

YORK REGION COURTS INTERMUNICIPAL AGREEMENT

This Agreement made the day of , 2010

BETWEEN:

THE CORPORATION OF THE TOWN OF AURORA
(hereinafter called "Aurora")

- and -

THE CORPORATION OF THE TOWN OF EAST GWILLIMBURY
(hereinafter called "East Gwillimbury")

- and -

THE CORPORATION OF THE TOWN OF GEORGINA
(hereinafter called "Georgina")

- and -

THE CORPORATION OF THE TOWNSHIP OF KING
(hereinafter called "King")

- and -

THE CORPORATION OF THE TOWN OF MARKHAM
(hereinafter called "Markham")

- and -

THE CORPORATION OF THE TOWN OF NEWMARKET
(hereinafter called "Newmarket")

- and -

THE CORPORATION OF THE TOWN OF RICHMOND HILL
(hereinafter called "Richmond Hill")

- and -

THE CORPORATION OF THE CITY OF VAUGHAN
(hereinafter called "Vaughan")

- and -

**THE CORPORATION OF THE TOWN OF WHITCHURCH-
STOUFFVILLE**
(hereinafter called "Whitchurch-Stouffville")

- and-

THE REGIONAL MUNICIPALITY OF YORK
(hereinafter called "the Region")

WHEREAS Section 176 under Part X of the Provincial Offences Act (R.S.O. 1990, c.P. 33, as amended) (the "POA") authorizes a group of municipalities to enter into an agreement with the Attorney General to perform court administration and court support functions, and to conduct prosecutions under Parts I and II of the POA as well as certain proceedings under the Contraventions Act (Canada);

AND WHEREAS the parties entered into such an agreement in 1999;

AND WHEREAS section 20 of the *Municipal Act, 2001* authorizes a municipality to enter into an agreement with one or more municipalities to jointly provide, for their joint benefit, any matter which all of them have the power to provide within their own boundaries;

AND WHEREAS the Councils of the parties wish to establish terms and conditions for the use by the area municipalities of officers and employees of the Region for purposes of conducting prosecutions, as more particularly detailed herein;

NOW THEREFORE in consideration of the premises, mutual covenants and conditions herein contained, the parties hereto AGREE AS FOLLOWS:

Definitions

In this Agreement, the following words shall have the meanings assigned herein:

"Area Municipality" shall mean an Area Municipality who is a party to this Agreement

"Courts" shall mean the facilities located in the Tannery Mall, Newmarket and South Service Centre, Richmond Hill or such other facility as approved by Regional Council.

"Local Prosecutions" means prosecutions and appeals that are conducted by a Municipality with regard to its own bylaws and includes prosecutions and appeals conducted in relation to the Building and Fire Codes and any other matters that a municipality is authorized by law to prosecute.

"Municipality" shall mean each of the parties to this Agreement.

"Program" shall mean the court administration, support and prosecution services to be provided by the Region pursuant to this Agreement.

"Region" shall mean The Regional Municipality of York;

"Senior Counsel, Prosecutions" shall mean the person designated by the Region to be responsible for prosecutions.

"Transfer Agreement" shall mean the Memorandum of Understanding and the Local Side Agreement entered into between the Municipalities and the Attorney General under Part X of the POA, together with amendments thereto.

1. Role of the Region

- 1.1 The role of the Region is to undertake the Program to provide court administration, court support and prosecution of offences under the POA on behalf of the Municipalities pursuant to the provisions of this Agreement and to the standards set forth in the Transfer Agreement.

2. POA Stakeholder Group

- 2.1 The Region shall establish a POA Stakeholder Group comprised of a broad range of Stakeholders including York Regional Police, OPP and other law enforcement agencies along with a representative from each Area Municipality.
- 2.2 It is agreed that the general mandate of the POA Stakeholder Group should be to provide a vehicle for information for input and feedback to be passed between the Region's POA Court Services Branch and stakeholders, but not to approve budgets, approve or direct resources or make procurement decisions.

