

## **MEMORANDUM OF UNDERSTANDING**

### **HARRIS ROAD UNDERPASS/ KENNEDY ROAD OVERPASS PROJECT**

#### **BETWEEN**

**CANADIAN PACIFIC RAILWAY ("CPR")**

#### **AND**

**CITY OF PITT MEADOWS ("City")**

#### **AND**

**VANCOUVER FRASER PORT AUTHORITY ("VFPA")**

#### **RECITALS:**

- A. The Gateway Transportation Collaboration Forum ("GTCF"), established in summer 2014, is a collaborative effort to ensure the Greater Vancouver gateway is ready to manage growing trade. The GTCF consists of Transport Canada, the BC Ministry of Transportation and Infrastructure, the Vancouver Fraser Port Authority, Translink and the Greater Vancouver Gateway Council.
- B. Oversight of the GTCF is provided by a Steering Committee, consisting of senior executives from the participating organizations. The responsibility of the Steering Committee is to understand stakeholder interests and issues, collaborate on advancing priority infrastructure projects, evaluate and prioritize projects, and identify and pursue viable funding sources.
- C. Greater Vancouver Gateway 2030 is the GTCF strategy for smart infrastructure investment to remove bottlenecks impeding the growth of trade, while addressing the community impacts of goods movement and population growth.
- D. The Harris Road Underpass, Kennedy Road Overpass and associated rail work (all of which form part of the "Project") in the City of Pitt Meadows ("City") represent three of the nearly 40 transportation projects proposed as part of Greater Vancouver Gateway 2030 which will provide national, provincial, and local benefits. By removing capacity constraints and freight bottlenecks to get Canadian goods to market, these projects will help grow the economy, create well-paying jobs and support livable, green communities with improvements to safety, mobility and air quality.
- E. The City's population is expected to grow to 24,000 residents by 2041. While the City will only experience modest population growth in the coming years, it is surrounded by some of the highest growth communities in the Metro Vancouver region, including Maple Ridge, Coquitlam, Surrey, and the Township of Langley. While the moderate growth in the City will create some local pressures on the City's transportation network, rapid growth projected in neighboring high growth communities will place increasing pressures on the City's transportation system. Given that these trends will continue into the future, there is a need to promote a balanced and sustainable transportation system to accommodate the increased growth locally and regionally.

- F. The City's Transportation Master Plan ("TMP") has been developed to provide the City's current vision for the future of the City's transportation system and guide the City to achieve larger community aspirations, including supporting alternatives to the automobile, promoting a healthy natural environment, protecting rural areas, and ensuring a vital local economy while also supporting the movement of people and goods.
- G. At the municipal level, the Project is generally consistent with Strategy 5.3 of the City's TMP, which discusses the general need for mitigating the effects of rail operations on the road network. The Project would eliminate the road/rail interface at these two crossings. It is further noted that the design concept for the Harris Road Underpass is based on a concept that was originally developed through a feasibility study led by the City.
- H. The mandate of VFPA is to facilitate Canada's trade objectives, ensuring goods are moved safely, while protecting the environment and considering local communities. In fulfilling this mandate, VFPA carries out a variety of duties, including collaborating with terminal operators, railroads and shippers to promote efficient goods movement throughout port lands and waters, and developing infrastructure to support growth and efficient operations, including working with government and others on projects beyond lands owned or managed by VFPA.
- I. The \$2-billion National Trade Corridors Fund ("NTCF") helps fund infrastructure projects in Canada. Such infrastructure projects include work to airports, ports, rail yards, transportation facilities and access roads. The Project was approved for funding by Transport Canada through the NTCF program, and VFPA has entered into a funding agreement with Her Majesty the Queen in Right of Canada for the Project ("Federal Funding Agreement").
- J. VFPA, CP and the City are to consider the following projects during the design of the Harris underpass and Kennedy overpass, and the potential cumulative effects:
- a. Improvements at the Harris Rd and Lougheed Hwy intersection;
  - b. North Lougheed Connector;
  - c. North Allen Way Connector to Harris; and
  - d. Kennedy-McTavish Connector.
- K. During previous project engagement the following concerns were mentioned and need to be considered and addressed where technically and economically feasible in the design of the project:
- a. traffic management during construction to minimize detour into the community;
  - b. noise mitigation measures within the urban boundary of the City;
  - c. relocation of the heritage buildings (General Store and Hoffman Garage);
  - d. changes to residential and business access; and
  - e. character of the community;
- L. The parties wish to enter into this Memorandum of Understanding ("MOU") to set out the terms upon which the parties will negotiate the funding and delivery of the Project.

