



## STAFF REPORT ACTION REQUIRED

### Durham Boundary Facility Agreement Renewal – Kingston Road Bridge over the Rouge River

<b>Date:</b>	June 3, 2016
<b>To:</b>	Public Works and Infrastructure Committee
<b>From:</b>	General Manager, Transportation Services
<b>Wards:</b>	Ward 44, Scarborough East
<b>Reference Number:</b>	P:\2016\Cluster B\TRA\TIM\ pw16010tim.docx

#### SUMMARY

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The purpose of this report is to seek authorization to negotiate, enter into and execute an agreement between the City of Toronto and the Regional Municipality of Durham (Region of Durham) for the cost sharing and maintenance of the Kingston Road Bridge over the Rouge River and the section of Kingston Road between the easterly end of the bridge and Altona Road in Pickering. The previous agreement between the two jurisdictions had been in place since January 1, 2006 and recently expired on January 1, 2016. The new agreement would be for a term from January 1, 2016 to January 1, 2026 and be based on terms substantially similar to the previous agreement, with the addition of a new clause pertaining to the design and construction administrative fee charged for capital improvements on the bridge structure.

#### RECOMMENDATIONS

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**The General Manager, Transportation Services recommends that:**

1. City Council authorize the General Manager, Transportation Services to negotiate, enter into and execute an agreement with the Regional Municipality of Durham for the cost sharing and maintenance of the Kingston Road Bridge over the Rouge River and the section of Kingston Road between the easterly end of the bridge and Altona Road in the City of Pickering, on terms and conditions generally as set out in Appendix 1 to the report dated June 3, 2016 from the General Manager, Transportation Services, and on such other terms and conditions satisfactory to the General Manager, Transportation Services.

2. That City Council authorize and direct the appropriate City officials to take the necessary action to give effect thereto.

## **Financial Impact**

The annual maintenance costs and expenses incurred specific to the Kingston Road bridge structure shall be shared equally between the City of Toronto and Durham Region. This annual cost is estimated at \$8,000 annually (\$4,000 for each party). An annual payment of \$3,650 will also be paid to the City of Toronto for winter maintenance on the stretch of Kingston Road starting at the easterly edge of the Bridge (as the west boundary) and the centreline of Altona Road (as the east boundary). All necessary funding can be accommodated within the annual Operating Budget for Transportation Services.

In addition, the City of Toronto's portion of any future expenses related to state of good repair (SOGR) will be accommodated within the 10-year Capital Budget and Plan for Transportation Services.

The Deputy City Manager & Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

City Council, at its meeting of September 25, 26 and 27, 2006, adopted a staff report entitled, "Durham Boundary Facilities Agreement - Kingston Road Bridge Over the Rouge River (Ward 44, Scarborough East)" (Works Committee Report 6, Clause 14).

<http://www.toronto.ca/legdocs/2006/agendas/council/cc060925/wks6rpt/cl014.pdf>

## **ISSUE BACKGROUND**

The Kingston Road Bridge over the Rouge River was downloaded from the Province of Ontario on November 27, 1997 to both the City of Toronto and Region of Durham. To ensure proper maintenance and rehabilitation of the facility, including clearly defining the legal obligations of each party, an agreement was executed. The term of that agreement was for ten years (January 1, 2006 to January 1, 2016). As this agreement has now expired, this report is seeking authorization to enter into a new agreement to define the legal obligations of the City of Toronto and Region of Durham with regard to the maintenance and cost sharing for the Kingston Road Bridge and the section of Kingston Road between the easterly end of the bridge and Altona Road in Pickering.

## COMMENTS

Staff propose to enter into a new agreement with the Region of Durham for a term from January 1, 2016 to January 1, 2026 on terms substantially similar to what was included in the previous agreement.

The estimated costs for the on-going maintenance of the Kingston Road bridge structure and winter operations on the bridge and section of Kingston Road from the easterly limit of the bridge to Altona Road have remained unchanged since the last agreement. The Region of Durham's annual expense for the aforementioned activities will be \$7,650.00, but will be reviewed periodically and adjusted by staff if needed. The remaining terms and conditions of the agreement are also being kept generally the same given that the agreement has worked well for both parties. The only change being proposed is the addition of a new clause related to the design and construction administrative fee charged for any capital improvements on the bridge structure undertaken by Engineering and Construction Services. The previous agreement was silent on this fee, and therefore there is this opportunity to formalize the fee as part of this new agreement.

The attached draft agreement (Appendix 1) reflects the proposed terms and conditions and legal obligations of each party.

