



**NO. - N° T-3194**

**FINANCIAL ASSISTANCE AGREEMENT**

**BETWEEN**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA REPRESENTED  
HEREIN BY THE MINISTER OF TRANSPORT**

**AND**

**THE CORPORATION OF THE TOWN OF FORT FRANCES**

DATE OF AGREEMENT: , 2014

CONCERNING: FORT FRANCES MUNICIPAL  
AIRPORT

MAXIMUM CONTRIBUTION: \$36,172.50

DESCRIPTION: ELECTRONIC RUNWAY  
CONDITION REPORTING  
EQUIPMENT AND FRICTION  
TESTER

Departmental Reference – Référence Du Ministère
File No. - N. Du Dossier 7161-0297-01

**MEMORANDA-NOTES**

AIRPORTS CAPITAL ASSISTANCE PROGRAM (ACAP)

CANADA – THE CORPORATION OF THE TOWN OF FORT FRANCES  
AIRPORTS CAPITAL ASSISTANCE PROGRAM  
AGREEMENT FOR ELECTRONIC RUNWAY CONDITION REPORTING EQUIPMENT  
2014–2015

This Agreement is made as of the date of last signature

**BETWEEN:** HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as  
represented by the Minister of Transport ("Canada")

**AND** THE CORPORATION OF THE TOWN OF FORT FRANCES,  
continued or incorporated pursuant to An Act to provide for the  
Incorporation of Towns in Territorial Districts, as represented by  
the Mayor and Clerk (the "Recipient"),

individually referred to as a "Party" and collectively referred to as the "Parties".

**WHEREAS** the Minister of Transport is responsible for the Program entitled the Airports Capital Assistance Program (hereinafter "ACAP" or "Program");

**WHEREAS** the Recipient is the owner and operator of the Fort Frances Municipal Airport ("Airport");

**WHEREAS** the Recipient has submitted to Canada a proposal for the funding of the Project which qualifies for support under ACAP;

**WHEREAS** the Recipient is responsible to carry out the Project and Canada wishes to provide financial support for the Project and its objectives;

**AND WHEREAS** the Recipient is duly authorized to execute this Agreement by Treasury Report 2013/72 dated July 12, 2013;

**NOW THEREFORE**, in accordance with the mutual covenants and agreements herein, the Parties hereby agree as follows:

## 1. INTERPRETATION

### 1.1 DEFINITIONS

In addition to the terms and conditions defined in the recitals and elsewhere in this Agreement, a capitalized term has the meaning given to it in this Section.

"**Aerodrome**" has the meaning ascribed thereto in the federal *Aeronautics Act*.

"**Agreement**" means this contribution agreement and all schedules, as may be amended from time to time.

"**Agreement End Date**" means six (6) months after the Project Completion Date.

"**Asset**" means any real or personal property or immovable or movable asset, purchased, constructed, rehabilitated or improved, in whole or in part, with funds contributed by Canada under the terms and conditions of this Agreement.

"**Certified Airport**" means an Aerodrome which has been certified in accordance with Subpart 302 of the *Canadian Aviation Regulations*.

"**Contract**" means an agreement between the Recipient and a Third Party whereby the latter agrees to supply a product or service to the Project in return for financial consideration.

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

"**Eligible Airport**" means either a:

- a) Certified Airport which is not owned or operated by the federal Crown;
- OR
- b) Remote Airport, which is not owned or operated by the federal Crown

- Canada;  
OR  
c) Registered Aerodrome that is not owned or operated by the federal Crown.

**"Eligible Expenditures"** means those costs directly related to the Project which are considered eligible for reimbursement by Canada as set out in Schedule A (Eligible and Ineligible Expenditures).

**"Final Claim Date"** means three (3) months after the Project Completion Date.

**"Fiscal Year"** means the period beginning April 1 of a year and ending March 31 of the following year.

**"Operating Period"** means the period commencing from the Effective Date and ending two (2) years after the Project Completion Date.

**"Project"** means the project as described in Schedule B (The Project).

**"Project Completion"** occurs when the Project can be used for the purpose for which it was intended.

**"Project Completion Date"** means the date of Project Completion and must be no later than two (2) years from the Effective Date.

**"Qualified Bid"** means a bid that meets the minimum technical requirements of the Project as outlined in the bid specification.

**"Registered Aerodrome"** means an Aerodrome which has been registered in accordance with Subpart 301 of the *Canadian Aviation Regulations*.

**"Remote Airport"** means an airport that is a remote airport under the terms of the National Airports Policy issued July 13, 1994.

**"Third Party"** means any person or legal entity, other than a Party, who participates in the implementation of the Project by means of a Contract.

**"Total Financial Assistance"** means funding from all sources towards Eligible Expenditures of the Project, including funding from federal, provincial, territorial, and municipal governments as well as funding from all other sources.

