

THIS AGREEMENT made in quadruplicate this day of , 2009,

B E T W E E N:

CITY OF TORONTO,
hereinafter called the “City”,

OF THE FIRST PART

- and -

TORONTO TRANSIT COMMISSION,
hereinafter called the “TTC”,

OF THE SECOND PART

WHEREAS the TTC is continued under the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A, as amended, to among other things consolidate and co-ordinate a local transportation system within the City of Toronto; and

WHEREAS the TTC has, in part, established a local transportation system that operates or may operate light rail vehicles and streetcars on the system of public highways within the City of Toronto (the “Public Highways”) for the benefit and use of the general public (the “Transit System”); and

WHEREAS the City is established as the municipal road authority with the power and responsibility to maintain the Public Highways for the benefit and use of the general public; and

WHEREAS each party recognizes that it is therefore in the public interest that agreement be reached as to the division of responsibilities and processes for the approval and undertaking of work for the construction, installation, rehabilitation, repair and maintenance of the Transit System and the Public Highways;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH that the City and the TTC, in consideration of the mutual covenants and premises contained herein, mutually covenant and agree as follows:

1. DEFINITIONS

As used in this Agreement,

“Applicable Laws” shall mean all mandatory laws, statutes, by-laws, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers of governments, Canadian provincial and municipal, ordinary or extraordinary which now or at any time hereafter may be applicable to and enforceable against the relevant Work in question or any part therein;

“Barrier Curb” shall mean a raised curb to deter public vehicles from travelling on an exclusive right-of-way;

“Beacon” shall mean a flashing amber light installed on a streetcar platform;

"Bridge – Parkside Drive" shall mean the bridge structure which accommodates the crossing of the streetcar over that part of the Public Highway comprised of Parkside Drive, including the embankment abutments, approach slabs, bridge deck, main structural frame, structural piers, foundations and footings and structural suspension, bearing and expansion joints;

“Bridge – Humber River” shall mean the bridge structure over the Humber River identified by the City and TTC as “LRT-000-60B-BR”, including the embankment abutments, approach slabs, bridge deck, main structural frame, structural piers, foundations and footings and structural suspension, bearing and expansion joints;

“City” shall mean the City of Toronto, its employees and agents and shall for greater certainty be deemed to include divisions as may be delegated the responsibility for the performance of the functions as set out in this Agreement from time to time. Reference to City¹, City², City³, City⁴ and City⁵ throughout this Agreement is for convenience only and shall not relieve the City of any responsibility as set out in this Agreement.

“City¹” as used in this Agreement shall mean the City of Toronto’s Transportation Services Division, its employees and agents, and shall for greater certainty be deemed include such other division or official as may be delegated the responsibility for the performance of the functions of this Division from time to time;

“City²” as used in this Agreement shall mean the City of Toronto’s Solid Waste Management Services Division, its employees and agents, and shall for greater certainty be deemed include such other division or official as may be delegated the responsibility for the performance of the functions of this Division from time to time;

“City³” as used in this Agreement shall mean the City of Toronto’s Parks, Forestry and Recreation Division, its employees and agents, and shall for greater certainty be deemed include such other division or official as may be delegated the responsibility for the performance of the functions of this Division from time to time;

“City⁴” as used in this Agreement shall mean the City of Toronto’s Toronto Water Division, its employees and agents, and shall for greater certainty be deemed include such other division or official as may be delegated the responsibility for the performance of the functions of this Division from time to time;

“City⁵” as used in this Agreement shall mean the City of Toronto’s Economic Development, Culture and Tourism Division, its employees and agents, and shall for greater certainty be deemed include such other division or official as may be delegated the responsibility for the performance of the functions of this Division from time to time;

“Costs” as used in this Agreement shall mean the direct costs for which either party is responsible in fulfilling its obligations under this Agreement, and, for greater certainty, shall not be interpreted to include an indemnity by either party in respect of any other claims against, or losses, costs or expenses incurred by, the other party;

“Exclusive Right-of-Way” shall mean those portions of the Rights-of-Way on the Public Highways from which private and public vehicles (with the exception of emergency vehicles) are prohibited except under the direction of the Police;

“Facility Owner” shall mean a person other than the City or the TTC who is the owner of a facility, attachment or structure which has been placed within or upon the Public Highways or attached to a pole owned by the City or the TTC, and includes a utility company;

“Force Majeure” shall be as defined in section 19;

“General Manager” shall mean the General Manager of Transportation Services Division for the City, and his/her delegate;

“Implementation” shall mean the performance of the Work, or any part thereof;

“Initiating Party” shall mean a party who is responsible under this Agreement for initiating the Implementation of certain Works;

“Litter-bin” shall mean those garbage and recycling receptacles installed and maintained by the City or a private contractor on behalf of the City;

“Maintenance” shall mean those activities, including cleaning, required to maintain the Public Highways and the Transit System in a proper state of repair;

"Minor Temporary Repairs" shall mean the maintenance and repair of damage in or to the Public Highways within a Non-Exclusive Right-of-Way, including potholes, as required to comply with the requirements of the Minimum Maintenance Standards for Highways in the City of Toronto, Ontario Regulation 612/06, as amended or replaced from time to time;

