Hamilton


Facilitator (Witness)

Joint Stewardship Agreement

Acknowledging that they each carry unique and different knowledge and resources, the Haudenosaunee and Hamilton have decided that their work together concerning the Valley will be guided by the principles of joint stewardship.

The Haudenosaunee and Hamilton intend that the respect and co-operation that exists between them should continue, and should spread into other fields, much as the Great White Roots of the Tree of Peace were intended to spread to the four corners of the world. To that end, the Haudenosaunee and Hamilton have decided to create a Joint Stewardship Board, which will be responsible for continuing their work together. The Board is intended to make the Parties' commitment to the Valley a sustained reality. It is intended to extend the spirit of their work together beyond the borders of the Valley.



This Joint Stewardship Agreement sets out the respective authorities and responsibilities of the Parties, including those they will exercise jointly; creates the Joint Stewardship Board that will implement and oversee the uses and activities in the Valley; and sets out the responsibility and authority of the Board.

1. The Joint Stewardship Board

- 1.1 The Haudenosaunee and Hamilton hereby create a Joint Stewardship Board, which will be responsible for the creation, implementation and administration of the Master Plan, and for the guidance and administration of their joint stewardship in the Valley. The Board will be an active guardian of the Valley, with a positive role in the relationship between the Haudenosaunee and Hamilton. The Board will be responsible for the effective administration and implementation of the Agreement
- 1.2 Within ninety days after the Agreement is ratified, the Haudenosaunee will name three people as members of the Board, and Hamilton will name three people as members of the Board.
- 1.3 To promote continuity and understanding, one of the people named to the Board by the Haudenosaunee, and one of the people named to the Board by Hamilton, will be one of the negotiators of the Agreement in 2003. These two members will be appointed for at least one year. All other members of the Board will have at least a three-year term.
- 1.4 The Haudenosaunee use the word *skariwat* to describe a state of satisfaction that people have come to one mind, using trust, respect and *knikonriyo*, the Good Mind. The Board will make its decisions by consensus, using those principles.
- 1.5 The Board will make its own rules of procedure, and its own codes of conduct and avoidance of conflicts of interest, and will provide the Parties with copies of those documents. To foster coming to one mind, meetings of the Board will be opened and closed with words of thanksgiving.
- 1.6 The Board will meet at least once every three months. The Board's regular meetings will be open to the public.
- 1.7 The Board will have at least one full-time staff person. The salaries of Board staff, at a level appropriate to their work and skills, will be funded, directly or indirectly, by Hamilton. The Board will seek to maintain a balance in its staff that reflects the spirit of this agreement. The staff will be responsible for assisting with the Board's meetings and implementing the Board's decisions.

1.8 The Board may on its own initiative seek advice on any aspect of the implementation or administration of the Master Plan or the joint stewardship of the Valley. The Board may create an independent multidisciplinary advisory network or body to provide it with information and analysis for the implementation of an ecosystem-based administration of the Valley. The Board will pay for these activities with funds from its annual budget (as provided for in Paragraph 1.11) or with funds it raises itself (as provided for in Paragraph 1.12)

1.9 In arriving at each of their decisions, the members of the Board will weigh and consider the following:

- (a) The impact of their decision on the natural world and on the Valley ecosystem;
- (b) The impact of their decision on future generations;
- (c) The impact of their decision on the relations between the Parties;
- (d) The social and economic needs of each of the Parties.

Every written Board decision will include an explanation of how each of the above factors was taken into account in arriving at the decision.

1.10 The Board's offices will be at the Grand River Territory and in Hamilton. The Grand River Territory office will be the head office.

1.11 Hamilton will ensure that adequate financial support is provided to the Board to enable it to operate effectively and to consult with the Parties, with specialist advisors, and with others. To that end, the Board will prepare an annual budget timed and designed to be consistent with Hamilton's budget process.

1.12 The Board may seek its own sources of funding to carry out any of its purposes or projects. Together, the Parties will assist and support the Board in seeking and receiving the funding.

1.13 The Board will monitor the compliance and performance of the Parties with respect to the Agreement and each Sub-Agreement, and will report its findings to the Parties.

2. The Master Plan

2.1 The Board will have as its first task and priority the creation of a Master Plan for the Valley.

2.2 The Master Plan will take into account the values and principles of the Parties. It will set out the approved uses of land in the Valley, as well as the steps to be taken by the Parties to achieve their objectives in the Valley. The Master Plan will adopt an ecosystem and watershed approach to planning for the future of the Valley. It will also adopt the principle that, with respect to any permitted development in the Valley, there should be no net loss of wildlife habitat, wetlands or populations of indigenous species. The Valley's ecosystem and urban environment will change over time, and the Master Plan will provide for sustained monitoring of the changes and the flexibility to adapt to accomplish its objectives.

It is understood that the construction of the Project will initially result in a loss of wildlife habitat, wetlands and populations of indigenous species in the Valley. The Parties and the Board will seek to mitigate that loss through their work together, and through the addition of land to the Valley,.

2.3 The Master Plan will be divided into two parts. The first part will set out the activities, including the Project, which will be carried out over the next five years. The second part will set out the long-term values and objectives of the Parties in the Valley.

2.4 The Board may establish local consultative networks for input into the planning process.

2.5 In creating the Master Plan, the Board will review all existing plans, policies and laws that affect the Valley.

2.6 The maintenance of the Parties' cultural and historic relationship with the Valley will be a consistent objective in the Master Plan.

2.7 Integral to the Master Plan will be the promotion of a continually developing program to communicate the Parties' values in conservation, environmental restoration and remediation, and long-term thinking about the ecosystem, to visitors to the Valley and to the population of the Haudenosaunee and Hamilton in general.

- 2.8 Each of the Parties has agreed to approve the Master Plan as part of its law. Since the same Master Plan will exist in each legal system, neither will have primacy over the other: the two laws will be parallel and equally respectable.
- 2.9 The Master Plan will come into effect when it is approved by both the Council of the Haudenosaunee at the Grand River Territory and the Council of the City of Hamilton.
- 2.10 Each Party will only authorize, permit or undertake activities, actions or uses of land or resources in the Valley that are consistent with the Master Plan, the Agreement and the Sub-Agreement.

3. Hamilton's Specific Authority and Responsibility

- 3.1 The construction, maintenance, operation and policing of the Roadway and city streets in the Valley will be part of Hamilton's special responsibility and authority pursuant to this Agreement. The Haudenosaunee, who have disagreed with the construction and location of the Roadway, will not have or claim any responsibility or authority over it, except as specifically stated in this Agreement.
- 3.2 Hamilton will continue to be responsible for policing, fire protection, ambulance and emergency services and waste management (including garbage collection) in the Valley. In an emergency, Hamilton may call upon the Haudenosaunee to assist in policing or fire protection in the Valley.
- 3.3 Hamilton will provide insurance coverage in the Valley at a level similar to the coverage it maintains for lands used in similar ways within its municipal boundaries. For the purposes of the Valley, the insurance policy will name the Board, its individual members, and the Haudenosaunee (that is, the Council, to the extent that it is the entity that appointed the Board members) as co-insured.
- 3.4 Hamilton will carry out its responsibilities in the Valley either directly by decisions of the City Council, through its staff, or through the members of the Board appointed by Hamilton.

4. Haudenosaunee Specific Authority and Responsibility

4.1 The Haudenosaunee will bear specific responsibility in the Valley for:

- a) Any burials of indigenous people that are found in the Valley, consistent with the Agreement Concerning Respect For and Protection of Human Burials in the Red Hill Creek Valley and Assurances Concerning Archaeological Work in the Red Hill Creek Valley;
- b) Any indigenous archaeological sites that are found in the Valley, consistent with the Agreement Respecting the Human Heritage of the Valley;
- c) Areas designated as sensitive for the protection of medicine plants in the Valley, pursuant to the Agreement on Medicine Plants and Other Significant Plants;
- d) Educating the public about Haudenosaunee stewardship principles, through specific projects undertaken in the Valley.

