

APPENDIX C

THIS AGREEMENT made this ____ day of _____, 2012.

BETWEEN:

THE CORPORATION OF THE CITY OF MISSISSAUGA
herein called "Mississauga"

of the First Part

and

CITY OF TORONTO
herein called "Toronto"

of the Second Part

BACKGROUND:

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

AND WHEREAS part of the common boundary is comprised of Bridges (as hereinafter defined) and other parts are comprised of boundary roads which have been jointly constructed and installed by both municipalities;

AND WHEREAS Mississauga and Toronto entered into an agreement dated October 22, 2008 (the "October 22, 2008 Agreement") outlining their respective obligations with respect to Boundary Roads and Bridges;

AND WHEREAS Mississauga now desires to widen the Eglinton Avenue West bridge over the Etobicoke Creek in order to accommodate a dedicated BRT (as hereinafter defined) lane in the future;

AND WHEREAS Mississauga 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 Bridges and Boundary Roads (as hereinafter defined), including the Eglinton Avenue West Bridge;

AND WHEREAS Mississauga and Toronto intend for this Agreement, effective January 1, 2012, to supercede and replace the October 22, 2008 Agreement;

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 Highway Improvement Act*, R.S.O. 1990, c.P.50;

"Boulevard Surface" means the non-structural hard surface of the Bridges and Boundary Roads 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 Maintenance" means the continuous, diligent and ongoing maintenance and repair of all Boulevard Surface components situated on the Bridges and Boundary Roads, 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, sanding and road washing;

"Boundary Road" means any one or more of: a) the road surface of the bridge installations over the Etobicoke Creek along east-west arterial roads comprising Lakeshore Road, Dundas Street, Bloor Street West, and Burnhamthorpe Road, which are situated within both Toronto and Mississauga and cross that part of the common boundary comprised of Etobicoke Creek; b) the portion of Renforth Drive situated in Toronto from a point approximately 145 metres north of Eglinton Avenue West along the boundary line to a point 900 metres further north thereof; c) Matheson Boulevard from Eglinton Avenue West to a point 375 metres further west thereof; and d) the portion of Eglinton Avenue West which is a part of the common boundary between Mississauga and Toronto and which shall include the Eglinton Bridge. The Boundary Roads and Bridges are shown in Appendix 1;

"Bridge" means the bridge structure which accommodates the crossing of a Boundary Road over that part of the common boundary between Mississauga 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 1;

"BRT" means the Mississauga bus rapid transit;

"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 road structure, including road and/or structure, widening, intersection improvements, lighting conduits, installation of medians, boulevard and sidewalk improvement and/or turning lanes;

"Eglinton Bridge" means the Eglinton Avenue West bridge over the Etobicoke Creek;