"Non-Exclusive Right-of-Way" shall mean those portions of the Rights-of-Way on the Public Highways to which private and public vehicles are also permitted access;

"Public Highways" shall mean those highways under the jurisdiction of the City;

"Responsible Party" shall mean the party that is responsible under this Agreement for the Implementation of the Work, or part thereof, at the request of the Initiating Party;

"Responsible for Costs" shall mean the responsibility for payment of the cost of any portion of the Work, including responsibility for cost to repair, replace or reinstate infrastructure damaged by third parties;

"Right-of-Way" or "TTC Track Allowance" shall mean that portion of a Public Highway which is occupied by streetcar or light rail tracks and located between the outer edges of the track ties, all as shown as the "TTC Track Allowance" on the cross-section attached as Schedule "A" to this Agreement;

"Structural Maintenance" shall mean the continuous, diligent and ongoing maintenance and repair of all structural components of the Bridge – Parkside Drive and the Bridge – Humber River that ensures a good state of repair and safe usage, in compliance with all Applicable Laws, including all required alterations, replacements, modifications or upgrades to the structural components of the Bridge – Parkside Drive and the Bridge – Humber River.

"Traffic Signage" shall mean all signage erected by the City dedicated to directing the movement or operation generally of vehicles on the Public Highways, erected on TTC platforms and traffic signal plant;

"Transit Priority" shall mean the system and devices that connect to the traffic control signals to provide priority signalling to transit vehicles to reduce transit delays;

"Transit Signalization" shall mean traffic signal heads and/or traffic signal indications (transit bar) dedicated to directing the movement or operation of transit vehicles operated as part of the traffic system, and dedicated traffic control signal installations for sole use by the TTC to access and egress from transit facilities;

"Transit System" is as defined on page 1 in the Recitals of this Agreement;

"Winter Maintenance" shall include the salting/sanding, shovelling, ploughing and removal of snow by various means; and

"Work" shall mean the construction, installation, rehabilitation, repair and Maintenance of the Transit System and the Public Highways, or parts thereof, forming part of the Transit

System or adjacent to a part of the Transit System.

2. GENERAL AGREEMENT

The City and the TTC agree that, subject to the requirements for specific Public Highway or Transit System projects as may be agreed to from time to time by the parties, the sharing of Costs and responsibility for the performance of Work not covered by warranty or under other agreements relating to the streetcar or light rail tracks located within the Rights-of-Way on the Public Highways shall be generally as set out in this Agreement.

3. EXCLUSIVE RIGHTS OF WAY

The sharing of Costs and responsibility for the performance of Work relating to the aspects of an Exclusive Right-of-Way listed below shall be as follows:

| Activity | Initiating Party | Responsible Party | Owner and Responsible for Costs |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|-----------------------|-----------------------------------------------------|
| 1. All Work relating to streetcar/light rail tracks, TTC Track Allowance paving, buried portions of TTC fixed facilities and operating systems general maintenance | TTC | TTC | TTC |
| 2. All Work relating to streetcar/light rail tracks, track allowance paving, buried portions of TTC fixed facilities and operating systems modification or replacement to accommodate City or third party facilities | TTC | TTC | City/Facility Owner |
| 3. Winter Maintenance | TTC | TTC | TTC |
| 4. Streetcar/light rail Overhead operating system (exclusive of supporting poles): (a) General Maintenance (b) TTC approved modification or replacement to accommodate City or third party facilities | TTC City ¹ /Facility Owner | TTC TTC | TTC City ¹ /Facility Owner |
| 5. Streetcar/light rail Overhead supporting poles: (a) General Maintenance and Replacement -TTC exclusive use Poles -Shared use poles (TTC owned) (b) TTC approved modification or replacement to accommodate City or third party facilities | TTC TTC City ¹ /Facility Owner | TTC TTC TTC | TTC TTC City ¹ /Facility Owner |

| Activity | Initiating Party | Responsible Party | Owner and Responsible for Costs |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|--------------------------------------------------------------------|-------------------------------------------------------------|
| 6. Streetcar/light rail Platforms: (a) Winter Maintenance (b) Litter-bin collection and disposal (c) Maintenance/Replacement of Litter-bins (d) Maintenance (e) Replacement/Rehabilitation (including vehicle deflectors or barriers) | TTC City ² City ² TTC TTC | TTC City ² City ² TTC TTC | TTC City ² City ² TTC TTC |
| 7. Streetcar/light rail Platform Shelters: (a) Cleaning (b) Manual garbage collection and removal (c) Maintenance and replacement | City ¹ City ¹ City ¹ | City ¹ City ¹ City ¹ | City ¹ City ¹ City ¹ |
| 8. (a) Maintenance of vehicle deflectors, handrails and barriers (b) Maintenance of Beacons, lights and conduit (c) Maintenance of Barrier Curbs (d) Replacement of Barrier Curbs | TTC TTC TTC TTC | TTC TTC TTC TTC | TTC TTC TTC TTC |
| 9. Maintenance and Installation of Traffic Delineation Devices/Signage (a) Transit Signalization (b) Traffic signals and all other electrical devices and signs (c) Clearance markings, entrance right-of-way signs, reserve lane signs attached to TTC overhead (d) Traffic Signage | TTC City ¹ TTC City ¹ /TTC | City ¹ City ¹ TTC City ¹ | TTC City ¹ TTC TTC |
| 10. Mechanical Street Cleaning * The City will only provide mechanical street cleaning in the downtown core of the city, and the TTC will make alternative arrangements to have this service provided across the remaining areas of the City. | TTC | * City ¹ | TTC |
| 11. Manual Street Cleaning | TTC | TTC | TTC |

