

Presented To:	City Council
Presented:	Tuesday, Aug 12, 2014
Report Date	Thursday, Jul 24, 2014
Type:	By-Laws
By-Law:	2014-187

## Request for Decision

### Grade Crossing Improvement Agreement

#### Recommendation

THAT the City of Greater Sudbury authorize the Chief Financial Officer/City Treasurer to execute the Agreement for Grade Crossing Improvements for the transfer of funds between Transport Canada and the City of Greater Sudbury; and

THAT the necessary by-law be passed.

#### Finance Implications

The City's portion of the traffic signal railway preemption improvements will be funded from the Traffic System Improvements within the approved 2014 Roads and Transportation Capital Budget.

## Background

The Grade Crossing Improvement Program (GCIP), funded under section 12 of the Railway Safety Act, provides a contribution of up to 50 percent of the cost of a crossing improvement project up to a maximum of \$550,000. The 2014-2015 funding of \$9.29 million will help 641 national projects, of which 261 are located in Ontario.

The purpose of the program is to provide funding to encourage and assist safety improvements at public grade crossings under federal jurisdiction because of the on-going need to reduce accidents, injuries and fatalities. While there is no limit to the number of projects a road authority can apply for, projects for which Transport Canada (TC) have received GCIP applications are prioritized against applications from across Canada.

#### **GCIP 2014-2015 Funding: City of Greater Sudbury**

The following Transport Canada contributions have been approved for the City of Greater Sudbury as part of the 2014-2015 GCIP funding:

#### Signed By

##### **Report Prepared By**

Kelsi Bernier  
Co-ordinator of Finance (Roads)  
*Digitally Signed Jul 24, 14*

##### **Division Review**

Shawn Turner  
Manager of Financial & Support  
Services  
*Digitally Signed Jul 24, 14*

##### **Recommended by the Department**

Lorella Hayes  
Chief Financial Officer/City Treasurer  
*Digitally Signed Aug 6, 14*

##### **Recommended by the C.A.O.**

Doug Nadorozny  
Chief Administrative Officer  
*Digitally Signed Jul 31, 14*

ROAD	PROJECT DESCRIPTION	APPLICATION DATE	PROJECT COST	TC PORTION
<b>Marier Street</b>	Traffic signal railway preemption improvements	5/9/2011	\$21,000	\$10,500
<b>Montée Principale</b>	Traffic signal railway preemption improvements	5/9/2011	\$21,000	\$10,500

## Summary

The Agreement for Grade Crossing Improvements is for a one year term spanning 2014-2015. Funding for the City of Greater Sudbury will be approximately \$21,000 for this period. The agreement requires that the necessary by-law be passed to execute the agreement.

**CANADA – CITY OF GREATER SUDBURY**  
**GRADE CROSSING IMPROVEMENT PROGRAM**  
**AGREEMENT FOR GRADE CROSSING IMPROVEMENTS**  
**2014 - 2015**

This Agreement is made as of the date of last signature

**BETWEEN:**                **HER MAJESTY THE QUEEN IN RIGHT OF CANADA**, as represented by the Minister of Transport (“Canada”)

**AND**                        **CITY OF GREATER SUDBURY**, incorporated/continued pursuant to the *Municipal Act* in the Province of Ontario, as represented by the Chief Financial Officer (the “Recipient”),

individually referred to as a “Party” and collectively referred to as the “Parties”.

**WHEREAS** the Minister of Transport is responsible for the Program entitled the Grade Crossing Improvement Program (hereinafter “GCIP” or “Program”);

**WHEREAS** the Recipient has submitted to Canada a proposal for the funding of the Projects, which qualify for support under Section 12 of the *Railway Safety Act* and the GCIP;

**WHEREAS** the Recipient is responsible to carry out the Projects and Canada wishes to provide financial support for the Projects and their objectives;

**AND WHEREAS** the Recipient is duly authorized to execute this Agreement by \_\_\_\_\_, dated \_\_\_\_\_;

**NOW THEREFORE**, in accordance with the mutual covenants and agreements herein, the Parties hereby agree as follows:

## **1. INTERPRETATION**

### **1.1 DEFINITIONS**

In addition to the terms defined in the recitals and elsewhere in this Agreement, a capitalized term has the meaning given to it in this Section.

“**Agreement**” means this contribution agreement and all schedules, as may be amended from time to time.

“**Agreement End Date**” means September 30, 2015.

“**Asset**” means any real or personal property or immovable or movable asset, purchased, constructed, rehabilitated or improved, in whole or in part, with funds contributed by Canada under the terms and conditions of this Agreement.

“**Asset Disposal Period**” means the period commencing from the Effective Date and ending on the Agreement End Date.

