

THIS RAPID TRANSIT AGREEMENT made as of this 10th day of September, 2009

B E T W E E N:

THE REGIONAL MUNICIPALITY OF YORK

(the “**Region**”)

OF THE FIRST PART;

- and -

YORK REGION RAPID TRANSIT CORPORATION

(“**YRRTC**”)

OF THE SECOND PART.

RECITALS:

- A. YRRTC is a share capital corporation under the *Business Corporations Act* (Ontario) incorporated on July 2, 2003 by the Region as a municipal business corporation pursuant to the *Municipal Act, 2001* and the Regulations thereunder, with the intent that the Region devolve to YRRTC the responsibility for the delivery of rapid transit services in the Region.
- B. The Region owns all of the issued and outstanding shares of YRRTC.
- C. By a unanimous shareholder's declaration made July 2, 2003, the Region, through Regional Council, retained to itself, instead of YRRTC's board of directors, all of the right, responsibility and power to manage the business and affairs of YRRTC, save for certain acts set forth in the unanimous shareholder's declaration.
- D. In addition to restricting the powers of the YRRTC board, the Region, in February 2004, established an interim mandate for YRRTC which set forth YRRTC's interim roles and responsibilities with respect to the Rapid Transit Project.
- E. At its meeting held on June 25, 2009, Regional Council authorized the entering into of this Agreement, to replace and supersede the unanimous shareholder's declaration and the interim mandate that had been given to YRRTC in February 2004.
- F. The Region and YRRTC wish to enter into this Agreement to set out the responsibilities, duties and obligations of YRRTC in respect of the Rapid Transit System.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties hereto covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions wherever used shall have the following meanings:

- (a) “**Agreement Termination Date**” means the fifteenth (15th) anniversary of the Effective Date, unless this Agreement is extended by mutual written agreement of the Parties;
- (b) “**Applicable Law**” means any and all requirements under or prescribed by the common law, and any and all applicable federal, provincial, regional, local or municipal laws, statutes, codes, acts, permits, licences, ordinances, orders, by-laws, rules, regulations and Governmental Consents, which may now, or at any time hereafter be applicable to and enforceable against the Rapid Transit Project, the Rapid Transit System, Rapid Transit Project Lands, or any Rapid Transit Project work or activity or any part thereof and provided that any such Governmental Consents are generally prevailing and reduced to written form;
- (c) “**Business Day**” means any day other than a Saturday, Sunday, or statutory holiday in the Province of Ontario;
- (d) “**Capital Expenditures**” means all expenses incurred by YRRTC in connection with the Rapid Transit Project, of a nature which are capitalized in the financial statements of YRRTC and not expensed, as determined in accordance with GAAP;
- (e) “**Effective Date**” means the 10th day of September, 2009;
- (f) “**Encumbrance**” means any mortgage, lien, judgment, execution, pledge, charge, security interest, restriction, claim, trust, deemed trust, or encumbrance of any nature whatsoever, whether arising by operation of law or statutory, or otherwise created;
- (g) “**Fiscal Year**” means the twelve (12) month period commencing on January 1st and ending on December 31st;
- (h) “**GAAP**” means Canadian generally accepted accounting principles applied on a consistent basis and which are in accordance with recommendations from time to time of the Canadian Institute of Chartered Accountants, at the date on which such generally accepted accounting principles are applied;
- (i) “**Governmental Authority**” means any federal, provincial, regional or municipal governmental, quasi-governmental, judicial, public or statutory authority, commission, tribunal, agency, department, ministry, body or other like entity;
- (j) “**Governmental Consents**” means any right, privilege, direction, consent, order, permission, approval, permit or authority to be issued or provided by a governmental authority which has been lawfully given or issued and which, in the case of a direction or order, is of a legally binding nature;