4.2 The Haudenosaunee will carry out their responsibilities in the Valley either directly by decisions of the Council at the Grand River Territory or through the Haudenosaunee members of the Board.

5. Joint Responsibility and Authority

5.1 All aspects of the implementation and administration of the Master Plan that are not described above as specific responsibilities or authorities of Hamilton or the Haudenosaunee are joint responsibilities of the Parties, and will be administered under the supervision and direction of the Board.

5.2 The Board will be responsible for educating the public, in Hamilton, in Haudenosaunee communities, and elsewhere, about the Valley, its ecosystem, and the agreements between the Parties.

5.3 Where the Board is concerned that activity on the Roadway or city streets may adversely affect other parts of the Valley, the following procedure will be followed:

- a) the Board will notify Hamilton of its concerns;
- b) Hamilton will describe the measures it plans to take to address the concerns;
- c) the Board will carefully consider Hamilton's proposed measures, and may respond with additional or alternative proposals;
- d) the Board may take initiatives to assist Hamilton and to protect the Valley in addressing the concerns or mitigating the adverse effects.

6. Maintenance, Renewal and Reporting

6.1 The Board will produce an annual report, in writing, which will be presented to the Haudenosaunee and to Hamilton. The report will contain a summary of what the Board has done during the year and will include the Board's recommendations concerning the stewardship of the Valley for the future.

6.2 The Board's annual report will be delivered in a way that will permit the Haudenosaunee and Hamilton to include the report in their own reports to the people.

6.3 Acceptance by the Haudenosaunee and Hamilton of the Board's annual report will be a reaffirmation of their continuing commitment to this Agreement.

6.4 The financial operations of the Board will be audited in the same manner, at the same time, and by the same auditors as those of Hamilton. Hamilton will pay for that audit and will include the results of the audit in its annual financial report.

6.5 The Board will also evaluate the performance of its staff on an annual basis.

6.6 The Board's fiscal year will be the same as Hamilton's.

- 6.7 Haudenosaunee government, and its staff, and Hamilton and its staff, will co-operate with the Board in providing information and advice, subject to the requirements of applicable freedom of information and privacy laws.
- 7. Amending the Master Plan, and Proposals Concerning the Use of Land in the Valley**
- 7.1 Where anyone proposes a change in the use of any land in the Valley, or an activity or use of land in the Valley that could affect the Valley's ecosystem or other aspects of the Valley covered by this Agreement, application will be made to the Board for authorization of such activity, use or change of use.
- 7.2 The Board may set and publish its requirements for applications and may deny any application that does not meet its formal requirements. The requirements may include the kinds of information required, including information on the environmental impact of the use or activity. To ensure that proposals are addressed predictably, the Board will set and publish the time it expects to take in addressing proposals.
- 7.3 Every application to the Board for authority to conduct construction in the Valley must, as a condition of its authorization, explain how the structures will be sustainably dismantled, and recycled or reused, at the end of their projected life.
- 7.4 Where an application meets the Board's formal requirements, the Board will consider the application on its merits and will make a decision based on the factors set out in paragraph 1.9. That decision will be communicated to the Parties.
- 7.5 The Board will calculate the cost of its consideration of any proposal and the proponent will bear that cost. If the proponent is unwilling to bear the cost of the proposal, the Board will not consider the proposal and the Parties will not approve it.

- 7.6 The Board, upon receiving an application that meets its formal requirements, will determine in a timely manner whether the proposed activity, use or change of use would require a change in the Master Plan. If the Board decides that no change in the Master Plan is required, the Board will have the authority to approve or deny the application. If the Board decides that, to permit the activity, use or change in use, a change in the Master Plan would be required, the Board will review the application and make its recommendation to the Parties.
- 7.7 After reviewing any application for an activity, use or change of use that does not require a change in the Master Plan, the Board may:
- (a) approve the proposal;
 - (b) deny the proposal;
 - (c) approve the proposal with specific changes or conditions;
 - (d) recommend studies or evaluations to be undertaken before the proposal can be fully considered;
 - (e) on its own initiative, commission independent studies of the proposal and its effect on the Valley and on areas around the Valley; the studies would be to assist and inform the Board about the proposed changes and their impact;
 - (f) on its own initiative, hold public hearings in Hamilton and at the Six Nations Grand River Territory to educate the public about the proposal and to seek public input and advice.
- 7.8 Approval by the Board pursuant to Paragraph 7.7 will not relieve any proponent of the obligation to secure any other approvals required by law.
- 7.9 Either Party, or any third party, may propose that the Master Plan be amended.
- 7.10 No amendment to the Master Plan will become effective unless both Parties have approved it in the same manner as they had approved the original Master Plan.

7.11 Before any proposal to amend the Master Plan may be approved by either Party, the Board must consider the proposed amendment. The Board may do any of the following:

- a) recommend to the Parties that the proposal be approved;
- b) recommend to the Parties that the proposal not be approved;
- c) recommend to the Parties that the proposal be approved, with specific changes or conditions;
- (d) recommend studies or evaluations to be undertaken before the proposal can be fully considered;
- (e) on its own initiative, commission independent studies of the proposal and its effect on the Valley and on areas around the Valley; the studies would be to assist and inform the Board about the proposed changes and their impact;
- (f) on its own initiative, hold public hearings in Hamilton and at the Six Nations Grand River Territory to educate the public about the proposal and to seek public input and advice.

7.12 If Hamilton proposes to add to the paved portion of the Roadway, or to make any substantial change to the Roadway, after its initial construction, it will deliver its proposal to the Board and the Board will address the proposal pursuant to Paragraph 7.11 and not Paragraph 7.7. Such a proposal will not be considered to be an amendment to the Master Plan and will not require Haudenosaunee approval; Paragraphs 7.2, 7.3, 7.4 and 7.5 shall apply to the proposal.

8. Adding Land and Linking Green Space to the Valley

8.1 As a matter of principle, the Parties are committed to adding land within the Red Hill watershed to the Valley as a means of reducing the impact of the development occurring in and near the Valley. Adding land to the Valley can be part of the “no net loss of habitat” principle to be applied by the Board, and can also be part of a deliberate policy of promoting wildlife corridors.

8.2 Land may be added to the Valley in any of the following ways:

- a) if Hamilton or the Haudenosaunee acquire legal title to a parcel of land within the watershed of Red Hill Creek, that parcel becomes part of the Valley if the Party that has acquired the land proposes to the Board that the parcel should become part of the Valley, and the Board agrees;
- b) if Hamilton decides no longer to use the King's Forest Golf Course as a golf course, that land will be added to the Valley upon its use as a golf course ceasing;
- c) if a third party acquires land within the watershed of Red Hill Creek, that parcel becomes part of the Valley if the third party that has acquired the land proposes to the Board that the parcel should become part of the Valley, and the Board agrees.
- d) open space land owned or acquired by Hamilton adjacent to the Valley, and managed by Hamilton or a third party (such as the Hamilton Conservation Authority) shall be administered as part of the Valley if Hamilton proposes that to the Board, and the Board agrees.

8.3 When land has been added to the Valley, the Board will become responsible for considering that land in the context of the Master Plan, and will plan any required environmental remediation of the land, including the application of all Sub-Agreements to the land and the restoration of the land to a healthy and safe state, if necessary.

