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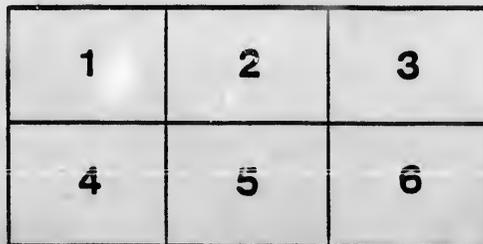
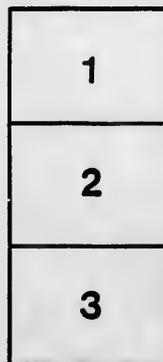
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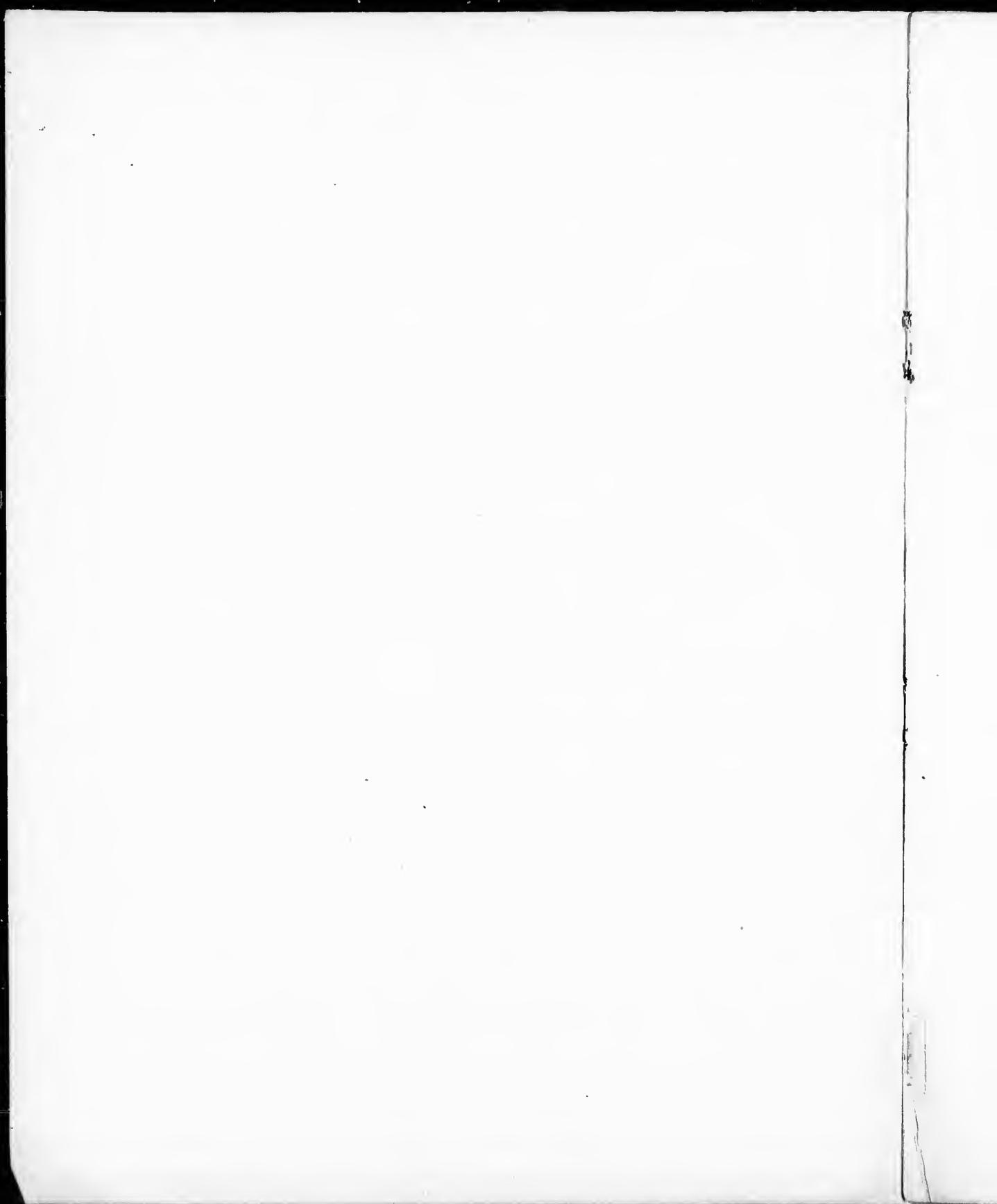
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THE CITIZENS OF TORONTO  
ARE RESPECTFULLY REQUESTED TO READ  
THE EXTRACTS FROM AND COPIES OF  
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CORRESPONDENCE

BETWEEN THE TORONTO RAILWAY COMPANY AND THE CITY  
IN REFERENCE TO  
THE PAVING OF THE TRACK ALLOWANCES OF THE RAILWAY,  
— AND THE —  
EXPLANATORY COMMENTS ON THE MERITS OF THE CASE.

*Dated, 4th August, 1893.*



# The Toronto Railway Company.

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## THE FACTS

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The accompanying correspondence between the officials at the City Hall and the Toronto Railway Company discloses the following essential facts:

Under the original agreement between the City and the Company, the City agreed to "construct" and also to "re-construct" and maintain in repair "the track allowances in the streets used by the Company, a width of sixteen feet six inches for double track, and eight feet three inches for single, and when the Company changed its tracks for the purpose of operating by electric power, the City was to lay down a permanent pavement in conjunction therewith on the track allowances, and the track-laying and pavement-laying were to proceed together in order to save time and trouble, and to put the public to the least possible inconvenience.

This obligation of the City to lay down a permanent pavement in conjunction with the change of tracks was subject to the following qualification, namely: that such tracks as are now laid on a permanently formed roadway should be changed by the Company without any expense to the City.

On these well-understood conditions, thirty miles of road, of a total of seventy, were changed from horse to trolley in 1892. The City spent about half a million in laying the permanent pavements required, and the Company carried out its part of the bargain for a first-class railway system.

Early in 1893 the Company, as the agreement empowered it to do, called on the City to resume the work. It was desirous of introducing the trolley upon the forty miles remaining and of extending its lines to High Park, and the order of proceeding with the work of changing tracks and laying pavements was settled between the Company and the City Engineer.

The City Engineer sent on his report to the Board of Works recommending the work of laying permanent pavements in conjunction with the laying of new tracks by the Company, and the Company placed orders for the rails and other material, and never supposed

For a moment that the City was going to depart from a solemn agreement under which half a million of the ratepayers' money had already been spent.

But the City Engineer withdrew his report and the Council adopted the withdrawal. The City Engineer had declared that in his opinion there were tracks on permanently formed roadways on other streets than those specified by Mr. Jennings, and that the City should not be required to lay down a permanent pavement on such streets in conjunction with the change of track, and he reported that he was advised that debentures could not be issued by the City for going on until it had been determined whether the City or the Company was liable to do the work.

This broke up all the plans for the work. Mr. Keating and Mr. Jennings were brought face to face at a formal meeting and Mr. Jennings informed Mr. Keating that at the time the Street Railway tenders were called for, he, as City Engineer, had intimated to the Civic Committee in charge of the matter as well as to all who made enquiry that the only permanent pavements were Sherbourne from King to Bloor, Bloor from Yonge to Sherbourne, and King at the Subway; but Mr. Keating thought this was "not in the bond," and put the responsibility of carrying out the agreement on the Council.

