



POLICE SERVICES AGREEMENT

BETWEEN

THE MINISTER OF COMMUNITY SAFETY

AND CORRECTIONAL SERVICES

AND

407 ETR CONCESSION COMPANY LIMITED

**SCHEDULE 15
POLICE SERVICES AGREEMENT**

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO as Represented
by the MINISTER OF COMMUNITY SAFETY AND CORRECTIONAL SERVICES
(the "Minister")**

OF THE FIRST PART

AND:

**407 ETR CONCESSION COMPANY LIMITED
(the "Concessionaire")**

OF THE SECOND PART

Background:

- (a) The Highway 407 Act, 1998, S.O. 1998, Chapter 28 (the "Act") provides for the transfer of all or any part of the Highway 407 Lands and other assets comprising or relating to Highway 407.
- (b) Highway 407 is an electronic toll highway. The Concessionaire is the owner of Highway 407, as defined in the Act.
- (c) Pursuant to subsection 59(2) of the Act, Highway 407 is deemed to be part of the King's Highway for the purposes of paragraph 3 of subsection 19(1) of the Police Services Act, R.S.O. 1990 c. P.15.
- (d) Pursuant to subsection 59(3) of the Act, the Ontario Provincial Police may charge the owner the costs of providing services under paragraph 3 of subsection 19(1) of the Police Services Act on a full cost recovery basis.
- (e) Pursuant to subsection 59(4) of the Act, the Minister may enter into an agreement with the owner for the provision of services on Highway 407 under paragraph 3 of subsection 19(1) of the Police Services Act.
- (f) Pursuant to Order-in-Council 1708/2003, the powers assigned to the Solicitor General in law, including those set out in the Police Services Act, have been transferred to the Minister therefore, all references to the Minister shall be deemed to include the powers previously exercised by the Solicitor General.
- (g) Parties have an existing Agreement in place including an extension of the Agreement to December 31, 2017, which will be superseded by this Agreement, upon its activation.

NOW THEREFORE, in consideration of the premises and covenants herein, the parties agree as follows:

1. (a) The parties warrant that the recitals are true.

ARTICLE 1.0 INTERPRETATION

1.1 Definitions

Unless otherwise specified or the context otherwise requires, for the purposes of this Agreement, the following terms have the following meanings:

- (a) **"Agreement"** means this police services agreement, including, for the avoidance of doubt, all schedules referred to herein.
- (b) **"Annual Billing Statement"** means a statement prepared by the Minister and submitted to the Concessionaire for review and approval which contains the Concessionaire's policing costs for the year following the year in which the statement is prepared, based on, among other items, an estimate of salary, benefit and overtime costs
- (c) **"Annual Financial Statement"** means a statement that contains a reconciliation of actual salary, benefits and overtime costs to those billed for the preceding year, based on the applicable Annual Billing Statement, along with a reconciliation of the previous years' FTE hours ensuring the minimum number of contractual hours were met.
- (d) **"Commissioner"** means the Commissioner of the O.P.P.
- (e) **"Concession Agreement"** means the Highway 407 Concession and Ground Lease Agreement made as of April 6, 1999, as amended, between the Concessionaire and the Crown in Right of Ontario.
- (f) **"Detachment Commander"** means the O.P.P. officer in charge of the Highway 407 Detachment.
- (g) **"Full-Time Equivalent (FTE)"** means a unit of at least 1,417 hours of policing services, per officer, delivered to the Concessionaire each year. It does not refer to an officer exclusively dedicated to this agreement. This number is subject to review annually and will be noted in the Annual Billing Statement.
- (h) **"GTA"** means the geographic area of jurisdiction of the City of Toronto and the Regional Municipalities of Durham, Halton, Peel and York as constituted from time to time.
- (i) **"O.P.P."** means the Ontario Provincial Police.

(j) **"Senior Operating Officer"** means the person designated by notice from time to time by the Concessionaire for the purposes of Schedule B.

(k) **"Senior Responsible Official"** means the person designated by notice from time to time by the Minister for the purposes of Schedule B.

1.2 Other Definitions

Unless defined herein, capitalized terms used in this Agreement have the meanings ascribed to them in the Concession Agreement.

1.3 Number and Gender

In this Agreement words in the singular include the plural and vice-versa and words in one gender include all genders.

1.4 Headings

The division of this Agreement into articles, sections and other subsections are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement.

1.5 References to this Agreement

The words "herein", "hereby", "hereto", and "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular portion of it.

1.6 References to any Agreement

A reference in this Agreement to any agreement or document (including, for avoidance of doubt, this Agreement) refers to that agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.

1.7 Meaning of Including

In this Agreement, the words "include", "includes" or "including" mean "include without limitation", "includes without limitation" and "including without limitation", respectively, and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list.

1.8 Statutes

Unless specified otherwise, a reference in this Agreement to a statute refers to that statute as in force at the date hereof and as the same may be amended, re-enacted, consolidated and/or replaced from time to time, and any successor statute thereto. A reference to a statute shall be deemed to include any regulation made there under.

1.9 Currency

Unless specified otherwise, all statements of or reference to dollar amounts or money in this Agreement are to lawful currency of Canada.

1.10 Generally Accepted Accounting Principles

All accounting and financial terms as used herein, and all billing statements, financial statements and other documents to be prepared pursuant to this Agreement, shall be prepared, interpreted and applied in accordance with Canadian generally accepted accounting principles, consistently applied.

1.11 Calculation of Time

For the purposes of this Agreement, a period of days shall be deemed to begin on the first day after the event, which began the period and to end at 5:00 p.m. (Eastern Standard Time or Eastern Daylight Time, whichever is applicable) on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period shall be deemed to end at 5:00 p.m. (Eastern Standard Time or Eastern Daylight Time, whichever is applicable) on the next Business Day.