"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 Mississauga or Toronto and **"Parties"** means both of them, and in the case of any indemnity provision herein, the terms Mississauga 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 a Bridge that ensures good state of repair and safe usage, in compliance with all Applicable Laws, including Inspections and all required alterations, replacements, 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 nor 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 Agreement, 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 Bridges and Boundary Roads. Except for the construction of the expansion of the Eglinton Bridge where Mississauga will carry out the capital activity with consent from Toronto as set out in Article IV, on a case by case basis, with the consent in writing of both Parties, Toronto shall also be responsible for the performance and implementation of all Capital Improvements required for all structural and boulevard surface of the Bridges and Boundary Roads.
- 2.2 **Cost Sharing:** Except for any work done on Eglinton Avenue West and Renforth Drive, the actual costs and expenses incurred by Toronto with respect to the Boulevard Surface Maintenance and Structural Maintenance work as well as the agreed upon costs of Capital Improvements of the Bridges and Boundary Roads in accordance with Section 2.1 shall be shared equally as between Toronto and Mississauga (50% each). Mississauga shall pay to Toronto commencing in 2012 in accordance with section 9.2 of this Agreement the sum of \$_____, based on 50% of the average cost of maintaining each of five bridges annually for Boulevard Surface Maintenance, Structural Maintenance (excluding subsurface maintenance) and facility maintenance purposes. The costs shall be reviewed and revised every three years from the effective date of this Agreement in order to reflect the actual costs incurred. Capital Improvement related payments will be made by Mississauga to Toronto in accordance with section 9.2 of this Agreement, on a case by case basis, based on 50% of incurred costs for work that has been approved or work that is necessary for the proper operation and maintenance of the Bridge or Boundary Road.
- 2.3 **Cost Sharing for Structural Maintenance over \$50,000.00:** Except for any work done on Eglinton Avenue West and Renforth Drive, should 50% of the cost for any Structural Maintenance required to be performed on a Bridge or Boundary Road exceed \$50,000.00, Toronto shall not perform such Structural Maintenance without prior written consent from Mississauga. If Mississauga 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 in accordance with section 9.1 of this Agreement. If the work is determined to be necessary, within 30 days of such determination, Mississauga shall pay to Toronto its 50% contribution for the work.
- 2.4 **Eglinton Avenue West:**
- 2.4.1 In addition to section 2.1, Toronto shall be responsible for all Capital Improvements and Surface Maintenance on Eglinton Avenue West that forms part of the common boundary between Toronto and Mississauga, which includes Eglinton Avenue West road from the easterly limit of the Eglinton Bridge to Renforth Drive. Notwithstanding the foregoing, the maintenance obligations for the Eglinton Bridge shall be in accordance with Article IV.
- 2.4.2 Commencing in 2012, Mississauga will pay to Toronto 50% of the costs of the maintenance work to be performed by Toronto under this Article II. Based on current average unit costs of key activities (asphalt repairs, sweeping, ploughing, salting and winter standby) as experienced by Toronto and based on the City's established frequencies, Mississauga's share at the commencement of the term of the Agreement will

be \$_____ per year. Such work will be undertaken without prior written consent from Mississauga. If Mississauga withholds consent and Toronto is of the opinion that the work is needed, Toronto can proceed with the repairs at its own cost while the matter is referred for resolution in accordance with Section 9.1 of this Agreement. If the work is determined to be necessary, within 30 days of such determination, Mississauga shall pay to Toronto its contribution for the work in accordance with section 2.4.2.

2.5 **Renforth Drive:**

2.5.1 In addition to section 2.1, Toronto shall be responsible for all the work related to Structural Maintenance and Boulevard Surface Maintenance on Renforth Drive that forms part of the Boundary Roads as defined in section 1.1. In addition, Toronto shall be responsible for the performance and implementation of Capital Improvements on Renforth Drive. However, Mississauga shall pay to Toronto 50% of the costs of all such work. Commencing in 2012, Mississauga will pay to Toronto 50% of the costs of the maintenance work to be performed by Toronto. Based on current average unit costs of key activities (asphalt repairs, sweeping, ploughing, salting and standby) as experienced by Toronto and based on Toronto's established frequencies, Mississauga's initial share will be \$_____ per year. Such costs will be revised every three years from the effective date of this Agreement to reflect real costs incurred. Toronto shall submit to Mississauga a breakdown of any required capital work to be done and the costs of such work in reasonable and sufficient detail prior to the work being done. No Capital Improvements shall be undertaken without prior written consent from Mississauga. If Mississauga withholds consent and Toronto is of the opinion that the work is needed, Toronto can proceed with the repairs at its own cost while the matter is referred for resolution in accordance with section 9.1. If the work is determined to be necessary, within 30 days of such determination, Mississauga shall pay to Toronto its contribution for the work in accordance with section 2.5.1.