When things had been brought to a standstill in this way, Ald. Lamb, chairman of the Board of Works, requested the Company to make another offer of some sort with a view of putting an end to the difficulty, which had been aggravated by the discovery on the part of aldermen that the work done by the City in 1892 had of itself absorbed nearly all the money that could be raised by pledging the thirty years' mileage of \$800 per mile of single track per annum payable by the Company during the life of its franchise. In response to this invitation, the Company submitted a new agreement the substance of which was that, subject to the control of the City Engineer, it would, so to speak, become permanent contractors for the City in laying the pavements in consideration of being released from the mileage, and that in addition it would assume the cost of the work done in 1892, the City retaining the percentage of gross receipts from passenger business free from any charge which would continue to be a valuable source of municipal revenue for the thirty years.

That offer was not accepted, and the Company then fell back upon the original agreement, and as the City refused to lay down the permanent pavement the Company began the suit for breach of contract against the City, the damages asked being based upon a fair estimate of the injury it has sustained.

Such is the plain narrative given in detail in the annexed correspondence. If the City was right in spending half a million in 1892 upon the conditions of the original agreement it was wrong in backing out of completing the work in 1893. Mr. Jennings' statement as to the

permanent pavements may be right or may be wrong; but he was Engineer when the Company entered into its contract with the City, and the representations he then made as the City's agent to the Company and the other tenderers cannot be set aside by Mr. Keating, the members of Council, or anyone else. As for the financial difficulty, that is a matter which concerns the City alone, but, whilst standing squarely upon the original covenant the Company is ready to consider any just proposition that promises to terminate the deadlock.

It is easy to excite prejudice against institutions of the character of a street railway. A storm of abuse was raised against the Company without any cause whatever, and the Company simply asks the intelligent ratepayer to read the correspondence and judge for himself. The Company has lived up to the spirit and letter of its contract, and it remains for the Council, which has violated both, to determine what shall be done to repair the mischief, to save the City from the consequences and to start work again so that the hundreds of men seeking employment may be provided for before winter. The Company holds fast to the contract, but, as has been said, is perfectly willing to make any reasonable concession which the Council, the Ratepayers' Association or any individual ratepayer may bring forward as a means of closing this chapter in Toronto's history, and providing for the prosecution with all possible expedition of the work which has been wrongfully delayed by the City.

WM. MCKENZIE

*President T. R. Coy.*

TORONTO, 2nd August, 1893.

# The Toronto Railway Company.

## STATEMENT OF CASE.

The agreement between the City and the Company was signed on 1st September, 1891, and the following are copies of the conditions of the sale of the franchise which relate to the pavements :

" 8. The City will construct, reconstruct and maintain in repair the Street Railway portion of the roadways, viz., for double track, 16 ft. 6 in., and for single track, 8 ft. 3 in., on all streets traversed by the railway system, but not the tracks and substructures required for the said railways.

" 10. The purchaser shall maintain the ties, stringers, rails, turn-outs, curves, etc., in a state of thorough efficiency and to the satisfaction of the City Engineer, and shall remove, renew or replace the same, as circumstances may require, and as the City Engineer may direct. When a street upon which tracks are now laid is to be paved in a permanent manner, on concrete or other like foundation, then the purchaser shall remove present tracks and substructures and replace the same, according to the best modern practice, by improved rails, points and substructures of such description as may be determined upon by the City Engineer as most suitable for the purpose, and for the comfortable and safe use of the highway by those using vehicles thereon, and all changes in the present rails, tracks and road-bed, construction of new lines, or additions to present ones, shall be done under the supervision of the City Engineer and to his satisfaction."

11. When the purchaser desires or is required to change any existing tracks and substructures for the purpose of operating by electric or other motive power, approved by the City Engineer and confirmed by the City Council, the City will lay down a permanent pavement in conjunction therewith upon the track allowance (as herein defined) to be occupied by such new tracks and substructures. This shall first apply only to existing main lines and thereafter to branch lines or extensions of main lines and branches as and when the City Engineer may from time to time recommend and the City Council may direct and require ; but such tracks as are now laid on a permanently formed roadway, must, when so required as aforesaid, be changed by the purchaser as hereinbefore provided, without any change of roadbed being made, or any expense occasioned to the City thereby.

The City put its practical construction on the meaning of these conditions in the year 1892, by laying down the permanent pavement on concrete foundation on about thirty miles of track allowances in conjunction with the change of the system from horse power to electric power, and pledged all the mileage payments of \$800 a mile for ten years, for a debenture debt for these payments of ..... \$ 442,606 00

The mileage payments for 1892 were ..... \$ 55,134 00  
and the annual payments for interest and sinking fund  
for the redemption of these debentures were ..... \$ 54,573 81  
Leaving only the small balance of ..... \$ 560 19

to provide for the pavements on the balance of the track allowances out of the mileage payments to be made by the Company, and it now appears that the said sum of \$442,606 has not been sufficient to pay for these pavements. The experience of 1892 therefore proved that if the agreement was carried out in accordance with the practical interpretation put upon it by the City, and the permanent pavements were laid down on the track allowances for the residue of the system, the percentage from the passenger traffic and the mileage payments would all be needed for the payment of the annual interest and sinking fund for the pavements on the track allowances. The electric cars had right of way and were flying along at such a rate that it was rather dangerous to drive on the track allowances, and when the power behind the throne at the City Hall saw that the mileage payments were already exhausted and that the whole revenue from the Company should be laid out on track allowances for the benefit of the Railway Company, the City began to halt and waver in its fulfilment of its obligations.

To be forewarned is to be forearmed." The Company began the preparation for the enforcement of their legal right to compel the City to honor its obligations by the following letter to the Engineer who represented the City when the Company bought the franchise.

TORONTO, 7th OCTOBER, 1892.

W. T. JENNINGS, Esq., C. E., TORONTO.

DEAR SIR:

*In re* permanently formed roadways of the City of Toronto.

The conditions for the sale of the Toronto Railway franchise contained a provision that the Street Railway tracks which were at that time laid on a permanently formed roadway should be changed by the purchasers without any change of road-bed being made, or any expense occasioned to the City thereby.

I am instructed that the purchasers enquired what the permanently formed roadways of the City were, and that they were told that Bloor St. from Sherbourne to Yonge; Sherbourne from Bloor to King and a portion of King at the sub-way were the only permanently formed roadways in the City, and I wish you to consider this question for the Company and to advise me what are permanently formed roadways, and whether you are aware of representations being made to purchasers on behalf of the City in regard to them at the time of the tenders and much oblige,

Yours faithfully,

(Sgd.) WM. LAIDLAW.

The following answer was received:

TORONTO, OCTOBER 10th, 1892.

WM. LAIDLAW, Esq., Q. C., TORONTO.

DEAR SIR:

Referring to your communication of yesterday on behalf of the purchasers of the Toronto Railway, I beg to reply that when the franchise was up for tender, I, as City Engineer, intimated to the Civic Committee in charge of the matter, as well as to all who made inquiry, that the only portions of railway line which I considered as being laid on a permanent pavement were as follows:

King Street from Dufferin to top easterly incline to subway.  
 Bloor Street, from Yonge to Sherbourne.  
 Sherbourne Street, from King to Bloor.

So far as the contract is concerned, I consider the above mentioned sections the only portions containing permanent pavements, and for definition would I refer you to sections 10 and 11 of the specification which states as follows: "when a street upon which tracks are now laid is to be paved in a permanent manner *on concrete or other like foundation* then the purchasers shall remove present tracks and substructures and replace the same according to best modern practice, etc., etc."