3. General Responsibility of the Region

- 3.1 The Region shall:

- (i) Perform court administration and court support functions as more particularly described in the Transfer Agreement.
- (ii) Conduct prosecutions, subject to Section 4.
- (iii) Collect all fines arising from the Program.
- (iv) Distribute revenue from fines and other income it may receive as provided in this Agreement.
- (v) Maintain adequate and appropriate records and accounts for purposes of audit, for purposes of reporting to and review by the Area Municipalities, and to meet the requirements of the Transfer Agreement.
- (vi) Provide and maintain court facilities and equipment that are adequate and appropriate for the existing needs of the Program, including the operation and management of any existing court facilities transferred to the Municipalities by the Transfer Agreement.
- (vii) Plan for and implement any future expansion of the Program through the provision of court facilities and equipment and court support functions for the

Program within York Region.

- (viii) Report to each Area Municipalities as required on activities relating to that Municipality, including disposition of charges, fine revenue collected, and collections activities.
- (ix) The Region will provide annual reports to the local municipalities through the respective CAO's on Courts operation, setting out performance measures including program efficiencies and service levels. An example of the type of reporting to be provided by the Region is attached as Schedule B.

4. Municipal Prosecution

- 4.1 The Region is authorized to conduct prosecutions on behalf of each Municipality and for such purposes the Region and persons it employs or retains to conduct prosecutions are deemed to be agents of the respective Municipality. Such authorization does not include Local Prosecutions or as may be otherwise limited by this agreement.
- 4.2 Notwithstanding the obligation of the Region to conduct prosecutions, any Municipality may, at its expense, use its own staff, agent or counsel to conduct Local Prosecutions, provided that the Municipality adheres to the standards for prosecutions set out in the Transfer Agreement other than respecting the Conflict of Interest Guidelines as noted in paragraph 12.2 herein. There shall be no charge for use of court facilities, nor any other charge or fee levied against a Municipality arising out of such prosecution or appeal.
- 4.3 A Municipality that decides, after execution of this Agreement, to conduct all of its Local Prosecutions, shall inform the Region six (6) months before the effective date.
- 4.4 If a Municipality wishes to conduct a Local Prosecution in relation to a specific matter, it shall so inform the Senior Counsel, Prosecutions prior to the first appearance held in relation to that matter. The Municipality will respond to any defendant's appeal(s) in such matters and will have the sole right to appeal decisions relating to such matters.
- 4.5 It shall be the responsibility of the Senior Counsel, Prosecutions to advise each Municipality of the process respecting each Provincial Offences Act matter relating to that Municipality after each step in the process thereof, including the first appearance, the trial and the notice of appeal, if any, in accordance with the protocol established under paragraph 4.11.
- 4.6 If a Municipality determines that it does not wish to conduct a Local Prosecution, it shall be the responsibility of the Municipality to forward a trial brief in a form that is satisfactory to the Senior Counsel, Prosecutions prior to the first appearance in that regard. The decision thereafter as to whether there is sufficient evidence to proceed and as to the conduct of the prosecution shall be at the discretion of the Senior Counsel, Prosecutions and the Municipality shall provide such witnesses from its staff as the Senior Counsel, Prosecutions may reasonably require.
- 4.7 In the event that a prosecution other than a Local Prosecution is unsuccessful, either the

Senior Counsel, Prosecutions or the Municipality involved may file an appeal. The Municipality shall have the right to conduct an appeal on its own behalf or in place of the Senior Counsel, Prosecutions if it so wishes, but shall not have the right (if the Senior Counsel Prosecutions determines not to appeal) to require the Senior Counsel, Prosecutions to conduct an appeal.