2.6 **Traffic Signals:** Without limiting the generality of Toronto's maintenance obligations under this Agreement, Toronto shall be responsible for the maintenance and operations of the traffic signals at the following locations at its own cost:

- a) Eglinton Avenue at Spectrum Way/Rakely Court;
- b) Eglinton Avenue at Satellite Drive;
- c) Eglinton Avenue at Orbitor Drive/Centennial Park Boulevard;
- d) Eglinton Avenue at Explorer Drive;
- e) Eglinton Avenue at Commerce Boulevard; and
- f) Eglinton Avenue at Renforth Drive.

- 2.7 **Energy Costs:** With the exception of Matheson Boulevard, Toronto and Mississauga shall be responsible for the energy cost of all streetlighting located along the Boundary Roads, which includes the Eglinton Avenue West road from the easterly limit of the Eglinton Bridge to Renforth Drive. For greater clarity, Mississauga shall be fully responsible for the maintenance of only those streetlights that are energized by Enersource Mississauga. However, the energy cost of all streetlighting shall be shared between the Parties at 50% each. For any energy cost that each of the Parties incur and that is within the responsibility of the other Party, the Party incurring the cost may issue an invoice to the other Party for reimbursement and the other Party shall pay the Party incurring the cost within thirty days of receipt of such invoice. Any such chargebacks shall be at cost without any additional administrative fee.
- 2.8 **Emergency Work:** Despite anything in this Agreement to the contrary, if there is any emergency structural work that impacts user or community safety, if the work does not exceed \$50,000.00, Toronto can carry out the necessary corrective action by providing 48 hours notice to Mississauga and Mississauga shall pay to Toronto 50% of the cost of the work but, if in relation to Eglinton Bridge, Mississauga shall pay to Toronto two-thirds of the cost of the work.

ARTICLE III MAINTENANCE BY MISSISSAUGA

- 3.1 **Matheson Boulevard:**
- 3.1.1 Mississauga shall be responsible for all the work costs, expenses and the performance and implementation of Capital Improvements, Structural Maintenance and Boulevard Surface Maintenance of the portion of Matheson Boulevard that forms the Boundary Road as defined in section 1.1. At the beginning of each year, Toronto will pay Mississauga an amount equal to 50% of the cost of the facility maintenance work to be performed.
- 3.1.2 Before performing any Capital Improvements, Mississauga shall secure Toronto's approval in writing. If Toronto withholds consent and Mississauga is of the opinion that the work is needed, Mississauga can proceed with the repairs at its own cost while the matter is referred for resolution in accordance with section 9.1. If the work is determined to be necessary, Toronto shall pay its contribution for the work in accordance with section 3.1.1.
- 3.1.3 Notwithstanding its maintenance obligations under this section 3.1, Mississauga is not responsible for the maintenance or energy cost of any streetlighting along Matheson Boulevard that forms the Boundary Road.
- 3.2 **Curve Warning Flasher at Renforth Drive ramp:** Mississauga shall be responsible – entirely at its own cost – for the maintenance and operation of the curve warning flasher at the Renforth Drive ramp to Matheson Boulevard East which is located approximately 290 m east of the center line of the Commerce Boulevard and Matheson Boulevard East intersection on the north side.

