

Report to Civic Works Committee

To: Chair and Members
Civic Works Committee

From: Kelly Scherr, P.Eng., MBA, FEC, Managing Director,
Environmental & Engineering Services and City Engineer

Subject: Adelaide Street Underpass Project: Subway Construction
Agreement and Crossing and Maintenance Agreement

Date: March 30, 2021

Recommendation

That on the recommendation of the Managing Director, Environmental & Engineering Services and City Engineer, the following actions be taken with respect to the Adelaide Street Underpass Project:

- a) the attached proposed by-law (Appendix “A”) being “A by-law to approve and authorize the Subway Construction Agreement between Canadian Pacific Railway Company (“CP”) and The Corporation of the City of London (the “Road Authority”) for the construction of the Adelaide Street Subway located at approximately Mile 113.73 of the Galt Subdivision, Ontario to be installed by the Adelaide Underpass Project”, BE INTRODUCED at the Municipal Council Meeting to be held on April 13, 2021; and,
- b) the attached proposed by-law (Appendix “B”) being “A by-law to approve and authorize the Crossing and Maintenance Agreement between Canadian Pacific Railway Company (“CP”) and The Corporation of the City of London (the “City”) for the crossing and maintenance of the Adelaide Street Subway located at approximately Mile 113.73 of the Galt Subdivision, Ontario to be installed by the Adelaide Underpass Project”, BE INTRODUCED at the Municipal Council Meeting to be held on April 13, 2021.

Linkage to the Corporate Strategic Plan

The following report supports the Strategic Plan through the strategic focus area of Building a Sustainable City by implementing and enhancing safe and convenient mobility choices for transit, automobile users, pedestrians, and cyclists.

A new road-rail grade separation on Adelaide Street at the CP crossing will increase roadway safety by removing the potential for conflict between pedestrians, cyclists, commuters and CP operations, improve traffic flow by managing congestion and provide route reliability for emergency services and local transit. The grade separation provides an opportunity to improve active transportation choices and connectivity for the community. The implementation of the grade separation is a strategic component of London’s comprehensive program of transportation improvements.

Executive Summary

This report seeks approval to enter into a Subway Construction Agreement and a Crossing and Maintenance Agreement with the Canadian Pacific Railway Company (“CP”) in respect to a new subway located at approximately Mile 113.73 of the Galt Subdivision, Ontario as part of the Adelaide Underpass Project. These Agreements are supported by an earlier Memorandum of Understanding between the City and CP that was executed in 2019.

Analysis

1.0 Background Information

1.1 Previous Reports Related to this Matter

- Environment and Transportation Committee – November 28, 2005 – Priority Setting Factors for Future Rail / Road Grade Separations
- Civic Works Committee – June 19, 2012 – London 2030 Transportation Master Plan
- Civic Works Committee – October 28, 2013 – Adelaide Street North / Canadian Pacific Railway Grade Separation Report
- Strategic Priorities and Policy Committee – June 23, 2014 – Approval of 2014 Development Charges By-Law and DC Background Study
- Civic Works Committee – January 5, 2016 – Environmental Assessment Appointment of Consulting Engineer
- Civic Works Committee – December 12, 2016 – Environmental Assessment Update
- Civic Works Committee – September 26, 2017 – Transport Canada Grade Crossing Regulations and Railway Funding Application
- Civic Works Committee – May 28, 2018 – Railway Rationalization
- Civic Works Committee – August 13, 2018 – Environmental Study Report
- Civic Works Committee – January 8, 2019 – Detailed Design & Tendering Appointment of Consulting Engineer
- Civic Works Committee – June 18, 2019 – Memorandum of Understanding with Canadian Pacific Railway Company

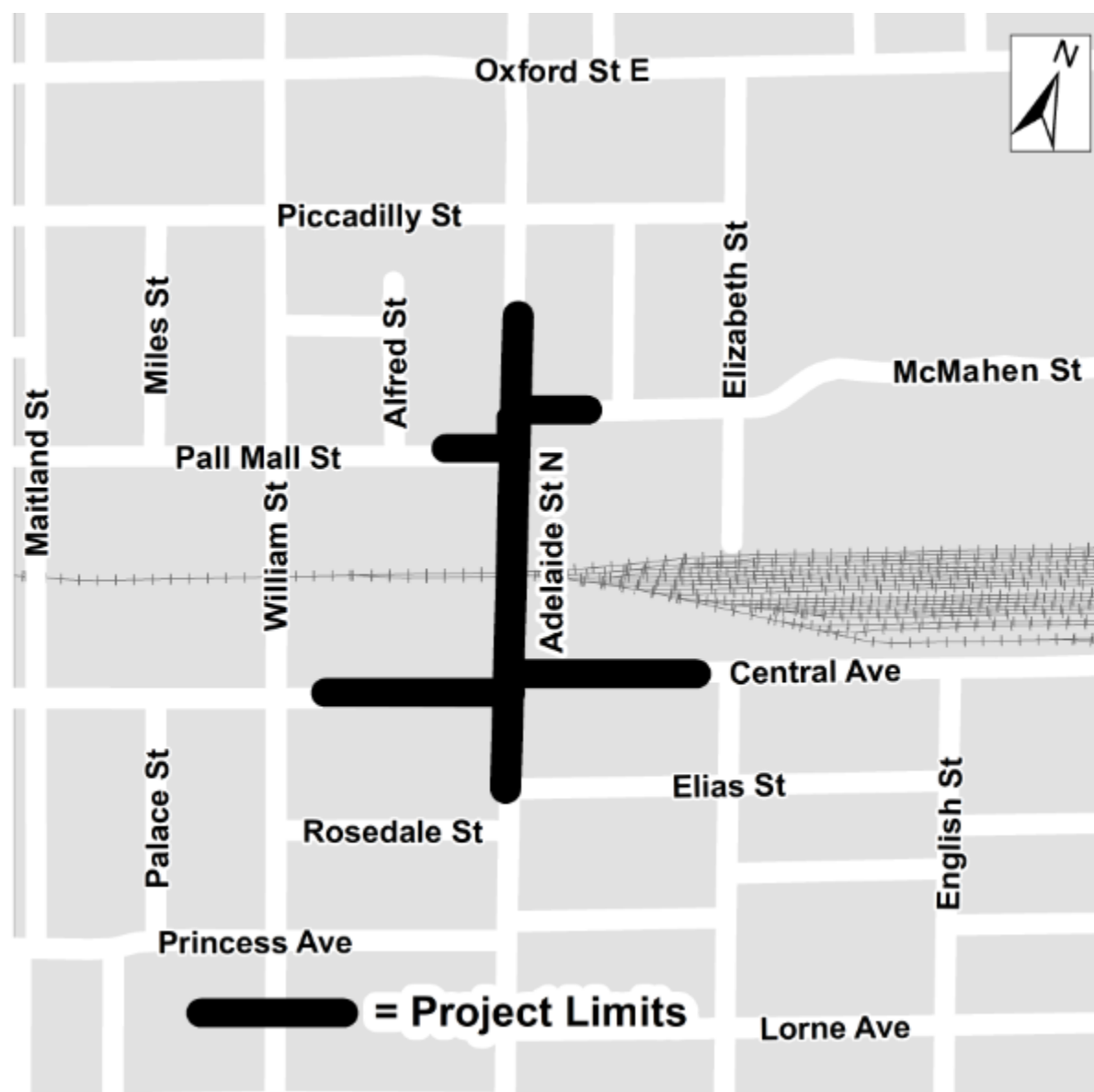
2.0 Context

Adelaide Street North is a major transportation corridor designed to carry high volumes of traffic. Improvements to install a new grade separation (railway subway) will accommodate pedestrians, cyclists and vehicular traffic in a safe and efficient manner and increase mobility within the surrounding community.

In 2018, the Civic Administration completed an Environmental Study Report for the Adelaide Underpass Project which addressed improvements to the transportation system, creating a safe crossing of the CP Tracks, and readied the Project with respect to future infrastructure funding programs. The CP crossing of Adelaide Street North has previously been identified as the City's highest priority candidate for a new rail-road grade separation. The crossing, located on Mile 113.73 of CP's Galt Subdivision, comprises two tracks across Adelaide Street North, which reduces to a single-track west of Adelaide Street North. The Galt Subdivision is a critical route for CP's service between Canada and America, including local customers in the London area. CP's rail yard operates to the east of Adelaide Street North and functions as a primary train assembly point including shunting operations and a crew hub.

The Adelaide Street Underpass Project was first identified in the 2014 Transportation Development Charges Background Study with a recommendation for construction in 2031. Due to the area's strategic location, the Smart Moves 2030 Transportation Master Plan (TMP) also identifies the need for traffic capacity optimization and transit priority on this corridor. The Project timing was subsequently adjusted in the 2018 capital budget update and the Development Charges Study for near-term implementation. The budget amendment considered the fastest possible project implementation with construction beginning as early as 2021, subject to utility relocations, property acquisition and railway concurrence.

The Adelaide Underpass Project will benefit the City and CP by improving safety at the crossing and eliminating conflicts between road users and train traffic. The Agreements detail respective CP and City responsibilities for the construction, operation and maintenance of the new subway. These Agreements are standard for new CP projects and have been used on similar projects such as the Western/Wharncliffe Grade Separation Project.



Adelaide Street North – CP Grade Separation Project Limits

3.0 Discussion and Considerations

Project Description

The Adelaide Underpass Project is a large complex project involving numerous property acquisitions, utility relocations and approvals. The proximity of the grade separation to the CP yard and the constrained nature of the site provide unique challenges for both design and construction of this Project.

A temporary construction road detour will be created on the east side of Adelaide Street North to allow for the effective movement of transportation choices throughout construction. Once complete, Adelaide Street North will include a new four-lane underpass grade separation with elevated pathways, a permanent utility corridor on the east side of Adelaide Street, new storm and ground water management infrastructure and enhanced streetscaping elements.

Construction of this Project is predominantly planned to start in the Fall of 2021. The Project schedule envisions the CP bridge construction commencing in 2022 with early works such as the temporary road detour being completed in 2021. Due to the

complexity of the project, the construction duration is expected to be approximately two years with a construction warranty period that spans into a third year. The majority of the underpass construction can be completed while traffic is routed around the construction area utilizing the temporary road detour.

Prior to the City constructing the Adelaide Underpass Project, the Subway Construction and the Crossing and Maintenance Agreement needs to be executed by both the City and CP to assign responsibilities for this Project during and after construction. CP will be making a financial contribution to this Project and having these Agreements executed will allow the City to be able to recover funds from CP. Both the Subway Construction Agreement and the Crossing and Maintenance Agreement have been reviewed by the City Solicitor's Office, Financial Services and Risk Management. Risk Management identified that the indemnity provisions requested by CP to be included in the Agreements, which are standard for new federally regulated railway crossings, expose the Corporation to potential liability. Similar provisions have been included in other agreements with CP and should not prevent the Corporation from entering into the Agreements recognizing that CP is a financial partner in the Project. In addition, construction risk will be transferred to the City's contractor as part of the construction contract.

Conclusion

Implementation of the City's highest priority grade separation at Adelaide Street North and CP is a strategic component of London's comprehensive program of transportation improvements that will mitigate the impact of rail activity in the City of London.

Adelaide Street North is a major transportation corridor. Improvements to this rail crossing will accommodate pedestrians, cyclists and vehicular traffic in a safe and efficient manner and improve mobility within the surrounding community.

The Subway Construction Agreement and the Crossing and Maintenance Agreement have been reviewed by the City Solicitor's Office, Financial Services and Risk Management. Risk Management identified that the indemnity provisions requested by CP to be included in the Agreements, which are standard for new federally regulated railway crossings, expose the Corporation to potential liability. Similar provisions have been included in other agreements with CP and should not prevent the Corporation from entering into the Agreements recognizing that CP is a financial partner in the project. In addition, risk during construction will be transferred to the City's contractor as part of the construction contract.

Prepared by: Garfield Dales, P.Eng., Division Manager, Transportation Planning and Design

Submitted by: Doug MacRae, P. Eng., MPA, Director, Roads and Transportation

Recommended by: Kelly Scherr, P. Eng., MBA, FEC, Managing Director, Environmental and Engineering Services and City Engineer

Attach: Appendix "A": By-law – Subway Construction Agreement
Appendix "B": By-law – Crossing and Maintenance Agreement

cc: Jennifer Benedict – CP
Peter Kavcic

Appendix "A"

Bill No.
By-law No.

A by-law to approve and authorize the Subway Construction Agreement between Canadian Pacific Railway Company and The Corporation of the City of London (the "Road Authority") for the construction of the Adelaide Street Subway located at approximately Mile 113.73 of the Galt Subdivision, Ontario to be installed by the Adelaide Underpass Project.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND 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 it is deemed expedient for The Corporation of the City of London (the "Road Authority") to enter into a Subway Construction Agreement (the "Agreement") with Canadian Pacific Railway Company ("CP") for the construction of the Adelaide Street Subway located at approximately Mile 113.73 of the Galt Subdivision, Ontario within Adelaide Street.

AND WHEREAS it is deemed 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 Agreement attached as Schedule "1" to this by-law, being a Subway Construction Agreement between Canadian Pacific Railway Company ("CP") and The Corporation of the City of London (the "Road Authority") for the construction of the Adelaide Street Subway located at approximately Mile 113.73 of the Galt Subdivision, Ontario within Adelaide Street is hereby AUTHORIZED AND APPROVED.
2. The Mayor and City Clerk are authorized to execute the Agreement authorized and approved under section 1 this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council , 2021

Ed Holder
Mayor

Catharine Saunders
City Clerk

First Reading
Second Reading
Third Reading

Schedule “1” – Subway Construction Agreement

CANADIAN PACIFIC RAILWAY COMPANY

- AND -

THE CORPORATION OF THE CITY OF LONDON

SUBWAY CONSTRUCTION AGREEMENT

In respect of the Adelaide Street Subway located at approximately
Mile Post 113.73 of CP’s Galt Subdivision in the City of London, Ontario

Dated: _____,2021

SUBWAY CONSTRUCTION AGREEMENT

This Agreement is dated: _____, 2021.

BETWEEN:

CANADIAN PACIFIC RAILWAY COMPANY, a company incorporated under the laws of Canada and having its head office in the City of Calgary, Alberta ("**CP**")

- and -

THE CORPORATION OF THE CITY OF LONDON (the "**Road Authority**")

RECITALS

- A. CP is a federally regulated railway and its Railway Operations, rights-of-way and facilities are subject to the jurisdiction, decisions and orders of the Agency and Transport Canada, and subject to federal legislation, including the *Canada Transportation Act* and the Act.
- B. In order to facilitate road development, the Road Authority wishes to construct the Subway across and over a portion of the Railway Lands at Mile 113.73 of the Galt Subdivision for the purpose of carrying vehicular, bicycle and/or pedestrian traffic.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the covenants herein contained and good and valuable consideration paid by each Party to the other, the receipt and sufficiency of which are hereby respectively acknowledged, the Parties agree as follows.

ARTICLE 1 - DEFINITIONS AND SCHEDULES

- 1.1 **Definitions.** In this Agreement the following words and phrases shall have the meanings set out below.
- (a) "**Access Protocols**" has the meaning ascribed in Schedule "D".
 - (b) "**Act**" means the *Railway Safety Act* (Canada), as amended and replaced from time to time or any statute or statutes passed in substitution therefor, together with all regulations made from time to time under the Act.
 - (c) "**Affiliate**" has the meaning ascribed in the *Canada Business Corporations Act*, as amended and replaced from time to time or in any statute or statutes passed in substitution therefor.
 - (d) "**Agency**" means the Canadian Transportation Agency and any successor or successors of the Agency.
 - (e) "**Agreement**" means this agreement, the recitals and the schedules hereto.
 - (f) "**Applicable Laws**" means all applicable federal, provincial, municipal and local laws, statutes, ordinances, by-laws and regulations and all orders, directives and decisions rendered by, and policies, standards, guidelines and similar guidance of, any Governmental Authority, ministry, department or administrative or regulatory agency or court having jurisdiction over the Parties, the Work, or the Project, and includes Environmental Laws and Safety Laws.
 - (g) "**Business Days**" means any day other than Saturdays, Sundays and statutory holidays in the Province of Ontario.
 - (h) "**CTA Guide**" means the *Guide to Railway Charges for Crossing Maintenance and Construction* published by the Agency, as amended from time to time.

- (i) "**Construction Schedule**" has the meaning ascribed in Section 4.1(b).
- (j) "**Contractor**" means the contractor(s) engaged by the Road Authority to construct and complete the Road Authority Work and the Project.
- (k) "**CP Indemnified Group**" means, collectively, CP, its Affiliates, officers, directors, employees, and agents.
- (l) "**CP Safety Requirements**" means the *Minimum Requirements for Contractors Working on CP Property in Canada*, as references in Schedule "D".
- (m) "**CP Work**" means the work and undertakings of CP set out in Schedule "C".
- (n) "**Emergency Situation**" means a situation arising that causes or may cause an immediate and serious threat or danger to, *inter alia*:
 - (i) the environment or human health;
 - (ii) the property of CP, including, without limitation, the Railway Lands;
 - (iii) the safety of the public or the CP Indemnified Group; or
 - (iv) Railway Operations,in each case as determined by CP in its sole and unfettered discretion.
- (o) "**Environmental Laws**" means all applicable federal, provincial, municipal and local laws, statutes, ordinances, by-laws and regulations and all orders, directives and decisions rendered by, and policies, standards, guidelines and similar guidance of, any Governmental Authority, ministry, department or administrative or regulatory agency or court (which, for certainty, in each case shall be deemed to have the force of law), including any obligations or requirements arising at law, relating to the protection of the environment, human and other animal health and safety or the release, manufacture, processing, distribution, use, treatment, storage, presence, disposal, packaging, labelling, recycling, transport, handling, containment, clean-up or other remediation or corrective action of or in respect of any Hazardous Substances.
- (p) "**Environmental Management Plan**" means an environmental management plan to be developed, implemented and maintained by the Road Authority to ensure:
 - (i) compliance with Environmental Laws; and
 - (ii) adverse environmental impacts due to the Project are avoided,as further described in Schedule "E".
- (q) "**Governmental Authority**" means any government, parliament, legislature, or any governmental, quasi-governmental or regulatory authority, agency, commission, department or board, ministry, department or administrative or regulatory agency or court (which, for certainty, in each case shall be deemed to have the force of law), any political subdivision thereof, or any court or any other law (including any obligations or requirements arising at law), regulation or rule-making entity, having jurisdiction in the relevant circumstances, or any person acting under the authority of any of the foregoing (including any court or any arbitrator with the authority to bind the Parties at law) or any other authority charged with the administration or enforcement of legal requirements.

- (r) **"Hazardous Substances"** means any substance, class of substance or mixture of substances, or such quantity of an otherwise non-hazardous substance or substances, which are or may be detrimental to the environment or human health including, without limitation:
- (i) radioactive, explosive, poisonous, corrosive, flammable or toxic substances or materials;
 - (ii) any substance that if added to any water, would degrade or alter the quality of the water to the extent that it is detrimental to its use by man or by any animal, fish or plant;
 - (iii) any solid, liquid, gas or odour or combination of any of them that, if released, creates or contributes to a condition that:
 - (A) endangers the health, safety or welfare of persons;
 - (B) interferes with the normal enjoyment of life or property; or
 - (C) causes damage to plant life, animal life or to property;
 - (iv) toxic substances, which shall include, without limitation, asbestos, polychlorinated biphenyls, all chemicals and substances known or suspected to cause cancer or reproductive toxicity;
 - (v) any substance, chemical or material, declared to be hazardous or toxic under any Applicable Laws or ordinance enacted or promulgated by any legislative, Governmental Authority having jurisdiction over the Parties; and
 - (vi) any medical waste or hazardous biological material.
- (s) **"Interference"** means to endanger, hinder or interfere with or materially affect Railway Operations.
- (t) **"Loss"** or **"Losses"** means any and all injuries, claims, suits, demands, awards, actions, proceedings, losses, costs, damages, expenses, charges (including all penalties, loss of profit, loss of income or consequential damages or losses with respect to Rolling Stock, Railway Operations or otherwise) by whomsoever made, brought or prosecuted which a Party suffers, sustains, pays or incurs and includes reasonable costs of legal counsel (on a solicitor-client basis) and other professional advisors and consultants incurred in connection therewith.
- (u) **"Mile"** means a CP rail mile on the Subdivision.
- (v) **"Minister"** has the meaning ascribed in the Act.
- (w) **"Notice"** has the meaning ascribed in Section 3.1(a).
- (x) **"Subway"** means the grade separated subway and multi-lane roadway known as the Adelaide Street underpass, including but not limited to the roadway, the bridge substructure, superstructure, ramps, approaches, permanent or temporary support structures, retaining walls, piers, signs, lights, drains, ditches, water conveyances and other associated works and improvements passing on, over, under or adjacent to the Railway Lands as detailed in the Project Plans.
- (y) **"Subway Completion"** has the meaning ascribed in Section 8.1.
- (z) **"Parties"** means CP and the Road Authority and **"Party"** means either CP or the Road Authority.

