



**THE CORPORATION OF THE TOWN OF INGERSOLL**

**BY-LAW NO. 09-4490**

**Being a by-law to authorize a funding agreement between Her Majesty the Queen in Right of Canada and the Town of Ingersoll for the safety improvement at McKeand Rd. Railway**

**WHEREAS** the Corporation of the Town of Ingersoll deems it expedient to enter into the attached funding agreement with Her Majesty the Queen in Right of Canada for the safety improvement at McKeand Rd. Railway.

**NOW THEREFORE** the Council of the Corporation of the Town of Ingersoll enacts as follows:

- (1) That the Mayor and the Clerk / Deputy Administrator are hereby authorized to execute a funding agreement with Her Majesty the Queen in Right of Canada as represented by the Minister of Transport, Infrastructure and Communities and to affix the seal of The Corporation of the Town of Ingersoll hereto.
- (2) That a copy of said agreement shall be annexed to and form part of this by-law

**READ** a first and second time in Open Council this 8<sup>th</sup> day of June, 2009.

**READ** a third time and passed in Open Council this 8<sup>th</sup> day of June, 2009.

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**Paul Holbrough, Mayor**

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**Elaine Clark, Clerk**

## FUNDING AGREEMENT

THIS FUNDING AGREEMENT made as of the        day of       , 200

BETWEEN:

**HER MAJESTY THE QUEEN  
IN RIGHT OF CANADA**

as represented by the Minister of Transport,  
Infrastructure and Communities  
(hereinafter called "Canada")

AND

**TOWN OF INGERSOLL**  
(hereinafter called the "Recipient")

**WHEREAS** Canada has agreed to provide financial assistance for a project to be undertaken pursuant to Section 12 of the *Railway Safety Act*;

**AND WHEREAS** the provisions of this Agreement describe the work to be undertaken by the Recipient in implementing such project;

**NOW THEREFORE THIS AGREEMENT WITNESSES THAT** in consideration of the mutual covenants contained herein, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), subject to the terms and conditions set out in this Agreement, the parties hereto agree with each other as follows:

### ARTICLE 1 - INTERPRETATION

#### Section 1.01 Definitions

1.01.01 In this Agreement, unless defined herein, terms within initial capital or upper case letters shall have the meanings assigned to them in the *Railway Safety Act*:

“**Agreement**” means this funding agreement, as amended from time to time;

“**Business Day**” means a day other than a Saturday, Sunday or statutory holiday in the Province;

“**Canada**” includes the Minister;

“**Canada Transportation Agency**” means the agency continued pursuant Section 7 of the *Canada Transportation Act*, S.C. 1996, C. 10;

“**Claim for Payment**” has the meaning ascribed to it in Subsection 3.02.01 of this Agreement;

“**Completion Date**” means the date of completion associated with an Improvement specified in the Project Description;

“**Effective Date**” means the date first above written;

“**Eligible Costs**” means any of the costs directly incurred by the Recipient in accordance with this Agreement and described in the Recipient Accounts Schedule;

“**Event of Default**” means any of the events described in Subsection 8.01.01;

“**Final Claim for Payment**” means the last Claim for Payment submitted by the Recipient to Canada in regards to the Project;

“**Final Completion Date**” means the date the Project has been completed by the Recipient;

“**Fiscal Year**” means the period starting on April 1<sup>st</sup> of any year and ending on March 31 of the following year;

“**Force Majeure**” means any cause which is unavoidable or beyond the reasonable control of the Recipient, including war, riot, insurrection, orders of government, strikes or any Act of God or other similar circumstance which is beyond the Recipient’s control, and which could not have been reasonably circumvented by the Recipient without incurring unreasonable cost;

“**Funding Assistance**” has the meaning ascribed to it in Subsection 3.01.01;

“**Government Assistance**” means all assistance to or for the direct benefit of the Recipient from any federal, provincial, territorial or municipal government department, corporation or agency or a public authority;

“**GST**” means the general sales tax paid by the Recipient for goods and services that are Eligible Costs;

“**Improvement**” means each of the improvements to be conducted pursuant to this Agreement and listed in the Project Description;