## **NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

### **1. KEY PRINCIPLES**

#### **1.1 Project Benefits**

The parties recognize that the Project will support trade growth and reduce the associated community impacts of trade through investment in two grade separations and expanded rail infrastructure, which will improve safety, emergency response, efficiency and reliability of public roadways and CPR railway(s); and that there is the potential for additional benefits to local residents and business in the form of noise mitigation opportunities.

#### **1.2 Public Engagement**

The parties recognize the benefit of local resident and business input for the Project and the parties therefore commit to implementing meaningful public engagement and consultation in order to identify opportunities, mitigate local impacts from the Project and to identify and address the concerns of local residents and business.

The Parties will approach public consultation based on two-way communication and open dialogue, working together to ensure the community, the environment and the economy are all considered during project planning.

Regarding public engagement, the Parties commit to:

- providing opportunities for the public to inform design;
- providing clear information to the public on how input is being used in to influence the decision(s);
- conducting early outreach to directly affected parties, in coordination with the City's Civic Engagement Policy and Framework; and
- taking a proactive approach to identifying and managing construction concerns and impacts.

The Parties will develop and comply with a mutually agreed upon consultation strategy and communications protocol that address:

- points of contacts for all parties to manage public inquiries;
- public information materials and postings, which include coverage area, format, graphics, language, etc.;
- open house(s) and/or workshop sessions;
- methods to reach out, gather, review, and assess public input which may include forums, meetings, questionnaires and surveys;
- recommendation on addressing sensitive issues; and
- other forms of public engagement (e.g. media, door knocking, local events).



### **1.3 Cooperation**

- (a) The parties commit to timely technical and procedural cooperation for all implementation phases from Project planning to design and construction, and to ensure coordination with related initiatives of importance to the parties.
- (b) The parties will form a management committee ("Management Committee") to assist with the implementation and management of the agreement described in Section 5.1 "Design Agreement" and the agreement described in Section 5.2 "Construction Agreement" and the agreement described in Section 5.3 "Maintenance/Operating Agreement". The Management Committee will be comprised of one member from each of the parties. As lead delivery agent and signatory to the Federal Funding Agreement, the VFPA member will be the chair of the Management Committee. Each party will bear its own costs of participation in the Management Committee.
- (c) The parties will identify the approvals and permits that are applicable to the Project having regard to VFPA being a federal port authority and CPR being a federally regulated railway and the nature of the Project. Where approvals are necessary from third party agencies, the parties will work together to obtain such approvals in a manner that best supports an on time and on budget delivery of the Project; in some instances, this may include the submission of applications by the City on behalf of the Project.

### **1.4 Project Funding**

- (a) Federal funding for the Project is subject to VFPA and Canada signing the Federal Funding Agreement. There will be requirements attached to Canada's funding obligations in the Federal Funding Agreement, including the completion of Project construction by March 2024 and obligations relating to ownership, operation and maintenance of certain Project components for 25 years following completion. Further, Canada will have no obligation to reimburse eligible expenditures under the Federal Funding Agreement until Canada is satisfied that any legal duty to consult with and, where appropriate, to accommodate Indigenous groups has been met.
- (b) CPR and VFPA funding contributions for the Project will be subject to internal approvals, the Federal Funding Agreement and the terms and conditions of a Design Agreement, which will include an evaluation of final scope, schedule, cost and risk assessment at the conclusion of design and/or receipt of construction tenders to determine whether funding will continue for the completion of the Project.

### **1.5 Indigenous Consultation**

The parties agree that consultation with Indigenous groups that might be affected by the Project will be necessary. No site preparation, vegetation removal or construction of any Project component will occur until Canada is satisfied that any legal duty to consult with and, where appropriate, to accommodate Indigenous groups for that Project component has been met. VFPA, with support from the other parties will lead the consultation with Indigenous groups.