Section 11, "When the purchaser desires or is required to change any existing tracks, etc. *the City will lay down a permanent pavement* in conjunction therewith upon the track allowance."

The words "on concrete or other like foundation" as mentioned in Section 10, in my opinion govern the subject in question, **and that was certainly my intention.** I am quite aware there are other sections of the line paved with stone setts, etc., but the work cannot be called permanent, as the substructures of the railway are of the most temporary character and the stone setts simply rest upon the sand or gravel; neither has any provision been made for drainage or other proper and necessary work as contained in modern permanent pavements.

Yours truly,

WM. T. JENNINGS.

The Company respectfully submits that the honor of every citizen of Toronto is involved in the public action of the City Council and every citizen who is in favor of sacrificing the honor of the City in carrying on litigation in defiance of the definition of the City Engineer, ought to support the leaders in the Council, and pay no attention to the fact that the Company trusted the representation of Mr. Jennings and paid the City in cash \$1,453,788 and incurred a liability for millions more in the belief that they were dealing with an honorable City.

The City leaders at the City Hall are not wanting in the skill and the will to create public sentiment against the Company, without regard to the claims of a just and honorable administration of public business, and they professed that they would provide the needed labor for the people and go on with the work of laying pavements if the Company would consent to a trial of the question whether the City or the Company would pay for it and the Engineer made the following report:

REPORT OF THE CITY ENGINEER—RECOMMENDED BY REPORT No. 1 OF THE  
 EXECUTIVE COMMITTEE, AND ADOPTED BY CITY COUNCIL  
 30th JANUARY, 1893.

It is the intention of the Toronto Railway Company to lay new rails for an electric service on each of the streets mentioned below during the present year, and that the City may be in a position to proceed with the paving of the track allowances, which will be made necessary by the Company's laying these new tracks, with the least practicable delay, and the electric service established on the streets named. I beg, under authority of clause 11 of the Award, Conditions, Tender and By-law embodied in the Toronto Railway Company's agreement and Contract with

the City, to recommend that the said track allowance on the said streets be paved at an approximate cost and in manner as set out below and that the work be at once fully started and as in my opinion the tracks on the said streets are under the meaning of clause 11 of the said agreement and contract, now laid on a permanently formed roadway. It is recommended before the work is undertaken by the City an agreement shall be taken from the Toronto Railway Company somewhat similar to that under which the track allowance on spacial extension from King to Queen Streets was paved, and a copy of which is herewith submitted, which the Company will consent to the work being done by the City now and that the Court shall afterwards be appealed to by the City and the Company to decide which party, under the meaning of the said clause 11, shall pay the entire cost.

I further recommend that the City Solicitor be authorized by the City Council to prepare and execute such an agreement as above indicated between the Toronto Railway Company and the City.

STREET	FROM	TO	CLASS OF WORK	APPROXIMATE COST
Front	Simcoe	Sherbourne	Granite on concrete	845,650
Church	Front	King	" " " "	3,850
Church	King	Queen	Asphalt on concrete with tothing	7,850
Yonge	Front	King	Granite on concrete	6,650
York	King	Queen	Asphalt on concrete with tothing	7,910
Dovercourt	Bloor	College	Vitrified brick, or cedar with granite tothing, on concrete	12,950
Bloor	Yonge	Bathurst	Asphalt on concrete with tothing	41,000
Church	Bloor	Queen	" " " "	11,460
Bathurst	Queen	C. P. Ry.	" " " "	69,990
Dovercourt	Bloor	Union	Vitrified brick or cedar with granite tothing, on concrete	14,418
Dufferin	Bloor	Union	" " " "	14,400
Bloor	Bathurst	Dufferin	" " " "	29,500
York	Front	King	Granite on concrete	7,430
Gerrard	Parliament	River	Asphalt on concrete with tothing	14,100
Queen	Yonge	River	" " " " " "	41,000
Winchester	Parliament	Sumach	" " " " " "	10,100
Bathurst	King	Queen	" " " " " "	7,910
Parliament	Winchester	Queen	" " " " " "	25,500
Union	Dufferin	Dovercourt	Vitrified Brick or Cedar with granite tothing, on concrete	7,620
Broadview	Queen	Danforth	" " " " " "	30,510
Dundas	Queen	Arthur	" " " " " "	8,610
				840,968

The lifetime of the pavements above recommended I estimate at 10 years, except the vitrified brick, or cedar on concrete with granite tothing, the life time of which I estimate at seven years.

In the event of the Court deciding that the City must pay the costs of the paving of the said track allowances, I recommend that the whole cost be borne by the City generally.

Under authority contained in Clause 11 of the Award, Conditions, Tender and By-law embodied in the Contract and Agreement between the Toronto Railway Company and the City, I recommend the construction of pavements on the track allowances on the streets hereafter enumerated in manner and at approximate cost as below set out; and that the City may be in a position to commence laying these pavements at the same time as the Company lay their rails for the electric service, I recommend that the work be at once advertised. The probable lifetime of these pavements I estimate to be 10 years; and the whole cost of them is to be borne by the City generally.

STREET.	FROM	TO	CLASS OF WORK.	PROBABLE COST.
College	Bathurst	Jameson	Vitrified brick or cedar with granite tooting, on concrete	\$ 39,340
Jameson	College	Dundas	" "	1,584
Dundas	Arthur	Dundas St. Bridges	" "	26,200
Elm	Sherbourne	Glen Road	" "	1,780
Glen Road	Elm	Hill	" "	1,100
Hill	Glen Road	South Drive	" "	1,500
				71,504

The above recommendations can only be carried out in the event of the City obtaining legislation whereby the percentages and other revenue derived from the Street Railway can be utilized for such pavements, or debentures issued, based upon such percentages and other revenue as asked for by the Executive Committee of the City Council of last year.

This was the first actual notice to the Company of the intention of the City to raise the question that the tracks on any of the streets other than the streets defined by Mr. Jennings were laid on permanently formed roadways, and the Company submit that the fair and reasonable inference from the subsequent action of the Council in withdrawing this report is that the Council thought that the Company would reject the condition, but the Company have always been willing to rest their case on the representation of the City Engineer, on the intention of the parties, and on the construction of the agreement, and they accepted the condition imposed by the City Engineer by the following letter which was forwarded to the City, and was actually received and was also published in the City press.

COPY

E. H. KEATING, ESQ., CITY ENGINEER.

DEAR SIR:

*In re Track Allowance Pavements.*

I made arrangements some time ago to sail from New York to-morrow, and it will be necessary for me to leave the City by the 4.45 p.m. train to-day to connect with the steamer.

The hesitation of the City to accept the account of permanent pavements given to the Company by their Engineer (Mr. W. T. Jennings), and the contemplated laying down of perma-

ment pavements by the City this year may cause litigation between the City and the Company, and in order to provide against any delay in the change of the tracks for the electric system and in the laying down of the permanent pavements by the City on the track allowances this year, I consent on behalf of the Company that the trial of the question of the liability of the Company under our contract and conditions to pay the cost of the permanent pavements which the City may lay down, or any of them, shall be deferred for a future action to be brought by the City against the Company, on the understanding that the City and the Company respectively shall, for the purpose of the trial, be in the same position and have the same rights under the contract and conditions as if the question of liability to bear the cost of the permanent pavements to be laid down had been tried and determined before the work was commenced and consent given.

If we should get into litigation now to determine the meaning of "permanent pavements" and to try our liability, if any, under the conditions of our contract to lay down the permanent pavements which the City may select for the streets or any of them, the electric service may be indefinitely delayed.