- (k) “**Infrastructure Ontario**” means Ontario Infrastructure Rapid Transit Projects Corporation, the corporation established by the Province of Ontario to assist in the procurement and the obtaining of private sector financing for Ontario infrastructure projects;
- (l) “**Metrolinx**” means the corporation established by the Province of Ontario under the *Greater Toronto Transportation Authority Act, 2006* (now the *Metrolinx Act, 2006*);
- (m) “**Municipal Act, 2001**” means the *Municipal Act, 2001*, S.O. 2001, c.25, as may be amended from time to time;
- (n) “**Operating Costs and Expenses**” means any and all operating costs and expenses incurred by YRRTC in fulfilling its responsibilities, duties, and obligations hereunder, in connection with the Rapid Transit Project, and excluding Capital Expenditures;
- (o) “**Party**” means either of the Region or YRRTC and “**Parties**” means both of them;
- (p) “**Person**” means an individual, corporation, partnership, limited partnership, joint venture, association, trust, pension fund, union, governmental agency, board, tribunal, ministry, commission or department, and the heirs, beneficiaries, executors, legal representatives or administrators of an individual;
- (q) “**Rapid Transit Project**” means the designing, developing, constructing and managing of the Rapid Transit System including extensions of the existing City of Toronto subway system into the Region and rapid transit connections with nearby regions and municipalities. The Project may also include transit-oriented development, joint development, and station development on, under, above, or associated with Rapid Transit Project Lands or the Rapid Transit System and operating and maintaining concessions;
- (r) “**Rapid Transit Project Lands**” means lands (including above ground and subsurface rights)
 - (i) owned or leased by the Region, whether on its own or with other Persons;
 - (ii) owned or leased by YRRTC, whether on its own or with other Persons;
 - (iii) owned or leased by municipal service corporations (or other similar municipal corporations incorporated or created pursuant to the *Municipal Act, 2001*), that are owned or controlled by the Region and/or YRRTC, whether on their own or with other persons; or
 - (iv) owned or leased by the Province of Ontario or Metrolinx;

and which form part of the Rapid Transit System;

- (s) “**Rapid Transit System**” means that portion of the Regional Transportation System being the York Region Rapid Transit System, being the entire seamless, integrated rapid transit system to be constructed and operated in the Region which includes the establishment of two subway routes and a series of rapid transit and transit priority corridors, together with those elements of the Regional Transit Facilities that exclusively serve the Rapid Transit System;

- (t) “**Region**” means The Regional Municipality of York as a municipal corporation, or, where the context requires, its geographic area;
- (u) “**Regional Transportation System**” means the entire transportation system in the Region which includes the Regional road network owned and maintained by the Region as more particularly described in Map 12 of the 2009 York Region Official Plan, the Regional transit network as more particularly described in Map 11 of the said Official Plan, and the Cycling Master Plan as more particularly described in Map 10 of the said Official Plan, all as may be amended or updated from time to time;
- (v) “**Regional Transit Facilities**” means (i) intermodal terminals or mobility hubs, including rapid transit stations, transit stations, subway stations and commuter parking areas; (ii) related infrastructure, including vent shafts, transit operation and maintenance facilities, passenger pick-up and drop-off areas, electrical substations and passenger safety facilities; (iii) other related facilities such as pedestrian and cycling facilities; (iv) intelligent transit and travel information systems, including transit ticket purchase facilities; (v) public streetscape enhancements; and (vi) surface and sub-surface rights; and any other facilities required for the efficient and effective operation of either the Regional Transportation System and/or the Rapid Transit System;
- (w) “**Regulations**” means the Regulations promulgated under the *Municipal Act, 2001*, as may be amended from time to time;
- (x) “**Revenue**” means the total amount of money received for goods sold or services rendered during a certain time period. Revenue also includes funds or grants received, inclusive of Senior Government Funding, to recover expenditures; the exchange of assets; interest and any other increase in equity and is calculated before any expenses are subtracted. Revenue is recognized in accordance with GAAP, and more specifically, in the period when the goods are sold and/or services are rendered. In the case of grants or third party recoveries, revenue is recognized in the period in which the expenditures have similarly been recognized;
- (y) “**Senior Government Funding**” means funding received by YRRTC and/or the Region from the Government of Canada, the Province of Ontario, Metrolinx, Infrastructure Ontario, or any other Provincial or Federal Crown corporation or agency, to fund the costs of the planning, design, development, construction, operation and maintenance of the Rapid Transit System, or any part thereof;
- (z) “**Term**” means the term of this Agreement, which begins on the Effective Date and ends on the Agreement Termination Date, or as extended by mutual written agreement of the Parties;
- (aa) “**York Consortium 2002**” means the joint venture currently among DMJM + Harris Canada Inc., IBI Group, Delcan Corporation, Peter Kiewit Sons Co., EllisDon Corporation, and Nord/LB Financial Services LLC formed to carry out Rapid Transit Project work for or in connection with the Rapid Transit System;
- (bb) “**YRRTC Annual Operating Plan and Budget**” means the annual operating plan and budget for YRRTC’s Rapid Transit Project work for a Fiscal Year, as approved by the Region, and as may be amended from time to time as herein provided; and