## **1.6 Non-Binding**

With the exception of Section 1.7, which is legally binding on the parties, the remaining provisions of this MOU do not create any contractual obligations relating to the Project. It is expected that each party will negotiate in good faith to reach a binding agreement(s), substantially in accordance with the provisions of this MOU.

## **1.7 Confidentiality**

The parties will keep confidential all matters respecting technical, commercial, financial and legal issues relating to or arising out of the agreement and will not disclose confidential information. Notwithstanding the foregoing, disclosure of confidential information may be made with the prior written consent of the other parties or disclosing party (as applicable) or as otherwise required by applicable laws; provided that such obligations of confidentiality will not apply to:

- (a) information that is, or subsequently becomes, publicly available other than through a breach of this agreement;
- (b) information which a party already possessed before commencing to participate in the Project;
- (c) information which is received from a third party without a known breach of any obligation of confidence by such third party; or
- (d) information which is independently developed without the use of such confidential information.

## **2. PROJECT SCOPE**

### **2.1 Harris Road Underpass Component**

The Harris Road grade separation, currently expected to be an underpass and referred to as the Harris Road Underpass component, will grade-separate the existing at-grade crossing of the double tracked CPR corridor at Harris Road along the existing road alignment. The underpass would include four travel lanes with provision for cycling/pedestrian use and applicable clearances for vehicles and sidewalks.

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Two heritage buildings adjacent to the proposed Harris Road Underpass (the General Store at 12294 Harris Road and the Hoffmann & Son building at 12277 Harris Road, in Pitt Meadows) are anticipated to be relocated as part of the Harris Road component to facilitate the change in the vertical road profile along Harris Road and to accommodate construction activities such as temporary detours.

### **2.2 Kennedy Road Overpass Component**

The Kennedy Road grade separation, currently expected to be an overpass and referred to as the Kennedy Road Overpass component, will grade separate the existing at-grade crossing of the triple-tracked CPR corridor at Kennedy Road east of and adjacent to the existing road alignment. The overpass would include two travel lanes and bridge parapet barriers, a single span with applicable clearances and

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On the north

side, the approach ramp would match to existing grade prior to intersecting Ferryslip Road, thereby ensuring continued vehicular access to the intermodal facility and other nearby industrial businesses.

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## **2.4 Project Schedule**

The three components of the Project must all be completed in a coordinated fashion to ensure substantial completion of each component, on or prior to March 31 2024, in accordance with the Federal Funding Agreement.

## **3. PROJECT CONTRIBUTIONS**

### **3.1 Project Cost and Sharing**

- (a) The Project is expected to cost a maximum of \$141 M as per the "Comprehensive Project Proposal" submitted by VFPA to the NTCF. Such Project costs will be shared among Canada, CPR and VFPA in accordance with the Federal Funding Agreement, and either a Design Agreement or other funding agreement between CPR and VFPA.
- (b) For new scope that is not described in Section 2 or not reasonably associated with the scope in Section 2 through consideration of applicable design and construction standards or applicable laws and regulations, unless the parties agree to include the new scope as part of the Project and share the additional scope change costs, such will be the responsibility of the party requesting and benefiting from the new scope.

### **3.2 In-Kind Contributions**

- (a) Any land required for the Project will be made available in kind to the Project by the relevant controlling party. This in kind contribution is over and above any financial contributions committed to by the relevant party pursuant to the Federal Funding Agreement, and either a Design Agreement or other funding agreement between any of the parties for the Project.
- (b) No party will compensate any other party for the costs of staff resources applied to the Project; provided that out of pocket, third party costs and overhead directly attributed to the Project and incurred by either VFPA or CPR will be considered Project costs.

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However, subject to subsection (b) above, all reasonable costs associated with the land acquisition (including ancillary support services such as land negotiations) will be attributed as a Project cost to be covered by the applicable funding partners.