It is of course understood between us that this letter and consent shall not in any way prejudice, interfere with or affect the rights and defenses of the Company in any action which may be brought by the City against the Company to recover the cost of these pavements or any of them, but the question of the liability of the Company, if any, shall be tried and determined under the contract and conditions in the same manner and with the same effect as if the question were raised and tried before the work was commenced and this consent given. The fact of the work being done and paid for by City in the first instance shall not affect or prejudice either party.

In making this consent I understand that the City does not claim that wooden block-pavements are permanently formed roadways under the meaning of the conditions.

I suppose this letter will be sufficient evidence for you, but if you want an agreement under the Seals of the City and the Company, it may be settled in accordance with this letter by our respective solicitors and executed.

Yours truly,

WM. MCKENZIE, President.

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After this acceptance of the condition imposed by the Engineer, namely, that "The court should be appealed to to decide which party under the meaning of said Clause 11 should pay the cost." (See page 7, line 8.) The Company also gave notice of their desire under the same Clause 11 to change their tracks in order to operate by electric power, and laid the foundation of their right to damages under said clause, if the City did not lay down the permanent pavement in conjunction with the desired change of tracks. These damages are now running on at an estimated approximate rate of from \$750 to \$1,000 a day, until the City does lay down the permanent pavement

COPY.

TORONTO, MARCH 4th, 1893.

E. H. KEATING, ESQ., CITY ENGINEER, CITY.

DEAR SIR:

I beg to enclose you the order, as mainly expressed in previous correspondence of the Toronto Railway Company, for the changing of the existing tracks and substructures for the purpose of operating by electric power during the coming season, and the laying down of tracks and substructures upon branch lines and extensions, to main lines and branches as set forth in the enclosed list, marked "A," as desired and required by the Toronto Railway Company under section 11 of its contract with the City.

The Toronto Railway Company deems it advisable in mutual interest to lay down a well-considered system for the said change, and that the time for commencement and completion should be settled by you at the time you advertise for tenders. The tracks to be laid upon the streets in the first proposed list, the Toronto Railway Company desires to lay between the 1st day of April and the 1st day of May next. In the first proposed list, the Railway Company desires to lay down the tracks on the connecting lines from King Street to Front Street at separate times, for example, York Street and Frederick Street, from Queen and King respectively to Front Street to be first laid and then George Street, Church and Yonge, between King and Front, immediately the tracks are laid upon and an outlet provided by way of York and Frederick Streets. The proposed second list the Toronto Railway Company desires to complete during the month of May. The proposed third list to be completed by July 15th. The proposed fourth list to be completed by September 1st, and the proposed fifth list as soon after holding of the Industrial Exhibition in Toronto as possible.

In answer to enquiries as regards the supplies of the Toronto Railway Company, I might mention that the Toronto Railway Company is prepared fully to perform its part of the contract.

The Toronto Railway Company wishes to state that it desires and requires that only one of the tracks upon streets upon which there are now laid double tracks, be torn up at a time, allowing it the use of the remaining track and the kerb nearer thereto as will permit of the use of temporary tracks thereon. It would also desire and require, of course, the use of the new track before tearing up the remaining track.

Yours truly,

J. C. GRACE.

The following list was enclosed:

STREETS UPON WHICH PROPOSED TRACKS TO BE LAID,	PROPOSED FIRST LIST. FROM
Dundas	Sorauren to High Park Avenue
Howard Park and High Park Avenue	Dundas to High Park
College	Spadina Avenue to Dovercourt
Front	Simcoe to Sherbourne
Sherbourne	King to Front
Frederick	King to Front

STREETS UPON WHICH PROPOSED  
TRACKS TO BE LAID.

	FROM
George	King to Front
Church	Queen to Front
Yonge	King to Front
York	Queen to Front

## PROPOSED SECOND LIST.

College	Spadina to Yonge
Dundas	Queen to Bridges
Carlton	Yonge to Parliament
Gerrard	Parliament to River (and extension)

## PROPOSED THIRD LIST.

Dovercourt	Bloor to College
Bathurst	King to C.P.R.
College	Dufferin to Dovercourt
Bloor	Dufferin to Spadina

## PROPOSED FOURTH LIST.

Church	Queen to Bloor
Parliament	Winchester to Queen
Winchester	Parliament to River
Queen East	Yonge to Don
Broadview	Queen to Danforth
Loop Line Dovercourt	Union and Dufferin to Bloor

## PROPOSED FIFTH LIST.

Bloor	Spadina to Yonge
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## DATES.

First proposed list between April 1 and May 1, 1893.

Second proposed list during the month of May, 1893.

Third proposed list between June 1 and July 15, 1893.

Fourth proposed list between July 15 and September 1, 1893.

Fifth proposed list as soon after the holding of the Industrial Exhibition as possible.

This is the proposed list marked "A," referred to in the letter of the Toronto Railway Company to the City Engineer, dated March 4, 1893.

J. C. GRACE,

## THE CITY COUNCIL STOPPED THE WORK.

The history of the following record of municipal management has not been published, but if the litigation goes on it will be brought out.

On March 17th, 1893, the City Council adopted the following report of the City Engineer :

After consultation with the City Solicitor, and on his advice, I beg to withdraw those portions of my report contained in Report No. 1 of the Committee on Works, 1893, as printed on pages 5, 6, and 7, of said report, and beginning with the words "It is the intention of the Toronto Railway Company to lay new rails, etc.," and ending with the words "as asked for by the Executive Committee of the City Council of last year." And on pages 7, and 8, beginning with the words "Under authority contained in clause 11 of the Award, Conditions, Tender, etc." and ending with the words, "as asked for by the Executive Committee of the City Council of last year."

My reason for making this withdrawal is **that debentures cannot be issued for the payment of the cost of these works until it has been determined who is liable for the expenditure**, whether the City or the Toronto Railway Company, and this question will, in all probability, be settled in the suit pending between the City and Toronto Railway Company in the matter of the paving of the track allowance on Spadina Avenue, between King and Queen Streets, which suit I suggest the City Solicitor be requested to bring to a hearing at the earliest date possible.

The original report for the work contains the clause: "The above recommendations can only be carried out in the event of the City obtaining legislation whereby the percentages and other revenue derived from the Street Railway can be utilized on such pavements or debentures issued based on such percentages and other revenue as asked for by the Executive Committee of the City Council of last year."

The leaders of the City Council had ordered the application to be made for legislation and it was in progress and not one citizen or one alderman ever doubted that the power would be granted.

There has been no trial—much less a decision—on the question of liability, but the City Council award contracts and declare that they are able to raise the money to lay a permanent pavement on all the residue of the track allowances.

There is no doubt, they are, and always were, able to raise the money, if they pledged the entire revenue from the Company and expended it on the track allowances and put the annual charges for the old Street Railway debentures in annual tax bills.

This cancellation of the work for 1893 was one of the mysterious operations at the City Hall, and the reason adopted by the Council for the withdrawal of the report **is not a good reason and cannot be the real reason**, because the City was proceeding with its application to the Legislature and it was not necessary to wait for a decision.

**If it were necessary to wait then it is equally necessary to wait now.**

A short reference to this report was published in the daily press and the Company immediately put upon record a fair and straight statement of the whole case and it was printed and delivered to the Mayor and to each alderman before the report of cancellation came before the Council. The following is the letter:

### COPY OF A LETTER

**Which was delivered to the Mayor and to each member of the City Council before the Council adopted Report No 6 of the Committee on Works, which revoked the Engineer's Report for the construction for the present year 1893 contained in Report No. 1 of the Committee on Works, and providing for track allowance construction to the estimated amount of \$512,412.**

## *The Toronto Railway Company*

*Toronto, Ont., 15th March, 1893.*

TO THE MAYOR AND TO THE CORPORATION  
OF THE CITY OF TORONTO.