“**Losses**” means, in respect of any matter, all claims, demands, proceedings, losses, damages (including, without limitation, direct, indirect incidental, special, exemplary, consequential or other damages) liabilities, deficiencies, costs and expenses (including without limitation, all legal fees on a solicitor and his own client basis and other professional fees and disbursements, interest, penalties and amounts paid in settlement) arising directly or indirectly as a consequence of such matter;

“**Maximum Amount**” means the amount specified for each Improvement on the Project Description;

“**Minister**” means the Minister of Transport;

“**Person**” means any individual, company, corporation, partnership, limited partnership, firm, trust, trade union, joint venture, syndicate, sole proprietorship, government or government agency, authority or entity, however designated or constituted;

“**Project**” has the meaning ascribed to it in Subsection 2.01.01;

“**Project Description**” means the list attached hereto as Schedule “A”;

“**Province**” means the province in which the Project is being completed;

“**Railway Safety Act**” means the *Railway Safety Act*, R.S.C. 1985, c. 32 (4<sup>th</sup> Supp)

**“Recipient Accounts Schedule”** means the schedule respecting the preparation of accounts by the Recipient in respect of Eligible Costs, a copy of which is attached hereto as Schedule “B”.

**“Records”** means any records including without limitation, any ledger, correspondence, memorandum, book, plan, map, drawing, diagram and any other documentary material, regardless of physical form or characteristics;

**“Term”** has the meaning ascribed to in Subsection 4.01.01 of this Agreement; and

**“Termination Date”** means the earliest of the date on which the Term expires or the date on which the Agreement is terminated pursuant to Subsection 8.01.02.

#### **Section 1.02 Subdivisions**

1.02.01 Unless otherwise stated, a reference herein or in a Schedule by numerical or alphabetical designation to an Article, Section, Subsection, Paragraph, Subparagraph or Schedule shall refer to the Article, Section, Subsection, Paragraph, Subparagraph or Schedule bearing that designation in this Agreement or in a Schedule.

#### **Section 1.03 Number and Gender**

1.03.01 Words importing the singular shall include the plural and vice versa and words importing a particular gender shall include all genders. The use of the neuter singular pronoun to refer to each of the parties is deemed a proper reference. The necessary grammatical changes required to make the provisions of this Agreement apply shall in all instances be assumed as though in each case fully expressed.

#### **Section 1.04 Headings**

1.04.01 The division of this Agreement into Articles, Sections, Subsections, Paragraphs, and Subparagraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

#### **Section 1.05 Business Day**

1.05.01 If the day on which any act or payment is required to be done or made under this Agreement is a day which is not a Business Day, then such act or payment shall be duly performed or made if done on the next following Business Day.

#### **Section 1.06 Schedules**

1.06.01 The documents attached hereto as Schedules “A” and “B”, form an integral part of this Agreement as fully as if they were set forth herein *in extenso*. The following are the Schedules to this Agreement:

Schedule “A” Project Description— Section 12 of the *Railway Safety Act*  
Schedule “B” Recipient Accounts Schedule

1.06.02 All capitalized words and phrases used in any of the Schedule annexed hereto will have the same meanings as defined in this Agreement.

## **Section 1.07 Statutes, Regulations and Rules**

1.07.01 Any reference in this Agreement to all or any part of any statute, regulation or rule shall, unless otherwise stated, be a reference to that statute, regulation or rule or the relevant part thereof, as amended, substituted, replaced or re-enacted from time to time.

## **Section 1.08 Governing Law**

1.08.01 This Agreement shall be interpreted in accordance with the laws in force in the Province, subject always to any paramount or applicable federal laws. Nothing in this Agreement is intended to or shall be construed as limiting, waiving, or derogating from any Federal Crown prerogative.

## **Section 1.09 Construed Covenants**

1.09.01 All of the provisions and each obligation or agreement of this Agreement, even though not expressed as a covenant, are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate provision hereof. The words "hereof", "herein", "hereto", "hereunder", "therein" and "thereto" and similar expressions used in this Agreement mean and refer to the whole of this Agreement and not to any particular Article or Section, unless the context indicates otherwise.

