

THIS AGREEMENT made this day of 2007.

B E T W E E N:

THE REGIONAL MUNICIPALITY OF PEEL
herein called "Peel"

of the First Part

and

CITY OF TORONTO
herein called "Toronto"

of the Second Part

BACKGROUND:

WHEREAS each of Toronto and Peel are neighbouring municipalities sharing a common boundary;

AND WHEREAS part of the common boundary is comprised of a Bridge (as hereinafter defined);

AND WHEREAS Peel and Toronto now desire to enter into this Agreement setting forth their respective rights and obligations with respect to the maintenance, repair and construction of the Bridge;

IN CONSIDERATION of the foregoing Background, the mutual covenants in this Agreement and other good and valuable consideration (the receipt and adequacy of which are hereby acknowledged) the Parties agree as follows:

ARTICLE I
INTERPRETATION

1.1 **Definitions:** In this Agreement, except where the context or subject matter is inconsistent therewith, the following terms shall have the following meanings:

"**Applicable Laws**" means all statutes, regulations, codes, by-laws, ordinances, orders and requirements, whether federal, provincial, municipal or by any other governmental authority, commission, board, agency department or regulatory body having jurisdiction, which apply to

the subject matter or matters of this Agreement, including the *Bridges Act*, R.S.O. 1990, c.B.12 and the *Public Transportation and Highways Improvement Act*, R.S.O. 1990, c.P .50;

"Boulevard Surface" means the non-structural hard surface of the Bridge required for the passage of pedestrians and vehicles, and includes paved surface, curbs, gutters, culverts, catch basins, storm sewer pipes, storm sewer drains, sidewalks, medians, guide rails, signage, and line markings;

"Boulevard Surface Routine Maintenance" means the continuous, diligent and ongoing maintenance and repair of all Boulevard Surface components situated on the Bridge, including pothole patching, crack sealing, depression/settlement repairs, sidewalk patching, guiderail, catch basin and storm sewer drain clean out, line painting, snow plowing, snow removal, salting and road washing;

"Bridge" means the bridge structure which accommodates the crossing of the Boundary Surface over that part of the common boundary between Peel and Toronto comprised of the Etobicoke Creek, including the embankment abutments, approach slabs, bridge deck, main structural frame, structural piers, foundations and footings and structural suspension, bearing and expansion joints, and the Boulevard Surface situated on the Bridge, shown in Appendix A;

"Business Day" means any day other than a Saturday, Sunday or statutory or civic holiday;

"Capital Improvements" means the work done to create or upgrade the structure, including road and/or structure, widening, lighting conduits, installation of medians, boulevard and sidewalk improvement;

"Inspection" means careful examination of the bridge structure and the local area surrounding it, by checking for erosion problems, element defects, and testing the condition and performance of those elements against established standards for the purpose of ascertaining whether the structure is safe and sound for public use or whether repairs are needed to make it so;

"Loss" or "Losses" means any and all liabilities, charges, cost, direct or indirect damages (including punitive damages), loss of profits, consequential damages, incidental damages, special damages, losses or expenses (including without limitation, court costs, arbitration fees, penalties, fines, amounts paid in settlement of claims and reasonable legal fees and expenses of investigation);

"Party" means either Peel or Toronto and **"Parties"** means both of them, and in the case of any indemnity provision herein, the terms Peel or Toronto shall be deemed to include all councillors, elected officials, officers, employees or agents of the Party to be indemnified;

"Person" includes an individual, corporation, partnership, joint venture, trust, unincorporated organization, the Crown or any agency or instrumentality thereof or any other entity recognized by law;

"Structural Maintenance" means the continuous, diligent and ongoing maintenance and repair of all structural components of the Bridge that ensures good state of repair and safe usage, in

compliance with all Applicable Laws, including all required alterations, replacements, major repairs, modifications or upgrades to the structural components of the Bridge.

1.2 **Headings and Index:** The division of this Agreement into articles, sections, subsections and schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The articles, section, subsection and schedule headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and should not be considered part of this Agreement.

1.3 **Extended Meanings:** The words expressed in the singular include the plural and vice versa and words in one gender include all genders.