| Activity | Initiating Party | Responsible Party | Owner and Responsible for Costs |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|-------------------|---------------------------------|
| 12. Landscaped Medians | | | |
| (a) Trees, shrubs, flowers, ground cover maintenance and replanting, tree trimming, weed control, manual garbage collection and disposal, irrigation and watering | City ³ /TTC | City ³ | TTC |
| (b) Maintenance and replacement of hard landscaping and planter boxes, including street-side curb maintenance | City ¹ /TTC | City ¹ | TTC |
| (c) Maintenance of Irrigation System | City ³ /TTC | City ³ | TTC |
| 13. All Work relating to Art Poles & Artwork located within the Right-of-Way | City ⁵ | City ⁵ | City ⁵ |
| 14. All Work relating to Stop Poles & Information Poles | TTC | TTC | TTC |
| 15. Maintenance or replacement of all fixed facilities (i.e. utilities) | Facility Owner | Facility Owner | Facility Owner |
| 16. Installation and Maintenance of Transit Priority Signals, including all associated devices, controllers, detector loops and transit priority ancillary components | TTC | City ¹ | TTC |

4. NON-EXCLUSIVE RIGHTS OF WAY

The sharing of Costs and responsibility for the performance of Work relating to the aspects of a Non-Exclusive Right-of-Way listed below shall be as follows:

A. MAINTENANCE:

| Activity | Initiating Party | Responsible Party | Owner and Responsible for Costs |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|-------------------|---------------------------------|
| 1. All Work relating to streetcar/light rail tracks, buried portions of TTC fixed facilities and operating systems general maintenance save and except as set out in paragraph 2 below. | TTC | TTC | TTC |

| Activity | Initiating Party | Responsible Party | Owner and Responsible for Costs |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|-----------------------------------------------|-----------------------------------------------------|
| 2. All Work relating to streetcar/light rail tracks, TTC Track Allowance paving, buried portions of TTC fixed facilities and operating systems modification or replacement which Work is required in order to accommodate the maintenance, reconstruction or renewal of: (a) City facilities; or (b) Third party facilities | City ¹ Facility Owner | City ¹ Facility Owner | City ¹ Facility Owner |
| 3. Winter Maintenance (TTC Track Allowance) | City ¹ | City ¹ | City ¹ |
| 4. Streetcar/light rail Overhead operating system (exclusive of supporting poles): (a) General Maintenance (b) TTC approved modification or replacement to accommodate City or third party facilities | TTC City ¹ /Facility Owner | TTC TTC | TTC City ¹ /Facility Owner |
| 5. Streetcar/light rail Overhead supporting poles (TTC-owned): (a) General Maintenance -TTC exclusive use Poles -Shared use Poles (TTC-owned) (b) TTC approved modification or replacement to accommodate City or third party facilities | TTC TTC City ¹ /Facility Owner | TTC TTC TTC | TTC TTC City ¹ /Facility Owner |
| 6. Streetcar/light rail Platforms: (a) Winter Maintenance (b) Manual garbage removal and disposal (c) Maintenance / Repair | TTC City ² TTC | TTC City ² City ¹ | TTC City ² TTC |
| 7. Streetcar/light rail Platform Shelters: (a) Cleaning (b) Maintenance and repair Work relating to the Platform Shelter | City ¹ City ¹ | City ¹ City ¹ | City ¹ City ¹ |

| Activity | Initiating Party | Responsible Party | Owner and Responsible for Costs |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| 8. (a) Maintenance of vehicle deflectors - i.e. bull-noses, handrails, and barriers (b) Maintenance of Beacons, lights and conduit | City ¹ TTC | City ¹ TTC | TTC TTC |
| 9. Maintenance of Traffic Delineation Devices/Signage: (a) Transit Signalization (b) Traffic signals and all other electrical devices and signs (c) Clearance pavement markings, entrance right-of-way signs, reserve lane signs attached to TTC overhead (d) Traffic Signage (e) Bull-nose painting | TTC City ¹ TTC City ¹ /TTC City ¹ | City ¹ City ¹ TTC City ¹ City ¹ | TTC City ¹ TTC City ¹ TTC |
| 10. Mechanical Street Cleaning | City ¹ | City ¹ | City ¹ |
| 11. All Work relating to Stop poles & Information Poles | TTC | TTC | TTC |
| 12. Maintenance or replacement of all fixed facilities (utilities, newspaper boxes, etc.) | Facility Owner | Facility Owner | Facility Owner |
| 13. TTC Track Allowance repairs: (a) Emergency (major) temporary repairs (as more particularly set out in subsection 13(4) of this Agreement) (b) Minor Temporary Repairs | City ¹ City ¹ | TTC City ¹ | TTC City ¹ |
| 14. Installation and Maintenance of Transit Priority, including all associated devices, controllers, detector loops and transit priority ancillary components | TTC | City ¹ | TTC |
| 15. All Work related to sewers, watermains and associated hardware within the Public Highway. City ⁴ to use best efforts to minimize impact of Work on transit operations. | City ⁴ | City ⁴ | City ⁴ |