- (aa) "**Personnel**" means the employees and agents of the Road Authority and all individual persons engaged or retained by the Road Authority, whether directly or indirectly, in connection with the Project, including the Contractor and its contractors.
- (bb) "**Project**" means all works and undertakings related to the Subway to be carried out by the Parties, including the reconstruction and expansion of the existing subway currently carrying vehicular and pedestrian traffic under CP's right of way at approximately Mile Post 113.73 of the Galt Subdivision.
- (cc) "**Project Plans**" has the meaning ascribed in Section 4.1.
- (dd) "**Project Site**" means that portion of the Railway Lands upon which the Work is to be located.
- (ee) "**Proponent**" has the meaning ascribed in the Act.
- (ff) "**Railway Lands**" means that portion of the Galt Subdivision located approximately at CP Mile Post 113.73.
- (gg) "**Railway Operations**" means the operations, business and undertaking of CP, including, without limitation:
 - (i) the use, repair, maintenance, storage, transportation, movement, pick-up and delivery of Rolling Stock;
 - (ii) transporting, *inter alia*, freight, commodities and goods;
 - (iii) transloading, *inter alia*, freight, commodities and goods;
 - (iv) the use, operation, repair, maintenance and undertaking of Utility Works and Third Party Fibre Systems;
 - (v) the installation, alteration, relocation, maintenance and removal of, *inter alia*, railway tracks, signals and communications equipment thereon, trackage, switches, signals, electric service lines, fibre optic and communications systems (including, without limitation, conduits, cables, fibres, towers, associated equipment, appurtenances and facilities), radio and radio repeater stations and all other appurtenances, equipment, improvements and facilities now or hereafter erected or placed on, over or under the Railway Lands for the purpose of such operations; and
 - (vi) any access to CP's lands or infrastructure (including tracks) granted to a Third Party.
- (hh) "**Railway Work**" has the meaning ascribed in the Act.
- (ii) "**Road Authority Work**" means the work and undertakings of the Road Authority set out in Schedule "B".
- (jj) "**Rolling Stock**" includes, *inter alia*, trains, locomotives, railcars, boxcars, gondolas, railway machinery, vehicles, equipment of every nature, and the contents of same.
- (kk) "**Safety and Security Protocols**" has the meaning ascribed in Schedule "D".
- (ll) "**Safety and Emergency Response Plan**" means the safety and emergency response plan to be implemented and maintained by the Road Authority to ensure compliance with Safety Laws and Schedule "D".
- (mm) "**Safety Laws**" means:
 - (i) all Applicable Laws related to the safety of Railway Operations;

- (ii) the regulations, orders, specifications, and directives of Transport Canada, the Agency and any other authority having jurisdiction in respect of Railway Operations or Railway Lands; and

all Applicable Laws related to the Railway Lands in force with respect to health or occupational health and safety.

- (nn) "**Subdivision**" means those certain railway right-of-way parcels of land owned by CP located at or near the City of London, Ontario, and all improvements, railway lines and structures situated therein or thereon.
- (oo) "**Third Party Fibre Systems**" means fibre optic and communications systems owned and operated by a Third Party (including conduits, cables, fibres, towers, associated equipment and facilities).
- (pp) "**Third Parties**" means a person, corporation or other entity other than CP or the Road Authority.
- (qq) "**Utility Crossing**" means any Utility Works crossing under, on or above the Railway Lands installed or erected in accordance with Section 101 of the *Canada Transportation Act* that are required to be installed or relocated (whether in whole or in part) as part of the Project, whether temporarily or permanently.
- (rr) "**Utility Works**" means oil, gas and water pipelines, power lines, telephone lines, railway facilities, drains, sewers, pipes, fibre optic, signal and communications systems (including conduits, cables, fibres, towers, associated equipment and facilities), Third Party Fibre Systems and related structures.
- (ss) "**Work**" means collectively, the CP Work and the Road Authority Work.

1.2 Schedules. The following schedules are attached to and form part of this Agreement:

Schedule "A" - Preliminary Scope of Project;
Schedule "B" - Road Authority Work;
Schedule "C" - CP Work;
Schedule "D" - Access Protocols and Safety and Security Protocols; and
Schedule "E" - Environmental Requirements.

ARTICLE 2 - SAFE RAILWAY OPERATIONS

2.1 Railway Operations. The Parties acknowledge that pursuant to the Act, the safety of the public, the Parties, their respective employees, Personnel and Railway Operations are and must be paramount at all times during the term of this Agreement and the Project. The Parties further acknowledge that because CP must maintain train movements and freight traffic volumes through the Project Site, continuous, uninterrupted and unhindered Railway Operations are required for CP to meet its service requirements as set out in the *Canada Transportation Act* and its service obligations to its customers. Therefore, the Parties shall carry out all of their respective activities and undertakings contemplated in this Agreement in such a manner as to ensure safe, continuous, uninterrupted and unhindered Railway Operations.

ARTICLE 3 - REGULATORY REQUIREMENTS AND APPROVALS

3.1 Regulatory Requirements. In respect of the Project, the Road Authority will be responsible for all obligations of a Proponent, including:

- (a) preparing and serving all notices of proposed Railway Works as required under the Act ("**Notice**");
- (b) responding to any objection received in respect of a Notice; and

- (c) if an objection to a Notice remains outstanding, obtaining approval of Transport Canada or the Minister for such Railway Works that may be required under the Act.

3.2 Additional Approvals. The Road Authority shall forthwith obtain at its sole cost all approvals, permits and authorizations required in respect of the Project, including approvals from owners of Third Party Fibre Systems to protect or relocate such Third Party Fibre Systems.

3.3 Conditions. The Road Authority shall, at its sole cost, satisfy all on-going monitoring or other conditions set out in all approvals, permits and authorizations.

ARTICLE 4 - COMMENCEMENT OF THE PROJECT

4.1 Project Plans. Prior to commencement of the Project, the Road Authority shall provide the following to CP (collectively, the "**Project Plans**"):

- (a) a detailed scope of work confirming all necessary activities to be undertaken in respect of the Work;
- (b) a construction schedule for the Project (the "**Construction Schedule**");
- (c) detailed engineering drawings, designs and specifications for the Project to be stamped by a professional engineer, as required by CP, including:
 - (i) alignment, profile, general arrangement and structural plans for the Subway (including drainage flows);
 - (ii) Utility Crossing encasement plans; and
 - (iii) detailed plans regarding Utility Works that require protection or relocation (whether in whole or in part), with the objective to minimize interference with any Utility Works on Railway Lands;
- (d) detailed drainage and grading design plans of the proposed Subway and completed facilities to be constructed by the Road Authority, confirming that drainage will be directed to a location off the Railway Lands;
- (e) its Safety and Emergency Response Plan and Environmental Management Plan, including provisions for protective structures (including without limitation fencing or netting) to preclude construction materials, waste or debris from falling onto, or accumulating within, the Railway Lands, and/or causing any Interference or Emergency Situation;
- (f) proposed measures to avoid incidents or any damage to the Railway Lands, including a track settlement monitoring plan;
- (g) a list of the construction equipment and machinery to be used for the Project;
- (h) proposed access location(s) to and from the Project Site and safety and security measures for the proposed access location(s) to preclude access to the Project Site by any non-Personnel;
- (i) a general description of proposed arrangements for the exchange of information and reports including, without limitation, the holding of informational meetings and anticipated timeframes for the delivery of information and written reports; and
- (j) any other information or documentation reasonably required by CP to complete the Project.

- 4.2 Further Information and Documentation.** Notwithstanding Section 4.1, CP may require the Road Authority to provide such further information and documentation that CP deems necessary to evaluate compliance and proceed with the Project.
- 4.3 Commencement of Construction.** Work on the Project shall not commence on the Railway Lands until the Road Authority has received confirmation from CP that:
- (a) CP has reviewed the Project Plans, such confirmation to be provided to the Road Authority on the later of:
 - (i) sixty (60) calendar days from receiving the last of the Project Plans, or reasonable parts thereof, and any amendments required by CP pursuant to Section 4.2; and
 - (ii) such additional time as reasonably required by CP engineering personnel;
 - (b) all approvals referred to in Article 3 have been obtained; and
 - (c) the Road Authority is in compliance with the provisions of Schedule "D".
- 4.4 Approval of Project Plans.** The Parties agree that the approvals, permits and authorizations required under this Agreement are necessary for the purpose of the Construction Schedule. Neither Party, nor its respective directors, officers, employees or agents, shall be liable for the safety, adequacy, soundness or sufficiency of anything approved herein by reason of the giving of any such approvals, permits and authorizations to the other Party nor shall the giving of such approvals, permits and authorizations by a Party constitute a waiver or release from any duty or liability owed to the other Party.

ARTICLE 5 - ROAD AUTHORITY WORK

- 5.1 Road Authority Work.** The Road Authority shall:
- (a) at its sole cost, in good and workmanlike manner, in accordance with the Project Plans, carry out or cause the Contractor to carry out the Road Authority Work and all necessary or desirable work, other than the CP Work, as may be required to complete the Project; and
 - (b) comply with the provisions of this Agreement.
- 5.2 Changes to Road Authority Work.**
- (a) CP will provide the Road Authority with prior written notice of any proposed changes to the Road Authority Work and the Project Plans (including any other construction specifications), such changes, if any, being to ensure that the Project is carried out and completed:
 - (i) in accordance with all Applicable Laws and all applicable standards, conditions and requirements of Governmental Authorities;
 - (ii) in accordance with CP labour agreements;
 - (iii) in accordance with CP standard engineering and operating requirements; and
 - (iv) in a manner that ensures safe, continuous, uninterrupted and unhindered Railway Operations.
 - (b) The Road Authority will review any proposed changes to the Road Authority Work and the Project Plans (including any other construction specifications) and respond to same in writing within fifteen (15) days of receipt of same from CP.

- (c) Notwithstanding the foregoing, CP may make changes to the Road Authority Work and the Project Plans without providing prior written notice to the Road Authority if such changes are required to respond to or prevent any Emergency Situation or Interference.
- (d) If any Road Authority Work is re-allocated to be part of the CP Work pursuant to Section 5.2, CP shall use commercially reasonable efforts to ensure that the cost for such re-allocated Work remains substantially the same as the Road Authority's cost for such Work.

5.3 Cost and Quality of the Road Authority Work.

- (a) Except as stated in 5.3(b), all of the Road Authority Work (including for certainty the design and construction of the Subway), including that which arises from changes made by CP under Section 5.2, shall be carried out at the sole cost and expense of the Road Authority. For certainty, CP shall not be responsible for nor apportioned any costs whatsoever with respect to the design and construction of the Subway or the Construction Project. Maintenance of the Overhead Bridge following construction shall be in accordance with a separate Crossing and Maintenance Agreement which the parties shall enter into.
- (b) CP shall contribute a fixed amount of \$8.75 million (CAD). The payment schedule shall be agreed mutually by both parties. Upon the Road Authority's receipt of the \$8.75 million (CAD) contribution from CP, the Road Authority shall release CP from any further financial contributions toward the Construction Project.
- (c) Maintenance of the Subway following construction shall be in accordance with a separate Crossing and Maintenance Agreement which the parties shall enter into.
- (d) All Road Authority Work, including all construction methods, and the quality and quantity of materials, shall be completed in accordance with: (i) all Applicable Laws; (ii) all applicable standards and specifications of Governmental Authorities; (iii) the standards and specifications of CP with respect to railway work, rail/road interface or subways; and (iv) the Project Plans. CP shall, as between the Parties, be the sole judge, acting reasonably, of the adequacy and quality of the Road Authority Work with respect to: (i) any Interference with Railway Operations or Emergency Situation; (ii) railway work; (iii) rail/road interface; and (iv) the suitability of and adherence with the Project Plans.

5.4 As Is Basis.

- (a) The Road Authority hereby accepts the Project Site as the location it has chosen for the Subway on the Railway Lands.
- (b) The Road Authority acknowledges that it has had the opportunity for inspection and testing of the Railway Lands and acknowledges that the Railway Lands have been used for Railway Operations and/or industrial purposes.
- (c) The Road Authority agrees and acknowledges that it shall be conclusively deemed to be satisfied with the condition of the Railway Lands in its existing condition and on an "as is" basis and hereby waives, against the CP Indemnified Group, all rights and recourses of any nature whatsoever in respect of any defects within the Railway Lands.
- (d) The Road Authority agrees and acknowledges that CP has made no agreement, representation or warranty of any kind as to the condition, nature, composition or use (past, present or future) of the Railway Lands, accuracy or completeness of any materials or information provided by CP,

the fitness or suitability of the Railway Lands for the Work, or the existing or potential environmental liabilities in relation to the Railway Lands.

5.5 Monitoring and Inspection by CP. For the purposes of allowing CP to monitor and inspect the Road Authority Work and the Project, the Road Authority shall:

- (a) from time to time, and at any time, permit CP full access to the:
 - (i) Project Site;
 - (ii) Road Authority documentation in respect of the Project; and
 - (iii) Personnel;
- (b) provide the written reports referred to in Section 4.1(i);
- (c) meet with CP at the Project Site to review the progress of and any issues relating to the Project, and for the purposes thereof shall arrange for reasonably acceptable meeting facilities at or near the Project Site; and
- (d) provide Project Site supervision as reasonably required by CP, such supervision to be provided at the sole cost and expense of the Road Authority.

5.6 Liens. The Road Authority shall keep the Railway Lands free from any and all liens and similar claims and encumbrances that arise due to the Road Authority Work. To the fullest extent permitted by Applicable Laws, the Road Authority waives all rights of such liens, claims and encumbrances. If the Road Authority fails to release and discharge any such lien, claim or encumbrance within five (5) Business Days of receiving notice thereof from CP, CP may, at its option discharge or release the lien, claim or encumbrance, or otherwise deal with the claimant thereunder, and the Road Authority shall pay CP any and all costs and expenses of CP in so doing, including reasonable legal fees and expenses (on a solicitor-client basis full indemnity basis) incurred by CP. The provisions of this Section 5.6 shall survive the expiration or termination of this Agreement.

ARTICLE 6 - CP WORK

6.1 CP Work. CP shall carry out or cause its contractors to carry out, at the sole cost and expense of the Road Authority, the CP Work and any other Work expressly agreed to in writing by CP or re-allocated by CP pursuant to Section 5.2. All such CP Work is to be carried out by CP or its contractors in accordance with the Construction Schedule. The CP Work shall be carried out in accordance with the requirements of all Governmental Authorities, to the engineering and operating requirements of CP and in a manner that ensures safe, continuous, uninterrupted and unhindered Railway Operations.

6.2 Changes to CP Work. Upon ten (10) days' prior written notice to the Road Authority, CP may make such changes to the CP Work as are necessary to complete the Project in accordance with this Agreement. CP will use commercially reasonable efforts to provide the Road Authority with a cost estimate for such changes to the CP Work concurrently with the notice for same. For certainty, any additional CP Work arising from any such changes shall remain at the sole cost and expense of the Road Authority. Notwithstanding the foregoing, CP may make changes to the CP Work without providing prior written notice to the Road Authority if such changes are required to respond to or prevent any Emergency Situation or Interference.

6.3 Quality of CP Work. CP shall, as between the Parties, be the sole judge of the adequacy and quality of the CP Work judged against CP standards for railway work carried out by or on behalf of CP, and in the event of any dispute with regard thereto the decision of CP shall be final, subject to the dispute resolution procedure in Section 13.1.

6.4 Payment by the Road Authority for CP Work. CP shall periodically provide invoices to the Road Authority for the CP Work. Each such invoice shall constitute a requisition for payment, and the Road Authority shall pay the full amount reflected in each invoice forthwith upon receipt. CP shall prepare all invoices for the CP Work on the basis of rates and charges stipulated in the most recent CTA Guide. In the event the Agency shall discontinue publishing the CTA Guide, invoices to the Road Authority for the CP Work shall be prepared in accordance with such standard rates as set out in any alternate document that will succeed the CTA Guide. Until such alternate document is publicly available, the standard rates shall be those set out in the most recent published version of the CTA Guide indexed by the Consumer Price Index for the transportation sector published by Statistics Canada. The provisions of this Section 6.4 shall survive the expiration or termination of this Agreement.

6.5 Coordination. The Parties will use commercially reasonable efforts to coordinate the CP Work with the Road Authority Work. The Parties acknowledge that coordination of their respective personnel and contractors is an important component of the Construction Schedule and timing of the Work under this Agreement.

ARTICLE 7 - UTILITY AND CROSSINGS AGREEMENTS

7.1 Utility Crossings and Utility Works.

- (a) The Road Authority shall carry out all necessary Work as may be required to install, protect and/or re-locate (temporarily or permanently) any Utility Crossing identified in the Project Plans or as required to complete the Subway.
- (b) The Road Authority shall, at its sole cost and expense, locate, protect or re-locate any and all Utility Crossings owned by CP or any Third Parties.
- (c) The Road Authority shall not attach any Subway facilities or structures to Utility Works except with the express written consent of the owner thereof.
- (d) The Road Authority shall maintain a three (3) foot separation from all Utility Works except with the express written consent of CP and the owner of the Utility Works.
- (e) If any Work is to be carried out in the vicinity of Third Party Fibre Systems, the Road Authority shall ensure a fibre optic locate is undertaken to the satisfaction of CP and that a Third Party Fibre System representative is present during any such Work.
- (f) The provisions of this Section 7.1 shall survive the expiration or termination of this Agreement.

7.2 Crossing Agreements. In furtherance of Section 7.1, the Road Authority agrees and acknowledges that prior to commencing any Work on the Railway Lands, CP must have entered into all necessary Utility Crossing agreements with Third Parties, utilizing CP standard form agreements and all to the satisfaction of CP. The Road Authority shall assist CP in obtaining all necessary Utility Crossing agreements with Third Parties.

ARTICLE 8 - SUBWAY COMPLETION

8.1 Subway Completion. Subway completion ("**Subway Completion**") shall occur when:

- (a) construction of the Subway in accordance with the Project Plans has been completed;
- (b) the Road Authority has provided confirmation from the engineer of record that the Project has been completed in accordance with the Project Plans;

- (c) Railway Operations on the Galt Subdivision over the Subway are at the same track speed and capacity as before the commencement of the Project;
- (d) all Work has been completed; and
- (e) the Parties have performed joint inspections of the Project and the Subway that CP deems necessary and desirable and all Work has been completed to both Parties' satisfaction.

8.2 **As Built Plans.** The Road Authority shall provide CP with "as built" plans from the Contractor approved by the Road Authority showing the location of the Subway within five (5) days of approving same and in any event not later than one hundred eighty (180) days from Subway Completion.

ARTICLE 9 - WAIVER AND INDEMNITY

9.1 The Road Authority shall, and cause any Contractor to, be liable for and indemnify and hold harmless the CP Indemnified Group from and against any and all Losses suffered or incurred by the CP Indemnified Group that arise out of, result from, are based upon or are in any way connected with:

- (a) this Agreement;
- (b) the Project;
- (c) anything to be done or maintained by the Road Authority hereunder;
- (d) anything not done or not maintained by the Road Authority as required hereunder;
- (e) claims under workers' compensation legislation;
- (f) third party claim arising in connection with the Project;
- (g) acts or omissions by or attributable to the Road Authority or its Personnel; and
- (h) the breach of the timing or conditions of any track block or flagging;

9.2 The Road Authority shall make no claim or demand against the CP Indemnified Group, and shall cause any Contractor to make no claim or demand against the CP Indemnified Group, for any Losses (including death) or damage to property (including destruction) suffered or sustained by the Road Authority, Personnel or any other Person which arises out, results from, or is based upon or are in any way connected with:

- (a) this Agreement;
- (b) the Project;
- (c) anything to be done or maintained by the Road Authority hereunder;
- (d) anything not done or not maintained by the Road Authority as required hereunder;
- (e) claims by Personnel under workers' compensation legislation;
- (f) a claim based on the interest of a third party;
- (g) acts or omissions by or attributable to the Road Authority or its Personnel; and
- (h) the breach of the timing or conditions of any track block or flagging;

and hereby waives as against and releases the CP Indemnified Group all such claims and demands.

- 9.3 The provisions of this Article 9 shall survive the expiration or termination of this Agreement.

ARTICLE 10 - INSURANCE

10.1 Insurance.

- (a) The Road Authority shall at its sole cost and expense, obtain and maintain (or cause to be obtained and maintained by the Contractor) during the term of this Agreement, and any extension hereof, with an insurer licensed under the *Insurance Act* (Ontario), the following policies of insurance:
- (i) *"Wrap-Up" Commercial General Liability* insurance covering the Road Authority and its Personnel, including agents, contractors and sub-contractors who perform work at the Project Site and including architects and engineers with a limit of not less than **fifty million dollars (\$50,000,000)** for any one loss or occurrence for personal injury, bodily injury, or damage to property including loss of use thereof, business interruption and consequential damages arising out of the Project. This insurance policy shall by its wording or by endorsement include but not be limited to the following:
- (A) the CP Indemnified Group as named insured;
 - (B) "cross liability" or "severability of interest" clause which shall have the effect of insuring each entity 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;
 - (C) blanket contractual liability;
 - (D) broad form products and completed operations, not less than twenty-four (24) months completed operations coverage;
 - (E) shall not exclude operations on or in the vicinity of the railway right-of-way, if applicable;
 - (F) non-owned auto liability;
 - (G) employer's liability;
 - (H) broad form property damage;
 - (I) owner's and contractor's protective liability;
 - (J) employees as additional insured;
 - (K) coverage for damage to existing structures;
 - (L) property damage due to explosion, collapse and underground property damage; and
 - (M) sudden and accidental pollution liability.
- (ii) *"All Risk" Builders Risk or Course of Construction* insurance covering all work and material for the full replacement value of the work and material. Coverage shall be in the name of the Road Authority, any contractors, subcontractors, or agents, and CP. The policy shall contain a loss payable clause in favor of CP as their interests may appear. When the extent of the loss or damage is determined, the Road Authority shall proceed to restore the work to the satisfaction of CP. To the extent that any loss or damage occurs on or to the

work before completion that is not covered by the Road Authority's policy, the Road Authority shall, without compensation from CP, bear such loss or damage and shall restore the work so damaged.