Key points of the proposed agreement include that:

- City of Toronto will continue to be responsible for all activities affecting the bridge, including: inspection, maintenance and management of capital work;
- City of Toronto will carry out all structural maintenance on the bridge with a cost sharing split on a 50/50 percent basis with the Region of Durham;
- If maintenance work is required on the bridge and the Region of Durham's financial obligation exceeds \$50,000.00, then the City of Toronto agrees to obtain prior written approval from the Region before any work is undertaken;
- Capital improvements require mutual agreement of both parties and will be shared on a 50/50 percent basis when agreement is reached;
- City of Toronto will be fully responsible for all roadway winter maintenance along the bridge and along Kingston Road between the easterly limit of the bridge and Altona Road in Pickering. Region of Durham will compensate the City fully for all winter maintenance expenses on the section of road between the easterly limit of the bridge and Altona Road;
- The City of Toronto will charge 9.15 percent (i.e., 50 percent share of the 18.3 percent administrative fee for third party projects) of the final contract value for design,

construction and supervision as compensation for Toronto staff's time for contract administration with regard to all agreed-upon capital improvement work on the bridge.

- The City of Toronto will indemnify the Region of Durham of any liabilities related to the work conducted by the City under this agreement and agrees to list the Region of Durham as an insured third party; and
- The unit costs of work that the City of Toronto will be using to invoice the Region of Durham will be reviewed every three years.

## **CONTACT**

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## **SIGNATURE**

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Stephen M. Buckley  
General Manager  
Transportation Services Division

## **ATTACHMENT**

Appendix 1: Draft Agreement: Durham Boundary Facility Agreement – Kingston Road Bridge over the Rouge River

# PW14.9-Appendix 1

## Appendix 1

### **DRAFT**

THIS AGREEMENT made this            day of            2016.

B E T W E E N:

**REGIONAL MUNICIPALITY OF DURHAM**  
herein called "Durham"

of The First Part

and

**CITY OF TORONTO**  
herein called "Toronto"

of The Second Part

### **BACKGROUND:**

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

AND WHEREAS that part of the common boundary is comprised of a Bridge (as hereinafter defined) which has been jointly used by both municipalities;

AND WHEREAS Durham 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 boundary 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 safe passage of pedestrians and vehicles, and includes paved surface, curbs, gutters, culverts, catch basins, storm sewer drain, sidewalks, medians, guide rails, signage, line markings;

**"Boulevard Surface 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/repair, guide-rail, catch basin and storm sewer drain clean out, line painting, snow plowing, snow removal, salting and road (and joint) washing;

**"Bridge"** means the physical structure of the Kingston Road crossing over the Rouge River between the most easterly joint to the most westerly joint plus ten (10 m) metres on each side, the common boundary between Durham and Toronto, 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; [See Appendix A]

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

**"Capital Improvements"** means the work done to create, upgrade or reconstruct the bridge structure, including widening, twinning, improving approaches to the bridge, installation of safety features, lighting conduits, boulevard and/or 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 Durham or Toronto and **"Parties"** means both of them, and in the case of any indemnity provision herein, the terms Durham 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 (excluding Boulevard Surface) that ensures good state of repair and safe loading capacity, in compliance with all Applicable Laws; such maintenance includes all required alterations, replacements, modifications or upgrades to the structural

components of the Bridge. Alterations to the Bridge will be identified by Toronto and agreed to by Durham Staff.

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.

1.8 **Agreement Life:** The agreement is renewable and renegotiable at the end of the Term.

## **ARTICLE II MAINTENANCE BY TORONTO**

2.1 **Maintenance:** Except as otherwise provided in this Article or Article III, 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. Toronto shall also be responsible for the performance and implementation of all Capital Improvements required for all structural and Boulevard Surface components of the Bridge, subject to obtaining the mutual consent, in writing, of both Parties to the Capital Improvements prior to commencing any work on those Capital Improvements.

2.2 **Cost Sharing:** The 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 Bridge in accordance with Section 2.1 shall be shared equally between Toronto and Durham. Costs of both Structural Maintenance and Boulevard Surface Maintenance (including safety and state-of-good-repair measures as well as winter operations), which is estimated at \$8,000.00 annually (\$4,000.00 for each party) will be shared equally between Durham and Toronto. Durham will compensate Toronto with an additional annual payment of \$3,650.00 for the maintenance and upkeep of the stretch on Kingston Road starting at the easterly edge of the Bridge (as the west boundary) and the centreline of Altona Road (as the east boundary) as detailed in section 2.5. Accordingly, Durham will pay Toronto seven thousand and six hundred and fifty dollars (\$7,650.00) on June 30<sup>th</sup> of each year to cover the costs of both Structural Maintenance and Boulevard Surface Maintenance. This estimate does not include the cost of any Capital Improvements agreed to between Toronto and Durham in accordance with Section 2.1, the cost of which shall be shared equally between Toronto and Durham with payment for Durham's share of those costs paid to Toronto on the next June 30<sup>th</sup> following the completion of the Capital Improvements. Notwithstanding these estimates, the actual costs of Structural Maintenance, Boulevard Surface Maintenance and upkeep of the stretch of Kingston Road between the Bridge and Altona Road may exceed \$7,650.00 annually, and in those instances, the Parties agree that the final cost of such work shall be shared evenly between Toronto and Durham. The parties agree that these costs shall be reviewed and adjusted every three years to reflect the actual costs incurred by Toronto in performing the work under this Agreement.