B. CAPITAL PROJECTS/STATE OF GOOD REPAIR

| Activity | Initiating Party | Responsible Party | Owner and Responsible for Costs |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|-------------------------------------------------------------|
| 1. All Work relating to streetcar/light rail track rehabilitation, including replacing streetcar/light rail tracks, buried portions of TTC fixed facilities and operating systems, adjustments or modifications to traffic control signal systems, and re-paving of TTC Track Allowance | TTC/City ¹ | City ¹ | TTC |
| 2. Construction/removal of streetcar/light rail platforms | TTC | City ¹ | TTC |
| 3. Construction of streetcar/light rail Overhead Operating System | TTC | TTC | TTC |
| 4. Construction of streetcar/light rail Overhead Supporting Poles (TTC-Owned) | TTC | TTC | TTC |
| 5. Construction of streetcar/light rail Platform Shelters | City ¹ | City ¹ | City ¹ |
| 6. Installation of Traffic Delineation Devices/Signage: (a) Transit Signalization (b) Traffic signals and all other electrical devices and signs (c) Clearance pavement markings, entrance right-of-way signs, reserve lane signs attached to TTC overhead (d) Traffic Signage (e) Bull-nose painting | TTC City ¹ TTC City ¹ /TTC City ¹ | City ¹ City ¹ TTC City ¹ City ¹ | TTC City ¹ TTC City ¹ TTC |
| 7. Sewers and watermains (a) Construction of sewers and watermains (b) Inspection, rehabilitation and Maintenance of sewers and watermains * Costs for re-routing of sewers and watermains to be shared between City ⁴ and TTC based on age and condition of infrastructure being replaced. City ⁴ to make best efforts to minimize impact on re-routing. | City ⁴ City ⁴ | City ⁴ City ⁴ | City ⁴ /TTC* City ⁴ |

5. THE QUEENSWAY

The sharing of Costs and responsibility for the performance of Work relating to the aspects of the streetcar/light rail Right-of-Way located within the Public Highway known as The Queensway list below shall be as set out in section 3 for Exclusive Rights of Way, except as follows:

| Activity | Initiating Party | Responsible Party | Owner and Responsible for Costs |
|--------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|-------------------|-----------------------------------|
| 1. General Maintenance of track on ballast structure | TTC | TTC | TTC |
| 2. Modification or replacement of streetcar/light rail tracks, ties, ballast structure to accommodate City or third party facilities | City ¹ /Facility Owner | TTC | City ¹ /Facility Owner |
| 3. Track on ballast in Exclusive Right-of-Way: | | | |
| (a) Winter Maintenance | TTC | TTC | TTC |
| (b) Manual garbage/recycling collection and removal | TTC | TTC | TTC |
| (c) Weed control | TTC | TTC | TTC |
| (d) Maintenance of fencing along track | TTC | TTC | TTC |
| (e) Maintenance of street-side curbs along track | City ¹ | City ¹ | City ¹ |
| (f) Maintenance of concrete platforms within Track Allowance | TTC | TTC | TTC |
| 4. Streetcar/light rail platforms – Maintenance of the following: | | | |
| (a) Winter Maintenance | TTC | TTC | TTC |
| (b) Manual garbage collection and removal | TTC | TTC | TTC |
| (c) Maintenance and Replacement of Litter-bins | City ² | City ² | City ² |
| (d) Railing/Splash guard | TTC | TTC | TTC |
| (e) Knee-wall | TTC | City ¹ | TTC |
| (f) Lighting standards and luminaries | TTC | TTC | TTC |
| 5. Stairway Structure (connects Parkside Drive to streetcar/light rail platform on The Queensway): | | | |
| (a) Maintenance / replacement of stairs including handrails, drains and lighting | TTC | TTC | TTC |
| (b) Winter Maintenance | TTC | TTC | TTC |

| Activity | Initiating Party | Responsible Party | Owner and Responsible for Costs |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|-------------------------------------------------------------|---------------------------------------------------------------------------|
| 7. Landscaped Planting Bed (a) Grass maintenance and replanting, weed control, manual garbage collection and disposal (b) Trees maintenance and replanting, tree trimming (c) Street-side curb maintenance and replacement | City ¹ City ³ City ¹ | City ¹ City ³ City ¹ | City ¹ City ³ City ¹ |
| 8. All Work related to sewers, watermains and associated hardware within the Public Highway. City to use best efforts to minimize impact of Work on transit operations. | City ⁴ | City ⁴ | City ⁴ |
| 9. Bridge – Humber River Structure: (a) Structural Maintenance (b) Reconstruction / replacement (c) Inspection ** City is the owner of the Structure and cost sharing shall be as previously agreed by the parties. | City ¹ City ¹ City ¹ | City ¹ City ¹ City ¹ | City ¹ /TTC** City ¹ /TTC** City ¹ |