1.09.02 In this Agreement, "includes" means "includes, without limitation"; "including" means "including, without limitation"; "agrees" or "acknowledges" means "expressly agrees" or "expressly acknowledges"; "any" means "any and all"; and "law" means "law, by-law, regulation, order, decision and rule".

## **Section 1.10 Accounting Principles**

1.10.01 All accounting and financial terms used in this Agreement shall, except where otherwise provided either expressly or by necessary implication in this Agreement, be interpreted and applied in accordance with generally accepted accounting principles and generally accepted auditing standards in Canada as they exist from time to time.

1.10.02 Where the Canadian Institute of Chartered Accountants or any successor thereto include a statement in its "Handbook" or any successor thereto on a method or alternative methods of accounting, such statement shall be regarded as the only generally accepted accounting principle and generally accepted auditing standard applicable to the circumstances that it covers, and references herein to generally accepted accounting principles and generally accepted auditing standards shall be interpreted accordingly.

## **ARTICLE 2 - PROJECT**

### **Section 2.01 Project Description**

2.01.01 The Recipient shall complete the Improvements on or prior to the Completion Date in accordance with the terms and conditions set out in this Agreement (the "Project").

## ARTICLE 3 - FEDERAL FUNDING

### Section 3.01 Amount

3.01.01 Subject to Subsection 3.01.02, Canada shall pay to the Recipient, for the purpose of the Project, a financial contribution equal to the lesser of

- (i) eighty per cent (80%) of the Eligible Costs; or
- (ii) the Maximum Amount

(the "Funding Assistance").

3.01.02 Canada shall deduct from the Funding Assistance an amount sufficient to ensure that the following requirements are met:

- (a) the aggregate of all Government Assistance received by the Recipient at any time in respect of the Project shall not exceed the Eligible Costs of the Project; and
- (b) the aggregate of all Government Assistance received by the Recipient at any time in respect of the Project from a federal government department, corporation, agency or authority shall not exceed one hundred per cent (100%) of the Eligible Costs of the Project.

3.01.03 The payment of the Funding Assistance is subject to there being an appropriation by Parliament for that Funding Assistance for the fiscal year in which the Funding Assistance is being made.

3.01.04 In the event that the departmental funding levels for the Department of Transport are changed by Parliament at any time during the Term of this Agreement, Canada shall be entitled to reduce or otherwise cancel the Funding Assistance payable hereunder.

### Section 3.02 Method of Funding

3.02.01 The payment of the Funding Assistance for the Project shall be made upon receipt by Canada of a Recipient certificate, certified to be true and correct in all respect, by the Recipient's financial officer, which certificate shall consist of a detailed accounting of all the Eligible Costs and shall contain, without limitation, the following information:

- (a) hours of labour and base hourly rates with overheads shown separately;
- (b) design hourly rates with overheads;
- (c) the month and year that the labour referred to in (a) and (b) of this subsection 3.02.01 was performed;
- (d) list of materials, unit cost and surcharges/or material/other overheads;
- (e) detail of suppliers and outside invoices for individual items up to Two Hundred Dollars (\$200) purchased on site for urgent purposes;
- (f) detail list of the billing codes of the equipment rented pursuant to the Recipient Accounts Schedule;
- (g) subject to subsection 3.02.02, a detailed list of the GST; and

(h) a certification that the Project has been completed in accordance with the terms and conditions set out in this Agreement.

(the "Claim for Payment").

3.02.02 Notwithstanding anything to the contrary in this Agreement, the Recipient may recover as an Eligible Costs the GST when such GST will not, or likely 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, the Recipient may claim as an Eligible Cost that portion of the GST not refunded or credited.

3.02.03 The final payment of the Funding Assistance for the Project will only be made following verification by Canada of the Final Claim for Payment. Canada, at its discretion, exercisable at any time, may examine the Records for the Project. Canada will endeavor to make final payment within ninety (90) days of receipt of the Final Claim for Payment.