1.12 Performance on Holidays

If any action is required by this Agreement to be taken on or by a day, which is not a Business Day, such action shall be valid if taken on or by the next succeeding Business Day.

1.13 Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the parties hereto. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied that form part of or affect this Agreement, or which induced any party hereto to enter into this Agreement or on which reliance is placed by any party hereto, except as specifically set forth in this Agreement.

1.14 Amendment

This Agreement may be amended, changed or supplemented only by a written agreement signed by both parties hereto.

1.15 Waiver of Rights

Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the party hereto giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any party hereto to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

1.16 Invalidity

Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application thereof to any Person or circumstances is determined to be invalid or unenforceable to any extent,

- (i) the remainder of this Agreement or the application of such provision to any other Person or circumstance shall not be effected thereby, and
- (ii) the parties hereto shall negotiate in good faith to amend this Agreement to implement the intentions set forth herein. If the parties cannot agree on an appropriate amendment, either party may refer the matter for determination pursuant to the dispute resolution procedure in Schedule B.

1.17 Governing Law

This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in the Province of Ontario (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction). Subject to Schedule B, each party hereto irrevocably submits to the exclusive jurisdiction of the courts of Ontario with respect to any matter arising hereunder or related hereto.

1.18 Schedules

The following Schedules form part of this Agreement:

- Schedule A OPP Costing Schedule
- Schedule B Dispute Resolution

ARTICLE 2.0 TERM, SERVICES AND PAYMENT

2.1 Commencement and Termination of Agreement

The term of this Agreement shall be for a term commencing on January 1, 2018 until December 31, 2023. Either party to this Agreement may terminate this Agreement upon one (1) year's written notice to the other party, in which case this Agreement shall terminate one (1) year following the delivery of such notice. The giving of such notice of termination shall not affect the obligations of either party under this Agreement during the notice period up to and including the date of termination. Should this Agreement be terminated or expire, the O.P.P. shall continue to be responsible to provide police services and the Concessionaire shall continue to be obligated to pay for the cost of providing police services, in accordance with subsection 59(3) of the Act.

2.2 Provision of Services

The Minister shall provide full police services to the Concessionaire in an adequate and effective manner as per the Police Services Act and in accordance with the needs of the Concessionaire in compliance with the terms and conditions of the Agreement. The Concessionaire shall pay the Minister for the police services provided under this Agreement in accordance with this Agreement.

2.3 Traffic Management Program

The Concessionaire has developed specialized equipment for the electronic tolling system in order to assist the O.P.P. in the investigation of toll evasion activity on Highway 407, and will make this equipment available for use by the O.P.P. Equipment required for the sole purpose of toll evasion enforcement shall be supplied by the Concessionaire including installation costs, replacement and upgrade. Transfer of such specialized equipment from one O.P.P. police cruiser to another shall be conducted by the O.P.P. with all associated costs paid by the Concessionaire. Prior to making use of any specialized equipment provided by the Concessionaire, the O.P.P. shall satisfy itself that the equipment has been properly tested and is suitable for enforcement purposes, including, but not limited to ensuring that it is acceptable in a court of competent jurisdiction for its intended purpose. The use of any particular piece of equipment shall be at the O.P.P.'s discretion, and shall be governed by O.P.P. policies and procedures.

2.4 Training

The O.P.P. In-service Training Unit will assess and conduct all training provided to O.P.P. personnel, including training related to officers stationed at the Highway 407 Detachment. The O.P.P. shall consult with the Concessionaire for the purpose of developing and implementing training information related to the Highway 407 tolling system. Any costs associated to special training provided by the Concessionaire to O.P.P. police officers pertaining to the Highway 407 tolling system will be the sole responsibility of the Concessionaire.

2.5 Motor Vehicle Collision Reports

A copy of motor vehicle collision reports relating to damage to Highway 407 property and/or accident investigation involving the attendance of fire suppression equipment shall be provided to the Concessionaire as soon as is reasonably possible following the completion of the report. The content of this information provided shall be in accordance with The Freedom of Information and Protection of Privacy Act and decisions made by the Information and Privacy Commissioner and shall be used only for the express purposes described in Section 54 (5)(1. and 2.) of the Highway 407 Act 1998.

The report information will be limited to the following:

- Time/Date
- Location
- Road and weather conditions
- Vehicle make, model, colour, plate
- Registered Owner's name
- Driver's name
- Insurance company and policy number
- Charges (if applicable) Information pertaining to charged Young Persons will not be released.

2.6 Charges

The Minister shall charge for the reasonable costs of providing services under this Agreement on a full cost recovery basis.

2.7 Payment

The Concessionaire shall pay the Minister for the police services provided under this Agreement, including any applicable taxes or charges, in accordance with the provisions governing payment detailed herein.

2.8 Estimates

The policing cost estimates set out in Schedule A are reasonable estimates for the costs for the policing requirements and police services.

2.9 Reporting

The Commissioner shall cause the Detachment Commander or his or her designate to report to the Concessionaire in writing monthly during the term of this Agreement, or at mutually agreed upon intervals, regarding the provision of police services under this Agreement.

ARTICLE 3.0 SERVICE LEVELS

3.1 Level of Service

The police services provided under this Agreement shall be provided by the O.P.P. in the same manner and to the same extent as provided by the O.P.P. on comparable Controlled Access Highways in the GTA and in accordance with Laws and Regulations.

