ADDENDUM

REGULAR MEETING OF CITY COUNCIL

2011 04 18

4:30 P.M.

COUNCIL CHAMBERS

PART ONE - CONSENT AGENDA

3. APPROVE AGENDA AS PRESENTED

Mover:

Councillor L. Turco

Seconder:

Councillor P. Mick

Resolved that the Addendum for the 2011 04 18 City Council meeting as

presented be approved.

5. COMMUNICATIONS AND ROUTINE REPORTS OF CITY DEPARTMENTS; BOARDS AND COMMITTEES

aa) McNabb / Southmarket Extension

A report of the Director of Engineering Services is attached for the consideration of Council.

The relevant By-laws 2011-75 and 2011-76 are listed under Item 10 of the Agenda and will be read with all other by-laws listed under that item.

bb) Correspondence from OLG is attached for the information of Council.

10. CONSIDERATION AND PASSING OF BY-LAWS

By-laws before Council for THREE readings which do not require more than a simple majority.

<u>AGREEMENT</u>

p) 2011-75

A by-law to authorize execution of an agreement between the City and Huron Central Railway Inc. dated the 1st day April, 2011 being a Standard Grade Crossing Agreement for Southmarket Street.

A report from the Director of Engineering Services is on the agenda.

q) 2011-76

A by-law to authorize execution of an agreement between the City and Huron Central Railway Inc. dated the 1st day April, 2011 being a New Crossing Signal Agreement for Southmarket Street.

A report from the Director of Engineering Services is on the agenda.

5(aa)

Jerry D. Dolcetti, RPP Commissioner

Don J. Elliott, P. Eng. Director of Engineering Services



ENGINEERING & PLANNING DEPARTMEN

Engineering & Construction Division

Tel: (705) 759-5378 Fax: (705) 541-7165

2011 04 18

Our File: 2009-1E

Mayor Debbie Amaroso Members of Council

Re: McNabb/Southmarket Extension

Rail Crossing Agreements

The Engineering Division is working towards ensuring that the McNabb/Southmarket Extension will be opened this fall, together with the adjacent portion of the Hub Trail. As stated in a report to Council at the 2010 09 13 meeting, there are two issues which have concurrently delayed the opening.

The first delay was the acquisition of two properties in order to construct an extension to the rail spur to the Shell tank farm. It was determined during the Environmental Assessment that it was the City's responsibility to extend the spur in order to mitigate negative effects of the project on the operation of the tank farm. We are pleased that the Legal Department has successfully acquired the properties. It is our intention to construct the spur extension and deed the properties over to Shell upon completion.

The second issue is the ordering of materials and installation of the two new railway crossing signals. Huron Central Railway indicated that materials would not be ordered pending the securing of funding for continued operation of the rail line. Given the favorable funding announcements for improvements to the railway, Huron Central and the City have negotiated crossing agreements for the mainline crossing at Southmarket. These agreements are typical, and are in place for all railway crossings in the City. The maintenance and future upgrade responsibility for the tank farm spur crossing McNabb Street remains with Shell.

The railway has provided a cost estimate for track and signal work associated with the two crossings and the spur extension (see attached sketch). It includes some upgrades to the Adeline, Shannon and Black crossings as there are linkages to nearby crossings that require intercommunication. The estimate is \$1,161,521.65 which is under the allowance carried in the project for rail work. The railway has a policy that 65% of the funds are required up front.

It is recommended that Council authorize the New Crossing Agreement, the Standard Grade Crossing Agreement with Huron Central Railway, and the prepayment of 65% of the estimate for construction.

By-laws 2011-75 and 2011-76 authorizing the execution of the agreements between the City and Huron Central Railway Inc. can be found elsewhere on Council's agenda and are recommended for approval.

Respectfully submitted,

Recommended for approval,

Don J. Elliott, P. Eng.

