

THE CORPORATION OF THE TOWNSHIP OF WILMOT

BY-LAW NO. 2025-20

**BEING A BY-LAW TO AUTHORIZE THE MAYOR AND CLERK TO ENTER INTO AN
AGREEMENT WITH THE REGION OF WATERLOO REGARDING THE BADEN TRUNK
SANITARY SEWER PROJECT., ATTACHED AS SCHEDULE 'A'**

WHEREAS Subsection 5(3) of the Municipal Act, 2001, S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS Section 20 of the Municipal Act, 2001, S.O. 2001, C 25, as amended, authorizes a municipality to enter into an agreement with one or more municipalities or local bodies to jointly provide, for their own benefit, any matter which all of them have the power to provide within their own boundaries;

AND WHEREAS the Municipal Council of the Corporation of the Township of Wilmot is desirous to enter into a cost-sharing agreement with the Region of Waterloo for the Baden Sanitary Forcemain upgrades, a copy of which is attached as Schedule 'A' to this By-law.

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF
WILMOT ENACTS AS FOLLOWS:**

1. THAT the Agreement regarding the reimbursement of contract administration fees and construction costs related to the Regional Baden Sanitary Forcemain within the Baden Trunk Sanitary Sewer Project between the Township of Wilmot and the Region of Waterloo., as more particularly set forth in Schedule 'A' attached to this By-law be hereby accepted and approved.
2. THAT the Mayor and Clerk are hereby authorized to execute under seal the said Agreement and all other documents and papers relating to this agreement.

READ a first and second time in Open Council this 28th day of April, 2025.

READ a third time and finally passed in Open Council this 28th day of April, 2025.

Mayor

Clerk

COST SHARING AGREEMENT
BADEN FORCEMAIN – BADEN SANITARY TRUNK CONSTRUCTION

This Agreement made this xx day of xxxx,xxxx.

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF WILMOT
(hereinafter called the "**Township**")

- and -

THE REGIONAL MUNICIPALITY OF WATERLOO
(hereinafter called the "**Region**")

WHEREAS Section 20 of the Municipal Act, 2001, S.O. 2001, C 25, as amended, authorizes a municipality to enter into an agreement with one or more municipalities or local bodies to jointly provide, for their own benefit, any matter which all of them have the power to provide within their own boundaries;

AND WHEREAS the Township is agreeable to enter into an Agreement with the Region to oversee construction of a twinned 250mm forcemain along Foundry St. and Gingrich Rd;

NOW, THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as follows:

1. This Agreement shall be interpreted according to laws of the Province of Ontario and the laws of Canada applicable therein.
2. Terms and Definitions used within this Agreement shall be as per:
 - a. OPSS MUNI GENERAL CONDITIONS OF CONTRACT OPSS.MUNI 100 November 2019
 - b. Construction Act, R.S.O. 1990, c. C.30
3. **Tendering & Award of Contract**
 - a. The Township has entered into a contract with their selected contractor (the "Contractor"), and agrees to oversee the construction of a section of twinned 250mm forcemain along Foundry St. from the Baden SPS to the culvert on Gingrich Rd.

(the "Project") on behalf of the Township and the Region through consultants retained by the Township.

- b. The Township has entered the Construction Contract with the Contractor on its own behalf. The Township will undertake the obligations of the "Owner" as set in the Construction Contract.

4. **Permitting**

- a. The Township is responsible for acquiring all necessary permits and agrees to obtain and provide copies of all required permits and approvals for the Project to the Region for their files upon request.