## **1.2 ENTIRE AGREEMENT**

This Agreement comprises the entire agreement between the Parties. No prior document, negotiation, provision, undertaking or agreement in relation to the subject of the Agreement has legal effect, unless incorporated by reference into this Agreement. No representation or warranty express, implied, or otherwise, is made by Canada to the Recipient except as expressly set out in this Agreement.

## **1.3 DURATION OF AGREEMENT**

This Agreement will be effective as of the Effective Date and will terminate on the Agreement End Date, subject to early termination in accordance with this Agreement.

## **1.4 SCHEDULES**

The following schedules are attached to, and form part of this Agreement:

Schedule A – Eligible and Ineligible Expenditures

Schedule B – The Project

Schedule B.1 – Project Summary

Schedule B.2 – Project Budget

Schedule C – Certificate of Compliance

Schedule C.1 – Final Claim

Schedule D – Communications Protocol

## **2. PURPOSE OF AGREEMENT**

The purpose of this Agreement is to establish the terms and conditions whereby Canada will provide funding to the Recipient for the Project.

### **3. OBLIGATION OF THE PARTIES**

#### **3.1 CONTRIBUTION BY CANADA**

- a) Canada agrees to pay a contribution to the Recipient of not more than one hundred percent (100%) of the total Eligible Expenditures of the Project but only up to a maximum of thirty-six thousand one hundred seventy-two dollars and fifty cents (\$36,172.50).
- b) Contributions by Canada will be payable in accordance with the terms and conditions of this Agreement and the Fiscal Year breakdown in Schedule B.2 (Project Budget).
- c) If the federal Crown's total contribution towards the Project exceeds one hundred percent (100%) of the Project's total Eligible Expenditures or if the Total Financial Assistance received or due in respect of the total Project expenditures exceeds one hundred percent (100%) thereof, Canada may recover the excess from the Recipient or reduce its contribution by an amount equal to the excess.
- d) The Parties acknowledge that Canada's role in the Project is limited to making a financial contribution to the Recipient for the Project. Canada is neither a decision-maker nor an administrator to the Project.

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

- a) The Recipient will be responsible for the complete, diligent and timely implementation of the Project, within the costs and deadlines specified in this Agreement and in accordance with the terms and conditions of this Agreement. The Recipient will be responsible for all costs of the Project including cost overruns, if any.
- b) The Recipient will repay to Canada any and all disallowed costs, surpluses, unexpended contributions, and overpayments made under and according to the terms and conditions of this Agreement.
- c) Canada may request that the Recipient declare to Canada any amounts owing to the federal Crown, under legislation or contribution agreements that constitute an overdue debt. The Recipient recognizes that any such amount owing is a debt due to the federal Crown and may be set-off by Canada in accordance with Section 20.6 (Set-off by Canada).
- d) The Recipient is responsible for and will continue to be responsible for ensuring the ongoing operation, maintenance, and repair of any Asset in relation to the Project, as per appropriate standards, for its full lifecycle of (5) years for the friction tester and ten (10) years for the electronic runway condition reporting equipment.
- e) Upon request, the Recipient will provide Canada with updates to Project status and budget expenditures and forecasts throughout the Agreement.
- f) The Recipient will only use the Asset on Airport property. Canada may reduce its contribution proportionally for any use of an Asset not on Airport property (e.g., if an Asset is used off of Airport property 50% of the time and Canada's contribution is 100% of Eligible Expenditures, Canada's contribution would then be reduced to 50% of Eligible Expenditures).

#### **3.3 APPROPRIATIONS AND FUNDING LEVELS**

Notwithstanding Canada's obligation to make any payment under this Agreement, this obligation does not arise if, at the time when a payment under this Agreement becomes due, the Parliament of Canada has not passed an appropriation that is sufficient and constitutes lawful authority for making the payment. Canada may reduce or terminate any payment under this Agreement in response to the reduction of appropriations or departmental funding levels in respect of transfer payments, the Program under which this Agreement was made or otherwise, as evidenced by any appropriation act or the federal Crown main or supplementary estimates expenditures. Canada will not be liable for any direct, indirect, consequential, exemplary or punitive damages, regardless of the form of action, whether in Contract, tort or otherwise, arising from any such reduction or termination of funding.

