

Bill No. 136  
2021

By-law No. A.-\_\_\_\_\_ -\_\_\_\_\_

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 on April 13, 2021.

Ed Holder  
Mayor

Catharine Saunders  
City Clerk

First Reading – April 13, 2021  
Second Reading – April 13, 2021  
Third Reading – April 13, 2021

**Schedule "1" - Crossing and Maintenance Agreement**

**CANADIAN PACIFIC RAILWAY COMPANY**

- AND -

**THE CORPORATION OF THE CITY OF LONDON**

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**CROSSING AND MAINTENANCE AGREEMENT**

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

\_\_\_\_\_, 2021

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**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 **Paramourncy 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 paramourncy 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](mailto: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.**

- (a) 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.
- (b) 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.

- (c) 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:

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[Name]

[Title]

**THE CORPORATION OF THE CITY OF LONDON**

Per:

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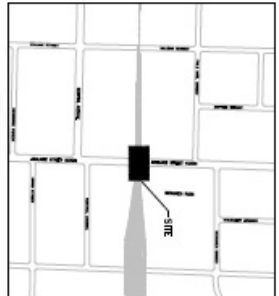
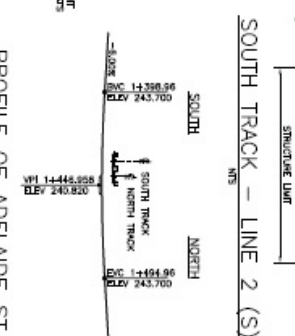
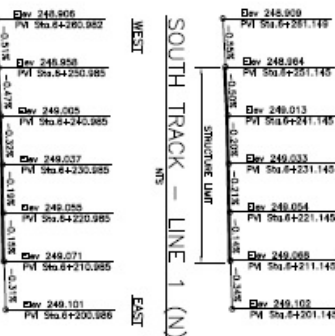
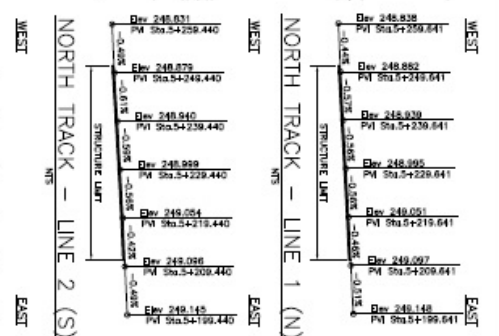
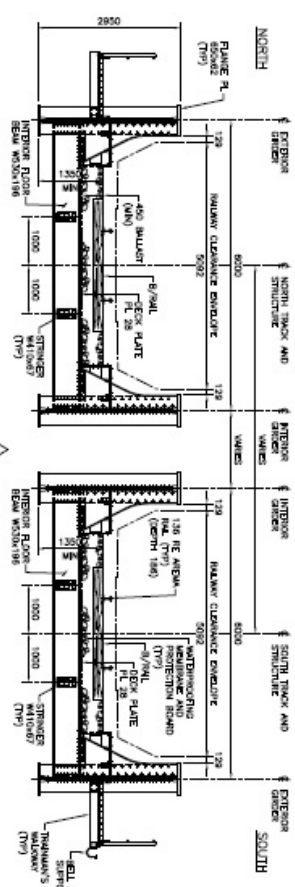
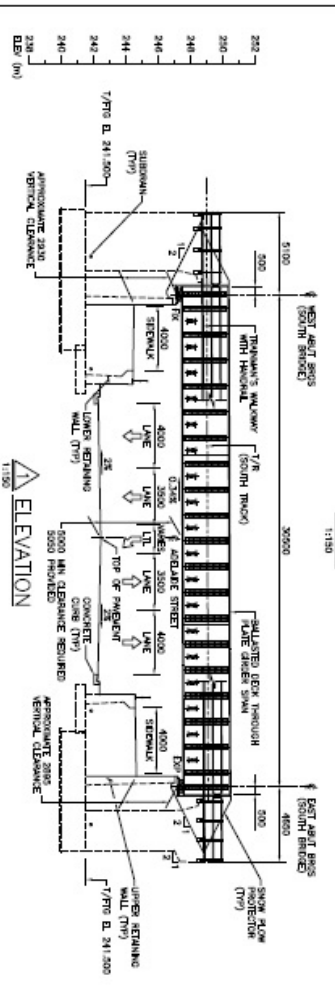
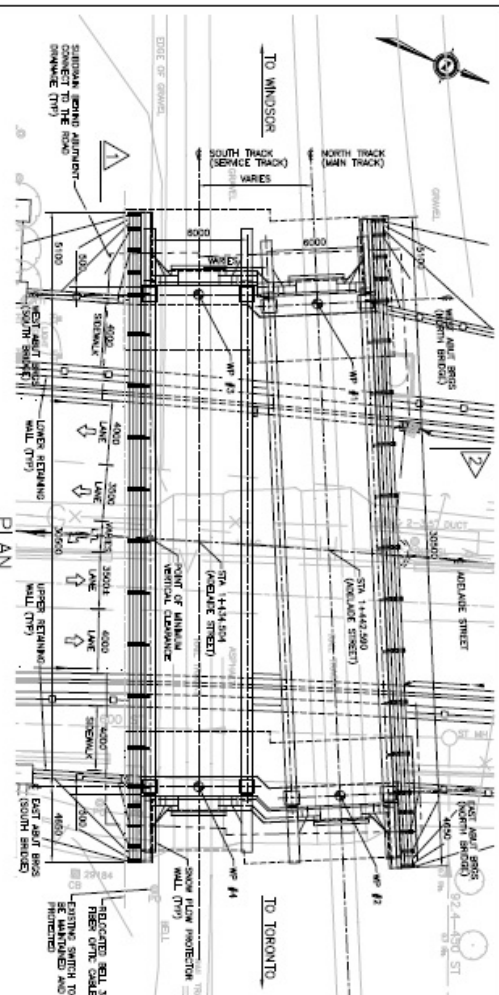
[Name]

