

Bill No. 529  
2018

By-law No. A.- \_\_\_\_ - \_\_\_\_

A by-law to authorize and approve an Agreement between Her Majesty the Queen in Right of Canada, as represented by the Minister of Transport ("Canada") and The Corporation of the City of London for the Rail Safety Improvement Program (RSIP) Agreement for Grade Crossing Improvements; and to authorize the Mayor and the City Clerk to execute the Agreement.

WHEREAS subsection 5(3) of the *Municipal Act, 2001* provides that a municipal power shall be exercised by by-law;

AND WHEREAS the Government of Canada has introduced a program to promote increased railway safety in Canada;

AND WHEREAS the The Corporation of the City of London has applied to the Government of Canada for funding under the Rail Safety Improvement Program, to assist in carrying out railway crossing safety improvements;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Agreement between Her Majesty the Queen In Right of Canada, as represented by the Minister of Transport ("Canada") and The Corporation of the City of London for the Rail Safety Improvement Program (RSIP) Agreement for Grade Crossing Improvements attached hereto as Schedule A is hereby authorized and approved;
2. The Mayor and the City Clerk are hereby authorized to execute the Agreement authorized and approved in section 1, above.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council August 28, 2018

Matt Brown  
Mayor

Catharine Saunders  
City Clerk

First Reading - August 28, 2018  
Second Reading - August 28, 2018  
Third Reading - August 28, 2018

## SCHEDULE 'A'

### CANADA – CITY OF LONDON RAIL SAFETY IMPROVEMENT PROGRAM

#### AGREEMENT FOR GRADE CROSSING IMPROVEMENTS

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 LONDON,**  
continued or incorporated pursuant to the Municipality Act (the "Recipient"),  
individually referred to as a "Party" and collectively referred to as the "Parties".

#### RECITALS

**WHEREAS** the Minister of Transport is responsible for the Program entitled the Rail Safety Improvement Program ("Program");

**WHEREAS** the Recipient has submitted to Canada a proposal for the funding of the Projects which qualify for support under the Program;

**AND WHEREAS** the Recipient is responsible for carrying out the Projects and Canada wishes to provide financial support for the Projects and its objectives;

**NOW THEREFORE**, the Parties 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 its schedules, as may be amended from time to time.

**"Agreement End Date"** means March 31, 2020.

**"Asset"** means any real or personal property or immovable or movable asset acquired, 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.

**"Declaration of Completion"** means a declaration in the form substantially prescribed in Schedule E (Declaration of Completion).

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

**"Eligible Expenditures"** means those costs incurred that are directly related to the Projects and which are considered eligible by Canada and may include cash-equivalent expenditures associated with In-Kind Contributions as set out in Schedule A (Eligible and Ineligible Expenditures).

**"Fair Value"** means the amount that would be agreed upon in an arm's length transaction between knowledgeable, willing parties who are under no compulsion to act.

**"Final Claim Date"** means the Project Completion Date of a Project no later than March 31, 2019.

**"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.

**“In-Kind Contributions”** means non-monetary contributions of goods, services or other support provided by the Recipient, or to the Recipient by a third party for any Project, for which Fair Value is assigned, but for which no payment occurs. The associated cash-equivalent expenditures may be considered Eligible Expenditures in accordance with Schedule A (Eligible and Ineligible Expenditures).

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

**“Project Completion Date”** means the date at which all funded activities of a Project under this Agreement have been completed and which must be no later than March 31, 2019.

**“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 the Recipient and 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 in relation to the subject of the Agreement. No prior document, negotiation, provision, undertaking or 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(s) of Compliance for Claims

Schedule D – Communications Protocol

Schedule E – 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 eighty percent (80%) of the total Eligible Expenditures for the Projects but only up to a maximum of one hundred eighty-six thousand eight hundred dollars (\$186,800.00).
- b) Canada will pay the contribution in accordance with the terms and conditions of this Agreement and the Fiscal Year breakdown in Schedule B.2 (Projects and Cashflow).
- c) If Canada's total contribution towards any Project exceeds eighty percent (80%) of the Project's total Eligible Expenditures or if the Total Financial Assistance received or due in respect of the total Project costs 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 and that Canada will have no involvement in the implementation of any Project or its operation. Canada is neither a decision-maker nor an administrator to the Projects.