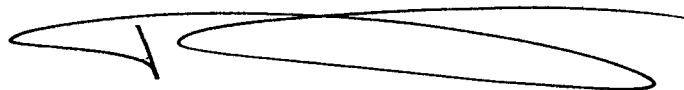
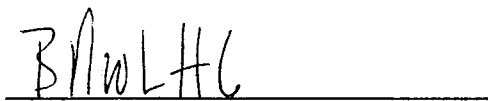
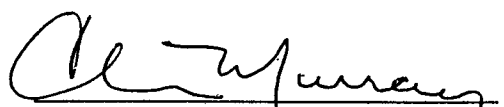
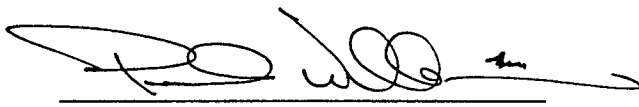
8.4 The Board will identify lands which, if added to the Valley, would enhance its ability to plan and manage the Valley as a complete ecosystem. As a matter of their long-term vision for the Valley, the Parties are committed to acquiring the identified lands, where they can be acquired from willing sellers at appropriate prices.

9. Relations with Federal and Provincial Agencies:

- 9.1 The Parties have agreed that they will facilitate Hamilton's compliance with the requirements of federal and provincial laws that apply to the Valley. Several federal and provincial Departments and agencies claim authority in the Valley, and have plans, rules or processes that apply to the Valley. While a web of federal, provincial and municipal regulation already applies to the Valley, the Parties are committed to ensuring that their joint stewardship of the Valley remains meaningful and that the Joint Stewardship Board shall have real, sustained authority in the Valley.
- 9.2 As a matter of principle, where there is an overlap between the Master Plan and the requirements of a federal or provincial law, those provisions which are most stringent in their protection of the natural world, or which are most far-sighted, will apply. Where there is an inconsistency between the Master Plan and a federal or provincial law, the Parties will seek to have the Master Plan govern, as it is the more specific and focussed provision.
- 9.3 With the consent of both Parties, the Board may accept delegations of authority from either Party or from Canadian federal, Ontario provincial or Haudenosaunee government agencies with respect to any matter affecting the Valley.
- 9.4 An Area Municipality Official Plan for Hamilton has been registered with the Ontario Ministry of Municipal Affairs. Where that Official Plan is not consistent with the Master Plan for the Valley, Hamilton will make application, supported by the Board, for changes that will make the Official Plan consistent with the Master Plan. Hamilton may choose to make all or part of the Master Plan part of its Official Plan.
- 9.5 As a general rule, any proposals for changes in land use in the Valley that are required by provincial law to be addressed to the City of Hamilton will be referred by Hamilton to the Board for its consideration pursuant to this Agreement. The staff of the Board will participate regularly in planning reviews with Hamilton staff.

- 9.6 The Niagara Escarpment Commission, a Commission created by Her Majesty in right of Ontario, has created a plan and rules governing development in the Niagara Escarpment area, which includes parts of the Valley. Where the Master Plan is inconsistent with the plans and rules of the Niagara Escarpment Commission, the Parties and the Board will work together to seek consistency.
- 9.7 The Department of Fisheries and Oceans of Canada regulates work in streams and rivers and protects fish habitat under the *Fisheries Act*. The Parties and the Board will work with that Department to protect fish habitat in the Red Hill Creek watershed, and to ensure that its guiding principle of "no net loss of habitat" is respected.
- 9.8 The Hamilton Conservation Authority regulates the floodplain of Red Hill Creek, downstream from the Valley. The Parties and the Board will work with the Hamilton Conservation Authority to implement aspects of the Master Plan that affect the floodplain.
- 9.9 If any work in the Valley requires an environmental assessment pursuant to the laws of Ontario or Canada, the Board will, with the support of the Parties, prepare any necessary documents for the Parties, and may take part in the assessment process on their behalf.
- 9.10 The Board will not seek to prevent any agency from doing anything that it is required by law to do.

Skariwat. We are of one mind.



FACILITATOR (WITNESS)

**Agreement Concerning Respect for and Protection of
Human Burials in the Red Hill Creek Valley
And
Assurances Concerning Archaeological Work in the Red Hill Creek Valley**

Preamble

The Haudenosaunee and the City of Hamilton ("Hamilton") share concerns and obligations with respect to the stream known as Red Hill Creek, and with respect to its Valley (the Creek and the Valley, in this Agreement, will be called "the Valley");

The Haudenosaunee and Hamilton have been seeking to agree about the protection of burials of indigenous people in the Valley, and have been seeking mutual assurances about archaeological work in the Valley;

No human burials have been found in the Valley to date;

As a matter of principle, the Haudenosaunee and Hamilton wish to ensure that any human burials are respected and that provision shall be made for their future protection; and

The Parties share a desire to come to one mind about the issues addressed by this agreement, and to avoid any present or future conflict concerning those issues.

The Haudenosaunee and Hamilton agree as follows:

1. Definitions

"Burial" includes not only human remains but also any funerary objects, and includes unintentional as well as intentional burials, and burials of part of a human being as well as entire bodies.

"Funerary objects" means objects that have been buried with a person.

"Parties" means the Haudenosaunee and the City of Hamilton.

"Project" means the Red Hill Valley Project as described in the July 2003 *Impact Assessment and Design Process Summary Report*.

“Registrar” means the Registrar of the Cemeteries Branch of the Ontario Ministry of Consumer and Commercial Relations.

“Respected”, in the context of a burial, means that once it has been located and dealt with pursuant to Article 5, it shall not be subjected to further disturbance.

“Valley” means the area outlined in red on the sketch which is attached as Appendix “A” to this agreement.

2. Principles

2.1 In the Haudenosaunee view, the protection of burials is a matter of rights and obligations: the obligations are to the ancestors and in accordance with Haudenosaunee law and custom; the rights are matters of law and also occur in the context of Haudenosaunee treaty relations with the Crown.

2.2 The Haudenosaunee have stated their disagreement with the environmental destruction that they believe the roadway aspects of the Project are likely to cause. The Haudenosaunee are negotiating this Agreement and others with Hamilton to prevent and mitigate damage rather than to support the roadway.

Hamilton believes the roadway is vital to Hamilton’s social and economic life, and has made numerous environmental improvements to the design that received approval from the provincial government in 1985.

2.3 As a matter of principle, the Haudenosaunee and Hamilton wish to ensure that any burials in the Valley shall be respected, and wish to provide for their future protection.

2.4 While human remains may be found as a result of archaeological investigations, the Parties acknowledge that human remains and burials are not to be treated as matters to be dealt with by archaeologists alone, but are to be addressed in the manner set out in this agreement.

2.5 Where an indigenous burial in the Valley is not clearly that of an ancestor of the Haudenosaunee, the Haudenosaunee will seek to ensure that representatives of other indigenous nations are appropriately involved in discussions with respect to that burial.

2.6 Hamilton is bound by the Ontario *Cemeteries Act*. In acknowledgment of this, the Parties will seek to ensure that their conduct and processes meet or exceed the standards and requirements of that statute.

- 2.7 Hamilton will make design and construction decisions with respect to the completion of the Project aimed at protecting and respecting any burials that may be found.
- 2.8 Where an isolated human bone or tooth is found, the Parties will meet immediately to discuss whether this find is a burial, and whether it will be dealt with pursuant to this agreement.

3. The Ontario Ministry of Transportation

- 3.1 A single burial was found near the Queen Elizabeth Way at the foot of the Valley. The Haudenosaunee are dealing with the Ontario Ministry of Transportation with respect to that burial. Hamilton is not a party to the arrangements being made with respect to that burial. Hamilton has agreed to provide any assistance and support it can to those arrangements.
- 3.2 The Parties will advise the Ontario Ministry of Transportation of the provisions of this Agreement, and will seek that Ministry's agreement that it will comply with the terms of this Agreement in those areas in the Valley where the Ministry has jurisdiction or control.

4. Investigation Before Construction

- 4.1 In order to protect, avoid and respect any burials in the Valley that might otherwise come into contact with construction, the Parties agree that there should be investigation by professional archaeologists to determine the existence and location of any burials.
- 4.2 The purpose of the archaeological investigations is not only to determine the existence and location of any burials, but also to identify and record previous human occupation and use of the Valley. The Parties acknowledge the usefulness of that information.
- 4.3 Archaeological work, commissioned by the Hamilton Region Conservation Authority, the Region of Hamilton-Wentworth, and the City of Hamilton, has been conducted in the Valley for over twenty years. Archaeologists contracted by Hamilton are continuing investigations in the Valley and expect to have that work completed in the fall of 2003. The archaeological investigations have taken place at the sites marked on the map attached as Appendix "B". It is the intention of the Parties that the archaeological investigations will be completed sufficiently in advance of any construction that the construction plans can be modified to respect the integrity and dignity of any burials.