“**Contract**” means an agreement between the Recipient and a Third Party whereby the latter agrees to supply a product or service to any Project in return for financial consideration.

“**Effective Date**” means the date of last signature of this Agreement.

“**Eligible Expenditures**” means those costs directly related to the Projects which are considered eligible for reimbursement by Canada as set out in Schedule A (Eligible and Ineligible Expenditures).

“**Final Claim Date**” means March 31, 2015.

“**Fiscal Year**” means the period beginning April 1 of a year and ending March 31 of the following year.

“**Guide**” means the *Guide to Railway Charges for Crossing Maintenance and Construction* prepared by the Canadian Transportation Agency, applicable to the year that the work was completed.

“**Project**” means an individual project described in Schedule B (The Projects).

“**Project Completion Date**” means March 31, 2015.

“**Projects**” means all of the projects described in Schedule B (The Projects).

“**Third Party**” means any person or legal entity, other than a Party, who participates in the implementation of any Project by means of a Contract.

“**Total Financial Assistance**” means funding from all sources towards Eligible Expenditures of the Projects, including funding from federal, provincial, territorial, and municipal governments as well as funding from all other sources, including In-Kind Contributions.

## **1.2 ENTIRE AGREEMENT**

This Agreement comprises the entire agreement between the Parties. No prior document, negotiation, provision, undertaking or agreement in relation to the subject of the Agreement has legal effect, unless incorporated by reference into this Agreement. No representation or warranty express, implied, or otherwise, is made by Canada to the Recipient except as expressly set out in this Agreement.

## **1.3 DURATION OF AGREEMENT**

This Agreement will be effective as of the Effective Date and will terminate on the Agreement End Date, subject to early termination in accordance with this Agreement.

## **1.4 SCHEDULES**

The following schedules are attached to, and form part of this Agreement:

Schedule A – Eligible and Ineligible Expenditures

Schedule B – The Projects

Schedule C – Certificate of Compliance

Schedule C.1 – Final Claim

Schedule D – Declaration of Completion

# **2. PURPOSE OF AGREEMENT**

The purpose of this Agreement is to establish the terms and conditions whereby Canada will provide funding to the Recipient for the Projects.

# **3. OBLIGATION OF THE PARTIES**

## **3.1 CONTRIBUTION BY CANADA**

- a) Canada agrees to pay a contribution to the Recipient of not more than fifty percent (50%) of the total Eligible Expenditures per Project but only up to a maximum of twenty-one thousand dollars (\$21,000.00).
- b) Contributions by Canada will be payable in accordance with the terms and conditions of this Agreement and the amounts set out per Project in Schedule B (The Projects).
- c) If the federal Crown's total contribution towards any Project exceeds fifty percent (50%) of the Project's total Eligible Expenditures, or if the Total Financial Assistance received or due in respect of the total Project expenditures exceeds one hundred percent (100%) thereof, Canada may recover the excess from the Recipient or reduce its contribution by an amount equal to the excess.
- d) The Parties acknowledge that Canada's role in the Projects is limited to making a financial contribution to the Recipient for the Projects. Canada is neither a decision-maker nor an administrator to the Projects.

## **3.2 COMMITMENTS BY THE RECIPIENT**

- a) The Recipient will be responsible for the complete, diligent and timely implementation of the Projects, within the costs and deadlines specified in this Agreement and in

accordance with the terms and conditions of this Agreement. The Recipient will be responsible for all costs of the Projects including cost overruns, if any. Canada acknowledges that the Recipient may enter into agreements with Third Parties to meet this responsibility.

- b) The Recipient will repay to Canada any and all disallowed costs, surpluses, unexpended contributions, and overpayments made under and according to the terms and conditions of this Agreement.
- c) Canada may request that the Recipient declare to Canada any amounts owing to the federal Crown, under legislation or contribution agreements that constitute an overdue debt. The Recipient recognizes that any such amount owing is a debt due to the federal Crown and may be set-off by Canada in accordance with Section 20.6 (Set-off by Canada).
- d) The Recipient will notify Canada if a Project will not or will likely not be completed by the Project Completion Date at least thirty (30) days before the Project Completion Date.
- e) The Recipient will notify Canada of any change to a Project described in Schedule B (The Projects) within thirty (30) days of its decision to make that change.

### **3.3 APPROPRIATIONS AND FUNDING LEVELS**

Notwithstanding Canada's obligation to make any payment under this Agreement, this obligation does not arise if, at the time when a payment under this Agreement becomes due, the Parliament of Canada has not passed an appropriation that is sufficient and constitutes lawful authority for making the payment. Canada may reduce or terminate any payment under this Agreement in response to the reduction of appropriations or departmental funding levels in respect of transfer payments, the Program under which this Agreement was made or otherwise, as evidenced by any appropriation act or the federal Crown main or supplementary estimates expenditures. Canada will not be liable for any direct, indirect, consequential, exemplary or punitive damages, regardless of the form of action, whether in Contract, tort or otherwise, arising from any such reduction or termination of funding.