### **3.4 FISCAL YEAR BUDGETING**

- a) The amount of the contribution payable by Canada for each Fiscal Year of the Project is set out in Schedule B.2 (Project Budget).
- b) If the actual amount payable by Canada in respect of any Fiscal Year of the Project is less than the estimated amount in Schedule B.2 (Project Budget), the Recipient may request that Canada re-allocate the difference between the two amounts to a subsequent Fiscal Year. Subject to Section 3.3 (Appropriations and Funding Levels), Canada agrees to make reasonable efforts to accommodate the Recipient's request. The Recipient acknowledges that requests for re-allocation of Project funding will require appropriation adjustments and/or federal Crown approvals.
- c) In the event that any requested re-allocation of Project funding is not approved, the amount of Canada's contribution payable pursuant to Section 3.1 (Contribution by Canada) may be reduced by the amount of the requested re-allocation. If the contribution payable by Canada pursuant to Section 3.1 (Contribution by Canada) is so reduced, the Parties agree to review the effects of such reduction on the overall implementation of the Project and to adjust the terms and conditions of this Agreement as appropriate.

### **3.5 CHANGES IN PROJECT COSTS AND FUNDING**

- a) If, at any time during the term of this Agreement, one or all of the Parties determines that it will not be possible to complete the Project unless the Recipient expends amounts in excess of the funding available to it, the Party will immediately notify the other Party of that determination and Canada may suspend its funding obligations. The Recipient will, within thirty (30) days of a request from Canada, provide a summary of the measures that it proposes to remedy the shortfall. If Canada is not satisfied that the measures proposed will be adequate to remedy the shortfall, then Canada may exercise one of the remedies listed at Section 15.3 (Remedies on Default).
- b) Notwithstanding the foregoing, the Recipient may request additional funding from Canada. It is solely up to Canada's discretion and approval to provide any additional funding to the Project.

### **3.6 [INTENTIONALLY OMITTED]**

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

The Recipient represents and warrants to Canada that:

- a) the Recipient has the capacity and authority to enter into this Agreement and to carry out the Project;
- b) the Recipient has the requisite power to own the Assets;
- c) this Agreement constitutes a legally binding obligation of the Recipient, enforceable against it in accordance with its terms and conditions;
- d) all information submitted to Canada as set out in this Agreement is true, accurate, and was prepared in good faith to the best of its ability, skill, and judgment. The Recipient will inform Canada immediately of any fact or event that could compromise wholly or in part the Project;
- e) any person or legal entity that the Recipient has hired, for payment, to speak to or correspond with any employee or other person representing Canada on the Recipient's behalf, concerning any matter relating to the contribution under this Agreement or any benefit hereunder and who is required to be registered pursuant to the federal *Lobbying Act*, is registered pursuant to that Act, and that the Recipient has not and will not make a payment or other compensation to any person or legal entity that is contingent upon or is calculated upon the contribution hereunder or negotiating the whole or any part of the terms and conditions of this Agreement;
- f) there are no actions, suits, investigations or other proceedings pending or, to the knowledge of the Recipient, threatened and there is no order, judgment or decree of any court or governmental agency which could materially and adversely affect the Recipient's ability to carry out the activities contemplated by this Agreement. The Recipient will inform Canada immediately if any such

action or proceedings are threatened or brought during the term of this Agreement;

- g) the Airport meets the requirements of the *Canadian Aviation Regulations*, Part III, Subpart 2 (TP312 "Aerodrome Standards and Recommended Practices") and amendments thereto;
- h) the Airport will continue to meet, during the Operating Period, the requirements of the *Canadian Aviation Regulations*, Part III, Subpart 2 (TP312 "Aerodrome Standards and Recommended Practices") and amendments thereto;
- i) except in the case of a Remote Airport, provides year round regularly scheduled commercial passenger service; and
- j) except in the case of a Remote Airport, handled a minimum of one thousand (1,000) regularly scheduled commercial passengers annually for each of the last three (3) calendar years.
- k) the Recipient is in good standing under the laws of the jurisdiction in which it is required to be registered.

## **5. [INTENTIONALLY OMITTED]**

## **6. CONTRACT PROCEDURES**

### **6.1 AWARDING OF CONTRACTS**

- a) The Recipient will ensure that all Contracts are awarded and managed in accordance with its policies and procedures. Notwithstanding the foregoing, the Recipient will ensure that Contracts will be awarded in a way that is transparent, competitive, consistent with value-for-money principles, or in a manner otherwise acceptable to Canada, and if applicable, in accordance with the Agreement on Internal Trade and international trade agreements. Situations where Canada may accept the use of non-competitive tendering are as follows:
  - i. the nature of such Project is such that it could be executed more expeditiously or economically by the officers and servants of the Recipient;
  - ii. only one person or firm is capable of executing such Project;
  - iii. the nature of such Project or its total estimated cost is such that it would not be in the public interest to issue a call for tenders;
  - iv. in case of pressing emergency, when delays incurred in the execution of such Project would be injurious to the public interest.
- b) The Recipient will select the lowest-priced Qualified Bid.
- c) Notwithstanding subsection 6.1 b), should the Recipient select a bid other than the lowest-priced Qualified Bid, Canada may agree to reimburse the Recipient for the cost of the lowest-priced Qualified Bid, in which case the Recipient will pay the difference in cost between the selected bid and the lowest-priced Qualified Bid.
- d) If Canada determines that the Recipient has awarded a Contract in a manner that is not in compliance with the foregoing, upon notification to the Recipient, Canada may consider the expenditures associated with the Contract to be ineligible or require that the Contract be re-tendered.