1.4 **Entire Agreement:** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions whether oral or written of the parties pertaining to such subject matter. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except those specifically set out herein. The execution of this Agreement has not been induced by nor do any of the parties rely upon or regard as material any representations not included in this Agreement. No supplement, modification or waiver of this Agreement shall be binding unless executed, in writing, by the party to be bound thereby. A waiver of any of the provisions of this Agreement shall not be deemed or shall constitute a waiver of any other provision whether or not similar nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

1.5 **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

1.6 **Currency:** Unless otherwise indicated, all dollar amounts referred to in this Agreement are in Canadian funds.

1.7 **Invalidity:** If any of the provisions contained in this Agreement are found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained herein shall not be in any way affected or impaired thereby.

ARTICLE II MAINTENANCE BY TORONTO

2.1 **Maintenance:** Except as otherwise provided in this Article, Toronto shall be responsible for the performance and implementation of all Structural Maintenance and Boulevard Surface Maintenance required to be performed under all Applicable Laws with respect to the structural components of the Bridge. On a case by case basis where required, with the consent in writing of both parties, Toronto shall also be responsible for the performance and implementation of all Major Maintenance and Capital Improvements required for all structural and boulevard surface of the Bridge.

2.2 **Cost Sharing for Structural and Boulevard Maintenance:** The actual costs and expenses incurred by Toronto with respect to the Boulevard Surface Maintenance and Structural Maintenance work shall be shared equally between Toronto and Peel (50% each). Peel shall pay to Toronto at the beginning of each year of the term for Structural Maintenance and facility maintenance purposes the sum of \$1,375.00 annually, based on 50% of the average cost of maintaining the bridge \$2,750.00 annually. The costs shall be reviewed and revised every three years as a basis for the next 3-year period, in order to reflect the actual costs incurred.

2.3 **Cost Sharing for Structural Capital Improvements and Major Repairs over \$50,000.00:** The costs of Capital Improvements of the Bridge and Boundary Road in accordance with Section 2.1 and are under \$100,000.00 shall be shared by Peel and Toronto on a 50/50 basis. Should 50% of the cost for any Structural Capital improvement required to be performed on the Bridge exceed \$50,000.00, Toronto shall not perform such Structural Maintenance without prior written consent from Peel. If Peel withholds consent and Toronto is of the opinion that the work is needed, Toronto may proceed with the work at its own cost, and the issue of the necessity of the work shall be referred for resolution to the Toronto General Manager of Transportation Services and the Peel Commissioner of Transportation and Works. If the work is determined to be necessary, Peel shall pay its 50 percent contribution for the work performed.

2.4 To facilitate the structural investment planning and budgeting by Peel, Toronto shall provide, on an annual basis, a 5-year Structural Capital Improvement Program and, if feasible, a 10-year program.

2.5 **Dispute Resolution:** Should either Party wish to dispute any portion of the invoice, the undisputed part of the invoice shall still be paid within the timeframe as provided in this Article. The disputed section shall be resolved through discussions between Peel's Commissioner of Public Works and Toronto's General Manager of Transportation Services, or their respective designates.

ARTICLE III PERFORMANCE

3.1 **Performance of Obligations:** Each of the Parties hereto agree to perform their obligations:

- (a) in a good and workmanlike manner;
- (b) with all due diligence and dispatch; and
- (c) in compliance with all Applicable Laws.

ARTICLE IV INDEMNITIES AND INSURANCE

4.1 **General Indemnity by Toronto:** Toronto shall indemnify and hold Peel harmless from and against any and all losses incurred by Peel or which Peel may suffer or become liable for, as a result of, or in connection with, or in relation to any matter arising under or in consequence of any breach of any term, obligation or covenant of Toronto contained in this Agreement or otherwise arising directly or indirectly in relation to any act, omission, error or negligence of Toronto or any of its employees, contractors, consultants or agents in the performance of any of Toronto's obligations under this Agreement.

4.2 **Insurance:** During the term of this Agreement, Toronto shall obtain and maintain in full force and effect, at its own cost, Commercial General Liability insurance issued by an insurance company authorized by law to carry on business in the Province of Ontario, providing for, without limitation, coverage for third party bodily injury, property damage and personal injury. Such policy shall:

- (a) have inclusive limits of not less than FIVE MILLION DOLLARS (\$5,000,000.00) per occurrence;
- (b) contain a cross-liability clause endorsement of standard wording;
- (c) add the other party as an additional insured;
- (d) not be terminated, cancelled, or materially altered unless written notice of such termination, cancellation or material alteration is given to the other party as least thirty (30) clear days before the effective date thereof; and
- (e) require that a party, upon the request of the other party, shall provide proof of insurance in a form satisfactory to the other party's insurance or risk manager.