### **3.4 FISCAL YEAR BUDGETING**

- a) The amount of the contribution payable by Canada for each Fiscal Year of the Agreement is set out in Schedule B (The Projects).
- b) If the actual amount payable by Canada in respect of any Fiscal Year of the Agreement is less than the estimated amount in Schedule B (The Projects), the Recipient may request that Canada re-allocate the difference between the two amounts to a subsequent Fiscal Year. Subject to Section 3.3 (Appropriations and Funding Levels), Canada agrees to make reasonable efforts to accommodate the Recipient's request. The Recipient acknowledges that requests for re-allocation of Project funding will require appropriation adjustments and/or federal Crown approvals.
- c) In the event that any requested re-allocation of Project funding is not approved, the amount of Canada's contribution payable pursuant to Section 3.1 (Contribution by Canada) may be reduced by the amount of the requested re-allocation. If the contribution payable by Canada pursuant to Section 3.1 (Contribution by Canada) is so reduced, the Parties agree to review the effects of such reduction on the overall implementation of the Project and to adjust the terms and conditions of this Agreement as appropriate.

### **3.5 CHANGES IN PROJECT COSTS AND FUNDING**

If, at any time during the term of this Agreement, one or all of the Parties determines that it will not be possible to complete a Project unless the Recipient expends amounts in excess of the funding available to it, the Party will immediately notify the other Party of that determination and Canada may suspend its funding obligations. The Recipient will, within thirty (30) days of a request from Canada, provide a summary of the measures that it proposes to remedy the shortfall. If Canada is not satisfied that the measures proposed will be adequate to remedy the shortfall, then Canada may exercise one of the remedies listed at Section 15.3 (Remedies on Default).

## **4. RECIPIENT REPRESENTATIONS AND WARRANTIES**

The Recipient represents and warrants to Canada that:

- a) the Recipient has the capacity and authority to enter into this Agreement and to carry out the Projects;

- b) the Recipient has the requisite power to own the Assets;
- c) this Agreement constitutes a legally binding obligation of the Recipient, enforceable against it in accordance with its terms and conditions;
- d) all information submitted to Canada as set out in this Agreement is true, accurate, and was prepared in good faith to the best of its ability, skill, and judgment. The Recipient will inform Canada immediately of any fact or event that could compromise wholly or in part any Project;
- e) any person or legal entity that the Recipient has hired, for payment, to speak to or correspond with any employee or other person representing Canada on the Recipient's behalf, concerning any matter relating to the contribution under this Agreement or any benefit hereunder and who is required to be registered pursuant to the federal *Lobbying Act*, is registered pursuant to that *Act*, and that the Recipient has not and will not make a payment or other compensation to any person or legal entity that is contingent upon or is calculated upon the contribution hereunder or negotiating the whole or any part of the terms and conditions of this Agreement;
- f) the Recipient is responsible for and will continue to be responsible for ensuring the ongoing operation, maintenance, and repair of any asset in relation to the Projects;
- g) there are no actions, suits, investigations or other proceedings pending or, to the knowledge of the Recipient, threatened and there is no order, judgment or decree of any court or governmental agency which could materially and adversely affect the Recipient's ability to carry out the activities contemplated by this Agreement. The Recipient will inform Canada immediately if any such action or proceedings are threatened or brought during the term of this Agreement; and
- h) the Recipient is in good standing under the laws of the jurisdiction in which it is required to be registered.

## **5. [INTENTIONALLY OMITTED]**

## **6. CONTRACT PROCEDURES**

### **6.1 AWARDING OF CONTRACTS**

- a) The Recipient will ensure that all Contracts are awarded and managed in accordance with its policies and procedures. Notwithstanding the foregoing, the Recipient will ensure that Contracts will be awarded in a way that is transparent, competitive, consistent with value-for-money principles, or in a manner otherwise acceptable to Canada, and if applicable, in accordance with the Agreement on Internal Trade and international trade agreements.
- b) If Canada determines that the Recipient has awarded a Contract in a manner that is not in compliance with the foregoing, upon notification to the Recipient, Canada may consider the expenditures associated with the Contract to be ineligible.

### **6.2 CONTRACT PROVISIONS**

The Recipient will ensure that all Contracts are consistent with, and incorporate, the relevant provisions of this Agreement. More specifically but without limiting the generality of the foregoing, the Recipient agrees to include terms and conditions in all Contracts to ensure that:

- a) the Third Party will keep proper and accurate financial accounts and records, including but not limited to its contracts, invoices, statements, receipts, and vouchers, in respect of a Project for at least six (6) years after the Agreement End Date and that the Recipient has the contractual right to audit them;
- b) all applicable labour, environmental, and human rights legislation is respected; and
- c) Canada and its designated representatives, to the extent permitted by law, will at all times be permitted to inspect the terms and conditions of the Contract and any records and accounts respecting a Project and will have free access to the Project sites and to any documentation relevant for the purpose of audit.

