

This Agreement made this 28th day of February, 2002

BETWEEN :

CITY OF TORONTO
hereinafter referred to as the "City"

OF THE FIRST PART

- and -

TORONTO CULTURAL ADVISORY CORPORATION
hereinafter referred to as the "TAC"

OF THE SECOND PART

WHEREAS TAC since 1974 has served as an independent advisory body to the City of Toronto on artistic and cultural matters, including the allocation of City cultural grants to organizations and individuals, operating independently and with an arm's length relationship to the City; and

WHEREAS at its meeting held on December 16 and 17, 1998 the Council of the City by its adoption of Clause 5 of Strategic Policies and Priorities Committee Report No. 26 adopted a Grants Policy, a copy of which is attached as Schedule "A"; and

WHEREAS the City's grant making activities are guided by the core values set out in the attached Schedule "B"; and

WHEREAS at its meeting held on December 16 and 17, 1998 by its adoption of Clause 4 of the Special Committee to Review the Final Report of the Toronto Transition Team, Council approved TAC as the city-wide arms' length administrative body to administer cultural grant funding for the City and directed that a grant agreement be established for that purpose; and

WHEREAS the Council of the City at its meeting held on December 4th and 5th, 2001, by its adoption of Clause 8 of Report No. 12, as amended, authorized that a grant agreement be entered into with TAC which, among other things, clarifies the responsibilities, reporting obligations and role of TAC and TAC's obligations with respect to the administration of grant funds as more particularly described in the body of this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and other terms and conditions hereinafter contained, the parties hereby covenant, promise and agree each with the other as follows:

1.0 DEFINITIONS

1.1 For the purposes of this Agreement, the following words or expressions shall have ascribed to them the meanings indicated as follows:

- (a) "Agreement" means this grant agreement, including all schedules thereto, as amended from time to time pursuant hereto;
- (b) "Arm's Length Funding Body" means one which, although ultimately accountable both to a government as a source of its funding and to the artistic community and its audiences and patrons, operates by interposing between

government and the arts themselves a body of instructed and knowledgeable people, independent of government;

- (c) **“Board of Directors”** means the Board of Directors of TAC;
- (d) **“City”** means the City of Toronto;
- (e) **“Commissioner”** means the Commissioner of Economic Development, Culture and Tourism and any successor officer appointed or designated as responsible for the service areas included in that office;
- (f) **“Committee”** means the Economic Development and Parks Committee or any such committee named as its successor and any other committee identified by Council;
- (g) **“Confidential Information”** means financial information developed on, by or on behalf of the City, data, preliminary findings, and any other material developed for or on behalf of the City, and any information disclosed to or obtained by TAC from the City in connection with the fulfilment of the terms of this Agreement and which has been identified by the City, acting reasonably, as information which should be treated as confidential.
- (h) **“Council”** means the council of the City;
- (i) **“Cultural Grants Program”** means the funding program for arts and cultural grants to be disbursed by TAC on behalf of the City;
- (j) **“Executive Director”** means the executive director of TAC or such other person as may be designated by TAC.
- (k) **“Grant”** means a grant given by the City to TAC pursuant to the terms of this Agreement and may include a grant for the Operations Program or for the Cultural Grants Program;
- (l) **“Grant Budget Request”** means the funding submission submitted by TAC to the City including the request for both its Operations Program and Cultural Grants Program in one funding envelope;
- (m) **“Loan Program”** means the fund established in 1977 which provides bridge loans to arts organizations;
- (n) **“Operations Program”** means the funding program to be used solely for expenses directly related to the management and administration of TAC’s grants programs, adjudication and disbursement of arts and culture grants by TAC;
- (o) **“Peer Review Process”** means a review of grant applications by TAC using the Peer Review Principle;
- (p) **“Peer Review Principle”** means the evaluation of grant applications by people with relevant arts and culture expertise in order to ensure a specialized, professional and technical review of information presented in support of a grant application so that the evaluators can make informed recommendations regarding grant recipients;
- (q) **“Program”** means a TAC program funded by Council, including the Loan Program, the Cultural Grants Program and the Operations Program.

2.1 TAC is a non-share capital non-profit Ontario corporation accorded charitable status by the Canada Customs and Revenue Agency.

2.2 TAC is an Arm's Length funding Body that uses a Peer Review Process of grants adjudication by juries or committees established by it which apply the Peer Review Principle.

2.3 TAC's organizational structure as of the date of execution of this Agreement is set out in the attached Schedule "C". TAC shall advise the Commissioner 45 days in advance of any proposed changes to its organizational structure.

2.4 TAC's membership structure as of the date of execution of this Agreement is set out in the attached Schedule "D". TAC shall advise the Commissioner 45 days in advance of any proposed changes to its membership structure.