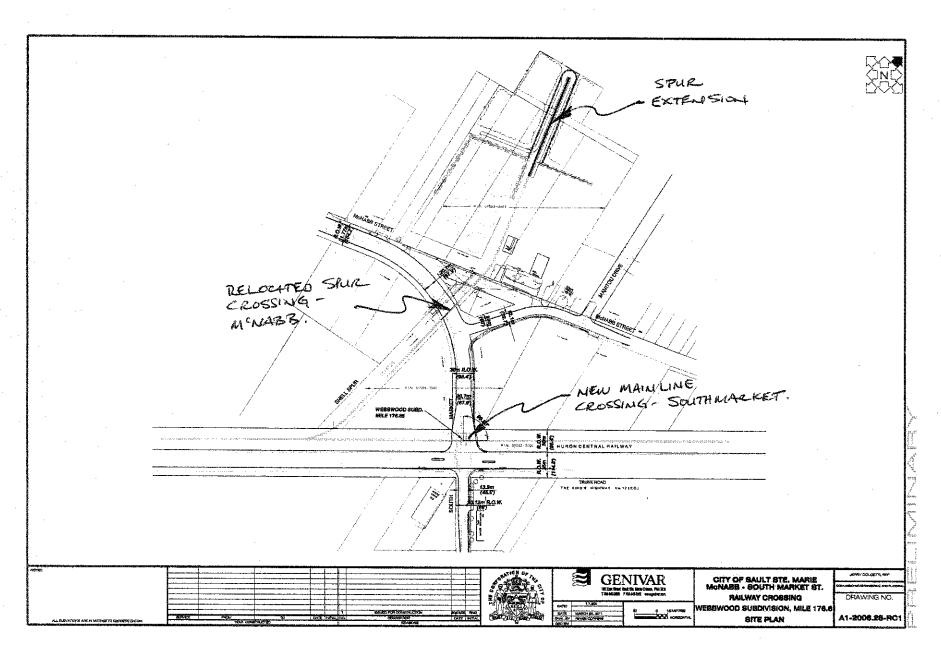
Director of Engineering Services

Jerry D. Dolcetti, RPP

Commissioner

Engineering & Planning

/bb





April 15, 2011

VIA FACSIMILE

Debbie Amaroso, Mayor The Municipality of Sault Ste. Marie 353 Moody Street Sault Ste. Marie, ON P6C 3Z9

Dear Mayor Amaroso:

RE: Casino Sault Ste. Marie & OLG Head Office

We are writing to tell you about the new financial reporting standards that OLG will be required to adopt effective April 1, 2011, and how this change will affect OLG payments to your organization.

As you may know, OLG calculates payments to your organization based on a percentage of revenue. To date, Canadian Generally Accepted Accounting Principles (CGAAP) have prescribed the manner in which OLG accounts for various revenue and expense items on its financial statements.

Effective April 1, 2011, OLG will be required to switch from CGAAP to new accounting standards called the International Financial Reporting Standards (IFRS). OLG is required to adopt IFRS for fiscal periods beginning on or after January 1, 2011, following direction from the Canadian Institute of Chartered Accountants. Canada is joining more than 120 countries and reporting jurisdictions already using these accounting standards.

This is relevant to your organization because IFRS will change the way OLG accounts for revenue, and this will have a consequential effect on the calculation of your current payments from OLG.

Unlike CGAAP, IFRS requires OLG to net (or subtract) from gross revenue the monetary value of complimentary items provided to patrons free of charge (i.e. comps, entertainment, Winner's Circle benefits, etc.). By way of example, using fiscal year 2010-2011 figures, the application of IFRS would have reduced consolidated OLG revenue by approximately \$340 million.

Based on 2011-2012 revenue forecasts, this translates into a reduction of approximately \$47,000 to your organization annually.

.....cont'd

IFRS Letter - OLG/Stakeholder

Page 2 of 2

To mitigate the impact of this change, OLG has chosen to provide you with one-time payments to accompany your regular payment calculated under IFRS for the first nine (9) months of this fiscal year. These transition payments would fully offset the difference between the current payment methodology (i.e. based on CGAAP) and the new payment methodology mandated by IFRS. OLG decided to do this to make allowances for your planning calendar. At the end of this transition period on January 1, 2012, your payments will be consistent with IFRS calculations and reflect the reduction noted above.

As IFRS continues to be adopted by jurisdictions around the world, we will monitor the evolution of the standards, and flag any additional impacts that may affect you with due notification.

We understand that the technical nature of this matter may require additional explanation. Please feel free to contact us through Audrey Smith at 416-224-7085 should a face-to-face discussion be helpful to you.

