

CITY OF BURNABY

BYLAW NO. 11079

A BYLAW to authorize an agreement relating to the extension of the Skytrain system in Burnaby

The Council of the City of Burnaby ENACTS as follows:

1. This Bylaw may be cited as **BURNABY SKYTRAIN EXTENSION AGREEMENT BYLAW 2000.**

2. The City of Burnaby is hereby authorized and empowered to enter into an agreement with British Columbia Transit and Greater Vancouver Transportation Authority relating to the extension of the Skytrain system in Burnaby, such agreement to be in the form attached hereto as Schedule "A".

Read a first time this	13 th	day of	MARCH	2000
Read a second time this	13 th	day of	MARCH	2000
Read a third time this	13 th	day of	MARCH	2000
Reconsidered and adopted this	27 th	day of	MARCH	2000



MAYOR



CLERK

SCHEDULE "A"

BURNABY ACCESS AGREEMENT

This Agreement is made as of March • , 2000,

BETWEEN:

CITY OF BURNABY
4949 Canada Way
Burnaby, BC V5G 1M2

(the "City");

AND:

BRITISH COLUMBIA TRANSIT
c/o Rapid Transit Project 2000 Ltd.
2000 - 1050 West Pender Street
Vancouver, BC V6E 3S7

("RTPO");

AND:

GREATER VANCOUVER TRANSPORTATION AUTHORITY
4330 Kingsway, Burnaby, BC
V5H 4H9

("TransLink").

RECITALS:

A. The Province of British Columbia (the "Province") is, pursuant to Section 33 of the *Greater Vancouver Transportation Authority Act*, responsible for planning, designing and constructing the proposed extension of the skytrain system (the "Project"), including the portion of the Project that will be within the boundaries of the City of Burnaby (the "Line") and is related to the completion of the L-line from New Westminster to Vancouver via Lougheed Mall (the "Millennium Line");

B. British Columbia Transit is carrying out the Project on behalf of the Province, and the Rapid Transit Project 2000 Ltd. is acting as agent for British Columbia Transit and as agent for the Province for purposes of the Project;

C. TransLink intends to operate the Project, once constructed, as part of TransLink's regional transit system;

D. The Province and TransLink have agreed to a Cost Sharing Agreement (the "CSA"), dated as of March 1, 2000, relating to the Project which provides, inter alia, for:

- (i) certain works (the "MIF Items", which are listed in Schedule "A" to this Agreement and also incorporated in the plans included in Schedule "A") to be constructed by RTPO and TransLink in relation to the Project and paid from a joint fund (the "MIF Fund") created by the CSA; and
- (ii) TransLink to assist the Province in obtaining from the City of Burnaby the required access for the Project to streets (or portions thereof within the City) (the "City Streets") and those City-owned properties (or portions thereof) (the "Fee Simple Properties") necessary for the Project (the City Street and Fee Simple Properties are collectively referred to as the "City Lands", descriptions and plans showing the affected areas of the Fee Simple Properties are included in Schedule "B" to this Agreement), all at no cost to the Province;

E. By a letter dated November 9, 1999 RTPO requested access to the City Lands. The City replied to RTPO's request by a letter dated December 9, 1999, noting certain design and funding issues to be settled. Those issues have now been resolved and so, pursuant to that exchange of correspondence and as contemplated by the CSA, the City hereby agrees to the construction of the Project within the boundaries of the City based on the Project's intended route and construction schedule, and the City also agrees to provide access to the City Lands, all as provided for in this Agreement;

NOW THEREFORE in consideration of the mutual promises contained herein and other good and valuable consideration, the parties agree, each with the others, as follows:

1. City Consent and Access Commitment

1.1 The City hereby consents and agrees to the construction of the Project within the City's boundaries following the agreed route, as shown on the plans attached as Schedule "C".

1.2 The City hereby grants free and unobstructed rights of access to and use of the City Streets and the affected areas of the Fee Simple Properties for construction by RTPO of the Project, and for operation of the Line by TransLink.

1.3 The portions of the Fee Simple Properties that RTPO expects to be affected or required for the Project (the "Affected Areas") are shown on Schedule "B". The City though agrees that if other areas within 5 metres of the Affected Areas are necessarily required in addition to, or in substitution for, such Affected Areas then those will be added to the City Lands upon request by RTPO. Without limiting the generality of the agreement to provide access in section 1.2 above, the City will, when requested by RTPO or TransLink, grant and provide as follows:

- (a) to RTPO, at no cost, the right to construct and operate the Project (and ancillary works and enterprises) above, on and under the City Streets wherever required in relation to the Project;
- (b) to RTPO, at no cost and in the form attached as Schedule "D", registerable statutory rights of way to construct and operate the Project (and ancillary works and enterprises) above, on and under the applicable portion of the Fee Simple Properties wherever required in relation to the Project. RTPO will be responsible at its cost for arranging for the legal and other requirements to effect the registration of the statutory rights of way; and
- (c) to RTPO, at no cost, temporary rights of way for access and use of other areas of City Streets wherever reasonably required in relation to the construction of the Project, including those areas necessary for staging and work locations.

