

**ETC.10**

**Shell Type = use for miscellaneous reports**

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<b>TO:</b>	<b>CHAIR AND MEMBERS CIVIC WORKS COMMITTEE MEETING ON MONDAY, FEBRUARY 25, 2013</b>
<b>FROM:</b>	<b>JOHN BRAAM, P.ENG. MANAGING DIRECTOR ENVIRONMENTAL SERVICES AND CITY ENGINEER</b>
<b>SUBJECT</b>	<b>RAILWAY ROW CROSSING FEE POLICY</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the Managing Director of Environmental Services and City Engineer, Canadian National Railway's one-time crossing fee proposal for City owned infrastructure on Canadian National Railway owned right-of-way **BE ACCEPTED;**

It being noted that the funding required for the 24 crossings would be \$64,000 and \$55,000 (excluding HST) respectively from the 2013 Water and Wastewater Operating Budgets.

<b>BACKGROUND</b>
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**Purpose:**

The purpose of this report is to obtain approval to accept CN's one-time fee proposal for City owned utilities for crossings and parallelisms on CN owned property.

**Context:**

There are currently three railways operating within the City of London; CN, CP and Rail America which has a long-term lease of CN's rail line to Strafford. Section 101 of the *Canada Transportation Act* authorizes railway companies, road authorities, utilities and landowners to negotiate agreements for any aspect of a railway crossing, which includes utility crossings.

Since the railways were constructed in the late 1800's, from time to time the City has needed to construct sewer and water pipelines, drains, culverts and in some cases transportation infrastructure on or across railway lands in locations other than road crossings. In each case a crossing agreement was entered into with the railway authority which typically included a term license fee payable by the City with rates subject to periodic review and updating.

Although it is becoming more common for modern crossing agreements to be subject to a one-time lump sum fee rather than an ongoing term or annual charge, the City continues to receive invoices for older utility crossings that were in some cases constructed almost a century ago.

With a goal of reducing paperwork and administration costs, CN is proposing a one-time lump sum fee for each of twenty-two utility crossings identified thus far, and two parallelisms that are currently subject to ongoing occupation charges. Since the one-time payment proposal is outside the terms of the original crossing agreements the City entered into with CN, Civic Administration requires Council approval to accept the proposal. Furthermore, if this proposal is accepted by Municipal Council, Civic Administration intends to use it as a template and approach both CP and Rail America with a similar proposition in order to further reduce the City's administration costs.

**Discussion:**

There are currently several dozen utility crossings of railways in the City, the majority of which cross CN railway property. Every year the City receives a number of invoices for rental fees for City owned utility crossings ranging from as little as \$15 to as much as \$285 annually, depending upon the type of infrastructure and nature of the crossing. Due to the age of some of the agreements and infrequent invoicing (some are billed in 5 or 10 year terms) each invoice

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must be verified to confirm its validity and the type of utility involved (e.g. sewer or water) in order to authorize payment and identify the appropriate account to be charged.

CN is proposing to convert these term licenses to a one-time fee of \$1850 for each of 22 identified crossings, and \$42,100 and \$23,700 for 380 metres of 200mm water main and 120 metres for an open drainage ditch, respectively, both running parallel to and within CN ROW (i.e. “parallelisms”).

The total cost of the twenty-two identified crossings and two parallelisms is therefore \$106,500 excluding HST.

Realty Services has reviewed a small sample of representative crossings and calculated present day values ranging from \$500 to \$2100 for each using a standard market-driven “across-the-fence” valuation formula with a modest inflationary component, with the average considerably less than the \$1850 per crossing proposed by CN. Realty Services are supportive CN’s proposed one-time fees for the two parallelisms. Realty Services cautions, however, that valuing railway corridor lands is not a straight-forward exercise given the unique nature of the ROW’s. When CN was asked to provide rationale as to their valuation model they refused to elaborate and appeared unwilling to negotiate the proposed crossing fees. However, CN did indicate a willingness to discount the proposed one-time fees by the amount of the annual or term rental fee if recently paid.

Notwithstanding the discrepancy between Realty Services estimated value of the sample crossings and CN’s proposed fee, there are other factors to consider:

- Realty Services valuation model included a modest inflationary component that is considerably lower than recent real property appreciation rates and may or may not be representative of future inflationary costs.
- CN’s license fees to date have been relatively modest as compared to other carriers (in particular Rail America), and there is the risk going forward that CN could start to aggressively increase license fees to cover their administration costs and reflect increasing land values.
- The nature of the crossing agreements puts the Federally Regulated CN in a strong bargaining position and leaves the City in a weak one, and it could be difficult for the City to appeal any unilateral decisions made by CN.
- The cost to the City to confirm the validity of crossing invoices, identify the appropriate budget and process through accounts payable likely runs as high as \$100 for each invoice in terms of staff time alone, so the long term savings in administration costs is significant.

When the additional risk factors are considered in conjunction with the long-term cost savings to the City, CN’s proposal can be supported.

**Summary:**

CN’s proposal to convert twenty-two crossings and two parallelism license fees from the current term payment to a one-time fee can be supported when the long-term administrative savings and risk factors are considered, and it is therefore recommended that the proposal be accepted.

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**Acknowledgements:**

This report was prepared by Gary Irwin, Manager of Geomatics and Chief Surveyor with input from Bill Warner, Manager of Realty Services.

<b>PREPARED BY:</b>	<b>REVIEWED AND CONCURRED BY:</b>
<b>A. GARY IRWIN, O.L.S., O.L.I.P. DIVISION MANAGER, GEOMATICS AND CHIEF SURVEYOR</b>	<b>JOHN LUCAS, P.ENG. DIRECTOR OF WATER AND WASTEWATER &amp; TREATMENT</b>
<b>RECOMMENDED BY:</b>	
<b>JOHN M. BRAAM, P.ENG. MANAGING DIRECTOR ENVIRONMENTAL SERVICES AND CITY ENGINEER</b>	

February 13, 2013  
/agi  
copy: Edward Soldo  
Bill Warner