[Title]

**SCHEDULE "A"**

**PLANS**

*(see attached on next page)*



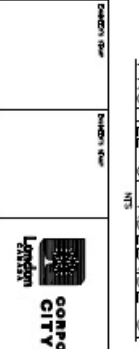
- LIST OF DRAWINGS:**
1. BRIDGE ARRANGEMENT
  2. TRACK PROTECTION WALL ELEVATIONS
  3. TRACK PROTECTION WALL ELEVATIONS
  4. TRACK PROTECTION WALL ELEVATIONS
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  46. TRACK PROTECTION WALL ELEVATIONS

**GENERAL NOTES:**  
 ALL DIMENSIONS ARE TO EXISTING UNLESS NOTED OTHERWISE.  
 BRIDGE DESCRIPTION  
 THE 221 NEW BRIDGE CROSSING OF STURGE GROW BLVD. TO BE CONSTRUCTED IN PHASES. PHASE 1 WILL BE THE CONSTRUCTION OF THE BRIDGE STRUCTURE AND PHASE 2 WILL BE THE CONSTRUCTION OF THE TRACKS AND SERVICE TRACKS.  
 MATERIAL SPECIFICATIONS  
 DESIGN LOADS  
 FOUNDATIONS  
 CLASS OF CONCRETE  
 CLEAR COVER TO REINFORCING STEEL  
 REINFORCING STEEL  
 CONSTRUCTION NOTES  
 LIST OF ABBREVIATIONS:

**WORKING POINT DATA**

WP	STATION & OF TRACKS	ELEVATION (T/R)	NORTHING	EASTING
1	STA 424+8.00	248.802	N 4700279.220	E 406012.821
2	STA 424+15.343	248.071	N 4700281.429	E 406045.052
3	STA 424+45.000	248.989	N 4700272.270	E 406020.113
4	STA 424+13.200	248.003	N 4700283.290	E 406048.424