- (cc) “YRT” means York Region Transit, a branch of the Region's Transportation Services Department, with the responsibility of operating the Regional transit network.

ARTICLE 2

RESPONSIBILITIES, RIGHTS AND POWERS OF YRRTC

2.1 Responsibilities, Rights and Powers Granted to YRRTC

Subject to the terms and conditions herein set out, YRRTC shall have the following responsibilities, rights and powers in connection with the Rapid Transit Project and the Rapid Transit System during the Term:

- (a) strategic planning, oversight and delivery of the Rapid Transit System, including obtaining environmental assessment approvals, planning and preliminary engineering work, design, capital delivery and funding or financing for the Rapid Transit System;
- (b) prepare submissions, negotiate for and obtain Senior Government Funding, either on its own behalf or in the name of the Region, from time to time to assist in the further development of the Rapid Transit Project, including funding co-ordinated through or administered by Metrolinx, Infrastructure Ontario, or any other Provincial or Federal crown corporation or agency;
- (c) manage and monitor Rapid Transit Project work, including the procurement process, and ensure compliance with the existing and/or amended business arrangements with York Consortium 2002 in Rapid Transit Project contracts and Rapid Transit Project work;
- (d) work with Metrolinx (including any subsidiary corporation of Metrolinx), Infrastructure Ontario, and any other Provincial or Federal crown corporation or agency in the management, procurement or financing of Rapid Transit Project work, where the involvement of Metrolinx (or any subsidiary corporation), Infrastructure Ontario, or such other Provincial or Federal crown corporation or agency, is required by Applicable Law as a condition of Senior Government Funding, or where YRRTC requests such involvement and enter into any agreements as may be required;
- (e) plan and implement rapid transit connections with other nearby regions and municipalities and subject to Section 3.1(a)(iv), manage the role of any other municipal service corporation (or other similar municipal corporations), incorporated or established by the Region and/or YRRTC to participate in such Rapid Transit Projects;
- (f) plan, pursue and implement commercial business opportunities and alternative Rapid Transit Project organization and governance models to better propel the Rapid Transit Project and that are in the best interests of YRRTC and the Region;
- (g) plan, implement and manage transit-oriented development and joint development opportunities related to the Rapid Transit System;
- (h) subject to Section 5.1(f) and subject to any conditions and/or requirements imposed by Metrolinx and/or the Government of the Province of Ontario, as same may be amended

from time to time, purchase, lease or otherwise acquire land as required for the Rapid Transit Project;

