

**AMENDING AGREEMENT TO SCHEDULE 13 OF THE CONCESSION AND
GROUND LEASE AGREEMENT**

Ministry of Transportation Enforcement Services

THIS FIRST AMENDING AGREEMENT, effective as of April 1, 2009, is made

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the Ministry of Transportation,

(hereinafter referred to as the “Grantor”),

- and -

407 ETR CONCESSION COMPANY LIMITED

(hereinafter referred to as the “Concessionaire”),

RECITALS

- A. 407 ETR and the Province entered into a Concession and Ground Lease Agreement (the “CGLA”) dated April 6, 1999, as amended, pursuant to which the Concessionaire has the right to operate the Highway 407 concession for a period of 99 years.
- B. The *Highway 407 Act, 1998 S.O. 1998, c. 28* (the “Act”) designates the Highway 407 as a private toll highway and obligates the Minister of Transportation to treat Highway 407 as if it were part of the King’s Highway.
- C. Pursuant to Schedule 13 of the CGLA, the Grantor is required to provide Ministry Enforcement Officers who shall undertake enforcement duties on Highway 407.
- D. Under the Act, the Minister is permitted to charge the Concessionaire for the reasonable costs of providing enforcement on Highway 407 on a full cost recovery basis.

NOW THEREFORE THIS AMENDING AGREEMENT WITNESSES THAT in consideration of the covenants and agreements contained herein and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto have agreed as follows:

1. **Defined Terms.** Unless otherwise defined herein, capitalized terms used herein shall have the respective meanings ascribed thereto in the CGLA.

2. **Amendments to Schedule 13 of the CGLA – Ministry of Transportation Enforcement Services.** Effective upon execution of this Amending Agreement by the parties Schedule 13 of the CGLA is hereby amended by the following:

- (a) deleting therefrom section 2 and inserting therein the following new section 2:

“2. Grantor Responsibility

The Grantor shall provide Ministry Enforcement Officers who shall undertake routine enforcement duties on Highway 407, as they would for Comparable Controlled Access Highways, according to Laws and Regulations. In addition to routine enforcement, the Grantor and the Concessionaire may agree that the Grantor shall provide a higher level of enforcement for a cost based on the parameters herein, as well as supplementary enforcement activities relating to offences under Part X.1 of the HTA for an agreed upon compensation to be paid by the Concessionaire. The Concessionaire and the Grantor will work together co-operatively to co-ordinate and set the parameters for these enforcement activities. If the Grantor and the Concessionaire cannot reach agreement with respect to the costs of supplementary enforcement activities the matter shall be subject to dispute resolution.

- (b) deleting therefrom sections 4, 4.1, 4.2, 4.3, and 4.4 and inserting therein the following new sections 4, 4.1, 4.2, 4.3, 4.4, 4.5, and 4.6:

“4. Costs of Enforcement

The Grantor shall charge the Concessionaire for all reasonable costs in respect of Ministry Enforcement Officers’ enforcement activities on Highway 407 as contemplated in this schedule on a full cost recovery basis. The Grantor may charge the Concessionaire for the items listed in **Appendix “A”** to this schedule (entitled **“Cost Recovery Items”**) based upon the applicable Ministry of Transportation annual costing statement (the **“Annual Costing Statement”**).

For the avoidance of doubt, any services, supplies, equipment, costs, charges, additional hours of work or any other item or matter related to Ministry Enforcement Officers’ enforcement activities on Highway 407 not specifically set out in the Annual Costing Statement is subject to the prior written approval of the Concessionaire, and such fees and expenses, including, and without limitation, excess costs or overtime charges, shall be billed and invoiced separately by the Grantor to the Concessionaire.

4.1. Annual Costing Statements

The Grantor shall review the costs and service levels of Ministry Enforcement Officers’ enforcement activities on Highway 407 and, on or before January 2nd of each calendar year, shall prepare and deliver to the Concessionaire the Annual Costing Statement for the following Fiscal Year of the Grantor. The Annual Costing Statement for each Fiscal

Year shall be in the form set out in **Appendix “B”** (entitled “**Annual Costing Statement**”).