### **3.2 COMMITMENTS BY THE RECIPIENT**

- a) The Recipient will complete the Projects in a diligent and timely manner, within the costs and deadlines specified in this Agreement and in accordance with the terms and conditions of this Agreement.
- b) The Recipient will be responsible for all costs of the Projects including cost overruns, if any.
- c) The Recipient will inform Canada promptly of the Total Financial Assistance received or due for all Projects.
- d) The Recipient will repay to Canada any payment received for disallowed costs, unexpended contributions, and overpayments made under and according to the terms and conditions of this Agreement.
- e) The Recipient will ensure the ongoing operation, maintenance, and repair of any Asset in relation to the Project as per appropriate standards, during the Asset Disposal Period.
- f) 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 18.6 (Set-off

by Canada). The Recipient will inform Canada immediately of any fact or event that could compromise wholly or in part any Project.

- g) Upon Canada's request and throughout the term of the Agreement, the Recipient will promptly provide Canada with updates to the status of the Projects and to the expenditures and forecasts set out in Schedule B (The Projects).

### **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's main or supplementary estimates expenditures. Canada will promptly advise the Recipient of any reduction or termination of funding once it becomes aware of any such situation. 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 a Project is set out in Schedule B.2 (Projects and Cashflow).
- b) If the actual amount payable by Canada in respect of any Fiscal Year of a Project is less than the estimated amount in Schedule B.2 (Projects and Cashflow), 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 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 DURING THE LIFE OF THE PROJECTS**

- a) Where a change to this Agreement is contemplated, the Recipient will submit to Canada a request for a change.
- b) Where the change is approved by Canada, the Parties will execute the corresponding amendment to the Agreement in accordance with Section 18.14 (Amendments).

### **3.6 INABILITY TO COMPLETE PROJECTS**

If, at any time during the term of this Agreement, one or all of the Parties determine that it will not be possible to complete a Project for any reason, the Party will immediately notify the other Party of that determination and Canada may suspend its funding obligation. The Recipient will, within thirty (30) business days of a request from Canada, provide a summary of the measures that it proposes to remedy the situation. If Canada is not satisfied that the measures proposed will be adequate to remedy the situation, then this will constitute an Event of Default under Section 15 (Default) and Canada may declare a default pursuant to Section 15 (Default).

### **3.7 GUIDELINES**

The Recipient will complete the Project, or cause the Project to be completed, in accordance with all applicable laws, regulations and prevailing industry standards for such design and construction and all applicable building and design codes.

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

The Recipient represents and warrants to Canada that:

- a) the Recipient has the capacity and authority to enter into and execute this Agreement as duly authorized by City of London Council By-Law No. 2018-      , dated August \_\_, 2018.
- b) the Recipient has the capacity and authority to carry out the Projects;
- c) the Recipient has the requisite power to own the Assets;
- d) this Agreement constitutes a legally binding obligation of the Recipient, enforceable against it in accordance with its terms and conditions;
- e) 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;

- f) any individual, corporation or organization that the Recipient has hired, for payment, who undertakes 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*;
- g) the Recipient has not and will not make a payment or other compensation that is contingent upon or is calculated upon the contribution hereunder or the negotiation of the whole or any part of the terms and conditions of this Agreement to any individual, or corporation or organization with which that individual is engaged in doing business with, who is registered pursuant to the federal *Lobbying Act*;
- h) 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
- i) 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 Contracts are 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 Canadian Free Trade Agreement 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 are 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 Recipient agrees that:

- a) Canada has determined that no legal duty to consult Aboriginal groups arises in the context of the Project.
- b) The Recipient must inform Canada promptly of any changes to the Project, or otherwise, that may affect Canada's determination of the legal duty to consult for this Project.
- c) If as a result of changes to the Project or otherwise, Canada determines that a legal duty to consult arises or further consultation is required, the Recipient agrees that:
  - vi. all of Canada's obligations pursuant to this Agreement will be suspended from the moment that Canada informs the Recipient that a legal duty to consult arises;
  - vii. it will consult with Aboriginal groups that might be affected by the Project, explain the Project to them, including Canada's role, and will provide a report to Canada, which will include:
    - a. a list of all Aboriginal groups contacted;
    - b. a summary of all communications to date with the Aboriginal groups, indicating which groups support or object to the Project, and whether their positions are final, preliminary, or conditional in nature;
    - c. a summary of any issues or concerns that the Aboriginal groups have raised and an indication of how the Recipient has addressed or proposes to address those issues or concerns; and
    - d. any other information Canada may deem appropriate.

- viii. no construction of the Project will occur and Canada has no obligation to reimburse Eligible Expenditures until Canada is satisfied that any legal duty to consult with, and where appropriate, to accommodate Aboriginal groups have been met and continue to be met.

## **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 PROGRESS CLAIMS**

- a) The Recipient will submit progress claims to Canada for each Project covering the Recipient's Eligible Expenditures in a form acceptable to Canada. Each progress claim must include the following:
  - i. a certification by a senior official designated in writing by the Recipient in the form set out in Schedule C.1 (Certificate of Compliance for Progress Claim) stating that the information submitted in support of the claim is accurate;
  - ii. a breakdown of Eligible Expenditures claimed, in accordance with Schedule B.2 Projects and Cashflow); and
  - iii. documentation to support the Eligible Expenditures claimed that is satisfactory to Canada.
- b) Canada will make a payment upon review and acceptance of a progress claim, subject to the terms and conditions of the Agreement.

### **9.3 FINAL CLAIM AND FINAL ADJUSTMENTS**

- a) The Recipient will submit a final claim to Canada for each Project by the Final Claim Date covering the Recipient's Eligible Expenditures in a form acceptable to Canada. The final claim for each Project must include the following:
  - i. a certification by a senior official designated in writing by the Recipient in the form set out in Schedule C.2 (Certificate of Compliance for Final Claim) stating that the information submitted in support of the claim is accurate;
  - ii. a breakdown of Eligible Expenditures claimed in accordance with Schedule B.2 (Projects and Cashflow);
  - iii. confirmation of the Total Financial Assistance in accordance with Section 3.2 c) (Commitments by the Recipient) in the form set out in Schedule C.2 (Certificate of Compliance for Final Claim);
  - iv. a completed Declaration of Completion in accordance with Section 9.5 (Declaration of Completion);
  - v. upon request by Canada, any of the documents referenced in Schedule E (Declaration of Completion); and
  - vi. documentation to support the Eligible Expenditures claimed that is satisfactory to Canada.
- b) Upon receipt of the 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.

### **9.4 WITHHOLDING OF CONTRIBUTION**

Canada may withhold up to ten percent (10%) of its contribution towards Eligible Expenditures claimed under the Agreement. Any remaining amount withheld by Canada will be released when the final adjustments have been completed under Section 9.3 (Final Claim and Final Adjustments) and the Recipient fulfills all its obligations under this Agreement.

### **9.5 DECLARATION OF COMPLETION**

- a) Prior to executing the Declaration of Completion, the Recipient will request confirmation in writing from Canada as to whether the Declaration of Completion lists all relevant documents.
- b) The Declaration of Completion must be signed by an authorized official of the Recipient as deemed acceptable by Canada, and it must list all relevant documents as determined by Canada.

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

## **11. AUDIT, EVALUATION AND MONITORING FOR COMPLIANCE**

### **11.1 RECIPIENT AUDIT**

Canada may, at its discretion, conduct a Recipient audit related to this Agreement during the term of this Agreement and up to two years after the Agreement End Date, in accordance with the Canadian Auditing Standards and Section 18.3 (Accounting Principles).