### **6.2 CONTRACT PROVISIONS**

The Recipient will ensure that all Contracts are consistent with, and incorporate, the relevant provisions of this Agreement. More specifically but without limiting the generality of the foregoing, the Recipient agrees to include terms and conditions in all Contracts to ensure that:

- a) the Third Party will keep proper and accurate financial accounts and records, including but not limited to its contracts, invoices, statements, receipts, and vouchers, in respect of the Project for at least six (6) years after the Agreement End Date and that the Recipient has the contractual right to audit them;

- b) all applicable labour, environmental, and human rights legislation are respected; and
- c) Canada and its designated representatives, to the extent permitted by law, will at all times be permitted to inspect the terms and conditions of the Contract and any records and accounts respecting the Project and will have free access to the Project sites and to any documentation relevant for the purpose of audit.

## **7. [INTENTIONALLY OMITTED]**

## **8. ABORIGINAL CONSULTATION**

The Parties agree that the legal duty to consult does not arise for the Project.

## **9. CLAIMS AND PAYMENTS**

### **9.1 PAYMENT CONDITIONS**

- a) Canada will not pay interest for failing to make a payment under this Agreement;
- b) Canada will not pay any claims submitted after the Final Claim Date, unless otherwise accepted by Canada;
- c) Canada will not pay any claims until the requirements under Section 8 (Aboriginal Consultation), if applicable, are, in Canada's opinion, satisfied to the extent possible at the date the claim is submitted to Canada.

### **9.2 FINAL CLAIM AND FINAL ADJUSTMENTS**

- a) The Recipient will submit one (1) claim to Canada by the Final Claim Date covering the Recipient's Eligible Expenditures incurred and in a form acceptable to Canada. The final claim must include the following:
  - i. certification as to the accuracy of the information submitted in support of the claim, in the form set out in Schedule C.1 (Final Claim) and signed by the senior official designated in writing by the Recipient;
  - ii. breakdown of Eligible Expenditures claimed in accordance with Schedule B.2 (Project Budget);
  - iii. a copy of the bill of sale or invoice for the Asset, a picture of the Asset at the Airport, and the model and serial number of the Asset; and
  - iv. upon request by Canada, any documentation or Third Party invoices or receipts of expenditures claimed.
- b) Upon receipt of the final claim, but before issuing the final payment, the Parties will jointly carry out a final reconciliation of all claims and payments in respect of the Project and make any adjustments required in the circumstances.

### **9.3 RETENTION OF CONTRIBUTION**

Canada may retain up to ten percent (10%) of its contribution under this Agreement. Any amount retained by Canada will be released when the final adjustments have been completed under Section 9.2 (Final Claim and Final Adjustments) and the Recipient fulfills all its obligations under this Agreement.

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

## **11. AUDIT AND EVALUATION**

### **11.1 RECIPIENT AUDIT**

Canada may, at its discretion, conduct a Recipient audit during the term of this Agreement and up to six years after the Agreement End Date, in accordance with the Canadian Auditing Standards and Section 20.3 (Accounting Principles). Any costs associated with the conduct of such audits will be the responsibility of Canada.

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

#### **11.3 EVALUATION**

The Recipient agrees to cooperate with Canada in the conduct of any evaluation of the Project or Program during or after the term of this Agreement. Any costs associated with the conduct of such evaluations will be the responsibility of Canada.

#### **11.4 CORRECTIVE ACTION**

The Recipient agrees to ensure that prompt and timely corrective action is taken in response of any audit findings and recommendations conducted in accordance with this Agreement.

#### **11.5 RECORD KEEPING**

The Recipient will keep proper and accurate financial accounts and records, including but not limited to its Contracts, Asset maintenance records, invoices, statements, receipts, and vouchers, in respect of the Project, for at least six (6) years after the Agreement End Date.

#### **11.6 ACCESS**

The Recipient will provide Canada and its designated representatives with reasonable and timely access to the Project sites, facilities, and any documentation for the purposes of audit, inspection, monitoring, evaluation, and ensuring compliance with this Agreement.

### **12. COMMUNICATIONS**

#### **12.1 PUBLIC COMMUNICATIONS**

- a) Any press release, public announcement or official ceremony regarding the Project, when planned by the Recipient, will be arranged in agreement with Canada.
- b) Canada reserves the right to publish and translate in both official languages any public communications produced by the Recipient and related to this Agreement.