4.2. Monthly Payments

On or before the last day of each month, the Grantor shall issue to the Concessionaire an invoice for one-twelfth (1/12th) of the total estimated cost of enforcement activities on Highway 407, as set out in the applicable Annual Costing Statement.

Within sixty (60) days of receipt of the applicable invoice, the Concessionaire shall pay to the Grantor the amount reflected in the invoice.

4.3. Annual Financial Statement – Reconciliation

On or before June 30 of the year following any year to which this schedule, as amended, applies, the Grantor shall prepare and deliver to the Concessionaire an annual financial statement for the preceding Fiscal Year (the “**Annual Financial Statement**”) The Annual Financial Statement shall set out the actual costs of enforcement for the preceding Fiscal Year, and reconcile those amounts against the amounts invoiced pursuant to the Annual Costing Statement, including, and without limitation, a reconciliation of amounts resulting from any change to the full headcount and/or any change in committed staff-time from 100%. Any difference between the amounts shall be refunded or paid by the respective responsible party within sixty (60) days of the Concessionaire’s receipt of the Annual Financial Statement.

4.4. Supporting Information

The Grantor shall retain complete and accurate records, statements of accounts, invoices and any other documentation necessary to support the Annual Financial Statement in accordance with its statutory obligations and document retention policies. The Grantor shall provide such documentation to the Concessionaire within a reasonable amount of time upon request by the Concessionaire.

The Grantor agrees that invoices under Schedule 13 of the CGLA shall be accompanied by supporting documentation including:

- (i) a list of the plates of vehicles used in the enforcement on Highway 407 in respect of the invoice, a list of the names of officers (or their badge numbers) along with their positions and their hours of enforcement on Highway 407; and
- (ii) a detailed list of transponder related HTA charges, the date of the offence and the type of offence summarized by region (Peel, York and Halton).

4.5. Costing Review

The Cost Recovery Items set out in **Appendix “A”** are subject to reasonable change by the Grantor, upon two (2) calendar months written notice to the Concessionaire, to reflect

the full cost recovery in respect of Ministry Enforcement Officers' enforcement activities on Highway 407. Any such change to the Cost Recovery Items set out in Appendix "A" shall not be effective until such change is included in the Annual Costing Statement for the following fiscal year.

4.6. Tools and Linkages

All relevant Highway 407 enforcement tools (e.g. special enforcement transponders) and technological linkages required to enforce Part X.1 offences under the HTA shall remain the property of the Concessionaire. To the extent the Grantor requires the use of any tools and linkages for enforcement activities on Highway 407, the tools and linkages shall be provided free of charge to the Grantor and shall be maintained and paid for by the Concessionaire.

- (c) deleting therefrom sections 7 and 8 and inserting therein the following new sections 7, 7.1, and 8:

"7. Partial Years

If for any reason it shall become necessary to calculate an Annual Costing Statement for a period of less than one Fiscal Year, then the calculation of such Annual Costing 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.

7.1. Prior Costing Provisions

Section 4 (j) of Schedule A, and Schedule D, to the settlement agreement of March 31, 2006 between the Grantor and the Concessionaire are superseded by this schedule, as amended, and are deemed and shall be considered for all purpose to be no longer of any force or effect.

8.1. Dispute Resolution

Any dispute relating to this schedule shall be resolved using the dispute resolution process in Article 25 of the CGLA. If there is a dispute as to any amount owing hereunder, the Concessionaire shall pay such amount within the time required. If the dispute arbitrator finds that any amount is not owing, the Grantor shall refund such amount with interest at the Bank Rate plus three (3%) per cent."

- (d) appending thereto a new Appendix "A", entitled "Cost Recovery Items" as follows:

APPENDIX A **COST RECOVERY ITEMS**

The following cost recovery items related to Ministry Enforcement Officers' enforcement activities shall be taken into consideration when preparing the Annual Costing Statement (Appendix B) for each of the Grantor's Fiscal Years.