Sincerely,

Preet Dhindsa

Executive Vice President, CAO/CFO

Larry Flynn

Senior VP Gaming

THE CORPORATION OF THE CITY OF SAULT STE. MARIE

BY-LAW 2011-75

AGREEMENT: (E.3.4.4.) A by-law to authorize execution of an Agreement between the City and Huron Central Railway Inc. dated the 1st day of April, 2011 being a Standard Grade Crossing Agreement for Southmarket Street.

THE COUNCIL of The Corporation of the City of Sault Ste. Marie, pursuant to the Municipal Act, S.O. 2001, C. 25, **ENACTS** as follows:

1. **EXECUTION OF DOCUMENT**

The Mayor and the Clerk are hereby authorized for and in the name of the Corporation to execute and affix the seal of the Corporation to an agreement in the form of Schedule "A" attached hereto, dated April 1st, 2011 and made between the City and Huron Central Railway for a Standard Grade Crossing Agreement for Southmarket Street.

2 SCHEDULE "A"

Schedule "A" forms part of this by-law.

3. **EFFECTIVE DATE**

This by-law takes effect on the day of its final passing.

PASSED in open Council this 18th day of April, 2011.

MAYOR – DEBBIE AMAROSO

CLERK – MALCOLM WHITE

da Bylaws\2011\2011-75 Agreement Std Grade Crossing South Mkt

NOTICE

THIS IS A DRAFT DOCUMENT. This document has not been enacted by City Council. It may not be enacted at all AND if enacted, it may not be in the form of the DRAFT copy.

CITY SOLICITOR

SCHEDULE "A" TO BY-LAW 2011-75

STANDARD GRADE CROSSING AGREEMENT

Southmarket Street

THIS AGREEMENT effective as of the 1st day of April, 2011.

BETWEEN:

HURON CENTRAL RAILWAY INC.

(Hereinafter called the "Railway")

- and -

THE CORPORATION OF THE CITY OF SAULT STE. MARIE,

(Hereinafter called the "Road Authority")

WHEREAS it is the Road Authority's intent to construct a "road", namely Southmarket street, at grade across the right-of-way and track of the Railway at Mileage 176.61 on the Webbwood Subdivision (hereinafter the Crossing) in the City of Sault Ste. Marie, in the Province of Ontario, as shown on plan No. A1-2006-28-RC3 and No. A1-2006-28-RC4 dated March 25th 2011 (hereinafter the Plans) attached to and forming part of this agreement;

AND WHEREAS the Railway is the senior party at this location;

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:

RESPONSIBILITIES

- The Road Authority and the Railway will carry out the work as shown on the Plans in accordance with the Railway requirements respect safe railway operations.
- The Road Authority and the Railway shall make every effort to carry out their portion of the work in a diligent and expeditious manner that will not result in delays in the work.

LIABILITY

 Prior to commencement of construction the Road Authority or any agent acting on its behalf will comply with the Railway's insurance requirements as stipulated in Appendix 1 attached hereto.

RAILWAY SAFETY ACT

4. The parties are required to fulfill their respective obligations under the <u>Railway Safety Act</u>. For the purposes of the <u>Railway Safety Act</u>, the Road Authority is considered to be the "proponent".

HIGHWAY APPROACHES

 The cost of constructing and maintaining the highway approaches to the crossing shall be paid by the Road Authority.

CROSSING SURFACE COSTS

 The cost of constructing and maintaining the crossing surface shall be paid by the Road Authority.

PREMIUM CROSSING SURFACE

 All costs associated with the installation and maintenance of a premium crossing surface will be paid by the Road Authority.

SIGHT LINES

8. All initial and on-going sight line clearing is to be in accordance with Transport Canada Railway Safety Directorate Guidelines G4-A (or any subsequent amendment thereof). Each party will be responsible for the physical work associated with the sight line clearing of its own property. The physical work associated with the sight line clearing of private property shall be the responsibility of the Road Authority. Costs associated with the sight line clearing of railway property shall be paid by the Railway. Costs associated with the sight line clearing of Road Authority property shall be paid by the Road Authority. Costs associated with the sight line clearing of private property shall be paid by the Road Authority.