*In Re the Question of Permanent Pavements under the contract between the Corporation of the City of Toronto and the Toronto Railway.*

DEAR SIRS:

The important question of the obligation of the City to lay down a permanent pavement in conjunction with the laying of the substructures and tracks of the Railway was considered with care by the Company at the time of the tender for the contract: and in order to make the proper calculations of approximate cost of construction an application was made to W. T. Jennings, Esq., City Engineer, for information of the streets and parts of streets upon which pavements were laid which would be permanently formed roadways under the provisions of Section 11 of the Conditions.

The answer of the Engineer was that the only streets upon which there were permanently formed roadways were King Street, from Dufferin to top of easterly incline of the Subway: Bloor Street, from Yonge to Sherbourne: Sherbourne Street, from King to Bloor.

The Company acted in good faith upon this information, and the tender was made and the contract accepted upon the statement of the City Engineer.

After the appointment of E. H. Keating, Esq., the present City Engineer, a claim was made by him that pavements on other streets were permanently formed roadways under Section 11 of the Conditions, and at the request of the Company a meeting took place between Messrs. Jen-

nings and Keating and the President of the Railway Company to consider the position of the Railway Company on this important question, and Mr. Jennings then informed Mr. Keating in the presence of the President that at the time of the taking of the tenders by the City, *he, as City Engineer*, intimated to the *Civic Committee* in charge of the matter *as well as to all who made enquiry* that the only portions of the railway lines which he considered as being laid on permanent pavement were the portions hereinbefore mentioned.

The Company believed that the present City Engineer and the Corporation would act upon the definition of permanent pavements of its own Engineer at the time the Company made the tender and entered into the contract; and they now claim that the City should honor the representation of its own Engineer and carry into effect without litigation the definition of permanent pavement upon which the contract was based.

The City carried on the work of last year upon that basis, but the City Engineer in making his report for the current year, qualified it and made it subject to the condition that the City should proceed with the work and lay the permanent pavements and that the question of liability should be determined between the City and the Company by an action, and that if the Court should hold that the Company is liable, the Company should pay the cost of the work. This report was passed by the Board of Works, the Executive and the Council, and communicated to the Company, and after consideration thereof, the Company accepted the report by letter to the City Engineer and which ought to have been communicated to all the members of the Council and which has since been published in the City press, and by that letter the Company offered to execute under the seal of the Corporation any agreement to be prepared by solicitors in the terms of the letter and that they would pay the cost of the work if the Court should hold that they were liable for the payment thereof.

A misapprehension appears to have arisen at the meeting of the Board of Works at which I was present on account of the want of production of this letter and at which I was asked if the Company would execute a bond, and I wish to clear away any misapprehension and state that the Company will execute the agreement contained and referred to in the letter, and if the City prefer to put it in the shape of a bond they may do so, but the Company will not vary from the agreement contained in the report of the Engineer and the acceptance of it, and will not give a bond for any other purpose.

The claim of the Company is that under the negotiations between the Engineer and the Company and under the report of the Engineer adopted by the Council and the acceptance of it, a valid binding agreement has been made between the Company and the City for the expenditure and work of the current year, and after the basis had been arranged in this satisfactory way, the President of the Company, who had special charge of that branch of the work, left for England, and a large order was immediately given for the rails and necessary material to enable the Company to carry out its part of the contract during the coming summer.

I beg respectfully to advise you that the plans and contracts for the work to be carried out during the coming season cannot in the opinion of the Company be cancelled by the proposed withdrawal by the Engineer of his report without giving good cause to the Company for large claims for loss and damage. The adoption of the report by the Council and the acceptance by the Company make the contract for the work for the summer, and the Engineer has no power to change the bargain which has been made; and the Company feel aggrieved that any attempt

should be made to interfere with this bargain, and to cause a complete block of the changes from the horse car to the electric service during the coming summer.

The Engineer appears, by the report which I have seen in the City press, to place the grounds of his withdrawal upon the want of power of the City to raise the money for the improvements, and I respectfully submit that he is mistaken. The City would have the same power to make the application to the Legislature to issue the debentures as it made last year and upon the faith of which the debentures were sold and the improvements made, and if a misapprehension has arisen about this power to raise the money, I wish that the Council would defer any action and would refer the question of arrangements for power to raise the money to the Solicitors for the City and the Railway Company, and I have no doubt that they would advise sufficient legal means for the proper power to raise the money by the issue and sale of debentures to carry on the work, and if the Company shall be held in litigation to be liable for the payment of the debentures they will pay.

I do not wish to give any notice in advance of litigation, which I fear must inevitably follow any attempt to change the agreement between the City and the Company for the work of the current year, but I wish the City to realize that if the report which has been passed by the Council should be revoked by the Council in the face of this protest—and I understand that it will require a two-third vote of the Council to do so—that our Company will challenge by litigation any power to revoke the agreement, and will commence proceedings against the City and if the position of the Company should be maintained in the litigation under the original or this agreement it would be entitled to and would claim damages against the city which it will be difficult to estimate, but which might approximate a half million of dollars.

If the City intends to try to cancel the agreement for the work of the coming season I can see no way out of the most expensive and protracted litigation and the public will suffer the inconvenience; but if the City want to carry out the agreement, and it is only a question of means of raising the money for making the changes; and providing for fair trial of the question of liability, I am satisfied that an acceptable arrangement can be made which will provide for public interest in accordance with the terms of the report and the acceptance of it, and provide for the immediate prosecution of the work on the understanding that the Company will pay for it if it be legally liable to do so.

I will attend the meeting of the City Council to-night, with the Superintendent and the Solicitor, and we will be pleased to give the members of the City Council all information on the questions of fact involved in this matter, and I will bring with me copies of the correspondence and papers referred to.

I beg, in conclusion, to state that if it be the desire of the City Engineer in withdrawing his report already adopted for the purpose of altering the same as regards pavements to be made in outlying and districts other than residential, it might be possible, in the event of the Council postponing the question of the present recommendation, that an agreement might be made which would be acceptable to the City, its Engineer and the Company.

Yours truly,

J. C. GRACE,

*Secretary and Treasurer of T. R. Co.*

The Secretary of the Company and the Solicitor attended the meeting of Council but their respectful protest contained in the said written letter was unheeded and the report was passed in silence and broke up all the arrangements for the work of 1893.