- 4.8 Any complaints or concerns that may arise in relation to the Region's prosecutors-will be forwarded to the Senior Counsel, Prosecutions who will in turn report to the Regional Solicitor. The Regional Solicitor shall report any complaints to the Area Municipalities quarterly.
- 4.9 Any complaints or concerns that may rise in relation to a Municipality's prosecutor will be forwarded to the person designated by the Municipality to receive complaints. The Region's Senior Counsel, Prosecutions shall be advised of all such complaints.
- 4.10 Any report respecting a complaint shall indicate whether or not the complaint was substantiated.
- 4.11 The parties hereto acknowledge that sharing the prosecution function amongst the Region and the Municipalities may result in the need for communication between the Senior Counsel, Prosecutions and the municipal prosecutors for the purpose of ensuring compliance with the Transfer Agreement and that a uniform prosecution policy evolves in relation to the Program. The parties commit herein to engaging in such communication.

5. POA Pt. II – Parking

5.1 First Attendance

Those parties who have not entered into an agreement respecting first attendance facilities with the Attorney General under Part II of the POA hereby undertake to use their best efforts to negotiate and execute such agreements.

5.2 First Attendance Facilities

First attendance facilities for POA Pt. II – parking matters – shall be supplied by the Area Municipalities at no cost to the Program.

5.3 Court Scheduling and Collections

Those parties who have not entered into an agreement respecting court scheduling and collections with the Attorney General under Part II of the POA agree to review and consider entering into such agreement.

- 5.4 Those parties who have not adopted an out of court system of Administrative Monetary Penalties for parking violations as provided under the Municipal Act, 2001 undertake to examine the costs and benefits of such a system with a view to implementation.

6. Budget

- 6.1 The Region shall maintain the Program as part of the annual budget, setting out the estimated operating and capital costs, and projected revenue from fines, fees, applicable grants, subsidies and other revenues.

7. Apportionment of Fine Revenue

- 7.1 Each Municipality shall receive fine revenue it is entitled to by law including, but not limited to, S. 324 of the Municipal Act, S. 67.1 of the Planning Act, S.36 of the Building Code Act, S. 178 of the Environmental Protection Act, and the Fire Protection and Prevention Act, or any successors thereto and including any such revenue that may by law be directed to municipalities in future.
- 7.2 Ministries and/or agencies that have a statutory entitlement to “dedicated fines” shall be paid those fines as required by statute.
- 7.3 The Region shall be responsible for all costs and expenses of the Program, and shall retain any revenue of the Program (after deductions mentioned in sections 7.1 and 7.2 above) shall be retained by the Region.

8. Conflict of Interest Guidelines

- 8.1 The Municipalities agree to apply the Conflict of Interest Guidelines attached as Schedule "A" to this Agreement to those functions being transferred to them under the Transfer Agreement.
- 8.2 For purposes of clarification, it is noted that Local Prosecutions, since they are not being transferred, are not subject to the Conflict of Interest Guidelines. A municipality may adopt the Conflict of Interest Guidelines for its Local Prosecutions.

9. Audit

- 9.1 The Program shall be subject to internal auditing in accordance with the policies and procedures of the Region and the direction of the Regional Council. The Program is also subject to audit by Ministry of the Attorney General pursuant to the Transfer Agreement.

10. Indemnity

- 10.1 The Region agrees to indemnify and save harmless each Area Municipality from and against all actions, causes of action, losses, liens, damages, suits, judgments, awards, orders, claims, fines, costs and demands whatsoever which may arise either directly or indirectly, by reason of or as a consequence of or in any way related to the Region's obligations under this Agreement or any action or actions properly taken hereunder.

11. Resolution of Disputes

- 11.1 The parties agree that any dispute, question, claim or other matter arising out of or relating to this Agreement should first be discussed at a staff level and if the matter cannot be resolved, the parties will engage the CAO's of the Municipalities.
- 11.2 In the event there is no resolution, the Municipalities may refer their dispute to mediation, utilizing a mutually agreed upon mediator.

12. Term

- 12.1 The term of this Agreement shall be concurrent with the Transfer Agreement.