3.2 Responsibility for Determination of Service Levels

Notwithstanding any other term in this Agreement, but subject to section 3.1 above, the O.P.P. shall be solely responsible for determining the adequate level of police services to be provided on Highway 407. The O.P.P. shall consult as reasonably necessary with the Concessionaire relating to the determination of the adequate level of police services. Subject to section 3.1 and to the Concessionaire's right to be consulted and to receive information from the O.P.P. as further detailed in this Agreement, the Concessionaire shall accept and have no right to challenge or question any determination made by the O.P.P. relating to the minimum level of police services. The Concessionaire may request, at the sole cost of the Concessionaire, a higher level of police services than the minimum or a reduction in such higher level. The O.P.P. may accommodate such requests, whereby the parties shall amend Schedule A and make adjustments to the Annual Billing Statement, accordingly.

3.3 Responsibility for Operational Decisions

Notwithstanding any other term in this Agreement, but subject to section 3.1 above, the O.P.P. shall be solely responsible for all operational policing decisions, including any matters relating to the application of any policing policy or procedure on Highway 407. Subject to section 3.1 and the Concessionaire's right to be consulted and to receive information from the O.P.P. as further detailed in this Agreement, the Concessionaire shall accept and have no right to challenge or question any operational policing decision, including any matters relating to the application of any policing policy or procedure on Highway 407.

3.4 Detachment Commander Selection

The Detachment Commander shall be selected from the short-listed pool of candidates by a Committee consisting of a majority of Highway Safety Division senior command members, and a minority of persons designated by the 407 Concessionaire. The short-listed pool of candidates shall be determined by the O.P.P. using its Provincial Policies relative to promotions.

3.5 Annual Review

The Minister, the O.P.P. and the Concessionaire may review annually the costs of the policing requirements and service levels set out in this Agreement and shall make the appropriate adjustments to the Annual Billing Statement.

3.6 Supporting Information

The Commissioner shall cause the Detachment Commander or his or her designate to report to the Concessionaire at mutually agreed upon intervals regarding the provision of police services in and for the Concessionaire. The O.P.P. will determine the information to be contained in the reports and the format in which they will be provided.

3.7 Dispute Resolution

Notwithstanding any other term of this Agreement, but subject to section 3.1, any matter relating to the determination of policing requirements and levels of police service, as described in section 3.2, or any other matter relating to operational policing decisions, as described in section 3.3 are matters to be determined solely by the O.P.P. as described in this Agreement, and are not subject to dispute resolution. For the avoidance of doubt, the Concessionaire shall be able to dispute whether the police services are being provided by the O.P.P. as per the requirements of this Agreement. Any disputes that are submitted to arbitration pursuant to section 1.3 of Schedule B shall be submitted independently and dealt with independently of any other disputes submitted to arbitration under the Concession Agreement.

ARTICLE 4.0 EQUIPMENT AND FACILITIES

4.1 Supply of Equipment

The Minister shall supply or cause to be supplied all vehicles and equipment reasonably necessary and appropriate for the use of the O.P.P. in providing police services under this Agreement.

ARTICLE 5.0 COSTS OF SERVICE

5.1 Annual Billing Statements

On or before the 1st day of December in each year, the Minister shall prepare and deliver to the Concessionaire for review and approval, the Annual Billing Statement for the following year, together with sufficient documentation and information reasonably necessary to explain and support the billing.

5.2 Monthly Payments

The Concessionaire shall make monthly instalment payments to the Minister on the 15th day of each calendar month in each year, each being one twelfth (1/12th) of the Annual Billing Statement for that year, subject to any adjustment in accordance with the Annual Financial Statement as set out below.

5.3 Annual Financial Statement - Reconciliation

On or before the 31st day of March in each calendar year following a year to which this Agreement applies, the Minister shall prepare and deliver to the Concessionaire an Annual Financial Statement for the preceding calendar year. The actual costs of police services for Highway 407 shall be shown in the Annual Financial Statement which will be reconciled against the relevant Annual Billing Statement, with any overpayment or underpayment by the Concessionaire adjusted for accordingly in the current calendar year.

The Minister shall keep records, statements of accounts, invoices and any other such documents necessary to support the Annual Financial Statement, and all such records shall be kept for a period of at least six (6) years. The Minister shall permit a designated representative of the Concessionaire, upon reasonable notice to the Minister, to examine all such records and books of account and conduct a review of the Annual Financial Statement.

5.4 Excess Amounts Offset

Despite anything in this Agreement, the total amount of money paid by the Concessionaire for police services in respect of any calendar year shall not exceed the Annual Billing Statement for that year. However, the Minister may charge the Concessionaire for any increase incurred as a result of the following items to the extent they relate to services to be provided pursuant to this Agreement:

- (i) increases with respect to wages, benefits or other employment matters,
- (ii) property and plant, equipment and fuel, (accommodation, equipment and fuel costs)
- (iii) compliance with any laws, by-laws, regulations or provincial standards which become applicable to this Agreement or the provision of police services following the approval of the Annual Billing Statement for that year, and
- (iv) any other matters which require the provision of services on Highway 407 and which were beyond the control of the Minister or the O.P.P., and which were unforeseeable at the time of the approval of the Annual Billing Statement.

5.5 Disputes

If a dispute should arise respecting a costing item in either the Annual Billing Statement or the Annual Financial Statement, the Concessionaire may refer the matter to the dispute resolution mechanism contained in Schedule B. In no case, however shall the referral of a matter to the dispute resolution mechanism operate to affect in any manner the parties' obligation to make payment with respect to the cost of any item or to continue to perform any other obligation under this Agreement.