- (i) report to Regional Council on an annual basis and from time to time on matters requiring shareholder approval under Section 5.1;
- (j) for every Fiscal Year, prepare a YRRTC Annual Operating Plan and Budget which shall include, among other things,
 - (i) an annual operating budget with reasonably detailed estimates of all anticipated Operating Costs and Expenses and sources and amounts of anticipated Revenue for the forthcoming Fiscal Year; and
 - (ii) a Capital Expenditures budget disclosing in reasonable detail YRRTC's proposed Capital Expenditures for the forthcoming Fiscal Year;
- (k) enter into contracts for services with third parties for or in connection with the Rapid Transit Project, provided that such contracts are in respect of transactions or work that is included in the Operating Plan and Budget for that Fiscal Year approved by the Region;
- (l) enter into contracts for services with third parties for or in connection with the Rapid Transit Project in respect of transactions or work that is not included in the Operating Plan and Budget for that Fiscal Year approved by the Region, where (i) YRRTC has secured Senior Government Funding for such contracts and such commitment is evidenced by way of a written legal funding agreement duly signed by YRRTC and the funding entity; or (ii) such contracts do not materially impact the Operating Plan and Budget for that Fiscal Year;
- (m) conduct public relations and communications planning, implementation and research in accordance with communications protocols, including issuing news releases, attending and organizing media and public relations events, issues management, and conducting polls; and
- (n) undertake such other obligations in connection with the Rapid Transit System or the Rapid Transit Project as agreed upon from time to time in writing by the Region and YRRTC.

2.2 **Observance of All Applicable Law and Legal Contracts**

During the Term, YRRTC shall cause the Rapid Transit Project and the planning, design, construction, development, management, operation and maintenance thereof to be in compliance with all Applicable Law and the terms and provisions of any agreement or contract in connection with the Rapid Transit Project.

ARTICLE 3
RESPONSIBILITIES, RIGHTS AND POWERS RETAINED BY THE REGION

3.1 Responsibilities, Rights and Powers Retained by the Region

The Region shall retain the following responsibilities, rights and powers in connection with the Rapid Transit Project and the Rapid Transit System during the Term:

- (a) in collaboration with YRRTC:
 - (i) jointly develop the operations and maintenance strategy for the Rapid Transit System;
 - (ii) prepare the operations and maintenance agreement and jointly procure the operator;
 - (iii) establish overall budget and performance criteria for the monitoring of the operations and maintenance agreement and the work of the operator thereunder to ensure the effective and efficient implementation of the Rapid Transit System;
 - (iv) determine the business and governance structure for transit-oriented development, joint development projects, and any commercial business opportunities related to or arising from the Rapid Transit Project;
 - (v) develop a strategy for (i) obtaining as-needed Senior Government Funding for the Rapid Transit Project and (ii) working with Senior Government, Metrolinx (and any applicable subsidiary corporation of Metrolinx), Infrastructure Ontario, and other Provincial and Federal crown corporations or agencies. The Region shall identify the Person who shall serve as the lead contact for the Region for purposes of working together with YRRTC to obtain such Senior Government Funding;
- (b) subject to paragraph (a) herein, be responsible for the operations, maintenance and administration of the Rapid Transit System;
- (c) be responsible for establishing fares and policies respecting fares on the Rapid Transit System in the context of fare policies and fare integration policies that may be established by Metrolinx from time to time; and
- (d) subject to any conditions and/or requirements imposed by Metrolinx and/or the Government of the Province of Ontario, as same may be amended from time to time, expropriate land as required for the Rapid Transit Project;

**ARTICLE 4
CONFLICTS AND PARAMOUNTCY RULES**

4.1 Conflicts and Paramountcy Rules

The Parties acknowledge and agree that:

- (a) in carrying out their respective mandates as provided in this Agreement, where there is any conflict in the exercise of a power by YRRTC, such power shall be inoperative to the extent that it conflicts with a power of the Region;
- (b) the powers granted to YRRTC are not intended to derogate from the powers of the Region to own, operate, finance, and maintain the Regional Transportation System which will include the operation and maintenance of Regional Transit Facilities;
- (c) nothing in this Agreement shall be construed as derogating from the Region's power and responsibility for constructing, maintaining and regulating Regional roads; and
- (d) where the Parties have overlapping powers under this Agreement in respect of the Rapid Transit Project, they shall work cooperatively with the goal of ensuring the efficient and effective delivery of the Rapid Transit System.