ARTICLE IV EGLINTON BRIDGE

- 4.1 **Widening the Eglinton Bridge:** Mississauga wishes to widen the northern side of the Eglinton Bridge by adding a cantilevered section along the full length in order to accommodate BRT lanes as shown in Appendix 3. Mississauga will also assume full responsibility for the construction of said facility and all associated costs. Construction approvals shall be obtained by Mississauga from Toronto for the final bridge design and Mississauga shall make application to Toronto for any necessary permits in accordance with Toronto's permitting process.
- 4.2 **Boulevard Surface Maintenance:** The bridge surface boulevard will be comprised of two components: the BRT lanes and the general purpose traffic lanes. Mississauga shall be responsible for all Boulevard Surface Maintenance within the limits of the BRT lanes at its own expense. Toronto will be responsible for all Boulevard Surface Maintenance for the remaining portions of the Bridge and the costs for the Boulevard Surface Maintenance for such remaining portions shall be shared equally between Toronto and Mississauga (50% each). Mississauga shall reimburse Toronto for such Surface Maintenance costs.
- 4.3 **Structural Maintenance:** Toronto shall be responsible for all Structural Maintenance of the Eglinton Bridge. Toronto will be financially responsible for one-third of the cost and Mississauga shall compensate Toronto for two-thirds of the incurred costs and Mississauga shall reimburse Toronto for such Structural Maintenance costs. This is based on the fact that Mississauga will be using four lanes (two for BRT and two for general traffic) and Toronto two lanes for general traffic. For any capital work exceeding \$50,000.00, Toronto shall not perform such Structural Maintenance without prior written consent from Mississauga. If Mississauga 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 in accordance with section 9.1. If the work is determined to be necessary, within 30 days of such determination, Mississauga shall pay to Toronto its contribution for the work in accordance with section 4.3.

ARTICLE V Traffic Control and Enforcement

- 5.1 **Matheson Boulevard:** Mississauga shall be responsible for investigating and monitoring speed of traffic, analysing the information and evaluating it to propose speed changes on the portion of Matheson Boulevard between Renforth Drive and Eglinton Avenue West. Mississauga will seek Toronto's approval before implementing any changes. If Toronto withholds consent and Mississauga is of the opinion that the change is needed, the matter will be referred for resolution in accordance with section 9.1.
- 5.2 **Eglinton Avenue West:** Toronto shall be responsible for investigating and monitoring speed of traffic, analysing the information and evaluating it to propose speed changes on the portion of Eglinton Avenue West between Renforth Drive and Etobicoke Creek. Toronto will seek Mississauga's approval before implementing any changes. If Mississauga withholds consent and Toronto is of the opinion that the change is needed, the matter will be referred for resolution in accordance with section 9.1.
- 5.3 **Renforth Drive:** Toronto shall be responsible for investigating and monitoring speed of traffic, analysing the information and evaluating it to propose speed changes on the portion of Renforth

Drive between Eglinton Avenue West and International Boulevard. Toronto will seek Mississauga's approval before implementing any changes. If Mississauga withholds consent and Toronto is of the opinion that the change is needed, the matter will be referred for resolution in accordance with section 9.1.

ARTICLE VI PERFORMANCE

- 6.1 **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 VII INDEMNITIES AND INSURANCE

- 7.1 **General Indemnity by Toronto:** Toronto shall indemnify and hold Mississauga harmless from and against any and all losses incurred by Mississauga or which Mississauga 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.
- 7.2 **General Indemnity by Mississauga:** Mississauga shall indemnify and hold Toronto harmless from and against any and all losses incurred by Toronto or which Toronto 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 Mississauga contained in this Agreement or otherwise arising directly or indirectly in relation to any act, omission, error or negligence of Mississauga or any of its employees, contractors, consultants or agents in the performance of any of Mississauga's obligations under this Agreement.
- 7.3 **Additional Indemnity by Mississauga:** Mississauga shall save, defend, and keep harmless and fully indemnify Toronto from and against any and all actions, suits, claims, executions, loss, costs, charges, damages, liens, and demands, including any post-construction damage, which may be brought against or made upon Toronto or which may be sustained, incurred or paid by Toronto as a result of, in connection with, or in consequence of, either directly or indirectly, any act, omission, error or negligence of Mississauga or any of its employees, contractors, consultants or agents with respect to the construction of the Eglinton Bridge widening as provided in Article IV. This section survives the termination or expiry of this Agreement.
- 7.4 **Insurance:** During the term of this Agreement, each Party 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.

ARTICLE VIII TERM AND TERMINATION

- 8.1 **Term:** The term of this Agreement shall commence on the 1st day of January, 2012 and shall continue for 10 years unless terminated by either Party on not less than six months' written notice (the "Term").