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

### **11.3 EVALUATION**

The Recipient agrees to cooperate with Canada in the conduct of any evaluation of the Program during or after the term of this Agreement.

### **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 Project, 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, at no cost, to the Project sites, facilities, and any documentation for the purposes of audit, evaluation, inspection and monitoring compliance with this Agreement.

## **12. COMMUNICATIONS**

### **12.1 COMMUNICATIONS PROTOCOL**

The Parties will comply with Schedule D (Communications Protocol).

### **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, unless Canada communicates in writing to the Recipient that this acknowledgement is not required.

### **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.

## **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 issue 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**

The following events constitute Events of Default under this Agreement:

- a) the Recipient has not complied with one or more 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 or in this Agreement, except for an error in good faith, demonstration of which is incumbent on the Recipient, to Canada's satisfaction;
- d) the Recipient has neglected or failed to pay Canada any amount due in accordance with this Agreement.

## **15.2 DECLARATION OF DEFAULT**

Canada may declare a default if:

- i. In Canada's opinion, one or more of the Events of Default occurs;
- ii. Canada gave notice to the Recipient of the event which constitutes an Event of Default; and the Recipient has failed, within thirty (30) business days of receipt of the notice from Canada, either to remedy the Event of Default or to notify Canada and demonstrate, to the satisfaction of Canada, that it has taken such steps as are necessary to remedy the Event of Default.

## **15.3 REMEDIES ON DEFAULT**

In the event that Canada declares a default under Section 15.2 (Declaration of Default), 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;
- d) terminate the Agreement.

## **16. LIMITATION OF LIABILITY AND INDEMNIFICATION**

### **16.1 DEFINITION OF PERSON**

In this section, "Person" includes, without limitation, a person, the Recipient, a Third Party, a corporation, or any other legal entity, and their officers, servants, employees or agents.

### **16.2 LIMITATION OF LIABILITY**

In no event will Canada, its officers, servants, employees or agents be held liable for any damages in contract, tort (including negligence) or otherwise, for:

- a) any injury to any Person, including, but not limited to, death, economic loss or infringement of rights;
- b) any damage to or loss or destruction of property of any Person; or
- c) any obligation of any Person, including, but not limited to, any obligation arising from a loan, capital lease or other long term obligation;

in relation to this Agreement or to any Project.

### **16.3 INDEMNIFICATION**

The Recipient will at all times indemnify and save harmless Canada, its officers, servants, employees or agents, from and against all actions, claims, demands, losses, costs, damages, suits or other proceedings, whether in contract, tort (including negligence) or otherwise, by whomsoever brought or prosecuted in any manner based upon or occasioned by:

- a) any injury to any Person, including, but not limited to, death, economic loss or any infringement of rights;
- b) any damage to or loss or destruction of property of any Person; or
- c) any obligation of any Person, including, but not limited to, any obligation arising from a loan, capital lease or other long term obligation;

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

## **17. ASSETS**

- a) Assets acquired, purchased, constructed, rehabilitated, or improved, in whole or in part, 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 the Recipient notifies Canada in writing and Canada consents to the Asset's disposal.
- c) Unless otherwise agreed to by Canada, upon alternate use or disposal of any Asset, which includes selling, leasing and encumbering an Asset whether directly or indirectly, during the Asset Disposal Period, the Recipient will reimburse Canada, at Canada's discretion, in whole or in part, an amount of funds contributed by Canada to the Asset under this Agreement.

## **18. GENERAL**

### **18.1 PUBLIC BENEFIT**

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



**18.2 SURVIVAL**

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

**18.3 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 Chartered Professional Accountants (CPA) Canada Handbook - Accounting or, where applicable, the CPA Canada Public Sector Accounting.

**18.4 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 to Canada forthwith on demand.

**18.5 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*.

**18.6 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.

**18.7 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 or part 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.