These vacillating methods at the City Hall in 1893, deliberately wrecking plans for expenditure to the extent of a million and a quarter dollars, were so vexatious that a cable was sent to the President and when he came home a new phase of affairs developed at the City Hall. The annual estimates were troubling the leaders in the Council and it appeared that the actual state of the account of the Street Railway Company debt, old and new, was as follows:—

The receipts from the Railway for 1892 were	
Mileage payments.....	\$ 55,134 00
Percentages from passenger traffic.....	65,239 38
	<hr/>
Making a total of.....	\$120,373 38

And the actual annual charges on debentures which were issued by the City for the old and new Street Railway debt was as follows:—

Annual charges on Local Improvement bonds (\$192,868.13) issued prior to the agreement between the City and the old Street Railway Company.....	\$ 24,244 00
And on bonds issued subsequent to the said agreement.....	36,741 31
And the annual charges for interest and sinking fund on the new Street Railway pavements debt.....	54,573 81
Total annual charges on old and new Street Railway debt.....	<hr/> \$ 115,559 12

Leaving the small balance of.....	\$ 4,814 26
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as the only available money to carry out the obligation of the City to lay the permanent pavements on about 40 miles of the Street Railway track allowances. The only way to make provision for carrying out the agreement would be to put the annual charges for the old Street Railway debt, namely, \$60,985.31, into the annual tax account for the year and pledge the percentages from the passenger fares for the purpose of future construction. It was plain and indisputable that if the City carried out its obligation to lay down the permanent pavement it would not only use up the entire receipts from mileage and passenger traffic but the annual charges for the old Street Railway debt would have to be put into the tax account year by year, and the Chairman of the Committee on Works and a large number of Aldermen met the officers of the Railway Company and asked them to consider a plan by which the class of pavement on some of the track allowances might be lowered and the percentages from passenger fares saved to the City for the payment of the annual charges on the old Street Railway debt or other municipal purposes. This led to the negotiations which finally resulted in the draft agreement of which the following is a copy:—

## *Draft Memo. of Agreement*

RESPECTING PAVEMENTS ON TRACK ALLOWANCES.

**This Indenture** made the \_\_\_\_\_ day of \_\_\_\_\_  
 in the year of our Lord, one thousand eight hundred and ninety-three.

BETWEEN  
 THE CORPORATION OF THE CITY OF TORONTO,  
 hereinafter called "The City,"  
 AND  
 THE TORONTO RAILWAY COMPANY,  
 hereinafter called "The Company,"  
 of the First Part.  
 of the Second Part.

**Whereas** by an agreement (herein called the original agreement) dated the first day of September, 1891, made between The City, of the first part, and George W. Kiely, William McKenzie, Henry A. Everett and Chauncey C. Woodworth, herein called the purchasers, of the second part, It is WITNESSED that The City did sell, grant and assign to the said purchasers certain street railway franchises in The City of Toronto, under and subject to certain Conditions of Sale adopted by The City Council on the Fifth Day of May, 1891, and which are incorporated into and form part of the said original agreement and are herein called the Conditions of Sale

**And Whereas** The Company has been substituted for the said purchasers under the said original agreement.

**And Whereas** The Company has changed the existing tracks on several of the streets of the City for the purpose of operating the Railway by electric power, and the City has laid down new pavements in conjunction therewith upon the track allowances of the Railway as defined herein and in the eighth Condition of Sale.

**And Whereas** the Company desires to change the tracks on the other streets traversed by the Railway, and claims that the City should lay down new pavements in conjunction therewith upon the track allowances thereon;

**And Whereas** differences have arisen between The City and The Company in reference to the obligation of The City to lay down the said new pavements, and it has been deemed expedient to settle the matters in difference and to make immediate provision for the change of the system of motive power as hereinafter mentioned.

### **Now This Indenture Witnesseth.**

1. That The Company doth by these presents acquit, release and discharge The City from its obligations contained in the \_\_\_\_\_th Condition of Sale respecting co. struction, re-construction

maintenance and repair of the said track allowances, and also from its obligation contained in the eleventh Condition of Sale respecting the laying down of new pavements in conjunction with the change of tracks by the Company.

2. Except in so far as the quarterly payments of mileage provided for by the ninth Condition of Sale are required for payment of the debentures issued (or to be issued) by The City under By-Laws No. 3078 and No. 3090 as therein provided, or intended so to be, The City doth by these presents acquit, release and discharge The Company from its obligation to pay quarterly to the City Treasurer mileage at the rate of eight hundred dollars per mile per annum of single track of railway as provided for by the said ninth Condition of Sale.

3. The several covenants hereinafter contained, respecting the construction, re-construction, maintenance and repair of the track allowances on the several streets traversed by the Railway and the observance, performance and fulfilment by The Company of this agreement shall not affect the jurisdiction, power and control of The City Council over the streets of the City, inclusive of the said track allowances, nor the rights of any other person or corporation in respect thereof.

4. The City doth covenant, promise and agree with The Company to maintain in repair the pavements on the said track allowances which have been laid down by The City in conjunction with the change of the tracks of the Railway until the expiration of the several and respective terms of the five year guarantees taken by the City from contractors for the maintenance and repair of the pavements on the said track allowances.

**And The Company doth covenant, promise and agree with  
The City :**

5. That at and from the expiration of the several terms of the said respective guarantees, where such guarantee exists, and in every other case, from the date of this agreement The Company will repair and maintain in repair the said pavements on the said track allowances until they are replaced by new pavements as hereinafter mentioned.

6. That for the purpose of operating by electric power, it will immediately proceed with the work of changing the existing tracks on the streets traversed by the Railway which have not already been changed, and will lay down on the said track allowances,—namely, the portions of streets between the rails and between the tracks and for a distance of one foot six inches outside the outer rail of each track, including all tracks, curves, switches and turnouts connected therewith,—the following classes of pavements on the following streets in conjunction with the change of tracks and substructures, using for that purpose all paving materials on the said track allowances which the City Engineer may consider available or suitable.

STREET.	FROM.	TO.	CLASSES OF PAVEMENT.
Carlton	Parliament	Yonge	Asphalt or, with the consent of the City Engineer, Vitrified Brick or Stone Setts on Concrete foundation, as may be ordered by the City Engineer.
College	Yonge	Bathurst	" " " "
College	Bathurst	Dufferin	Wood on Concrete foundation, as may be ordered by the City Engineer.
Gerrard	Parliament	River	" " " "
Parliament	Queen	Winchester	" " " "
Queen	Yonge	Parliament	" " " "
Dundas	Queen	Lansdowne	" " " "
Bathurst	King	Queen	" " " "
York	Front	Queen	Asphalt or, with the consent of the City Engineer, Vitrified Brick or Stone Setts on Concrete foundation, as may be ordered by the City Engineer.
Front	Yonge	Jarvis	" " " "
Front	Simcoe	Yonge	The present Stone pavement to be relaid on Concrete foundation.
Church	Front	Bloor	" " " "
Bloor	Yonge	Dufferin	" " " "
Sherbourne	Bloor	King	Present Stone pavement to be relaid on same foundation.
Yonge	Front	King	The present stone pavement to be relaid on Concrete foundation.
King	Strachan Ave.	Dufferin	" " " "
Bathurst	Queen	C.P.R.	The present pavement to be taken up and restored, as directed by the City Engineer.
Broadview	Queen	Danforth	" " " "
George	Front	King	" " " "
Bloor	Yonge	Sherbourne	" " " "
Frederick	Front	King	" " " "
Front	Jarvis	Frederick	" " " "
Dovercourt	College	Bloor	" " " "
Dufferin	Queen	Exhibition	" " " "
McCaul	Queen	College	" " " "
Winchester	Parliament	Sumach	Pavement under contract to be finished.

All to be laid with such tothing as the City Engineer may direct.

The track allowances on any other streets which are at present traversed by the Railway, and which have not been specially mentioned, are to be laid with such class of pavement and according to such specifications as The City Engineer may determine.

7. That The Company will also lay down the pavements on all street intersections and street crossings which may be crossed by the tracks of the Railway with such material and under

such specifications as The City Engineer may from time to time direct. This work is not to extend beyond the limit of the track allowances. And the words "track allowances" herein include the above.

8. That it will prosecute the said work with diligence and complete it before the first day of September, 1894, and will repair and maintain in repair the said pavements until they are replaced by new pavements as hereinafter mentioned.

9. That it will, after laying down pavements on the track allowances as aforesaid, renew, construct and re-construct the same from time to time as in the opinion of the City Engineer may be necessary, and will repair and maintain them in repair during the term of its franchise.