- 4.4 Each future contract for archaeological work in the Valley shall require that a person designated by the Haudenosaunee shall be hired as part of the archaeological team. This person shall have the same authority as the archaeologist in charge to stop work on a site pursuant to Paragraph 5.2.
- 4.5 All archaeological work in connection with the Project will be carried out in accordance with the Ontario *Heritage Act* and its Regulations. The archaeological work will also meet or exceed the Ontario Ministry of Culture guidelines concerning archaeological methodology and analysis. The archaeological work will also be conducted in a way that respects Haudenosaunee law and customs. The Haudenosaunee will meet with archaeologists conducting work in the Valley to communicate to them the standards and methodology required by Haudenosaunee law and customs. Haudenosaunee requirements will not place the archaeologists in conflict with provincial law and will not interfere with their ability to fulfil their contracts.
- 4.6 All reports by archaeologists working for Hamilton in the Valley will be provided to the Haudenosaunee at the same time as they are provided to Hamilton.
- 4.7 The Haudenosaunee have selected a bio-archaeologist to monitor any investigations at the "King's Forest Park" and "Recliner" sites on a daily basis.
- 4.8 The Haudenosaunee may designate persons who shall have the right to monitor or inspect any archaeological site during the times that work on those sites is being conducted.
- 4.9 Hamilton will fund the Haudenosaunee workers described in Paragraph 4.4 and the bio-archaeologist described in Paragraph 4.7.

5. If Burials Are Found in the Valley:

- 5.1 If a burial is found during archaeological work or construction work in the Valley, the person in charge of the archaeological or construction work, as the case may be, shall immediately provide notice both by telephone and by facsimile to the Haudenosaunee. The notice will include the location of the burial and any information available to the person giving notice at the time.
- 5.2 If a burial is found during archaeological work, all work on that archaeological site will stop immediately.

- 5.3 If a burial is found during construction in the Valley, all construction work in the vicinity of the burial site will stop immediately.
- 5.4 If a burial is found during archaeological or construction work in the Valley, the person in charge of the work shall immediately notify the police or coroner.
- 5.5 If a burial is found during archaeological or construction work, the person in charge of the work shall immediately notify the Registrar.
- 5.6 Whether the Registrar orders it or not, and if the coroner or police have determined that the burial is not the result of a recent crime, Hamilton, in consultation with the Haudenosaunee, shall cause an investigation to be made of the origin of the burial. The investigation shall be carried out, in the case of an archaeological site, by the archaeologists who have been contracted to investigate that site, and in the case of a burial found during construction, by an archaeologist selected from the list of approved archaeologists which is Appendix "C" to this agreement, and contracted by Hamilton. In conducting the investigation, the archaeologist shall not exceed any authority provided by provincial law.
- 5.7 The Haudenosaunee may request that the investigation be carried out jointly by an archaeologist contracted by Hamilton and one contracted by the Haudenosaunee.
- 5.8 The investigator or investigators shall, within five days after beginning the investigation, provide a written report containing the following information:
 - a) a determination of the possible cultural origin or religious affiliation of the persons whose remains are interred and the basis upon which the determination is made;
 - b) a description of the boundaries of the burial site;
 - c) details of the style and manner in which the human remains are interred;
 - d) a description of any artifacts that, in the opinion of the investigator, form part of the burial;
 - e) an opinion as to whether the burial site was set apart with the apparent intention of interring human remains in accordance with cultural affinities and the basis on which the opinion is made;

- f) a description of the methodology used in the investigation; and
 - g) any information which, in the opinion of the investigators, may assist the Parties in arriving at an agreement concerning the future protection of the remains.
- 5.9 Reports of investigations made pursuant to Paragraph 5.6 shall be delivered to Hamilton and the Haudenosaunee at the same time.
- 5.10 If the investigation conducted pursuant to Paragraph 5.6 concludes that the remains were not human remains, work stopped pursuant to Paragraphs 5.2 or 5.3 shall resume once the report has been received.
- 5.11 An investigation conducted pursuant to Paragraph 5.6 shall be conducted with a minimum of interference with the burial. Human remains and funerary artifacts shall not be removed from the site during the investigation. The remains and funerary artifacts shall not be photographed without Haudenosaunee consent.
- 5.12 The Parties will as soon as possible make every reasonable effort to arrive at an agreement providing for the protection of the burial. These efforts will include, with respect to construction, finding practical design or construction solutions aimed at ensuring the burial site is respected.
- 5.13 If a burial is found in the Valley, the Haudenosaunee, or any aboriginal people they notify in accordance with Paragraph 2.5, will have the opportunity immediately to perform ceremonies at the site in accordance with their laws and customs.
- 5.14 Any agreement made pursuant to Paragraph 5.12 may be registered by Hamilton as a "Site Disposition Agreement" pursuant to the Ontario *Cemeteries Act*.

6. Artifacts Found in the Valley

- 6.1 Many human cultures place objects with their dead, to accompany them to the next world. As a matter of respect for the dead and for the people who buried them, artifacts found with burials shall be treated as funerary objects and shall remain with the burial unless the Haudenosaunee consent otherwise in writing.

- 6.2 The Haudenosaunee will advise Hamilton of the kinds of objects that, if discovered in the Valley, require under Haudenosaunee custom that they be treated ceremonially. Hamilton will honour and respect such advice.
- 6.3 The Parties will seek to arrive at an agreement that will provide for aboriginal artifacts recovered in the Valley in which the Haudenosaunee express an interest to be repatriated to the Haudenosaunee.
- 6.4 All artifacts recovered in the Valley as a result of archaeological or construction work and which are identified as Haudenosaunee and are not funerary objects shall be returned to the Haudenosaunee as soon as practically possible, subject to Haudenosaunee customs and good archaeological practice, and subject to Hamilton's compliance with the requirements of provincial laws.
- 6.5 The Haudenosaunee will have access on a continuing basis to all artifacts found in connection with the Project.

7. Education and Access to Information

- 7.1 The Parties will begin discussions on ways in which the results of archaeological work in the Valley may be used to produce educational facilities or materials that will enhance understanding of the past for the people of Hamilton and the Six Nations Grand River Territory.
- 7.2 The Haudenosaunee will have access on a continuing basis to all information relating to archaeological activities in connection with the Project.

8. Resolving Concerns

- 8.1 If either the Haudenosaunee or Hamilton has a concern about the fulfilment of any part of this agreement, the Parties shall first seek to resolve the issue directly and respectfully between themselves, in accordance with the principles stated in Article 2 of this Agreement.
- 8.2 If the Parties cannot resolve an issue directly between themselves, either party may contact Professor Michael Coyle, who will request an immediate conference call to resolve the issue. The call will involve representatives of the Parties named by the Parties for this purpose.

8.3 If the issue involves work on an archaeological or construction site, work on the site will be suspended until the conclusion of the conference call, which shall be held within one business day after it is requested by either party.

8.4 The Parties will identify the persons who shall participate in any conference call under this Article, and their alternates in case they are unavailable, at the time of the signing of this Agreement. These representatives may be changed from time to time by notice to the other party and to Michael Coyle.

9. Further Agreement


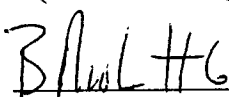
9.1 The provisions of this Agreement are intended to continue until they are enhanced in a further agreement between the Parties.

