THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 11-065


THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

That the Mayor and Clerk be hereby authorized to execute an agreement between the Corporation of the City of Peterborough and the Canadian Pacific Railway Company in the form attached hereby as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first, second and third time this 26th day of April, 2011.

(Sgd.) Daryl Bennett, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk
C A N A D I A N  P A C I F I C  R A I L W A Y  C O M P A N Y

A G R E E M E N T  F O R  T R A I L  C R O S S I N G

T H I S  A G R E E M E N T  m a d e  t h e  __ ___  d a y  o f  ___ ___ ___ ___ , 2 0 1 1 ( t h e  " A g r e e m e n t " ).

B E T W E E N :

C A N A D I A N  P A C I F I C  R A I L W A Y  C O M P A N Y

a  C o m p a n y  d u l y  i n c o r p o r a t e d  u n d e r

T h e  l a w s  o f  C a n a d a  a n d  c a r r y i n g  o n  b u s i n e s s  i n

C a l g a r y ,  A l b e r t a

( " C P " )

-  a n d -

T H E  C O R P O R A T I O N  O F  T H E  C I T Y  O F  P E T E R B O R O U G H

a  m u n i c i p a l  a u t h o r i t y  p r u s e n t  t o  t h e  l a w s  o f  t h e

P r o v i n c e  o f  O n t a r i o

( t h e  " C i t y " )

W H E R E A S :

A.  C P  i s  t h e  r e g i s t e r e d  u s e r  o f  c e r t a i n  r a i l w a y  r i g h t s  o f  w a y  s i t u a t e d  a t  o r  n e a r  t h e  C i t y  o f

P e t e r b o r o u g h ,  i n  t h e  P r o v i n c e  o f  O n t a r i o ,  a t  M i l e  1 1 7 . 9 0  o f  H a v e l o c k  S u b d i v i s i o n ,  ( c o l l e c t i v e l y

t h e  " C P  L a n d s " ) ;

B.  C P  o p e r a t e s  a n  i n t e r p r o v i n c i a l  r a i l w a y  o v e r  r a i l w a y  l i n e s ,  i n c l u d i n g  t h e  C P  L a n d s ;

C.  T h e  C i t y  d e s i r e s  t o  o p e r a t e  a n d  m a i n t a i n  a  r e c r e a t i o n a l  p e d e s t r i a n  p a t h w a y  ( a s  d e f i n e d  h e r e i n )

o n  a p o r t i o n  o f  t h e  C P  L a n d s  o v e r  a n d  a c r o s s  t h e  t r a c k s  a s  s h o w n  o n  a t t a c h e d  d r a w i n g  # P - 4 0 4 - 1 1 7 -

9 0 - T  d a t e d  M a r c h  2 3 ,  2 0 1 1 ;  a n d

D.  C P  h a s  a g r e e d  t o  a l l o w  a  r e c r e a t i o n a l  p a t h w a y  o n  t h e  C P  L a n d s ,  s u b j e c t  t o  t h e  t e r m s  a n d

c o n d i t i o n s  s e t  f o r t h  i n  t h i s  A g r e e m e n t .

N O W  T H E R E F O R E ,  i n  c o n s i d e r a t i o n  o f  t h e  p r e m i s e s  a n d  t h e  c o v e n a n t s  a n d  a g r e e m e n t s  s e t  f o r t h

h e r e i n ,  C P  a n d  t h e  C i t y  c o v e n a n t  a n d  a g r e e  a s  f o l l o w s :

A R T I C L E  1  -  D E F I N I T I O N S  A N D  I N P R E T E R P A T I O N

1.1  D e f i n i t i o n s

(a)  " A c t u a l  C o s t "  m e a n s  a n y  d i r e c t  c o s t s  i n c u r r e d  b y  C P  i n c l u d i n g  l a b o u r  c o s t s  f o r  p e r f o r m i n g  a n y

w o r k  p u r s u a n t  t o  t h i s  A g r e e m e n t ,  i n c l u d i n g  t h e  l a b o u r  r a t e ,  t h e  c o s t s  o r  a m o u n t s  p a y a b l e  o r  i n c u r r e d

i n  r e s p e c t  o f  a n n u a l  v a c a t i o n s ,  j o b  s e c u r i t y  p r o v i s i o n s ,  p e n s i o n ,  b e n e f i t s  ( m e d i c a l  d e n t a l ,  e t c . ) ,

e m p l o y m e n t  i n s u r a n c e ,  w o r k e r ' s  c o m p e n s a t i o n  o r  a n y  l i k e  c o s t  o r  i m p o s i t i o n ,  e x c l u d i n g  a n y  c o s t s  o f

h e a d  o f f i c e  s u p e r v i s i o n ;