ARTICLE IX GENERAL

- 9.1 **Dispute Resolution:** Should either Party wish to dispute any portion of an invoice, the undisputed part of the invoice shall still be paid within the timeframe as provided in this Agreement. The disputed section shall be resolved through discussions between Mississauga's Commissioner of Transportation and Works and Toronto's General Manager of Transportation Services, or their respective successors/designates. In the event that they are unable to resolve the matter, the Parties agree that either Party may request that the matter be referred to, in the case of Toronto, the Deputy City Manager (with responsibility for the functions as performed by the Transportation Services Division) and, in the case of Mississauga, the City Manager, for discussion and resolution.
- 9.2 **Payments:** All amounts payable to either Party under this Agreement will be paid within 30 days of receipt of invoice.
- 9.3 **Interest:** All amounts payable to the Parties under this Agreement will bear simple interest at the rate of 1.25% per month (15% per year) (the "Default Rate of Interest"). Interest will be calculated and payable from and including the day after the day the amount is due until payment in full of the overdue amount is received by the other Party. Interest will be calculated only on the principal amount outstanding from time to time, and interest charges will not be added to the outstanding principal amount for purposes of calculating interest. Payments received by either Party will be applied first to outstanding interest charges and the balance (if any) will be applied to the outstanding principal amount. The Default Rate of Interest may be increased by the Parties from time to time by notice to the other Party. The rights of both Parties to charge and receive interest in accordance with this section are without prejudice to any of the other rights of both Parties in this Agreement, at law or otherwise.
- 9.4 **NSF:** Mississauga and Toronto agree to pay, immediately on demand, a charge of thirty-five dollars (\$35.00) for every cheque tendered by either Party that is not honoured by the institution

on which it is drawn (the "Returned Cheque Fee"). The Returned Cheque Fee may be increased by either Party from time to time by notice to the other Party, so that it is at all times equal to the charge payable in respect of cheques tendered in payment of tax, water and court service charges that are not honoured by the institution on which they are drawn.

9.5 **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 Mississauga addressed to it at:

THE CORPORATION OF THE CITY OF MISSISSAUGA
300 City Centre Drive, 3rd Floor
Mississauga, ON L5B 3C1
Attention: Martin Powell, Commissioner of Transportation and Works
Facsimile Number: 905-896-5504

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

CITY OF TORONTO
Toronto City Hall
24th Floor, East Tower
100 Queen Street West
Toronto, ON M5H 2N2
Attention: Gary Welsh, General Manager, Transportation Services
Facsimile Number: (416) 392-4540

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.

- 9.6 **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.
- 9.7 **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.
- 9.8 **Binding on Successors:** This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
- 9.9 **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.
- 9.10 **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 pledge credit of or incur expenses or liabilities on behalf of the other Party.

9.11 The Parties intend for this Agreement to supercede and replace the October 22, 2008 Agreement. Notwithstanding this, the Parties agree that any outstanding payment obligations of the Parties arising from the terms of the October 22, 2008 Agreement for the term of that Agreement are unaffected and that the Indemnity and Insurance Provisions in the October 22, 2008 Agreement survive the replacement of that Agreement by this Agreement.

