

THIS AGREEMENT made this day of 2020.

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 Queensway forms a Bridge (as hereinafter defined) that crosses Etobicoke Creek, which as a river forms the boundary between Peel and Toronto;

AND WHEREAS Section 29(2) of the *Municipal Act, 2001*, SO 2001, c 25, as amended (the "**Act**"), provides that the Bridge is under the joint jurisdiction of Peel and Toronto.

AND WHEREAS Section 29.1(2) of the Act provides that if municipalities enter into an agreement for the repair of a highway forming a boundary line, each municipality has jurisdiction over that part of the highway that it has agreed to keep in repair and is liable for any damages that arise from failure to keep the highway in repair and the other municipality is relieved from all liability in respect of the repair of that part;

AND WHEREAS Section 2(1) of the *Bridges Act*, RSO 1990, c. B. 12, as amended, provides that Toronto and Peel as municipalities with jurisdiction over highways have authority to build, place, construct, rebuild, replace or alter the Bridge;

AND WHEREAS Peel and Toronto entered into an agreement dated May 14, 2008 setting forth their respective rights and obligations with respect to the maintenance, repair and construction of the Bridge, which agreement commenced on January 1, 2008 and terminated on January 1, 2018 (the "**First Agreement**");

AND WHEREAS Peel and Toronto now desire to enter into this new agreement upon expiry of the First Agreement;

IN CONSIDERATION of the foregoing, 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 Queensway required for the passage of pedestrians and vehicles, and includes, without limitation, 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 Inspection, maintenance and repair of all Boulevard Surface components situated on the Bridge that ensures good state of repair and safe usage, in compliance with all Applicable Laws, including without limitation, 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 Boulevard 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 Bridge or any portion thereof, including the Boulevard Surface and/or structural components of the Bridge, widening, lighting conduits, installation of medians, boulevard, sidewalks and Cycling Infrastructure improvements;

"Cycling Infrastructure" includes building and maintaining bicycle lanes, bicycle tracks, multi-use lanes, or shared roadway space using pavement markings (or Sharrows) that indicate a shared environment for bicycles and motor vehicles as permitted by applicable laws.

"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, in frequency, manner and extent that, at a minimum, complies with all Applicable Laws;

"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 Inspection, 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 and the Boulevard Surface 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 Capital Improvements required for all structural components and the Boulevard Surface of the Bridge.

2.2 **Cost Sharing for Structural Maintenance and Boulevard Surface 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's fifty per cent (50%) share shall be fixed at the sum of Seven Thousand and Seventy Dollars (\$7,070.00) annually for the first three (3) years of the Term of the Agreement, based on 50% of the average cost of maintaining the Bridge of Fourteen Thousand One Hundred and Forty Dollars (\$14,140.00) annually. These costs shall be reviewed and revised by mutual agreement of the Parties every three (3) years, commencing following the completion of the third year of the Term of the Agreement, as the basis for the next 3-year period, in order to reflect the actual costs incurred. Toronto shall invoice Peel, and Peel shall pay Toronto, its 50% share at the beginning of each year of the Term of the Agreement subsequent to the invoice date.

2.3 **Cost Sharing for Unforeseen Structural Maintenance and Unforeseen Boulevard Surface Maintenance ("Unforeseen Maintenance"):** Unforeseen Structural Maintenance or Boulevard Surface Maintenance which is not routine or prescheduled shall be performed by the City as needed. In the event that the total cost of a particular item of Unforeseen Maintenance is under \$100,000.00, the City and Peel agree that Peel will pay to the City 50% of the actual cost of each such repair performed by the City. If, as a result of unforeseen circumstances, Structural Maintenance or Boulevard Surface Maintenance is required to be performed on the Bridge where the total cost of the Unforeseen Maintenance exceeds One Hundred Thousand Dollars (\$100,000.00) (i.e. 50% of the cost of repair exceeds Fifty Thousand Dollars (\$50,000.00)), Toronto shall not perform such maintenance without prior written consent from Peel to the performance and to the cost of the Unforeseen Maintenance. If Peel withholds consent and Toronto is of the opinion that the work is needed, Toronto shall be entitled to proceed with the work at its own cost, and the issue of the necessity of the work shall be referred for Dispute Resolution as set out in Section 2.6 in this Agreement. If it is determined through the Dispute Resolution process that the Unforeseen Maintenance in question was necessary, Peel shall pay its 50% contribution for the work.

2.4 **5-Year Capital Improvements Plan:** Peel shall participate in the planning, design and construction phases of the Capital Improvements. Toronto shall, upon the execution of this Agreement, provide Peel with a 5-year plan (and, if feasible, a 10-year plan), which shall itemize all Capital Improvements planned for the Bridge, by year, for the first five (5) years of the Term of the Agreement, with the corresponding capital budget associated with each such Capital Improvement. Toronto shall thereafter provide Peel with an updated Capital Improvements plan by no later than May 1st of each year during the Term of the Agreement, commencing May 1st, 2020, which shall always incorporate Cycling Infrastructure improvements to the Bridge, if feasible, and all of the same information required of the initial Capital Improvements plan together with any changes thereof, for the next ensuing five (5) year period of the Agreement. It is acknowledged that the 5-year Capital Improvements plan is not intended to be binding on the Parties, but shall serve as an estimate for Peel for budgeting purposes. Toronto shall forthwith advise Peel in writing of any changes to any Capital Improvements plan provided to Peel should such changes become known to or be made by Toronto after the submission of any plan. The actual costs and expenses with respect to the mutually agreed upon Capital Improvements work shall be shared equally between Toronto and Peel (50% each).