**ARTICLE 5
REQUIREMENT FOR REGION APPROVALS**

5.1 YRRTC Reporting and Approvals

In addition to any other reports YRRTC may make from time to time to Regional Council, YRRTC shall

- (a) in each Fiscal Year, in accordance with the Region's annual budget cycle, prepare and deliver to the Region the YRRTC Annual Operating Plan and Budget for such Fiscal Year for the Region's approval;
- (b) confirm in an annual report to Regional Council that the YRRTC business plan goals and objectives, as provided from time to time by YRRTC to the Region, are on track and within budget;
- (c) seek approval from Regional Council of the operating impact of the \$1.4 Billion Metrolinx/YRRTC capital work program;
- (d) seek approval from Regional Council where changes to the \$1.4 Billion capital budget have a material operating impact;
- (e) seek approval from Regional Council for YRRTC or the Region to obtain long-term financing or to enter into any business arrangements which impose long-term financial obligations on the Region, such as an operating concession for the Rapid Transit System, land development arrangements, the creation of subsidiary corporations

assigned to YRRTC, such as a rapid transit parking agreement, and other significant commercial arrangements;

- (f) seek approval from Regional Council to purchase, lease, or otherwise acquire real property (or any interest in real property) for or in connection with the Rapid Transit Project and give security therefor;
- (g) seek approval from Regional Council to borrow money or provide debt; and
- (h) seek Regional Council's approval to any and all material terms and conditions of Senior Government Funding.

ARTICLE 6 REGION/YRRTC CHARTER

6.1 Region and YRRTC Charter

The Parties agree that they have joint responsibility for the successful operation of the Rapid Transit System. The Parties hereby acknowledge and reaffirm the division of responsibilities set out in a document entitled the "YRT/Rapidco Charter" dated March 28, 2007 for the operations, marketing and communications strategies of the Rapid Transit System. The Parties agree to work cooperatively to develop a further protocol to delineate their respective roles and responsibilities with respect to the planning, construction and implementation of capital infrastructure when required for the efficient and effective operation of the Regional Transportation System, subject to any conditions and/or requirements imposed by Metrolinx.

ARTICLE 7 GENERAL DUTIES OF YRRTC

7.1 Standard of Care

Without limiting the obligations and liabilities of YRRTC under this Agreement, YRRTC shall carry out its duties, responsibilities and obligations hereunder diligently and expeditiously, in good faith, in a safe, reasonable and prudent manner, in accordance with good business practices and management techniques, and in a transparent manner.

7.2 Corporate Status and Qualifications

YRRTC shall maintain in full force and effect its existence and all qualifications necessary to carry on its business pertaining to the Rapid Transit Project, including all permits, rights, franchises, licences, privileges and qualifications required in connection with the Rapid Transit Project.

7.3 Conduct of Business

YRRTC shall conduct its business in a proper and prudent manner so as not to adversely affect its ability to perform and observe its obligations and covenants under this Agreement.

7.4 **Notice of Claims**

YRRTC shall promptly give notice to the Region of all material claims, proceedings, disputes (including labour disputes) or litigation in respect of YRRTC or the Rapid Transit Project (whether or not such claim, proceeding or litigation is covered by insurance) of which YRRTC is aware. YRRTC shall provide the Region with all reasonable information requested by it from time to time concerning the status of any such claims, proceedings or litigation.

7.5 **Insurance**

YRRTC shall work with the Region to ensure that all required insurance for the Rapid Transit Project, the Rapid Transit System, and YRRTC is obtained and maintained.

7.6 **Construction Lien Matters**

YRRTC shall promptly give notice to the Region of all construction liens and other liens in connection with the Rapid Transit Project in respect of which notice may have been given to YRRTC or which may be registered against or otherwise affect the Rapid Transit Project Lands or the Region or impose or create a liability on the Region.