3.02.04 In the event of failure to complete the Project, or any part thereof, or to submit a Final Claim for Payment prior to the end of the Term, the Funding Assistance payable hereunder may, at the discretion of Canada, be reduced by ten percent (10%).

3.02.05 Canada, in its sole discretion, will consider making progress payments to the Recipient for any group of Improvements completed periodically, upon presentation of a Claim for Payment. Notwithstanding the foregoing, a Claim for Payment shall not be submitted more frequently than once every six (6) months and shall not exceed eighty percent (80%) of the Maximum Amount.

### **Section 3.03 Overpayments**

3.03.01 Any discrepancy between the amounts effectively paid hereunder and the amounts payable by virtue of the terms hereof shall be promptly adjusted by the parties.

3.03.02 Any overpayments or unexpended balances of a progress payment made pursuant to Subsection 3.02.05 shall constitute a debt due to Canada and be reimbursed in accordance with Section 13.01.

### **Section 3.04 Disputes**

3.04.01 Where Canada contests any amount submitted by the Recipient in a Claim for Payment, Canada shall so notify the Recipient and provide an opportunity to it to confirm or verify the Claim for Payment, or any part thereof contested by Canada.

## **ARTICLE 4 - EFFECTIVE DATE AND TERM**

### **Section 4.01 Term**

4.01.01 The Term of this Agreement commences on the Effective Date and ends on the 31<sup>st</sup> day of March 2011.

## ARTICLE 5 - COVENANTS

### Section 5.01 Covenants of the Recipient

- 5.01.01 Unless prior written approval is given by Canada, the Recipient shall complete the Improvements no later than the Completion Date set out in the Project Description.
- 5.01.02 The Recipient shall notify Canada of the effective Completion Date for each Improvement within thirty (30) days of such date.
- 5.01.03 The Recipient shall notify Canada of the Final Completion Date within thirty (30) days of such date.
- 5.01.04 The Recipient acknowledges and agrees that where the Project, in whole or in part, is a project as defined in the *Canadian Environmental Assessment Act*, the Recipient shall submit the Project for environmental assessment, technical review and project registration under the *Canadian Environmental Assessment Act* prior to initiating such Project. The Recipient shall carry out the work required to be carried out under any environmental assessment that Transport Canada may be required by law to carry out in connection with the Project and this Agreement.

- 5.01.04 The Recipient shall not initiate the Project unless Canada has determined in writing that the Project is unlikely to cause any significant adverse environmental effects.

### Section 5.02 Accounts, Records, Audit and Inspection

- 5.02.01 The Recipient shall, for a period of five (5) years from the Final Completion Date:
- (a) maintain all accounts and Records relating to the actual cost of the work of the Project in accordance with generally accepted accounting principles and keep such accounts and Records for the Project;
  - (b) make all accounts and Records referred to in Paragraph 5.02.01(a) available to audit and inspection by Canada or by persons acting on its behalf;
  - (c) allow Canada or persons acting on its behalf to make copies of, and to take extracts from, any of the accounts or Records referred to in Paragraph 5.02.01(a); and
  - (d) furnish to Canada or persons acting on its behalf with any information they may require from time to time in connection with such accounts and Records.

### Section 5.03 Conditions Precedent

- 5.03.01 Notwithstanding anything herein, Canada's obligation to make any payment in respect of the Project is subject to the presentation of a Claim for Payment by the Recipient, acceptable to Canada.

## **ARTICLE 6 - REPRESENTATIONS AND WARRANTIES**

### **Section 6.01 Recipient**

6.01.01 The Recipient warrants that Canada shall not be responsible for any costs associated with the Improvements other than the Eligible Costs.

## **ARTICLE 7 – DISCONTINUANCE**

7.01.01 If the line of railway at an Improvement site is discontinued within five (5) years from the Completion Date of the Project, the Recipient shall reimburse Canada eighty per cent (80%) of the difference between:

- (a) the salvage value of signal material removed for reuse, or the proceeds of the sale of signal material sold to others; and
- (b) the removal and inspection costs reasonably incurred by the Recipient.

The salvage value of material removed for reuse shall be determined in accordance with the Recipient Accounts Schedule.

