



Report to: General Committee

Date Report Authored: April 12th, 2012

SUBJECT: Langstaff Road Railway Crossing Warning System
Modification Agreement
PREPARED BY: Morgan Jones, Operations Manager, Roads, x 2285

RECOMMENDATION:

- 1) That the staff report entitled Langstaff Road Railway Crossing Warning System Modification Agreement, be received;
- 2) That the Mayor and Clerk be authorized to execute the Standard Funded Crossing Warning System Modification Agreement between Canadian National Railway and the Town of Markham based on the principles set out in the draft Agreement (Attachment 'A'), for the construction and future maintenance of the Langstaff Road railway crossing warning system. Said agreement to be in a form satisfactory to the Town Solicitor and Commissioner of Community and Fire Services;
- 3) That upon execution of the Agreement, the Commissioner of Community and Fire Services be authorized to issue payment to Canadian National Railway (CN) for the Town of Markham's portion of funding for the installation of the CN railway warning system upgrade at Langstaff Road and funded as per Financial Considerations;
- 4) And that Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

The purpose of this report is to obtain Council approval to authorize the Mayor and Clerk to execute the 'Standard Funded Crossing Warning System Modification Agreement' between CNR and the Town of Markham.

BACKGROUND:

In January of 2006, CN conducted a site meeting with Town of Markham representatives to review the suitability of the road crossing warning system at the Langstaff Crossing Mile 18.15 Bala Subdivision. The Langstaff crossing consists of two main tracks with approximately 20 freight, 3 passenger and 16 GO commuter trains utilizing this crossing daily. During this meeting, Transport Canada shared with CN and Markham representatives, Order No. R-2475 of the Canadian Transportation Commission, dated April 22, 1977, ordering CN to relocate a grade crossing warning system consisting of automatic gates, flashing lights and bell at Mile 18.15 Bala subdivision.

It was agreed by the attending parties that the addition of grade crossing predictors (GCP 4000) to the existing road crossing warning system would enhance vehicular/pedestrian safety at this crossing.

As the railway work is necessary to improve safety at this crossing, CN, as the party proposing to undertake the work, made an application under Section 12(1) of the Railway Safety Act, RSC, 1985, c. 32 (4th Supplement) for a grant of 80% in respect of the cost of this proposed railway work in December of 2008.

The cost for the works was \$226,016.03 and CN was able to secure a federal grant of 65.2% of the completed works. The Town's portion of the actual cost for the completed works was \$49,968.14 compared to an anticipated cost of \$35,050.00 which was based on a higher federal grant commitment.

OPTIONS/ DISCUSSION:

Crossing safety is a shared responsibility between the railway and the road authority. Both parties are equally responsible for identifying and progressing safety concerns and for actively participating in site meetings at which the safety of the crossing, signage both advanced and warning, approach gradient reductions, sightline improvements and alternative solutions are discussed.

The Town of Markham maintains a Capital Improvement program which funds gradient improvements at numerous crossings throughout the Town relative to Canadian National, Canadian Pacific and GO Railway system requirements. The program provides safe crossings for both pedestrian and vehicular traffic.

Town of Markham representatives closely monitor all crossings within the Town to prioritize improvements required at each crossing to ensure the maintenance strategies remain within the approved budget for the Railway Crossing Improvement Program.

Staff recommends the Town enter into the Crossing Warning System Modification Agreement with CN, pay our proportionate share for the works performed to implement the safety improvements and agree to the 50-50 cost sharing arrangement for all future maintenance costs of the railway warning system. This is consistent with existing cost sharing arrangements between the Town and the Railway Authorities for all existing level crossings on Town owned roads.

FINANCIAL CONSIDERATIONS AND TEMPLATE:

The Town's portion of the Langstaff railway warning system upgrade was budgeted at \$35,050.00 under the CN Railroad Crossing Safety Compliance project (account 700-101-5399-11296). The final cost of works came in at \$49,968.14 and the balance of \$14,918.14 will be funded from the Emergency Repairs project (account 700-101-5399-11297).


ALIGNMENT WITH STRATEGIC PRIORITIES:

Municipal Services – Railway crossing safety improvements will enhance transportation safety for pedestrians and vehicles.

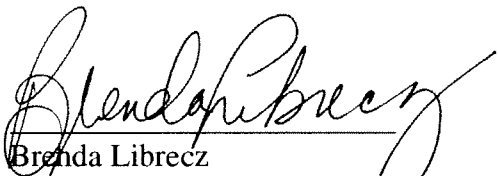
BUSINESS UNITS CONSULTED AND AFFECTED:

Not Applicable

RECOMMENDED BY:



Paul Ingham
Director, Operations



Brenda Librecz
Commissioner, Community & Fire Services

ATTACHMENTS:

Attachment 'A' – Standard Funded Crossing Warning System Modification Agreement

DRAFT

STANDARD FUNDED CROSSING WARNING SYSTEM MODIFICATION AGREEMENT

THIS AGREEMENT effective as of the _____ day of _____, TWO THOUSAND AND NINE.