**18.8 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.

**18.9 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.

**18.10 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 an 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.

**18.11 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.

**18.12 COUNTERPART SIGNATURE**

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

**18.13 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.

**18.14 AMENDMENTS**

This Agreement, including its schedules, can only be amended in writing by the Parties.

**18.15 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.

**18.16 NOTICE**

- a) Any notice, information or required documentation provided for under this Agreement must be delivered in person or sent by mail, email, messenger or facsimile to the identified representatives of the Parties at the following coordinates, unless otherwise specified by Canada:

Canada:

Director, Transportation Infrastructure Program  
Transport Canada  
Place de Ville, Tower C, 19<sup>th</sup> Floor  
330 Sparks Street  
Ottawa, Ontario  
K1A 0N5

Email: TC.RSIPITR-PASFITR.TC@tc.gc.ca

Recipient:

Janice Verhaeghe  
300 Dufferin Avenue,  
London, Ontario  
N6A 4L9

Email: jverhaeg@london.ca

- b) Such notice will be deemed to have been received:
- i. in person, when delivered;
  - ii. if sent by mail, email or facsimile, when receipt is acknowledged by the other Party;
  - iii. if sent by messenger or registered mail, when the receiving Party has signed the acknowledgment of reception.
- c) If a Party changes its representative or the coordinates for that representative, it will advise the other Party as soon as possible.

**18.17 COMPLIANCE WITH LAWS**

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

**18.18 GOVERNING LAW**

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

**18.19 SUCCESSORS AND ASSIGNS**

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

**19. 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 London by the Mayor and City Clerk

HER MAJESTY THE QUEEN IN RIGHT  
OF CANADA

CITY OF LONDON

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Per: Emilia Warriner  
Director, Transportation Infrastructure  
Program

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Per: Matt Brown  
Mayor

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Date

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Date

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Per: Cathy Saunders  
City Clerk

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Date

## SCHEDULE A – ELIGIBLE AND INELIGIBLE EXPENDITURES

### SCHEDULE A.1: ELIGIBLE EXPENDITURES

Eligible Expenditures must:

- be reasonable and directly related to a Project, as determined by Canada;
- must not exceed the rates described in the *Guide to Railway Charges for Crossing Maintenance and Construction* (the “Guide”)
- be incurred between the date Canada received the recipient’s application for Program funding and the Final Claim Date; and
- consist of the following categories of expenditures:
  - Staff salaries and benefits;
  - Purchase and lease of capital assets, technology, equipment and supplies;
  - Professional services, including accounting, translation, audit and consulting;
  - Planning, design and evaluation;
  - Engineering and environmental reviews and follow-up measures;
  - Expenditures related to construction and rehabilitation of assets (including fees paid to general contractors and labourers, materials, licenses, permits, and the rental of construction machinery and equipment, and fees paid to power supply companies);
  - Licenses and permits
  - Expenditures for Aboriginal consultations, specifically project-related consultation activities pursuant to the Crown’s legal duty to consult;
  - Administrative expenditures (including general administration expenditures, rent, insurance, office equipment rental, and membership fees);
  - Travel expenditures (including the cost of accommodations, vehicle rental and kilometric rates, bus, train, airplane or taxi fares, allowances for meals and incidentals). Travel and per diem expenses cannot be more than the rates and allowances determined in the Travel Directive of the National Joint Council, available at the following link: <http://www.njc-cnm.gc.ca/directive/index.php?did=10&dlabel=travel-voyage&lang=eng&merge=2&slabel=index>;
  - Other costs that are, in the opinion of the Minister or his/her delegated representative, considered to be direct, reasonable, and incremental for the successful implementation of a project and have been approved in writing prior to being incurred.

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.