#### **12.2 RECOGNITION OF CANADA'S CONTRIBUTION**

The Recipient will acknowledge Canada's contribution in all signage and public communication produced as part of the Project or Agreement, in a manner acceptable to Canada.

#### **12.3 PUBLIC INFORMATION**

The Recipient acknowledges that the following may be made publicly available by Canada:

- a) its name, the amount awarded by Canada, and the general nature of the Project; and
- b) any evaluation or audit report, and other reviews related to this Agreement.

#### **12.4 OFFICIAL LANGUAGES**

The Recipient is responsible, in consultation with Canada, for taking the necessary measures to respect the spirit and intent of the federal *Official Languages Act*.

#### **12.5 COMMUNICATIONS PROTOCOL**

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

### **13. INTELLECTUAL PROPERTY**

- a) All intellectual property that arises in the course of the Project will vest in the Recipient.
- b) The Recipient will obtain the necessary authorizations, as needed, for the implementation of the Project, from Third Parties who may own the



intellectual property rights or other rights in respect of the Project. Canada will assume no liability in respect of claims from any Third Party in relation to such rights and to the Agreement.

## **14. DISPUTE RESOLUTION**

- a) The Parties will keep each other informed of any issue that could be contentious by exchanging information and will, in good faith and reasonably, attempt to resolve potential disputes.
- b) Where the Parties cannot agree on a resolution, the Parties may explore any alternative dispute resolution mechanisms available to them to resolve the issue.
- c) Any payments related to the issue in dispute will be suspended, together with the obligations related to such issue, pending resolution.
- d) The Parties agree that nothing in this Section will affect, alter, or modify the rights of Canada to terminate this Agreement.

## **15. DEFAULT**

### **15.1 EVENTS OF DEFAULT**

Any of the following constitute Events of Default under this Agreement:

- a) the Recipient has not complied with any of the terms and conditions of this Agreement;
- b) the Recipient has not completed the Project in accordance with the terms and conditions of this Agreement;
- c) the Recipient has submitted false or misleading information to Canada or made a false or misleading representation in respect of the Project, except for an error in good faith, demonstration of which is incumbent on the Recipient, to Canada's satisfaction;
- d) the Recipient has not complied with, if applicable, Section 8 (Aboriginal Consultation);
- e) the Recipient has neglected or failed to pay Canada any amount due in accordance with this Agreement.

### **15.2 DEFAULT**

Canada will not declare that a default has occurred unless Canada has given notice to the Recipient of the event which in Canada's opinion constitutes an Event of Default and the Recipient has failed, within thirty (30) days of receipt of the notice, either to remedy the Event of Default or to demonstrate, to the satisfaction of Canada, that it has taken such steps as are necessary to remedy the Event of Default, and has notified Canada of the rectification.

### **15.3 REMEDIES ON DEFAULT**

In the event of default under this Agreement, Canada may exercise one or more of the following remedies, without limiting any remedy available to it at law:

- a) suspend any obligation by Canada to contribute or continue to contribute funding to the Project, including any obligation to pay an amount owing prior to the date of such suspension;
- b) terminate any obligation of Canada to contribute or continue to contribute funding to the Project, including any obligation to pay any amount owing prior to the date of such termination;
- c) require the Recipient to reimburse Canada all or part of the contribution paid by Canada to the Recipient.

## **16. LIMITATION OF LIABILITY**

Subject to the federal *Crown Liability and Proceedings Act*, Canada, its officers, servants, employees, sub-contractors or agents will not be held liable for any injury, including death to any person, or for any loss or damage to property of the Recipient or any obligation of the Recipient or anyone else, incurred or suffered

by the Recipient, its officers, servants, employees, or agents arising directly or indirectly from one or more of the following:

- a) the Project;
- b) the performance of this Agreement or the breach of any of the terms and conditions of this Agreement by the Recipient or Third Party and their respective officers, servants, employees, sub-contractors, or agents;
- c) the design, construction, operation, maintenance, and repair of any part of the Project;
- d) any omission or other wilful or negligent act of the Recipient or Third Party and their respective officers, servants, employees, sub-contractors or agents;
- e) the entering into by the Recipient or Third Party and their respective officers, servants, employees, sub-contractors or agents, of a loan, capital lease or other long term obligation in relation to the Project;
- f) any decision of a court that prevents Canada from performing any obligation under this Agreement.