- (iii) *Automobile Liability* insurance covering bodily injury and property damage in an amount not less than **two million dollars (\$2,000,000)** per accident, covering the ownership, use and operation of any motor vehicles and trailers which are owned, leased or controlled by the Road Authority and used in regards to this Agreement. The Road Authority's contractors and their subcontractors shall independently maintain automobile liability insurance covering bodily injury and property damage in an amount not less than **two million dollars (\$2,000,000)** per accident, covering the ownership, use and operation of any motor vehicles and trailers which are owned, leased or controlled by the Contractor and/or its subcontractors and used in connection with the Project.

- (iv) *Contractor's Pollution Liability* insurance, including naming the CP Indemnified Group as an additional insured, with a limit of not less than **five million dollars (\$5,000,000)** for any one loss or pollution event. Coverage shall include, but not be limited to, claims for bodily injury, death, damage to property including the loss of use thereof, clean-up costs and associated legal defense expenses arising from pollution conditions caused by, and/or exacerbated by, services performed by the Road Authority. The policy shall be endorsed to contain a blanket contractual liability endorsement. If this policy is written on a "claims-made" basis it shall remain in effect for no less than twenty-four (24) months after the expiry or termination of this Agreement.

- (v) For operations not covered by the "Wrap-Up" Commercial General Liability Policy outlined in (i), the Road Authority shall obtain and maintain until completion of the Agreement, a *Commercial General Liability* policy with a limit of not less than **one hundred million dollars (\$100,000,000)** for any one loss or occurrence for personal injury, bodily injury, or damage to property, including loss of use thereof, business interruption, and consequential damages. This policy shall by its wording or by endorsement include but not be limited to the following:
 - (A) the CP Indemnified Group as an additional insured;
 - (B) "cross liability" or "severability of interest" clause which shall have the effect of insuring each entity 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;
 - (C) blanket contractual liability,
 - (D) broad form products and completed operations;
 - (E) shall not exclude operations on or in the vicinity of the railway right of way;
 - (F) non-owned auto liability;
 - (G) sudden and accidental pollution liability; and
 - (H) contingent employer's liability.

- (b) The Road Authority shall ensure that it and the Contractor comply with the *Workplace Safety and Insurance Act, 1997 (Ontario)*, as amended and replaced from time to time or any statute or statutes passed in substitution

therefor, together with all regulations made from time to time under such act. Upon request, the Road Authority will provide CP with written confirmation from the Ontario Workplace Safety and Insurance Board that the Contractor is registered under and in compliance with the requirements of the *Workplace Safety and Insurance Act, 1997 (Ontario)*, as amended and replaced from time to time or any statute or statutes passed in substitution therefor, together with all regulations made from time to time under such act.

- (c) Concurrently with execution and delivery of this Agreement by the Road Authority, the Road Authority shall provide CP with a copy of detailed certificates of insurance evidencing the above insurance. Such certificates shall be sent by email to cprail@ebix.com. CP may at its option require the Road Authority to annually provide CP with a copy of updated certificates of insurance evidencing the renewal of the above insurance. CP shall have no obligation to examine such certificates or to advise the Road Authority in the event its insurance is not in compliance herewith. Acceptance of such certificates which are not compliant with the stipulated coverage shall in no way whatsoever imply that CP has waived the insurance requirements of the Road Authority.
- (d) The Road Authority agrees that the insurance coverage required to be obtained and maintained by it under the provisions of this Agreement shall not limit or restrict its liabilities under this Agreement.
- (e) The Road Authority agrees that the insurance coverage is primary and not excess of any other insurance that may be available.
- (f) The Road Authority agrees that unless otherwise provided above, all insurance coverage shall take place in the form of an occurrence based policy and not a claims made policy. If any policy is written on a "claims-made" basis it shall remain in effect for no less than twenty-four (24) months after the expiry or termination of this Agreement.
- (g) The Road Authority shall provide CP with written notice and all reasonable particulars and documents related to any Losses, incidents, claims and potential claims concerning this Agreement as soon as practicable after the Loss, incident or claim has been discovered.
- (h) The insurance policies shall be endorsed to provide CP with not less than thirty (30) days' written notice in advance of cancellation, material change or amendments restricting coverage (with the exception of the automobile policies). Such notice shall be sent to:

Canadian Pacific Railway Company
7550 Ogden Dale Road, SE
Calgary, AB T2C 4X9
Attention: Director of Risk Management
- (i) If at any time the Road Authority fails to obtain or maintain (or cause to be obtained or maintained as the case may be), any of the policies of insurance required pursuant to this Article 10, then upon written notice from CP, the Road Authority and the Contractor shall immediately stop all work on the Project until otherwise advised by CP.
- (j) CP reserves the right to maintain the insurance in good standing at the Road Authority expense and to require the Road Authority to obtain additional insurance where, in CP's opinion, acting reasonably, the circumstances so warrant.

ARTICLE 11 - TERM AND TERMINATION

11.1 Term. Subject to the express rights of a Party to terminate this Agreement, this Agreement shall be effective as of the date first written above and continue in effect until the later of the following events:

- (a) Subway Completion; and
- (b) CP has received full and final payment of all amounts owing to it pursuant to this Agreement.

11.2 Termination by the Road Authority. The Parties agree that the Road Authority may terminate this Agreement, upon providing CP with sixty (60) days' prior written notice, if any approvals set out in Article 3 are not obtained to the satisfaction of the Road Authority, acting reasonably.

11.3 Termination by CP. The Parties agree that CP may terminate this Agreement, upon providing the Road Authority with sixty (60) days' prior written notice, if the Road Authority:

- (a) fails to construct the Work in accordance with the Project Plans and such failure may, in the sole discretion of CP, cause an Emergency Situation or Interference; or
- (b) fails to pay CP any amount due and owing under this Agreement; or
- (c) is in material breach of its obligations hereunder and such material breach has not been remedied to CP's reasonable satisfaction following the Road Authority's receipt of prior written notice pertaining thereto.

11.4 Termination.

- (a) Upon termination pursuant to this Article 11, whether or not any of the steps required for implementation thereof have been commenced or completed, CP shall have the right to recover from the Road Authority payment for:
 - (i) all the materials ordered and costs and expenses incurred pursuant to this Agreement to and including the date of termination;
 - (ii) any outstanding amounts payable by the Road Authority to CP under this Agreement;
 - (iii) the cost of such further work as may be necessary in the opinion of CP to return Railway Operations along the Galt Subdivision to not less than its capacity and standard of operating capability and safety as existed immediately prior to the commencement of the Work; and
 - (iv) any Losses CP may sustain as a result of termination of this Agreement.
- (b) The provisions of this Section 11.4 shall survive the expiration or termination of this Agreement.

ARTICLE 12 - NOTICES

12.1 Notices. Any notice or communications required to be given by either Party under this Agreement shall be given by courier or facsimile, or if mailed, by registered letter, prepaid to the Party at its respective addresses as follows:

(a) If to CP:

Canadian Pacific Railway Company
7550 Ogden Dale Road, SE
Calgary, AB T2C 4X9
Attention: Manager Public Works – Ontario
Facsimile: (403) 319-3883

With a copy to:

Canadian Pacific Railway Company
7550 Ogden Dale Road, SE
Calgary, AB T2C 4X9
Attention: Cameron Greaves, Legal Counsel
Facsimile: (403) 319- 6770

(b) If to the Road Authority:

The Corporation of the City of London
300 Dufferin Avenue
London, ON N6A 4L9
PO BOX 5035

Attention: Mr. Doug MacRae, P.Eng., MPA
Director, Roads & Transportation City of London
Phone: (519) 661 – 2489 ext. 4936.
Facsimile: (519) 661 - 4734

or such other address as may be furnished from time to time by either Party. Any notice, if delivered by courier or facsimile, shall be deemed to have been given or made on the date delivered or the date that a confirmation of receipt of the facsimile was recorded by the sender and if mailed correctly, shall be deemed to have been received on the third Business Day after mailing. In the event of actual or imminent disruption or postal service, any notice shall be delivered, by courier or facsimile.

ARTICLE 13 - DISPUTE RESOLUTION

13.1 Resolution of Disputes. Subject to, and without prejudice to the rights of termination set forth in Article 11, the Parties shall attempt, in good faith, to resolve or cure all disputes and claims with respect to the interpretation of this Agreement and the performance of their respective obligations hereunder before initiating any legal action or attempting to enforce any rights or remedies at law or in equity. If a Party believes that a breach of this Agreement by the other Party has occurred, then the Parties shall attempt to resolve such dispute in the following manner:

- (a) the Party who believes that a breach of this Agreement by the other Party has occurred shall provide notice and the Parties will attempt to resolve the dispute within thirty (30) days;
- (b) if the dispute remains unresolved, in whole or in part, after thirty (30) days, the issue(s) in dispute will be escalated to a CP vice president and the Deputy Minister of Transportation on behalf of the Road Authority, who will have thirty (30) days to attempt to resolve such remaining issue(s) in dispute; and

- (c) if the Parties are still unable to resolve the dispute after such thirty (30) day period pursuant to Section 13.1(b), then either Party may pursue all legal remedies available to it.

ARTICLE 14 - MISCELLANEOUS

- 14.1 Relationship of Parties.** The Parties agree and acknowledge that they are not partners in any business or a joint-venture or a member of a joint or common enterprise.
- 14.2 Entire Agreement.** This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and the Parties have not relied upon any statement, representation, agreement or warranty except such as are set out in this Agreement.
- 14.3 No Modification.** No amendment, modification, or supplement to this Agreement shall be valid or binding unless set out in writing and executed by Parties in the same manner as the execution of this Agreement.
- 14.4 Assignment and Subcontracting.** This Agreement may only be assigned by the Road Authority with the prior written consent of CP. CP agrees and acknowledges that the Road Authority will cause the Contractor to carry out certain of its obligations in this Agreement; provided that the Road Authority shall remain liable for and shall not be released or relieved of any of its obligations and liabilities in this Agreement.
- 14.5 Enurement.** This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
- 14.6 No Waiver.** Neither Party shall be deemed to have waived the exercise of any right that it holds under this Agreement unless such waiver is made in writing. No waiver made with respect to any instance involving the exercise of any such right shall be deemed to be a waiver with respect to any other instance involving the exercise of that right or with respect to any other right.
- 14.7 Applicable Law and Construction.** This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. Time is of the essence of this Agreement. The captions of the Articles and Sections are included for convenience only and shall have no effect upon the construction or interpretation of this Agreement. References to dollar amounts are references to Canadian dollar amounts.
- 14.8 Construed Covenants and Severability.** All of the provisions of this Agreement are to be construed as covenants and as though the words importing such covenants and agreements were used in each separate Article hereof. Should any provision of this Agreement be or become invalid, void, illegal or not enforceable, it shall be considered separate and severable from this Agreement and the remaining provisions shall remain in force and be binding upon the Parties as though such provision had not been included.
- 14.9 Survival.** The obligations of the Parties herein that are expressly described to survive the termination, cancellation, completion or expiration of this Agreement shall survive.
- 14.10 No Option.** This Agreement becomes effective only upon execution and delivery hereof by the Parties.
- 14.11 Further Assurances.** The Parties covenant and agree that they shall execute and deliver all such further assurances and do or perform or cause to be done or performed all such acts and things as may be required to be performed to fully carry out the provisions and intent of this Agreement.
- 14.12 Subway Crossing and Maintenance Agreement.** Crossing rights and ongoing

access and maintenance obligations in respect of the Subway shall be governed by a *Crossing and Maintenance Agreement*, which remains to be negotiated by the Parties.

14.13 Project-Specific Agreement. The Parties agree and acknowledge that this Agreement is specific to the Project and the terms hereof shall not be deemed or interpreted to be a precedent that binds the Parties in respect of future negotiations of railway grade separation, or subway, agreements.

14.14 Counterparts and Electronic Delivery. This Agreement may be executed in any number of counterparts and delivered via facsimile or email in PDF, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, provided that any Party delivering this Agreement via facsimile or email in PDF shall deliver an originally executed copy of this Agreement forthwith thereafter to the other Party.

IN WITNESS WHEREOF the Parties have caused their duly authorized officers to execute this Agreement as evidenced below as of the date first above written.

CANADIAN PACIFIC RAILWAY COMPANY

Per: _____
Name:
Title:

THE CORPORATION OF THE CITY OF LONDON

Per: _____
Name:
Title:

Per: _____
Name:
Tite:

SCHEDULE "A"

SCOPE OF THE PROJECT

(see attached on next page)

SCHEDULE "B"

ROAD AUTHORITY WORK

The Road Authority Work shall consist of the following.

- 1.1 Supply and install all right-of-way access control fencing and access gate as required and shown on the final detailed plan.
- 1.2 Ordering, transporting and supplying all materials not supplied by CP for the Project.
- 1.3 Designing and constructing drainage ditches, supply and installation of drainage culverts and structures.
- 1.4 Designing and constructing all Utility Crossing encasements as per approved plans, including CP owned and Third Party Fibre Systems. The Road Authority shall be responsible for relocating any Utility Works that must be moved as a result of the Project, and any associated costs charged by Third Party owners of the Utility Works or incurred by CP.
- 1.5 Designing and constructing the Subway as per approved Project Plans.
- 1.6 Monitoring of any track settlement.
- 1.7 Re-vegetation of all disturbed areas as required.
- 1.8 Highway flagging protection for work in and around the Project Site area related to CP and the Road Authority's activities.
- 1.9 Preparation of all documents, reports and schedules, relating to the above, including monthly reports.
- 1.10 Attendance at meetings with CP related to safety, schedule preparation, construction issues, standards, changed conditions.
- 1.11 Attendance at regular progress update meetings as required.
- 1.12 Planning, coordinating, scheduling, monitoring, managing, supervising the Road Authority Work.
- 1.13 Providing appropriate staff resources to be available to CP for the purposes of providing advice, assistance, construction coordination and review.
- 1.14 Any collaborative effort required by the Road Authority, its contractors or consultant to progress the Road Authority Work.

SCHEDULE "C"

CP WORK

The CP Work shall consist of the following.

- 1.1 Track flagging protection and associated requirements as required to protect operations on CP property.
- 1.2 Providing supervision and labour for the CP Work.
- 1.3 Planning, coordinating, scheduling, monitoring, managing and supervising the CP Work.
- 1.4 Reviewing construction plans and documents.
- 1.5 Attendance at meetings with the Road Authority and its consultants and contractors related to schedule preparation, construction issues, standards, changed conditions and other matters.
- 1.6 Attendance at regular progress update meetings as required.
- 1.7 Reviewing progress reports to be provided by the Road Authority. CP will require a monthly progress report and updated schedule.
- 1.8 Periodic Project Site inspections to monitor construction quality.
- 1.9 Preparation of deficiency lists, reporting on same, and monitoring correction.
- 1.10 Final inspection and acceptance of all railway related infrastructure.

SCHEDULE "D"

ACCESS PROTOCOLS AND SAFETY AND SECURITY PROTOCOLS

1. **Access Requirements.** In order to ensure compliance with Safety Laws, the safety of all Personnel, CP employees and CP Operations, the Road Authority's access to the Railway Lands will be subject to the following conditions (collectively, the "**Access Protocols**").
 - (a) The Road Authority shall deliver notice to CP by contacting the designated CP representative not less than five (5) Business Days prior (or such longer period as CP may reasonably determine from time to time to ensure flagging protection and all safety measures can be scheduled) to the date upon which the Road Authority seeks to enter upon the Railway Lands, together with such other information as CP may reasonably require.
 - (b) No work of any nature shall be undertaken without scheduled flagging protection, unless otherwise agreed in writing by CP.
 - (c) The Road Authority shall contact the CP Operations Center in Calgary at 1.800.795.7851 (or such other contact number CP may publish from time to time) not less than five (5) Business Days prior to the proposed access date to determine the location of any Utility Works or structures under or on the Railway Lands.
 - (d) The Road Authority shall provide notice to and obtain consents from owners of Utility Works (including Third Party Fibre Systems) who may be affected by the Project, including those Third Parties who are required to give consents to protect or relocate such utilities
2. **Safety and Security Requirements.** In addition to the Access Protocols, the Parties agree that any Work carried out on the Railway Lands will be subject to the following safety and security conditions (collectively, the "**Safety and Security Protocols**").
 - (a) The Road Authority shall be solely responsible for ensuring the safety and health of all Personnel and for compliance with all Applicable Laws.
 - (b) The Road Authority agrees to ensure that all Personnel (including any contractors) wear photo identification badges at all times while on the Railway Lands to comply with CP security requirements.
 - (c) The Road Authority agrees to comply with and to ensure the Contractor complies with security regulatory directives and requirements as communicated by CP from time to time.
 - (d) The Road Authority shall be responsible for developing, implementing and maintaining its own Safety and Emergency Response Plan for the Project Site and all Personnel and for ensuring that all Personnel understand and comply with the practices and procedures set out in such plan. In addition to the minimum requirements stipulated in Subsection 2(c) of this Schedule, the Safety and Emergency Response Plan must include:
 - (i) reporting and response procedures in the event of an incident or accident;
 - (ii) emergency response service providers and contacts and their phone numbers; and
 - (iii) incident reporting phone numbers, including phone numbers for CP incident reporting and local CP personnel.
 - (e) The Road Authority and all Personnel shall adhere to the directions of any CP flag persons, inspectors and supervisory personnel (including engineering and technical support) as CP may require to supervise any Work on the Railway Lands. Instructions

may include orders with respect to security restrictions, safety requirements or emergency situations.

- (f) The Road Authority acknowledges that CP has limited resources available for flagging protection and that flagging protection is subject to the availability of qualified flagpersons who must be allocated by CP across its service area for ongoing Railway Operations and other concurrent construction and maintenance projects. As a result, a maximum of two (2) flag persons will be available for the Project, for a maximum of forty (40) hours per week per flag person (including travel time to the Project Site), Monday through Friday; CP will not grant any requests to provide flagpersons to work any additional days or overtime.
- (g) Notwithstanding CP consent to commence construction and provide access to the Railway Lands, if an Emergency Situation arises over, on or under the Railway Lands, or the presence of the Road Authority or their activities are causing an Interference, CP may direct that the Road Authority and its Personnel exit from the Railway Lands for such period of time as CP deems appropriate. Any Interference caused by the Road Authority must be remedied to complete satisfaction of CP prior to CP allowing the Road Authority and its Personnel to resume access onto the Railway Lands. CP shall not be responsible for any costs incurred by the Road Authority or any of their Personnel for any delays to the Project, Construction Schedule or construction costs due to an evacuation or shutdown pursuant to this Subsection 2(g).
- (h) Any machinery or equipment used for the Project must meet applicable safety regulations and requirements.
- (i) The Road Authority shall not store any fuel, oil or lubricants on the Railway Lands or permit any fuelling or servicing of any machinery or equipment on Railway Lands.
- (j) The Road Authority shall not cause, suffer or permit the use of the Project Site or Railway Lands by any person other than the Road Authority Personnel required to be on or about the Project Site for the purposes of completing the Project.
- (k) The Road Authority shall be solely responsible, at its own cost and expense, for the installation and maintenance of construction security fences and lockable gates, as directed by CP. The Road Authority shall keep gates locked, except when entering or exiting from the Railway Lands, to secure the site from entry by members of the public, trespassers and non-Personnel.
- (l) The Road Authority agrees to ensure that all Personnel adhere to CP safety requirements including the publication *Minimum Requirements for Contractors Working on CP Property in Canada*, and such other applicable safety stipulations and rules as communicated by CP from time to time, a copy of which is attached hereto as Appendix 1.

Appendix 1 to Schedule “D”

Minimum Requirements for Contractors Working on CP Property in Canada.



Minimum Safety Requirements for Contractors Working on CP Property in Canada



Approval Authority:	Corporate Risk	Effective Date:	January 20, 2020
Version:	4.0	Review Date:	January 20, 2023

Table of Contents

Table of Contents	2
Introduction.....	3
1 Application.....	3
2 Definitions and Interpretation.....	3
3 Contractor Compliance & Responsibilities	5
4 Site Safety Plan.....	6
5 Safety Training.....	7
6 Safety Orientation.....	7
7 Job Safety Briefing.....	7
8 Applicable Legislation.....	8
9 Security Access to CP Property.....	9
10 Personal Conduct.....	10
11 Personal Protection	12
12 Railroad Track Protection.....	14
13 WHMIS.....	17
14 Operation of Highway Vehicles	18
15 Tools, Equipment and Machinery	20
16 Emergency Response.....	22
17 Confined Space	23
18 Reportable Accidents, Incidents and Injuries.....	24
19 Reporting	25
20 Contractor & Contractor Personnel Acknowledgement.....	26
21 Attachment A - Emergency Information Sheet	28

Introduction

At Canadian Pacific (CP), safety is an integral part of the way we do business. We expect everyone working on Canadian Pacific's property to be unconditionally committed to safety. Safety must be given top priority and will take precedence over deadlines, production schedules, and all other considerations.

1 Application

1.1 Application

- 1.1.1 These Minimum Safety Requirements are applicable to all who work on CP property (except as noted in 1.13 and 1.14 below) including Contractors and other persons performing Work or otherwise providing services to Canadian Pacific on CP Property in Canada.
- 1.1.2 These Minimum Safety Requirements cannot be waived or altered, in whole or in part, without a prior Risk Assessment specific to the Work conducted and the Manager-In-Charge has provided written consent.
- 1.1.3 Notwithstanding the foregoing, these Minimum Safety Requirements do not apply to other railway companies who only operate trains on CP Property

under various trackage or interchange agreements.

- 1.1.4 Further, notwithstanding the foregoing, these Minimum Safety Requirements may not apply to Work or services provided in CP Property in Canada that are Office Premises, in which case, CP's Minimum Safety Requirements for Contractors Working In CP's Office Premises may apply.