5.6 Payment

Any amounts payable by the Concessionaire under this Agreement, except those amounts payable pursuant to section 6.2, shall be paid within 30 (thirty) days of the date of delivery of an invoice. Any amounts payable in accordance with an adjustment by either party following delivery of the Annual Financial Statement shall be paid within 30 (thirty) days of the date of delivery of the Annual Financial Statement or credited or debited, as the case may be, against the amount owing within one (1) month after the delivery of the Annual Financial Statement

5.7 Reimbursement

If either party pays any amount under this Agreement and it is subsequently determined that such an amount was not owing by such party, the party in receipt of such amount shall immediately upon such determination repay such amount to the other party.

5.8 Partial Years

If for any reason it shall become necessary to calculate an Annual Billing Statement for a period of less than one (1) calendar year, then the calculation of such Annual Billing Statement shall be done on an appropriate pro rata basis, based on the number of days in such period in proportion to the number of days in the calendar year.

5.9 Adjustment to Billing Statements and Financial Statements

Any change to the policing requirements, service levels and costing shall be incorporated in the appropriate Annual Billing Statement and reflected in the Annual Financial Statement in accordance with this Agreement

ARTICLE 6.0 DEFAULT

6.1 Concessionaire's Default

The occurrence of any one or more of the following events shall constitute a Concessionaire's default ("Concessionaire's Default") under this Agreement:

- (i) If the Concessionaire fails to make any payment of any amount due to the Minister under this Agreement and such default continues unremedied for a period of thirty (30) days following notice thereof from the Minister to the Concessionaire.
- (ii) If the Concessionaire fails to perform or observe any of its material obligations or covenants under this Agreement, and such failure continues unremedied for a period of ninety (90) days following notice thereof (giving particulars of the failure in reasonable detail) from the

Minister to the Concessionaire or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Concessionaire has demonstrated to the satisfaction of the Minister, acting reasonably, that:

- (a) it is proceeding and will proceed, with all due diligence to cure or cause to be cured such failure,
- (b) its proceeding can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Minister, acting reasonably, and if such failure is in fact cured within such period of time then such failure shall not be a Concessionaire's Default.

(iii) If the Concessionaire fails to comply with the requirements or directives of a final award in a matter arbitrated in accordance with Schedule B and such default continues unremedied for a period of sixty (60) days following notice thereof from the Minister to the Concessionaire.

6.2 Remedies of the Minister

Upon the occurrence of a Concessionaire's Default, the Minister may by notice to the Concessionaire declare the Concessionaire to be in default and may, subject to the dispute resolution provisions in Schedule B, do any or all of the following as the Minister, in its sole and absolute discretion, shall determine

- (i) The Minister may terminate this Agreement by giving at least sixty (60) days prior notice to the Concessionaire. The Minister may cure the Concessionaire's Default (but this shall not obligate the Minister to cure or attempt to cure a Concessionaire's Default or, after having commenced to cure or attempted to cure a Concessionaire's Default, to continue to do so) and all costs and expenses incurred by the Minister in curing or attempting to cure the Concessionaire's Default, together with an administrative fee equal to fifteen percent (15%) of such costs and expenses shall be payable by the Concessionaire to the Minister on demand, without any days of grace. No such action by the Minister shall be deemed to be a termination of this Agreement. The Minister shall not incur any liability to the Concessionaire for any act or omission of the Minister or any other Person in the course of remedying or attempting to remedy any Concessionaire's Default.
- (ii) The Minister may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a Concessionaire's Default.
- (iii) The Minister may seek to recover damages and costs, including legal fees on a solicitor and client basis.

6.3 Minister's Default

The occurrence of any one or more of the following events shall constitute a Minister's default ("Minister's Default") under this Agreement:

- (i) If the Minister defaults in the payment or crediting of any amount due to the Concessionaire under this Agreement and such default continues unremedied for a period of thirty (30) days following notice thereof from the Concessionaire to the Minister.
- (ii) If the Minister fails to perform or observe any of its material obligations or covenants under this Agreement, and such failure continues unremedied for a period of ninety (90) days following notice thereof (giving particulars of the failure in reasonable detail) from the Concessionaire to the Minister or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Minister has demonstrated to the satisfaction of the Concessionaire, acting reasonably, that
 - (a) it is proceeding and will proceed, with all due diligence to cure or cause to be cured such failure,
 - (b) its proceeding can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Concessionaire, acting reasonably, and if such failure is in fact cured within such period of time then such failure shall not be a Minister's Default.
- (iii) If the Minister fails to comply with the requirements or directives of a final award in a matter arbitrated in accordance with Schedule B and such default continues unremedied for a period of sixty (60) days following notice thereof from the Concessionaire to the Minister.

6.4 Remedies of the Concessionaire

Upon the occurrence of a Minister's Default under this Agreement, the Concessionaire may do any or all of the following as the Concessionaire, in its sole and absolute discretion, shall determine:

- (i) The Concessionaire may terminate this Agreement by giving at least sixty (60) days prior notice to the Minister.
- (ii) The Concessionaire may seek such equitable remedies as are available to it.
- (iii) The Concessionaire may seek to recover damages and costs, including legal fees on a solicitor and client basis.

6.5 Rights of Leasehold Mortgages

Article 22 of the Concession Agreement applies to this Agreement with necessary modifications.

6.6 Notification of Breach

Each of the Concessionaire and the Minister shall notify the other immediately upon becoming aware that any of the provisions set out in this Agreement have been breached.