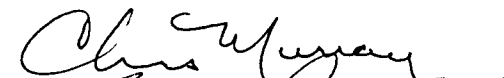

10 Effect of this Agreement

10.1 This agreement, the negotiations, and any agreement resulting from the negotiations will not affect the Treaty rights of the Haudenosaunee with the Crown. However, this Agreement has been made consistent with that relationship, and in a spirit of current implementation and recognition of that relationship.

10.2 This agreement is an expression of co-operation, respect and good faith, intended to govern the conduct of the Parties in their work together, and not intended to prejudice any rights of the Parties. It shall not be used as evidence in any court.

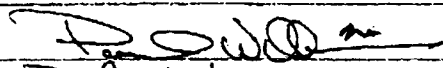
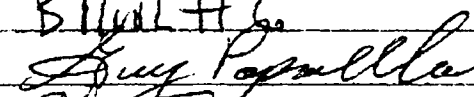
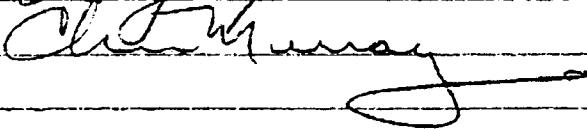
Agreed this 22nd day of October, 2003.



For the Haudenosaunee



For the City of Hamilton

The signing of the agreement
Concerning Respect for
and Protection of Human Burials
in the Red Hill Creek Valley
and Assurances Concerning Archaeological Work
in the Red Hill Creek Valley
by the negotiators for the Haudenosaunee and Hamilton
is an indication that the agreement
is binding between the negotiators
but does not become binding between the parties
until it is ratified by both Councils
as part of a more comprehensive agreement.

October 22, 2003


Paul H. G.

Guy Papallia

Chris Murray

Legend

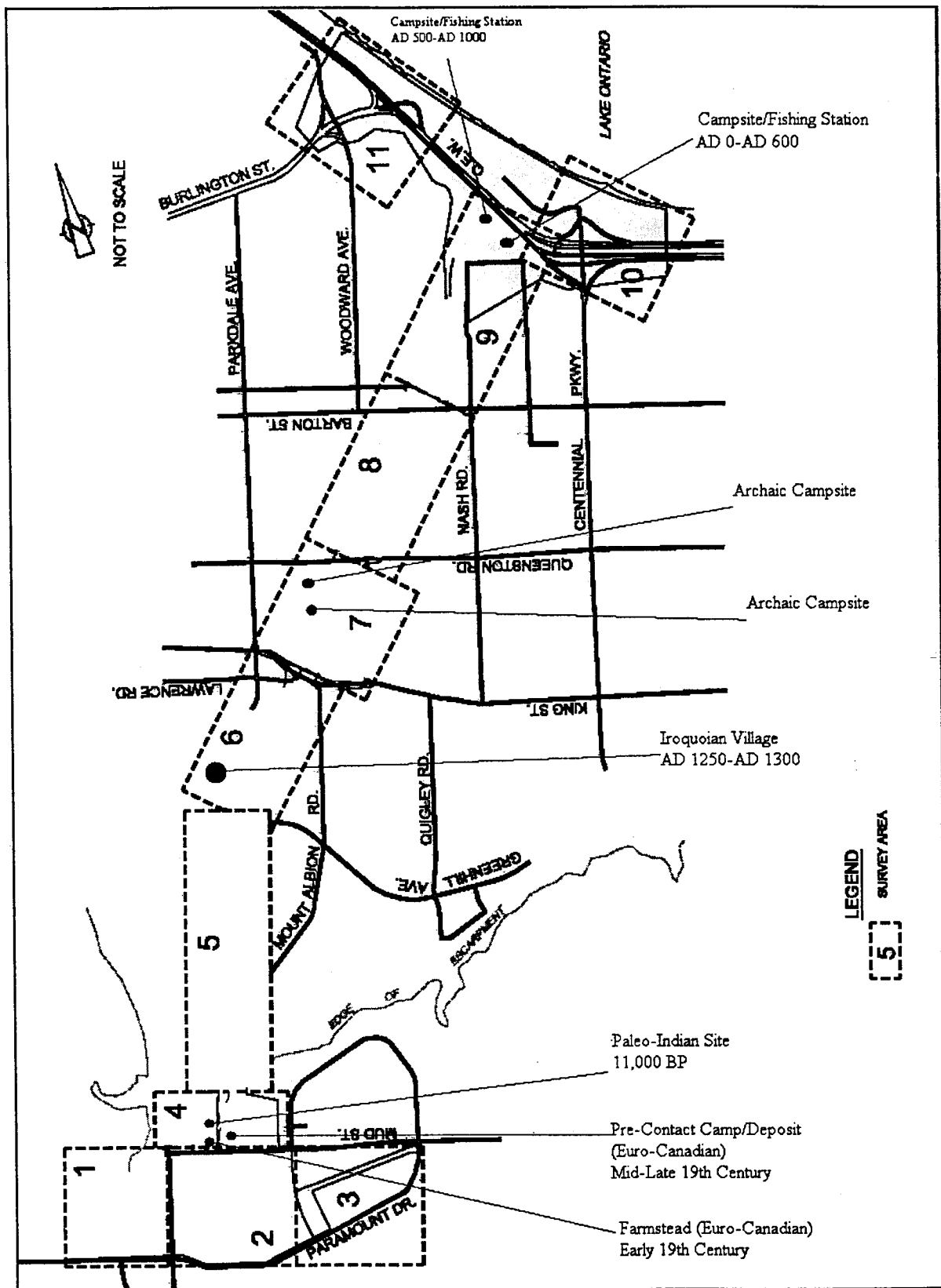
Project Area



SCALE 1:10,000

Appendix A:
Red Hill Valley Project Area

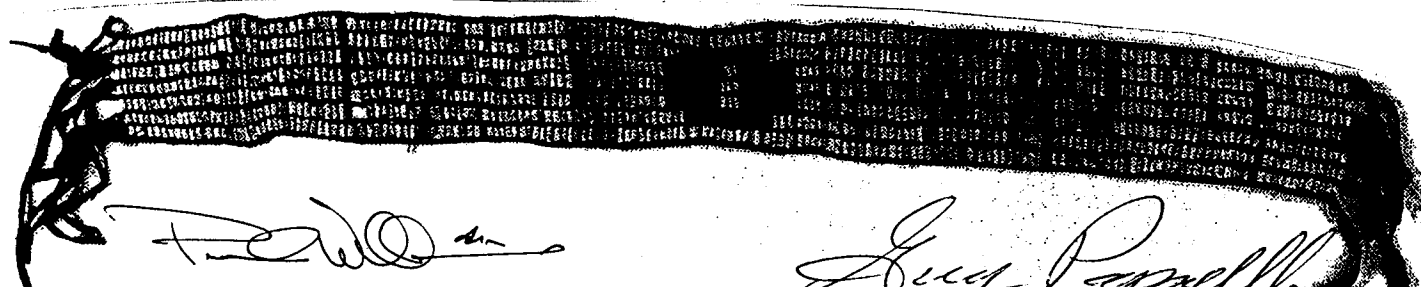





Agreement About Hunting, Fishing, Trapping and Gathering

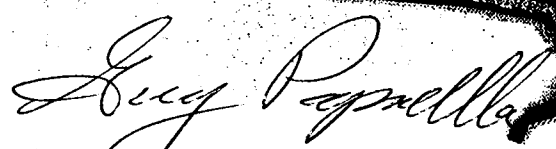
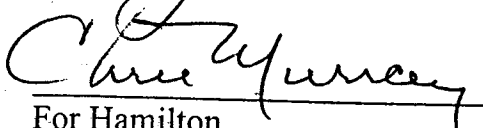
1. Hunting, fishing, trapping and gathering are part of the Haudenosaunee way of life. The Haudenosaunee affirm that these practices are protected in treaties between themselves and the Crown, and also that the treaties apply to the Valley. Hamilton does not dispute the existence of these treaty rights.
2. The Haudenosaunee and Hamilton recognize that the exercise of these rights in the Valley raises issues of conservation and safety. The right to hunt, fish, trap and gather brings with it the responsibility to protect and respect the animals, fish and plants, both in their own right and for future generations of humans.
3. Haudenosaunee hunting, fishing, trapping and gathering in the Valley will be subject to rules made by the Board for the purpose of conservation and safety. The rules made by the Board will incorporate Hamilton's existing prohibition against the discharge of firearms in its urban area.
4. The Board will make rules to govern hunting, fishing, trapping and gathering in the Valley by persons other than Haudenosaunee; such rules will be no less stringent than the ones that apply to the Haudenosaunee.
5. The rules described in Paragraphs 3 and 4 shall be implemented into law by the Parties in the manner that best promotes and facilitates their respect and enforcement.
6. As a matter of principle, violations of the rules by Haudenosaunee citizens will be dealt with by the Haudenosaunee, pursuant to Haudenosaunee law; if the alleged violation is committed by a person who is not Haudenosaunee, the matter will be dealt with by Hamilton pursuant to the laws that are available to it. The Board's rules, and the laws that implement them, shall reflect this principle.