Eligible Expenditures can be cash-equivalent expenditures associated with In-Kind Contributions. These expenditures may be reimbursed so long as the following three criteria are met:

- 1) The associated costs are deemed as Eligible Expenditures and have been approved by Canada;
- 2) The associated costs are not a donation received from a third party; and
- 3) The associated costs are related to goods, services or other support that would otherwise be purchased and paid for by the Recipient as essential for a Project.

In-Kind Contributions received from a third party are considered donations and may form part of the total Eligible Expenditures of a Project, but are not reimbursable.

## **SCHEDULE A.2: INELIGIBLE EXPENDITURES**

The following expenditures shall be considered ineligible, and therefore will not be considered in the calculation of the total eligible expenditures of a Project:

- Costs incurred before the date Canada received the recipient's application for Program funding or after the Final Claim Date;
- Expenditures for provincial sales tax and Goods and Services Tax, or the Harmonized Sales Tax, where applicable, for which the Recipient is eligible for a rebate, and any other costs eligible for rebates;
- Purchase of land and/or buildings, related real estate fees, and vehicles;
- Financing charges and interest payments on loans; and
- Expenditures that have been reimbursed from other sources of funding, federal statutes or funding programs.
- Personal mileage to and from Recipient's employees' homes.

## **SCHEDULE B – THE PROJECTS**

### **SCHEDULE B.1: DESCRIPTION OF PROJECTS**

#### **Description of Projects:**

The Projects involve grade crossing improvements in the Province of Ontario.

#### **Objective(s):**

The objective of the Projects is to enhance public safety at the public grade crossings described in Schedule B.2 (Projects and Cashflow) to reduce the risk of collisions, fatalities and injuries.

#### **Activities:**

The Projects consists of improvements to the crossings described in Schedule B.2 (Projects and Cashflow) through undertaking the following activities:

- Relocation and installation of signage, pavement markings, approach surface resurfacing
- Median separation and vegetation removal
- Sidewalk replacement

#### **Project Outcomes:**

In order to illustrate how the Projects will contribute to rail safety, the Recipient will collect performance data and report on the following performance indicators that the Projects will contribute to:

- Number of installed new crossing warning system barrier gates;
- Number of installed cantilever structures;
- Number of new interconnection cable ducts from traffic controller to rail crossing bungalow.

This data is collected only for the purpose of performance measurement and reporting to Canadians.

**SCHEDULE B.2: PROJECT AND CASHFLOW**

Name of Project	Description of Project  (Main technical and financial stages, location, construction methods, etc.)	Estimated Total Project Expenditures	Estimated Total Eligible Project Expenditures	Estimated Contribution by Canada	Estimated contribution to Eligible Expenditures per Party, per Fiscal Year	
					Contributor	2018-19
Project 1 - Mile 73.10 Dundas Subdivision, Gore Road	Installation of signage, pavement markings, approach surface resurfacing	\$36,000.00	\$36,000.00	\$28,800.00	Canada	\$28,800.00
					Recipient	\$7,200.00
Project 2 - Mile 77.66 Dundas Subdivision, Colborne Street	Installation of signage, pavement markings, vegetation removal, approach surface resurfacing.	\$46,500.00	\$46,500.00	\$37,200.00	Canada	\$37,200.00
					Recipient	\$9,300.00
Project 3 - Mile 0.17 Windsor Subdivision, St. George Street	Installation of signage, pavement markings, median separation, and vegetation removal.	\$39,000.00	\$39,000.00	\$31,200.00	Canada	\$31,200.00
					Recipient	\$7,800.00
Project 4 – Mile 0.05 Windsor Subdivision, Richmond Street	Installation of signage, remove old pavement markings, approach surface resurfacing, and sidewalk replacement.	\$21,500.00	\$21,500.00	\$17,200.00	Canada	\$17,200.00
					Recipient	\$4,300.00
Project 5 – Mile 76.84 Dundas Subdivision, Rectory Street	Installation/relocation of signage, pavement markings, approach surface resurfacing.	\$14,000.00	\$14,000.00	\$11,200.00	Canada	\$11,200.00
					Recipient	\$2,800.00
Project 6 –Mile 118.77 Guelph Subdivision, Highbury Avenue	Installation of signage, pavement markings, vegetation removal.	\$8,500.00	\$8,500.00	\$6,800.00	Canada	\$6,800.00
					Recipient	\$1,700.00
Project 7 –Mile 77.36 Dundas Subdivision, William Street	Installation of signage, pavement markings, vegetation removal.	\$25,500.00	\$25,500.00	\$20,400.00	Canada	\$20,400.00
					Recipient	\$5,100.00
Project 8 – Mile 77.51 Dundas Subdivision, Maitland Street	Relocation and installation of signage, crossing surface resurfacing including sidewalk replacement, and pavement markings.	\$21,000.00	\$21,000.00	\$16,800.00	Canada	\$16,800.00
					Recipient	\$4,200.00
Project 9 – Mile 76.44 Dundas Subdivision, Egerton Street	Installation of signage, and pavement markings.	\$6,000.00	\$6,000.00	\$4,800.00	Canada	\$4,800.00
					Recipient	\$1,200.00