## **17. INDEMNIFICATION**

The Recipient will at all times indemnify and save harmless Canada, its officers, servants, employees, sub-contractors or agents, from and against all actions, whether in contract, tort, or otherwise, claims and demands, losses, costs, damages, suits or other proceedings by whomsoever brought or prosecuted in any manner based upon, or occasioned by any injury to persons, damage to or loss or destruction of property, economic loss or infringement of rights caused by, in connection with, or arising directly or indirectly from one or more of the following:

- a) the Project;
- b) the performance of this Agreement or the breach of any of the terms and conditions of this Agreement by the Recipient or Third Party and their respective officers, servants, employees, sub-contractors or agents;
- c) the design, construction, operation, maintenance, and repair of any part of the Project;
- d) any omission or other wilful or negligent act of the Recipient or Third Party and their respective officers, servants, employees, sub-contractors or agents;
- e) the entering into by the Recipient or Third Party and their respective officers, servants, employees, sub-contractors or agents, of a loan, capital lease or other long term obligation in relation to the Project;
- f) any decision of a court that prevents Canada from performing any obligation under this Agreement;

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

## **18. ASSETS**

### **18.1 DISPOSAL OF ASSETS**

- a) Assets acquired through the course of the Project will be the responsibility and remain the property of the Recipient.
- b) Notwithstanding any other provision of this Agreement, the Recipient will preserve, maintain, and use any Assets for the purposes of the Project, and will not dispose of any Asset during the Operating Period, unless Canada consents to their disposition or unless the replacement of worn or outdated Assets is necessary.
- c) The Recipient undertakes to notify Canada in writing, one hundred eighty (180) days in advance if, at any time during the Operating Period, the Recipient proposes to sell, lease, encumber, use in a manner other than as described in their request for funding under ACAP or otherwise dispose of, directly or indirectly, any Asset, purchased, constructed, rehabilitated or improved, in whole or in part, with funds contributed by

Canada under the terms and conditions of this Agreement, other than to Canada or the Recipient and, upon disposition, the Recipient undertakes to reimburse Canada, on demand, a proportionate amount of the funds so contributed by Canada, in the following proportion:

Where Asset disposed of:	Return of Contribution (in current dollars)
Prior to and up to 1 year after Project Completion Date	100%
1-2 years after Project Completion Date	90%
2-3 years after Project Completion Date	80%
3-4 years after Project Completion Date	70%
4-5 years after Project Completion Date	60%
5-6 years after Project Completion Date	50%
6-7 years after Project Completion Date	40%
7-8 years after Project Completion Date	30%
8-9 years after Project Completion Date	20%
9-10 years after Project Completion Date	10%
10 years or more after Project Completion Date	0%

- d) Subject to Section 20.11 (Assignment), if the Recipient takes any action described in Section 18.1(c) (Disposal of Assets) during the Operating Period, Canada may require the Recipient to assign its rights and obligations under this Agreement to the third party involved.

## 19. [INTENTIONALLY OMITTED]

## 20. GENERAL

### 20.1 PUBLIC BENEFIT

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

### 20.2 SURVIVAL

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

### 20.3 ACCOUNTING PRINCIPLES

All accounting terms will have the meanings assigned to them, all calculations will be made and all financial data to be submitted will be prepared, in accordance with the Generally Accepted Accounting Principles (GAAP) in effect in Canada as defined in the Canadian Institute of Chartered Accountants (CICA) Handbook - Accounting or, where applicable, the Public Sector Accounting Handbook.

### 20.4 DEBTS DUE TO THE FEDERAL CROWN

Any amount owed to Canada under this Agreement by the Recipient will constitute a debt due to the federal Crown, which the Recipient will reimburse Canada forthwith on demand.

### 20.5 INTEREST ON DEBTS DUE TO THE FEDERAL CROWN

Debts due to the federal Crown by the Recipient will accrue interest in accordance with the federal *Interest and Administrative Charges Regulations*.

### 20.6 SET-OFF BY CANADA

Any debt due to the federal Crown by the Recipient may be set-off against any amounts payable by Canada to the Recipient under this Agreement.

### 20.7 MEMBERS OF THE HOUSE OF COMMONS AND SENATE

No member of the House of Commons or the Senate of Canada will be admitted to any share of this Agreement, or to any benefit arising from it that is not otherwise available to the public. The Recipient will promptly inform Canada should it become aware of the existence of any such situation.

#### **20.8 CONFLICT OF INTEREST**

No current or former public servant or public office holder to whom any post-employment, ethics and conflict of interest legislation, guidelines, codes or policies of Canada applies will derive direct benefit from this Agreement unless the provision or receipt of such benefits is in compliance with such legislation, guidelines, policies or codes. The Recipient will promptly inform Canada should it become aware of the existence of any such situation.

#### **20.9 NO AGENCY, PARTNERSHIP, JOINT VENTURE, ETC.**

- a) No provision of this Agreement and no action by the Parties will establish or be deemed to establish a partnership, joint venture, principal-agent relationship, or employer-employee relationship in any way or for any purpose whatsoever between Canada and the Recipient or between Canada and a Third Party.
- b) The Recipient will not represent itself, including in any agreement with a Third Party, as a partner, employee or agent of Canada.