5. **Billing & Invoicing**

- a. The Township will review and provide payment to the Contractor.
- b. Subject to the terms of the Construction Contract, the Township shall withhold from the Contractor:
 - i. 10% Statutory Holdback
 - ii. 2.0% Maintenance Holdback

- iii. any Owner's set-off
- c. The Township agrees to provide to the Region, on a monthly basis:
 - i. An Invoice.
 - ii. Progress Payment Certificate signed by Contractor, Contract Administration and Township.
 - iii. Any new Change Order(s) pursuant to the Construction Contract.
 - iv. Construction Documentation, not limited to Inspection Reports, MOL visits, if requested by the Region.
 - v. All geotechnical and materials test results.
- d. The Region agrees to pay the Township:
 - i. Monthly, the costs associated with Construction Administration and Inspection in proportion to the Construction Costs of the Project attributed to the Regional components of the Project.
 - ii. Monthly, the costs associated with Soils and Materials Testing Inspection in proportion to the Construction Costs of the Project attributed to the Regional components of the Project.
 - iii. Monthly, the actual construction costs attributed to the Regional components of the Project, as per the Progress Payment Certificate based on the proportionate costs identified in Schedule A of this Agreement.
 - iv. As incurred, following receipt of an invoice, any additional costs incurred by the Township in carrying out its obligations under this Agreement or the Construction Contract in respect of Regional components of the Project.
- e. The Region shall not set-off or retain amounts from the payment due to the Township, including, in particular, the 10% Statutory Holdback or the 2.0% Maintenance Holdback. Any dispute by the Region in relation

to billing and invoicing and any amounts alleged to be owing by the Region shall be resolved pursuant to paragraph 8 of this Agreement.

- f. The Region shall inform the Township of any direction to the Township to apply an Owner's set-off pursuant to OPSS MUNI 100 GC 8.02.04.12 in writing a minimum of 14 calendar days prior to Certification and Payment Pursuant to GC 8.02.04.
- g. The Township shall not provide authorization of Substantial Performance without consent of the Region.
- h. The Township shall provide the Region with written notice of any non-compliance with the Construction Contract and/or defects in relation to the Region's component of the Project within a reasonable time of discovering it and the Township shall consult with and take direction from the Region on the appropriate remedies to correct such. The Region shall also be entitled to inspect any Regional component of the Project for defects or deficiencies and to attend any "walk through" of the works that includes the Contractor and/or consultant(s) of the Township.

6. **Contingencies**

- a. The Township agrees to monitor the Construction Activities providing the Region with Monthly Budgetary updates on item overages.
- b. The Township agrees that use of Contingencies for Regional Works shall require written approval from the Region.
- c. The Region shall provide written direction to the Township prior to the Township approving a Change Order in relation to Regional components of the Project.

7. **Insurance & WSIB**

- a. The Township shall obtain and maintain comprehensive general liability insurance and WSIB for the Project from:
 - i. The Contractor pursuant to the terms of the Contract
 - ii. The Consultant
 - iii. The Geotechnical Consultant

All required insurance and indemnities in the Construction Contract shall name the Region as an additional insured and an indemnified party, as

applicable. Proof of Insurance shall be provided to the Region within 14 days of request before, during or after the project.

The Township shall ensure compliance with, and shall satisfy any and all requirements of, the Occupational Health and Safety Act ("OHSA"). The Township shall indemnify, defend, and hold harmless the Region against, but not limited to, any and all fines, penalties, damages, claims, or actions which may arise under the OHSA due to any breach for which the Township is responsible. The Township will be recognized as the "Owner" in the Construction Contract.

8. Dispute Resolution

- a. If a dispute arises out of, or in connection with this Agreement, the parties agree to meet to pursue resolution through negotiation, and if required such meeting to include the Chief Administrative Officer or designate for each of the parties. All information exchanged during this meeting shall be regarded as "without prejudice" communications for the purpose of settlement negotiations and shall be treated as confidential by the parties and their representatives, unless otherwise required by law. Failing resolution by negotiation, the parties shall submit any such dispute to arbitration, which arbitration shall be governed by the rules and procedures under the Arbitration Act, 1991, S.O. 1991, c.17, as amended.