10. The pavements which have been or may be laid down by The City or by The Company on a concrete foundation on the track allowances shall be allowed to remain thereon during the life of such pavements respectively.

11. Whenever any change of pavement is ordered to be made on the portion of any street adjoining the track allowances, The Company will in each such case—if so ordered by The City Engineer—lay down at its own cost upon the track allowances a pavement of a similar character, but this shall not extend to track allowances upon which there is at the time an existing pavement on a concrete foundation, the life of which has not expired.

12. In all cases in which the sides of the streets adjoining the track allowances are paved with asphalt, The Company may, with the concurrence of The City Engineer, lay down on the track allowances pavements of vitrified brick, scoria, granite setts or such other material as may be approved of by him.

13. The City Engineer shall establish the grades of the track allowance pavements to be laid on concrete foundations at the time of laying down the same, and if such grades are altered during the life of the pavement, the same shall be done without expense to The Company; but whenever the grade of any street or portion of street upon which the track allowance pavements have not been laid on concrete foundations is changed by The City Engineer, The Company will alter the grade of the pavements on said track allowances to conform thereto to the satisfaction of The City Engineer and without expense to The City.

14. In case of the extension of the tracks of the Railway over other paved streets, The Company shall take up the pavement on the track allowances and shall renew or restore it in good order and condition; or The Company may, with the approval of The City Engineer, lay down a new pavement on the track allowances, and the several covenants herein contained shall extend and apply to the said extensions and pavements.

15. The wages of such Inspectors as the said Engineer may consider necessary during the progress of the work of construction and re-construction shall be paid by The Company to The City on demand at such amount as The City Engineer may from time to time certify to be correct, not exceeding the current rates paid by The City for similar services on like works.

16. In all works of construction and re-construction by The Company of pavements on track allowances, The City Engineer will, as far as he deems reasonable and practicable, restrict the public traffic on the street during the progress of the work.

17. The Company will join the pavements on the track allowances with the pavements on the adjoining portions of the street, and will repair any damage to pavements on such adjoining portions which may arise while the works are in progress.

18. The Company, its agents and servants, is also to be governed at all times by the directions of The City Engineer regarding the placing, storing and disposing of all materials taken from the streets or to be used thereon, and must remove all refuse and surplus material as rapidly as possible from the vicinity of the works and deposit the same where directed by The City Engineer.

19. All plans, specifications and details of works to be done by the Company, on any street or public place in the City of Toronto as well as the works themselves, shall be subject from time to time and at all times and in all places, to the direction, supervision and approval of the City Engineer, and to any such alterations as he may deem necessary to make before the work is begun, but not afterward; all such plans, specifications and details shall be submitted by The Company to the said City Engineer before any work is commenced in any locality, and no work shall be begun without written authority from him, and after receiving the approval of the said Engineer in writing, all works must be carried out in strict conformity with the directions given from time to time by the said Engineer in respect thereof, and must be completed to his satisfaction within such period as he may prescribe. Clause 35 of the Conditions of Sale shall apply to all such works, and to any damages caused or claimed by delay in executing the same.

20. The City Engineer shall have the right to determine whether the life of any pavement or portion of a pavement on any track allowance has expired, and the necessity for its renewal, re-construction or repair, but in determining whether the life of any pavement has expired or whether any pavement requires to be renewed or reconstructed wholly or in part, he shall give to the Company ten days' notice of the time when he proposes to inspect the said pavement officially for the purpose of determining such question, and upon such official inspection the Company shall be entitled to be represented.

21. When The City Engineer has determined that the life of any pavement or part of a pavement has expired, or that it requires wholly or in part renewal or reconstruction, he shall give notice to The Company of his decision, and in case The Company is dissatisfied with such decision, and shall within ten days after notice thereof appeal therefrom to The City Council, the matter in dispute shall be determined by the Council and the Engineer's decision shall not be binding unless and until it has been confirmed by a two-thirds majority of the Members of The City Council present and voting thereon.

22. In the event of The Company declining or neglecting to proceed within the time limited by The City Engineer in that behalf, or within the time fixed by the Council in case of an appeal to them as aforesaid, with any work, matter or thing herein provided for, The City Engineer shall have the right, power and authority, without prejudice to any other right or remedy of the City, to proceed with such work by day labor, and from time to time to purchase materials and employ all such assistance as he may deem necessary to carry on the work, and The Company shall be liable for all debts, expenditures and obligations incurred by The City Engineer in and for the execution of any such work; and The Company agree to pay on demand all bills, vouchers, or certificates, rendered or presented to them on

account thereof, provided the same are certified by The City Engineer, and the provisions of Clause 35 of the Conditions of Sale shall apply to all work done by The City Engineer hereunder as if he were acting, as to said work, for The Company and not for The City; but no order shall be given by The City Engineer for any work of renewal or re-construction to be performed between any 1st day of December and the 1st day of April following. This, however, does not apply to ordinary and necessary repairs.

23. In the event of The City exercising its right to take over the Railway and the real and personal property of The Company at the expiration of the franchise, or of any renewal or extension thereof, The Company shall be entitled to the actual value of the existing pavements on the track allowances at the time of the award, and such actual value shall be taken into account by the arbitrators, and included in the said award.

24. The Company will pay the necessary quarterly sums on account of the mileage as hereinbefore mentioned for the payment of the debentures issued by The City under the said By-Laws Nos. 3078 and 3090, and an account shall be taken between The City and The Company of all moneys realised from the sale of the said debentures and laid out and expended during the years 1892 and 1893, or which may yet be due and payable by The City for the pavements on track allowances, and also of the liability of The City under existing contracts for the construction of pavements on the track allowances (these existing contracts must be listed, agreed upon and specially defined), and The Company shall be entitled to credit for all moneys paid by The Company on account of track mileages since the 1st day of September, 1891, and for all moneys payable as aforesaid on account of the said mileage and for all moneys appropriated under the said By-Laws but not actually laid out and expended by The City; The interest on the said sums of money shall be adjusted between the said parties in an equitable manner by the Treasurer of The City of Toronto, and in case of dispute by reference to one of the Judges of the County Court of the County of York, whose decision shall be final.

25. The City shall construct, re-construct and maintain in repair the sewer manholes and track gullies on the track allowances.

26. Except as herein otherwise expressly provided this Agreement shall not affect or prejudice any rights or obligations of The Company or The City as to any matter or thing referred to or affected by the original agreement as the same is amended and confirmed by the Ontario Act 55 Victoria, Chapter 99, and by the Act of the last session of the Ontario Legislature, and the Conditions of Sale forming a part of the said original agreement are incorporated herein and shall apply to these presents except in so far as they are hereby expressly qualified, superseded or changed.

27. In case of dispute between the parties hereto, no verbal arrangements shall be acknowledged by or on behalf of either of the said parties.

28. The bonds, debentures or other securities issued, or which may be issued, under and in pursuance of the powers conferred by the Act of Incorporation of The Company and any Amendments thereto and the proceeds thereof may be applied for the expenditures required to be made by the Company pursuant to the terms of this Agreement, except for repairs and damages.

29. The City and The Company will respectively concur in using their best efforts to obtain any legislation which either may consider expedient or necessary to confirm and ratify this Agreement, and they will pay in equal proportions the cost of and incidental to the obtaining of such legislation.

30. All actions and suits between The City and The Company in reference to pavements are hereby settled and discontinued, and each party shall bear and pay its own costs.