## **7. [INTENTIONALLY OMITTED]**

## **8. ABORIGINAL CONSULTATION**

The Parties agree that the legal duty to consult does not arise for any of the Projects.

## **9. CLAIMS AND PAYMENTS**

### **9.1 PAYMENT CONDITIONS**

- a) Canada will not pay interest for failing to make a payment under this Agreement;
- b) Canada will not pay any claims submitted after the Final Claim Date, unless otherwise accepted by Canada;
- c) Canada will not pay any claims until the requirements under Section 8 (Aboriginal Consultation), if applicable, are, in Canada's opinion, satisfied to the extent possible at the date the claim is submitted to Canada.

### **9.2 FINAL CLAIM AND FINAL ADJUSTMENTS**

- a) The Recipient will submit one (1) final claim to Canada for each Project no later than the Final Claim Date covering the Recipient's Eligible Expenditures incurred and in a form acceptable to Canada. The final claim must include the following:
  - i. certification as to the accuracy of the information submitted in support of the claim, in the form set out in Schedule C.1 (Final Claim) and signed by the senior official designated in writing by the Recipient;
  - ii. breakdown of Eligible Expenditures claimed for the Project, which must include the following:
    - a. hours of labour and base hourly rates with overheads shown separately;
    - b. design hourly rates with overheads;
    - c. list of materials, unit cost and surcharges, and related overheads;
    - d. detailed list of the equipment rented pursuant to the Guide; and
    - e. subject to Schedule A (Eligible and Ineligible Expenditures), a detailed list of the GST and HST that will not be refunded or credited to the Recipient.
  - iii. a declaration that the Project has been completed as it was described in this Agreement, in the form set out in Schedule D (Declaration of Completion);
  - iv. upon request by Canada, any of the documents referenced in Schedule D (Declaration of Completion) and any documentation in support of expenditures claimed.
- b) Upon receipt of a final claim for a Project, but before issuing the final payment, the Parties will jointly carry out a final reconciliation of all claims and payments in respect of the Project and make any adjustments required in the circumstances.

### **9.3 RETENTION OF CONTRIBUTION**

Canada may retain up to ten percent (10%) of its contribution under this Agreement. Any amount retained by Canada will be released when the final adjustments have been completed under Section 9.2 (Final Claim and Final Adjustments) and the Recipient fulfills all its obligations under this Agreement.

## **10. [INTENTIONALLY OMITTED]**

## **11. AUDIT AND EVALUATION**

### **11.1 RECIPIENT AUDIT**

Canada may, at its discretion, conduct a Recipient audit during the term of this Agreement and up to two years after the Agreement End Date, in accordance with Section 20.3 (Accounting Principles) and the Canadian Auditing Standards. Any costs associated with the conduct of such audits will be the responsibility of Canada.

### **11.2 [INTENTIONALLY OMITTED]**

### **11.3 EVALUATION**

The Recipient agrees to cooperate with Canada in the conduct of any evaluation of a Project or the Program during or after the term of this Agreement. Any costs associated with the conduct of such evaluations will be the responsibility of Canada.

#### **11.4 CORRECTIVE ACTION**

The Recipient agrees to ensure that prompt and timely corrective action is taken in response of any audit findings and recommendations conducted in accordance with this Agreement.

#### **11.5 RECORD KEEPING**

The Recipient will keep proper and accurate financial accounts and records, including but not limited to its Contracts, invoices, statements, receipts, and vouchers, in respect of the Projects, for at least six (6) years after the Agreement End Date.

#### **11.6 ACCESS**

The Recipient will provide Canada and its designated representatives with reasonable and timely access to the Project sites, facilities, and any documentation for the purposes of audit, inspection, monitoring, evaluation, and ensuring compliance with this Agreement.

### **12. COMMUNICATIONS**

#### **12.1 PUBLIC COMMUNICATIONS**

- a) Any press release, public announcement or official ceremony regarding any Project, when planned by the Recipient, will be arranged in agreement with Canada.
- b) Canada reserves the right to publish and translate in both official languages any public communications produced by the Recipient and related to this Agreement.

#### **12.2 RECOGNITION OF CANADA'S CONTRIBUTION**

The Recipient will acknowledge Canada's contribution in all signage and public communication produced as part of a Project or the Agreement, in a manner acceptable to Canada.