ACCOUNTS

9. The Railway shall prepare all accounts 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 prepared in accordance with standard rates adopted by the railway industry in Canada, or in their absence, in accordance with standard rates adopted by the Railway. If there should be no standard rates in effect for work done by the Railway, the accounts shall be based on actual costs plus allowances for the Railway's overhead.

FUTURE RECONSTRUCTION

10. If at any time during the continuance of this agreement either party wishes to widen, relocate, make narrower or otherwise upgrade (the "reconstruction") the crossing, the terms associated with the reconstruction will be agreed to by the parties by means of a written agreement between them.

JURISDICTION

11. 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.

ASSIGNMENT

- 12. This agreement is not assignable without the prior written consent of both parties which consent will not be unreasonably withheld. Notwithstanding the foregoing:
 - (a) the Railway may assign its interest under this agreement to another railway, without the consent of the Road Authority, in the event of a transfer of the rail line for continued rail operation, provided that the proposed assignee covenants in writing with the Road Authority to be bound by this agreement and to fulfill all of the obligations of the Railway hereunder from and after the effective date of the assignment; and

(b) the Road Authority may assign its interest under this agreement to another public road authority, without the consent of the Railway, in the event of such public road authority assuming control of and responsibility for the highway at the location of the crossing, provided that the proposed assignee covenants in writing with the Railway to be bound by this agreement and to fulfill all of the obligations of the Road Authority hereunder from and after the effective date of the assignment. The provisions of Section 29(4) (c) of the Public Transportation and Highway Improvement Act shall apply.

TERM

- 13. This agreement shall become effective on the date appearing on page 1 of this agreement and shall continue until:
 - (a) the Railway discontinues its rail operations at the location of the crossing, unless the Railway chooses, according to its sole discretion, to leave its tracks in place notwithstanding the discontinuance, in which case the agreement shall not terminate until the Railway has permanently removed its tracks at the crossing; or
 - (b) the Road Authority closes the Highway at the location of the crossing; or
 - (c) the parties have mutually consented to terminate the agreement.

TERMINATION

14. Upon termination of this agreement, unless terminated by a crossing relocation or reconstruction, the terms of which are to be set out in a subsequent agreement, the Road Authority shall be responsible for all future costs associated with the existence of the crossing, including the cost of maintaining the crossing or dismantling the crossing and restoring the Railway and Road Authority property to its original or mutually agreed upon condition.

RESIDUAL OBLIGATIONS

15. Notwithstanding the termination of this agreement, unless terminated by a crossing relocation or reconstruction, the obligations of the Road Authority as to the Termination clause of this agreement shall survive any such termination and shall remain in force until discharged.

CANADIAN TRANSPORTATION AGENCY

 Upon execution, the Railway shall file this agreement with the Canadian Transportation Agency.

DEFAULT

17. If either party fails at any time to fulfill its obligations provided in the present agreement, the other party, at its option, may upon reasonable notice, undertake the necessary measures to ensure safety, at the risk and expense of the defaulting party.

RE PREAMBLE

18. The preamble to this agreement forms an integral part of the agreement.

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

HURON CENTRAL RAILWAY INC.	
Mario Brault, President	
Witness: Signature and Title	
Date	
THE CORPORATION OF THE CITY OF SAULT STE. MARIE	
Signature and Title Mayor Debbie Amaroso	
Witness Signature and Title Malcolm White, City Cl	Lerk
April 18, 2011 We have authority to b	
Date	

APPENDIX 1

Indemnity and Liability Requirements

INSURANCE REQUIREMENTS FOR ROAD AUTHORITIES FOR WORKS PERFORMED ON AND/OR IN PROXIMITY TO THE RAILWAY OR WITHIN RAILWAY RIGHT OF WAY

During the term of the construction or re-construction of any works on and/or in proximity to the railway or within the railway right-of-way and before any work is started, the Road Authority and/or its Agents, at its sole cost and expense, shall effect and maintain with insurance companies, satisfactory to the Railway, the following liability insurances:

Comprehensive Liability Policy

A Comprehensive Liability Policy naming as Insureds the Road Authority, its Consultants and Contractors and the Railway, including any of their employees, servants or agents, agreeing to pay on behalf of the Insureds all sums which the Insureds shall become obligated to pay by reason of the liability imposed by law upon the Insureds for damages, including damages for care and loss of services, arising out of or in connection with the project, because of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person or persons or damage to or destruction of property including loss of use thereof, caused by accident and occurring during the policy period,

a) for bodily injury \$2,000,000 per person and \$5,000,000 per accident or occurrence and for property damage \$5,000,000 per accident or occurrence

-or-

with limits of not less than:

 for bodily injury and property damage \$5,000,000 inclusive in any one accident or occurrence.