2.3 **Cost Sharing for Structural Maintenance over \$ 50,000.00:** Notwithstanding anything else in this Agreement, should 50% of the cost for any Structural Maintenance and Boulevard Surface Maintenance required to be performed on the Bridge exceed \$50,000.00, Durham shall not be required to pay its 50% share of the cost of that work until such time as it has granted, in writing, its consent to the work, which consent shall not be unreasonably withheld. Toronto and Durham shall determine arrangement for payments (amounts and dates) of such costs. If the parties are unable to agree as to the need for work to be performed, or the costs of the work, then the provisions of section 2.6 shall apply. In any event, Toronto shall have the right to perform any such work without the consent of Durham provided that Toronto pays the full cost.

2.4 **Design and Contract Administration Fee:** Whenever the Bridge requires Capital Improvements, Toronto will, after obtaining consent from Durham, retain a construction company to carry out all necessary construction work and a consulting firm to carry out the detailed design and supervision of the construction of the Capital Improvements work. Durham will be billed 9.15 percent (i.e., 50 percent share of the 18.30 percent administrative fee for work on third party projects) of the final contract values for design, construction and supervision as compensation for Toronto staff's time for contract administration for the Capital Improvements work. This cost will be paid by Durham at the time Durham pays Toronto its share of the cost of the Capital Improvements under Section 2.2. In any event, and notwithstanding anything in this Agreement, Toronto shall have the right to perform any Capital Improvement work without the consent of Durham provided that Toronto pays the full cost.



2.5 **Cost Sharing for Approaches to the Bridge:** Winter maintenance on both approaches (Altona Road centreline being the easterly limit) will be carried out by Toronto. Durham will compensate Toronto for winter operations at the rate of \$2.28 per square metre per year (applicable to the stretch of Kingston Road between the Bridge and the centreline of Altona Road) as discussed in section 2.2 of this agreement. This is the \$3,650.00 dollars included in section 2.2, above. The parties agree that these costs shall be reviewed and adjusted every three years to reflect the actual costs incurred by Toronto in performing the work.

2.6 **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 Durham's Commissioner of Works and Toronto's General Manager of Transportation Services, or their respective designates. If this dispute resolution mechanism fails, then the parties may submit the dispute to an independent third party for arbitration.

### **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:** Except on matters covered by section 2.1 and 2.3 that require written consent from Durham and Durham has not given that consent, Toronto shall indemnify and hold Durham harmless from and against any and all Losses incurred by Durham or which Durham 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 Durham 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 at 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 V TERM AND TERMINATION

5.1 **Term:** The term of this Agreement shall commence on the 1<sup>st</sup> day of January, 2016 and expire on January 1, 2026, unless terminated by either Party on not less than six months' written notice (the "Term").

5.2 **Default:** In the event that either party is in breach of its obligations under this agreement, the other Party shall be entitled to notify the defaulting party of such breach. If the defaulting Party does not remedy the breach within 30 days of the notice, or where it is not reasonable to resolve the breach within 30 days, or commence to remedy the breach and diligently pursue the remedy within 30 days, then the notifying party shall be entitled to terminate this Agreement.

## 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 Durham addressed to it at:

REGIONAL MUNICIPALITY OF DURHAM  
605 Rossland Road East

P.O. Box 623  
Whitby, ON L1N 6A3

Attention: Clifford Curtis, Commissioner of Works  
(or his/her successor)

Facsimile Number: (905) 668-2051

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

CITY OF TORONTO  
100 Queen Street West  
24<sup>th</sup> Floor, East Tower  
Toronto City Hall  
Toronto, ON M5H 2N2

Attention: Stephen M. Buckley, General Manager, Transportation Services  
(or his/her successor)

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; or
- (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 enure 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 pledge 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 REGIONAL MUNICIPALITY OF DURHAM**

**Per:** \_\_\_\_\_  
Roger M. Anderson, Regional Chairman and CEO

**Per:** \_\_\_\_\_  
Debi Wilcox, Regional Clerk/Director of Legislative Services

**CITY OF TORONTO**

**Per:** \_\_\_\_\_  
Roberto Rossini, Deputy City Manager and Chief Financial Officer

**Per:** \_\_\_\_\_  
Ms. Ulli S. Watkiss, City Clerk

Appendix 'A'  
Kingston Road Bridge over the Rouge River  
Location Map