6. ST CLAIR AVENUE

The sharing of Costs and responsibility for the performance of Work relating to the streetcar/light rail Right-of-Way located within the Public Highway known as the St Clair Avenue shall be as set out in section 3 for Exclusive Rights of Way, except that section 3, item 7 shall be replaced with the following:

| Activity | Initiating Party | Responsible Party | Owner and Responsible for Costs |
|--------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|---------------------------------|---------------------------------|
| 1. Streetcar/light rail Platform Shelters: (a) Cleaning (b) Maintenance and replacement (c) Manual garbage collection and removal | TTC TTC City ² | TTC TTC City ² | TTC TTC City ² |

7. REHABILITATION/INSTALLATION/MAINTENANCE OF TRACKS

- (1) Where the installation, repair or Maintenance of streetcar/light rail tracks by the TTC has necessitated the cutting, removal or other alteration of the paved portion of the Public Highways, the TTC will restore, at its sole Cost, the Public Highways to the satisfaction of the General Manager, acting reasonably, within a reasonable timeframe having due regard for the preservation of the Public Highways and their use by the public.
- (2) Where the TTC undertakes the rehabilitation or realignment of any existing streetcar/light rail line or portion thereof on any Public Highway which necessitates the cutting, removal or other alteration of the paved portion of the Public Highway, the TTC will restore, at its sole Cost, the Public Highways to the satisfaction of the General Manager, acting reasonably, within a reasonable timeframe having due regard for the preservation of the Public Highways and their use by the public.
- (3) The TTC agrees that it shall obtain a permit from the City for the purpose of performing any Work on the Public Highways and shall ensure that the City receives adequate notice of the Work in accordance with the City's normal requirements. All Work done by the TTC shall be in compliance with all Applicable Laws, including all applicable standards for such Work.

8. REHABILITATION OR REALIGNMENT OF PUBLIC HIGHWAYS

- (1) Where the City undertakes the rehabilitation or realignment of any Public Highway or portion thereof upon which the TTC has a streetcar/light rail track, the City shall pay the full Cost of any required paving within the TTC Track Allowance. The TTC shall pay the full Cost of any required rehabilitation of the tracks and track foundations, provided that any realignment of the tracks and track foundations shall be shared between the City and TTC based on the age and condition of the infrastructure that is to be relocated, as mutually agreed.
- (2) The City shall undertake all required rehabilitation or realignment of the Public Highways in accordance with all Applicable Laws and the existing standards for such Work as provided for in the City's road maintenance/construction program.
- (3) Subject to the terms of any agreement to the contrary, where the construction by the City of a new Public Highway or facility has an adverse impact upon a pre-existing streetcar/light rail Right-of-Way, the City shall pay the Cost of restoring or relocating the streetcar/light rail Right-of-Way.

9. ABANDONMENT OR RELOCATION OF STREETCAR/LIGHT RAIL TRACKS

- (1) Where the TTC, after the date of this Agreement, permanently discontinues the use of any streetcar/light rail line or any portion thereof located on any Public Highway, the TTC shall, at the request of the City upon the first scheduled rehabilitation of the Public Highway, remove its tracks at its sole Cost and shall assume fifty percent (50%) of the Cost to the City of restoring the TTC Track Allowance portion of the Public Highway to

the satisfaction of the Transportation Services General Manager, acting reasonably.

- (2) In the case of a required removal and relocation of a streetcar/light rail track due to the closing, or a change in the alignment, of a Public Highway which is required by the City, the TTC shall, at its sole Cost, remove its tracks, provided that the City shall assume the total Cost of any required restoration work.

10. WINTER MAINTENANCE

Except as provided elsewhere in this Agreement, the City shall, at its own Cost, undertake all required Winter Maintenance on the Public Highways in accordance with the service levels as provided in the Minimum Maintenance Standards for Highways in the City of Toronto, Ontario Regulation 612/06, as amended or replaced from time to time, and the City's annual winter maintenance program, and any additional Winter Maintenance required by the TTC shall be carried out by it, at its Cost, with the prior approval of the Transportation Services General Manager.

11. FACILITATING LITTER COLLECTION

The TTC agrees that it shall at its sole expense make such reasonable alterations or modifications to TTC facilities as may be required by the City, acting reasonably, to ensure the safe and efficient operation of the City's road-side litter bin pick-up system in respect of Exclusive Rights-of-Way.