2.5 TAC staff shall not be employees of the City. TAC is not an agency, board or commission of the City.

2.6 The Board of Directors shall have at least 21 members. The City shall have the right to appoint five members of Council to the Board of Directors. TAC shall advise the City from time to time when it is necessary for the City to appoint replacement representatives to the Board of Directors.

2.7 The Board of Directors shall govern TAC and oversee its operations.

3.0 CITY GRANT APPROVAL PROCESS

3.1 For as long as TAC seeks to receive grants from the City, it shall determine the amount of the grant to be requested for the next calendar year for the Cultural Grants Program and the Operations Program, shall prepare Grant Budget Request(s) for those programs in the City's prescribed form, and shall meet the City's eligibility criteria for grant recipients. Copies of the Grant Budget Request(s) shall be submitted to the Commissioner and the City's Chief Financial Officer and Treasurer.

3.2 TAC shall adhere to the process and time frames established in the Annual Operating Budget Schedule adopted by Council with respect to the submission of its proposed Grant Budget Request(s) for the next calendar year. Copies of such Grant Budget Request(s) shall be submitted to the Commissioner in accordance with the aforesaid time frames so that the Commissioner can report to the Committee on the Grant Budget Request(s) at the same time that TAC's Grant Budget Request(s) are submitted to the Committee. Such Grant Budget Request(s) shall be accompanied by its proposed total budget for the Cultural Grants program and the Operations Program for the next calendar year, containing such details as are required by the City's Chief Financial Officer and Treasurer.

3.2.1 TAC's request for its Operations Program shall be expressed as a percentage of its total Grant Budget Request. TAC's request for its Operations Program will not exceed 10 percent of the Grant Budget Request. At the very least, TAC's Grant Budget Request must contain:

Operations Program:

- (a) full particulars of all proposed administrative expenses for the year ahead and full particulars of the budgeted and estimated/actual administration expenses for the current and previous year;
- (b) a breakdown by category of all expenses, all revenues (including asset sales, donations, grants from other sources, interest and City grants) for the current year and the previous year both budgeted and estimated/actual;

- (c) an unaudited projected financial statement for the current year which contains the information set out in subsection (b) above;
- (d) any other information generally required from time to time by Council;
- (e) an analysis of any financial impacts on the Cultural Grants Program.

Cultural Grants Program:

- (a) a breakdown by category of all expenses, all revenues (including asset sales, donations, grants from other sources, interest and City grants) for the current year and the previous year both budgeted and estimated/actual;
- (b) a breakdown of the Grant Budget Request(s) for the Cultural Grants Program for the coming fiscal year;
- (c) TAC's written criteria for decision making in the grant evaluation and award process;
- (d) a list of all grant applicants that are organizations for the most recent complete year, the arts category into which each application falls, the number of applications received in each grant category, the amount of funding requested in each grant category, the amount recommended in each grant category, the amount of grant requested, recommended and received by each applicant (if applicable), and year to year comparisons to demonstrate trends in comparing the totals;
- (e) an analysis of any financial impacts on the Operations Program;
- (f) any other information generally required from time to time by Council.

4.0 CITY GRANT

4.1 The Council shall determine from time to time its strategic policies, priorities and directions including for the development and funding of arts and culture in the City, and for grants generally, and in accordance with such policies, priorities and directions, shall determine on an annual basis its financial commitment to funding for arts and cultural grants.

4.2 Subject to TAC's compliance with section 3, Council shall review TAC's Grant Budget Request(s) and may approve it in whole or in part. In approving a Grant Budget Request, Council may, in addition to any condition contemplated in this Agreement, attach such additional conditions as are not inconsistent with the provisions of this Agreement

4.3 The Council shall, in each year, approve the City's total budget for arts and culture grants and subject to section 3, the City shall provide a grant to TAC.

4.4 (a) The Grant for the Operations Program including any interim advances shall be disbursed to TAC in instalments by the City's Chief Financial Officer and Treasurer according to a cash flow forecast prepared by TAC immediately preceding Council approval of the Grant allocation.

(b) Until the finalization by Council of the Grant for the Operations Program, interim advances shall be paid to TAC in the same amounts paid to TAC in the previous calendar year. All such interim advances shall be subject to adjustment upon the finalization of the annual Grant for the Operations Program.

4.5 The Grant for the Cultural Grants Program shall be disbursed to TAC by the City's Chief Financial Officer and Treasurer in two instalments according to a cash flow forecast prepared by TAC and approved by the Chief Financial Officer and Treasurer. Such cash flow forecast shall

be prepared in accordance with TAC's grant disbursement schedules.