CONTRACT SERVICES	ENGINEER & ARCHITECT	CONTRACTOR SERVICES	CONSULTANT	NO.	REVISION	DATE	CONTRACTOR

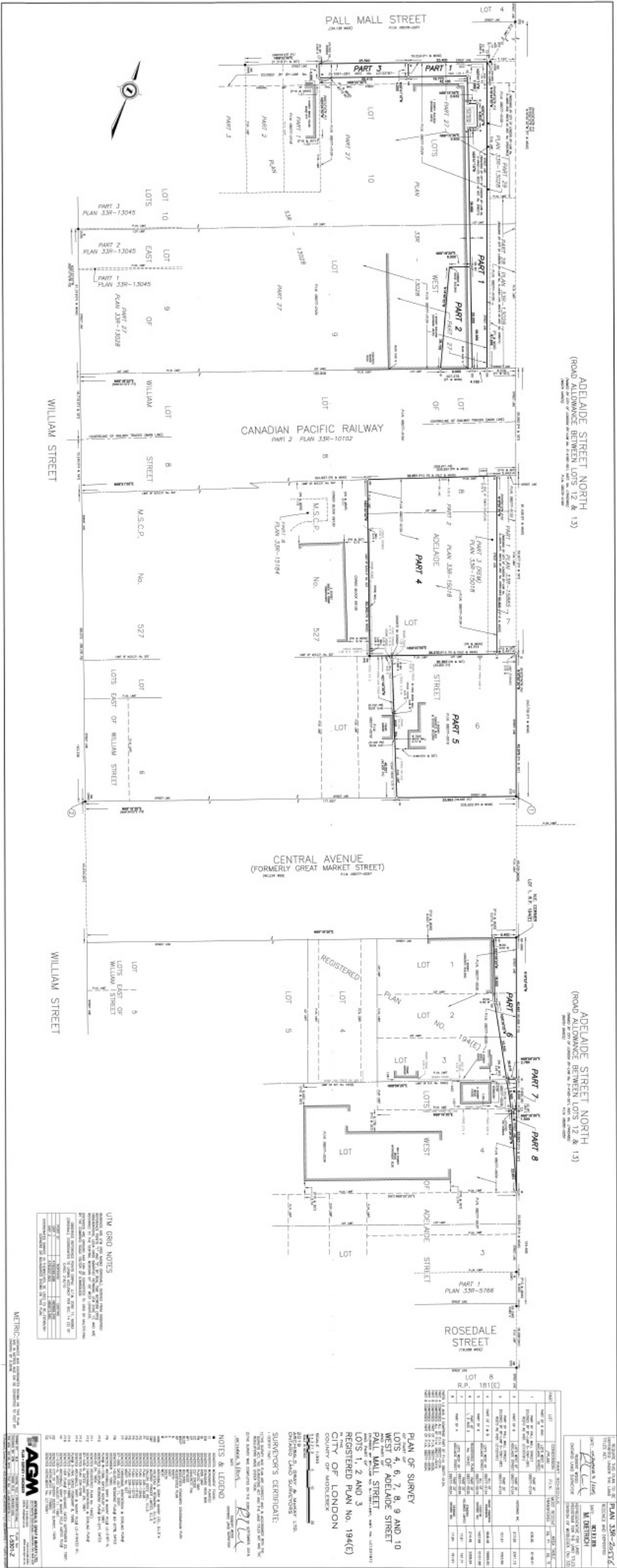


**ADelaide STREET/SPR GRADE SEPARATION**  
 W/LT 11.0/1.9 GALT SUBDIVISION

**GENERAL ARRANGEMENT**

DATE: 19/01/15  
 SHEET NO: S1

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



ADELAIDE STREET NORTH  
(ROAD ALLOTMENT BETWEEN LOTS 12 & 13)  
PLAN 33R-10102

ADELAIDE STREET NORTH  
(ROAD ALLOTMENT BETWEEN LOTS 12 & 13)  
PLAN 33R-52566

LOT	REGISTERED	REGISTERED PLAN NO.	REGISTERED DATE	REGISTERED BY	REGISTERED AS
1	REGISTERED	194(E)	1944	...	...
2	REGISTERED	...	...	...	...
3	REGISTERED	...	...	...	...
4	REGISTERED	...	...	...	...
5	REGISTERED	...	...	...	...
6	REGISTERED	...	...	...	...
7	REGISTERED	...	...	...	...
8	REGISTERED	...	...	...	...
9	REGISTERED	...	...	...	...
10	REGISTERED	...	...	...	...

**PLAN OF SURVEY**  
 LOTS 6, 7, 8, 9 AND 10  
 OF  
 WILLIAM STREET  
 PALM MALL STREET  
 LOTS 1, 2 AND 3  
 REGISTERED PLAN NO. 194(E)  
 CITY OF LONDON  
 COUNTY OF MIDDLESEX

**SURVEYOR'S CERTIFICATE:**  
 I, **ROBERT D. GRIFFIN**, Surveyor, do hereby certify that the above is a true and correct copy of the original plan as filed in my office on the 14th day of **APRIL**, 2014.

**NOTES & LEGEND**  
 1. THE PLAN IS TO BE CONSIDERED AS A TRUE COPY OF THE ORIGINAL PLAN AS FILED IN MY OFFICE ON THE 14th DAY OF APRIL, 2014.  
 2. THE PLAN IS TO BE CONSIDERED AS A TRUE COPY OF THE ORIGINAL PLAN AS FILED IN MY OFFICE ON THE 14th DAY OF APRIL, 2014.  
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 17. THE PLAN IS TO BE CONSIDERED AS A TRUE COPY OF THE ORIGINAL PLAN AS FILED IN MY OFFICE ON THE 14th DAY OF APRIL, 2014.  
 18. THE PLAN IS TO BE CONSIDERED AS A TRUE COPY OF THE ORIGINAL PLAN AS FILED IN MY OFFICE ON THE 14th DAY OF APRIL, 2014.  
 19. THE PLAN IS TO BE CONSIDERED AS A TRUE COPY OF THE ORIGINAL PLAN AS FILED IN MY OFFICE ON THE 14th DAY OF APRIL, 2014.  
 20. THE PLAN IS TO BE CONSIDERED AS A TRUE COPY OF THE ORIGINAL PLAN AS FILED IN MY OFFICE ON THE 14th DAY OF APRIL, 2014.

**UTM GRID NOTES**  
 1. THE UTM GRID IS SHOWN ON THIS PLAN FOR REFERENCE.  
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## 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 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.