BETWEEN:

CANADIAN NATIONAL RAILWAY COMPANY
(hereinafter called the "Railway")

- and -

TOWN OF MARKHAM

in the Town of Markham
and Province of Ontario

(hereinafter called the "Road Authority")

WHEREAS Order No. R-24715 of the Canadian Transportation Commission, dated April 22, 1977, ordered the Canadian National Railway, to construct a second main line across Langstaff Road, at mileage 18.15, on the Bala Subdivision, in the Town of Richmond Hill (formerly Township of Markham), in the Province of Ontario and to relocate the existing automatic protection at the crossing to accommodate the second track.

AND WHEREAS Order No. 1997-R-652, dated October 20, 1997, amended Order No. R-24715 to reflect a change of Road Authority from the Ministry of Transportation and Communications of the Province of Ontario to the Regional Municipality of York, which responsibilities are now assumed by the Town of Markham.

AND WHEREAS the parties are contemplating a modification to the existing crossing warning system, that modification consisting of installing GCP 4000 with standby (hereinafter the "crossing warning system"), at the grade crossing of Langstaff Road, at mileage 18.15, on the Bala Subdivision, in the Town of Markham, in the Province of Ontario.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the mutual covenants and agreements herein and subject to the terms and conditions set out in this agreement, the parties agree as follows:

1. The Railway, as party proposing to undertake the work, will file an application pursuant to the *Railway Safety Act* ("the Act"), for a grant in respect of the cost of this proposed railway work as defined in the Act.
2. Upon confirmation from the Minister that funding has been authorized, the Railway will carry out the proposed railway work.

Initials: CN _____
RA _____

- DRAFT**
3. 62.5% of the total cost of the crossing warning system modification (as determined pursuant to clause 6), remaining after Transport Canada funding has been applied, shall be paid by the Road Authority.
 4. 37.5% of the total cost of the crossing warning system modification (as determined pursuant to clause 6), remaining after Transport Canada funding has been applied, shall be paid by the Railway.
 5. The cost of maintaining the crossing warning system shall be paid 50% by the Road Authority and 50% by the Railway.
 6. The Railway shall prepare all accounts for work performed by the Railway for both installation and maintenance using rates as stipulated in the latest Guide to Railway Charges for Crossing Maintenance and Construction as issued by the Canadian Transportation Agency. In the event that the Canadian Transportation Agency should discontinue publishing same, the accounts shall be based on the Railway's costs including overheads.
 7. If at any time during the continuance of this Agreement the parties agree on the requirement for modification to the crossing warning system, the terms associated with the modifications will be agreed to by the parties in a separate agreement.
 8. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and all applicable federal laws and regulations.
 9. This Agreement is not assignable without the prior written consent of both parties which consent will not be unreasonably withheld. Notwithstanding the above, in the event of the transfer of its line for continued operations, the Railway will have the right to assign this Agreement to any subsequent owner. The Road Authority will also have the right to assign responsibility for the highway to another road authority on condition that the highway maintains its public status.
 10. This Agreement shall become effective on the date appearing on page 1 of this Agreement and shall continue until either the Railway discontinues its operations at this location, or the Road Authority closes the Highway at this location, or the Minister notifies the parties that funding will not be provided, or upon the written consent of both parties.
 11. Upon termination of the Agreement, the Railway shall be responsible for dismantling the crossing warning system at the Railway's cost.
 12. Any dispute relating to the wording and interpretation of the clauses in this Agreement will be resolved in accordance with the arbitration act of the province in which the crossing warning system is located.
 13. Upon execution, the Railway may file this Agreement with the Canadian Transportation Agency.
 14. Subject to clause 13, this Agreement is confidential and the Agreement or any of its terms and conditions shall not be disclosed to any third party, person or association except and to the extent as may be required by law or upon the prior written consent of all parties hereto.

Initials: CN _____
RA _____

15. The preamble to this Agreement forms an integral part of the Agreement.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed by their respective representatives hereunto duly authorized, as of the date first above written.

CANADIAN NATIONAL RAILWAY COMPANY

(Signature)

GENERAL MANAGER
(Title)

(Witness)

(Date)

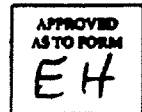
TOWN OF MARKHAM

(Signature)

(Title)

(Witness)

(Date)



Initials: CN _____
RA _____