ARTICLE 7.0 GENERAL

7.1 Notice

Any notice, statement, invoice or account to be delivered or given by any of the below listed groups to any other of them shall be delivered to all other groups in writing and sent by mail addressed to those groups at their respective address as listed below, or sent by fax transmission to the fax number listed below, or sent by email transmission to the email address listed below, if any. Any notice, statement, invoice or account sent by mail shall be deemed to be received on the third Business Day following the date of mailing unless shown to the contrary and if sent by fax or email shall be deemed to be received on the date of transmission or if not on a Business Day, on the next Business Day. Any group may change its address and fax number by giving notice provided herein:

- i) by mail to the Minister addressed to: The Minister of Community Safety and Correctional Services, 25 Grosvenor Street, 11th Floor, Toronto, Ontario, M7A 1Y6, or by fax to (416) 325-6067.
- ii) by mail to the Commissioner addressed to: The Commissioner, Ontario Provincial Police, 777 Memorial Avenue, Orillia, Ontario, L3V 7V3, to the attention of the Manager, Municipal Policing Bureau, by fax to (705) 330-4191, or by email to opp.municipalpolicing@opp.ca
- iii) by mail to the Concessionaire addressed to: President, 407 ETR Concession Company Limited, 6300 Steeles Avenue West, Woodbridge, Ontario, L4H 1J1, FAX number (905) 265-4072, with a copy to the Legal Department at legaldept@407etr.com.

or at any other such address or fax number or email address of which the addressee may from time to time have notified the addressor.

7.2 Time of the Essence

Time is of the essence of every provision of this Agreement. Extension, waiver or variation of any provision of this Agreement shall not be deemed to affect this provision and there shall be no implied waiver of this provision.

7.3 Further Acts

The parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, each party shall at any time and from time to time execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by the other party or parties in order to cure any defect in the execution and/or delivery of this Agreement.

7.4 Interest

Any amount not paid when due under this Agreement shall bear interest at a variable nominal rate per annum on each day to the Bank Rate then in effect plus three percent (3%); from the date such payment is due until payment and both before and after judgement.

7.5 Costs

Except as otherwise provided under this Agreement, each party shall be responsible for its own costs and expenses incurred in connection with performing and observing its obligations and covenants under this Agreement.

7.6 Enurement and Binding Effect

This Agreement shall enure to the benefit of the parties hereto and their respective permitted successors and assigns and is binding upon the parties hereto and their respective successors and assigns.

7.7 No Partnership

Nothing contained in this Agreement shall constitute or be deemed to create a partnership, joint venture or principal and agent relationship between the Minister and the Concessionaire.

7.8 Cumulative Remedies

The rights, remedies, powers and privileges are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

7.9 Counterparts

This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This Agreement shall be effective when it has been executed by each of the parties hereto and delivered to all parties hereto.

7.10 Facsimile Execution

To evidence the fact that it has executed this Agreement, a party hereto may send a copy of its executed counterpart to all other parties hereto by facsimile transmission or email transmission of a PDF. Such party shall be deemed to have executed and delivered this Agreement on the date it sent such facsimile or email transmission. In such event, such party shall forthwith deliver to the other parties hereto an original counterpart of this Agreement executed by such party.

7.11 Precedence of this Agreement

Unless expressly stated otherwise in this Agreement, in the event of any direct conflict between this Agreement and the provisions of the Concession Agreement, the terms of this Agreement shall prevail.

7.12 Assignability

Subject to section 7.5 this Agreement may not be assigned by the Minister or the Concessionaire, either in whole or in part, without prior written consent of the other party, which consent may not be unreasonably withheld. No consent shall be required if this Agreement is assigned in conjunction with a permitted Transfer under the Concession Agreement and in such case the provisions of Article 21 of the Concession Agreement shall apply with necessary modifications.

Notwithstanding any term, provision or condition contained in this Agreement, the Minister acknowledges and agrees that the Concessionaire shall be entitled at all times to grant a security interest in, and/or specific assignment by way of security of, all or any of its right, title, benefit and/or interest in and to this Agreement to and/or in favour of any Leasehold Mortgagee of the Concessionaire and the Crown in Right of Ontario, provided that the assignee agrees that in the event that it exercises, enjoys or enforces all or any of the rights of the Concessionaire under this Agreement, such assignee shall be bound by the terms and conditions hereof.

7.13 Certificates

On fifteen (15) days' notice, each party shall promptly, whenever reasonably requested by the other, execute and deliver to the other, a certificate signed by a responsible officer or director or employee, in respect of the status of this Agreement including confirmation:

- (a) that this Agreement is in full force and effect, unamended and, if not, reasonable details thereof: and
- (b) as to the existence or non-existence of any defaults under this Agreement and, to the extent applicable, reasonable details thereof.

7.14 Further Assurances

The parties hereto shall execute and deliver such further documents and take such further action as reasonably necessary or appropriate to give effect to this Agreement.

IN WITNESS WHEREOF, the Concessionaire by its duly authorized signing authority has signed this Agreement and the Minister of Community Safety and Correctional Services has personally signed this Agreement to be effective as of the date set out herein.

THE CROWN IN RIGHT OF ONTARIO, as Represented by the Minister of Community Safety and Correctional Services of Ontario.


Per: Marie-France Lalonde
The Honourable Marie-France Lalonde

Feb 21, 2018
Date: January 29, 2018

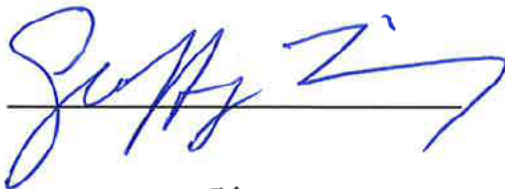
407 ETR CONCESSION COMPANY LIMITED


Per: _____

Name: Andres Sacristan

Title: President + CEO.

Date: 18/12/2017.


Per: _____

Name: Geoffrey Liang
Chief Financial Officer

Title: _____

Date: Dec 18, 2017

SCHEDULE A
OPP COSTING SUMMARY

The Ontario Provincial Police (O.P.P.), in accordance with the Police Services Act, R.S. O. 1990, c. P. 15, is responsible for providing traffic control (patrol and enforcement) on all 400 series and King's Highways, including those parts that are within the jurisdiction of municipal police agencies.