The above rights will be freely assignable by RTPO to the Province or to other agents of the Province, and may be freely used for construction purposes by the Project's contractors and subcontractors. RTPO may also lease or assign such rights to TransLink in relation to TransLink's operations, as contemplated by the CSA.

2. Cooperation and Work Priority

2.1 The City, RTPO and TransLink agree to work cooperatively with each other with the mutual objective of completing the Line within the Project's budget and construction schedule (the "Project Schedule", which is attached as Schedule "E").

2.2 The City agrees to treat the Project as a high work priority, and will ensure that it processes all permits, requests and applications made in relation to the Project (such as utility relocations) and to respond to requests for review of plans and similar matters in a timely fashion to prevent delay of any construction activity caused by matters under the City's control.

3. Permits

3.1 The City acknowledges that RTPO has and is exercising its jurisdictional authority concerning its use or development of land. Without limiting the above mentioned jurisdictional authority, RTPO and the City will proceed as follows:

- (a) no building or other permits will be obtained by RTPO or its contractors or agents for the guideway, stations, substations, bus loops, other improvements or other portions of the Project;
- (b) no development permits, preliminary plan approvals or other types of development, planning, construction, or similar permits or approvals from the City will be obtained,

and no permit fees, no development cost charges and no other regional or municipal fees or charges will be paid for the Project;

- (c) the City acknowledges the advice of RTPO that, due to its jurisdictional authority, the Project will not be pursuing rezoning. RTPO acknowledges the advice of the City that it is following a rezoning process for stations for its own purposes. The City will process its rezoning as expeditiously as possible. RTPO will cooperate with the City in its process by providing information and making presentations; and
- (d) RTPO has obtained CEAA approval for the Project, and will obtain other required environmental approvals from federal and provincial agencies as required for the work.

4. RTPO's Commitments

4.1 RTPO will:

- (a) provide the City with all drawings related to utility and storm drainage extension and relocation for review and confirmation that the proposed utility works comply with appropriate engineering standards;
- (b) relocate and reinstate on a like-for-like basis all streets, utilities and storm drains impacted by the construction of the Project. The like-for-like reinstatement would include:
 - pavement restoration
 - widening of Lougheed Highway with necessary overlay
 - sanitary and storm sewer reinstatement or replacement as required
 - undergrounding of overhead wires (if agreed to)
 - culverts and ditches that must be reinstated or replaced, as required, due to road work or drainage connections to the Project.
 - dealing with potential underground storage tank at Sperling (if impacted by the Project) including necessary remediation related to the Project
 - requirements imposed by federal and provincial agencies related to the work.

Designs for reinstatement of City utilities are to be submitted to the City with related information such as geotechnical and pavement structure evaluation.

If the City pays for the agreed incremental cost of an upgrade done at its request then the upgrade work will be done, with agreement by RTPO and the City on the details, provided it fits within the Project Schedule and Project approvals.

- (c) contribute \$1 million for upgrading or replacement of utilities considered outside of the scope of the Project (under arrangements to be settled between RTPO and the City, or if the arrangements cannot be settled by agreement, then as determined by a single arbitrator under the rules for domestic commercial arbitration of the B.C. International Commercial Arbitration Centre). This work will be mutually defined by the City and RTPO prior to construction contracts being let. RTPO will be responsible to replace water mains, streetlights and other utilities impacted by the Project. Replacement of water mains (the "Water Main") along Lougheed Highway is not within the Project scope and so, at the City's option, it may be paid for from this upgrade fund. The undergrounding of overhead wires that are not directly affected by construction of the Project is also agreed to be an upgrade;
- (d) construct the access bridge over Lougheed Highway at Brentwood Station in accordance with the layout and dimensions shown on the drawing attached as Schedule "F"; and
- (e)
 - (i) complete up to \$380,000 of work for the agreed urban frontage enhancements as incorporated in the plans included in Schedule "A" to the Agreement;
 - (ii) provide up to \$600,000 for acquisition of land for road widening on the north side of Lougheed Highway, west of Willingdon (under arrangements to be settled between RTPO and the City, or if the arrangements cannot be settled by agreement, then as determined by a single arbitrator under the rules for domestic commercial arbitration of the B.C. International Commercial Arbitration Centre); and
 - (iii) complete \$350,000 of work for the agreed undergrounding wires west of Sperling Avenue (between Lougheed Highway and Winston/BNR) (under arrangements to be settled between RTPO and the City, or if the arrangements cannot be settled by agreement, then as determined by a single arbitrator under the rules for domestic commercial arbitration of the B.C. International Commercial Arbitration Centre);
- (f) provide the necessary servicing associated with the stations, substations and guideway including items such as road works, storm drainage, sanitary sewer, water

main extensions, fire hydrants and lighting related to their direct impact or functional needs;