Name of Project	Description of Project	Estimated Total Project Expenditures	Estimated Total Eligible Project Expenditures	Estimated Contribution by Canada	Estimated contribution to Eligible Expenditures per Party, per Fiscal Year	
	(Main technical and financial stages, location, construction methods, etc.)				Contributor	2018-19
<b>Project 10 – Mile 73.97 Dundas Subdivision, Clarke Road</b>	Installation of signage, pavement markings, approach surface resurfacing, and sidewalk replacement.	\$15,500.00	\$15,500.00	\$12,400.00	<b>Canada</b>	<b>\$12,400.0</b>
					<b>Recipient</b>	<b>\$3,100.00</b>
<b>TOTAL</b>		<b>\$233,500.00</b>	<b>\$233,500.00</b>	<b>\$186,800.00</b>	<b>Canada</b>	<b>\$186,800.00</b>
					<b>Recipient</b>	<b>\$46,700.00</b>

For greater certainty, Canada's total contribution cannot exceed the amount set out in Section 3.1 (Contribution by Canada).



**SCHEDULE C – CERTIFICATE(S) OF COMPLIANCE FOR CLAIMS**  
**SCHEDULE C.1: CERTIFICATE OF COMPLIANCE FOR PROGRESS CLAIM**

In the matter of the Agreement entered into between Her Majesty the Queen in right of Canada, as represented by the Minister of Transport, and the City of London (the “Recipient”), represented by \_\_\_\_\_(Name), concerning the Grade Crossing Improvements Project (the “Agreement”).

I, \_\_\_\_\_(Name), of the City/Town 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 **[DATE]**.
3. I have read and understood the Agreement and the progress 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 claimed are Eligible Expenditures 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.

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

\_\_\_\_\_  
Signature

**SCHEDULE C.2: CERTIFICATE OF COMPLIANCE FOR FINAL CLAIM**

In the matter of the Agreement entered into between Her Majesty the Queen in right of Canada, as represented by the Minister of Transport, and the City of London (the "Recipient"), represented by \_\_\_\_\_(Name), concerning the Grade Crossing Improvements Project (the "Agreement").

I, \_\_\_\_\_(Name), of the City/Town 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 **[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 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.
5. The expenditures claimed are Eligible Expenditures in accordance with the Agreement.
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. The Project as defined in the Agreement has been completed.