#### **20.10 NO AUTHORITY TO REPRESENT**

Nothing in this Agreement is to be construed as authorizing any person, including a Third Party, to contract for, or to incur any obligation on behalf of Canada or to act as agent for Canada. The Recipient will take the necessary action to ensure that any Contract between the Recipient and any Third Party contains a provision to that effect.

#### **20.11 ASSIGNMENT**

The Recipient will not transfer or assign its rights or obligations under this Agreement without the prior written consent of Canada. Any attempt by the Recipient to assign any of the rights, duties or obligations of this Agreement without Canada's express written consent is void.

#### **20.12 COUNTERPART SIGNATURE**

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

#### **20.13 SEVERABILITY**

If for any reason a provision of this Agreement that is not a fundamental term of this Agreement between the Parties is found to be or becomes invalid or unenforceable, in whole or in part, and if both Parties agree, it will be deemed to be severable and will be deleted from this Agreement, but all the other terms and conditions of this Agreement will continue to be valid and enforceable.

#### **20.14 AMENDMENTS**

This Agreement can only be amended in writing by the Parties.

#### **20.15 WAIVER**

A Party may waive any of its rights under this Agreement only in writing. Any tolerance or indulgence demonstrated by the Party will not constitute a waiver.

#### **20.16 NOTICE**

- a) Any notice provided for under this Agreement may be delivered in person, sent by mail, or sent by facsimile addressed to:

Canada:

Manager, Funded Programs  
Programs Branch  
4900 Yonge Street  
Suite 300  
North York ON M2N 6A5  
Facsimile number: N/A

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

the Recipient:

Town Clerk  
Town of Fort Frances  
Civic Centre  
320 Portage Avenue  
Fort Frances ON P9A 3P9  
Facsimile number: N/A

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.

b) Such notice will be deemed to have been received:

- i. in person, when delivered;
- ii. if sent by mail, when receipt is acknowledged by the other Party; and
- iii. by facsimile, when transmitted and receipt is confirmed.

#### ***20.17 COMPLIANCE WITH LAWS***

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

#### ***20.18 GOVERNING LAW***

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

#### ***20.19 SUCCESSORS AND ASSIGNS***

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

## 21. SIGNATURES

This Agreement has been executed on behalf of Her Majesty the Queen in right of Canada by the Minister of Transport and on behalf of the Corporation of the Town of Fort Frances by the Mayor.


HER MAJESTY THE QUEEN IN RIGHT  
OF CANADA

CORPORATION OF THE TOWN OF  
FORT FRANCES

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Per: John Higham  
Regional Director

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Per: Roy Avis  
Mayor

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Date

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Date

CORPORATION OF THE TOWN OF  
FORT FRANCES

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Per: Glenn Treftlin  
Clerk

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Date

## **SCHEDULE A – ELIGIBLE AND INELIGIBLE EXPENDITURES**

### ***SCHEDULE A.1: ELIGIBLE EXPENDITURES***

All Eligible Expenditures must be considered directly related to the Project by Canada as set out in Schedule B (The Project). Expenditures are considered eligible between the Effective Date of the Agreement and the Project Completion Date.

Eligible Expenditures must consist of the following categories of expenditures:

- Expenditures related to the construction, rehabilitation or improvement of Airport Assets and any other infrastructure related to the Project;
- All planning (including designs, plans and specifications) and evaluation for the Project;
- Expenditures related to environmental reviews, including environmental assessments and follow-up programs as defined in the *Canadian Environmental Assessment Act, 2012* and the costs of remedial activities, mitigation measures and follow-up activities;
- Professional services;
- Expenditures for materials required for the Project;
- Expenditures related to communication activities (press releases, press conferences, translation, etc.) and signage recognition set out in Schedule D (Communications Protocol);
- Provincial sales tax and the Goods and Services Tax or the Harmonized Service Tax for which the Recipient or a Third Party is not eligible for a tax; and
- Other expenditures that, in the opinion of Canada, are considered to be direct and necessary for the successful implementation of the Project.

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

Certain expenditures are not eligible for funding and therefore will not be considered in the calculation of the total Eligible Expenditures for the Projects, including:

- Expenditures incurred prior to the Effective Date, with the exception of work covering investigation, design plans, environmental assessment and documentation directly relating to the undertaking of the Project;
- Expenditures related to the purchase or lease of land, or any compensation paid to owners of land required for the Project;
- Registered airport zoning;
- Administrative costs, including overhead expenses;
- Expenditures related to the operation or maintenance of the Airport;
- Cost of purchasing operating or construction equipment;
- Unless specifically authorized by Canada, reimbursement of travel expenses;
- Employee wages and benefits, overhead costs as well as other direct or indirect operating, maintenance and administrative expenditures incurred by the Recipient, and more specifically expenditures relating to survey, engineering, design, architecture, supervision, management and other services delivered directly by permanent employees of the Recipient, except in the case where the Recipient can demonstrate value for money.