4.3 During the term of this Agreement, Toronto shall obtain and maintain in full force and effect, at its own cost, Standard Automobile Liability insurance in an amount of FIVE MILLION DOLLARS (\$5,000,000.00) per occurrence.

ARTICLE V TERM AND TERMINATION

5.1 **Term:** The term of this Agreement shall commence on the 1st day of January, 2008, and shall continue for ten (10) years unless terminated by either party on not less than six months' written notice (the "Term").

**ARTICLE VI
GENERAL**

6.1 **Notice:** Any notice, demand, consent, or other communication (in this section, a Notice required or permitted to be given or made in this Agreement shall be in writing and shall be sufficiently given or made if:

- (a) delivered in person, during normal business hours on a Business Day and left with a receptionist or other responsible employee of the relevant party at the applicable address set forth below; or
- (b) sent by prepaid first-class mail; or
- (c) sent by any electronic means of sending messages including facsimile transmission which produces a paper record (Electronic Transmission) during normal business hours on a Business Day.

In the case of a notice to Peel addressed to it at:

THE REGION OF PEEL
10 Peel Centre Drive
Brampton, ON L6T 4B9

Attention: Mitch Zamojc, Commissioner of Public Works

Facsimile Number: (905) 791-6728

and in the case of a notice to Toronto addressed to it at:

CITY OF TORONTO
Toronto City Hall
23rd Floor, East Tower
100 Queen Street West
Toronto, ON M5H 2N2

Attention: Gary Welsh, General Manager, Transportation Services

Facsimile Number: (416) 392-4455

Each notice sent in accordance with this section shall be deemed to have been received:

- (a) at the time it was delivered in person;

- (b) at the beginning of business on the third (3rd) Business Day after it was mailed, excluding each Business Day during which there existed any general interruption in postal services due to strike, lock-out or other cause; or
- (c) at the start of business on the first (1st) Business Day after the day on which it was sent by electronic transmission.

Any party may change its address for notice by giving notice to the other parties as provided in this section.

6.2 **Further Assurances:** Each Party shall do such acts and shall execute such further documents, conveyances, deeds, assignments, transfers and the like and will cause the doing of such acts and will cause the execution of such further documents as are within its power as any other Party may, in writing, at any time and from time to time reasonably request be done and/or executed in order to give full effect to the provisions of this Agreement.

6.3 **Assignment:** The Parties shall not be entitled to assign, transfer, license or otherwise divest the benefits of their respective rights under this Agreement without the prior written consent of the other, which consent may be arbitrarily or unreasonably withheld.

6.4 **Binding on Successors:** This Agreement shall ensure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

6.5 **Force Majeure:** Except as expressly provided or otherwise in this Agreement, dates and times by which a Party is required to render performance under this Agreement shall be postponed automatically to the extent and for the period of time that such a Party is prevented from meeting them by any reason of any cause beyond its reasonable control. The Party prevented from rendering performance must, however, notify the other Party immediately and in detail of the commencement and nature of such cause: and the probable consequences thereof. Such Party must use its reasonable efforts to render performance in a timely manner utilizing to such end all resources reasonably required under the circumstances including obtaining supplies or services from other sources if same were reasonably available.

6.6 **Independent Contractor:** In giving effect to this Agreement, no Party shall be or be deemed an agent or employee of the other Party for any purpose and that their relationship to each other shall be that of independent contractors. Nothing in this Agreement shall constitute a partnership or a joint venture between the Parties. No Party shall have the right to enter into contracts or pledges credit of or incur expenses or liabilities on behalf of the other Party.

6.7 **Time of the Essence:** Time shall be of the essence hereof.

IN WITNESS WHEREOF the Parties have duly executed this Agreement.

THE CORPORATION OF THE REGION OF PEEL

Per: _____
Mitch Zamojc, Commissioner of Public Works

CITY OF TORONTO

Per: _____
Joseph P. Pennachetti, Deputy City Manager and Chief Financial Officer

Per: _____
Ulli S. Watkiss, City Clerk

Appendix A
The Queensway Bridge over Etobicoke Creek