12. FACILITATING ACCESS TO SEWERS AND WATERMAINS

- (1) The TTC agrees that it shall accommodate access, within the streetcar/light rail Rights-of-Way, to the City for the purpose of carrying out construction, rehabilitation, maintenance, and inspection of City sewers and watermains and appurtenances ("Water Work") and shall make provision, upon reasonable notice (except in the case of an emergency), for alternative routing or operation of streetcars/light rail vehicles as may be required by the City, acting reasonably, to ensure safe and timely access to City sewer and watermain infrastructure located within Exclusive and Non-Exclusive Rights-of-Way. The City shall ensure that any Water Work is performed in an expeditious manner and that the impact on the TTC transit system and its operations is minimized, including but not limited to whenever feasible performing such Water Work during non-peak TTC operating times. For greater certainty, the City agrees that for all planned Water Work it shall provide the TTC with notice at least forty-five (45) days in advance of such planned Water Work.
- (2) Where the TTC undertakes the installation of new streetcar/light rail line or realignment of an existing streetcar/light rail line or portion thereof, and the location of the new or realigned TTC Track Allowance will be over existing buried City Water infrastructure, including sewers and watermains, the TTC agrees to relocate, if in the opinion of the TTC and City⁴ it is financially and physically feasible, the City Water infrastructure to an area outside the TTC Track Allowance, at a cost to be shared between the City and TTC based on the age and condition of the infrastructure that is to be relocated, to the satisfaction of the Toronto Water General

Manager, acting reasonably. Any maintenance and cost issues associated with such maintenance relating to a new streetcar/light rail line (constructed after the date of this Agreement) shall be addressed on a project by project basis.

13. CITY MAINTENANCE AND CONSTRUCTION STANDARDS

- (1) The parties agree that all Maintenance undertaken by the City within the TTC Track Allowance shall be performed in accordance with all Applicable Laws to the same standard as Work done on the Public Highways generally, having regard to the standards provided for in the City's road maintenance program, as revised or amended from time to time.
- (2) The parties agree that all Work as set out in section 4B undertaken by the City within the TTC Track Allowance shall be performed in accordance with all Applicable Laws to the same standard as Work done on the Public Highways generally, having regard to the standards provided for in the City's road construction program, as revised or amended from time to time and TTC standards relating to streetcar/light rail track allowances, as amended from time to time.
- (3) Except as otherwise provided in this Agreement, the City shall maintain the Public Highways, including the Track Allowances, in accordance with the Minimum Maintenance Standards for Highways in the City of Toronto, Ontario Regulation 612/06, as amended or replaced from time to time.
- (4) Despite anything else in this Agreement, the parties agree that "emergency (major) temporary repairs" within the TTC Track Allowance as that term is used in item 13 of the table contained in section 4A shall refer to repairs required as a result of state of disrepair which pose a threat to streetcar/light rail transit operations. In such circumstances, the City shall advise the TTC under subsection 17(2) of the need for the repair and, if possible, provide a temporary patch pending the completion of the repair by the TTC. For greater certainty the following are examples of common problems and whether the repair required is considered major or minor for the purposes of item 13 of section 4A:

| Nature of Problem within TTC Track Allowance | Major repair or Minor Temporary Repair | Responsibility |
|-----------------------------------------------------|-----------------------------------------------|-----------------------|
| Potholes in pavement | Minor Temporary Repair | City |
| Surface discontinuity | Minor Temporary Repair | City |
| Failure of buried portions of TTC fixed facilities | Major repair | TTC |
| Issues related to the running structure | Major repair | TTC |
| Failure of the skirt or | Major repair | TTC |

| | | |
|-------------------------------------------------------------------------|-----------------------------------------------|-----------------------|
| margin | | |
| Nature of Problem within TTC Track Allowance | Major repair or Minor Temporary Repair | Responsibility |
| Cracks in the pavement (unless caused by the failure of TTC facilities) | Minor Temporary Repair | City |

14. FACILITATING ACCESS TO TREES

The TTC agrees that it shall accommodate access, within the streetcar/light rail Rights-of-Way, to the City for the purpose of carrying out maintenance and inspection of trees. The City shall ensure that any Tree Work is performed in an expeditious manner and that the impact on the TTC transit system and its operations is minimized, including but not limited to whenever feasible performing such Tree Work during non-peak TTC operating times. For greater certainty, the City agrees that for all planned Tree Work it shall provide the TTC with notice at least fifteen (15) days in advance of such planned Tree Work.

15. MAINTENANCE OF PUBLIC HIGHWAYS

Unless expressly stated to the contrary in this Agreement, the City shall be responsible for the Maintenance and paving of the Public Highways located within the City of Toronto.

16. LIABILITY ISSUES

(1) The TTC hereby indemnifies and agrees to protect and save the City, its appointed elected officials, employees, officers and agents, harmless from and against all claims, actions, causes of action, complaints, demands, suits or proceedings of any nature or kind whatsoever by any person in respect of loss of life, personal injury (including, in all cases, personal discomfort and illness) and loss of or damage to property (the "Claims") and any and all losses, damages, liabilities, deficiencies, costs and expenses (including, without limitation, all legal and other professional fees and disbursements, interest, liquidated damages and amounts paid in settlement, whether from a third person or otherwise) in respect of such Claims or otherwise, including the costs or expenses of complying with any Environmental Laws (provided that "costs" shall, for the purposes of this section mean those costs awarded in accordance with the order of a court of competent jurisdiction, the order of a board, tribunal or arbitrator or costs negotiated in the settlement of a claim or action) (collectively the "Losses") which the City or its employees, officers and agents may suffer or incur arising from:

(a) the negligence or willful misconduct of the TTC, its officers, employees and agents, in:

(i) the TTC's exercise of any of its rights under this Agreement,

- (ii) the TTC's performance of any Work within the Public Highways and the operation or use of the Transit System by the TTC,
 - (iii) the TTC undertaking any activity over, under, within, or upon the Public Highways which is ancillary to the TTC's exercise of its rights under this Agreement; or
 - (b) any breach of this Agreement by the TTC, its employees, officers and agents.
- (2) All property of the TTC kept or stored on the Public Highways, or parts thereof, will be kept or stored at the sole risk of the TTC.
- (3) The City hereby indemnifies and agrees to protect and save the TTC, its appointed elected officials, employees, officers and agents, harmless from and against all claims, actions, causes of action, complaints, demands, suits or proceedings of any nature or kind whatsoever by any person in respect of loss of life, personal injury (including, in all cases, personal discomfort and illness) and loss of or damage to property (the "Claims") and any and all losses, damages, liabilities, deficiencies, costs and expenses (including, without limitation, all legal and other professional fees and disbursements, interest, liquidated damages and amounts paid in settlement, whether from a third person or otherwise) in respect of such Claims or otherwise, including the costs or expenses of complying with any Environmental Laws (provided that "costs" shall, for the purposes of this section mean those costs awarded in accordance with the order of a court of competent jurisdiction, the order of a board, tribunal or arbitrator or costs negotiated in the settlement of a claim or action) (collectively the "Losses") which the TTC or its employees, officers and agents may suffer or incur arising from:
- (a) the negligence or willful misconduct of the City, its officers, employees and agents, in:
 - (i) the City's exercise of any of its rights under this Agreement;
 - (ii) the City's performance of any Work within the Public Highways; or
 - (iii) the City undertaking any activity over, under, within, or upon the TTC Track Allowance which is ancillary to the City's exercise of its rights under this Agreement;
 - (b) any breach of this Agreement by the City, its employees, officers and agents.
- (4) Despite anything else contained herein, the liability of the parties under this section 16 shall not include any Claims for economic loss, consequential, indirect, special or incidental damages.
- (5) Despite anything else in this section 16, the parties agree that the term "Initiating Party" is used in this Agreement only for convenience only and the failure of an Initiating Party to initiate work or advise the Responsible Party shall not in any way relieve the Responsible Party from its responsibility to perform any of its obligations as set out in this Agreement. An Initiating Party shall not in any event be responsible

or liable for a Claim or Loss due to the failure to advise the Responsible Party to commence the Work as required under this Agreement.

17. NOTICE AND RESPONSE

- (1) The parties agree that notice of the initiating requirements for Capital Projects under section 4B shall be deemed to have been given where such Work has, as a result of consultation between the parties prior to finalization of the Responsible Party's capital program, been included in the Responsible Party's capital program.
- (2) Other than in the circumstances as set out in the preceding paragraph and for Work as set out in section 3, item 12(a) and (c), an Initiating Party under this Agreement shall be required to give notice to the Responsible Party under subsection 16(4) of this Agreement in writing served by facsimile or courier delivery or deposited in the mail, postage prepaid by registered mail, or by telephone at the following addresses or numbers:

For the TTC:
 General Secretary, Toronto Transit Commission
 1900 Yonge Street,
 Toronto, ON M4S 1Z2
 Transit Control - 416-393-3444
 Fax No. - 416-393-2068

For the City:
 General Manager, Transportation Services
 Toronto City Hall
 23rd Floor, East Tower
 100 Queen Street West, Toronto ON M5H 2N2
 Tel No. - 416-392-8431
 Fax No. - 416-392-4455

- (3) For the purposes of section 3, item 12(a) and (c), TTC shall provide notice to City in writing served by facsimile or courier delivery or deposited in the mail, postage prepaid by registered mail, or by telephone at the following addresses or numbers:

For the City:
 General Manager, Parks, Forestry and Recreation
 Toronto City Hall
 8th Floor, East Tower
 100 Queen Street West, Toronto ON M5H 2N2
 Tel No. - 416-392-8182
 Fax No. - 416-392-8565

An Initiating Party giving notice by telephone at the numbers set out above shall provide a return telephone number. The call shall then be returned by the Responsible Party, who shall provide a facsimile number to which further information may be sent. Notice shall be conclusively deemed to have been given

as of the time of receipt of such the first telephone call. If notice is given in writing, the following shall apply: if sent by facsimile, notice shall be deemed to have been received within one (1) day of the date of successful transmission, or, in the case of mailing, shall be deemed to have been received in three (3) days of such mailing or, in the case of delivery by courier, shall be deemed to have been received within two (2) business days following the pick-up by the courier. In the event of a change in the addresses or telephone numbers listed above, the Responsible Party shall immediately notify the other party of the change in telephone number or address for the purpose of giving notice under this paragraph.