5.0 USE OF GRANT FUNDS

5.1 TAC warrants and represents to the City that no funds advanced to it shall be used for the personal benefit of any director, officer, committee member, juror or employee unless such funds have been specifically so allocated for that purpose in the Grant Budget Request and approved by Council in accordance with section 4. Should any funds be used for any improper purpose, the amount of any such personal benefit derived shall be deemed to be a loan and shall become immediately due and payable upon demand by the City.

5.2 TAC shall not use Grant money allocated to the Operations Program, the Cultural Grants Program or the Loan Program for any purpose other than the specific purpose of that Program, without the prior consent of Council.

5.3 TAC shall use the interest accrued on money allocated for a Program for the specific purpose for which the Program was created and for no other purpose.

5.4 TAC covenants and agrees that the Grant for the Operations Program provided to it by the City shall be used and applied solely to the cost of its operations.

5.5 TAC covenants and agrees that the Grant for the Cultural Grants Program provided to it by the City shall be used and applied solely for the purpose of funding arts and cultural organizations and artists on the City's behalf and for no other purpose.

5.6 TAC covenants and agrees that the funds in the Loan Program including any earned interest on those funds shall be used and applied solely for the purpose of funding loans to arts and cultural organizations and artists and for no other purpose.

6.0 POLICIES AND CRITERIA FOR GRANT EVALUATION BY TAC

6.1 TAC, in accordance with the City's Grants Policy, shall establish criteria by funding category for decision making in its grant process. Such criteria shall be in writing and shall be made available to the public at the beginning of an annual grant cycle and on request.

6.2 TAC, in accordance with the City's Grants Policy, shall provide equitable access to grants to City arts organizations and artists of every social, economic and cultural background located across the City.

6.3 TAC, through its arts committees, its juries and its Board of Directors, applying the Peer Review Principle shall:

- (a) apply the criteria referred to in section 6.1;
- (b) decide which applicants should receive grants;
- (c) decide the amount of grant that each successful grant applicant should receive.

6.4 The arts committees and juries of TAC shall exercise independent professional artistic judgement in the review of the merits of any grant application and in the making of recommendations to the Board of Directors.

6.5 TAC shall provide an appeal process to applicant organizations that is well publicized and will provide review results in writing in time for applicant groups to exercise any right of appeal.

6.5.1 Individual artist applicants shall be eligible to appeal the decision of a jury only on the basis of alleged irregularities or improprieties in the adjudication process. Such appeals must be

submitted in writing to the Executive Director. The assessment of artistic merit by juries shall not be subject to appeal.

7.0 TAC RESPONSIBILITIES

7.1 TAC shall report to Council through the Committee.

7.2 TAC shall determine its policies and practices in a manner consistent with its mission statement, its articles of incorporation, applicable corporate law, this Agreement and any directions given by Council from time to time and shall advise Council in advance of any public announcement of major changes to its established priorities, policies or practices.

7.3 TAC, in recognition of the many demands placed on the City by individuals, organizations and corporations for grants and other forms of support, as well as the City's own organizational and service needs, all of which result in a constant strain on the City's available funds, covenants and agrees that, in establishing its policies and practices and in establishing and implementing its Grant Budget Request(s), it will continually strive to seek ways to operate at an optimum level of efficiency, economy and effectiveness.

7.4 TAC shall advise Council of any major new initiatives of which it is aware, which are being undertaken by other levels of government or the arts community, which may have an impact on its established policies or practices.

7.5 TAC shall not create a new Program without the consent of Council.

7.6 TAC shall provide to Council, within 45 days after receiving a written request from it, all information requested by Council, acting reasonably, regarding TAC's organization, operations and programs. If the requested information is required by Council or a Committee on an urgent basis TAC shall use its best efforts to provide such information within five (5) working days or within such time frame specified by Council or the Committee in the request.

7.7 TAC shall, in disbursing grants to organizations on behalf of the City, follow the City's Grants Policies as amended from time to time.

7.8 TAC shall complete and sign the Declaration of a Non-Discrimination Policy in the form set out in the attached Schedule "E" and return it to the Commissioner.

7.9 TAC shall ensure that conflict of interest guidelines approved by TAC and attached as Schedule "F" shall apply to all members of the Board of Directors, its committees, juries and TAC staff.

7.10 TAC shall comply with the Access and Equity requirements of the City for grant recipients.

7.11 TAC shall provide to the City Auditor and to the Commissioner signed copies of the minutes of all Board of Directors' meetings within fifteen days after their approval by the Board.