The O.P.P. has provided full police services to Highway 407 since its inception and specifically to the Concessionaire, since 1999, by way of contract including traffic patrol services, investigative services, forensic identification services and specialized services, in all, adequate and effective policing as per the Police Service Act.

This Agreement will be for a defined number of contractual hours of service as represented by uniform Full Time Equivalent (FTE), plus civilian FTEs. It is based on hours of service and reflects the integrated service delivery model, whereby service can be provided from any OPP detachment uniform position.

The O.P.P. as legislated by the Police Services Act, must be capable of providing provincial level response that can be mobilized for emergencies, disaster or specialized needs. The O.P.P. may meet this requirement by deploying resources that normally would be assigned to the Highway 407 Detachment. The O.P.P. shall ensure that in the event resources are deployed to a situation requiring provincial level response, appropriate resources remain available to effectively provide policing for the Highway 407 Detachment .

It is anticipated that the new Highway 407 Detachment will be completed early in 2018. The new detachment will be located at: 8308 Bathurst Street, Vaughan, Ontario, on property that will be the subject of a lease by the Crown in favour of the Concessionaire.

The Concessionaire shall grant to the OPP a right to occupy the new detachment (the "Building") and the property (the "Lands"), pursuant to a licence agreement dated January 1, 2018, between the Minister of Infrastructure, on behalf of the OPP (the "Occupant"), the occupant of the Building and the Lands and the Concessionaire (the "Licence Agreement"). The Licence Agreement will permit the OPP to use the Building and the Lands in order to carry out full policing services on Highway 407, as further contemplated by this Agreement.

The Concessionaire shall issue a written notice (the "Commencement Date Notice") to the Minister of Infrastructure when the Building is fit for occupancy by the Occupant and has been substantially completed in accordance with the provisions of a design and construction agreement dated as of January 1, 2017, between the Minister of Infrastructure and the Concessionaire. The Commencement Date Notice shall set forth the commencement date of the Occupant's right to occupy the new detachment.

Upon completion and occupation of the new detachment, the Concessionaire will be responsible for accommodation and cleaning services. The Concessionaire is also responsible for all costs associated to this facility as outlined in the OPP Costing Summary.

The Concessionaire is also responsible for all accommodation and cleaning costs associated with the current Highway 407 Detachment facility located in Aurora, up to and including the day before the commencement date of the Occupant's right to occupy the new detachment as stipulated in the Commencement Date Notice.

FTE CONTRACT RESOURCES

Staff Sergeant
Sergeants
Constables
Total Uniform



Clerical Support
Total Civilian

As of the Effective Date of this Agreement, 01Jan2018, there are a total of [REDACTED] FTE contract resources provided by the OPP. [REDACTED] of these resources are considered the minimum staffing level for the Detachment. The remaining [REDACTED] which are all Constable positions, represent a higher level of police service dedicated to toll enforcement, rapid incident response and police visibility, which has been agreed to by the parties.

OPP Contract Proposal Costing Summary
407 ETR Concession
Estimated Policing Costs for the period January 01, 2018 to December 31, 2018

Salaries and Benefits

(Note 1)

Uniform Members

	<u>\$/FTE</u>	<u>Positions</u>	<u>\$</u>	
Staff Sergeant-Detachment Commander.....	139,185		139,185	
Sergeant.....	116,535		582,675	
Constable.....	98,826		3,755,388	
Total Uniform Salaries				4,477,248
Overtime.....				242,219
Statutory Holiday Payout.....	3,499			153,956
Shift Premiums.....	681			29,283
Uniform Benefits.....				1,211,910
<i>Total Uniform Salaries & Benefits</i>				<u>6,114,617</u>

Detachment Civilian Members

(Note 1)

		<u>Positions</u>	<u>\$</u>	
Detachment Administrative Clerk.....	Full-time	64,326	192,978	
Total Detachment Civilian Salaries				192,978
Civilian Benefits.....	(Note 4)			48,573
<i>Total Detachment Civilian Salaries & Benefits</i>				<u>241,551</u>

Support Staff (Salaries and Benefits)

Communication Operators.....	6,322		278,168	
Prisoner Guards.....	1,698		74,712	
Operational Support.....	4,520		198,880	
RHQ Municipal Support.....	2,358		103,752	
Telephone Support.....	123		5,412	
Office Automation Support.....	628		27,632	
Mobile and Portable Radio Support.....	168		7,392	
<i>Total Support Staff Salaries and Benefits Costs</i>				<u>695,948</u>

Total Salaries & Benefits

7,052,115

Other Direct Operating Expenses

Communication Centre.....	203		8,932	
Operational Support.....	807		35,508	
RHQ Municipal Support.....	219		9,636	
Telephone.....	1,289		56,716	
Mobile Radio Equipment Repairs & Maintenance.....	286		12,584	
Office Automation - Uniform.....	1,854	(Note 5)	89,952	
Office Automation - Civilian.....	1,689		5,067	
Vehicle Usage.....	7,344	(Note 6)	346,278	
Detachment Supplies & Equipment.....	505		22,220	
Accommodation & Cleaning Contract.....	1,188	(Note 7)	52,272	
Uniform & Equipment.....	1,938		85,272	

Total Other Direct Operating Expenses

724,437

Estimated Annual Policing Costs

\$ 7,776,552

OPP Contract Proposal Costing Summary
407 ETR Concession
Estimated Policing Costs for the period January 01, 2018 to December 31, 2018