## **4. PROJECT DELIVERY ROLES**

### **4.1 VFPA Delivery Obligations**

VFPA will be responsible for project management, leading consultation and overall delivery of the design and construction of the Harris Underpass, Kennedy Overpass and Heritage Building relocations to total completion in accordance with the Federal Funding Agreement, Design Agreement, Construction Agreement, and any other applicable agreements between VFPA and either of the other parties. VFPA will undertake such delivery in a professional, competent, timely and diligent manner.

### **4.2 CPR Delivery Obligations**

CPR will deliver the design and construction of all rail works to total completion in accordance with the Federal Funding Agreement, Design Agreement, Construction Agreement, and any other applicable agreements between CPR and either of the other parties. CPR will maintain and operate rail infrastructure and the elements of the Harris Underpass Structure which support rail operations in accordance with the Maintenance/Operating Agreement. CPR will undertake such delivery in a professional, competent, timely and diligent manner.

### **4.3 City Participation and Land Delivery Obligations**

The City will participate in the design, construction and public engagement process in accordance with the Federal Funding Agreement, Design Agreement, Construction Agreement, and any other applicable agreements between City and either of the other parties. The City will maintain and operate the applicable elements of the Harris Underpass and Kennedy Overpass Structure in accordance with the Maintenance/Operating Agreement. The City will undertake such participation, maintenance and operation in a professional, competent, timely and diligent manner.

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The costs of property acquisition will be treated as a Project cost shared in accordance with Section 3.

## **5. DEFINITIVE AGREEMENTS**

### **5.1 Form and Content of Future Agreements**

The Parties agree to negotiate and enter into further agreements as needed for successful delivery of the project. At present, a Design Agreement a Construction Agreement and Maintenance/Operations Agreement(s) are contemplated; however the form and content of future agreement(s) may change as the project is progressed.

### **5.2 Design Agreement**

Immediately following the execution of this MOU, the parties will expeditiously and in good faith negotiate and enter into a Design Agreement that will among other things:

- (a) authorize VFPA and CPR and any of their contractors to carry out all works, and perform all acts required by VFPA and CPR and their contractors to complete Project design, including site investigations;
- (b) grant VFPA and CPR any necessary licenses over City land to facilitate the works referred to subsection (a) above;
- (c) obligate VFPA and CPR to complete the design of their respective Project components for which they are obligated to deliver:
  - (i) in accordance with the established design standards of CPR for rail works and the City for road works and otherwise applicable prevailing and accepted industry standards; and
  - (ii) in compliance with all applicable laws, statutes and regulations;
- (d) obligate VFPA and CPR to provide design review and input opportunities to the other parties, and obligate all parties to provide such input;
- (e) identify the party or parties responsible for obtaining approvals and permits applicable to the Project;
- (f) obligate VFPA and CPR to complete applicable environmental and community assessments, and to identify and mitigate any impacts to the extent reasonably possible, for the Project components that such party is obligated to deliver;
- (g) obligate the parties to implement and participate in an inclusive community engagement strategy;
- (h) obligate the parties to implement and participate in an Indigenous consultation strategy that will satisfy the requirements of the Federal Funding Agreement;
- (i) include applicable terms and conditions relating to Project funding, expenditures and reimbursement;
- (j) acknowledge that VFPA and CPR have the authority to halt design progression and further investment of resources if satisfactory progress on the negotiation of any further agreements required for the Project, including the Construction Agreement, is not achieved;
- (k) include terms and conditions contemplated or required by this MOU, the Federal Funding Agreement or other applicable agreements among any of the parties relating to the Project; and
- (l) any other terms and conditions that a party may reasonably require.

### **5.3 Construction Agreement**

Immediately following the execution of the Design Agreement, the parties will expeditiously and in good faith negotiate and enter into a Construction Agreement that will among other things:



- (a) authorize VFPA and CPR and any of their contractors to carry out all works, and perform all acts, required by VFPA and CPR and their contractors to deliver the Project in accordance with the approved design;
- (b) grant VFPA and CPR any necessary licenses over Pitt Meadows lands to facilitate the works referred to in subsection (a) above;
- (c) to the extent not identified in the Design Agreement, identify the party or parties responsible for obtaining approvals and permits applicable to the Project;
- (d) obligate VFPA and CPR to complete the construction of their respective Project components for which they are obligated to deliver:
  - (i) in accordance with the established construction standards of CPR for rail works and the City for road works and otherwise applicable prevailing and accepted industry standards; and
  - (ii) in compliance with all applicable laws, statutes and, regulations;
- (e) obligate VFPA and CPR to require all of their contractors to:
  - (i) indemnify all parties for all costs, claims and other expenses incurred as a result of the contractor's negligence or willful misconduct;
  - (ii) obtain and maintain such insurance as would a reasonable and prudent owner, with all parties named as additional insured under all general liability policies;
  - (iii) provide performance security as would a reasonable and prudent owner;
  - (iv) develop and provide traffic management plans for the City's review and comment; which seek to minimize as reasonably possible, impacts to local residents and business;
- (f) include applicable terms and conditions relating to Project funding, expenditures and reimbursement;
- (g) allow VFPA and CPR to make a final investment decision before starting construction and being obligated to complete the delivery of the Project;
- (h) include terms and conditions contemplated or required by this MOU, the Design Agreement, the Federal Funding Agreement or other applicable agreements among any of the parties relating to the Project; and
- (i) any other terms and conditions that a party may reasonably require.

#### **5.4 Maintenance/Operating Agreement**

Immediately following the execution of the Design Agreement, the parties will expeditiously and in good faith negotiate and enter into a Maintenance/Operating Agreement for each crossing, that will among other things:

- (a) obligate CPR to own, operate and maintain any rail infrastructure and the elements of the Harris Underpass Structure which support rail operations for a period of 25 years;

- (b) obligate the City to own, operate and maintain elements of the Harris Underpass which are architectural in nature or support public use of the roadway and associated pathways, for a period of 25 years; provided that such obligation will not require ownership or operations and maintenance of assets outside the 25 year period;
- (c) obligate the City to own, operate and maintain the Kennedy Overpass Structure, for a period of 25 years; provided that such obligation will not require ownership or operations and maintenance of assets outside the 25 year period;
- (d) include applicable terms and conditions relating to Project funding, expenditures and reimbursement;
- (e) include terms and conditions contemplated or required by this MOU, the Design Agreement, the Construction Agreement, the Federal Funding Agreement or other applicable agreements among any of the parties relating to the Project; and
- (f) obligate CPR and the City to enter into a Crossing Agreement(s) that are anticipated to be registered with Transport Canada
- (g) any other terms and conditions that a party may reasonable require.

## **6 GENERAL**

### **6.1 Termination**

This MOU will terminate by any party giving 30 days written notice to the other parties (in which case Section 1.7 will survive termination) or immediately upon the full execution of the Design Agreement and the Construction Agreement and the Maintenance/Operating Agreement.

### **6.2 Relationship of the Parties**

No provision of this MOU 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 among any of the parties.

### **6.3 MOU Costs and Expenses**

Each party will bear its own costs and expenses in connection with the preparation, negotiation and execution of this MOU.

### **6.4 Counterparts**

This MOU may be executed and delivered in any number of counterparts, including by electronic means, each of which when so executed and delivered will be deemed to be an original and such counterparts together will be one and the same instrument.

**IN WITNESS WHEREOF** the parties hereto have executed and delivered this Agreement as of the date reflected below their respective signatures.

Signed and delivered by the **CANADIAN  
PACIFIC RAILWAY COMPANY** by its  
authorized signatory:

Mike FORAN  
Name (please print)  
VP MARKET Strategy and Asset Mgmt  
Title (please print)  
[Signature]  
Signature  
AUG 8<sup>th</sup> / 2019  
Date

Signed and delivered by the **CITY OF PITT  
MEADOWS** by its authorized signatory:

William Dingwall  
Name (please print)  
Mayor  
Title (please print)  
W Dingwall  
Signature  
July 31<sup>st</sup>, 2019  
Date

Signed and delivered by the **VANCOUVER  
FRASER PORT AUTHORITY** by its duly  
authorized signatory(ies):

[Signature]  
President & CEO  
2019-07-30  
Date  
[Signature]  
Corporate Secretary  
2019-07-30  
Date

[Signature]

KATE BARCHARD  
Corporate Officer  
CITY OF PITT MEADOWS

July 31, 2019