13. Termination

- 13.1 No notice to terminate this Agreement or the Transfer Agreement shall be given unless requested by a majority of the Municipalities having a majority of the electors in York Region, and by like vote at Regional Council.
- 13.2 Upon such request, the provisions of Section 17 of the Transfer Agreement apply to govern the transition of the program.

14. Amendment

- 14.1 The parties to this agreement may at any time make a written request to amend the terms and conditions of this agreement. Any such request shall set out the reasons for the request.
- 14.2 Any amendment to this agreement shall be subject to approval by a majority of the Municipalities having a majority of the electors in York Region, by a vote at Regional Council.

15. Notice

- 15.1 Any notice which is permitted or required pursuant to this Agreement shall be in writing and shall be served personally or by registered mail upon the Clerk of each of the parties at the following addresses:

The Corporation of the Town of Aurora
100 John West Way, P.O. Box 1000
Aurora, Ontario L4G 6J1
Attention: Clerk
Fax No.: (905) 841-3483

The Corporation of the Town of East Gwillimbury
19000 Leslie Street
Sharon, Ontario L0G 1V0
Attention: Clerk
Fax No.: (905) 478-2808

The Corporation of the Town of Georgina
26557 Civic Centre
Keswick, Ontario L4P 3G1
Attention: Clerk
Fax No.: (905) 476-8100

The Corporation of the Township of King
2075 King Road
King City, Ontario L7B 1A1
Attention: Clerk
Fax No.: (905) 833-2300

The Corporation of the Town of Markham
Anthony Roman Centre
101 Town Centre Boulevard
Markham, Ontario L3R 9W3
Attention: Clerk
Fax No.: (905) 479-7771

The Corporation of the Town of Newmarket
465 Davis Drive, P.O. Box 328
Newmarket, Ontario L3Y 4X7
Attention: Clerk
Fax No.: (905) 853-3459

The Corporation of the Town of Richmond Hill
225 East Beaver Creek Road
Richmond Hill, Ontario L4C 4Y5
Attention: Clerk
Fax No.: (905) 771-2502

The Corporation of the City of Vaughan
2141 Major Mackenzie Drive
Vaughan, Ontario L6A 1T1
Attention: Clerk
Fax No.: (905) 832-8535

The Corporation of the Town of Whitchurch-Stouffville
P.O. Box 419, 19 Civic Avenue
Stouffville, Ontario L4A 7Z6
Attention: Clerk
Fax No.: (905) 640-7957

The Regional Municipality of York
17250 Yonge Street
Newmarket, Ontario L3Y 6Z1
Attention: Clerk
Fax No.: (905) 895-3031

16. Severability

- 16.1 In the event that any covenant, provision or term of this Agreement should at any time be held by any competent tribunal to be void or unenforceable, then the Agreement shall not fail, but the covenant, provision or term shall be deemed to be severable from the remainder of this Agreement, which shall otherwise remain in full force and effect.

17. Estoppel

- 17.1 No party or parties shall call into question, directly or indirectly, in any proceedings whatsoever in law or in equity or before any administrative tribunal, the right of the parties or any of them to enter into this Agreement or the enforceability of any term, agreement, provision, covenant and/or condition contained in this Agreement, and this clause may be pleaded as an estoppel as against any such party in any proceedings.

18. Successors and Assigns

- 18.1 This Agreement shall ensure to the benefit of and be binding upon the parties and their respective successors and assigns

SCHEDULE "A"
CONFLICT OF INTEREST GUIDELINES
ADOPTED IN RELATION TO ADMINISTRATION
OF THE PROVINCIAL OFFENCES COURT

Preamble

Whereas administration of the Provincial Offences Court by the Municipal Partners pursuant to agreement with the Attorney General must be conducted in accordance with the fundamental principles of justice, which include prosecutorial independence, fairness, impartiality, competence and integrity;

Therefore, the Municipal Partners, on behalf of their elected representatives and staff, agree to implement and adhere to these Guidelines in all matters relating to the administration of the Provincial Offences Court (Central East Region).

