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December 6, 2017

Mr. Richard Paton, MA, MPA
Chair, Railway Safety Act Review
255 Albert Street, 7th Floor, Room 38
Ottawa, Ontario
K1P 6A9
Email: richard.paton@tc.gc.ca

Dear Mr. Paton:

On behalf of the Federation of Canadian Municipalities (FCM) National Municipal Rail Safety Working Group (RSWG), I would like to thank you for meeting with members of the RSWG on November 20, 2017 to discuss FCM's insights and perspectives on important issues and outstanding gaps impacting the federal rail safety legislative and regulatory framework. I would also like to thank you for your commitment to continuing the collaborative federal-municipal relationship on rail safety that FCM has built with the Railway Safety Act (RSA) Review Panel. Building on the review panel's continued engagement with FCM and municipal leaders, I would like to provide some additional comments on the emerging themes and key issues identified by the panel in their consultations.

While we are encouraged by the consultations that have taken place to date, we will continue to look to this review to recommend concrete reforms that improve the safety of Canada's railways. In particular, we look forward to engaging with the review panel to ensure that the outstanding municipal concerns and perspectives outlined in our preliminary submission (Annex A) are considered in the RSA review. Building on our discussion on November 20th, 2017, it will be critical for the review panel to consider additional measures to:

- Implement outstanding Transportation Safety Board (TSB) recommendations;
- Improve confidence in the rail safety regulatory framework among municipalities;
- Work with municipalities to improve crossing safety; and
- Support the implementation of solutions to railway proximity and trespassing issues.

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Implement outstanding TSB recommendations

In its 2016 Watchlist, the Transportation Safety Board (TSB) highlighted the slow progress on addressing its recommendations and called on the federal government to accelerate its response to the outstanding recommendations. FCM and the National Municipal Rail Safety Working Group's rail safety advocacy is guided by the work undertaken by the TSB. The TSB serves a critical function in terms of making safety recommendations to the federal government, and at FCM we believe the standard for progress is full implementation of TSB safety recommendations.

In particular, as a result of their investigation into the February 2015 derailment near Gogama, Ontario, the TSB is recommending that Transport Canada identify appropriate mitigating strategies including train speeds and amend the *Rules Respecting Key Trains and Key Routes* accordingly during the phase-in of TC-117 tank cars and the full phase-out of Class 111 tank cars. The TSB also stated that, until flammable liquids are transported in the TC-117 tank cars, Transport Canada and industry must ensure that risk control measures during the transition are effectively managed. Since Transport Canada first announced the transition to the updated tank car standard, FCM has continued to urge Transport Canada to implement additional mitigation measures during the 10-year transition to the TC-117 tank car, such as speed restrictions on key routes, increased inspections and track maintenance. FCM has previously reached out to Transport Canada officials to offer FCM's support in developing new measures to address the concerns of our members and meaningfully respond to the TSB's recommendation in the report from the first Gogama derailment.

Furthermore, in its investigation into the March 2015 derailment and fire near Gogama, the TSB has recommended that Transport Canada acquire rail surface condition data, including information on localized surface collapse, rail end batter and crushed heads, and incorporate it into its risk-based planning approach for targeted regulatory track inspections. We continue to call on the federal government to allocate adequate resources to Transport Canada to implement this recommendation, conduct regular track inspections and properly enforce existing rail safety measures.

Improve confidence in the rail safety regulatory framework among municipalities

Municipalities are the on-the-ground experts that understand community needs, public sentiment and potential barriers to the safe transportation of dangerous goods by rail. Moving forward, FCM continues to call on the federal government and railway companies to continue to work constructively, in partnership with municipalities, to assess all social, economic and environmental risks and to effectively address the hazards associated with Canada's rail transportation system.

In particular, while the department has implemented significant improvements to the risk assessment process, our members remain concerned about trains being left unattended at high-risk locations (even with the two lines of defenses applied as per the new operating rules). Municipalities are looking to be meaningfully engaged on identifying these high-risk locations

and restricting rail operations accordingly. Municipal consultation will also be critical as the department considers policies to adapt technologies to provide fail-safe physical train control defenses and the safe operation of remote control locomotive operations within the Canadian rail network. Moving forward, we continue to advocate for meaningful consultation and awareness-raising with municipalities when further developing, implementing and enforcing proposed amendments to the *Railway Safety Act* and other changes to the rail safety regulatory framework. Improved engagement with municipalities will help improve trust in Canada's rail safety regime and ensure any changes reflect the diverse perspectives and concerns of cities and communities across the country.