## **ARTICLE 8 -DEFAULT**

### **Section 8.01 Events of Default**

8.01.01 The occurrence of any one or more of the following events each such event being herein referred to as an “Event of Default” by the Recipient shall constitute a default under this Agreement:

- (a) fails to disclose material information required to be submitted under the terms hereof, or submits false or misleading information to Canada which would materially adversely affect this Agreement;
- (b) delays in the commencement of the Project, or any part thereof, or, does not diligently perform the work set out in Schedule “A”;
- (c) has abandoned the Project, or any part thereof;
- (d) has otherwise failed to observe or perform any of the provisions of this Agreement; and,

such Event of Default continues for a period of fifteen (15) days after notice by Canada to the Recipient specifying the default and requiring the default to be remedied;

- (e) the Recipient has defaulted in the completion of any part of the Project on or prior to the Completion Date;
- (f) has become insolvent;
- (g) has committed an act of bankruptcy; or
- (h) has made an assignment of this Agreement without the consent required pursuant to Subsection 10.01.01 of this Agreement.

8.01.02 If an Event of Default has occurred and is continuing, Canada may, at its discretion, by written notice communicated to the Recipient, exercise any of the following remedies:

- (a) terminate any obligation by Canada to effect payment of the Funding Assistance; and
- (b) direct the Recipient to repay forthwith all or part of the Funding Assistance paid under the terms of this Agreement.

## ARTICLE 9 - ARBITRATION

### Section 9.01 Arbitration

- 9.01.01 Each party has the right to require that a dispute or difference between the parties arising under this Agreement be submitted to arbitration in accordance with this Section.
- 9.01.02 Subject to this Section, the arbitration shall be governed by the *Commercial Arbitration Code* referred to in the *Commercial Arbitration Act*.
- 9.01.03 This Section does not apply to the interpretation or application of the constitutional, administrative, criminal, tax or other public law of Canada, including without limitation, the interpretation of any statute relating to the public law or the exercise of any power under such law.
- 9.01.04 The party requiring that a dispute or difference be submitted to arbitration shall do so by giving a written notice to the other party that describes the dispute or difference and the notice may be given in accordance with Section 16.05. That notice and this Section constitute the arbitration agreement for the purposes of the *Commercial Arbitration Code*.
- 9.01.05 If the parties do not agree to appoint a single arbitrator within thirty (30) days of the giving of notice pursuant to Subsection 9.01.03, then each party shall appoint an arbitrator and those arbitrators shall appoint a third arbitrator.
- 9.01.06 No individual who has participated in a mediation of the dispute or difference shall be appointed as arbitrator in respect of the dispute or difference.
- 9.01.07 The fees and expenses of the arbitrators shall be borne equally by the parties.
- 9.01.08 The arbitration shall be conducted in the official language of Canada requested by the Recipient and shall take place:
  - (a) if the dispute or difference relates to a specific Grade Crossing, in the closest city or municipality of such Grade Crossing;
  - (b) if the dispute or difference relates to any other matter subject to this Agreement, in the City of Ottawa in the Province of Ontario;
  - (c) or such other place as the parties may agree upon.
- 9.01.09 The arbitrators are not authorized to decide *ex aequo et bono* or as *amiables compositeurs*.
- 9.01.10 The award or decision of the arbitrators shall be final and binding on both parties.

**Section 9.02 Alternative Dispute Resolution**

9.02.01 Notwithstanding Section 9.01 of this Agreement and prior to issuing a notice pursuant to Subsection 9.01.01, the parties may agree to settle a dispute arising from this Agreement amicably through negotiation or mediation. The cost associated with such negotiation or mediation shall be borne equally by the parties.

9.02.02 For greater certainty, the parties acknowledge that a dispute or difference between them may be resolved by mediation offered and coordinated by the Canada Transportation Agency.