(b)  " A g e n t "  m e a n s  a n y  c o n t r a c t o r ,  a g e n t ,  p u b l i c  a u t h o r i t y  o r  P e r s o n  t h a t  i s  c o n t r a c t e d ,  r e t a i n e d  o r

i n s t r u c t e d  b y  t h e  C i t y  t o  p e r f o r m  a n y  o f  t h e  C i t y ' s  o b l i g a t i o n s  u n d e r  t h i s  A g r e e m e n t ;

(c)  " A g r e e m e n t "  m e a n s  t h i s  A g r e e m e n t  ( i n c l u d i n g  a l l  S c h e d u l e s  t o  i t )  a s  t h e  s a m e  m a y  b e  a m e n d e d  o r

s u p p l e m e n t e d  f r o m  t i m e  t o  t i m e  i n  a c c o r d a n c e  w i t h  i t s  t e r m s ;

(d)  " A s s o c i a t e d  W o r k s "  m e a n s  t h e  s t e e l  m a z e  b a r r i e r s  o v e r  t h e  P a t h w a y  a n d  a l l  f e n c i n g ,  s i g n a g e ,

c u l v e r s ,  d r a i n s ,  d r a i n a g e  d i t c h e s ,  r a i l w a y  p l a n k s  a n d  c r o s s i n g  m a t e r i a l  o r  o t h e r  w o r k  o f  a  p h y s i c a l

c h a r a c t e r  i n c i d e n t a l  t o  t h e  P a t h w a y ;

P L E A S E  I N I T I A L
(e) "Claims or Losses" means any claims, demands, actions, causes of action, suits, damages, judgments, losses, liabilities, costs or expenses;

(f) "Environmental Contamination" means the release, deposit or spill of any contaminants or contamination residue, 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, fish 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 over CP, the City or the CP Lands;

(g) "Event of Default" has the meaning set out in Section 11.1;

(h) "Fee" means the fee payable by the City to CP pursuant to Section 4.1;

(i) "License" means the license granted by CP to the City pursuant to Article 2;

(j) "License Area" means the area that is 3.3 meters wide, with a length of 13.56 meters more or less, crossing the Right of Way as outlined in red on the plan attached as Schedule "A";

(k) "Pathway" means a paved pedestrian and bicycle pathway to be constructed and installed on the License Area measuring 3.3 meters in width by 13.56 meters in length and crosses perpendicular to the Right of Way, as identified in the plan attached as Schedule "A";

(l) "Term" means a term of Ten (10) years commencing from April 1, 2011 as further described in Section 3.1.

1.2 Schedules

The following schedules are attached to and form a part of this Agreement:

Schedule "A" — Sketch Plan; and
Schedule "B" — Minimum Safety Requirements for Contractors Working on CP Property.

1.3 Construction

In this Agreement, unless otherwise expressly stated:

(a) references to a "party" or "parties" are references to a party or parties to this Agreement, and references to "herein", "hereby", "hereunder", "hereof" and similar expressions are references to this Agreement and not to any particular section, subsection or schedule;

(b) references to an "Article", "Section", "Subsection", "Clause" or "Schedule" are references to an Article, Section, Subsection, Clause or Schedule of or to this Agreement;

(c) references to dollar amounts are references to Canadian dollar amounts;

(d) words importing the singular shall include the plural and vice versa, words importing gender shall include the masculine, feminine and neuter genders, and references to a "Person" or "Persons" shall include individuals, corporations, partnerships, associations, bodies politic and other entities, all as may be applicable in the context;

(e) the use of headings is for convenience of reference only and shall not affect the construction or interpretation hereof;

(f) where a word or phrase is defined, its derivatives or other grammatical forms have a corresponding meaning;

(g) where a word or phrase appears in quotations or parenthesis or both, that word or phrase is deemed to be a defined word or phrase and gets its meaning from the words or phrases that immediately precede or follow that word or phrase;

(h) references to a statute, regulation or other legal enactment include all of its amendments and re-enactments;
(i) references to a manner of conduct include, without limitation, any omission, representation, statement or undertaking, whether or not in writing; and

(j) the word "including" means "including without limitation".

1.4 Amendment

This Agreement may not be varied, modified, amended, supplemented or replaced except by written agreement executed by all parties to this Agreement.