#### **12.3 PUBLIC INFORMATION**

The Recipient acknowledges that the following may be made publicly available by Canada:

- a) its name, the amount awarded by Canada, and the general nature of each Project; and
- b) any evaluation or audit report, and other reviews related to this Agreement.

#### **12.4 [INTENTIONALLY OMITTED]**

### **13. INTELLECTUAL PROPERTY**

- a) All intellectual property that arises in the course of a Project will vest in the Recipient.
- b) The Recipient will obtain the necessary authorizations, as needed, for the implementation of a Project, from Third Parties who may own the intellectual property rights or other rights in respect of the Project. Canada will assume no liability in respect of claims from any Third Party in relation to such rights and to the Agreement.

### **14. DISPUTE RESOLUTION**

- a) The Parties will keep each other informed of any matter that could be contentious by exchanging information and will, in good faith and reasonably, attempt to resolve potential disputes.
- b) Where the Parties cannot agree on a resolution, the Parties may explore any alternative dispute resolution mechanisms available to them to resolve the issue.
- c) Any payments related to the issue in dispute will be suspended, together with the obligations related to such issue, pending resolution.
- d) The Parties agree that nothing in this Section will affect, alter, or modify the rights of Canada to terminate this Agreement.



## **15. DEFAULT**

### **15.1 EVENTS OF DEFAULT**

Any of the following constitute Events of Default under this Agreement:

- a) the Recipient has not complied with any of the terms and conditions of this Agreement;
- b) the Recipient has not completed a Project in accordance with the terms and conditions of this Agreement;
- c) the Recipient has submitted false or misleading information to Canada or made a false or misleading representation in respect of a Project, except for an error in good faith, demonstration of which is incumbent on the Recipient, to Canada's satisfaction;
- d) the Recipient has not complied with, if applicable, Section 8 (Aboriginal Consultation);
- e) the Recipient has neglected or failed to pay Canada any amount due in accordance with this Agreement.

### **15.2 DEFAULT**

Canada will not declare that a default has occurred unless Canada has given notice to the Recipient of the event which in Canada's opinion constitutes an Event of Default and the Recipient has failed, within thirty (30) days of receipt of the notice, either to remedy the Event of Default or to demonstrate, to the satisfaction of Canada, that it has taken such steps as are necessary to remedy the Event of Default, and has notified Canada of the rectification.

### **15.3 REMEDIES ON DEFAULT**

In the event of default under this Agreement, Canada may exercise one or more of the following remedies, without limiting any remedy available to it at law:

- a) suspend any obligation by Canada to contribute or continue to contribute funding to a Project, including any obligation to pay an amount owing prior to the date of such suspension;
- b) terminate any obligation of Canada to contribute or continue to contribute funding to a Project, including any obligation to pay any amount owing prior to the date of such termination;
- c) require the Recipient to reimburse Canada all or part of the contribution paid by Canada to the Recipient.

## **16. LIMITATION OF LIABILITY**

Subject to the federal *Crown Liability and Proceedings Act*, Canada, its officers, servants, employees or agents will not be held liable for any injury, including death to any person, or for any loss or damage to property of the Recipient or any obligation of the Recipient or anyone else, incurred or suffered by the Recipient, its officers, servants, employees, or agents arising directly or indirectly from one or more of the following:

- a) any Project;
- b) the performance of this Agreement or the breach of any of the terms and conditions of this Agreement by the Recipient or Third Party and their respective officers, servants, employees, sub-contractors, or agents;
- c) the design, construction, operation, maintenance, and repair of any part of the Project;
- d) any omission or other wilful or negligent act of the Recipient or Third Party and their respective officers, servants, employees, sub-contractors or agents;
- e) the entering into by the Recipient or Third Party and their respective officers, servants, employees, sub-contractors or agents, of a loan, capital lease or other long term obligation in relation to the Project;
- f) any decision of a court that prevents Canada from performing any obligation under this Agreement.

## **17. INDEMNIFICATION**

The Recipient will at all times indemnify and save harmless Canada, its officers, servants, employees or agents, from and against all actions, whether in contract, tort, or otherwise, claims and demands, losses, costs, damages, suits or other proceedings by whomsoever

brought or prosecuted in any manner based upon, or occasioned by any injury to persons, damage to or loss or destruction of property, economic loss or infringement of rights caused by, in connection with, or arising directly or indirectly from one or more of the following:

- a) any Project;
- b) the performance of this Agreement or the breach of any of the terms and conditions of this Agreement by the Recipient or Third Party and their respective officers, servants, employees, sub-contractors or agents;
- c) the design, construction, operation, maintenance, and repair of any part of the Project;
- d) any omission or other wilful or negligent act of the Recipient or Third Party and their respective officers, servants, employees, sub-contractors or agents;
- e) the entering into by the Recipient or Third Party and their respective officers, servants, employees, sub-contractors or agents, of a loan, capital lease or other long term obligation in relation to the Project;
- f) any decision of a court that prevents Canada from performing any obligation under this Agreement;

except to the extent to which such actions, claims, demands, losses, costs, damages, suits, or other proceedings relate to the negligence or breach of the Agreement by an officer, servant, employee, or agent of Canada in the performance of his or her duties.