Work with municipalities to improve crossing safety

The issue of railway-community proximity is still an outstanding concern when it comes to grade crossings. While FCM fully supports the intent of the *Grade Crossings Regulations (GCR)*, we are continuing discussions with Transport Canada to ensure that additional funding is made available to municipalities and railways to assist them with meeting their obligations to upgrade existing crossings to basic standards over the next seven years. Furthermore, the fact remains that the obstruction of grade crossings by moving trains remains both a safety and an economic issue. The rapid growth in the volume and frequency of freight shipments has resulted in heavy traffic congestion leading to delays and frustration for residents, commercial and emergency vehicles. While recent investments through the Rail Safety Improvement Program have made significant progress in addressing these crossing safety issues, but FCM is recommending that the RSA Review Panel request that the federal government allocate additional funding to municipalities and railways to assist them with improving crossing safety through crossing openings, closures and grade separations.

Support the implementation of solutions to railway proximity and trespassing issues

The practice of developing land in close proximity to rail operations and the expansion of rail operations in urban areas have generated a variety of opportunities as well as challenges for municipalities, developers and railways. FCM remains committed to working with the Railway Association of Canada, focused on developing and promoting guidelines to help local and provincial governments take these safety considerations into account in municipal land use planning.

We do note however, that these challenges must be addressed by municipal and provincial governments, as the federal government does not have authority over local land use planning. The federal government should continue to work collaboratively with provincial and municipal governments to advance land use planning practices in proximity to railway operations, rather than mandating a one-size-fits-all approach not suitable for a country as diverse as Canada. Supporting provincial efforts to develop railway notification processes that are aligned with provincial land use regulations would help advance our shared objective of consistency in land use planning in proximity to railway operations while recognizing the geographic and jurisdictional diversity of Canada.

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Throughout the review process, we have appreciated the review panel's ongoing consultation with municipalities and we look forward to working with you to ensure municipal priorities are reflected in the review panel's recommendations to government. FCM and its member municipalities look forward to continuing a conversation with the Chair, Vice-Chairs and Secretariat in the coming months and are available to provide input, examples and regional perspectives on the key issues that will be included in the panel's final report. If you or your staff have any questions or require further information in the meantime, please contact Marc LeBlanc, Policy Advisor at 613-907-6368 or marc.leblanc@fcm.ca.

Sincerely,

A handwritten signature in black ink, appearing to read "J Gerbasi". The signature is fluid and cursive, with the first letter "J" being particularly large and stylized.

Jenny Gerbasi
Deputy Mayor, City of Winnipeg
FCM President

Enclosure

Annex A – Summary of Recommendations in FCM’s Preliminary Submission to the Railway Safety Act (RSA) Review

In summary, FCM is recommending that the RSA Review:

- Recommendation 1.1: Call on Transport Canada to quickly implement any outstanding safety recommendations from the TSB, including recent recommendations from the TSB’s investigation into the 2015 derailments near Gogama, ON.
- Recommendation 1.2: Call on the federal government to allocate adequate resources to Transport Canada to implement TSB recommendations and to properly enforce all subsequent rail safety measures.
- Recommendation 2.1: Request that the federal government allocate additional funding to municipalities and railways to assist them with improving crossing safety through crossing openings, closures and grade separations.
- Recommendation 3.1: Consider possible legislative changes that would allow Transport Canada to take a more comprehensive approach to the obstruction of grade crossings by moving trains, taking into account both safety and economic factors.
- Recommendation 4.1: Encourage Transport Canada to identify high-risk locations commonly used as stopover locations, where trains should not be left unattended. This is due to extraordinary site-specific risks like very steep grade and curvature leading in to populated areas. Railways must restrict rail operations accordingly.
- Recommendation 5.1: Call on the federal government to continue working collaboratively with provincial and municipal governments to advance land use planning practices in proximity to railway operations, rather than mandating a one-size-fits-all approach not suitable for a country as diverse as Canada.
- Recommendation 5.2: Call on the federal government to continue working closely with its provincial counterparts to support provincial efforts develop railway notification processes that are aligned with provincial land use regulations.
- Recommendation 6.1: Call on Transport Canada to develop a clear timetable and municipal consultation plan to effectively implement the remaining ERTF recommendations.
- Recommendation 7.1: Call on the federal government to work with the provinces/territories and industry to provide the necessary resources to ensure municipal first responders can access operational and specialized training, if necessary;
- Recommendation 7.2: Call on the federal government to work with shippers and carriers to improve access for first responders, particularly volunteer departments in small and remote communities, to participate in response exercises and specialized training programs and facilities to improve emergency preparedness and to test and evaluate the effectiveness of the ERAP program.

- Recommendation 7.3: Call on Transport Canada to continue to work with industry partners to expand awareness and outreach efforts with municipalities, to improve understanding of the resources available to them during incidents involving dangerous goods.
- Recommendation 8.1: Call for the development of regulations respecting the subject matters of PD36 be made under section 27 of the Transportation of Dangerous Goods Act.
- Recommendation 9.1: Urge Transport Canada to implement the CTA Review's recommendation to quickly expand the levy to other dangerous goods shipped in large quantities in Canada, such as ethanol.
- Recommendation 10.1: Continue to ensure meaningful consultation and awareness-raising with municipalities when further developing, implementing and enforcing proposed amendments to the Railway Safety Act and other legislation.