7. If trees are to be cut in the Valley, the Parties and the Board shall afford reasonable priority to Haudenosaunee harvesters. The following specific provisions shall also apply:
- a) ironwood and hickory trees to be cut shall be cut at appropriate times of the year and made available to Haudenosaunee lacrosse stick makers, snow snake makers, and craftspeople;
 - b) firewood will be made available to be transported to the Longhouses at the Six Nations Grand River Territory to be used for ceremonies; and to be distributed to elders and the disabled.
8. The Haudenosaunee shall have priority, as allocated and managed by the Board, to collect maple sap and make maple sugar or syrup in the Valley at appropriate times.
9. The Haudenosaunee have treaties with other indigenous nations about hunting, fishing, trapping and gathering. The symbol of those agreements is a dish with a single wooden spoon, meaning that there should be no conflict between people seeking food on and from the land. The Haudenosaunee may provide Hamilton with notice of the nations participating in those treaties, and the people of those nations shall be considered to be Haudenosaunee for the purpose of this Sub-Agreement.

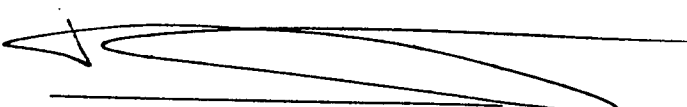



B. A. W. L. H. C.

For the Haudenosaunee



Luigi Paparella

Chris Murray

For Hamilton


Facilitator (Witness)

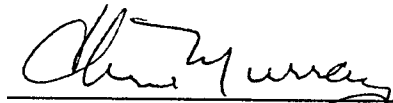
Agreement on Tolls

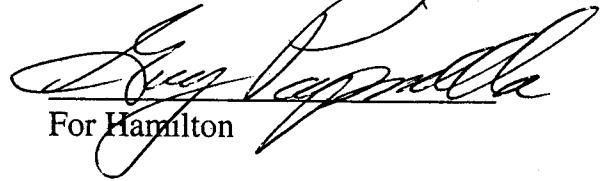
1. There shall be no toll or user fee of any kind imposed upon or required of Haudenosaunee for the use of the Roadway.
2. Hamilton agrees that, if it imposes a toll or user fee of any kind on users of the Roadway, a portion of that revenue will be used to cover the cost of the Board's operations.



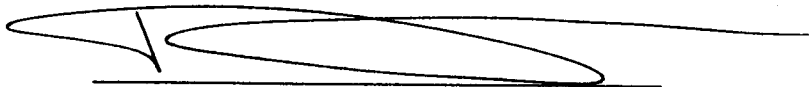


For the Haudenosaunee





For Hamilton



Facilitator (Witness)

Agreement on Medicine Plants And Other Significant Plants

The Valley is home to many kinds of plants, some of which have been identified as rare or endangered.

The Haudenosaunee and Hamilton are committed to the protection of the Valley environment, including the plant life.

Some plants are used by the Haudenosaunee as medicines. As such, the plants require respect. Their importance to the people has motivated the Haudenosaunee and Hamilton to take special protective measures for those plants in the Valley.

Haudenosaunee medicine is often discreet—much as Canadian medicine is treated as a private matter between patient and doctor. The gathering of medicines by traditional Haudenosaunee medicine people is conducted with deep respect for the medicine plants and their ability to heal the people. A person gathering medicine will not pick the first plant that is met. The medicine gatherer will put down sacred tobacco and will explain the purpose of the gathering, and ask for help. The respect shown by medicine gatherers includes the spirit of conservation of the plants, and this agreement reflects that spirit.

1. The Haudenosaunee will identify a team of people (the “Team”) who are knowledgeable about traditional herbal medicine to examine the plant life in the Valley and to determine the locations of medicine plants, the extent of those populations, and their state of health.
2. The Team will consult with other knowledgeable people, including Haudenosaunee, about whether measures should be taken for the protection of the medicine plants in the Valley, and about what measures would be appropriate. The Parties recognize that in some cases, one form of effective protection will be that the location and identity of the plants will not be made public. In their thinking about these issues, the Team shall consider:
 - a) the rareness of the plants; and their availability in other locations;
 - b) the viability of the populations in the Valley; and the probable impact on those populations of the Roadway;
 - c) the need for those plants as medicines;
 - d) the confidentiality of Haudenosaunee knowledge of medicines, medicine plants and their locations, and the recognition that

knowledge of some medicines is held carefully by individuals and societies and is not a matter of public information.

3. The Team will develop a long-term plan for the protection of medicine plants in the Valley and will deliver the plan to the Board. The Board will meet with the Team about the plan, and may direct further studies or may seek further advice. The Board will then incorporate a plan for the protection of medicine plants into the Master Plan for the Valley.
4. The Team will inform the Board of the areas in the Valley that should be protected as part of the protection of medicine plants. The Board will hold that information in confidence.
5. In considering any proposal for development or use, where the proposal involves an area identified by the Team, the Board will ensure that the proposed development or use will not adversely affect, degrade or destroy any of the plant populations which were the basis for the designation of the protected area, and will require any proponent to take steps to protect the plant life. The Board may choose not to identify particular plants or plant populations. The Board may reject proposals for the use of land in the Valley where those proposals would adversely affect medicine plant populations, and it may recommend rejection of a proposal to amend the Master Plan for the same reasons.
6. The Roadway, and the construction work involved in other parts of the Project, are not "proposals for development or use" as described in Paragraph 5, and Haudenosaunee medicine gatherers will avoid gathering medicines in areas that are under construction.
7. Haudenosaunee medicine gatherers shall have free and unimpeded access to all parts of the Valley for the purpose of gathering medicines, and shall not have to apply for any form of permit or authorization.
8. The Board, in consultation with the Team or on its own initiative, may create and initiate propagation plans for medicine plants in the Valley, either as part of the implementation of the Master Plan or as a separate project.

9. The Board shall monitor the plant life in the Valley and may advise Haudenosaunee medicine people of the scarcity or endangerment of particular plants or plant populations. The medicine people shall take such advice under careful consideration, and may make proposals to the Board at any time for the further protection or promotion of the welfare of the medicine plants in the Valley.
10. The Board may, in consultation with Haudenosaunee medicine people, develop plans for protecting medicine plants in the Valley that include removing plants or seeds from the Valley to be grown elsewhere, for later planting in the Valley.
11. The Board may identify areas in the Valley where no plants are to be harvested. In these areas, Hamilton will create and enforce appropriate by-laws for the protection of the plants, and the Haudenosaunee will take steps consistent with Haudenosaunee laws and culture for the same purpose. None of these laws or steps will result in the prosecution of any Haudenosaunee medicine person gathering medicine to assist any individual.
12. The Board may develop and implement strategies or programs in the Valley for the protection of indigenous species against invasive or exotic species.
13. The Board may develop programs of public education about the plants of the Valley and Carolinian plants in general and may work with other groups to implement those programs in schools in Hamilton and the Grand River Territory, and in such other venues as it chooses.