2 Definitions and Interpretation

2.1 Definitions

2.1.1 In these Minimum Safety Requirements, the following capitalized terms shall have the ascribed meaning below:

- (a) **"Applicable Legislation"** means all applicable legislation, regulations, by-laws, codes, rules, standards, policies, procedures, promulgated by any federal, state, and municipal governmental body, including those of its agencies, having authority over CP and, or a Contractor in relation to the Work in the matter of health and safety of the person, property and, or the environment;
- (b) **"Canadian Pacific"** or **"CP"** means Canadian Pacific Railway Company Ltd., and its subsidiaries and affiliates, and includes each of their respective directors, officers, employees, agent, and representatives;
- (c) **"CP Personnel"** means CP's employees, agents, and representatives;
- (d) **"CP Property"** means any building, facility, yard, track, right of way or other property owned or controlled by CP;
- (e) **"Contractor"** means the company or person, and their respective employees and authorized agents, representative and subcontractors who are providing goods or services to CP; or on behalf of a third party working on CP property.
- (f) **"Contractor Personnel"** means the Contractor's employees, and authorized agents, representative and subcontractors;
- (g) **"Co-mingled Work"** means Work where Contractor Personnel works directly with or, in close proximity (time or space) to CP Personnel;
- (h) **"eTest"** an efficiency test. It is a planned procedure to evaluate compliance with rules, instructions and procedures, with or without the employee's knowledge.
- (i) **"Foul of Track"** means the placement of an individual or equipment within 4' feet of the outside rail of a railway track that could be struck by a moving train or on-track work equipment (e.g. Hi-rail equipment).
- (j) **"Hazardous Materials"** means any substance, which is hazardous to persons or property and includes, without limiting the generality of the foregoing:
 - (i) radioactive, explosive, poisonous, or toxic substances;
 - (ii) any substance that if added to any water, would degrade or alter the quality of the water to the extent that it is detrimental to its use by man or by any animal, or plant;
 - (iii) any solid, liquid, gas or odour or combination of any of them that, if emitted into the air, would create or contribute to the creation of a condition of the air that endangers the health, safety, or welfare of persons, or the health of animal life, or causes damage to plant life or to property; and

- (iv) substances declared to be hazardous, toxic or dangerous under any law or regulation now or hereafter enacted by any governmental authority having jurisdiction.
- (k) **“Manager-in-Charge”** means a CP manager as designated or otherwise identified by CP as being responsible for overseeing the Work to be performed, such Manager-in-Charge may include, but is not limited to Local CP Management, Regional Superintendents, Division Engineers, and Project Managers.
- (l) **“Mobile Equipment”** means any motorized and self-propelled equipment, excluding Railway equipment and highway vehicles, but including, for example, forklifts, tractors, cranes, ATVs, mules, motorized scissor lifts, and similar equipment that are not designed to operate or move on railway tracks;
- (m) **“Office Premises”** means any building, facility, or portion thereof, or other premises, whether owned or controlled by CP, which is used solely for clerical or administrative purposes and which does not contain heavy equipment or machinery, as designated by CP from time to time;
- (n) **“Qualified and Authorized”** means a status attained by a person who has successfully completed any required training and demonstrated proficiency in the duties of a particular position or function and who has been given the right to act.
- (o) **“Railway equipment”** means trains, locomotives, railcars, track units, hi-rail vehicles and any other equipment designed to operate or move on railway tracks;
- (p) **“Site Safety Plan”** means a contractors’ documented plan which set out how Work is to be conducted in a safe manner, as required by Applicable Legislation see 3.16;
- (q) **“Third Party Project”** means any work being performed on CP property that CP is not managing (i.e, road authority, utility company, commuter agency, or other similar entity, are on CP property for their own purposes, and not a project sponsored or managed by CP.
- (r) **“Work”** means the provision of products and services and related activities;
- (s) **“Work Site”** means any CP Property where CP Personnel or Contractor Personnel are present, or permitted to be present, while engaged in any Work, including any railway equipment, Mobile Equipment and highway vehicles operated by or used to convey a person engaged in such Work. This applies also to work immediately adjacent to CP property, which can pose a risk to safe railway operations (i.e., blasting, excavation next to Right-of-Way (ROW), etc.).

2.2 Interpretation & Application

- 2.2.1 Where legislation is referred to in these Minimum Safety Requirements, it shall include all amendments and replacements thereto as promulgated from time to time.
- 2.2.2 Where standards, such as those of the Canadian Standards Association (CSA), is referred to in these Minimum Safety Requirements, they shall include all amendments and replacements thereof from time to time.
- 2.2.3 Where there is any ambiguity, inconsistencies, or omissions between or among any agreements with CP, expressed or implied; any Applicable Legislations; any applicable CP policies and practices; and any applicable industrial standards and practices, Contractor and Contractor Personnel

shall adhere to that which is most stringent and current.

3 Contractor Compliance & Responsibilities

3.1 General Compliance

- 3.1.1 Contractor shall be fully and solely responsible for ensuring the safety and health of Contractor Personnel and for ensuring that its Work and other activities do not compromise the health and safety of CP Personnel or any other party, the protection of the environment, the protection of CP's property and those of any other party, and do not interfere with the safety of CP's railway operations.
- 3.1.2 Contractor shall comply with and shall ensure all of Contractor Personnel are trained and qualified to safely perform the Work and that they comply with all Applicable Legislation pertaining to the protection against fire, safety, health, and environmental hazards, and with any license, permits, authorizations issued by the respective authority.
- 3.1.3 Contractor shall comply with and shall ensure all of Contractor Personnel comply with all terms and conditions of all agreements, expressed or implied, between Contractor and CP, and all applicable CP policies and practices.
- 3.1.4 Subject to the requirements of CP's Access Control Procedures, the contractor shall provide CP eRailsafe training for each employee engaged in work on CP property. Where there is no agreement between CP and the Contractor, the Contractor is responsible for meeting the additional requirements outlines within CP's Access Control Procedures.
- 3.1.5 Contractor shall provide Contractor Personnel, at its own expense, all safety equipment required to protect against injuries during the performance of the Work and shall ensure that Contractor Personnel are knowledgeable of and utilize safe practices in performing the Work.
- 3.1.6 The Contractor shall have a copy of the following documents at the Work Site at all times, and shall produce them as and when requested by CP:
 - (a) These Minimum Safety Requirements for Contractors Working on CP Property;
 - (b) Licenses, Certifications, permits, training records or other documents required by Applicable Legislation or these Minimum Safety Requirements;
 - (c) Contractor's Site Safety Plan;
 - (d) Contractor's Emergency Information Sheet (see Attachment A); and
 - (e) Any additional documents required by Contract or by agreement with Manager-in-Charge.
 - (f) Employee identification (eRailsafe badge – see 9.1.1).

3.2 Compliance Assurance

- 3.2.1 CP reserves the right to observe, inspect, test and audit Contractor and Contractor Personnel for compliance with all requirements herein, and to demand and receive all relevant records, documentation, and materials evidencing compliance, at any time, and from time-to-time.
- 3.2.2 Failure of the Contractor or Contractor Personnel to comply with any applicable provisions herein may be considered a material breach, and in addition to all

other remedies available, CP may without prejudice:

- (a) take over control of that Work or activity;
- (b) order the Work to stop; and/or
- (c) order Contractor Personnel to leave CP Property.

3.2.3 Upon the earlier of the completion of the Work, the expiration of the applicable agreement, or the request of a Manager-in-Charge, Contractor and Contractor Personnel shall return all identification, badges, access cards, and decals, issued or provided by CP to the Manager-in-Charge.

4 Site Safety Plan

4.1 General Requirements

4.1.1 Prior to starting any Work on CP Property, the Contractor must have a written Site Safety Plan that identifies:

- (a) All applicable legislation, rules, policies and work practices in relation to the Work being performed;
- (b) Specific hazards that are associated with the Work being performed on CP property for CP, and Work being performed not for CP:

For example:

- (i) Construction, maintenance or inspections of buildings;
 - (ii) Working on or adjacent to railroad tracks;
 - (iii) Maintenance or inspection of railroad tracks, crossings or signal systems;
 - (iv) Maintenance, reconstruction or construction of railway crossings, crossing approaches, grade separations, passenger facilities, passenger platforms, utility crossings or any other work which may affect the safe movement of trains;
 - (v) Operating Railroad Equipment on CP tracks; or
 - (vi) When/where Contractor Personnel work directly with or in proximity (time or space) to CP Personnel; and
- (c) Methods of verifying compliance.

4.1.2 The Contractor will provide Manager-in-Charge with a copy of this Safety Management Plan on reasonable request.

4.1.3 The Contractor must be able to demonstrate an awareness of applicable legislation, rules, policies and work practices in relation to the work being performed.

5 Safety Training

5.1 Minimum Training & Qualifications

5.1.1 At its sole cost and expense, Contractor shall ensure that all Contractor Personnel be fully trained and qualified for the Work they will be performing. Contractors and Contractor Personnel shall meet, or exceed, all applicable legislation requirements relating to training and qualification.

5.1.2 Additionally, Contractor Personnel training and qualification shall meet or

exceed all applicable industry standards.

5.2 Proof of Training & Qualification

- 5.2.1 Contractor Personnel shall at all times have proof of such training and qualifications and shall produce them as and when requested by the Manager-in-Charge.
- 5.2.2 CP reserves the right to inspect qualification certificates, licenses, training records and/or Work-history records for any Contractor Personnel, and, or to be provided with copies thereof, on reasonable request. In addition, CP reserves the right to perform eTests on contractor employees, and request discipline for non-conformance.

6 Safety Orientation

6.1 General Requirements

- 6.1.1 Prior to beginning Work, all Contractor Personnel shall participate in a CP authorized safety orientation, including on-site orientation presented by the Manager-in-charge or designate.
- 6.1.2 Any time the scope of Work, location, condition or supervision changes, Contractor Personnel may be required to attend additional safety orientation sessions.
- 6.1.3 After successful completion of such safety orientation, Contractors must be able to produce company identification or an eRailsafe photo identification badge authorizing access to CP property unescorted for the purposes of conducting work. Managers have the ability to enter the tracking code into CM (Compliance management). Third parties who hire subcontractors must ensure required compliance while on CP property. The eRailsafe identification card shall be worn or be made visible at all times, or produced upon request and cannot be transferred under any circumstances.

7 Job Safety Briefing

- 7.1.1 Contractor Personnel shall attend all Job Safety Briefings as and when conducted. Contractor Personnel shall be solely and fully responsible for understanding the content of the Job Safety Briefing, and at a minimum shall:
 - (a) have an understanding of the scope of Work to be performed and an appreciation of the nature of the location, environment, and conditions where such Work is to be performed;
 - (b) be aware of specific or unusual hazardous condition, existing or potential and the control measures required to protect against, control, mitigate, or where possible, avoid said hazard; and
 - (c) Have emergency response plan/evacuation procedures.
- 7.1.2 Where Contractor Personnel are working directly with or in proximity (time or space) to CP Personnel, job briefings must include both CP Personnel and Contractor Personnel, and any other affected third parties. The Job Safety Briefing shall identify nature and extent of the interaction between the Work being performed by Contractor Personnel, and those performed by CP Personnel or other third parties. Contractor Personnel shall inform CP Personnel, and any other third parties of known or potential unsafe conditions and hazards that may be created by, resulting from, or inherent in their Work and the corresponding preventative, mitigation, and/or control measures at

all job safety briefings prior to commencing Work, or as soon as Contractor Personnel becomes aware of such conditions.

7.1.3 In all situations, all Contractor Personnel are expected to:

- (a) continually identify hazards and assess risk of hazards and to continually and clearly communicate all hazards to the Manager-in-Charge and to all other parties that may be affected at job briefings, and at any other time as and when appropriate or necessary;
- (b) take actions that are within their assigned responsibility to eliminate or control hazards and risks; and
- (c) immediately notify their supervisor or the Manager-in-charge of hazards that pose unacceptable risk that they are unable to eliminate or control.

7.1.4. Where Contractor Personnel are unable to eliminate or control a hazard, Contractor Personnel shall take interim measures to protect people, property, equipment and the environment until the hazard can be properly assessed and appropriate corrective actions taken.

8 Application Legislation

8.1 General Requirements

- 8.1.1 Contractor and Contractor Personnel shall be solely responsible for identifying and complying with all Applicable Legislation. Contractors and Contractor Personnel providing Work to CP are likewise required to comply with all Applicable Provincial and Federal Legislations. At a minimum, Contractor and Contractor Personnel shall comply with the federal legislations set out below which list is intended solely for general guidance, and not as a comprehensive list of all applicable legislation.
- 8.1.2 Additionally, the Railway Association of Canada (RAC) is an industry association which can provide support and guidance on matters related to railway safety and the transportation of dangerous goods.

8.2 Transportation of Dangerous Goods

- 8.2.1 When Work involves the handling or transportation of dangerous goods, that Work must comply with the federal *Transportation of Dangerous Goods Act*, (TDG). Contractor shall be solely responsible for ensuring that all Contractor Personnel who handles, offers for transport and/or transports dangerous goods by any transportation mode be trained and holds a valid training certificate or is working under the direct supervision of someone who is trained and holds a valid training certificate. The training must be based on the Work that the person is expected to perform and the DG that the person is expected to handle, offer for transport or transport.
- 8.2.2 Contractors shall be solely responsible for ensuring that Contractor Personnel who handles, offers for transport and/or transports dangerous goods by any transportation mode are trained and hold a valid training certificate or is working under the direct supervision of someone who is trained and holds a valid training certificate. That training must be based on the Work that the person is expected to perform and the dangerous goods that the person is expected to handle, offer for transport or transport.
- 8.2.3 Transport Canada enables the Transportation of Dangerous Goods Act to publish Transportation of Dangerous Goods Regulation. The TDG Regulations divide dangerous goods into 9 classes according to the type of

hazard they present

8.3 Canada Labour Code

- 8.3.1 Where Work is being performed that may create a risk to the health and safety of CP Personnel, Contractor Personnel must comply with Part II of the Canada Labour Code.
- 8.3.2 Additionally, Contractor and Contractor Personnel shall comply with all applicable provisions of the Occupational Health and Safety Regulations (COHS) which are intended to prevent accidents and injuries to employees working for federally regulated companies. Compliance with these regulations may extend to Contractors, depending on the type of Work being done and their proximity to CP Personnel (i.e. Co-mingled Work). Alternatively, provincial occupational health & safety regulations will govern Contractors.

8.4 Railway Safety Act

The *Railway Safety Act* (RSA) governs all federally certified railways in Canada and some provincial railways through various agreements with Transport Canada. The RSA addresses all

- 8.4.1 matters relating to the construction, alteration, operation, inspection and maintenance of railway works and railway equipment, and contains training and qualification requirements for certain types of Work. When applicable, Contractor and Contractor Personnel shall perform Work in accordance with the RSA, as if directly bound by it.

8.5 Environmental Protection Act

- 8.5.1 Where Work is being performed that may impact the environment, that Work must comply with all applicable federal and provincial environmental acts and regulations. Some examples of applicable legislations includes the Canadian Environmental Protection Act; Fisheries Act, Navigable Waters Protection Act; Species at Risk Act; Migratory Birds Convention Act; and all corresponding Regulations. Provincial requirements are normally set out in a general Environmental Protection Act which is complemented by numerous regulations addressing more specific areas of concern. Canadian Environmental Protection Act <http://laws-lois.justice.gc.ca/eng/acts/C-15.31/>

9 Security Access to CP Property

9.1 Access to CP Property

- 9.1.1 All Contractor Personnel must have the following identification in their possession at all times while on CP Property, and present them for review to any Manager-in-Charge, other CP managers and employees, Police Officer, security guard, or regulatory officer upon request:
 - (a) photo identification (e.g. driver's license);
 - (b) proof of employment document or card;
 - (c) identification card, or other proof of safety orientation issued by CP;
 - (d) access pass, issued and signed by a CP manager, where Work requires Contractor Personnel to ride in any locomotive or other non-passenger rolling stock;
 - (e) security identification card, where required by CP; and
 - (f) building access pass, where required by CP or by a third party having control of the premises.

(g) Valid eRailsafe card

- 9.1.2 Where any Work requires Contractor Personnel to ride in locomotive or other non-passenger railroad equipment, the Contractor must also possess a CP ACCESS PASS for riding non-passenger railroad equipment, signed by the responsible operating manager.

Such a signed pass must be presented to the train crew or operator when boarding the equipment. Failure to possess such a pass will result in the equipment not moving, removal from the equipment, and/or the filing of trespasser charges.

9.2 Security Awareness

- 9.2.1 The Contractor shall conduct such background check as is necessary to ensure that Contractor Personnel do not pose a security risk to CP, such security risk includes the risk of the commission of terrorist activities, sabotage, vandalism, theft, and violence. CP reserves the right, at all times, to require that Contractor undertake certain security training and/or perform background checks of Contractor Personnel, prior to allowing such Contractor Personnel to enter onto CP Property.
- 9.2.2 On request CP can make available a copy of CP's Railway Security Awareness program for use by Contractor Personnel.

9.3 Firearms & Explosives

- 9.3.1 Firearms (loaded or empty) are not permitted on CP Property, except for Police officers and other designated government officials when authorized to do so.
- 9.3.2 No explosives will be permitted on CP Property without written approval by the Manager-in-Charge.

9.4 Reporting

- 9.4.1 Contractor Personnel must report any security concern, security incident, criminal activity (known or suspected), suspicious happenings and/or suspicious persons on CP Property to the Manager-in-Charge or to CP Police Services in accordance with Section 18.

10 Personal Conduct

10.1 Drug and Alcohol Standards

- 10.1.1 The Contractor and Contractor Personnel shall comply with CP's Alcohol and Drug Policy and Procedure while under contract to perform services for CP. Any contravention of these requirements will be considered a breach of contract.
- 10.1.2 The Contractor and Contractor Personnel shall report fit to work and remain fit for work as scheduled and when on scheduled call and be able to perform their duties free from the negative effects, including the after effects of alcohol, legal recreational cannabis, illicit or illegal drugs, other mood altering substances or medications including medical marijuana, any of which can have the potential to adversely affect the way a person thinks, feels or acts.
- 10.1.3 It is prohibited to be in control of a CP vehicle or moving equipment (either on or off duty), while under the influence of alcohol and/or drugs, including the after effects of such use.

- 10.1.4 All Contractors must comply with these requirements when scheduled on call and/or subject to duty.
- 10.1.5 If there are grounds to believe a contract worker is unfit for work, the worker will be removed from CP property in a safe manner under the care of another adult person, to a safe place for example, to their local place of residence, or provided the opportunity to arrange the same or an escort is arranged to the nearest appropriate medical facility if there is a medical problem that requires immediate attention. The primary contractor is required to ensure appropriate investigation, follow up and a fitness for duty assessment is conducted to ensure the contractor

is fit to return to work prior to any return to CP property or work. CP reserves the right not to allow a contractor back on CP property or to CP work.

- 10.1.6 In the event a contract worker is directly involved in a significant work related incident as described by CP's Alcohol and Drug Policy and Procedure, the worker may be subject to Post Incident Testing under the CP Testing Program. They may be removed from CP premises pending the results of the investigation, including receipt of alcohol and drug testing results. Depending on the test results and the outcome of the investigation, a fitness for work medical assessment may also be required through the primary contractor before the Contractor can return to CP premises or work. CP reserves the right not to allow a contractor back on CP property or to CP work.
- 10.1.7 CP reserves the right to request drug and alcohol testing for Contractor Personnel performing Safety Critical and Safety Sensitive duties under CP's workplace testing program requirements as and where permitted by law.

10.2 Inappropriate Behavior

- 10.2.1 CP is committed to maintaining a Work environment that supports the dignity of all individuals. No person working at CP may be subjected to any form of discrimination or harassment, including sexual harassment.
- 10.2.2 Acts or threats of violence are unacceptable at all times on CP Property. Uttering of threats or committing acts of violence will result in the removal of the responsible Contractor Personnel from CP Property, termination of the Contract, and/or criminal charges.
- 10.2.3 Horseplay, practical jokes, fighting or any other activity that may create a safety hazard will not be tolerated.
- 10.2.4 Inappropriate language directed at any CP employee or agent of CP, will not be tolerated.

10.3 Electronic Entertainment and Communication Devices

- 10.3.1 The use of personal entertainment devices, including portable audio and video devices such as compact DVD, CD, video game players, tablets, SMART watches and MP3 players, is prohibited:
 - (a) while working on CP Property;
 - (b) while transporting CP personnel, whether on and off CP property; and
 - (c) while operating any CP highway vehicles, Railroad Equipment or Mobile Equipment, when on and off CP property
- 10.3.2 The use electronic communication devices, including cell phones, Smart

Phones, Blackberries, walkie-talkies, PDAs, iPads, tablets, GPS navigation units, portable computers and similar devices, is prohibited:

- (a) while operating a highway vehicle, unless it is stopped and parked in a safe location;
- (b) while operating or assisting in the operation of any railroad equipment or mobile equipment;
- (c) while operating power tools, equipment or machinery;
- (d) when Foul of Track for any reason;
- (e) whenever use of such a device creates an unsafe condition.

10.3.3 Notwithstanding the foregoing, company cell phones, radios, walkie-talkies, GPS units, iPads, tablets, and other communication devices may be used solely for the conduct of business when authorized by the CP Manager-in-Charge and where not prohibited by state or municipal legislation. Any electronic communication device may be used when it is necessary to communicate an emergency condition.

10.4 Smoking

10.4.1 Smoking, including the use of e-cigarettes is prohibited on all CP Property, and in or on all highway vehicles, Railroad Equipment, and Mobile Equipment, except for CP designated outdoor smoking areas.

11 Personal Protection

11.1 Work Clothing

11.1.1 The Contractor must ensure that Contractor Personnel wear clothing that meets Applicable Legislation and is suitable to perform the Work safely. This includes at minimum ankle length pants and waist length shirts with a minimum quarter-length sleeves at all times. Clothing must not interfere with vision, hearing or use of hands and feet.