- (g) acknowledge and support the use of \$4.804 million from the MIF Fund for the construction of the Lake City Station, and its associated improvements. RTPO agrees that the Lake City Station will be constructed to a standard similar to other Millennium Line stations and be operational by no later than January 1, 2004 (subject to events generally considered to be force majeure for contractual commitments, and for an estimated total cost of \$16.5 million, of which \$4.804 million is to be allocated from the MIF Fund and \$11.7 million is to be paid by TransLink as per section 6.1(a) of this Agreement). The proposed improvements to the Lake City Way/Lougheed Highway intersection will be constructed as a Millennium Line element, and will be consistent with the drawings prepared by Hunter Laird (which are attached as Schedule "G" to this Agreement);
- (h) ensure that the design and finish of stations will be generally consistent (subject to budget considerations) with the station drawings provided by RTPO for public hearings related to the City's rezoning process; and
- (i) provide the base works relative to the station plaza and frontage areas and Lougheed Highway improvements, all as shown in the plans attached as Schedule "A" to this Agreement.

5. City's Commitments

5.1 The City will:

- (a) notify RTPO by March 31, 2000 whether the City wishes to elect to upgrade the Water Main or to pay for other upgrades, and the City will provide the required funds to do so (in excess of what it chooses to apply from the utility upgrade fund) when it requests such work;
- (b) become an active member in the partnering arrangement between RTPO and its contractors under which all participants agree to work together to achieve construction of the Project in a cooperative manner within the timetable and budget established for the Project;
- (c) support RTPO in its objective in negotiations with Standard Life (the owner of the property on which Gilmore Station will be constructed) to achieve dedications of a statutory right of way through those lands for guideway and station at no cost to RTPO; and

- (d) accept and support the construction and operation of the Line by RTPO and TransLink following the terms of its commitments under this Agreement.

6. TransLink's Commitments

6.1 TransLink will:

- (a) pay the sum of \$11.7 million to RTPO for the construction of the Lake City Station, and its associated improvements. This amount will be paid as invoiced by RTPO as construction proceeds. TransLink will also acknowledge and support the use of \$4.804 million from the MIF Fund for such work. TransLink agrees that the Lake City Station will be constructed to a standard similar to other Millennium Line stations and be operational by no later than January 1, 2004 (subject to events generally considered to be force majeure for contractual commitments, and for an estimated total cost of \$16.5 million). The proposed improvements to the Lake City Way/Lougheed Highway intersection will be constructed as a Millennium Line element and will be consistent with the drawings prepared by Hunter Laird (which are attached as Schedule "G" to this Agreement);

7. MIF Items

7.1 RTPO and TransLink will provide the MIF Items (in accordance with the list of descriptions and as shown on the plans attached as Schedule "A" to this Agreement) with funding to be drawn from the \$16,041,000 allocated for Burnaby works (which is inclusive of pooled contingency amounts and exclusive of the \$11.7 million TransLink payment for Lake City station referred to in 6.1(a) above) as part of their CSA.

7.2 The parties agree to the principles of the CSA for dealing with MIF Items which are shown in Schedule "H".

8. Indemnity

RTPO agrees to indemnify and hold the City harmless from and against all claims or damages arising out of or in any way connected with its performance of or failure to perform obligations under this Agreement and from all claims that it may cause arising out of the construction or operation of the Line, except to the extent that such matters or claims are caused or contributed to by the City or TransLink (or those for whom they are at law responsible). The City reserves any rights that it may have at law to seek indemnity from TransLink or any other person for any claims that they may cause arising out of this Agreement or the construction or operation of the Line.

9. Effect

9.1 Execution of this Agreement by all parties shall provide RTPO with immediate access to the City Lands to continue construction of the Project. RTPO, TransLink and the City agree to thereafter work out arrangements and details between them in a timely fashion.

THIS AGREEMENT is signed by the parties as witnessed below.

CITY OF BURNABY

Per: _____
Authorized Signatory

RAPID TRANSIT PROJECT 2000 LTD.
as agent for **BRITISH COLUMBIA TRANSIT**

Per: _____
Authorized Signatory

GREATER VANCOUVER TRANSPORTATION AUTHORITY

Per: _____
Authorized Signatory

SCHEDULES A - H

The schedules to the Burnaby Access Agreement are contained in a separate Schedule Book, which forms part of this Agreement, containing the following:

- Schedule A Description of SkyTrain Related and Lougheed Highway Works Distributed by RTPO and MIF Cost Responsibilities
- Schedule B City of Burnaby Lands Required for Guideway
- Schedule C SkyTrain Route
- Schedule D Statutory Right-of-way Agreement
- Schedule E Project Schedule
- Schedule F Brentwood Station Land Bridge
- Schedule G Lake CityWay / Lougheed Highway Intersection
- Schedule H MIF Principles

The signatories to the Access Agreement have signed the title page of the Schedule Book for identification.