## SCHEDULE B – THE PROJECT

### ***SCHEDULE B.1: PROJECT SUMMARY***

#### **Project Description:**

Purchase electronic runway condition reporting equipment and friction tester.

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

The objective of this Project is to ensure safety levels are maintained at the Airport by purchasing equipment that is required for Airport operations.

#### **Activities:**

The equipment will include:

- In-truck mounted hardware and software system including computer with touch screen, graphical Airport display with in-vehicle docking equipment and unlimited Airport staff sign-in feature.
- Complete on-site installation, training and 1-year warranty and support.
- Computer interface with winter friction testing device.
- Airport office host computer and airfield-wide, license-free no airtime point-to-point data transceiver for communication from friction tester vehicle to airfield office computer.
- Interface to communicate with NAV CANADA, SNOWWIZ software.

The Recipient will solicit quotations for the purchase of the equipment.

The Recipient will manage all aspects of the Project.



**SCHEDULE B.2: PROJECT BUDGET**

A. ELIGIBLE EXPENDITURES	TOTAL	FISCAL YEAR BREAKDOWN
		2014–2015
TOTAL ELIGIBLE EXPENDITURES		
Electronic runway condition reporting equipment and friction tester	\$34,450.00	\$34,450.00
Contingencies (5%)	\$1,722.50	\$1,722.50
Applicable HST (0%)	\$0	\$0
TOTAL A: TOTAL ELIGIBLE EXPENDITURES	\$36,172.50	\$36,172.50

B. SOURCES OF FUNDING	TOTAL	2014-2015
<b>B.1: RECIPIENT FUNDING</b>		
Cash	\$0	\$0
<b>SUBTOTAL B.1: RECIPIENT FUNDING (0%)</b>	<b>\$0</b>	<b>\$0</b>
<b>SUBTOTAL B.2: MAXIMUM CANADA CONTRIBUTION (100%)</b>	<b>\$36,172.50</b>	<b>\$36,172.50</b>
<b>TOTAL B: TOTAL FUNDING FOR PROJECT</b>	<b>\$36,172.50</b>	<b>\$36,172.50</b>

## SCHEDULE C – CERTIFICATE OF COMPLIANCE

### SCHEDULE C.1: FINAL CLAIM

In the matter of the Agreement entered into between Her Majesty the Queen in right of Canada, as represented by the Minister of Transport, and the Corporation of the Town of Fort Frances (the "Recipient"), represented by \_\_\_\_\_ (Name), concerning the Electronic Runway Condition Reporting Equipment Project (the "Agreement").

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

1. That I hold the position of \_\_\_\_\_ with the Recipient and as such have knowledge of the matters set forth in this declaration and believe this declaration to be true.
2. I am duly authorized by the Recipient to give this Certificate under [RECIPIENT INSERTS THE COMPLETE REFERENCE TO THE BY LAW OR INTERNAL POLICY AUTHORITY THAT ALLOWS THEM TO PROVIDE THIS CERTIFICATION] dated [INSERT DATE].
3. I have read and understood the Agreement and the final claim submitted by the Recipient thereunder dated the same date as this Certificate and have knowledge of the business and affairs of the Recipient and have made such examinations or investigations as are necessary to give this Certificate and to ensure that the information contained herein is true and accurate.
4. The Recipient, at the date of this Certificate, has performed all covenants under the Agreement that are required to be performed by it on or prior to that date.
5. The expenditures incurred for the reporting period are eligible in accordance with the Agreement.
6. All representations and warranties of the Recipient contained in the Agreement are true and accurate in all respects at the date of this Certificate as though such representations and warranties had been made at the date of this Certificate.
7. The Project as defined in the Agreement has been completed.
8. This Certificate of Compliance does not preclude any rights of Canada to verify, audit or inspect as per the terms and conditions of the Agreement.
9. The Recipient is not entitled to payment of any amount under the Agreement, other than any amount requested by the Recipient in accordance with the Agreement on or prior to the date of this Certificate.

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

\_\_\_\_\_  
Signature

## SCHEDULE D – COMMUNICATIONS PROTOCOL

### GENERAL

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

### COMMUNICATING WITH THE PUBLIC

#### *Public Information Products*

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

#### *News Releases*

A joint news release may be issued when the Agreement is signed. A news release may include quotations from a federally, provincially, or municipally elected official or, where applicable, any other contributor. Canada must agree on these quotations.

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

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

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

The signing of this Agreement may be the subject of an official ceremony.

### COST SHARING

Expenditures associated with any temporary or permanent signage will be considered as Eligible Expenditures.