

Bill No. 236
2019

By-law No. A.- _____ - ____

A by-law to authorize a Memorandum of Understanding (MoU) between The Corporation of the City of London and Canadian Pacific Railway Company (CPR) for the project responsibilities of the Adelaide St North Grade Separation at CPR project; and to authorize the Mayor and City Clerk to execute the MoU.

WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS section 8 provides that the powers of a municipality shall be interpreted broadly so as to confer broad authority on the municipality to enable it to govern its affairs as it considers appropriate and to enhance its ability to respond to municipal issues;

AND WHEREAS subsection 10(1) of the *Municipal Act, 2001* provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS it is deemed expedient for the Corporation of the City of London (the "City") to enter into an Agreement with Canadian Pacific Railway Company (CPR) for defining the project responsibilities of the Adelaide St North Grade Separation at CPR project (the "MoU");

AND WHEREAS it is appropriate to authorize the Mayor and City Clerk to execute the Agreement on behalf of the City;

NOW THEREFORE the Municipal Council of the Corporation of the City of London enacts as follows:

1. The MoU attached as Schedule "A" to this By-law, being an Agreement between the Corporation of the City of London and Canadian Pacific Railway Company (CPR) for the project responsibilities in implementing the Adelaide Street North Grade Separation at CPR is hereby AUTHORIZED AND APPROVED substantially in the form attached and as approved by the City Solicitor.
2. The Mayor and City Clerk are authorized to execute the MoU authorized and approved under section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on June 25, 2019.

Ed Holder
Mayor

Catharine Saunders
City Clerk

First reading – June 25, 2019
Second reading – June 25, 2019
Third reading – June 25, 2019

Schedule “A”

Memorandum of Understanding

made this day of , 2019 between

Canadian Pacific Railway Company (the “Railway”)

and

The Corporation of the City of London (the “Road Authority”)

BACKGROUND:

1. The Road Authority plans to construct a subway “road under rail” Grade Separation on Adelaide Street North CPR crossing Mileage 113.73 Galt Subdivision between Central Ave and McMahan Street to replace the existing At-Grade Crossing (the “Project”);
2. The Road Authority completed a Municipal Class Environmental Assessment (Class EA) for the project in 2018;
3. The Project will include a new four lane underpass grade separation with elevated sidewalks, a temporary road detour and permanent utility corridor on the east side of Adelaide Street, storm and ground water management infrastructure and other features as outlined in the Environmental Study Report;
4. The Project will benefit the Road Authority and the Railway by improving safety at the crossing and eliminating conflicts between road and train traffic.
5. Implementation of the main grade separation works is expected to be in 2021 and 2022, with the likelihood of early works such as utility relocations being completed in 2020. Construction of the road, structure, services and utilities will be administered by a City-managed contractor with an exception that implementation of track and signal works will be coordinated and executed by the Railway.
6. The parties wish to establish the terms under which they have agreed to proceed with the Project, prior to the execution of a formal Construction Agreement and Crossing & Maintenance Agreement.

UNDERSTANDING AND AGREEMENT OF THE PARTIES:

1. The Road Authority and the Railway agree that the cost apportionment for the Project be dealt with via a contribution from the Railway to the Road Authority at a fixed lump sum amount of \$8,750,000, minus CP realty impacts. The preliminary value of the CP realty impacts (disturbance cost to 620 Adelaide Street and railway advertisement billboard) is estimated at \$461,000 and is subject to a realty process that requires a third party appraisal to be completed.
2. The payment of the Railway contribution to the Road Authority as identified above shall be paid in four equal installments between 2019 and 2022, due on April 1 of each year. The payment shall not be subjected to overheads, audit or adjustment based on actual construction costs.
3. The maintenance costs for the Project shall be apportioned in accordance with the Canadian Transportation Agency (CTA) maintenance cost guidelines for a subway as follows: the Railway company pays all maintenance costs of the substructure and the superstructure of a subway with the exception of aesthetic repairs and the Road Authority pays all other maintenance costs of a subway, including cost of maintaining the road approaches, retaining walls, road surfaces, sidewalks, drainage and lighting.

4. The parties agree on the project scope of work and timelines as identified in the Class EA, noting that there are specific design and construction elements that require further design and review.
5. The Railway agrees to make the property at 620 Adelaide Street North (Plan 386 PT BLK A & B PT Lots 1 to 7) available to the City of London and its contractors for the purposes of the project construction at no cost to the City and subject to restoration to pre-existing conditions upon completion of the project. Use of the property will be subject to the execution of a Licence agreement between the Road Authority and the Railway.
6. The Railway agrees to provide flagging services in accordance with the latest CTA Guide to Railway Charges publication.
7. The Railway agrees to waive the permit application, processing and occupancy licencing fees for all municipal and private utilities being relocated to the utility corridor and the detour road leasing fees.
8. The Road Authority and Railway agree to the following project design features:
 - o The construction of the temporary road detour to be implemented on the east side of Adelaide Street over the king switch and be between the heel blocks and the frog. This configuration will not require yard track realignment. This work includes installation of a new temporary rail crossing warning system.
 - o The main track be realigned, in order to provide sufficient clearance for the structure.
 - o The details of the structure are subject to detailed design and technical approvals.

This MOU sets out the terms under which the Railway and the Road Authority have agreed to proceed with the Project. The parties agree to negotiate in good faith and to use their respective best efforts to conclude the necessary agreements to give effect to the terms of this MOU.

IN WITNESS WHEREOF the parties hereto have executed this MOU.

THE CORPORATION OF THE CITY OF LONDON

Per: _____

Mayor Ed Holder

Per: _____

Catharine Saunders, City Clerk

CANADIAN PACIFIC RAILWAY COMPANY

Per: _____

Justin Meyer – Vice President Engineering

Per: _____

I\We have authority to bind the Corporation