18. DISPUTE RESOLUTION

- (1) In the event of a dispute between the parties respecting the performance of any Work under this Agreement, the parties agree that either party may request that the matter be referred to, in the case of the City, the Deputy City Manager (with responsibility for the functions as performed by City¹, City², City³, City⁴ and City⁵), and in the case of the TTC, the General Manager of Operations, for discussion and resolution. In the event that these two officials, acting in good faith, cannot, within fifteen (15) days of the initial notice to consider the matter, arrive at a mutually satisfactory solution, the parties shall be free to exercise their respective legal remedies.
- (2) In the event of a dispute between the parties respecting responsibility for any Claims or Losses as defined in section 16 of this Agreement, the parties agree that either party may request that the matter be referred to, in the case of the City, Manager, Insurance & Risk Management, and in the case of the TTC, the General Counsel, Legal & Claims Department, for discussion and resolution. In the event that these two officials, acting in good faith, cannot, within fifteen (15) days of the initial notice to consider the matter, arrive at a mutually satisfactory solution, the parties shall be free to exercise their respective legal remedies.

19. FORCE MAJEURE

Each of the parties shall be excused from the performance of any obligation hereunder to the extent that such obligation is hindered or prevented by reason of strike, boycott, lockout or other labour dispute, fire or theft, any act of God, any riot, civil disturbance or any act of war, terrorism or of the public enemy, epidemics, any present or future governmental law, ordinance, rule or regulation, or any cause or contingency beyond the parties' control, and neither the City nor the TTC shall be liable to the other for any damage or loss sustained thereby.

20. SOLE AGREEMENT

The City and the TTC agree that this Agreement shall replace all previous Agreements between the parties with respect to the subject matter hereof, including all previous agreements between the TTC and the Metropolitan Corporation and any of the former municipalities amalgamated into the new City of Toronto on January 1, 1998.

21. SUCCESSORS AND ASSIGNS

That this agreement and everything herein contained shall respectively enure to the benefit of and be binding upon the City and the TTC, their successors and assigns respectively.

IN WITNESS WHEREOF the City and the TTC have hereunto affixed their respective corporate seals attested by the hands of their respective proper officers in that behalf duly authorized.

CITY OF TORONTO

Name:
Title: Ulli S. Watkiss, City Clerk

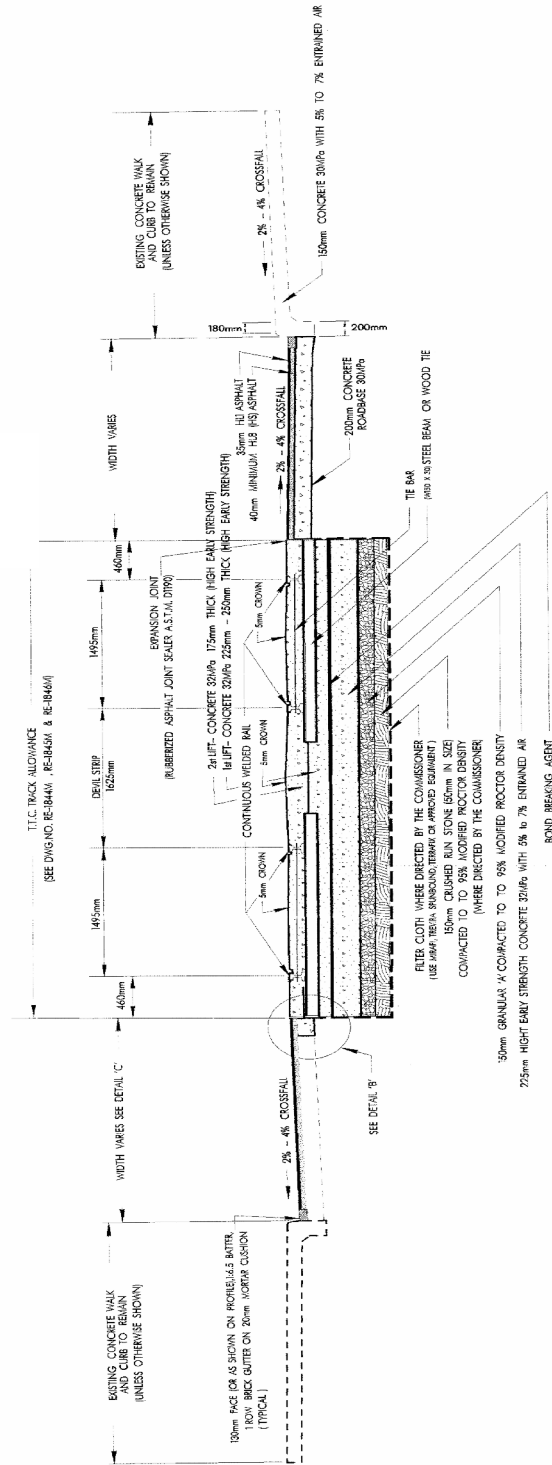
Name:
Title: Cam Weldon, Deputy City
Manager & Chief Financial Officer

TORONTO TRANSIT COMMISSION

Name:
Title:

Name:
Title:

SCHEDULE "A" CROSS-SECTION OF STREETCAR RIGHT OF WAY



TYPICAL CROSS SECTION

N.T.S.