7.7 **Governmental Consents**

YRRTC shall ensure that all Governmental Consents as are necessary in connection with the Rapid Transit Project are obtained, complied with, promptly renewed, and maintained in good standing.

7.8 **Other Authorizations**

In addition to Governmental Consents, YRRTC shall cause all other permits, approvals, authorizations, consents, waivers and licences as are necessary in connection with the Rapid Transit Project or to perform YRRTC's obligations hereunder to be obtained, complied with, promptly renewed, and maintained in good standing.

**ARTICLE 8
GENERAL PRINCIPLES**

8.1 **General Principles**

Subject to the applicable terms and provisions of the *Metrolinx Act, 2006*, and any conditions and/or requirements imposed by Metrolinx and/or the Government of the Province of Ontario, as same may be amended from time to time, YRRTC Annual Operating Plans and Budgets will be agreed upon on a good faith basis:

- (a) in view of the legitimate requirements of and resources needed for the Rapid Transit Project;

- (b) recognizing the need for the Region, YRRTC, and contracting entities in the Rapid Transit Project to allocate risks in an optimal manner;
- (c) to promote integration of the Rapid Transit System with conventional transit in the Region; and
- (d) to provide fair incentives and rewards to YRRTC and other Persons in connection with the Rapid Transit Project to increase ridership on the Rapid Transit System and create cost savings in the Rapid Transit Project, while maintaining Rapid Transit System standards agreed upon from time to time by YRRTC and the Region.

ARTICLE 9

RAPID TRANSIT PROJECT LANDS OWNED, LEASED, OR MANAGED BY YRRTC

9.1 Ownership and Development of Rapid Transit Project Lands

The Parties acknowledge that there are many alternative ways to structure the ownership of Rapid Transit Project Lands and the interests of the Region and YRRTC in Rapid Transit Project Lands and that the manner in which ownership is structured may be subject to any terms and conditions imposed by Metrolinx in accordance with its obligations under the *Metrolinx Act, 2006*. The Parties agree that the ownership of Rapid Transit Project Lands and the interests of the Parties in Rapid Transit Project Lands should be structured in ways that will provide the greatest benefit to the Region, YRRTC, and the Rapid Transit Project as a whole.

9.2 Compliance by YRRTC

In its ownership of Rapid Transit Project Lands, its leasehold interest in Rapid Transit Project Lands, or its management role with respect to Rapid Transit Project Lands, YRRTC shall comply with Applicable Law and its obligations under this Agreement.

9.3 No Encumbrances on Rapid Transit Project Lands Other than Permitted Encumbrances

YRRTC shall not do any act or thing that will result in any Encumbrance, save for encumbrances permitted by the Region, affecting the Rapid Transit Project Lands or the Rapid Transit System and YRRTC shall promptly remove any Encumbrances against the Rapid Transit Project Lands or the Rapid Transit System, unless the Encumbrance resulted from an act of or omission by the Region, which in turn was not caused by an act or omission of YRRTC. YRRTC, if so requested by the Region, shall use its commercially reasonable efforts, at the sole cost and expense of the Region, to assist the Region in attempting to remove any Encumbrance which has come into existence as a result of an act of or omission by the Region.

**ARTICLE 10
POLICIES AND PROCEDURES**

10.1 Policies and Procedures

YRRTC shall develop policies and procedures in order to effectively and efficiently carry out its responsibilities under this Agreement. YRRTC shall have regard to any policies, procedures or practices implemented by or governing the Region.