IN WITNESS WHEREOF the Parties have duly executed this Agreement

THE CORPORATION OF THE CITY OF MISSISSAUGA

Per: _____
Martin Powell, Commissioner of Transportation of Works

Per: _____
Crystal Greer, City Clerk

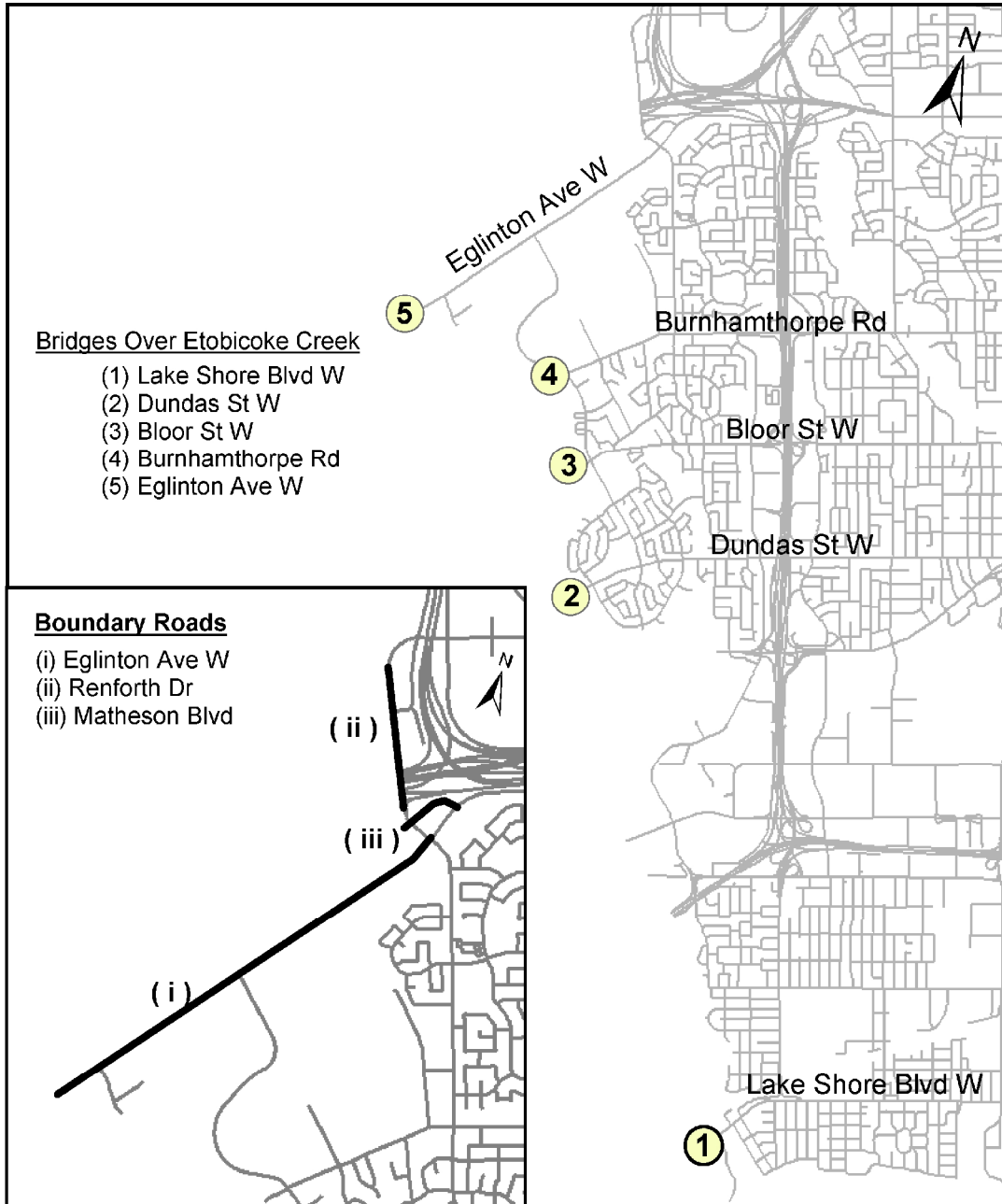
CITY OF TORONTO

Per: _____
Cam Weldon, Deputy City Manager and Chief Financial Officer

Per: _____
Ulli S. Watkiss, City Clerk

Appendix 1

Boundary Roads and Bridges



Appendix 2

Bus Rapid Transit Alignment



— — — Bus Rapid Transit Alignment

Appendix 3
Cross Section of Eglinton Bridge over Etobicoke Creek with Bus Rapid Transit Lanes