2.5 **Design and Contract Administration Fee:** Whenever the Bridge requires Capital Improvements, Toronto, after obtaining consent from Peel in writing, shall 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. Peel will, as part of its share of the cost of Capital Improvements under Section 2.4, be billed 9.15 percent, being fifty percent (50%) 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 mutually agreed upon Capital Improvements work. This cost will be paid by Peel at the time Peel pays Toronto its share of the cost of the Capital Improvements under Section 2.3 of the Agreement.

2.6 **Dispute Resolution:** Should any dispute arise under the Agreement, including, without limitation, a dispute related to any portion of an invoice or the necessity of the work, the disputing party shall provide the other party with written notice of the dispute and the dispute shall be referred to Peel's Commissioner of Public Works and Toronto's General Manager of Transportation Services, or their respective designates, for resolution through discussion. Should a dispute involve a portion of an invoice, Peel shall pay the undisputed portion thereof. All negotiations conducted by such officers shall be confidential and shall be treated as compromise and settlement negotiations. If the parties fail to resolve the dispute within thirty (30) days of the non-disputing party's receipt of written notice, either party may initiate legal proceedings.

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, the following policies of insurance, issued by an insurance company authorized by law to carry on business in the Province of Ontario:

- i. Commercial General Liability insurance, providing for, without limitation, coverage for third party bodily injury or death, property damage, personal injury and non-owned automobile liability. 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;

ii. Automobile Liability insurance in an amount of not less than FIVE MILLION DOLLARS (\$5,000,000.00) per occurrence or claim with coverage for vehicles owned, leased or hired by Toronto and with no pollution exclusion.

All policies of insurance shall be non-contributing with, and will apply only as primary and not excess to any other insurance available to Peel with respect to its obligations under this Agreement.

Toronto shall endeavour to provide thirty (30) days written notice to Peel of any termination, cancellation or material alteration to the above policies of insurance before the effective date thereof.

Toronto, upon the request of Peel, shall provide proof of insurance in a form satisfactory to Peel's insurance or risk manager.

ARTICLE V TERM AND TERMINATION

5.1 **Term:** The term of this Agreement shall commence on the 1st day of January, 2020, and shall continue until December 31, 2029 unless terminated earlier by either party on not less than six months' written notice (the "Term");

5.2 **Interim Term:** Notwithstanding the termination of the First Agreement, the parties acknowledge and agree that the parties continued to operate under and be bound by rights and obligations with respect to the maintenance, repair and construction of the Bridge contained in the First Agreement until the Term of this Agreement commences.

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 regular mail;
- (c) sent by prepaid first-class mail; or
- (d) 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 REGIONAL MUNICIPALITY OF PEEL
10 Peel Centre Drive
Brampton, ON L6T 4B9

Attention: Manager, Transportation

Facsimile Number: 905-791-2398

Email: sally.rook@peelregion.ca

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: General Manager, Transportation Services

Facsimile Number: (416) 696-3743

Email:

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 Party 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 or obligations 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.

6.8 **Execution by Counterparts:** For the convenience of the parties, this Agreement may be executed in any number of counterparts with the same force and effect as if all parties had executed the same document. Each counterpart shall be deemed to be an original document. All

of the counterparts shall be construed together and shall be deemed, for all purposes, to constitute one and the same agreement, binding on all parties, despite that all parties did not execute the same counterpart. It shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Any amendment to or modification of this Agreement provided for herein may be executed in counterpart form.

6.9 **Approval Process:** If applicable, the parties agree that the execution of this Agreement by either party may be facilitated through an electronic approvals process (the "**Approval Process**") whereby an e-mail confirmation is provided by the signing party to the other party to evidence the execution of the Agreement and binds the individual/corporation, which e-mail confirmation shall be attached to this Agreement and shall have the same force and effect as an executed original. Each of the parties shall maintain a record of such electronic documents pursuant to this Approval Process and shall provide an executed copy of the agreement to the other party with a wet signature, within a reasonable time following the termination of the latter of any municipal, provincial, or federal Declaration of Emergency in effect in Peel in relation to the COVID-19 pandemic (the "**Declaration**"). This Approval Process shall apply only to the extent that this Agreement is executed during the period in which the Declaration is in effect.

IN WITNESS WHEREOF the Parties have duly executed this Agreement.

THE REGIONAL MUNICIPALITY OF PEEL

Per: _____
Terry Ricketts, Director of Transportation, Public Works

CITY OF TORONTO

Per: _____
Barbara Gray, General Manager, Transportation Services

Appendix A The Queensway Bridge over Etobicoke Creek