11.2 Personal Protective Equipment (PPE)

11.2.1 The Contractor shall ensure that Contractor Personnel wear personal protective equipment required by Applicable Legislation, regulations, codes and industry standards as necessary to protect against personal injuries while on Railway property. All personal protective equipment shall be approved by the Canadian Standards Associations (CSA) or by the American National Standards Institute (ANSI), and shall be in good condition and be properly fitted.

11.2.2 The following mandatory personal protective equipment ("PPE") shall be supplied by the Contractor at its own expense, and shall be worn at all times by Contractor Personnel while on CP Property:

- (a) safety hard hat, meeting CSA standard Z94.1 or ANSI 89.1 standards;
- (b) safety boots with protective toe caps and soles, meeting CSA standard, Z195 (Green Triangle - Grade 1);
- (c) safety glasses with permanently attached side shields, meeting CSA standard Z94.3;
- (d) high visibility fluorescent outerwear with retro reflective striping (meeting CSA standard Z96, class 2 level 2), with such high visibility fluorescent outerwear not covered by other clothing or equipment, except where

- necessary for safety reasons such as where fall protection or pole climbing equipment is being used; and
- (e) any other PPE as required by Applicable Legislation, CSA standard, or otherwise required to protect Contractor Personnel from injuries.

11.2.3 In addition to the foregoing minimum requirements, the following table contains further recommendations in relation to specific types of PPE:

Type of Protection	Additional Recommendations
Hard Hats	Have hi-visibility characteristics which are not obscured by markings or decals
Safety Eye & Face Protection	<p>Tinted safety eyewear must meet Canadian standards for red signal recognition if operating railway equipment (safety eyewear meeting this requirement is available from Acklands-Grainger; ask for CP approved tinted safety eyewear)</p> <p>Transition lenses are discouraged and should be worn with caution when working in changing light conditions</p> <p>Personal sunglasses are discouraged and must not be worn when operating railway equipment</p> <p>Wear mesh face shields over top safety glasses when using any striking tool while performing on track maintenance work (e.g. spiking, snapping on/off anchors, etc.). If working alongside CP employees you will be required to comply with this practice.</p>
Safety Footwear	<p>Have defined heels</p> <p>Be laced and tied securely for ankle support</p> <p>When snow and ice conditions are present wear anti-slip winter footwear</p>
High-Visibility Apparel	Lime-green is recommended when working on, or near tracks, or when performing Co- mingled Work

11.2.3 Contractor and Contractor Personnel shall be solely and fully responsible for assessing the risks related to the Work and determining whether additional PPE may be required such as:

- (a) Nomex or Proban fire-retardant protective gear when performing certain TDG Work and or handling certain Hazardous Materials or performing specialized Work.
- (b) hearing protection when working in any area where noise exposure levels:
- (i) are consistently greater than 84 dBA);
 - (ii) exceed 115 dBA at any time; and
 - (iii) any other Work areas where posted, or so notified by CP management.
- (c) respiratory protection where Contractor Personnel may be exposed to occupational dusts/particulates, fumes, mists, gases and vapors, in which case, in which case Contractors must have a written Respiratory Protection Program that meets or exceeds Applicable Legislation;
- (d) additional eye and face protection meeting CSA standard Z94.3 (i.e. face shields, impact/splash goggles, welding/cutting goggles and welding helmets); and
- (e) fall protection systems and equipment meeting appropriate CSA standards as required by Applicable Legislation and appropriate for the related fall hazards.

- (f) fall protection when working on an unguarded surface over water, where the water is deeper than 1.2 meters (4 feet), or where there is a hazard of drowning due to terrain, winter conditions, water velocity or current; contractors must use a fall protection system or a personal floatation device (PFD) meeting approved standards.

12 Railroad Track Protection

Contractor's Responsibilities for the Protection of Railroad Traffic and Property

- 12.1.1 Where the Work Site is in close proximity to, or is located on, above, or below railroad tracks, special attention, care and precautions shall be taken to ensure the safety of all Contractor Personnel, CP Personnel, all other third parties and to protect CP's property and railroad operations.
- 12.1.2 Contractor shall ensure that Contractor Personnel is made aware of all unique and inherent hazards in working near, on, above or below railroad tracks and shall ensure that all Contractor Personnel are fully trained and equipped to work safely.
- 12.1.3 Contractor Personnel shall at all times remain alert to the movement of trains, rolling stock and other Railway equipment.
- 12.1.4 No temporary structure, materials, or equipment shall be permitted closer than 3.66 meters (12 feet) to the nearest rail of any track without prior approval in writing of the Manager-In-Charge.
- 12.1.5 Contractor Personnel shall be especially alert in yards and terminal areas as
 - (a) Railway equipment that appears to be stationary may be moving;
 - (b) the rate of movement of Railway equipment may be faster than it appears;
 - (c) Railway equipment change tracks often; and
 - (d) movements may be occurring simultaneously on adjacent tracks
- 12.1.6 The Contractor shall, at all times, conduct its operations in a wholly responsible manner to avoid damage to CP's tracks or property.

12.2 15 m (50 ft.) Clearance Requirement

- 12.2.1 All work shall be performed as far away from railway tracks as possible.
- 12.2.2 Unless authorized by CP, Contractor Personnel, equipment, and vehicles are not permitted within 15 m (50 ft.) of the closest track centerline.
- 12.2.3 In the event work must be carried out within 15 m (50 ft.) of the closet track centerline, written authorization must be obtained from the Manager-in-Charge, and Contractor Personnel must still remain at the maximum practicable distance from all railway tracks at all times.
- 12.2.4 When crossing tracks, Contractor Personnel shall ensure a minimum of 15 m (50 ft.) separation between standing Railway equipment, stay at least 15 feet away from the end of the nearest equipment, and look both ways before crossing tracks, and if clear, walk at a right angle to the tracks. The 15 meters (50 feet) distance must take in account the swing radius of work equipment, vertical grade differences, and overhead work distances.
- 12.2.5 No work activities or processes are allowed within 15 m (50 feet) of the track while trains are passing through the work site unless specifically authorized.

12.3 Flagging Protection

- 12.3.1 When the Work requires Contractor Personnel to be within 15 m (50 ft.) of any

railway tracks, Contractor or Contractor Personnel shall notify and obtain the written approval of the Manager-in-Charge in advance of the intended start date, and when approved, shall only perform Work strictly in accordance with all terms and conditions of that approval.

- 12.3.2 Unless otherwise indicated by the Manager-in-Charge, proper protection against the movement of trains, rolling stock and other Railway equipment shall be deemed required at all times

whenever Work or Contractor Personnel must be within 50 feet (approximately 15 metres) of the closest track centerline. Protection may be provided only by a qualified CP employee through use of a flag person, Canadian Railway Operating Rules (CROR) Track Occupancy Protection (TOP), mechanical blue flag protection or other protection methods designated by the Manager-in-Charge.

- 12.3.3 Where CP determines that flagging is required, then Work must be strictly conducted under the direction of a CP flag person or such other person designated by the Manager-in-Charge.

- 12.3.4 Contractor Personnel shall ensure that there is clear communication at all times between Contractor Personnel and any CP flag person. Contractor Personnel shall ensure that they are aware of:

- (a) flagging distance limits;
- (b) time limits; and
- (c) any adjacent tracks where movement of Railway equipment may still occur.

- 12.3.5 Contractor Personnel shall not assume that a train movement is being stopped or cleared unless clear communication is received directly from the CP flag person.

- 12.3.6 A job safety briefing between the CP flag person and all Contractor Personnel must occur before beginning any Work on or Foul of Track, or within CP's ROW depending on the nature of the site.

- 12.3.7 Blue flag protection is used to indicate that CP or Contractor Personnel are working on, under or between Railway equipment and movement of trains or other Railway equipment is prohibited. Blue flags must not be tampered with or obstructed. Blue flags can only be removed by the person or group of persons who originally applied it. Application, use, and removal of blue flags, when appropriate, may only be done under the authorization and guidance of the Manager-in-Charge.

- 12.3.8 Red flag protection is used to indicate that CP or Contractor Personnel are working on or Foul of Track, or the track is out of service and movement of trains or other Railway equipment is prohibited. Red flags must not be tampered with or obstructed. Application, use, and removal of red flags, when appropriate, may only be done under the authorization and guidance of the Manager-in-Charge. Similarly, as with all other flags; blue, yellow and green flags.

12.4 Working on or near Tracks

- 12.4.1 When authorized to perform Work Foul of Track or otherwise be near railway tracks, Contractor Personnel shall ensure that Contractor Personnel, equipment, and vehicles are kept as far away from railway tracks as practicable, and shall at all times:

- (a) be alert to train movements and shall expect the movement of trains,

- engines, cars, or other mobile Railway equipment at any time, on any track, and in any direction, even if they appear to be stationary or in storage;
- (b) not rely on others to protect them from train movement;
 - (c) stay at least 15 feet (approximately 5 meters) away from the ends of stationary railway equipment when crossing the track;
 - (d) ensure a minimum of 50 feet (approximately 15 meters) separation prior to crossing between railway equipment;
 - (e) look both ways before crossing tracks, and if clear, walk at a right angle to them.
 - (f) never climb on, under or between railway equipment;
 - (g) be aware of the location of structures or obstructions where track clearances are close;
 - (h) not stand on the track in front of an approaching engine, car or other equipment;
 - (i) when possible, stand at least 20 feet back from the track(s) when there is a passing movement of trains, engines, cars, or other mobile Railway equipment, to prevent injury from flying debris or loose rigging and shall observe the train as it passes and be prepared to take evasive action in the event of an emergency;
 - (j) not stand on or between adjacent tracks in multiple track territory when a train is passing;
 - (k) not walk, stand or sit on the rails, between rails or on the end of ties, unless absolutely necessary. As the rail surface can be extremely slippery, personnel must step over the rails when crossing tracks. Personnel shall also be aware railway ties can also be slippery and that railway ballast can shift while walking on top of it. Situational awareness and use of proper footwear is important;
 - (l) not remain in a vehicle that is within 15.2 meters (50 feet) of a passing train unless specifically authorized, or where this is not possible, park the vehicle as far away from the tracks as possible and walk to as safe a distance whenever trains pass.
 - (m) keep away from track switches as remotely operated switch points can move unexpectedly with enough force to crush ballast rock. Personnel shall stay away from any other railway devices they are unsure of. Personnel shall not disturb or foul the ballast at any time.
 - (n) Third party work that has a potential to impact rail traffic must take into account machine swing radius, vertical grade differences, overhead work, etc to ensure it will not impact a passing train; work and equipment must maintain a distance of 15.2 meters (50 feet) of a passing train.
 - (o) When exiting on track machinery as trains are passing; exit on the opposite side.
 - (a) use 3-point contact when getting on/off any vehicle, equipment or track unit;
 - (b) face the vehicle or equipment/track unit when getting on/off
 - (c) place handheld items onto equipment/track unit or seek help prior to getting on/off
 - (d) get on/off on the operators side when possible

12.5 Equipment on or near tracks

12.5.1 Contractor Personnel shall not be Foul of Track with any piece of equipment

without a CP flag person or other authorized track protection;

- 12.5.2 Contractor Personnel shall not move equipment across the tracks except at established road crossings, or unless under the protection and authorization of a CP flag person and only if the Work Site has been properly prepared for such a move. Tracked equipment will require a CP flag person any time railroad tracks are crossed.
- 12.5.3 Contractor Personnel shall not move equipment across railroad bridges or through tunnels, except as expressly authorized and only under such conditions as stipulated by the Manager- in-Charge.
- 12.5.4 Contractor Personnel shall move equipment away from the tracks at least 50 feet, or where not possible, park the equipment as far away from the tracks as possible, and walk to a safe distance whenever trains pass.
- 12.5.5 Buckets, shovels, and loads on cranes must be lowered to the ground to rest, and cranes without a load must have their load line tightened or retracted to prevent movement, whenever there are passing trains.

12.6 Railway Signs, Signals, Flags and other Communication Infrastructure

- 12.6.1 Signs, signals and flags shall not be obstructed, removed, relocated, disabled or altered in any way without proper authorization and qualification.
- 12.6.2 Only qualified Contractor Personnel who are authorized by CP are permitted to operate switches, derails, electric track mechanisms, signal and communication systems or other track control appliances.
- 12.6.3 Railway pole lines carry electric power and should be treated as any other power lines.
- 12.6.4 The Contractor shall keep all Contractor Personnel informed of current weather conditions. Personnel shall stay alert for possible high water conditions, or flash floods. During severe weather conditions:
 - a) Personnel shall be prepared to take cover in the event of a tornado;
 - b) Personnel shall not work while lightning is occurring;
 - c) If storm conditions arise unexpectedly, Contractor Personnel shall ensure that equipment is in the clear of the tracks and secured before seeking cover. Contractor Personnel shall stay away from railroad tracks when visibility is poor, such as during fog or blizzard conditions.

Any Contractor personnel discovering a hazardous or potentially unsafe condition, which may affect the safe passage of railway traffic, must advise CP Police immediately by calling the CP Police Communications Centre – 1-800-716-9132

Excavation

- 12.7.1 Before starting excavation operations, the Contractor shall ascertain that there are no underground wires, fiber optic cables, pipelines or other utilities which could be damaged or, if present, that such installations are properly protected. Fiber optic cables are present on most segments of the right-of-way. Prior to commencing any excavation, the Contractor shall contact the proper authority to obtain the necessary permit and to locate and protect such cables or other underground utilities.
- 12.7.2 Excavations shall not be left unattended unless they are properly protected;

and the Manager- in-Charge shall be notified.

- 12.7.3 Contractors MUST obtain and maintain utility locates in accordance with applicable law.

13 WHMIS

- 13.1.1 If at any time Contractor's Work involves the use, handling, storage, or disposal of Hazardous Materials ("Handling of Hazardous Materials"), Contractor Personnel must inform the Manager- in-Charge.
- 13.1.2 Contractors shall ensure that all Contractor Personnel are fully trained in the Handling of Hazardous Materials and that Contractor and Contractor Personnel are in full compliance with all Applicable Legislation, and as directed by the Manager-in-Charge.
- 13.1.3 Contractor Personnel shall have appropriate processes, systems and controls in place to prevent or otherwise mitigate potential environmental, health and safety risks associated with the Handling of Hazardous Materials.

13.2 Access to Safety Data Sheets (SDS)

- 13.2.1 Prior to beginning any Work that may expose CP Personnel to Hazardous Materials, Contractor or Contractor Personnel shall:
- (a) provide a copy of the respective Safety Data Sheet (SDS) to the Manager-in-Charge; and
 - (b) keep a copy of the SDS at the Work Site and shall such that it is readily available at all times.

13.3 Hazardous Material Incident or Spill

- 13.3.1 In the event of a hazardous material incident or spill, the Contractor must:
- (a) ensure that no Contractor or CP Personnel have or will be exposed;
 - (b) take all reasonable actions to contain the spill;
 - (c) respond in accordance with its emergency response plan; and
 - (d) notify CP immediately in accordance with Section 18.

14 Operation of Highway Vehicles

14.1 Highway Vehicles

- 14.1.1 The following requirements apply to all highway vehicles, when operated on CP Property; or used to transport CP Personnel.

14.2 Regulations and Inspection

- 14.2.1 Before using a highway vehicle, Contractor Personnel shall:
- (a) complete a pre-trip inspection;
 - (b) maintain an inspection log;

- (c) ensure periodic inspections are completed at official testing locations as required;
- (d) ensure the vehicle is maintained and in safe operating conditions at all times; and
- (e) ensure the vehicle is in compliance with applicable motor vehicle regulations and license requirements.

14.2.2 Vehicle maintenance, inspection records and logs must be made available to the Manager-in- Charge on request.

14.3 Vehicle Operator Requirements

14.3.1 Operation of highway vehicles is restricted to those Contractor Personnel who are licensed, qualified and authorized to do so. Such Contractor Personnel shall be responsible for the safety of all passengers at all times. For greater certainty, such Contractor Personnel shall:

- (a) hold a valid license for the class of vehicle being operated, in accordance with applicable local, state and federal requirements, and
- (b) strictly comply with all posted traffic signs, signals, and all shall obey all Applicable Legislations; and
- (c) maintain the required driver log, and make the log available to the Manager-in-Charge on request, and
- (d) comply with the requirements on the use of electronic devices as set out in Section 10 above.

14.4 Driving on CP Property

14.4.1 In addition to the requirements set out above, while on CP Property, Contractor Personnel shall:

- (a) travel only on designated roadways unless otherwise instructed;
- (b) keep daytime running lights on (if so equipped);
- (c) not exceed 15 mph unless otherwise posted;
- (d) come to a full stop at all blind corners, rail and roadway crossings;
- (e) yield the right of way to all Mobile Equipment and other non-highway equipment or service vehicles;
- (f) not operate vehicles (or any internal combustion equipment) inside buildings or enclosed structures unless adequate ventilation is provided;
- (g) not park Foul of Track unless on-track protection is provided;
- (h) not leave vehicles running unnecessarily;
- (i) park only in pre-determined or designated areas;
- (j) always use the parking brake (or wheel chocks) when leaving an unoccupied vehicle running;
- (k) prior to operation of a vehicle the driver must conduct a walk around of the vehicle to identify any obstacles, clearance restrictions, or adjacent vehicles that may interfere with executing a safe movement.
- (l) where safe and practicable, pull vehicles through or back into marked parking spaces to avoid reverse collisions when exiting.
- (m) If a passenger is present, he exit the vehicle prior to a reverse movement to provide guidance and direction to the driver during the reverse movement and applies to commercial vehicles and vehicles with restricted rear views

14.4.2 All Contractor Personnel who will be operating a highway vehicle or Mobile

Equipment in any CP intermodal facilities must complete a Driver Safety Orientation program prior to first entry, and from time-to-time thereafter as directed by the Manager-in-Charge.

14.5 Seat Belts

- 14.5.1 Seat belts must always be worn while operating or riding in any equipped vehicle unless Contractor Personnel is actively engaged in inspections requiring said Contractor Personnel to be free of such restraint, and then only when the vehicle is operating at less than 25 km/h.

14.6 Loads

- 14.6.1 Contractor Personnel shall ensure vehicles are loaded according to weight and dimensional requirements as authorized by state regulations and permits, and properly load and secure tools, material, equipment and freight to avoid shifting, falling, leaking or otherwise escaping from vehicles during operation.

14.7 Riding in CP Vehicles

- 14.7.1 Contractor Personnel are prohibited from operating or riding in any CP vehicles unless authorized to do so, or in case of emergency.

15 Tools, Equipment and Machinery

15.1 General Safety Requirements Respecting All Tools, Equipment and Machinery

- 15.1.1 Contractor Personnel shall ensure that all tools, equipment, and machinery used be:
- (a) in compliance with all applicable legislation;
 - (b) in good working order, properly serviced and maintained;
 - (c) safe for their proposed use and used only for purposes specified by the manufacturer;
 - (d) operated and maintained only by persons properly trained and qualified for that duty;
 - (e) seat belts (if present on equipment) must be worn while operating or riding any such equipped mobile equipment;
 - (f) if mobile, equipped with appropriate safety devices (e.g. lights, horns, back-up alarms, safety beacons), and prevented from moving through use of the hand brake, wheel blocking, wheel chocking and/or a derail where applicable.
- 15.1.2 The Contractor shall provide adequate lighting when performing work between sunset and sunrise.
- 15.1.3 Use of CP tools, equipment and machinery by Contractor Personnel is prohibited unless specifically authorized by local CP management.

15.2 Hazardous Energy Control- Lockout/Tagout

- 15.2.1 Contractor Personnel shall employ such hazardous energy lockout/tagout procedures as required to eliminate the accidental or unexpected start-up, energizing, or release of stored (residual) energy during maintenance, repair and/or servicing activities.
- 15.2.2 All tools, equipment and machinery must be made safe and isolated from all energy sources rendering the machine, equipment, or process inoperative prior to performing maintenance, repair or servicing related tasks.

- 15.2.3 No Contractor Personnel can remove any CP applied lock or tag, including bad-order tag.
- 15.2.4 Notwithstanding the foregoing, if Contractor's Work may create an energy hazard to any CP Personnel, then all affected parties must follow the requirements set forth in CP's Lockout – Hazardous Energy Control Policy and Code of Practice.
- 15.2.5 If CP Personnel and Contractors are jointly performing maintenance, repair or servicing activities on the same machine, equipment or using the same energy source, then they must apply a multi-

lock hasp and individual locks and tags (as per CP's Lockout – Hazardous Energy Control Policy and Code of Practice).

15.3 Electrical Safety Requirements

- 15.3.1 In addition to the hazardous energy control lockout requirements above, all electrical Work must comply with Applicable Legislation, CSA and National Fire Protection Association (NFPA) requirements.
- 15.3.2 Contractor Personnel Working on electrical systems must:
 - (a) if in proximity to CP Personnel, inform them of:
 - (i) existing or potential electrical hazards;
 - (ii) any specific additional personal protective equipment that may be required;
 - (iii) applicable safe Work practices;
 - (iv) applicable emergency and evacuation procedures; and
 - (v) apply lock out procedures as per section above on Hazardous Energy Control-Lockout
 - (b) have practices, procedures and training that comply with:
 - (i) applicable sections of CSA-Z462 Workplace Electrical Safety Standards;
 - (ii) Canadian Electrical Code Parts 1 and 2; and
 - (iii) any other Applicable Legislation
 - (c) not operate or allow cranes or other mobile equipment to approach closer to any live electrical power line than is permitted by CSA Z150 Standards for mobile cranes.