General Principles

- 1.1 These Guidelines apply to elected representatives, officials and members of the staff of the Municipal Partners.
- 1.2 No person shall attempt to improperly influence or interfere, financially, politically or otherwise, with the administration or prosecution functions of the Provincial Offences Court or with persons performing duties in relation to the Provincial Offences Court.
- 1.3 Every person involved with the administration and prosecution functions of the Provincial Offences Court shall endeavour to carry out such duties in a manner which upholds the integrity of the administration of justice.

Obligation to Report

- 2.1 Every member of Region staff involved in administration of the Provincial Offences Court, including the prosecution function, shall immediately disclose to the Regional Solicitor any attempt at improper influence or interference in relation to matters before the Provincial Offences Court made by any elected representative, official or member of the staff of the Municipal Partners. If the matter is deemed to be improper influence or interference, the Regional Solicitor shall advise the Crown Attorney.
- 2.2 Every member of staff of a Municipal Partner, other than the Region, performing any duties with respect to the Provincial Offences Court, including prosecution, shall immediately disclose to the person designated by the Municipal Partner for such purposes any attempt at improper influence or interference in relation to matters before the Provincial Offences Court made by any elected representative, official or member of the staff of the Municipal Partner. If the matter is deemed to be improper influence or interference, the designated person shall advise the Crown Attorney. When the Municipal Partner employs a member or members of the Law Society of Upper Canada in positions relevant to the administration of justice, the Municipal Partner shall endeavor to so

designate one of such members.

- 2.3 No action may be taken against a person making such disclosure in good faith.

Administrative Structure

- 3.1 Members of staff of the Municipal Partners who are engaged in administration or prosecution functions shall not directly report to or be supervised by persons who are municipal finance officers or who are employed by police agencies.
- 3.2 Where a member of staff of a Municipal Partner who is engaged in administration or prosecution functions has been charged with an offence created under a federal or provincial statute or regulation and where continuing to perform his or her duties may erode public confidence in the administration of justice, the charge shall be disclosed to the Municipal Partner. Upon notification, the Municipal Partner shall determine if any actual or perceived conflict of interest exists and, if so, shall take appropriate action to address the conflict.
- 3.3 Members of staff of the Municipal Partners who are engaged in the prosecution function shall adhere to the following:
- (a) a prosecutor shall not place him or herself in a position where the integrity of the administration of justice could be compromised;
 - (b) a prosecutor shall disclose any actual or reasonably perceived conflict as soon as possible to the Municipal Partner. Upon notification, the Municipal Partner shall determine if any actual or perceived conflict of interest exists and, if so, shall take appropriate action to address the conflict;
 - (c) a prosecutor may not also be engaged in the enforcement function;
 - (d) each prosecutor must be a member in good standing of the Law Society of Upper Canada or report to or be supervised by a member in good standing of the Law Society of Upper Canada;
 - (e) a prosecutor must not hold or have held office within the period of twelve months prior to engaging in any prosecution function;
 - (f) each prosecutor shall take oath of office as may be required from time to time;
 - (g) a prosecutor shall not, personally or through any partner in the practice of law, act or be directly or indirectly involved as counsel or solicitor for any person in respect of any offence charged against the person under the laws in force in Ontario, unless it relates to his or her own case; and
 - (h) a prosecutor, who is charged with an offence under the Criminal Code of Canada or any other federal statute or regulation that is dealt with under the Criminal Code,