**ARTICLE 10 - NO PARTNERSHIP, JOINT VENTURE OR AGENCY**

**Section 10.01 No Partnership, Joint Venture or Agency**

10.01.01 Canada and the Recipient expressly disclaim any intention to create a partnership, joint venture or joint enterprise. It is understood, acknowledged and agreed that nothing contained in this Agreement nor any acts of Canada or the Recipient shall constitute or be deemed to constitute Canada and the Recipient as partners, joint venturers or principal and agent in any way or for any purpose. The Recipient shall not represent or hold itself out to be an agent of Canada. No party hereto shall have any authority to act for or to assume any obligations or responsibility on behalf of the other party hereto.

10.01.02 For greater certainty, neither this Agreement, nor any other document contemplated by this Agreement shall constitute or be construed or be deemed to constitute or be construed as a delegation by Canada to the Recipient of any of Canada's powers, duties or functions.

**ARTICLE 11 - ASSIGNMENT**

**Section 11.01 Assignment by the Recipient**

11.01.01 This Agreement shall not be assigned by the Recipient, either in whole or in part, without the prior written consent of Canada.

**ARTICLE 12 - INDEMNITY**

**Section 12.01 Indemnity**

12.01.01 The Recipient shall indemnify and save Canada harmless from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings (the "Claims" by whomever made, brought or prosecuted and in any manner based upon, arising out of, related to, occasioned by or attributable to the activities of the Recipient, the Recipient's servants, agents, subcontractors and sub-subcontractors in performing any work contemplated by this Agreement.

12.01.02 For the purposes of Subsection 12.01.01, "activities" includes any act improperly carried out, any omission to carry out an act and any delay in carrying out an act.

**ARTICLE 13 – DEBTS**

**Section 13.01 Debts Due to Canada**

13.01.01 Any amount owed to Canada under this Agreement shall constitute a debt due to Canada, which the Recipient shall reimburse forthwith, on demand, to Canada.

**Section 13.02 Interest on Debts Due to Canada**

13.02.01 In accordance with the *Interest and Administrative Charges Regulations*, SOR/96-188, in all cases where there is a debt due to Canada, interest calculated and compounded monthly at the average bank rate plus three percent is payable on that amount and accrues during the period beginning on the due date and ending on the day on which payment is received by Canada.

**Section 13.03 Set Off - Canada**

13.03.01 Where applicable, and at Canada's sole discretion, the amount of any debt due may be deducted from or offset against any amounts payable by Canada to the Recipient

**ARTICLE 14 - ANNOUNCEMENTS**

**Section 14.01 Public Announcement**

14.01.01 Any press release, public announcement or other ceremony of the Recipient respecting the Project or this Agreement shall be subject to Canada's prior written approval.

**ARTICLE 15 - FORCE MAJEURE**

**Section 15.01 Event of Force Majeure**

15.01.01 The Recipient will not be in default by reason only of any failure in performance of the Project in accordance with this Agreement if such failure arises without the fault or negligence of the Recipient and is caused by any event of Force Majeure.

**ARTICLE 16 - GENERAL PROVISIONS**

**Section 16.01 Entire Agreement**

16.01.01 This Agreement sets forth the entire agreement between the parties hereto concerning the subject matter hereof. No representation or warranty expressed, implied or otherwise is made by Canada to the Recipient or by the Recipient to Canada except as expressly set out in this Agreement

**Section 16.02 Agreement to Supersede**

16.02.01 This Agreement supersedes and revokes all negotiations, arrangements, letters of intent, brochures, representations and information conveyed, whether oral or in writing, between the parties hereto or their representatives or any other Person purporting to represent Canada or the Recipient. The Recipient agrees that:

- (a) it has not been induced to enter into this Agreement by any representations not set forth in this Agreement;
- (b) it has not relied on any such representations;
- (c) no such representations shall be used in the interpretation or construction of this Agreement; and

- (d) no claims, including loss of profits and consequential damages arising as a result of, or from any such representations shall accrue to or be pursued by it and Canada shall have no liability for any such claims.

### Section 16.03 House of Commons

- 16.03.01 As required by the *Parliament of Canada Act*, R.S.C. 1985, c. P-1, it is an express condition of this Agreement that no member of the House of Commons shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

### Section 16.04 Time of Essence

- 16.04.01 Time shall in all respects be of the essence of this Agreement.