NOTES TO STATEMENT

- 1) Salary rates are based on weighted average rates for municipal detachment staff by rank, level and classification. The 2018 salaries incorporate the January 1, 2018, 1.75% general salary rate increase set in the 2015 to 2018 OPPA Uniform and Civilian Collective Agreements. The benefit rates are based on the most recent rates set by the Treasury Board Secretariat, (2017-18).
- 2) Overtime is calculated for uniform members based on a provincial rate of 5.41% of uniform salaries. Overtime is reconciled to actual costs allocated to the 407 ETR Concession.
- 3) Shift Premium is calculated at \$681 per Sergeant and Constable FTE. The rate will be adjusted to the final rate applicable for the year upon reconciliation.
- 4) The benefit rates are 26.96% of salaries for uniformed officers, 25.17% for civilian staff and 2% for overtime payments.
- 5) Office Automation-Uniform is calculated at \$1,854 per uniformed member. In addition, six (6) laptops at a cost of \$1,396 each annually; one of the six laptops will be for the Uniformed Court Officer and the remaining five laptops will be utilized within the detachment. These costs will be updated annually.
- 6) Vehicle Usage is calculated at an annualized cost of \$7,344 per uniformed member and includes one (1) additional patrol vehicle at an annualized cost of \$23,142 for the Uniformed Court Officer. These costs will be updated annually.
- 7) Accommodation & Cleaning Contract is calculated at an annualized cost of \$1,188 per uniform member. These charges remain in effect until OPP staff members relocate to the new detachment facilities being provided by 407 ETR Concession. Upon relocating to the new facilities the OPP will no longer be providing accommodation or cleaning services.

SCHEDULE B

DISPUTE RESOLUTION

1.1 Amicable Negotiations

Unless otherwise provided herein, in the event of any dispute arising between the Minister and the Concessionaire under or relating in any way to this Agreement, including a dispute with respect to the obligations of the Concessionaire or the Minister hereunder or the occurrence of a default hereunder. Such dispute shall in the first instance by notice from either party to the other requiring the dispute to be resolved be referred to the Senior Responsible Official of the Minister and the Senior Operating Officer of the Concessionaire for resolution. If the dispute is not resolved to the mutual satisfaction of the parties within fifteen (15) Business Days (or such longer period as the parties may agree) following such notice, the dispute shall, by notice from either party to the other requiring the dispute to be resolved at a higher level, be referred to the then Chief Executive Officer of the Concessionaire and the Commissioner or the Commissioner's designee. If the dispute is not resolved to the mutual satisfaction of the parties within thirty (30) Business Days following such latter notice, either party may by notice to the other require that the dispute be resolved by mediation as set out below.

1.2 Mediation

The mediation shall be held within thirty (30) Business Days following the end of the thirty (30) Business Day negotiation period.

Within seven (7) Business Days following the end of such thirty (30) Business Day negotiation period, the parties shall jointly select and appoint a skilled and experienced commercial mediator to assist the parties to reach an agreement through mediation. The mediation shall be conducted under such mediation rules as the mediator recommends and the cost of mediation shall be resolved in writing, shall be signed by the parties and shall be final and binding on them. If the parties fail to agree on a mediator within seven (7) Business Days or the dispute is not resolved to the mutual satisfaction of the parties within thirty (30) Business Days following the date of receipt of the notice of mediation, either party may by notice to the other require the dispute to be resolved by arbitration as set out below.

1.3 Initiation of Arbitration Proceedings

If the procedures described above do not result in the resolution of the dispute, arbitration proceedings shall be commenced by the party desiring arbitration (the "Initiating Party") giving notice (the "Initiation Notice") to the other party (the "Responding Party"). The Initiation Notice must state the nature of the dispute, the amount involved, if any, and the remedy sought and request arbitration. Within fifteen (15) Business Days following receipt of the Initiating Notice by the Responding Party, the Initiating Party and the Responding Party shall designate one (1) arbitrator (the "Single Arbitrator") acceptable to both of them. If the parties fail to appoint a

Single Arbitrator within such period of time, the Initiating Party shall, by notice to the Responding Party, appoint an arbitrator. The Responding Party shall, within fifteen (15) Business Days following receipt of such notice, appoint an arbitrator by notice to the Initiating Party, and the two (2) arbitrators so appointed shall select a third arbitrator acceptable to both arbitrators. If the Responding Party fails to appoint an arbitrator within such a period of time (or such additional period of time as the parties may agree) the Initiating Party may appoint an arbitrator on behalf of the Responding Party and is hereby appointed the agent of the Responding Party for such purpose. If the two (2) arbitrators so appointed are unable to agree upon the third arbitrator within fifteen (15) Business Days following the appointment of the arbitrator by the Responding Party either party shall be entitled to make application under the Arbitration Act 1991 (Ontario) to a judge of the Ontario Court (General Division) to appoint the third arbitrator and the provisions of the Arbitration Act 1991 (Ontario) shall govern such appointment.

1.4 Qualified to Act

The Single Arbitrator or panel of arbitrators appointed to act hereunder (the "Arbitrator") shall have appropriate qualifications by profession or occupation to decide the matter in dispute.

1.5 Submission of Written Statements

- (i) Within thirty (30) Business Days following the appointment of the Single Arbitrator or the third arbitrator, as the case may be, the Initiating Party shall send to the Responding Party a statement of claim (the "Statement of Claim") stating in sufficient detail the facts and any contentions of law on which the Initiating Party relies and the relief that it claims.
- (ii) Within fifteen (15) Business Days following the receipt of the Statement of Claim, the Responding Party shall send to the Initiating Party and the Arbitrator a statement of defence and, if applicable, counterclaim (collectively the "Statement of Defence") stating in sufficient detail which of the facts and contentions of law in the Statement of Claim the Responding Party admits or denies, on what grounds, and any other facts and contentions of law on which it relies.
- (iii) Within fifteen (15) Business Days following receipt of the Statement of Defence, the Initiating Party may send to the Responding Party and the Arbitrator a statement of reply (the "Statement of Reply").
- (iv) Within fifteen (15) Business days following receipt of the Statement of Reply, the Responding Party may send to the Initiating Party a statement of reply to counterclaim (the "Statement of Reply to Counterclaim").
- (v) Every Statement of Claim, Statement of Defence, Statement of Reply and Statement of Reply to Counterclaim shall be accompanied by copies (or, if they are especially

voluminous, lists) of all essential documents and other materials on which the party concerned relies.