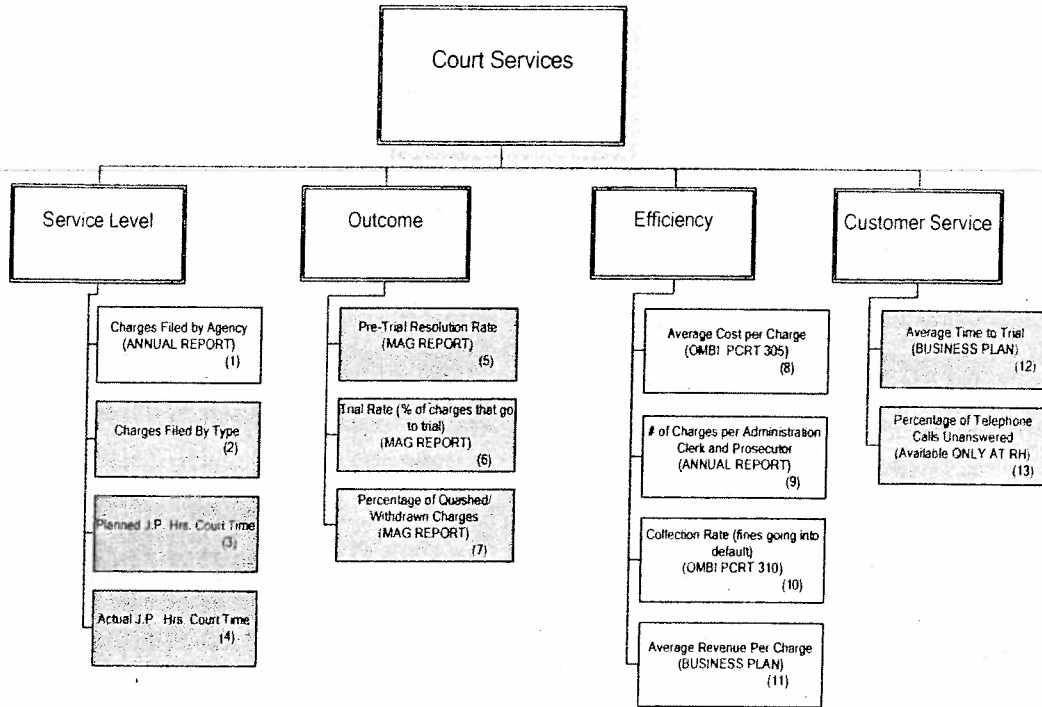
shall disclose such charge in the same manner as provided in paragraphs 2.1 and 2.2. Where a prosecutor is charged with an offence under other federal statutes or regulations thereunder or a provincial statute or regulation thereunder and where continuing to perform his or her duties may erode public confidence in the administration of justice, the charge shall be disclosed to the appropriate Municipal Partner. Upon notification, the Municipal Partner shall determine if any actual or perceived conflict of interest exists and, if so, shall take appropriate action to address the conflict.

Implementation

- 4.1 Each elected representative of the Municipal Partners shall be provided with a copy of these Guidelines as part of the orientation process following each municipal election.
- 4.2 The Guidelines shall form part of the corporate policy of each Municipal Partner in relation to administrative reporting structures and in relation to the standards expected of municipal staff and, for this purpose, shall be drawn to the attention of municipal staff.
- 4.3 The attention of all persons affected by these Guidelines is drawn to the possibility of civil litigation by persons harmed by certain breaches of this Guideline and to the possibility of penal sanction under applicable federal and provincial legislation and regulations thereto, including applicable provisions of the Criminal Code.

SCHEDULE "B"

ANNUAL KPI DATA FOR POA COURTS TO BE REPORTED TO CAO'S



Key:

PREVIOUSLY REPORTED ☐ NOW APPROVED FOR CONFIDENTIAL RELEASE ☐ JUDICIAL APPROVAL STILL REQUIRED ☐

IN WITNESS WHEREOF the parties hereto have executed this York Region Courts Intermunicipal Agreement.

The Corporation of the Town of Markham

Per: _____
Name:

Position:
Authorized Signing Officer

Per: _____
Name:

Position:
Authorized Signing Officer

Dated at _____ this _____ day of _____, 2010.