### Section 16.05 Notice

- 16.05.01 All notices or other communications necessary for the purposes of this Agreement shall be in writing and shall be delivered personally or by courier, or shall be sent by registered mail or by prepaid post or sent by facsimile, addressed,

- (a) in the case of Canada, to:

Transport Canada

Attention: Karen Swol

Director, Program Analysis & Performance

Address: 14<sup>th</sup> Floor, 427 Laurier Ave W, Suite 1410

Ottawa, Ontario

K1A 0N5

Telephone: 613-990-5631

Facsimile: 613-990-7767

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

- (b) in the case of the Recipient, to:

Town of Ingersoll

Attention: Mr. E.R. (Gene) McLaren

Engineering Services Co-ordinator

Address: 130 Oxford Street

Ingersoll, Ontario

N5C 2V5

Telephone: (519) 485-0120

Facsimile: (519) 485-3543

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.

Any notice or communication will be considered to have been received:

- (a) in the case of facsimile, on actual receipt, and

- (b) in all other cases, on the date of delivery.

If the postal service is interrupted, or threatened to be interrupted, or is substantially delayed, any notice shall be delivered personally or by facsimile.

### **Section 16.06 Amendment**

- 16.06.01 This Agreement may be amended by a written agreement signed by both Canada and the Recipient.
- 16.06.02 No amendment, variation, addition, deletion (which term includes lining out), rider or other change to this Agreement shall have any force or effect unless it is in writing and unless it is signed by both Canada and the Recipient.

### **Section 16.07 Waiver**

- 16.07.01 The failure by any party hereto to insist in any one instance upon the strict performance by the other party hereto of its obligations hereunder shall not constitute a waiver or relinquishment of any such obligations as to any other instances, and the same shall continue in full force and effect.
- 16.07.02 No covenant or condition of this Agreement may be waived by any party hereto except by the written consent of that party, and forbearance or indulgence by that party in any regard whatsoever and no matter how long shall not constitute a waiver of the covenant or condition and, until performed or waived in writing, that party shall be entitled to invoke any remedy available to that party under this Agreement or by law, despite the forbearance or indulgence.

### **Section 16.08 Severability**

- 16.08.01 If, for any reason, any provision of this Agreement, other than any provision which is of fundamental importance to the arrangement between the parties, is, to any extent, held or rendered invalid, void, illegal or unenforceable for any reason whatsoever, then the particular provision shall be deemed to be independent of and severed from the remainder of this Agreement and all the other provisions of this Agreement shall nevertheless continue in full force and effect.

### **Section 16.09 Survival**

- 16.09.01 The Parties' rights and obligations set out in Sections 3.03, 5.01, 5.02, 5.03, 6.01, 7.01, 7.02 and 12.01, shall survive the expiry or early termination of this Agreement for a period of five (5) years from the Termination Date or such other date as determined by Canada.

### **Section 16.10 Canada's Consent**

- 16.10.01 In any matter requiring Canada's or the Minister's consent for which Canada or the Minister originally withholds consent and subsequently gives consent or for which a Court of competent jurisdiction determines that such consent should have been given, Canada and the Minister shall not have any responsibility to the Recipient for any claims whatsoever for having withheld Her or his consent, the Recipient hereby agreeing that no such claims shall accrue or be pursued by it. The Recipient hereby constitutes these presents as a full release, waiver and estoppel of any such claim.

### **Section 16.11 Lobbying**

- 16.11.01 Any person lobbying on behalf of the Recipient must be registered pursuant to the *Lobbyists Registration Act*.