Item			Unit
Salaries and Wages			
	District Enforcement Manager -		
	Enforcement Supervisor -		
	Enforcement Officer -		
	Enforcement Services Clerk		
	Court Administration Officer		
	Overtime Rate for Enforcement Staff	1 ½ times salary and wages	per hour
Employee Benefits			
	Benefits	All -	
Transportation and Communications			
	Cell Phones		per officer
	Telephones		per officer
	Meal Provisions		per officer
	Mileage (Personal vehicle use for training, etc.)		per officer
	Other minor/incidental transportation and communication items		
Services			
	Radio Communications		per officer
	Vehicle Usage		per officer
	Portable Scale Calibration		per officer
	Accommodations (includes hydro and janitorial)		per officer
	Office Equipment Rental (photocopier, shredding)		per officer
	Seminars/Conferences		per officer
	IT Costs		per officer
	Training		per officer
	Cleaning Services (Coverall Dry Cleaning)		per officer
	407 W/B Lay-by Maintenance		per officer
	Other minor/incidental services		
Supplies and Equipment			
	Stationary and Office Supplies		per officer
	Uniforms (includes protective clothing)		per officer
	Equipment and Accessories		per officer
	Other minor/incidental supplies and		

	equipment			

(e) appending thereto a new Appendix “B” entitled “Annual Costing Statement” as follows:

APPENDIX B
ANNUAL COSTING STATEMENT

The following describes the enforcement activities that will be provided by Ministry Enforcement Officers. The Concessionaire will be financially responsible for the costs identified below. The associated costs are as outlined in Appendix A (“Cost Recovery Items”).

POSITION	COMPLEMENT
District Enforcement Manager	
Enforcement Supervisor	
Enforcement Officer	
Enforcement Services Clerk	
Court Administration Officer (Halton)	
Court Administration Officer (Peel)	
Court Administration Officer (York/Metro)	

The District Enforcement Manager shall advise the Concessionaire of any operational changes and their effective timing to the complement at the regular consultative meeting between the District Enforcement Manager and the Concessionaire.

Annual Costing Statement for the period April 1, _____ to March 31, _____
(Fill in year) (Fill in year)

Salaries and Wages

Uniformed Staff Salaries	<u>Complement</u>	<u>Rate</u>	<u>Cost</u>
District Enforcement Manager	X	X	
Enforcement Supervisor	X	X	
Enforcement Officer	X	X	
Administrative			
Enforcement Services Clerk	X	X	
Court Administration Officer	X	<u>X</u>	
TOTAL Salaries and Wages			X

Employee Benefits

Benefits	X	X	
TOTAL Employee Benefits			X

Transportation and Communications

Cell Phones	X	
Telephones	X	
Meal Provisions	X	
Mileage (Personal vehicle use for training, etc.)	<u>X</u>	
Other minor/incidental transportation and communication items	<u>X</u>	
TOTAL Transportation and Communications		X

Services

Radio Communications	X	
Vehicle Usage	X	
Portable Scale Calibration	X	
Accommodations (includes hydro and janitorial)	X	
Office Equipment Rental (photocopier, shredding)	X	
Seminars/Conferences	X	
IT Costs	X	
Training	X	
Cleaning Services (Coverall Dry Cleaning)	X	
407 W/B Lay-by Maintenance	<u>X</u>	
Other minor/incidental services	X	
TOTAL Services		X

Supplies and Equipment

Stationary and Office Supplies	X	
Uniforms (includes protective clothing)	X	
Equipment and Accessories	<u>X</u>	
Other minor/incidental supplies and equipment	X	
TOTAL Supplies and Equipment		<u>X</u>

TOTAL ESTIMATED COSTING \$X

3. **Effect of Amendments.** Except as amended hereby, the terms, conditions and provisions of Schedule 13 to the CGLA are hereby ratified and confirmed and henceforth this Amending Agreement and Schedule 13 shall be read and construed as one agreement.

IN WITNESS OF THE FOREGOING, each of the Parties have duly executed and delivered this Amending Agreement as of the date first above written.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
as represented by the Minister of Transportation

By: _____
Name: Bob Chiarelli
Title: Minister of Transportation
Date: March 27, 2012

407 ETR CONCESSION COMPANY LIMITED

By: _____
Name: Jose A. Tamariz
Title: President and CEO
Date: Jul 10, 2012

By: _____
Name: Louis-M. St-Maurice
Title: Chief Financial Officer
Date: JAN 10, 2012