7.12 Upon entering into any financial obligation (including any obtaining of borrowing or credit facilities, or any actual borrowing of money for a term past any calendar year end) which would have the effect of increasing future Grant Budget Requests to the City by TAC or increasing the City's direct or indirect or contingent liabilities or affecting the City's financial, cash or debt position, TAC shall report such obligation to Committee immediately thereafter, or so soon as is practicable.

7.12.1 TAC shall establish and maintain financial and administrative procedures which ensure the accurate recording and reporting of its operations and which maintain adequate administrative and financial control, and shall maintain accounting procedures consistent with sound operating practices in accordance with generally accepted accounting principles.

7.12.2 TAC shall establish and maintain financial records in accordance with the principles of fund accounting in respect of the Operations Program, the Cultural Grants Program and the Loan Program.

7.13 TAC shall be solely responsible for any operating deficits incurred during a calendar year. Any surplus monies for a calendar year derived from the monies provided by the City for the Cultural Grants Program shall be reported to Council by February 1st of the next calendar year based on the then unaudited financial statements from the previous calendar year. Such surplus monies shall be used as Council may then direct, including the use of such surplus funds by TAC.

7.13.1 Any surplus monies for a calendar year derived from the monies provided by the City for the Operations Program shall be reported to Council at the time the Grant Budget Request(s) are submitted.

7.14 TAC covenants and agrees that it shall not charge management fees in the administration of grants disbursed from monies provided by the City.

7.15 TAC shall provide the Commissioner, on an annual basis and in format determined by TAC (which may be electronic or other), budget information submitted by organization grant applicants through application and report forms. The budget information will include, among other things, a breakdown by organization of total revenues (earned, private sector, government (federal, provincial and municipal)) for the last audited year, total expenses (artistic, operating) for the last audited year and any accumulated surplus/deficit. Where information provided by TAC is used in City publications, credit will be given to TAC.

7.16 TAC shall notify the City, in writing, immediately upon any of the following acts occurring:

- (a) the bankruptcy or insolvency of TAC, the filing against TAC of a petition in bankruptcy, the making of an authorized assignment or proposal for the benefit of creditors by TAC, the appointment of a receiver or trustee for TAC or for any assets of TAC, or the institution by or against TAC of any other type of insolvency proceeding under the Bankruptcy Act or otherwise;
- (b) the institution by or against TAC of any formal or informal proceeding for the dissolution or liquidation of TAC, or the winding up of the affairs of TAC;
- (c) the receipt of a notice, statement, or settlement of claim against or instituted by TAC;
- (d) if TAC ceases or threatens to cease to carry on operations or makes or agrees to make a bulk sale of assets without complying with applicable law or commits or threatens to commit an act of bankruptcy;
- (e) if any execution, sequestration, extent or other process of any court becomes enforceable against TAC or if a distress or analogous process is levied upon the assets of TAC or any part thereof;
- (f) TAC ceasing to be a non-share capital non-profit Ontario corporation accorded charitable status by the Canada Customs and Revenue Agency;

7.17 TAC shall notify the City, in writing, immediately if any certificate, statement, representation, warranty or audit report heretofore or hereafter furnished to the City by or on its behalf pursuant to or in connection with this Agreement (including, without limitation, the representations and warranties contained herein) or as an inducement to the City to enter into this or any other agreement with TAC:

- (a) proves to have been false or inaccurate in any material respect at the time as of which the facts therein set forth were stated or certified; or
- (b) has omitted any substantial contingent or unliquidated liability or claim against TAC having a value of \$1,000,000.00 or more.

7.18 TAC shall, by notice in writing, immediately notify the Commissioner of each TAC Board of Directors' meeting at which any of the matters set out in section 7.16 or 7.17 will be discussed and shall permit the Commissioner or his designate to attend any such meeting.

8.0 TAC REPORTING REQUIREMENTS

8.1 TAC shall in each year provide, within six months of its fiscal year end, annual audited financial statements to the City's Chief Financial Officer and Treasurer, the City's Auditor and the Commissioner for review.

The form and content of the annual audited financial statements shall be in accordance with generally accepted accounting principles.

8.2 TAC shall provide to the Committee, with copies to the Commissioner, the City's Chief Financial Officer and Treasurer and the City's Auditor during each year of the term of this Agreement an annual report on its performance for the preceding calendar year. The annual report shall be submitted no later than June 30th each year during the term.

8.2.1 The annual report shall contain a summary of the financial performance for the preceding year as well as an appropriate quantitative and qualitative review of TAC's previous year's activities. This review shall include, but not be limited to the following information:

- (a) a list of all grant applicants that are organizations, alphabetically and by grant category, the number of applications received in each grant category, the amount of funding requested in each grant category, the amount recommended in each grant category, the amount of grant requested, recommended and received by each applicant (if applicable), the amount of the previous year's grant (if applicable), the purpose for which the grant was used and, year to year comparisons to demonstrate trends in comparing the totals;
- (b) total number and total amount of grants to organizations;
- (c) a list of all individual grant recipients, alphabetically and by grant category and the total number and total amount of grants to individuals;
- (d) estimated number of performances, screenings and exhibitions funded;
- (e) estimate of public participation in funded performances, screenings and exhibitions; and
- (f) a list of the members of each jury and committee.