**SCHEDULE "A"  
Project Description**

Improvements	Road/ Street	Mileage and Subdivision	Location	RSD Number	Project Completion Date	Final Claim for Payment	80 % Contribution	100 % Maximum
Removal of the existing asphalt surface, cul-de-sacs, fencing and site restoration	McKeand Road	59.51 Dundas	Ingersoll	2036	June 30, 2010	September 30, 2010	\$129,268.00	\$161,585.00

## SCHEDULE "B"

### Recipient Accounts Schedule

#### SCHEDULE RESPECTING THE PREPARATION OF ACCOUNTS BY A RECIPIENT IN RESPECT OF THE COST OF A RAILWAY WORK FOR WHICH A FINANCIAL ASSISTANCE HAS BEEN APPROVED BY THE MINISTER UNDER SECTION 12 OF THE RAILWAY SAFETY ACT

##### Application

1. This Schedule applies to accounting of Eligible Costs pursuant to this Agreement.
2. Unless otherwise directed by Canada, accounts shall be prepared in accordance with this Schedule.

##### Labour Costs and Surcharges

3. (1) Labour cost may include a proportion of wages allowed on statutory holidays and proportion of wages allowed for annual vacation pay, and shall be calculated as follows:

To the wages of all employees paid on an hourly, daily or weekly basis engaged on the project shall be added 15.3 per cent.

- (2) To all items of labour costs add surcharges to cover the following:

- |   |       |
|---|-------|
| (i) Supervision, Support Services, Accounting and use of small tools  | 10.0% |
| (ii) Pensions (a percentage may be added to direct labour costs in accordance with the Recipient's actual pension costs); |       |
| (iii) Workmen's compensation  | 2.3%  |
| (iv) Unemployment Insurance   | 2.3%  |
| (v) Pension Plans, Government   | 1.5%  |
| (vi) Health and Welfare   | 4.0%  |

and,

- (3) The surcharges covering supervision, accounting and use of small tools, are in lieu of the cost of all salary and expense of any general or supervising office, or other person regularly employed, having supervision over any operation, or maintenance, including all overhead office expense, cost of drafting-room accessories, etc. all stenographic or clerical forces employed in head, divisional, or district offices, handling matters pertaining to the work, all charges for minor equipment and small tools.

- (4) Special Engineering Services.

(a) A direct charge, plus the surcharges herein provided, is allowed for engineering services when it is necessary to employ engineers on the one job continuously and exclusively.

(b) It is also proper to charge the wages of office engineers and draftsmen assigned to the work in the preparation of plans, plus the surcharges herein provided. Assigned means continuous service for one day, or more, solely in connection with the particular project, but does not permit accumulation of short intermittent periods equal to one day.

(c) Such charges shall not be allowed if the work ordered or authorized is not carried out.

#### Workman's Compensation

4. Payment of compensation claims for injury or death is not allowed.

#### Transportation of Employees

5. Reasonable charges may be allowed for transportation of the Recipient's labour or employees to and from the project.

#### Material

6. (1) To the invoice price (including foreign freight, customs duty, sales tax and exchange) of all items or materials supplied from stores and used in construction work, an amount up to 15.0 per cent to cover supervision, store expense, inspection, accounting, handling and transportation from the Recipient's store to the site of work.

(2) Proper credit should be allowed for salvage materials, less an amount up to 15.0 per cent to cover expense of supervision, inspection, store expense, accounting, handling and transportation.

#### Contract work

7. (1) To the contract price of work done by a contractor there may be added a premium to cover supervision, accounting and inspection of three per cent on amounts up to \$50,000, of two per cent on the excess of \$50,000 up to \$100,000, and of one percent on the excess over \$100,000.

(2) Where a consulting engineer handles the complete project for the Recipient, that is complete supervision, accounting and inspection, then no premium shall be added.

#### Land Purchases and Damages

8. To the purchase price of land and property damages, registration fees, special taxes, fees paid into court, and commissions paid for purchase settlement, there may be added a premium to cover supervision, accounting, etc. of three per cent on amounts up to \$50,000, of two per cent on the excess of \$50,000 up to \$100,000, and of one per cent on the excess over \$100,000.

#### Rental of Equipment

9. Equipment rental charges may be allowed at rates relative to the rental of similar types of equipment in the area involved; percentage allowance shall not be added to equipment rentals.

10. All claims for payment of work done by a railway company on behalf of the Recipient shall be prepared using rates not in excess of those stipulated by the *Guide to Railway charges for crossing maintenance and construction* prepared by the Canadian Transportation Agency and effective January 1, 2004.