15.4 Lifting Devices

- 15.4.1 All lifting devices, including but not limited to jacks, cranes, cables, slings, chains and hooks shall:
 - (a) meet Applicable Legislation governing design, inspection, maintenance and operation;
 - (b) be safety certified and labeled or tagged with load capacity limits where required;
 - (c) have sufficient capacity for the planned lift;
 - (d) have sufficient footing or support area to properly distribute the load during a lift.

15.5 Welding and Torch Cutting

- 15.5.1 When welding or torch cutting, Contractor Personnel shall:

- (a) be properly trained and qualified;
- (b) ensure that all closed containers have been properly purged;
- (c) direct flame or sparks away from other Workers, equipment and flammable material;
- (d) have a fire extinguisher readily available;
- (e) keep compressed gas and oxygen cylinders stored in a secure, vertical position, with regulators removed and caps applied, labeled properly and located in vented cabinets or other designated locations.

15.6 Explosive Actuated Tools

- 15.6.1 Only Contractor Personnel who are qualified and licensed in accordance with Applicable Legislation, and authorized by CP, may use explosives or explosive actuated tools.

15.7 Unattended Equipment or Machinery

- 15.7.1 Tools, Equipment and Machinery shall not be left unattended at any time and shall not be stored on CP Property, unless expressly permitted pursuant to a written agreement with CP or by the Manager-in-Charge in writing, and where so permitted, Contractor shall ensure that:
 - (a) storage shall be restricted to the designated area, or as otherwise specified by CP.
 - (b) all such tools, equipment and machinery shall be secured in a safe position well clear of all tracks to prevent accidental contact with trains and moving equipment and to not restrict train crew sightlines;
 - (c) as much as possible, tools, equipment and machinery shall be stored in locations out of public view.
 - (d) Machines must be secured in accordance with on-track machinery rules.

16 Emergency Response

16.1 Emergency Response Plan

- 16.1.1 The Contractor must maintain a current emergency response plan and make it available to CP on request. Emergency response plans must include at a minimum:
 - (a) contractor reporting procedures in the event of an incident or spill;
 - (b) emergency response contacts and phone numbers, including phone numbers for CP incident reporting and local CP managers (See Attachment A); and
 - (c) containment measures to be taken in the event of an incident or spill.

16.2 Initial Response

- 16.2.1 Initial response to any emergency condition must follow the following sequence:
 - (a) Protect the safety and security of all individuals and communities
 - (b) Provide environmental protection and mitigation
 - (c) Conduct incident investigation and evidence preservation
 - (d) Restore railroad operations

16.3 First Aid

- 16.3.1 Contractor Personnel must have sufficient First Aid qualified personnel and the required First Aid kit and any other required First Aid equipment at the Work Site, suitable for the crew size, nature of Work being performed and location, all of which shall, at a minimum, comply with Part II of the Canada Labour Code.

16.4 Fire Protection

- 16.4.1 The Contractor must have appropriate fire extinguishers, suitable in type, size and quantity having regards to the nature of Work and Applicable Legislation, readily available at all times on:
- (a) the Work Site; and
 - (b) all Contractor equipment, machinery and highway vehicles.
- 16.4.2 Contractor Personnel shall ensure that all necessary precautions are taken to prevent fires, including the following:
- (a) storing flammable material (e.g., paper, rubbish, sawdust, oily or greasy rags, etc.) in proper containers;
 - (b) storing and transporting fuel, gasoline or other flammable liquids in approved containers. Use of unapproved containers is prohibited;
 - (c) proper disposal of flammable material daily;
 - (d) preventing static electricity when dispensing or transferring flammable liquids by using proper grounding and bonding techniques;
 - (e) avoid using cutting or welding torches during the last one-half hour of shifts, if possible;
 - (f) taking special precautions with fusees, including:
 - (i) store and transport in approved containers;
 - (ii) do not allow fusees to come in contact with any combustible material, including railroad ties or wooden timbers; and
 - (iii) fully extinguish fusees before leaving the location where used;
 - (g) promptly advise CP management of any fire on CP Property; and
 - (h) fully extinguish or provide protection for any fire prior to leaving the Work Site.
- 16.4.3 Contractors Working on the CP right-of-way where a high risk of fire exists (e.g., during rail grinding, rail welding) must have:
- (a) appropriate fire prevention and suppression plans (including emergency numbers for CP, local firefighters and fire control districts); and
 - (b) additional firefighting equipment and trained Contractor Personnel on site, as required by Applicable Legislation or the Manage In Charge.

17 Confined Space

17.1 Confined Space

- (a) Qualified and authorized Contractor Personnel must follow all required confined space entry procedures in accordance with applicable legislation and standards prior to entering into a confined space.

- (b) Rescue procedures and equipment must readily available when required to enter a confined space.

18 Reportable Accidents, Incidents and Injuries

18.1 Reportable Injuries

18.1.1 Reportable injuries include any personal injury to:

- (a) Contractor Personnel;
- (b) any CP Personnel; or
- (c) to any third party on CP Property.

18.2 Reportable Accidents

18.2.1 Reportable accidents include any occurrence that results in:

- (a) damage to railroad tracks, right of way, buildings or other CP Property;
- (b) damage to railroad equipment;
- (c) damage to CP highway vehicles;
- (d) release or potential for release of hazardous material;
- (e) damage to a container, spill or loss of transported commodities; and
- (f) any threat to the environment.

18.3 Reportable Incidents

18.3.1 Reportable incidents include:

- (a) unintended movement of railroad equipment;
- (b) failure to provide track protection for Workers when required;
- (c) movement of railroad equipment beyond authorized limits;
- (d) operation of railroad equipment by an unqualified person;
- (e) unauthorized handling of a track switch;
- (f) damage, vandalism or tampering with any railroad signals, structures or railroad safety device;
- (g) seepage, leakage, spills of, or other contamination from, Hazardous Materials;
- (h) actual, threaten or suspected security related incidents;
- (i) slides, washouts or other on-track obstructions; or
- (j) any occurrence that may disrupt the movement of trains or affect safe rail operations.

19 Reporting

19.1 Emergency Reporting

19.1.1 In the case of an emergency, Contractor Personnel must call:

- (a) 911, where this emergency response system exists, or
- (b) the local police, fire or emergency department in all cases; and
- (c) **CP Police Services Communication Center- 1-800-716-9132.**

19.2 Accident, Incident, Injury Reporting

19.2.1 When an accident, incident or injury occurs on CP Property, the Contractor must:

- (a) immediately report it to the
 - (i) **CP Police Services Communication Center 1-800-716-9132**; and
 - (ii) **CP Manager-in-Charge**
- (b) follow all instructions given to protect the scene.

19.2.2 CP does not report Contractor Personal Injuries to WCB. Such WCB reporting remains the Contractor's responsibility.

19.3 Information to Report

19.3.1 Information required with the initial report includes:

- (a) type of incident;
- (b) date and time of occurrence;
- (c) location (mileage, subdivision, building, yard or other physical description);
- (d) identity of person(s) involved or injured (company & name);
- (e) description of any hazardous materials involved;
- (f) type & unit number of any railroad equipment or vehicle involved;
- (g) description of occurrence, damage and/or injury, and cause if known;
- (h) description of any emergency response;
- (i) name and contact information of person making the report; and
- (j) any such other information that CP may require.

19.4 Environmental Incidents and Spills

19.4.1 In the event of an environmental incident spill, leak or potential release of a hazardous material, the Contractor must immediately:

- (a) immediately report the incident to:
 - (i) CP Police Services Communication Center 1-800-716-9132;
 - (ii) CP Manager-in-Charge,
 - (iii) Designated CP contact as per the governing agreement relating to the Work; and
 - (iv) Regulatory authorities that require notification related to the nature of the incident.
- (b) follow all instructions given to protect the scene.
- (c) take all reasonable actions to contain the spill;
- (d) respond in accordance with its emergency response plan; and
- (e) provide CP with the following information;
 - (i) description of location and surrounding area, including any sensitive environmental areas nearby (e.g., rivers, parks, sewers);
 - (ii) type and quantity of substance released;
 - (iii) cause of spill or deposit, if known; and
 - (iv) details of any immediate action taken or action proposed to be taken to contain spill and recover substance.
 - (v) details of any external or regulatory agency reporting completed as a result of the incident.

19.5 Additional Contractor Requirements

19.5.1 Contractor and Contractor Personnel must:

- (a) ensure an appropriate emergency response is initiated;
- (b) protect any evidence until released by the CP Manager-in-Charge;
- (c) cooperate fully with any CP investigation;
- (d) cooperate fully with any investigating government agency; and
- (e) notify CP if information is requested by any investigating government agency.

20 Contractor & Contractor Personnel Acknowledgement

Acknowledgement

20.1.1 Contractor and Contractor Personnel who Work on CP Property shall be deemed to have read and understood the content of these Minimum Safety Requirements for Contractors While Working on CP Property in Canada, as amended from time to time, and to agree to be bound by them.

20.1.2 These Minimum Safety Requirements for Contractors While Working on CP Property in Canada are subject to change without prior notice. The most current version of these Minimum Safety Requirements can be viewed at www.cpr.ca or by contacting the Manager-in-Charge.



Home SafeTM is a commitment to be vigilant about personal safety and the safety of co-workers.

NOTES:

20 Attachment A – Emergency Information Sheet

Emergency Contact Information

Emergency Contacts	Phone	Location
CP Calgary Operations Center	1-800-795-7851	·
CP Police Services	1-800-716-9132	
CP Railroad Traffic Controller Radio Channel		
Manager-in-Charge		
Local Police Services		
Local Fire Services:		
Local EMS		
Hospital		
Physician		
Aircraft Service, (if applicable):		
Watercraft Service, (if applicable):		
Other Emergency Services		

Emergency Evacuation Route

(Describe nearest evacuation assembly location OR Provide sketch on back)

Work Site Information

	Phone	Location
Work Site Location Name		
Railroad Subdivision & Mileage		
Address, Number and Street		
Nearest Town		
CP Manager-in-Charge		
Emergency Site Access Route (Describe route from nearest emergency services location in detail including access roads & physical landmarks OR provide sketch on back.)		
Contractor Supervisor		
Site Telephone		
Certified First Aid Attendant		
Location of First Aid Supplies at Site		
Location of Fire Extinguishing Equipment:		
Location of WHIMS data sheets		

Utility Information

Utilities Contact	Phone	Location

Natural Gas:	()	
Electrical:	()	
Fiber Optic Line:	()	
Water & Sewer:	()	
Telephone:	()	
Cable System:	()	
Qualified employee(s) in:	()	
Confined Space Entry, (if applicable):	()	
Equipment requirements for Confined Space Entry, (if applicable):	()	
Other:		

SCHEDULE "E"

ENVIRONMENTAL REQUIREMENTS

1. **Environmental Management Plan.** The Road Authority shall, at its own expense, comply with all Environmental Laws and develop, implement and maintain a site-specific Environmental Management Plan to ensure:
 - (a) that the Road Authority Work and the Project Plans comply with all Environmental Laws;
 - (b) that it has appropriate systems and controls in place to avoid or mitigate potential environmental, health and safety risks with respect to the Project Site and any adjacent lands and watercourses, including silt fences, spill kits and erosion controls;
 - (c) that any construction debris or waste of any kind (whether hazardous or not and including contaminated soil excavated from the Railway Lands) resulting from the Road Authority Work is not disposed of on the Project Site or Railway Lands; and
 - (d) the Road Authority's response to any incident involving a release, leak, deposit or spill is handled in accordance with the provisions of this Schedule "E".

2. **Spill Prevention.** The Road Authority shall undertake the Road Authority Work and related activities in a manner that avoids, minimizes, or mitigates the risk of a release or other safety hazard. The Road Authority shall provide spill containment as necessary to protect the ground and capture any spills that may occur in accordance with its Environmental Management Plan.

3. **Storage of Hazardous Substances.** The Road Authority shall not install any fuelling tanks or fuelling stations on the Railway Lands or store any Hazardous Substances including any fuel, oil, grease, petroleum, gas or chemicals on the Railway Lands.

4. **Incidents.** The Road Authority covenants as follows.
 - (a) The Road Authority shall immediately report any incident involving a release, leak, deposit or spill of a Hazardous Substance arising from the

Road Authority Work or Project activities to the CP Operations Centre in Calgary at 1.800.795.7851 (or such other contact number CP may publish from time to time) whether or not such releases are required to be reported to any federal, provincial or local authority, and to any regulatory authorities (including CANUTEC) as required by law.

- (b) The Road Authority shall immediately respond to such incident described in Subsection 4(a) and take all reasonable actions to contain the spill and respond in accordance with its Safety and Emergency Response Plan; provided, however, that CP may elect to remediate, repair and restore the roadbed, track and related structures on the Railway Lands impacted by any Hazardous Substance, at the expense of the Road Authority.
- (c) The Road Authority shall provide a written follow-up report to CP within five (5) Business Days of such incident which constitutes an offence or is reportable under any laws, by-laws, or regulations relating to the protection of the environment, or is in breach thereof. Such follow-up report will describe the incident, substance and volume released, and measures undertaken or planned to cleanup and remove the released substance and any contaminated soil, water and materials and waste and identify the name and address of the proposed disposal facility.
- (d) The Road Authority shall provide CP with copies of any and all reports made to any Governmental Authorities that relate to such incidents or releases. In addition, the Road Authority shall provide CP with a copy of any alleged violation of applicable Environmental Laws relating to the Road Authority Work or activities at the Project Site, as well as a copy of any written responses made by the Road Authority to Governmental Authorities regarding said violations.
- (e) The Road Authority shall commence and complete, at the request of CP, the cleanup, disposal, and remediation of any spill or environmentally unsound condition occurring on the Railway Lands or any CP property as a result of the Road Authority Work. The Road Authority shall completely clean up any such spill or condition (including any contaminated soil excavated from Railway Lands); shall dispose of any contaminated soil or waste in a properly licensed disposal facility and maintain a copy of the manifest to verify such proper disposal; and shall replace contaminated soils with clean fill as appropriate under the circumstances. The Road Authority shall demonstrate to the satisfaction of CP, acting reasonably, that any impacted lands (including the Railway Lands and any impacted adjacent lands) have been restored to a condition existing prior to the commencement of the Project.
- (f) The Road Authority shall be solely responsible for all costs related to the clean-up and remediation of any releases or incidents resulting from the Road Authority Work or any of its related construction activities on the Railway Lands.
- (g) If CP and the Road Authority are in disagreement as to whether any such incident has been completely cleaned up, the contaminated soil or waste properly disposed of and replaced with appropriate clean fill, the Road Authority shall retain a reputable environmental consulting firm to review the Road Authority activities and report whether the Road Authority has fulfilled its obligations hereunder. If the Road Authority obligations have not been fulfilled, the Road Authority shall take further action as is necessary to rectify any deficiencies and obtain a report from the environmental consultant verifying the same.

Appendix “B”

Bill No.
By-law No.

A by-law to approve and authorize the Crossing and Maintenance Agreement between Canadian Pacific Railway Company (“CP”) and The Corporation of the City of London (the “City”) for the crossing and maintenance of the Adelaide Street Subway located at approximately Mile 113.73 of the Galt Subdivision, Ontario to be installed by the Adelaide Underpass Project.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND 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 it is deemed expedient for The Corporation of the City of London (the “City”) to enter into a Crossing and Maintenance Agreement (the “Agreement”) with Canadian Pacific Railway Company for the crossing and maintenance of the Adelaide Street Subway located at approximately Mile 113.73 of the Galt Subdivision, Ontario within Adelaide Street.

AND WHEREAS it is deemed 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 Agreement attached as Schedule “1” to this by-law, being a Crossing and Maintenance Agreement between Canadian Pacific Railway Company and The Corporation of the City of London (the “City”) for the crossing and maintenance of the Adelaide Street Subway located at approximately Mile 113.73 of the Galt Subdivision, Ontario within Adelaide Street is hereby AUTHORIZED AND APPROVED.
2. The Mayor and City Clerk are authorized to execute the Agreement authorized and approved under section 1 this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council , 2021

Ed Holder
Mayor

Catharine Saunders
City Clerk

First Reading
Second Reading
Third Reading

Schedule "1" - Crossing and Maintenance Agreement

CANADIAN PACIFIC RAILWAY COMPANY

- AND -

THE CORPORATION OF THE CITY OF LONDON

CROSSING AND MAINTENANCE AGREEMENT

In respect of a Subway located at approximately Mile 113.73 of the Galt Subdivision,
Ontario

_____, 2021

CROSSING AND MAINTENANCE AGREEMENT

This Agreement is dated _____, 2021.

BETWEEN:

CANADIAN PACIFIC RAILWAY COMPANY, a company
incorporated under the laws of Canada and having its head
office in the City of Calgary, Alberta (**CP**)

- and -

THE CORPORATION OF THE CITY OF LONDON (The Road Authority)

RECITALS.

- A. CP is a federally regulated railway and its Railway Operations, rights-of-way and facilities are subject to the jurisdiction, decisions and orders of the Agency, Transport Canada and federal legislation, including the *CTA* and the *RSA*.
- B. CP and The Road Authority will be parties to a *Grade Separation Construction Agreement* pursuant to which CP authorizes The Road Authority to construct the Subway at the location shown on The Road Authority plans bearing numbers _____ attached as Schedule "A" (collectively, the **Plans**).

- C. Crossing Rights are necessary for the ongoing occupancy, operation over, use and Maintenance of the Subway by The Road Authority.
- D. CP intends to file a copy of this Agreement with the Agency pursuant to Section 101 of the CTA, and thereby become an order of the Agency.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the covenants herein contained and good and valuable consideration paid by each Party to the other, the receipt and sufficiency of which are hereby respectively acknowledged, the Parties agree as follows.

- 1 **Definitions.** In this Agreement the following words and phrases shall have the meanings set out below.
- (a) **Access Protocols** has the meaning ascribed in Schedule "C".
 - (b) **Affiliate** has the meaning ascribed in the *Canada Business Corporations Act*, as amended and replaced from time to time or in any statute or statutes passed in substitution therefor.
 - (c) **Agency** means the Canadian Transportation Agency and any successor or successors of the Agency.
 - (d) **Agreement** includes all schedules attached hereto, as may be amended or modified from time to time.
 - (e) **Alteration Plans** has the meaning ascribed in Section 6(a).
 - (f) **Applicable Laws** means all applicable federal, provincial, municipal and local laws, statutes, codes and standards, ordinances, by-laws and regulations and all orders, directives and decisions rendered by, and policies, standards, guidelines and similar guidance of, any Governmental Authority, ministry, department or administrative or regulatory agency or court having jurisdiction over the Parties, the Railway Lands, the Subway, and includes Environmental Laws and Safety Laws.
 - (g) **Business Day** means any day other than Saturdays, Sundays and statutory holidays in Ontario and Alberta.
 - (h) **CP Indemnified Group** means, collectively, CP, its Affiliates, officers, directors, employees, and agents.
 - (i) **CP Safety Requirements** means the *Minimum Requirements for Contractors Working on CP Property in Canada*, as referenced in Schedule "C".
 - (j) **CTA** means the *Canada Transportation Act*, as amended and replaced from time to time or any statute or statutes passed in substitution therefor, together with all regulations made from time to time under the act.
 - (k) **CTA Guide** means the *Guide to Railway Charges for Crossing Maintenance and Construction* published by the Agency, as amended from time to time.
 - (l) **Contractor** means any contractor engaged by The Road Authority to perform Maintenance.
 - (m) **Cost** or **Costs** means the rates and charges set by the most recent CTA Guide.
 - (n) **Crossing Area** means that portion of the Railway Lands under or upon which the Subway is located, as outlined on the location and profile attached hereto as Schedule "B".