The policy shall contain the following clause or one to like affect:

"Cross Liability - This policy shall insure each person, firm or Corporation insured hereunder in the same manner and to the same extent as if a separate policy had been issued to each, but the inclusion herein of more than one insured shall not operate to increase the limits of the Insurance Company's Liability."

The policy shall be written so as to provide coverage for blasting and other special hazards, where such hazards will be incidental to the works or project and shall include coverage for the clean-up of pollutants or the actual, alleged or threatened discharge, dispersal, release or escape of pollutants as a result of a collision, overturning of any vehicle;

The Road Authority's Contractor shall ensure that its subcontractors, if any, maintain substantially the same insurance as is required of the Contractor under this Agreement.

Environmental Impairment Insurance

Environmental impairment insurance in respect to the operations of the Road Authority and/or its Agents thereon against claims for personal injury, death or property damage, indemnifying and protecting the Railway and Contractor, their respective employees, servants, agents, contractors, invitees or licensees, to the inclusive limit of not less than \$2,000,000.00 for each occurrence and \$5,000,000 annual aggregate or such higher limits as the Railway may from time to time reasonably require and shall:

- (a) name the Railway as an additional insured;
 - (b) contain a cross liability clause which shall have the effect of insuring each person, firm or corporation named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each.

Non-Owned Automobile Liability

A Non-Owned Automobile Liability Policy providing substantial limits of insurance against the risks of Bodily Injury and Property Damage.

Automobile Third Party Liability Policy

An Automobile Third Party Liability Policy providing substantial Limits of insurance against the risks of Bodily Injury and Property Damage.

Such policies shall not be terminated, canceled or materially altered unless written notice of such termination, cancellation or material change is given by the insurers to the Railway at least thirty (30) days prior to the effective date thereof.

All policies of insurance stipulated in this Article will be with insurers acceptable to the Railway and in a form satisfactory to the Railway, and the Road Authority and/or its Agents will see that a copy of all policies or certificates of insurance are delivered to the Railway prior to the date that the Road Authority and/or its Agents commences operations and prior to any insurance renewal thereof.

Before the commencement of the work, the Road Authority shall furnish evidence certified copies of the above mentioned liability policies to the Railway at the following address:

Huron Central Railway

7

THE CORPORATION OF THE CITY OF SAULT STE. MARIE **BY-LAW 2011-76**

AGREEMENT: (E.3.4.4.) A by-law to authorize execution of an Agreement between the City and Huron Central Railway Inc. dated the 1st day of April, 2011 being a New Crossing Signal Agreement for Southmarket Street.

THE COUNCIL of The Corporation of the City of Sault Ste. Marie, pursuant to the Municipal Act, S.0. 2001, C. 25, ENACTS as follows:

EXECUTION OF DOCUMENT

The Mayor and the Clerk are hereby authorized for and in the name of the Corporation to execute and affix the seal of the Corporation to an agreement in the form of Schedule "A" attached hereto, dated April 1st, 2011 and made between the City and Huron Central Railway for a New Crossing Signal Agreement for Southmarket Street,

2. SCHEDULE "A"

Schedule "A" forms part of this by-law.

3. **EFFECTIVE DATE**

This by-law takes effect on the day of its final passing.

PASSED in open Council this 18th day of April, 2011.

MAYOR - DEBBIE AMAROSO CLERK - MALCOLM WHITE

da Bylaws\2011\2011-76 Agreement New Crossing Signal Agrmt South Mkt

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CITY SOLICITOR

10(9)

NEW CROSSING SIGNAL AGREEMENT

Southmarket Street

THIS AGREEMENT effective as of the 1st day of April, 2011

BETWEEN:

HURON CENTRAL RAILWAY INC.