8.3 TAC shall prepare and submit, within 45 days from the end of each quarter, to conform with City reporting requirements, an information report to the Committee with copies to the Commissioner, the City's Chief Financial Officer and Treasurer and the City's Auditor for their review and analysis on its revenues and expenditures for each of its Programs for the previous quarter. The report shall include but not be limited to the following information:

- (a) a list of all grant applicants that are organizations, alphabetically and by grant category, the number of applications received in each grant category, the amount of funding requested in each grant category, the amount recommended in each grant category, the amount of grant requested,

recommended and received by each applicant (if applicable), the amount of the previous year's grant (if applicable), the purpose for which the grant was used and, year to year comparisons to demonstrate trends in comparing the totals;

- (b) total number and total amount of grants to organizations;
- (c) a list of all individual grant recipients, alphabetically and by grant category and the total number and total amount of grants to individuals;
- (d) estimated number of performances, screenings and exhibitions funded;
- (e) estimate of public participation in funded events and projects;
- (f) a list of the members of each jury and committee;
- (g) year to year comparisons;
- (h) budget and actual expenditures to date and year end projections.

8.4 TAC shall immediately report to the Committee each time there is any anticipated or emergent material variance(s) in its financial performance or projections from what was approved in the Grant Budget Request(s) and obtain Council approval of the variance.

8.5 In order to allow the appropriate City staff to provide Committee with analysis and recommendations respecting TAC's reports, all reports which TAC is required to submit to Committee shall be submitted to the Commissioner in accordance with the City's Economic Development, Culture and Tourism report submission schedules, copies of which shall be provided to TAC from time to time.

9.0 **RIGHT OF AUDIT**

9.1 The City Auditor, or anyone designated in writing by the City Auditor, on reasonable notice, may audit and inspect accounts, records, receipts, vouchers, and other documents relating to the Grant and shall have the right to make copies thereof and to take extracts therefrom.

For the purposes of this section, audit includes any type of audit.

9.2 TAC shall make available all facilities, physical and otherwise, for the audits and inspections and shall furnish the City and its authorized representatives with all of the information as it, or they, may from time to time require with reference to the accounts, records, receipts, vouchers, and other documents.

9.3 TAC shall cause all accounts, records, receipts, vouchers and other documents, required under this section for financial audit, to be preserved and kept available for audit and inspection at any reasonable time, and from time to time, until the expiration of seven (7) years from the date of disbursement of a Grant under section 4, or until the expiration of such lesser or greater period of time as approved in writing by the City.

10.0 **ACKNOWLEDGMENT OF CITY**

10.1 TAC shall on all written material, including grant application forms and grant approval letters, acknowledge the financial support of the City in a way satisfactory to the Commissioner. If TAC makes a grant to an artist or arts organization from funds provided by the City, TAC shall require the recipient of the grant to acknowledge in a public way, satisfactory to the Commissioner, the financial support of the City. In addition, TAC shall ensure that grant recipients are made aware that grants are being made to them by TAC on behalf of the City.

11.0 **INDEMNITY AND INSURANCE**

11.1 TAC agrees that it shall, from time to time, and at all times after this Agreement takes effect and at all times after the expiry of this Agreement, save, keep harmless and fully indemnify the City including the five City councillors appointed to the Board of Directors, its employees, agents, successors and assigns, from and against any and all actions, claims and demands whatsoever which may be brought against or made upon the City including the five City councillors appointed to the Board of Directors, its employees, agents, successors and assigns and against any and all loss, liability, claims, judgements, costs, legal defence costs, demands or expenses whatsoever which the City may sustain, suffer or be put to resulting from or arising out of:

- (a) the actual or alleged failure of TAC to exercise reasonable care, skill or diligence in carrying out the administration of the arts and culture grants including any actual or alleged breach of obligations outlined in section 7 or any challenge raised by City arts organizations in respect of TAC's administration of grants; or,
- (c) any act or omission of TAC, its Board of Directors, its agents, servants, employees or by anyone for whom TAC is at law responsible relating to any work or service required to be performed or rendered under this Agreement by TAC

except, in each case, to the extent that, any such loss, liability, claim, judgment, costs or expenses is attributable to the negligence of the City, its councillors, employees, agents, successors and assigns.