***[If applicable, add:]***

8. All applicable mitigation measures, accommodation measures and follow-up measures required to be performed during the Project implementation as a result of Aboriginal consultations have been implemented.
9. The Total Financial Assistance received or due for the Project in accordance with Section 3.2 c) (Commitments by the Recipient) is as follows:  
**[INCLUDE ALL TOTAL FINANCIAL ASSISTANCE RECEIVED OR DUE]**
10. 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.
11. 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 – COMMUNICATIONS PROTOCOL

### GENERAL

1. Canada and the Recipient agree to undertake joint communications activities and products that will enhance opportunities for open, transparent, effective and proactive communications with citizens through appropriate, continuous, and consistent public information activities that recognize the contribution of the Parties and, where applicable, any other contributor.
2. The mechanisms for such communications and public information activities and products will be determined by Canada.
3. All public information material in relation to this Agreement will be prepared jointly and in both official languages and will equitably reflect the funding of all contributors to the Project. This requirement is not needed for tendering documents; the Recipient will carry out any tendering processes in accordance with its own policies, guidelines and governing laws.

### COMMUNICATING WITH THE PUBLIC

#### ***Public Information Products***

The Parties may jointly develop information kits, brochures, public reports, and website material for the public about the Projects.

#### ***News Releases***

A joint news release may be issued when the Agreement is signed and/or at appropriate milestones such as start of Project work or completion of the Project. A news release may include quotations from a federally, provincially, or municipally elected official or, where applicable, any other contributor. Canada must agree on these quotations.

#### ***Press Conferences, Public Announcements and Other Joint Events***

The Parties will co-operate in organizing press conferences, announcements or official ceremonies. Canada should also agree on the messages and public statements at such events. No public announcement for a Project under this Agreement will be made by the Recipient or, where applicable, any other contributor, unless Canada has been informed of it at least thirty (30) business days in advance.

Either Party may organize a joint press conference. The requestor will give the other Party reasonable notice of at least thirty (30) business days of such a press conference, public announcement or joint event.

#### ***Signage***

Prior to the implementation of a Project under this Agreement, and as directed by Canada, the Recipient agrees to supply, erect, and maintain signage consistent with federal/provincial identity graphics guidelines, and in both official languages specifying that the Project is financed by contributions from the Government of Canada and the Recipient or such wording as may have been or may be agreed upon by Canada.

### COMMUNICATION COSTS

The eligibility of costs related to communication activities that provide public information on this Agreement will be subject to Schedule A (Eligible and Ineligible Expenditures) and must be agreed to in advance by Canada.

**SCHEDULE E – DECLARATION OF COMPLETION**

In the matter of the Agreement entered into between Her Majesty the Queen in right of Canada, as represented by the Minister of Transport, and the City of London (the “Recipient”), represented by \_\_\_\_\_(Name), concerning the Grade Crossing Improvements Project (the “Agreement”).

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

1. 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) I have received the following documents for the [Grade Crossing] Project:
    - i. [LIST NAME OF RELEVANT DOCUMENT(S), e.g. Certificate of Completion, Certificate of Performance, Occupancy Permit, etc.] signed by \_\_\_\_\_ (Name), a \_\_\_\_\_ (Profession, e.g. professional engineer, professional architect or other applicable professional) for the Project.
    - ii. [ADD SAME TEXT AS IN i FOR EACH DOCUMENT]
  
  - b) Based on the above documents and the representations made to me by the professionals identified in section 2(a) above, I declare to the best of my knowledge and belief that the Project has been completed, as described in Schedule B.1 (Description of Projects), as defined in the Agreement, on the \_\_\_\_\_ day of the \_\_\_\_\_ 20\_\_.

*[Insert #3, if applicable:]*

3. I have received the following documents and based on these documents and representations made to me by the professionals identified below, I declare to the best of my knowledge and belief that the Project conforms with the guidelines referenced in Section 3.7 (Guidelines) of the Agreement:
  - i. [LIST NAME OF RELEVANT DOCUMENT(S), e.g. Certificate of Completion, Certificate of Performance, Occupancy Permit, etc.] signed by \_\_\_\_\_ (Name), a \_\_\_\_\_ (Profession, e.g. professional engineer, professional architect or other applicable professional) for the Project.
  - ii. [ADD SAME TEXT AS IN i FOR EACH DOCUMENT]
  
4. All terms and conditions of the Agreement that are required to be met as of the date of this declaration have been met.

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

\_\_\_\_\_  
Signature