**ARTICLE 11
BOOKS, RECORDS AND FINANCIAL STATEMENTS**

11.1 Books and Records

YRRTC will keep books and records relating or pertaining to and reflecting the result of the operations of the Rapid Transit Project, including any and all documents and other materials, in whatever form they may be kept, which support or underlie those books and records. YRRTC shall maintain such books and records, together with such supporting or underlying documents and materials, for the Term and for at least seven (7) years following the Term, including any and all renewals. All such books and records, together with the supporting or underlying documents, will be available to the Region, upon request, through its employees agents, representatives, contractors or other designees, for inspection, audit and copying during normal business hours at YRRTC's office. Upon the expiration or termination of this Agreement, unless the Region otherwise agrees, all such books and records will forthwith be delivered to the Region so as to ensure the orderly continuance of the operation of the Rapid Transit Project. All such books and records will thereafter, for a period of seven (7) years be available to YRRTC at the Region's office, at all reasonable times, for inspection, audit and copying. This paragraph shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the Region may have by Applicable Law, whether those rights, powers, or obligations are express or implied. The rights and obligations of the parties under this Section 11.1 shall survive the expiration and termination of this Agreement.

11.2 Audited Financial Statements

In each year during the Term, YRRTC shall cause to be prepared audited financial statements for YRRTC for the preceding Fiscal Year, prepared in accordance with GAAP. YRRTC shall present the audited financial statements to the YRRTC Board of Directors for approval in order that they will be received by the Region, as shareholder, by no later than June 30th each year. Unless the Parties agree otherwise, the auditor preparing the audited financial statements for YRRTC shall be the same auditor as the Region's external auditor.

11.3 Right to Audit

The Region's Director of Audit Services shall have the right to conduct financial audits of YRRTC and the Rapid Transit Project from time to time during the Term, to ensure YRRTC's compliance with this Agreement. YRRTC shall provide such assistance, and shall cause others to provide such assistance in respect of any such audits, as may be reasonably requested by the Region's Director of Audit Services. The rights and obligations of the Parties under this Section 11.3 shall survive the expiration and termination of this Agreement.

ARTICLE 12
REGION'S INSPECTION RIGHTS

12.1 Inspection of Rapid Transit System and Rapid Transit Project

The Region shall at all times, have access to the Rapid Transit Project, and every part thereof, and YRRTC shall furnish, and shall cause others as may be reasonably requested by the Region to furnish the Region with every reasonable assistance for inspecting the Rapid Transit Project, for the purpose of ascertaining compliance with this Agreement, provided that such access and assistance shall be carried out in accordance with and subject to the reasonable safety and security requirements of any such third parties.

12.2 Inspections and Financial Audits Do Not Affect Obligations

Any inspection of the Rapid Transit Project by the Region under Section 12.1 hereof and any financial audit under Section 11.3 hereof shall not relieve YRRTC of any of its obligations under this Agreement. No default by YRRTC hereunder will be waived or deemed to have been waived by any inspection by the Region hereunder or by any financial audit hereunder by the Region's Director of Audit Services.

ARTICLE 13
COMMUNICATIONS PROTOCOL

13.1 Transparency and Accountability

The Rapid Transit Project and the Rapid Transit System represent an important infrastructure commitment by both the Region and YRRTC. The Region and YRRTC are both committed to enhanced transparency and accountability to the public. Accordingly, a comprehensive communications and stakeholder relations plan is necessary to ensure effective day-to-day communications and relationship building, and to ensure that the public is informed and is engaged, where necessary.

13.2 Communications Protocol

As soon as reasonably possible after the Effective Date, representatives of the Region and YRRTC will, in consultation with affected partners, develop communications protocols for the Rapid Transit Project and the Rapid Transit System. Among other things, the communications protocol will address the following:

- (a) identification of lead communication contacts with applicable skills and experience on applicable aspects of communications and issues management;
- (b) identification of lead media spokesperson on applicable aspects of communications;
- (c) prime media contact for the Rapid Transit Project;

- (d) review and approval of all public communications materials;
- (e) communication promptly with all relevant parties on crisis issues and communication with twenty-four (24) hours of general issues;
- (f) maintain and update Rapid Transit Project website;
- (g) updates to internal/external stakeholders;
- (h) comprehensive program including print, web-based, and other elements describing and providing information about the Rapid Transit Project;
- (i) community relations program and public consultation program;
- (j) media relations policy and protocol;
- (k) public reporting, to highlight and provide Rapid Transit Project progress updates and information and how community issues have been considered and addressed;
- (l) required planning for potential crisis issues;
- (m) communications among the Region, YRRTC, local municipalities, the Federal Government, the Province, and Federal and Provincial crown corporations and agencies; and
- (n) updates to the communications protocol.