11.2 TAC agrees that it shall, at its own expense during the term of this Agreement, cause to be maintained a Commercial General Liability policy of insurance, including Blanket Contractual Liability, Tenants Legal Liability, Owner's and Contractor's Protective Liability, Contingent Employers Liability, Occurrence Property Damage, Additional Insured-Volunteers and Non-Owned Automobile Liability containing a \$2,000,000.00 each occurrence limit of coverage. The policy shall show the City as an additional named insured and contain a cross liability and severability of interest clause.

11.3 TAC agrees that it shall, at its own expense during the term of this Agreement, cause to be maintained a Directors and Officers liability policy including corporate indemnification coverage of insurance including the five appointed City councillors to the Board of Directors, containing a \$1,000,000.00 each occurrence limit of coverage, subject to a policy aggregate limit.

11.4 TAC agrees that it shall, at its own expense during the term of this Agreement, cause to be maintained a Crime Insurance policy of insurance covering the loss and/or damage to Money and Securities by actual destruction, disappearance or wrongful abstraction inside and outside the premises, through depositor's forgery and third party computer and funds transfer fraud and including coverage for employee dishonesty under a primary commercial blanket bond, Form A, and containing a \$1,000,000.00 each occurrence limit of coverage.

11.5 The minimum amounts of insurance stipulated in paragraphs 11.2, 11.3 and 11.4 shall be subject to periodic review by the City. The City reserves the right to require increased levels of insurance if it deems such increased levels to be necessary, having regard to all relevant risk management factors.

If the City requires the amount of coverage increased, if it requires TAC to obtain other special insurance, if it requires any policy to be extended or if it requires a policy deductible level to be reduced or lowered, then it shall provide reasonable advance notice of such requirement and TAC shall obtain such extended, increased or special insurance or deductible change.

11.6 All policies of insurance required to be provided by TAC pursuant to paragraphs 11.2, 11.3 and 11.4 shall contain or shall be subject to the following terms and conditions:

- (a) all policies of insurance required to be taken out by TAC shall be placed with insurers to be approved by the Chief Financial Officer and Treasurer;

- (b) each policy shall contain an endorsement requiring the insurers to notify the City in writing, by registered mail, at least thirty (30) days prior to cancellation or any material change that restricts or reduces the insurance required under this section, to be provided to: the Chief Financial Officer and Treasurer, 7th Floor, East Tower, City Hall, 100 Queen Street West, Toronto, Ontario M5H 2N2. Any material change or amendment must be approved by the Chief Financial Officer and Treasurer; and
- (c) the insurance policies required pursuant to this section shall be primary and shall not call into contribution any insurance available to the City.

11.7 TAC shall duly and punctually pay all premiums under the aforesaid policies as they become due and payable, and in the event of default of payment by TAC, the City may pay same, and the amount so paid shall be payable forthwith on demand by TAC to the City.

11.8 TAC shall deliver to the City a Certificate(s) of Insurance which indicates that the insurance provisions of the Agreement have been met and that the coverage being maintained by TAC is in a form and with limits satisfactory to the Chief Financial Officer and Treasurer. TAC further agrees that a renewal Certificate(s) will be delivered to the City not less than seven (7) days prior to the expiration date of the policy(ies). Upon request, TAC will deliver to the City a certified copy of each policy required pursuant to subsections 11.2, 11.3 and 11.4 of this Agreement.

11.9 TAC shall not do or permit to be done any act or thing which may make void or voidable any insurance or which may cause any increased or additional premium to be payable for any insurance.

12.0 TERM

The parties agree that the term of this Agreement shall be for a period of five years commencing on January 1, 2002 and ending on December 31, 2006, unless terminated prior to such date in accordance with the provisions of section 13.

13.0 TERMINATION

13.1 The parties agree that TAC shall have the right to terminate this Agreement upon giving the City not less than sixty (60) days' prior written notice of termination. The City and TAC shall convene a meeting within ten (10) days of such notice of termination to settle all outstanding matters under the Agreement.

13.2 The City shall have the right to terminate this Agreement, upon notice to TAC, if TAC is in default of this Agreement and such default has not been rectified within the time period specified in this Agreement. TAC shall be considered to be in default of this Agreement if it does not comply with the provisions of this Agreement.

13.2.1 In the event that the City becomes aware of a default, it shall deliver written notice to TAC specifying the nature of the default. TAC shall have 60 days from receipt of such notice to rectify the default, provided that if the default is not capable of rectification within 60 days, and TAC has commenced and continues diligently working to correct the default, it shall have an additional 30 days to correct the default.