- (o) **Crossing Rights** means the rights granted by CP to The Road Authority within the Crossing Area described in Section 2(a).
- (p) **Emergency Situation** means a situation arising that causes an immediate and serious threat or danger to the public, CP employees, Personnel, the Railway Lands, or Railway Operations.
- (q) **Environmental Laws** means all applicable federal, provincial, municipal and local laws, statutes, ordinances, by-laws and regulations and all orders, directives and decisions rendered by, and policies, standards, guidelines and similar guidance of, any Governmental Authority, ministry, department or administrative or regulatory agency or court (which, for certainty, in each case shall be deemed to have the force of law), including any obligations or requirements arising at law, relating to the protection of the environment, human and other animal health and safety or the release, manufacture, processing, distribution, use, treatment, storage, presence, disposal, packaging, labelling, recycling, transport, handling, containment, clean-up or other remediation or corrective action of or in respect of any Hazardous Substances.
- (r) **Environmental Management Plan** means an environmental management plan developed, implemented and maintained by The Road Authority to ensure:
 - (i) compliance with Environmental Laws; and
 - (ii) adverse environmental impacts due to Maintenance are avoided,as further described in Schedule "D".
- (s) **Governmental Authority** means any government, parliament, legislature, or any governmental, quasi-governmental or regulatory authority, agency, commission, department or board, ministry, department or administrative or regulatory agency or court (which, for certainty, in each case shall be deemed to have the force of law), any political subdivision thereof, or any court or any other law (including any obligations or requirements arising at law), regulation or rule-making entity, having jurisdiction in the relevant circumstances, or any Person acting under the authority of any of the foregoing (including any court or any arbitrator with the authority to bind the Parties at law) or any other authority charged with the administration or enforcement of legal requirements.
- (t) **Hazardous Substances** means any substance, class of substance or mixture of substances, or such quantity or concentration of an otherwise non-hazardous substance or substances, which are or may be detrimental to the environment or human health including, without limitation:
 - (i) radioactive, explosive, poisonous, corrosive, flammable or toxic substances or materials;
 - (ii) any substance that if added to any water, would degrade or alter the quality of the water to the extent that it is detrimental to man or any animal, fish or plant;
 - (iii) any solid, liquid, gas or odour or combination of any of them that, if released, creates or contributes to a condition that:
 - (A) endangers the health, safety or welfare of persons;
 - (B) interferes with the normal enjoyment of life or property; or
 - (C) causes damage to plant life, animal life or to property;

- (iv) toxic substances, including, without limitation, asbestos, polychlorinated biphenyls, all chemicals and substances known or suspected to cause cancer or reproductive toxicity;
 - (v) any substance, chemical or material, declared to be hazardous or toxic under any Applicable Laws or ordinance enacted or promulgated by any Governmental Authority; and
 - (vi) any medical waste or hazardous biological material.
- (u) **Interference** means to endanger, hinder, interfere with or materially affect Railway Operations.
- (v) **Losses** means any and all injuries, claims, suits, demands, awards, actions, proceedings, losses, costs, damages, expenses, charges (including all penalties, loss of profit, loss of income or consequential damages or losses with respect to Rolling Stock, Railway Operations or otherwise) by whomsoever made, brought or prosecuted which a Party suffers, sustains, pays or incurs and includes reasonable costs of legal counsel (on a solicitor-client basis) and other professional advisors and consultants incurred in connection therewith.
- (w) **Maintain or Maintenance** means all activities necessary to safely operate the Subway including the Substructure on which the Subway shall run (including in cases of emergency) including, but not limited to, activities that require access to the Railway Lands, together with any required mitigative measures within the Crossing Area in accordance with the terms of this Agreement and Applicable Laws, but does not include a Material Alteration.
- (x) **Material Alteration** means:
- (i) constructing any new rail track on the Subway within the Crossing Area, including for the purpose of expansion; or
 - (ii) upgrades or repairs, such as altering, removing, reconstructing and relocating the Subway within the Crossing Area. **Material Alteration Notice** has the meaning ascribed in Section 6(a).
- (y) **Parties** means The Road Authority and CP and **Party** means either The Road Authority or CP.
- (z) **Personnel** means the employees and agents of The Road Authority and all individual persons engaged or retained by The Road Authority, whether directly or indirectly, in connection with Maintenance.
- (aa) **RSA** means the *Railway Safety Act (Canada)*, as amended and replaced from time to time or any statute or statutes passed in substitution therefor, together with all regulations made from time to time under the act.
- (bb) **Railway Line** means all improvements, railway lines and structures situated within or upon the Railway Lands.
- (cc) **Railway Operations** means the operations, business and undertaking of CP in respect or in furtherance of Rolling Stock over CP's network of railway lines, as well as the operation of switches, signals, fibre optic, signal and communications systems (including conduits, cables, fibres, towers, associated equipment and facilities), whether on the Railway Lands or elsewhere.
- (dd) **Railway Work** means:
- (i) inspecting, maintaining, repairing, altering, modifying, expanding, relocating, replacing or reconstructing the Railway Line;

- (ii) constructing a new rail facility; and
 - (iii) such other operations as may be required from time to time.
- (ee) **Remove or Removal** means the physical removal of the Subway or any part or parts thereof from the Crossing Area and restoration of subsurface and ground surface to the satisfaction of CP, acting reasonably.
- (ff) **Rolling Stock** means trains, locomotives, railcars, boxcars, gondolas, railway machinery, vehicles, equipment of every nature, and the contents of same.
- (gg) **Routine Maintenance** means inspection and maintenance activities conducted wholly within the Subway in accordance with the terms of this Agreement and Applicable Laws and, for greater certainty, in no circumstance includes any access to the surface or subsurface of the Railway Lands.
- (hh) **Safety and Emergency Response Plan** means the safety and emergency response plan to be implemented and maintained by The Road Authority to ensure compliance with Safety Laws and Schedule "B".
- (ii) **Safety Laws** means:
 - (i) all Applicable Laws related to the safety of Railway Operations;
 - (ii) the regulations, orders, specifications, and directives of Transport Canada, the Agency and any other Governmental Authority having jurisdiction in respect of Railway Operations or the Railway Lands; and
 - (iii) all Applicable Laws related to the Railway Lands in force with respect to health or occupational health and safety.
- (jj) **Subdivision** means the Mactier Subdivision and all improvements, railway lines and structures situated therein or thereon.
- (kk) **Superstructure** means the deck span above the substructure.
- (ll) **Substructure** means the underlying support structure below the subway deck, including but not limited to the abutments and piers.
- (mm) **Subway** means the grade separated subway and multi-lane roadway known as the Adelaide Street underpass, including but not limited to the roadway, bridge substructure, superstructure, permanent or temporary support structures, rail track, retaining walls, signs, lights, drains, ditches, water conveyances and other associated works and improvements passing on, over or adjacent to the Railway Lands as detailed in the Plans.
- (nn) **Third Party Fibre Systems** means fibre optic and communications systems owned and operated by a Third Party (including conduits, cables, fibres, towers, associated equipment and facilities).
- (oo) **Third Parties** means a Person other than The Road Authority or CP.
- (pp) **Track Block** means the act of blocking or mechanically prohibiting Rolling Stock from accessing the Crossing Area.
- (qq) **Utility Crossing** means any Utility Works crossing under, on or above the Railway Lands installed or erected in accordance with Section 101 of the CTA.
- (rr) **Utility Works** means oil, gas and water pipelines, railway lines and facilities, power lines, telephone lines, drains, sewers, pipes, fibre optic,

signal and communications systems (including conduits, cables, fibres, towers, associated equipment and facilities), Third Party Fibre Systems and related structures.

2 **Grant.**

- (a) CP hereby grants to The Road Authority, insofar as it has the right to do so, the right to occupy, operate, and use the Crossing Area, including the right to maintain the Subway within the Crossing Area, subject to the terms and conditions contained in this Agreement.
- (b) The Road Authority agrees that it has no right to:
 - (i) perform a Material Alteration; or
 - (ii) conduct any activities other than as specified in Section 2(a),
within the Crossing Area except as expressly agreed to by CP in accordance with the terms of this Agreement.
- (c) This Agreement shall commence on the date first written above and shall remain in effect continuously thereafter until a further order of the Agency is granted.
- (d) The Road Authority agrees and acknowledges that it has no right to construct any improvements or facilities within the Railway Lands, whether inside or outside the Crossing Area.

3 **Paramourcy of Railway Operations.**

- (a) The Road Authority covenants that the Crossing Rights shall in no way preclude or interfere with the full, free, complete, safe, continuous, uninterrupted and unhindered Railway Operations and any other purpose or use of the Railway Lands by CP.
- (b) In furtherance of CP's paramourcy of Railway Operations, The Road Authority agrees and acknowledges that, for the purposes of Railway Work:
 - (i) the Subway may have to be relocated, protected, modified, altered or lowered; or
 - (ii) Subway Operations may have to be modified or delayed,and that, in either circumstance, CP shall not be responsible to The Road Authority for any resulting costs, expenses, losses or damages incurred or suffered by The Road Authority.
- (c) The Road Authority acknowledges the Crossing Area may contain Utility Works. CP may in the future require additional railway and expansions, or be ordered by the Agency to grant rights to Third Parties and such rights may require the subsurface or overhead use of portions of the Crossing Area which are parallel to, under or over the Subway. As a result of the foregoing, CP and such Third Parties shall, at all times, but subject to the rights granted in this Agreement and the requirements of Applicable Laws, have unrestricted access to and use of the Crossing Area for the maintenance of existing and future Utility Works.

4 **Designation.** Ownership of the Subway shall remain solely with The Road Authority.

5 **Maintenance.**

- (a) Following completion of the Project, maintenance costs 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.

6 **Material Alteration.**

- (a) If The Road Authority wishes to undertake a Material Alteration, The Road Authority shall deliver to CP a request in accordance with Section 21 (a **Material Alteration Notice**), together with design plans identifying the Material Alteration (**Alteration Plans**) not less than one hundred and eighty (180) days prior to the date on which The Road Authority intends to commence such Material Alteration.
- (b) CP reserves the right to charge a reasonable administration fee for the review and, if applicable, approval of Alteration Plans.
- (c) The Road Authority acknowledges that it shall be solely responsible for all costs of any Material Alteration and the ongoing and future Maintenance thereof.
- (d) Prior to commencing any Material Alteration, The Road Authority shall enter into CP's then standard form *Grade Separation Construction Agreement* and *Crossing and Maintenance Agreement*, and/or any other agreement CP may require.

7 **Signs/Markers.** The Road Authority, at its sole expense, shall install and maintain signs prominently marking the Subway, at locations satisfactory to CP (or as required by any Governmental Authority).

8 **Environmental Obligations.** The Road Authority shall:

- (a) provide to CP, and maintain throughout the term of this Agreement, its Safety and Emergency Response Plan and its Environmental Management Plan, including provisions for protective structures (including without limitation fencing or netting) to any Interference or Emergency Situation;
- (b) carry out all measures CP may reasonably consider appropriate to avoid creating a hazardous, unsafe, unhealthy or environmentally unsound condition in or upon the Railway Lands, including without limitation:
 - (i) appropriate drainage measures and improvements to ensure roadway drainage is not directed on to the Railway Lands; and
 - (ii) that Hazardous Substances and debris accumulations will not drain directly into or upon the Railway Lands;
- (c) notify any Governmental Authorities as required by Applicable Laws, and provide a written report to CP within ten (10) Business Days of:
 - (i) the detection of a Hazardous Substance on the Railway Lands that could impact Railway Operations; or
 - (ii) any event on or affecting the Railway Lands which constitutes an offence of or is reportable under any Applicable Laws,

and such written report shall describe the incident, the Hazardous Substance, volume and concentration of Hazardous Substance released and measures undertaken or planned to clean up and remediate the Hazardous Substance and any contaminated soil, water, materials and waste from the Railway Lands;

- (d) coordinate with CP to:
 - (i) carry out all work required by Applicable Laws or any Governmental Authorities to remediate any Hazardous Substance from in or upon the Railway Lands; and
 - (ii) remediate and clean up, to the satisfaction of CP, any Hazardous Substance in or upon the Railway Lands resulting from or in connection with the Subway and caused by The Road Authority or by those for whom The Road Authority is in law responsible; provided that CP may elect to perform some of the work, but all such work shall be at the sole cost and expense of The Road Authority.

9 **Insurance Obligations.**

- (a) The City shall obtain and maintain (or cause to be obtained and maintained by the Contractor) during the term of this Agreement, and any extension hereof, with an insurer licensed under *The Insurance Act* (Ontario), the following policies of insurance:
 - (i) "*Wrap-Up*" *Commercial General Liability* insurance covering the City and its Personnel, including architects, engineers contractors and subcontractors (but not for professional liability) with a limit of not less than **twenty-five million dollars (\$25,000,000)** (or such greater amount that CP may require from time to time) for any one Loss or occurrence for personal injury, bodily injury, or damage to property including Loss of use thereof, business interruption and consequential damages. This insurance policy shall by its wording or by endorsement include the following:
 - (i) the CP Indemnified Group as additional insured;
 - (ii) "cross liability" or "severability of interest" clause which shall have the effect of insuring each entity 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;
 - (iii) blanket contractual liability;
 - (iv) broad form products and completed operations, not less than twenty-four (24) months completed operations coverage;
 - (v) shall not exclude operations on or in the vicinity of the railway right-of-way, if applicable;
 - (vi) shall not exclude crane operations;
 - (vii) non-owned auto liability;
 - (viii) contingent employer's liability;
 - (ix) broad form property damage;
 - (x) the City's and Contractor's protective liability;
 - (xi) employees as additional insured; and
 - (xii) property damage due to explosion, collapse and underground property damage;
 - (xiii) shall not exclude loss or damage to existing structures or infrastructure including that of CP.
 - (ii) *Automobile Liability* insurance covering bodily injury and property damage in an amount not less than **two million dollars (\$2,000,000)**

(or such greater amount that CP may require from time to time) per accident, covering the ownership, use and operation of any motor vehicles and trailers which are owned, leased or controlled by the City and used in regards to this Agreement. The City's Contractors and their subcontractors shall independently maintain automobile liability insurance covering bodily injury and property damage in an amount not less than **five million dollars (\$5,000,000) (or such greater amount that CP may require from time to time)** per accident, covering the ownership, use and operation of any motor vehicles and trailers which are owned, leased or controlled by such Contractors and/or its subcontractors and used in connection with the Project.

- (iii) *Contractor's Pollution Liability* insurance, including naming the CP Indemnified Group as an additional insured, with a limit of not less than **five million dollars (\$5,000,000) (or such greater amount that CP may require from time to time)** for any one Loss or pollution event. Coverage shall include claims for bodily injury, death, damage to property, including Losses, clean-up costs and associated legal defense expenses arising from pollution conditions caused by, and/or exacerbated by, work performed by the City and/or its Contractors. The policy shall be endorsed to contain a blanket contractual liability endorsement. If this policy is written on a "claims-made" basis it shall remain in effect for no less than twenty four (24) months after the expiration or Termination of this Agreement.
- (iv) *Commercial General Liability* policy with a limit of not less than **ten million dollars (\$10,000,000) (or such greater amount that CP may require from time to time)** for any one Loss or occurrence for personal injury, bodily injury, or damage to property, including Losses. This policy shall by its wording or by endorsement include the following:
 - (i) the CP Indemnified Group as an additional insured with respect to obligations of the Contractor under this Agreement and incidental thereto;
 - (ii) "cross liability" or "severability of interest" clause which shall have the effect of insuring each entity 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;
 - (iii) blanket contractual liability, including the insurable liabilities assumed by such Contractors under this Agreement;
 - (iv) products and completed operations;
 - (v) shall not exclude operations on or in the vicinity of the railway right of way;
 - (vi) non-owned auto liability;
 - (vii) sudden and accidental pollution liability; and
 - (viii) contingent employer's liability.
- (b) The Road Authority shall ensure that it and the Contractor comply with the *Workplace Safety and Insurance Act, 1997 (Ontario)*, as amended and replaced from time to time or any statute or statutes passed in substitution therefor, together with all regulations made from time to time under such act. Upon request, the Road Authority will provide CP with written confirmation from the Ontario Workplace Safety and Insurance Board that the Contractor is registered under and in compliance with the requirements of the *Workplace Safety and Insurance Act, 1997 (Ontario)*, as amended

and replaced from time to time or any statute or statutes passed in substitution therefor, together with all regulations made from time to time under such act.

- (c) All policies of insurance stipulated in this Section 9 shall be with insurers acceptable to CP, and the City shall provide CP with a copy of certificates of insurance evidencing the above insurance to the satisfaction of CP. Such certificates shall be sent by email to Risk_Management@CPR.ca. CP may, at its option, require the City to annually provide CP with a copy of updated certificates of insurance evidencing the renewal of the above insurance. CP shall have no obligation to examine such certificates or to advise the City in the event its insurance is not in compliance herewith. Acceptance of such certificates which are not compliant with the stipulated coverage shall in no way whatsoever imply that CP has waived the insurance requirements of the City.
- (d) The City agrees that the insurance coverage required to be obtained and maintained by it under the provisions of this Agreement shall not limit or restrict its liabilities under this Agreement.
- (e) Unless otherwise provided above, all insurance coverage shall take place in the form of an occurrence basis policy and not a claims made policy.
- (f) The City agrees that the insurance coverage is primary and not excess of any other insurance that may be available.
- (g) The maximum deductible under each policy of insurance required to be maintained hereunder shall be **fifty thousand dollars (\$50,000)** unless approved by CP in writing.
- (h) The City shall provide CP with written notice and all reasonable particulars and documents related to any damages, Losses, incidents, claims and potential claims concerning this Agreement as soon as practicable after the damage, Loss, incident or claim has been discovered.
- (i) The insurance policies shall be endorsed to provide CP with not less than thirty (30) Business Days written notice in advance of cancellation, material change or amendments restricting coverage.
- (j) CP reserves the right to maintain the insurance in good standing at the City's expense and to require the City to obtain additional insurance where, in CP's opinion, the circumstances so warrant.
- (k) If at any time the City fails to obtain and maintain (or cause to be obtained and maintained by its Contractors) any of the insurance required under this Agreement, on notice from CP the City and its Contractors shall immediately stop all work on the Project and on the CP Yard and neither the City nor its Contractors shall access (whether directly or indirectly) the CP Yard until each has received written approval from CP.
- (l) The provisions of this Section 9 shall survive the expiration or Termination of this Agreement.

10 **Costs, Fees and Liens.**

- (a) CP shall contribute a fixed amount of eight million and seven hundred fifty thousand dollars (\$8,750,000) to the project.
- (b) CP will pay the contribution annually in four (4) installments, starting in the first year of construction, but no earlier than January 2020.
- (c) All other costs arising in connection with the construction of the Subway pursuant to the terms of this Agreement shall be paid by the Road Authority.

- (d) CP will invoice The Road Authority for any and all Costs and fees payable hereunder and The Road Authority shall pay such Costs or fees, including CTA overheads, within thirty (30) days after receipt of a written statement of such Costs or fees.
- (e) In the event the Agency shall discontinue publishing the CTA Guide, the accounts shall be prepared in accordance with such standard rates as set out in any alternate document that will succeed the CTA Guide. Until such alternate document is publicly available, the standard rates shall be those set out in the most recent published version of the CTA Guide indexed by the Consumer Price Index for the transportation sector published by Statistics Canada.
- (f) The Road Authority shall keep title to the Railway Lands free from any and all liens and similar claims and encumbrances that arise due to Maintenance or other work conducted by The Road Authority within or affecting the Crossing Area. To the fullest extent permitted by Applicable Laws, The Road Authority waives all rights of such liens, claims and encumbrances. If The Road Authority fails to release and discharge any such lien, claim or encumbrance within five (5) Business Days of receiving notice from CP, CP may, at its option, discharge or release the lien, claim or encumbrance, or otherwise deal with the claimant thereunder, and The Road Authority shall pay CP any and all costs and expenses of CP in so doing, including legal fees and expenses (on a solicitor-client basis) incurred by CP.
- (g) The Road Authority shall indemnify CP from and against all taxes or assessments of any description whatsoever levied by any Governmental Authority in respect of the Subway.

11 **Waiver and Indemnity.**

- (h) The Road Authority shall, and cause the Contractor to, indemnify and hold harmless the CP Indemnified Group from and against any and all Losses suffered or incurred by the CP Indemnified Group that arise out of, result from, are based upon or are in any way connected with:
 - (i) this Agreement;
 - (ii) Maintenance;
 - (iii) Routine Maintenance;
 - (iv) anything to be done or maintained by The Road Authority hereunder;
 - (v) anything not done or maintained by The Road Authority as required hereunder;
 - (vi) claims by Personnel under workers' compensation legislation;
 - (vii) acts or omissions by or attributable to The Road Authority or its Personnel; and
 - (viii) the breach of the timing or conditions of any Track Block approved by CP with respect to Maintenance.
- (i) The Road Authority shall make no claim or demand against the CP Indemnified Group for any Losses (including death) or damage to property suffered or sustained by The Road Authority, Personnel or any other Person which arises out, results from, or is based upon or are in any way connected with:
 - (i) this Agreement;

- (ii) Maintenance;
- (iii) Routine Maintenance;
- (iv) anything required to be done or maintained hereunder;
- (v) anything not done or maintained as required hereunder;
- (vi) claims by Personnel under workers' compensation legislation;

and hereby waives as against and releases the CP Indemnified Group all such claims and demands.

- (j) If Maintenance or Routine Maintenance is disrupted or delayed at any time for any cause, including the occurrence of an event of force majeure, expiration of a Track Block, or maintenance required by CP, The Road Authority shall have no claim against the CP Indemnified Group for any Losses resulting from any such disruption or delay, and The Road Authority hereby waives and releases the CP Indemnified Group from any such claim.

12 **Removal and Restoration.**

- (a) If at any time The Road Authority elects to Remove, The Road Authority shall provide CP with a Material Alteration Notice at least one hundred and eighty (180) days prior to the date on which The Road Authority intends to commence the Removal.
- (b) The Road Authority shall, at its sole risk and expense, diligently pursue the Removal, and complete the Removal no later than twelve (12) months after the date on which The Road Authority indicated in the Material Alteration Notice that it intended to commence the Removal. In doing so, The Road Authority shall leave the Crossing Area in a neat, clean and level state, in good order and condition, free of any environmental contamination resulting from The Road Authority's occupation or use thereof, all to the reasonable satisfaction of CP and in accordance with Applicable Laws.
- (c) The Removal may be subject to the supervision and conditions of CP and shall be in accordance with Access Protocols and any other terms set out by CP.
- (d) The Road Authority shall be responsible for all Costs incurred in relation to the Removal. Upon completion of the Removal, the Parties shall notify the Agency and request that the Agency terminate the order in respect of this Agreement.
- (e) Upon termination of the order by the Agency, this Agreement shall concurrently terminate.
- (f) Prior to commencing any Removal, The Road Authority shall enter into CP's then standard from pipeline removal agreement, or such other form of agreement required by CP.

13 **Moving/Alterations.** Should CP be ordered by the Agency, Transport Canada or other authority having jurisdiction, to make such changes in CP's tracks, structures or facilities that:

- (a) would necessitate the moving or alteration of the Subway; or
- (b) deem it necessary in order to protect its tracks, structures or property to make any change in the location or construction of the Subway,

The Road Authority shall at its own expense and to the entire satisfaction of CP perform all such work of moving or altering or carrying out protective measures to

safeguard the Subway as may be necessary within one (1) month after receipt of notice so to do.