## **18. ASSETS**

### **18.1 DISPOSAL OF ASSETS**

- a) Assets acquired through the course of a Project will be the responsibility and remain the property of the Recipient.
- b) Notwithstanding any other provision of this Agreement, the Recipient will preserve, maintain, and use any Assets for the purposes of a Project, and will not dispose of any Asset during the Asset Disposal Period, unless Canada consents to their disposition or unless the replacement of worn or outdated Assets is necessary.

## **19. [INTENTIONALLY OMITTED]**

## **20. GENERAL**

### **20.1 PUBLIC BENEFIT**

The Parties acknowledge that their contributions to the Projects are meant to accrue to the public benefit.

### **20.2 SURVIVAL**

The Parties' rights and obligations, which by their nature extend beyond the termination of this Agreement, will survive any termination of this Agreement.

### **20.3 ACCOUNTING PRINCIPLES**

All accounting terms will have the meanings assigned to them, all calculations will be made and all financial data to be submitted will be prepared, in accordance with the Generally Accepted Accounting Principles (GAAP) in effect in Canada as defined in the Canadian Institute of Chartered Accountants (CICA) Handbook - Accounting or, where applicable, the Public Sector Accounting Handbook.

### **20.4 DEBTS DUE TO THE FEDERAL CROWN**

Any amount owed to Canada under this Agreement by the Recipient will constitute a debt due to the federal Crown, which the Recipient will reimburse Canada forthwith on demand.

### **20.5 INTEREST ON DEBTS DUE TO THE FEDERAL CROWN**

Debts due to the federal Crown by the Recipient will accrue interest in accordance with the federal *Interest and Administrative Charges Regulations*.

### **20.6 SET-OFF BY CANADA**

Any debt due to the federal Crown by the Recipient may be set-off against any amounts payable by Canada to the Recipient under this Agreement.

## **20.7 MEMBERS OF THE HOUSE OF COMMONS AND SENATE**

No member of the House of Commons or the Senate of Canada will be admitted to any share of this Agreement, or to any benefit arising from it that is not otherwise available to the public. The Recipient will promptly inform Canada should it become aware of the existence of any such situation.

## **20.8 CONFLICT OF INTEREST**

No current or former public servant or public office holder to whom any post-employment, ethics and conflict of interest legislation, guidelines, codes or policies of Canada applies will derive direct benefit from this Agreement unless the provision or receipt of such benefits is in compliance with such legislation, guidelines, policies or codes. The Recipient will promptly inform Canada should it become aware of the existence of any such situation.

## **20.9 NO AGENCY, PARTNERSHIP, JOINT VENTURE, ETC.**

- a) No provision of this Agreement and no action by the Parties will establish or be deemed to establish a partnership, joint venture, principal-agent relationship, or employer-employee relationship in any way or for any purpose whatsoever between Canada and the Recipient or between Canada and a Third Party.
- b) The Recipient will not represent itself, including in any agreement with a Third Party, as a partner, employee or agent of Canada.

## **20.10 NO AUTHORITY TO REPRESENT**

Nothing in this Agreement is to be construed as authorizing any person, including a Third Party, to contract for, or to incur any obligation on behalf of Canada or to act as agent for Canada. The Recipient will take the necessary action to ensure that any Contract between the Recipient and any Third Party contains a provision to that effect.

## **20.11 ASSIGNMENT**

The Recipient will not transfer or assign its rights or obligations under this Agreement without the prior written consent of Canada. Any attempt by the Recipient to assign any of the rights, duties or obligations of this Agreement without Canada's express written consent is void.

## **20.12 COUNTERPART SIGNATURE**

This Agreement may be signed in counterpart, and the signed copies will, when attached, constitute an original agreement.

## **20.13 SEVERABILITY**

If for any reason a provision of this Agreement that is not a fundamental term of this Agreement between the Parties is found to be or becomes invalid or unenforceable, in whole or in part, and if both Parties agree, it will be deemed to be severable and will be deleted from this Agreement, but all the other terms and conditions of this Agreement will continue to be valid and enforceable.

## **20.14 AMENDMENTS**

This Agreement can only be amended in writing by the Parties.

## **20.15 WAIVER**

A Party may waive any of its rights under this Agreement only in writing. Any tolerance or indulgence demonstrated by the Party will not constitute a waiver.