13.2.2 Each event of default shall be deemed to exist and continue so long as it shall not have been remedied. Notwithstanding any other provision of this Agreement, the City shall have the right to terminate this Agreement under the following circumstances:

- (a) if TAC persists in violation of any of the provisions of this Agreement, or,
- (b) if TAC uses the Grant funds for any purpose other than as set out in this Agreement, or

- (c) if TAC refuses or neglects to comply with any reasonable requirement from the Commissioner, Council, or a Committee he or it is entitled to stipulate under this Agreement, or
- (d) if TAC becomes insolvent or commits any act of insolvency or makes any assignment for creditors, or
- (e) if TAC assigns or transfers or attempts to assign or transfer this Agreement without the City's consent, or
- (f) if TAC ceases to be a non-share capital non-profit Ontario Corporation accorded charitable status by Canada Customs and Revenue Agency, or
- (g) if TAC ceases to exist.

13.2.3 If this Agreement is terminated by the City in accordance with Section 13, TAC shall on the written demand of the City, pay to the City

- (a) all City monies advanced to TAC pursuant to this Agreement in the current fiscal year; and
- (b) all other City monies held by TAC at the time of the termination

that, in each case, have not been used by the TAC and, for greater certainty, TAC shall not be required to pay to the City monies for grants approved by the Board of Directors before the date of termination of this Agreement that have not been paid before such date.

13.2.4 If this Agreement is terminated in accordance with Section 13, TAC may apply to the Council in writing for the costs of winding-up the operations of TAC, including costs and expenses incurred by TAC in relation to its responsibilities under this Agreement on or before the termination date and any costs and expenses that may be payable by TAC under contracts entered into before the termination date.

13.3 Any declaration as to termination made under this section shall be made in writing and delivered by the City to TAC in the manner herein specified for the giving of notices to TAC.

14.0 **DISPUTE RESOLUTION**

14.1 If any dispute or disagreement arises between the parties with respect to the rights and obligations of either party, work performed or to be performed, the payment of amounts claimed due or any other claim arising out of or relating to this Agreement or the interpretation of any arrangements relating thereto or the breach, termination or invalidity thereof, it shall be settled exclusively and finally by a sole arbitrator appointed by mutual agreement between the City and TAC.

14.2 Failing mutual agreement on the appointment of a sole arbitrator, the issue shall be determined by a panel of three arbitrators; one arbitrator shall be appointed by the City and a second arbitrator shall be appointed by TAC. These two arbitrators shall appoint a third, who shall chair the arbitration.

14.3 The determination of the sole arbitrator or the arbitration panel, as applicable, shall be final and binding upon the City and TAC and there shall be no appeal from the determination.

14.4 The arbitrator shall have the power to award the costs of the arbitrators' services and related costs against either party, however, each party will bear the cost of their own counsel and any witness fees.

15.0 **GENERAL**

15.1 The Council shall act in a timely fashion to appoint its five nominees, who shall be members of Council, to the Board of Directors. Such appointments shall be made for a period of 18 months and appointees will serve until their successors are appointed.

15.2 TAC has the right to acquire capital by gift, bequest or otherwise. Such capital and any earnings on such capital other than capital received by way of Grant from the City which is specifically designated for the Programs may be used to further the objects of TAC as determined by its Board of Directors, subject to such terms if any, on which the capital was provided.

15.3 Upon termination or expiry of this Agreement, TAC shall return to the City all written or descriptive matter, including but not limited to drawings, prints, descriptions or other papers, documents or any other material which contains any Confidential Information.

15.4 Except as expressly provided in this section, no Confidential Information shall be disclosed by TAC in any manner whatsoever except as may be authorized by the Commissioner in writing or as may be required by law.

15.5.1 Any request for such approval by the Commissioner shall specifically state the benefit to the City of disclosure of Confidential Information.

15.5.2 Any use of the Confidential Information shall be limited to the express purposes as set out in the approval of the Commissioner or as may be required by law.

15.5.3 TAC shall not, at any time during or after the term of this Agreement, use any Confidential Information for the benefit of anyone other than the City.

15.5.4 If TAC has received written authorization from the Commissioner with respect to the release of Confidential Information to a third party, it shall immediately notify the Commissioner in writing when the Confidential Information has been released and the name of the party to whom it has been released.