(Hereinafter called the "Railway")

- And -

THE CORPORATION OF THE CITY OF SAULT STE-MARIE,

(Hereinafter called the "Road Authority")

WHEREAS the parties have agreed on the requirement for the installation of a crossing warning system consisting of Automated signals (hereinafter the "crossing warning system"), at the crossing at grade of Southmarket Road, at Mileage 176.61 Webbwood Subdivision, in the city of Sault Ste. Marie, in the Province of Ontario.

AND WHEREAS pursuant to section 12(1) of the <u>Railway Safety Act</u>, R.S.C. 1985, c.32, 4th supplement, the proposed railway work is not eligible for funding.

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:

UNDERTAKING

1. The Railway will carry out the proposed railway work.

CONSTRUCTION COST

2. The total actual cost of installing the crossing warning system, based on detailed estimate found in the project estimate booklet (hereinafter 'estimate booklet') dated March 25th 2011, attached hereto, shall be paid by the Road Authority.

MAINTENANCE COST

3. 100% of the cost of maintaining the crossing signal warning system shall be paid by the Road Authority.

ACCOUNTS

4. The Railway shall prepare all accounts 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 prepared in accordance with standard rates adopted by the railway industry in Canada, or in their absence, in accordance with standard rates adopted by the Railway if there should be no standard rates in effect for work done by the Railway, the accounts shall be based on actual costs plus allowances for the Railway's overhead.

FUTURE MODIFICATION

5. 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 by means of a written agreement between them.

JURISDICTION

6. 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.

ASSIGNMENT

- 7. This agreement is not assignable without the prior written consent of both parties which consent will not be unreasonably withheld. Notwithstanding the foregoing:
 - (a) the Railway may assign its interest under this agreement to another railway, without the consent of the Road Authority, in the event of a transfer of the rail line for continued rail operation, provided that the proposed assignee covenants in writing with the Road Authority to be bound by this agreement and to fulfill all of the obligations of the Railway hereunder from and after the effective date of the assignment; and
 - (b) the Road Authority may assign its interest under this agreement to another public road authority, without the consent of the Railway, in the event of such public road authority assuming control of and responsibility for the highway at the location of the crossing, provided that the proposed assignee covenants in writing with the Railway to be bound by this agreement and to fulfill all of the obligations of the Road Authority hereunder from and after the effective date of the assignment.

TERM

- 8. This agreement shall become effective on the date appearing on page 1 of this agreement and shall continue until:
- (a) the Railway discontinues its rail operations at the location of the crossing, unless the Railway chooses, according to its sole discretion, to leave its tracks in place notwithstanding the discontinuance, in which case the agreement shall not terminate until the Railway has permanently removed its tracks at the crossing; or
- (b) the Road Authority closes the Highway at the location of the crossing; or
- (c) the parties have mutually consented to terminate the agreement."

TERMINATION

9. Upon termination of this agreement, the Railway shall be responsible for dismantling the crossing warning system at the Road Authority's cost.

CANADIAN TRANSPORTATION AGENCY

10. Upon execution, the Railway shall file this agreement with the Canadian Transportation Agency.

RE PREAMBLE

11. The preamble to this agreement forms an integral part of the agreement.

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

HURON CENTRAL RAILWA	Y
Signature and Title	
Witness: Signature and Title	
Date	
CORPORATION OF THE CIT	Y OF SAULT STE-MARIE
Signature and Title Mayor De	ebbie Amaroso
Witness: Signature and Title Ma	alcolm White, City Clerk
April 18, 2011	We have the authority to bind the corporation

Estimate Booklet

XRAG,609,176-61 SSM Southmarket Extension

Track work

Labor & Equipment (Swift RR Contractor) Material		158,089.20 \$
Southmarket St		122,803.03 \$
McNabb St		34,616.63 \$
Shell Spur		60,922.39\$
	Sub total	218,342.05 \$
Approach Circuit Joint Elimin	ation	
Material	•	121,918.00 \$
	Signal work	
Southmarket St		283,039.22 \$
Shannon Rd		133,864.66 \$
Adeleine st		38,547.66\$
Black Rd		37,981.15 \$
Mcnabb St		169,739.71\$
	Sub total	663,172.40 \$
	Total	1,161,521.65\$