ARTICLE 14 YRRTC PERSONNEL AND EMPLOYEES

14.1 YRRTC Employees

The recruitment, selection and employment of the personnel and employees necessary for YRRTC to comply with its responsibilities and obligations hereunder shall be the responsibility of YRRTC. Unless otherwise agreed by the Parties, all personnel employed by YRRTC shall be employees of YRRTC and not of the Region. Compensation and benefits of YRRTC personnel, human resources arrangements for such personnel, and their performance appraisals shall be the responsibility of YRRTC.

ARTICLE 15 NOT A PARTNERSHIP OR A JOINT VENTURE

15.1 Not a Partnership or Joint Venture

Nothing contained in this Agreement, nor any acts of the Region or YRRTC are or were intended by the Region or YRRTC to constitute, nor shall they be deemed to constitute the Region and YRRTC as partners, joint venturers or principal and agent. YRRTC shall not be able to bind the Region to any legal obligation to any third party, except as expressly provided in this Agreement.

15.2 **Notification to Third Parties**

YRRTC shall, in all contractual relationships entered into by YRRTC with third parties relating to all or any part of the Rapid Transit Project ensure that the agreement contains a written acknowledgement whereby the third party acknowledges that it will not assert that a joint venture, partnership or principal and agent relationship exists between the Region and YRRTC.

**ARTICLE 16
GENERAL**

16.1 **Notices**

Any notice required or permitted to be served by either Party under this Agreement shall be in writing and signed by the Party delivering the notice. Any notice may be served on the other Party by delivering a copy of such notice by mail, by delivery, or by fax transmission addressed to the Party intended to receive same at the facsimile addresses set out below. Facsimile transmission of notices shall be deemed to have been received on the first (1st) Business Day following transmission. Service of notices by mail shall be deemed to have been received on the fifth (5th) Business Day following the date of mailing. The following are the addresses for service:

if to the Region to:

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

if to YRRTC:

York Region Rapid Transit Corporation
3601 Highway 7, Twelfth Floor
Markham, ON L3R 0M3
Attention: Mary-Frances Turner, President
Fax No. 905-886-6969

16.2 **Time of the Essence**

Time shall in all respects be of the essence hereof. The time for doing or completing any matter provided for in this Agreement may be extended or abridged by an agreement in writing signed by the Parties.

16.3 **Further Acts**

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

16.4 **Governing Law**

This Agreement shall be conclusively deemed to have been made in and shall be governed by the laws of the Province of Ontario and the Federal laws of Canada applicable therein (without giving effect to any principles of conflict of laws) and the Parties hereby unconditionally and irrevocably attorn to the jurisdiction of the courts of the Province of Ontario.

16.5 **Freedom of Information**

Both Parties acknowledge and agree that the commercial and financial information in this Agreement is subject to the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario), as amended.

16.6 **Amendment**

This Agreement may be amended only by written agreement of the Parties.

16.7 **Waiver**

Save as otherwise expressly set out herein, no waiver of any provision of this Agreement shall be binding unless it is in writing. No indulgence or forbearance by a Party shall constitute a waiver of such Party's right to insist on performance in full and in a timely manner of all covenants in this Agreement. Waiver of any provision shall not be deemed to be a waiver of the same provision thereafter or any other provision of this Agreement at any time.

16.8 **Severability**

If any provision of this Agreement or portion thereof or the application thereof to any Person or circumstances shall to any extent be invalid or unenforceable, (a) the remainder of this Agreement or the application of such provision or portion thereof to any other Person or circumstance shall not be affected thereby, and (b) the Parties will negotiate in good faith to amend this Agreement to implement the intentions set forth herein. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