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B. N. H. G.

Al. Y. M. G.

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FACILITATOR / WITNESS

Agreement on Economic Opportunities in the Red Hill Valley

The Haudenosaunee and Hamilton have agreed to work together to mitigate the environmental loss caused by the Roadway portion of the Red Hill Valley Project, and to join in protecting the Valley for the future.

The Project will create economic, employment and educational opportunities.

The Parties want their co-operation in other aspects of the Valley to be reflected in their work together to ensure equitable Haudenosaunee sharing in the economic, employment and educational opportunities.

The Parties recognize that Haudenosaunee sharing in these opportunities may foster Haudenosaunee enterprises that will be mutually beneficial to the Parties in future undertakings; may support and train a body of uniquely skilled Haudenosaunee workers for those undertakings; and will take advantage of existing unique Haudenosaunee knowledge, resources and skills.

This Sub-Agreement creates and confirms opportunities. The Parties are committed to working to transform those opportunities into realities.

1. The Project and its Schedule

- 1.1 The Project will include the Roadway, the realignment of Red Hill Creek to approximate the course it followed 10,000 years ago, a stormwater management system, a combined sewer overflow pipe, and the implementation of the landscape management plan.
- 1.2 Between 2004 and 2008, Hamilton intends to complete the infrastructure aspects of the Project, including the realignment work on the Creek, and to begin ecological restoration in the Valley.
- 1.3 Between 2004 and 2014, Hamilton intends to complete ecological restoration in the Valley to help address the loss of plant life and wildlife habitat caused by the Project.

2. Partnerships

- 2.1 The Haudenosaunee and Hamilton agree to pursue partnerships in three specific aspects of the Project (the "Three Aspects"). The Three Aspects are: the growing, planting, monitoring and maintenance of plant materials in the Valley; the protection and commemoration of indigenous cultural features in the Valley; and the realignment, natural channel design and restoration work on the upper two kilometres of Red Hill Creek in the Valley. The Haudenosaunee have distinct resources, skills and knowledge that make these partnerships appropriate and mutually beneficial from a cultural, economic and practical perspective.
- 2.2 In this Sub-Agreement, "partnership" does not carry its legal meaning of shared liability, but rather bears its more usual meaning of shared intentions and shared work. The spirit of this partnership is drawn from the relationship of mutual aid and respect symbolized by the Silver Covenant Chain.
- 2.3 The Parties intend that the Three Aspects shall be completed through co-operation between the Haudenosaunee and Hamilton, as specifically provided in this Sub-Agreement.
- 2.4 The Project, until now, has been planned by Hamilton without the benefit of the unique knowledge and skills that the Haudenosaunee can bring. Before proceeding with the Partnerships, the Parties will meet to review the plans for the Three Aspects, with a view to refining them to take advantage of Haudenosaunee experience and knowledge. Haudenosaunee refinements of the creek restoration aspect will not have the effect of compromising either its engineering requirements or the terms of the Department of Fisheries and Oceans approval for the work.
- 2.5 To assemble the components of each partnership effort, the Parties will meet within 45 days of ratification of the Agreement to identify specifically the quantities and nature of materials or work that will be required, and when it will be required. Based on these requirements, the Parties will work together to create or identify and support the entities and people that will carry out the work and provide the materials. The support will include providing potential funding sources with evidence of guaranteed contracts, as well as advice, training and other assistance for Haudenosaunee Contractors. The Parties, or either of them, may co-operate with federal, provincial or private entities in achieving the goals of this Sub-Agreement.

- 2.6 A "Haudenosaunee Contractor" is a contractor whose business is substantially owned by Haudenosaunee citizens. The Council will assist in identifying Haudenosaunee contractors.
- 2.7 Some aspects of the ecological restoration work in the Valley may be delayed for a reasonable time by the Parties if a Haudenosaunee Contractor for that aspect of the work is experiencing delays in acquiring the capability, capital or materials required. Where the work must be done in a timely manner to avoid erosion or other damage, or because the delay would result in undue interference with other parts of the Project, there will be no accommodation through delay.
- 2.9 If no Haudenosaunee Contractor is available to undertake an aspect of the work identified for a reasonable cost, with reasonable quality, then Hamilton may make other arrangements for the work in question. However, Hamilton will not make such arrangements until the Parties have first made their best efforts to implement the partnership provisions of this Sub-Agreement.
- 2.10 The Partnerships are not meant to be a complete list. The Haudenosaunee and Hamilton will seek to identify other opportunities for viable partnerships, in the Valley and elsewhere, using their experience in the Valley to develop the principles and practices of those partnerships.

3. The Three Aspects

a) Plants

- 3.1 The ecological restoration program for the Valley will require trees, shrubs and grasses ("the Plant Material"). The Six Nations Grand River Territory is the largest viable tract of Carolinian forest in Canada. Growing and providing the plants required for the Project are compatible with the desire of the people of the Grand River Territory to protect and enhance the natural character of their land. The Parties intend that the Plant Material will be acquired, grown, planted, monitored and maintained through a series of contracts between Hamilton and Haudenosaunee Contractors. The contracts will describe how each partner will provide elements of the work or materials. Hamilton has its own land, greenhouses and qualified staff that can provide part of the Plant Material and work required for the Project. Some of these resources will be used for the Project, either by

Hamilton acting alone, or as part of a partnership undertaking with a Haudenosaunee Contractor.

- 3.2 The Parties intend that the partnership should result in long-term contracts between Hamilton and Haudenosaunee Contractors for the planting, maintenance and monitoring of the plant life in the Valley, including the Plant Material.
- 3.3 The Parties intend that the results of their partnership with respect to plants shall be the creation of a viable Haudenosaunee enterprise, and the sustaining of Hamilton's horticultural capabilities.
- 3.4 The projected cost of the planting, maintenance and monitoring of Plant Materials in the area of the Valley from the Mud Street interchange to the CNR tracks is approximately \$7,800,000.00, and the projected cost of the planting, maintenance and monitoring of Plant Materials in the escarpment cut and the Roadway is approximately \$1,500,000.00. These are described in greater detail in Hamilton's *Impact Assessment and Design Process Summary Report* of July, 2003.
- 3.5 The projected cost of the planting, maintenance and monitoring of Plant materials in the area of the Valley from the CNR tracks to the Queen Elizabeth Way is approximately \$2,300,000.00. The contracts for this work are in the discretion of the Ontario Ministry of transportation. Hamilton and the Haudenosaunee will seek to have that Ministry apply the partnership principles of this Sub-Agreement to those contracts.
- 3.6 Though the budgets and studies refer to "trees" as the focus for the replanting, in fact the Project involves providing Plant Material of all kinds, for the purpose of re-establishing and maintaining a complete ecosystem.

b) Indigenous Cultural Features

- 3.7 The Project Landscape Management Plan identifies a number of indigenous cultural features, including archaeological sites, in the Valley that should be protected and commemorated for educational and other purposes in a respectful way. The Joint Stewardship Agreement places these features under the primary responsibility and authority of the Haudenosaunee, through the Haudenosaunee members of the Board. Work on these features,

including any architectural and landscaping work, will be done through contracts with Haudenosaunee Contractors.

c) Creek Realignment, Natural Channel Design and Restoration

- 3.8 Creek restoration work requires both specialized heavy equipment and specialized skills. The Haudenosaunee are committed to ecological protection and restoration and would like to enhance their capabilities in those fields.
- 3.9 The approximately two kilometres of Red Hill Creek, starting at the edge of the Niagara Escarpment, will be the subject of a specific restoration contract, to be carried out by a Haudenosaunee Contractor. This part of the Creek will not require dramatic realignment work, with heavy equipment and significant capital outlays, such as will be required for the realignment and restoration of the lower seven kilometres of the Creek.
- 3.10 The partnership approach to the creek restoration contract means that the contract would not be put out to public tender. As a matter of accountability and equity, the Parties want to make sure that the price for this contract is demonstrably fair. The price for the creek restoration work will be set as follows. After the meetings described in Paragraph 2.5, a qualified Haudenosaunee contractor will submit a proposal for the contract. This proposal will undergo peer reviews by an individual designated by Hamilton and an individual designated by the Haudenosaunee. The peer reviews and the proposal will then be provided to Hamilton's General Manager of Public Works, who, on the basis of those reviews, will decide on the fairness of the price proposed and communicate the decision to the proponent and the reviewers.