In witness whereof The City and The Company have hereunto affixed the corporate seals of the said respective corporations under the hands of the Mayor and the Clerk of The City and of the President and Secretary of The Company.

Signed, sealed and delivered )  
in presence of

This agreement makes the Railway Company the permanent contractors for the pavements under the same obligations as other contractors. Under the present system the contractors guarantee pavements for five years, and the Railway Company would guarantee them for the whole term and were subject to the jurisdiction and control of the City for construction, maintenance and repair.

The Railway Company consented to this agreement for the purpose of a peaceful solution of the differences between the Railway Company and the City, but they always have preferred and now prefer that the original agreement should be carried out in good faith.

After the City revoked all the work for 1893 they awarded some contracts for pavements of portions of the track allowances, but they were violating the spirit of the agreement in letting these contracts. The plan of the agreement was to change the system from horse power to electric power and that the City should lay down the pavements in conjunction with the change of tracks, and the Company insisted that the change of tracks for electric power should govern and regulate the laying of pavements.

Take the following as an illustration: The City expended a large sum of money in laying down a permanent pavement from Dundas Street into High Park and then let the contract for a permanent pavement on Dundas from Queen Street to the bend, leaving about a mile and a half on Dundas Street which could not be bonded and wired for the purpose of operating by electric power, and no practical result could come from laying down pavements on two ends of a street without pavement in the middle for the purpose of an electric service from Queen Street into High Park.

Another illustration might be taken on Front Street, where the Council awarded a contract for a permanent pavement from Frederick Street to Church Street, which can be of no use whatever to the Railway Company.

In consequence of the unfair action of the City the Company decided that they would be obliged to resort to a Court of law to obtain their legal rights, and compel the City to carry out its obligation and lay the pavement—and pay the damages which may be approximately estimated from the following statement:

1st. "Loss of earnings of the company between horse and electric power."

The horse car service on Yonge, King and Belt Lines, from the 1st January, 1892, to the 24th of June, 1892 earned ..... \$165,858.00  
and the electric service during the corresponding period of 1893 earned .... \$237,940.00  
making a difference of earnings under electric system of ..... \$72,092.00

Or over 40%.

2nd. "Increase of operating expenses caused by maintenance of double system."

The Company has built and equipped a power house and plant for electric power for the whole system, and is only using one half the electric power, and is working from six to seven hundred horses.

The last monthly statement shows the cost of electric power about \$7000, and the cost of horse power about \$10,000, and if the City had carried out its obligation the cost of the horse power would be saved, and the additional cost at the power house would consist of coal bill and coal shovellers' wages, which would only amount to a few hundred dollars a month. The Company is keeping an accurate record and will prove a claim for at least \$750 to \$1000 a day, and they would far rather earn and save the money by operating the electric system over the whole City.

The delay and vacillation at the City Hall has been harassing and vexatious to the Company and although it is unusual to give away the brief of the case to the other side, a short reference to one leaf of the overwhelming evidence of the Company against the City may convince some of the members of the Council that they should make a definite and decided change of methods of business at the City Hall.

We refer to the report of the City Treasurer, the City Engineer and the City Solicitor, on the comparative value of the tenders for the franchise dated June 17, 1891, and printed at page 533, and the following twelve pages of the minutes of the City Council of 1891. It is too long to be reprinted in full, but the citizens will remember that there were several tenders for the franchise on condition that the City would lend its credit to carry out the conditions, and these tenders were received in competition with our straight tender. For example, Miller Bros offered to pay four per cent. on \$800,000 for the estimated cost of permanent pavements on the track allowances, and the Committee required the City officials to report on the comparative value of all the tenders. It was, therefore, necessary for them to estimate the cost to the City of laying down the permanent pavement on the track allowances in conjunction with the change of tracks for the electric system, and the officials estimated the annual charges for interest and sinking fund for these permanent pavements to be laid down under the said obligation contained in the 11th Condition at \$1196.80 a mile per annum and reported on our tender by stating the estimated annual receipts from percentages on passenger traffic and from mileage payments, and deducting from this amount the annual charges payable by the City for the permanent pavements, namely, \$1196.80 a mile, and closed their report as follows:

"Annexed is a series of schedules in which we have endeavoured to exhibit as clearly as possible with figures dealing with so many varied conditions, the results in synoptical form of our analysis of the tenders.

"Schedule 'A' shows the amount to be received by the City irrespective of any provision either for sinking fund for liquidating the debt, or acquiring the property at the end of the

term, or interest and sinking fund against the cost of permanent pavements.

"Schedule 'B' shows the result to the City after making provision for the cost of construction of permanent pavements only.

"Schedule 'C' shows the result after making provision for the payment of all debt incurred or to be incurred, in respect of the property, or for acquiring it at the end of thirty years, and for the cost of construction of permanent pavements.

" Respectfully,

" W. T. JENNINGS,  
*City Engineer.*

" R. T. COADY,  
*City Treasurer.*

" C. R. W. BIGGAR,  
*City Solicitor.*"

The City Engineer (Mr. W. T. Jennings), and the City Solicitor (Mr. C. R. W. Biggar), have both acted in a fair, straight and honorable manner.

Mr. Jennings will prove the representation, the intention, and the construction. Mr. Biggar has stated in unmistakable language to the Committee on Works, at a public meeting, that they should go straight on and lay down the permanent pavements.

Mr. Coady also has signed the report, and every member of the Railway Committee of 1891, and every member of the Council has acted on it.

**The plain meaning of the report is that the City officials and the members of the Council estimated the liability of the City under its obligation under the said Condition 11 to lay down a permanent pavement in conjunction with the change of tracks at the annual charge for interest and sinking fund of \$1,186.80 a mile; which is the cost of a permanent pavement on concrete foundation.**

When the said draft agreement was under consideration a reference was made to the City Engineer (Mr. Keating) for an estimate of the cost of the pavement on concrete foundations claimed by the Company and he reported \$1,187.80 per mile just 80 cts. more than Messrs. Jennings, Coady, and Biggar had estimated it in 1891, and Mr. Keating made his report without any knowledge whatever of the estimate of 1891.

We made no complaint in 1891, for the estimate was consistent with the representation made to us by the Engineer, but if it were honest and right to deduct from the value of our straight tender in measuring it against tenders on a different basis, the said sum of \$1,196.80 a mile, it is right that the City should now honour its own work and lay down the pavement to cost \$1,196.80 a mile, namely, a permanent pavement on a concrete foundation over the whole system.

The City Treasurer and the aldermen may consider the reasons they will give for refusal to proceed to lay down this permanent pavement if they refuse to honor and carry out this official report; and their own consideration of it; and action upon it. It will, of course, be manifest that if the Council will not spend the estimated money in laying the pavement, they have not acted fairly in allowing that amount to be charged against us when they were considering our tender in comparison with other competitive tenders on a different basis.

The Mayor of the City admits that he believes it was the intention of the City officials and City Council in 1891 to lay down a pavement on concrete foundation over the whole system, and declares that he wants to dispute this liability because he thinks it is not fully expressed in the agreement. The Company submits that the intention should govern whether it is fully expressed or not, but if the City Council want a law suit to try whether the intention should govern and whether it has been sufficiently expressed, the Company will defend their contract rights.

The Company will always prefer peace and prosecution of business to litigation, but if the City Council insist on the dishonor of obligations recorded in their own minutes, we think that the examination of the members of the City Council who called for that report and acted on it and who now refuse to honor it will be rather humiliating to the citizens of Toronto who elected them for the discharge of public duty in an honorable and consistent manner.

WM. MCKENZIE,

*President Street Railway Co.*