## **20.16 NOTICE**

- a) Any notice provided for under this Agreement may be delivered in person, sent by mail, or sent by facsimile addressed to:

Canada:

Director, Transit Projects  
Transportation Infrastructure Programs  
Transport Canada  
330 Sparks Street  
Place de Ville, Tower C  
Ottawa, Ontario K1A 0A5  
Facsimile: (613) 990-9639

or to such other address or facsimile number or addressed to such other person as Canada may, from time to time, designate in writing to the Recipient; and

the Recipient:

Co-ordinator of Finance (Roads)  
Financial and Support Services  
Finance Department  
City of Greater Sudbury  
PO BOX 5000, STN 'A'  
200 Brady St.  
Sudbury, ON P3A 5P3

Facsimile: (705) 560-7141

or such other address or facsimile number or addressed to such other person as the Recipient may, from time to time, designate in writing to Canada.

- b) Such notice will be deemed to have been received:
- i. in person, when delivered;
  - ii. if sent by mail, when receipt is acknowledged by the other Party; and
  - iii. by facsimile, when transmitted and receipt is confirmed.

#### **20.17 COMPLIANCE WITH LAWS**

The Recipient will comply with all applicable laws and regulations and all requirements of all regulatory bodies having jurisdiction over the subject matter of the Projects.

#### **20.18 GOVERNING LAW**

This Agreement is governed by the laws applicable in the Province of Ontario.

#### **20.19 SUCCESSORS AND ASSIGNS**

This Agreement is binding upon the Parties and their respective successors and assigns.

21. SIGNATURES

This Agreement has been executed on behalf of Her Majesty the Queen in right of Canada by the Minister of Transport and on behalf of the City of Greater Sudbury by the Chief Financial Officer.

HER MAJESTY THE QUEEN IN RIGHT  
OF CANADA

CITY OF GREATER SUDBURY

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Per: Martin McKay  
A/Director, Transit and Ontario Projects

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Lorella Hayes  
Chief Financial Officer

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Date

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Date

## SCHEDULE A – ELIGIBLE AND INELIGIBLE EXPENDITURES

In order to be considered an Eligible Expenditure under this Agreement, the expenditure must be directly related to a Project set out in Schedule B (The Projects), and must not exceed the rates described in the *Guide to Railway Charges for Crossing Maintenance and Construction* (the “Guide”).

For the purposes of determining Eligible Expenditures, and notwithstanding the material overhead rates set out in Schedule C to the Guide, the overhead rate applicable to pre-wired packages will be the allowance for contract overheads set out in Schedule D of the Guide.

For each Project, expenditures are considered eligible between the date Canada received the Recipient's application for GCIP funding and the Final Claim Date.

Eligible Expenditures will consist of the following categories of expenditures:

- Labour (hours of labour, base hourly rates [as identified in collective agreements or documentation provided by Recipient], and overheads)
- Design (hourly rates and overhead)
- Cost to develop estimates (if a Contract is used)
- Materials (unit costs, surcharges and overhead)
- Delivery and transportation of materials
- Meals and lodging in accordance with the Guide
- Equipment/vehicles used, both company-owned and rented
- Personal mileage for weekend travel (job site to home) in accordance with the rates set out in the Guide
- Goods and services tax (GST) and Harmonized Sales Tax (HST) paid by the Recipient for goods and services that are Eligible Expenditures when such GST or HST will not be refunded or credited to the Recipient. In the event that the Recipient is only entitled to a refund or credit of a portion of the said GST or HST, the portion of the GST or the HST not refunded or credited will be considered an Eligible Expenditure.
- Other outsourced services required to complete the improvements (e.g., power supply companies, civil work contractors, engineering consulting fees etc.)
- Other Eligible Expenditures directly related to a Project that Canada determines are reasonable and required to achieve the objectives and results of the Project.

Ineligible Expenditures:

The following expenditures shall be considered ineligible for reimbursement:

- Ineligible materials (materials not used for a Project or, when applicable, materials claimed that do not have a Third Party invoice to support the expenditure)
- GST (goods and services tax) and HST (harmonized sales tax) paid by the Recipient for goods and services that are Eligible Expenditures.
- Any expenditure for which Canada determines that there was a lack of justification for the charge incurred
- Amounts in excess of Canada's Contribution per Project, as set out in Schedule B (The Projects), unless approved by Canada
- Personal mileage to Recipient's employees' homes (daily)
- Land acquisition costs

SCHEDULE B – THE PROJECTS

Prov.	Project Description	Road	Community	RSD #	Mileage	Subdivision	Total Project Cost	Contribution by Canada for 2014–15	Date Canada received Recipient's GCIP funding application
ON	Traffic signal railway pre-emption improvements	Marier Street	City of Greater Sudbury	2662	86.91	Cartier	\$21,000.00	\$10,500.00	2011-05-09
ON	Traffic signal railway pre-emption improvements	Montee Principale	City of Greater Sudbury	2663	87.91	Cartier	\$21,000.00	\$10,500.00	2011-05-09
						Maximum Contribution by Canada:		\$21,000.00	