16.0 NOTICES

16.1 A notice, demand, request, payment, consent or objection required or contemplated to be given or made hereunder shall be in writing and either delivered personally, sent by facsimile or other means of electronic telecommunication (and confirmed with original paper notification) or by registered mail postage prepaid addressed as follows:

(a) in the case of TAC:

Toronto Arts Council
141 Bathurst Street
Toronto, Ontario M5V 2R2
Attn: Executive Director
Tel.: 392-6800
Fax: 392-6920

(b) in the case of the City:

City of Toronto
City Hall
East Tower - 8th Floor
100 Queen Street West
Toronto, Ontario M5H 2N2
Attn: Commissioner, Economic Development, Culture & Tourism
Tel. 395-6188
Fax 395-0388

or such other address of which either of the parties may from time to time notify the other in writing. The time of giving or making such notice, demand, request, consent or objection shall be (i) if delivered or sent by means of electronic communication, when so delivered or sent, (ii) if mailed in Canada, other than during an actual or threatened postal disruption, on the second business day following the date of mailing, and (iii) otherwise, when received.

17.0 FURTHER GENERAL PROVISIONS

17.1 Entire Agreement

This Agreement and the other documents and agreements referred to herein contain all of the terms and conditions of the agreement between the parties hereto relating to the subject matter hereof and supersede all previous agreements or representations of any kind, written or spoken made by anyone in reference thereto.

17.2 Amendment

This Agreement may be changed only by a written amendment signed and sealed by authorized representatives of both parties.

17.3 Schedules

- (a) The Schedules to this Agreement form a part hereof.
- (b) If there is any inconsistency between this Agreement and any Schedule to this Agreement, this Agreement shall govern.

17.4 Severability of Provision

If any material provision of this Agreement is or becomes illegal or unenforceable, it shall during such period that it is illegal or unenforceable be considered separate and severable from the remaining provisions of this Agreement which shall remain in force and be binding as though the said provision had never been included.

17.5 No Partnership or Joint Venture

Nothing contained herein shall be deemed to create any partnership or joint venture between the parties hereto.

17.6 Captions

The captions for sections of this Agreement are for convenience only and are not to be considered a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.

17.7 Time of Essence

Time shall be of the essence of this Agreement.

17.8 Gender and Number

Words importing the singular shall include the plural and vice versa. Words importing gender shall include all genders.

17.9 Waiver

The waiver by a party of strict compliance or performance of any of the terms and conditions of this Agreement or of any breach on the part of any other party shall not be held or deemed to be a waiver of any subsequent failure to comply strictly with or perform the same or any other term or condition of this Agreement or of any breach thereof.

17.10 No Waiver

- (a) No waiver of any breach of any provision of this Agreement will be effective or binding unless it is in writing and signed by the party purporting to give such waiver and, unless otherwise provided, will be limited to the specific breach waived.
- (b) No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise specifically provided in writing.

17.11 Excusable Delay

Subject to the provisions of section 14, if, because of a circumstance beyond the control of a party, such party is delayed in performing or observing a covenant or in complying with a condition under the terms of this Agreement that it is required to do by a certain date or within a specified period of time or with all due diligence, and if the circumstance is neither caused by the default or act of commission or omission of such party nor avoidable by the exercise of reasonable effort or foresight by such party, the date or period of time by or within which it is to perform, observe or comply will be extended by a period of time equal to the duration of the delay, provided that nothing excuses a delay caused by lack of funds or other financial circumstances or excuses a party from payment of any amount payable hereunder when due.

17.12 Covenants

Each obligation of the City or of TAC expressed in this Agreement, even though not expressed as a covenant, is considered to be a covenant for all purposes. The covenants, representations, warranties and indemnity of TAC set forth in this Agreement shall survive the expiry of the term of this Agreement.

17.13 Additional Assurances

TAC shall, at its sole expense, promptly execute any such additional documentation with respect to the Grant to give effect to this Agreement as the City may from time to time require.

17.14 Successors and Assigns

- (a) This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.
- (b) TAC shall not assign this Agreement or any part thereof without the prior written consent of the City, which consent may not be unreasonably withheld or delayed. Such written consent as the City may give shall not relieve TAC of its obligations and liability under this Agreement.
- (c) For the purposes of this Agreement, assignment shall include any transfer in the majority ownership or controlling interest in TAC, whether through the sale of shares, direct acquisition of assets or otherwise.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals attested to by the hands of their respective proper signing officers in that behalf duly authorized.

CITY OF TORONTO

Name:
Title: for Joseph Pennachetti
Chief Financial Officer and Treasurer

c/s

Name:
Title: for Ulli S. Watkiss
City Clerk

**TORONTO CULTURAL ADVISORY
CORPORATION**

Name:
Title:

c/s

Name:
Title:

I/We have authority to bind the corporation.

Authorized by Clause 5 of Strategic Policies and Priorities
Committee Report No. 26 adopted by the Council of the
City of Toronto at its meeting held on December 16 and 17, 1998

and

Clause 8 of Economic Development and Parks Committee
Report No.12 adopted as amended by the Council of the City of Toronto
at its meeting held on December 4 and 5, 2001.

for Ulli S. Watkiss
City Clerk