9. Indemnity and Insurance

- a. The Township shall defend, indemnify and hold harmless the Region in relation to, but not limited to, all demands, claims, actions, suits, damages, liabilities, fines, losses, settlements, and judgments from the Contractor or any 3rd party arising from the Construction Contract and Project.
- b. Notwithstanding subparagraph a. of this paragraph, if the Region is found to be liable or contributed to such losses, the Region agrees to contribute to any reasonable legal and expert costs that the Township incurs to defend or respond to any claim, action or suit, and/or any settlement or judgment, arising from the Construction Contract and Project, based on the Region's proportionate share pursuant to Schedule A of this Agreement on the condition that the Township advises and consults with the Region or their insurer, as necessary, and that the claim, action or suit is not the result of the Township's negligence, breach of law and/or willful misconduct.
- c. The Township shall ensure all third parties and contractors acting or performing work on behalf of the Township, as contemplated under the conditions of this agreement, have appropriate indemnification in such

agreements and are adequately insured with a minimum of not less than five million (\$5,000,000) per occurrence in coverage, include Township and The Regional Municipality of Waterloo as an Additional Insured on all contracts, and are a sophisticated contractor who complies with all requirements under the OHSA. The Township shall be responsible to request, collect and retain all insurance certificates of insurance with all appropriate coverages and endorsements depending on what type of work is being performed.

- d. The Township shall carry appropriate insurance as would similar municipalities of comparable size and include The Regional Municipality of Waterloo as an additional insured, including the following endorsements: Cross Liability, Severability of Interest, 30 days cancelation notice, and Products & Completed Operations. A certificate of insurance shall be provided upon request at any time, including after the termination of this agreement (As long as the request is for the time during the contract was active).
 - e. For any claim submitted to the Township under such contracts governed by this agreement, that includes the Region, notice shall be provided to the Region and the Waterloo Region Municipalities Insurance Pool ("WRMIP") within 2 business days. The WRMIP will assess the allegations and provide input in how such claims are to be managed between the two parties.
10. Any notice, invoice or other document required to be given to either party under this Agreement shall be sufficiently given by email to the person below:

To the Region at:

Region of Waterloo
150 Frederick Street
Kitchener, ON N2G 4J3
Attention: Jason Isbister, Project Manager
[Email: jisbister@regionofwaterloo.ca](mailto:jisbister@regionofwaterloo.ca)

To the Township at:

Township of Wilmot
60 Snyder's Road West
Baden, ON N3A 1A1
Attention: Project Manager

Either party may substitute another person by providing written notice.

11. Failure by either party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.
12. If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and everything else in this Agreement shall continue in full force and effect.
13. This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns. Neither party may assign all or any part of this Agreement without the written approval of the other party.
14. This Agreement may be executed in counterpart in writing or by electronic signature, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement and shall be valid and binding among the parties hereto as of the date first above written. The delivery of an executed counterpart copy of this Agreement by mail, facsimile or other electronic means, including in Portable Document Format (PDF), will be deemed to be the equivalent to delivery of an original executed copy.
15. The following Schedules are attached to and form part of this Agreement:

Schedule "A": Construction Costs

If there is a conflict or inconsistency between the terms and conditions of this Agreement and any Schedule or other document contemplated or delivered in connection with this Agreement, the terms and conditions of the Schedule shall prevail.

[Remainder of page left blank. Signature page follows.]

IN WITNESS WHEREOF the Township has executed and delivered this Agreement as of the _____ day of _____ 2025.

THE CORPORATION OF THE TOWNSHIP OF WILMOT

Natasha Salonen,
Mayor

Xxxxx,
Municipal Clerk

We have authority to bind the corporation.

IN WITNESS WHEREOF the Region has executed and delivered this Agreement as of the _____ day of _____ 2025.

THE REGIONAL MUNICIPALITY OF WATERLOO

Jennifer Rose,
Commissioner of Engineering and Environmental Services

I have authority to bind the corporation pursuant to By-law 22-018, sec. 88.

Schedule A

Construction Costs

Item	Costs	
Change Order #6 – 250mm Twinned Forcemain	\$312,052.50 (fixed)	
Inspection	\$8,800.00 (estimate)	16 working days @ \$550.00 per WD
Contract Admin	\$1,250.00 (fixed)	15 hours
Geotechnical Services	\$20,000.00 (estimate)	To be tracked separately
Overhead	Included in rates	
Total	\$342,102.50	