SCHEDULE C – CERTIFICATE OF COMPLIANCE

SCHEDULE C.1: FINAL CLAIM

In the matter of the Agreement for Grade Crossing Improvements 2014–2015 under the Grade Crossing Improvement Program entered into between Her Majesty the Queen in right of Canada as represented by the Minister of Transport, and the City of Greater Sudbury (the “Recipient”), represented by the Chief Financial Officer, concerning the Project located at Mile \_\_\_\_\_ of the \_\_\_\_\_ Subdivision, in the Province of \_\_\_\_\_, TC RSD No. \_\_\_\_\_ (the “Project”).

I, \_\_\_\_\_(Name), of the City of \_\_\_\_\_, Province/Territory of \_\_\_\_\_, declare as follows:

- 1. That I hold the position of \_\_\_\_\_ with the Recipient and as such have knowledge of the matters set forth in this declaration and believe this declaration to be true.
- 2. I am duly authorized by the Recipient to give this Certificate under [RECIPIENT INSERTS THE COMPLETE REFERENCE TO THE BY LAW OR INTERNAL POLICY AUTHORITY THAT ALLOWS THEM TO PROVIDE THIS CERTIFICATION] dated [INSERT DATE].
- 3. I have read and understood the Agreement and the final claim submitted by the Recipient thereunder dated the same date as this Certificate and have knowledge of the business and affairs of the Recipient and have made such examinations or investigations as are necessary to give this Certificate and to ensure that the information contained herein is true and accurate.
- 4. The expenditures outlined in the final claim are eligible in accordance with the Agreement.
- 5. The Recipient, at the date of this Certificate, has performed all covenants under the Agreement that are required to be performed by it on or prior to that date.
- 6. All representations and warranties of the Recipient contained in the Agreement are true and accurate in all respects at the date of this Certificate as though such representations and warranties had been made at the date of this Certificate.
- 7. This Certificate of Compliance does not preclude any rights of Canada to verify, audit or inspect as per the terms and conditions of the Agreement.
- 8. The Recipient is not entitled to payment of any amount under the Agreement, other than any amount requested by the Recipient in accordance with the Agreement on or prior to the date of this Certificate.

Dated, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
(Signature)



SCHEDULE D – DECLARATION OF COMPLETION

In the matter of the Agreement for Grade Crossing Improvements 2014-2015 under the Grade Crossing Improvement Program entered into between Her Majesty the Queen in right of Canada, as represented by the Minister of Transport, and the City of Greater Sudbury (the "Recipient"), represented by the Chief Financial Officer, concerning the Project located at Mile \_\_\_\_\_ of the \_\_\_\_\_ Subdivision, in the Province of \_\_\_\_\_, TC RSD No. \_\_\_\_\_ ("the Project")

I, \_\_\_\_\_ (Name), of the City of \_\_\_\_\_, Province/Territory of \_\_\_\_\_, declare as follows:

- 1. That I hold the position of \_\_\_\_\_ with the Recipient and as such have knowledge of the matters set forth in this declaration and believe this declaration to be true.
- 2. a) That I have received the following documents for the Project:
  - i) [if applicable] Recorded Tests, signed by \_\_\_\_\_ (Name), holding the position of \_\_\_\_\_ (Title), a qualified person responsible for the work for the Project.
  - ii) [if applicable] As-installed Plans signed by \_\_\_\_\_ (Name), holding the position of \_\_\_\_\_ (Title), a qualified person responsible for the work for the Project.
  - iii) [if applicable] In-service Notice signed by \_\_\_\_\_ (Name), holding the position of \_\_\_\_\_ (Title), a qualified person responsible for the work for the Project.
  - iv) [if applicable] Invoice issued by [INSERT RECIPIENT OR DIVISION] confirming the start date for the Project.
  - v) [if applicable] Other documentation not listed above:  
\_\_\_\_\_
- b) That based on the above documents and the representations made to me by the qualified person(s) identified in section 2(a), I declare to the best of my knowledge and belief that the Project:
  - i) has been completed, as described in Schedule B (The Projects) of the Agreement;
  - ii) was carried out beginning on \_\_\_\_\_ (start date) and completed on \_\_\_\_\_ (in-service date).
- 3. That all terms and conditions of the Agreement that are required to be met as of the date of this declaration have, to the best of my knowledge and belief, been met.

Declared at \_\_\_\_\_ (City), in \_\_\_\_\_ (Province/Territory), this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Signature)