4.0 Opportunities

- 4.1 Hamilton will ensure that notice of tender opportunities in connection with aspects of the Project other than the Three Aspects will be provided to the Haudenosaunee and to Six Nations entities designated by the Council at the same time as such notice is provided to other potential contractors. Advertising of the tenders will be placed in the Turtle Island News and the Tekawennake, and provided to Grand River Employment and Training, at the same time as the tenders are advertised in Hamilton.

- 4.2 While Hamilton cannot require contractors to hire Haudenosaunee workers, it will encourage them to do so, and will require them to advertise employment opportunities in the Turtle Island News and Tekawennake, and provide the job notices to Grand River Employment and Training, at the same time as the positions are advertised in Hamilton.


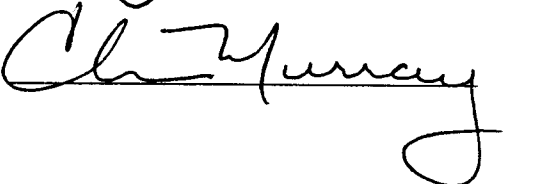
5.0 Training

- 5.1 The realignment of the Creek using natural channel design will involve specialized skills, especially in the use of heavy equipment. Working with creek design, fisheries and terrestrial ecology specialists, Hamilton will pre-qualify heavy equipment operators for the realignment work. Hamilton's Project Team will develop a short training course for this purpose, and the course will be presented through Grand River Employment and Training for unionized heavy equipment operators. The operators who pass the course will be placed on an approved roster for selection by the contractors for the Creek realignment work.
- 5.2 Hamilton will advise Grand River Employment and Training as soon as possible of positions and skills required for work in the Valley so that appropriate training and skills development can take place in a timely manner.

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Bill H/C

Agreement Respecting the Human Heritage of the Red Hill Valley

Human beings have occupied the Red Hill Valley for at least ten thousand years. For almost all of that time, they lived lightly on the land, without changing its form or its wildlife.

The original people of the Valley are among the ancestors of the Haudenosaunee of today.

The Haudenosaunee and Hamilton share a desire to protect and learn from the long human heritage of the Valley.

The Haudenosaunee and Hamilton recognize that indigenous cultures are not merely matters for museums, and that a living indigenous culture, in an increasingly globalized and homogenized world, is a fragile and precious thing. It is in their mutual best interests to recognize, protect and preserve existing Haudenosaunee culture. This living culture helps in the understanding of past cultures and events.

The human heritage of the Valley extends from the past through the present into the future. There is no escaping the fact that the Roadway will deeply affect the Valley. Other aspects of the Project, and other agreements between the Parties, aim to mitigate the impact of the Roadway on the Creek, on wildlife, on plants, and on archaeological sites and human burials. The Parties are also committed to protecting and respecting human values other than transportation in the Valley. This Sub-Agreement embodies their joint commitment and efforts.

1. Protection of Sites

- 1.1 Archaeological work in the Valley has located a number of sites of earlier human habitation. These places range from the campsites of hunters eleven thousand years ago to the remains of a village six hundred years old to more recent settler farmsteads. Each place provides us with lessons about how human beings have lived and survived with this land.

- 1.2 The Haudenosaunee, through the Haudenosaunee members of the Board, have undertaken the primary responsibility of protecting indigenous archaeological sites in the Valley.
- 1.3 In consultation with Hamilton and the Haudenosaunee, the Board will develop plans for the archaeological sites in the Valley that will best serve to respect the sites and the people who lived there while meeting goals of public education, aesthetic values, and safety. The Haudenosaunee and Hamilton will implement those plans together. The Parties recognize that in some cases the most appropriate plan for a site will be to leave it alone.
- 1.4 The Board will designate archaeological sites in the Master Plan for the Valley, and will include the plans developed pursuant to Paragraph 1.3 in the Master Plan. The plans will include appropriate protection for the sites, and the Board will take the plans into account when it considers proposed changes in the Master Plan and applications for changes in land use or development in the Valley.

2. Ownership of Objects

- 2.1 The Parties agree that, as between themselves, and further to Paragraph 6.4 of the Agreement Concerning Respect for and Protection of Human Burials in the Red Hill Creek Valley and Assurances Concerning Archaeological Work in the Red Hill Creek Valley, the Haudenosaunee will own all objects found on indigenous archaeological sites in the Valley, and Hamilton will own all objects found on all other archaeological sites in the Valley.

3. The Red Hill Centre

- 3.1 The Parties intend that there should be an interpretation and resource centre ("the Centre") to acknowledge, honour and explain the natural and human heritage of the Valley. The Board will facilitate the planning, building and operation of the Centre. The Parties and the Board will work together to seek other partners, to assist in funding, building and operating the Centre.
- 3.2 The Parties and the Board will set the purpose and objectives of the Centre, consistent with those set out in this Sub-Agreement, and will develop the terms of reference for the design of the Centre.

- 3.3 The information presented in the Centre about the lives and cultures of earlier indigenous peoples of the Valley will also explain how those earlier values remain important to the Haudenosaunee of today, and how traditional Haudenosaunee values of today reflect a desire to respect the natural world and to maintain and promote peace, and to cast our minds to the welfare of the coming seven generations.
- 3.4 Many “heritage centres” approach “nature” as if it were not deeply affected by the choices that human beings make, individually and as societies. Some such centres explain “history” from a single perspective. Some seek to justify development choices. In doing so, they sanitize, simplify and homogenize. They gloss over the difficult challenges and choices that have been made along the way, and that still stand before us.

The history of the Red Hill Valley Project is an example of efforts to find a balance between the perceived needs that flow from development and the desire to protect aspects of the natural world. It cannot be said that anyone “won” or “lost”, or that change and compromise was “good” or “bad”. Rather, the history is a series of stories about people who each did the best they could.

The Centre will seek to explain the recent history of the Valley, in the context of the difficult choices and balances that face people in North America and the world in the twenty-first century. It will not argue in favour of any point of view. Our challenge is to seek balance between human needs, and responsibility and regard for the natural world. We must find respectful and imaginative solutions to balance the expansion of cities and their infrastructure, and the remaining undeveloped lands. Accepting and meeting the challenge requires skill, knowledge and respect.

The Centre will include a library and resource centre that will be open to the public. It will be the repository for the Red Hill Project records and documents, for the Parties and for any other group that wants to ensure that their records should be considered and preserved as part of the recent history of the Red Hill Valley. The intention is to ensure that the public has access to the complete story, including all the alternatives that were proposed or considered.

The library and resource centre will not simply deal with the Valley and the Project. It will contain resource materials that will enable members of the public to become knowledgeable about environmental assessment, planning, development, infrastructure design, road design, stream design, reforestation, and the protection of biological and cultural diversity. It will be kept current. One purpose of the resource centre will be to ensure that members of the public can participate fully, effectively and positively in future major development decisions.

4. Partnership

- 4.1 The Board may in its discretion enter into partnership efforts and agreements with other entities for the protection, preservation and enhancement of human-scale and heritage activities and places in the Valley. These activities include recreation, the sustainable and respectful use of natural resources, and the study of the natural world and the impact of human decisions. "Other entities", in this Paragraph, includes conservation authorities, universities and colleges, school boards, community groups and Haudenosaunee institutions.

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B. A. L. H. 6