- 14 **Remedies.** If The Road Authority fails to or neglects to perform any act or if The Road Authority is otherwise in default of its obligations under this Agreement, CP may provide written notice thereof to The Road Authority. If The Road Authority fails to promptly respond and rectify the matters described in such written notice, CP shall be entitled to, but is under no obligation to, undertake such reasonable measures as CP may consider appropriate, at the sole cost and risk of The Road Authority, and The Road Authority shall pay to CP all Costs incurred by CP within thirty (30) days of demand thereof. Without limiting the generality of the foregoing, if CP carries out work as an agent for The Road Authority pursuant to this Section 14, The Road Authority shall pay to CP the Costs.
- 15 **Termination.** CP may terminate this Agreement upon providing The Road Authority with sixty (60) days' prior written notice if The Road Authority fails to undertake Maintenance in accordance with this Agreement and such failure may, in the sole discretion of CP, cause an Emergency Situation or materially affect Railway Operations.
- 16 **Resolution of Disputes.** Subject to and without prejudice to the rights of termination set forth in Section 15, the Parties shall attempt, in good faith, to resolve or cure all disputes and claims with respect to the interpretation of this Agreement and the performance of their respective obligations hereunder before initiating any legal action or attempting to enforce any rights or remedies at law or in equity. If a Party believes that a breach of this Agreement by the other Party has occurred, then the Parties shall attempt to resolve such dispute in the following manner:
- (a) the Party who believes that a breach of this Agreement by the other Party has occurred shall provide notice and the Parties will attempt to resolve the dispute within sixty (60) days;
 - (b) if the dispute remains unresolved, in whole or in part, after sixty (60) days, the issue(s) in dispute will be escalated to a CP vice president and a The Road Authority vice president, who will have thirty (30) days to attempt to resolve such remaining issue(s) in dispute;
 - (c) if the Parties are not able to resolve the issue(s) in dispute pursuant to Sections 16(a) and 16(b), the Parties shall refer the matter to the Agency's mediation program (if the mediation program exists at such time) and negotiate with the assistance of a mediator for a further period of up to thirty (30) days; and
 - (d) if the Parties are still unable to resolve the dispute after such thirty (30) day period pursuant to Section 16(c) (or if the mediation program does not exist at such time), then either Party may pursue legal remedies available to it, including applying to the Agency for a determination of the matter.
- 17 **No Other Rights.** The Road Authority covenants, acknowledges and agrees that, notwithstanding the Crossing Rights granted herein, CP is not conveying title to any real property, including the Crossing Area and, notwithstanding any use of the Railway Lands, it is not the Parties' intention that The Road Authority acquire any, other or further right, title or interest in and to the Crossing Area, by adverse possession or otherwise, save and except for the rights granted pursuant to this Agreement.
- 18 **Assignment.**
- (a) This Agreement shall not be transferred or assigned by The Road Authority without the prior written consent of CP, which consent may be arbitrarily withheld.

- (b) The Road Authority may, without the prior written consent of CP, arrange to have any of the obligations of this Agreement carried out by contractors or consultants; provided that in the event The Road Authority does so, The Road Authority shall remain liable for and shall not be released or relieved of any of the obligations and liabilities assumed under this Agreement.
- 19 **Further Assurances**. The Parties covenant and agree that they shall execute and deliver all such further assurances and do or perform or cause to be done or performed all such acts and things as may be required to be performed to fully carry out the provisions and intent of this Agreement.
- 20 **Compliance with Applicable Laws**. Both Parties shall at all times comply with all Applicable Laws. The minimum applicable technical standards therein shall apply to both Parties unless more stringent standards are provided for in this Agreement. If compliance with any provision of this Agreement would result in a violation of any Applicable Laws, such Applicable Law shall prevail and this Agreement shall be amended accordingly.
- 21 **Notices**. Any notice, request, demand and other communication hereunder (each a **notice**) shall be in writing and shall be furnished to the Parties at the addresses given below.
- (a) in the case of CP, to:
- Canadian Pacific Railway Company
1290 Central Parkway West, Suite 600
Mississauga ON L5C 4R3
Attention: Manager Public Works Ontario
Facsimile: 905-803-3412
- (b) in the case of The Road Authority, to:
- City of London -- require address:
- Attention: Mr. Doug MacRae, P.Eng., MPA
Director, Roads & Transportation City of London
Phone: (519) 661 – 2489 ext. 4936.
Facsimile: (519) 661 – 4734
- All notices required to be given hereunder may be delivered by hand, mailed by registered mail, or sent by facsimile. If mailed, the notice shall be deemed to have been given and received five (5) Business Days after the mailing thereof. If delivered by hand, the notice shall be deemed to have been given and received on the day on which it was delivered, or if delivered after regular business hours, it shall be deemed to have been given and received on the following Business Day. If sent by facsimile, the notice shall be deemed to have been given and received on the first Business Day following the day it was dispatched. Either Party may from time to time change its address for service by giving notice to the other Party.
- 22 **Miscellaneous**.
- (g) The Parties agree and acknowledge that they are not partners in any business or a joint-venture or a member of a joint or common enterprise.
- (h) This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and the Parties have not relied upon any statement, representation, agreement or warranty except such as are set out in this Agreement.
- (i) No amendment, modification, or supplement to this Agreement shall be valid or binding unless set out in writing and executed by Parties in the same manner as the execution of this Agreement.

- (j) This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
- (k) Neither Party shall be deemed to have waived the exercise of any right that it holds under this Agreement unless such waiver is made in writing. No waiver made with respect to any instance involving the exercise of any such right shall be deemed to be a waiver with respect to any other instance involving the exercise of that right or with respect to any other right.
- (l) This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. The Parties attorn to the exclusive jurisdiction of the Ontario Superior Court of Justice, Toronto Region. All actions or proceedings arising out of or relating to this Agreement shall be litigated in such court and the Parties unconditionally accept the jurisdiction of the said court and waive any defense of *forum non-conveniens*, and irrevocably agree to be bound by any judgment rendered thereby in connection with this Agreement.
- (m) Time is of the essence of this Agreement.
- (n) References to dollar amounts, if any, are references to Canadian dollar amounts.
- (o) The captions of the Articles and Sections are included for convenience only and shall have no effect upon the construction or interpretation of this Agreement.
- (p) All of the provisions of this Agreement are to be construed as covenants and as though the words importing such covenants and agreements were used in each separate Article hereof.
- (q) Should any provision of this Agreement be or become invalid, void, illegal or not enforceable, it shall be considered separate and severable from this Agreement and the remaining provisions shall remain in force and be binding upon the Parties as though such provision had not been included.
- (r) The covenants, obligations, and liabilities of The Road Authority herein shall survive expiration or termination of this Agreement.
- (s) This Agreement becomes effective only upon execution and delivery hereof by the Parties.
- (t) The Parties agree and acknowledge that this Agreement is specific to subject matter hereof and the terms hereof shall not be deemed or interpreted to be a precedent that binds the Parties in respect of future negotiations of utility crossings.
- (u) The Parties agree that the terms of this Agreement are confidential and The Road Authority shall not disclose the terms hereof to any person; except where:
 - (i) disclosure is required by Applicable Laws and The Road Authority has provided prior written notice to CP; or
 - (ii) disclosure to a The Road Authority's officers, agents, employees, consultants, professional advisors or lenders is necessary to carry out the purpose and intent of this Agreement.
- (v) The Parties agree that when this Agreement is filed with the Agency, CP may do so confidentially.
- (w) This Agreement may be executed in any number of counterparts and delivered via facsimile or email in PDF, each of which shall be deemed to

be an original and all of which taken together shall be deemed to constitute one and the same instrument, provided that any Party delivering this Agreement via facsimile or email in PDF shall deliver an originally executed copy of this Agreement forthwith thereafter to the other Party.

IN WITNESS WHEREOF, the Parties have caused their duly authorized officers to execute this Agreement as evidenced below as of the date first above written.

CANADIAN PACIFIC RAILWAY COMPANY

Per:

[Name]
[Title]

THE CORPORATION OF THE CITY OF LONDON

Per:

[Name]
[Title]

SCHEDULE "A"

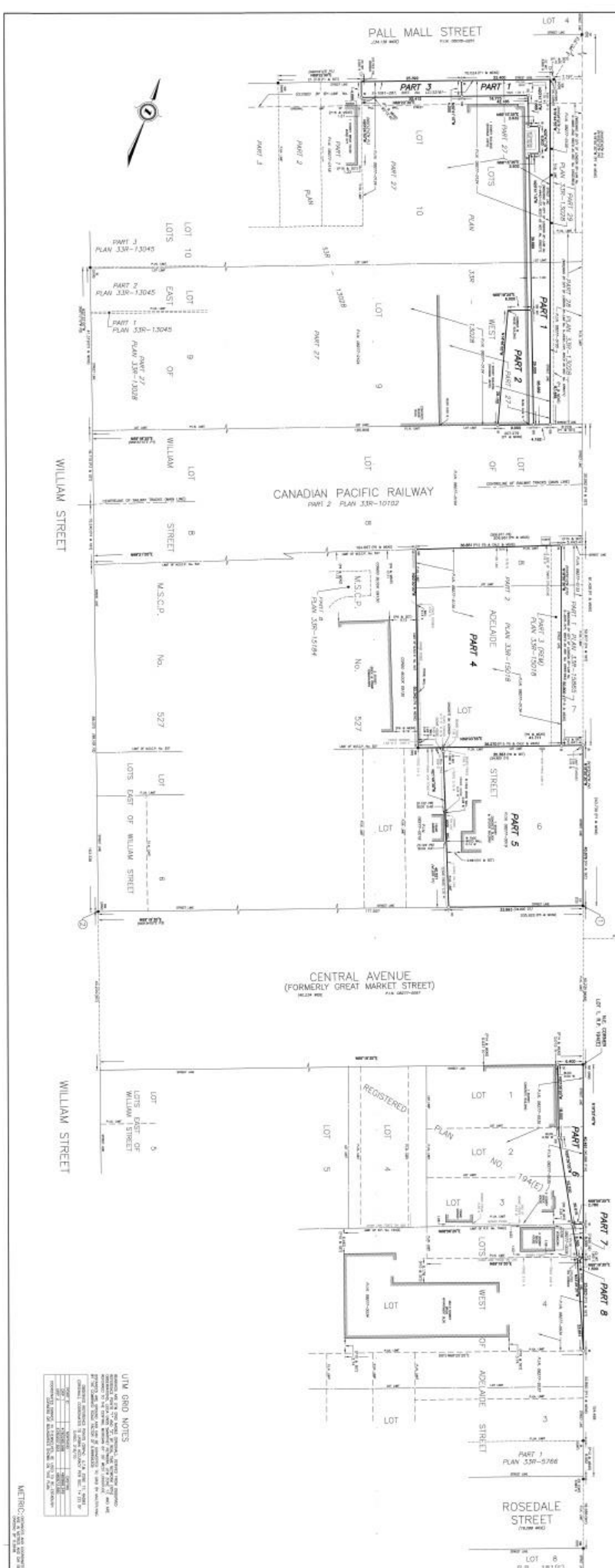
PLANS

(see attached on next page)

SCHEDULE "B"
(CROSSING AREA – LIMITS OF RAILWAY LANDS)
(see attached on next page)

ADELAIDE STREET NORTH
(ROAD ALIQUANT BETWEEN LOTS 12 & 13)
PART 1 PLAN 338-10702

ADELAIDE STREET NORTH
(ROAD ALIQUANT BETWEEN LOTS 12 & 13)
PART 2 PLAN 338-10702



UTM GRID NOTES
 UTM GRID COORDINATES ARE SHOWN IN METERS TO THE NEAREST CENTIMETER.
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PLAN OF SUBDIVISION
 LOTS 6, 7, 8, 9 AND 10
 OF
 LOTS 1, 2 AND 3
 OF
 ADELAIDE STREET
 PALM MALL STREET
 REGISTERED PLAN NO. 194(E)
 CITY OF LONDON
 COUNTY OF MIDDLESEX

LOT	REGISTERED PLAN NO.	AREA (SQ. METERS)	AREA (SQ. FEET)	PERCENTAGE OF TOTAL AREA
LOT 1	338-10702	10,000.00	108,900.00	100.00%
LOT 2	338-10702	10,000.00	108,900.00	100.00%
LOT 3	338-10702	10,000.00	108,900.00	100.00%
LOT 4	338-10702	10,000.00	108,900.00	100.00%
LOT 5	338-10702	10,000.00	108,900.00	100.00%
LOT 6	338-10702	10,000.00	108,900.00	100.00%
LOT 7	338-10702	10,000.00	108,900.00	100.00%
LOT 8	338-10702	10,000.00	108,900.00	100.00%
LOT 9	338-10702	10,000.00	108,900.00	100.00%
LOT 10	338-10702	10,000.00	108,900.00	100.00%

NOTES & LEGEND
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AGM
 ASSOCIATED GENERAL MANAGERS
 1000 SHEPPARD AVENUE EAST
 SUITE 1000
 SCARBOROUGH, ONTARIO M1S 1W7
 TEL: (416) 291-1111
 FAX: (416) 291-1112
 WWW.AGM.COM

SCHEDULE "C"

ACCESS PROTOCOLS AND SAFETY AND SECURITY REQUIREMENTS

1. **Access Requirements.** In order to ensure compliance with Safety Laws, the safety of all Personnel, CP employees and Railway Operations, The Road Authority's access to the Railway Lands will be subject to the following conditions (collectively, the **Access Protocols**).
 - (a) The Road Authority shall deliver notice to CP by contacting the designated CP representative not less than five (5) Business Days prior (or such longer period as CP may reasonably determine from time to time to ensure flagging protection and all safety measures can be scheduled) to the date upon which The Road Authority seeks to enter upon the Railway Lands, together with such other information as CP may reasonably require.
 - (b) No work of any nature shall be undertaken without scheduled flagging protection, unless otherwise agreed in writing by CP.
 - (c) The Road Authority shall contact the CP Network Management Centre in Calgary at 1-800-795-7851 (or such other contact number CP may publish from time to time) not less than five (5) Business Days prior to the proposed access date to determine the location of any Utility Works or structures under or on the Railway Lands.
 - (d) The Road Authority shall provide notice to and obtain consents from owners of Utility Works (including Third Party Fibre Systems) who may be affected by Maintenance, including those Third Parties who are required to give consents to protect or relocate such utilities.
 - (e) In the event The Road Authority requires emergency access to the surface or subsurface of the Railway Lands, The Road Authority shall contact CP Police at 1-800-716-9132, or such other contact number CP may publish from time to time.

2. **Safety and Security Requirements.** In addition to the Access Protocols, the Parties agree that Maintenance carried out on the Railway Lands will be subject to the following safety and security conditions (collectively, the **Safety and Security Protocols**).
 - (a) The Road Authority shall be solely responsible for ensuring the safety and health of all Personnel and for compliance with all Applicable Laws.
 - (b) The Road Authority agrees to ensure that all Personnel (including any Contractor) wear photo identification badges at all times while on the Railway Lands to comply with CP security requirements.
 - (c) The Road Authority agrees to comply with and to ensure the Contractor complies with security regulatory directives and requirements as communicated by CP from time to time.
 - (d) The Road Authority shall be responsible for developing, implementing and maintaining its own Safety and Emergency Response Plan and all Personnel and for ensuring that all Personnel understand and comply with the practices and procedures set out in such plan. In addition to the minimum requirements stipulated in Subsection 2(c) of this Schedule, the Safety and Emergency Response Plan must include:
 - (i) reporting and response procedures in the event of an incident or accident;
 - (ii) emergency response service providers and contacts and their phone numbers; and

- (iii) incident reporting phone numbers, including phone numbers for CP incident reporting and local CP personnel.
- (e) The Road Authority and all Personnel shall adhere to the directions of any CP flag persons, inspectors and supervisory personnel (including engineering and technical support) as CP may require to supervise any Maintenance. Instructions may include orders with respect to security restrictions, safety requirements or Emergency Situations.
- (f) The Road Authority acknowledges that CP has limited resources available for flagging protection and that flagging protection is subject to the availability of qualified flagpersons who must be allocated by CP across its service area for ongoing Railway Operations and other concurrent construction and maintenance projects. As a result, a maximum of two (2) flag persons will be available for Maintenance, for a maximum of forty (40) hours per week per flag person (including travel time to the Crossing Area), Monday through Friday; CP will not grant any requests to provide flagpersons to work any additional days or overtime.
- (g) Notwithstanding CP consent to provide access to the Railway Lands, if an Emergency Situation arises over, on or under the Railway Lands, or the presence of The Road Authority or their activities are causing an unauthorized Interference, CP may direct that The Road Authority and its Personnel exit from the Railway Lands for such period of time as CP deems appropriate. Any unauthorized Interference caused by The Road Authority must be remedied to complete satisfaction of CP prior to CP allowing The Road Authority and its Personnel to resume access onto the Railway Lands. CP shall not be responsible for any costs incurred by The Road Authority or any of their Personnel for any delays to Maintenance due to an evacuation or shutdown pursuant to this Section 2(g).
- (h) Any machinery or equipment used for Maintenance must meet applicable safety regulations and requirements.
- (i) The Road Authority shall not store any fuel, oil or lubricants on the Railway Lands or permit any fuelling or servicing of any machinery or equipment on Railway Lands.
- (j) The Road Authority shall not cause, suffer or permit the use of the Crossing Area or Railway Lands by any Person other than The Road Authority Personnel required to be on or about the Crossing Area for the purposes of completing Maintenance.
- (k) The Road Authority shall be solely responsible, at its own cost and expense, for the installation and maintenance of construction security fences and lockable gates, as directed by CP. The Road Authority shall keep gates locked, except when entering or exiting from the Railway Lands, to secure the site from entry by members of the public, trespassers and non-Personnel.
- (l) The Road Authority agrees to ensure that all Personnel adhere to CP safety requirements including the publication "Minimum Requirements for Contractors Working on CP Property in Canada", and such other applicable safety stipulations and rules as communicated by CP from time to time.

SCHEDULE "D"

ENVIRONMENTAL REQUIREMENTS

1. **Environmental Management Plan**. The Road Authority shall, at its own expense, comply with all Environmental Laws and develop, implement and maintain a site-specific Environmental Management Plan to ensure:
 - (a) that Maintenance complies with all Environmental Laws;
 - (b) that it has appropriate systems and controls in place to avoid or mitigate potential environmental, health and safety risks with respect to the Railway Lands and any adjacent lands and watercourses, including silt fences, spill kits and erosion controls;
 - (c) that any construction debris or waste of any kind (whether hazardous or not) resulting from Maintenance is not disposed of on the Railway Lands; and
 - (d) The Road Authority's response to any incident involving a release, leak, deposit or spill is handled in accordance with the provisions of this Schedule "D".
2. **Spill Prevention**. The Road Authority shall undertake Maintenance and related activities in a manner that avoids, minimizes, or mitigates the risk of a release or other safety hazard. The Road Authority shall provide spill containment as necessary to protect the ground and capture any spills that may occur in accordance with its Environmental Management Plan.
3. **Storage of Hazardous Substances**. The Road Authority shall not install any fuelling tanks or fuelling stations on the Railway Lands or store any Hazardous Substances including any fuel, oil, grease, petroleum, gas or chemicals on the Railway Lands.
4. **Incidents**. The Road Authority covenants as follows.
 - (a) The Road Authority shall immediately report any incident involving a release, leak, deposit or spill of a Hazardous Substance arising from Maintenance to the CP Network Management Centre in Calgary (1-800-795-7851), or such other number as directed by CP in writing, whether or not such releases are required to be reported to any federal, provincial or local authority, and to any regulatory authorities (including CANUTEC) as required by law.
 - (b) The Road Authority shall immediately respond to such incident described in Subsection 4(a) and take all reasonable actions to contain the spill and respond in accordance with its Safety and Emergency Response Plan; provided, however, that CP may elect to remediate, repair and restore the roadbed, track and related structures on the Railway Lands impacted by any Hazardous Substance, at the expense of The Road Authority.
 - (c) The Road Authority shall provide a written follow-up report to CP within five (5) Business Days of such incident which constitutes an offence or is reportable under any laws, by-laws, or regulations relating to the protection of the environment, or is in breach thereof. Such follow-up report will describe the incident, substance and volume released, and measures undertaken or planned to cleanup and remove the released substance and any contaminated soil, water and materials and waste and identify the name and address of the proposed disposal facility.
 - (d) The Road Authority shall provide CP with copies of any and all reports made to any Governmental Authorities that relate to such incidents or releases. In addition, The Road Authority shall provide CP with a copy of any alleged violation of applicable Environmental Laws relating to Maintenance at the

Railway Lands, as well as a copy of any written responses made by The Road Authority to Governmental Authorities regarding said violations.

- (e) The Road Authority shall commence and complete, at the request of CP, the cleanup, disposal, and remediation of any spill or environmentally unsound condition occurring on the Railway Lands or any CP property as a result of Maintenance. The Road Authority shall completely clean up any such spill or condition; shall dispose of any contaminated soil or waste in a properly licensed disposal facility and maintain a copy of the manifest to verify such proper disposal; and shall replace contaminated soils with clean fill as appropriate under the circumstances. The Road Authority shall demonstrate to the satisfaction of CP, acting reasonably, that any impacted lands (including the Railway Lands and any impacted adjacent lands) have been restored to a condition existing prior to the commencement of Maintenance, as the case may be.
- (f) The Road Authority shall be solely responsible for all costs related to the clean-up and remediation of any releases or incidents resulting from Maintenance or any related activities on the Railway Lands.
- (g) If CP and The Road Authority are in disagreement as to whether any such incident has been completely cleaned up, the contaminated soil or waste properly disposed of and replaced with appropriate clean fill, The Road Authority shall retain a reputable environmental consulting firm to review The Road Authority activities and report whether The Road Authority has fulfilled its obligations hereunder. If The Road Authority obligations have not been fulfilled, The Road Authority shall take further action as is necessary to rectify any deficiencies and obtain a report from the environmental consultant verifying the same.