- (vi) After submission of the Statement of Claim, Statement of Defence, Statement of Reply and Statement of Reply to Counterclaim, if any, the Arbitrator shall forthwith meet with and give directions to the parties for the further conduct of the arbitration.
- (vii) There shall be no oral discovery unless ordered by the Arbitrator.

1.6 Meetings and Hearings

- (a) Meetings and hearing of the Arbitrator shall take place in the City of Toronto or in such other place as the parties agree upon and such meetings and hearings shall be conducted in the English language unless otherwise agreed by such parties and the Arbitrator. Subject to the foregoing, the Arbitrator may at any time fix the date, time and place of meetings and hearings in the arbitration and shall give the parties adequate notice thereof. Subject to any adjournments which the Arbitrator calls, the arbitration hearing shall be continued on successive Business Days until it is concluded.
- (b) All meetings and hearing shall be in private unless the parties otherwise agree.
- (c) Each party may be represented at any meetings or hearings by legal counsel.
- (d) Each party may examine and re-examine its witnesses and cross-examine those of the other parties at the arbitration.

1.7 The Decision

- (a) Subject to the provision of the Arbitration Act, 1991 (Ontario), the Arbitrator shall send a decision in writing to the parties within thirty (30) Business Days following the conclusion of all hearings referred to in Section 1.6 of this Schedule B unless such period of time is extended for a fixed period by the Arbitrator on written notice to each party because of illness or other cause beyond the Arbitrator's control and, unless the parties otherwise agree, shall state the reason for the decision.
- (b) If the Arbitrator is a panel, the decision of the majority of the panel shall be deemed to be the decision of the Arbitrator.
- (c) Subject to the provision of the Arbitration Act, 1991 (Ontario), and with the exception of monetary claims in excess of ten million dollars (\$10,000,000) or errors in law, the decision of the Arbitrator shall be final and binding on the parties and shall not be subject to any appeal or review procedure provided that the Arbitrator has followed the rules and procedures herein in good faith and has proceeded in accordance with the principles of natural justice.

- (d) If the decision results in an award in excess of ten million dollars (\$10,000,000) the decision of the Arbitrator may be appealed on a question of fact or a question of mixed fact and law pursuant to the provision of the Arbitration Act, 1991 (Ontario).

1.8 Jurisdiction and Powers of the Arbitrator

- (a) The object of arbitration hereunder shall be to ensure the just, expeditious, economical and final determination of any dispute.
- (b) Without limiting the jurisdiction of the Arbitrator at law, a submission to arbitration hereunder shall confer on the Arbitrator the jurisdiction to
 - (i) determine any question of law arising in the arbitration.
 - (ii) determine any question as to the Arbitrator's jurisdiction.
 - (iii) determine any question of good faith or dishonesty arising in the dispute.
 - (iv) order any party to furnish details of its case, in fact or in law to the other parties.
 - (v) proceed in the arbitration notwithstanding the failure or refusal of any party to comply with these provisions or with the Arbitrator's orders or directions, or to attend any meeting or hearing, but only after giving such party notice that the Arbitrator intends to do so.
 - (vi) receive and take into account such written or oral evidence tendered by the parties as the Arbitrator determines is relevant whether or not strictly admissible in law.
 - (vii) make one or more interim awards, including the appointment of a receiver or receiver and manager in connection with the collection and retention of Toll Revenues pending the final resolution of any dispute hereunder.
 - (viii) hold meetings and hearings and make a decision (including a final decision) in Ontario or elsewhere with the concurrence of the parties hereto.
 - (ix) order the parties to produce to the Arbitrator, and to each other for inspection, and to supply copies of any books and records, documents, materials and other information in their possession or control which the Arbitrator determines to be relevant.
 - (x) order the preservation and storage of any property or thing relevant to the subject matter of the arbitration under the control of any of the parties.

- (xi) make any order as to the payment of costs of the arbitration, including legal fees on a solicitor and client basis, and
 - (xii) include, as part of any award, the payment of interest at the rate set out in this Agreement from an appropriate date as determined by the Arbitrator.
- (c) The jurisdiction and powers referred to in Subsection 1.8 (b) of this Schedule B shall be exercised at the discretion of the Arbitrator subject to only the Laws and Regulations and the provisions of this Agreement.

1.9 Arbitration Act, 1991 (Ontario)

The rules and procedures of the Arbitration Act, 1991 (Ontario) shall apply to any arbitration conducted hereunder except to the extent that its provisions are modified by the express provisions of this Schedule B or by agreement of the parties.

1.10 Provisional Remedies

No party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that it is not otherwise available under this Agreement, including temporary and preliminary injunctive relief and restraining orders and the appointment of a receiver or receiver and manager in connection with the collection and retention of Toll Revenues.

1.11 Continuing Performance

At all times notwithstanding the existence of any dispute, the Minister and the Concessionaire shall continue to perform their respective obligations in accordance with the provisions of this Agreement without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of this Agreement.

1.12 Costs of Arbitration

Pending determination by the Arbitrator, the parties shall share equally and be responsible for their respective shares of all costs relating to the Arbitrator.