1.5 Entire Agreement

This Agreement constitutes the entire agreement between the parties relating to the Pathway and the License Area and no other representations, warranties or agreements, oral or written, will be binding on the parties with respect to such subject matter.

1.6 Severability

If any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable, such provision or provisions shall be distinct and severable and the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired.

ARTICLE 2 – GRANT OF LICENSE

2.1 Grant

Subject to the provisions, terms and conditions of this Agreement, CP grants to the City and the City hereby accepts from CP, a non-exclusive license to use the License Area in accordance with Sections 2.2 and 2.3, and to carry out its obligations under this Agreement.

This License shall, throughout the Term of this Agreement, be subject to the requirements of any governmental authority, including but not limited to Transport Canada, the Canadian Transportation Agency or any other authority having jurisdiction over CP or its operations.

2.2 Permitted Uses

Subject to the terms and conditions herein, the City shall be entitled to use the License Area to:

(c) construct, maintain and repair the Pathway and Associated Works; and

(d) allow members of the public to access and use the Pathway for the limited purpose of a pedestrian and bicycle pathway,

after the City has met all obligations pursuant thereto.

2.3 Restrictions On Use

(a) The City shall not permit:

(b) any Persons to enter or travel upon the License Area with motorized vehicles (including cars, trucks, motorcycles, ATV's, and snowmobiles but excluding emergency vehicles), implements or any equipment, except as required by the City and approved by CP in order to repair and maintain the Pathway as required herein and to access other infrastructure in the valley for maintenance purposes;

(c) any interruption, interference or endangerment of CP's railway operations or the Right of Way arising from the maintenance, repair, existence or use of the Pathway;

(d) any building, improvement, structure, utility line, pipeline, crossing or work of any kind, to be erected, constructed or installed on, across, under or over the License Area, except as expressly provided for herein; and

(e) the Pathway or License Area to be used by any Person for any purpose other than as expressly provided in this Article 2.
ARTICLE 3 – TERM

3.1 Term and Renewal

The Term of this Agreement, unless terminated earlier pursuant to Article 11, shall commence on April 1, 2011 and continue for a period of ten (10) years. Provided that there has been no material breach of the terms of this Agreement, the City shall be entitled to renew this Agreement upon three (3) months written notice prior to the end of the Term for an additional term of ten (10) years upon the same terms and conditions save and except that the annual fee may be increased to Two Thousand Dollars ($2,000.00) per annum, plus HST, at CP’s sole discretion.

ARTICLE 4 - FEES

4.1 Fees

(a) In consideration for the granting of this License, the City shall pay to CP an annual fee for the use of the License Area of Five Hundred Dollars ($500.00) per annum, plus HST, payable in advance (collectively referred to as the “Fees”). The annual Fee for April 1, 2011 to March 31, 2012 is payable upon execution of this Agreement. Thereafter, the annual Fees are payable in advance, on the 1st day of April in each remaining year of this Agreement and any renewal thereof, commencing on the 1st day of April, 2012.

(b) A one-time documentation fee in the amount of Three Hundred Fifty Dollars ($350.00), plus HST, is payable by the City upon execution of this Agreement.

(c) All Fees and other amounts payable hereunder shall be paid by the City to CP, at the offices of Canadian Pacific Railway Company, P.O. Box 1979, Station A, Toronto, ON, MSW 1W9, or at such other place as CP may designate in writing from time to time, without any prior demand therefor.

ARTICLE 5 – PATHWAY

5.1 Responsibilities for Pathway

The City shall be solely responsible for the installation, construction, operation, maintenance, modification, and repair of the Pathway and Associated Works. The City, at its sole costs and expense, shall furnish all materials, parts, components, equipment necessary to construct, install, operate, maintain and repair the Pathway and Associated Works or any part thereof, including the steel maze barriers over the Pathway which is further described in Schedule “A”, in accordance with the design approved by CP and in accordance with Article 6 hereof and any specifications required by this Agreement. Any such work shall be performed in accordance with industry standards (if any) and in conformity with all applicable statutes, laws, ordinances, regulations, rules, codes, orders or specifications of any public body or authority having jurisdiction thereon (all of which shall have precedence over the specifications set forth in this Agreement or over instructions which may be given from time to time by CP except where such specifications or instructions result from a requirement of law).

The construction, installation, operation, maintenance, repair, existence and use of the Pathway shall not interfere with CP’s business, activities or operations on the Right of Way, or adversely impact CP Lands, including the real estate value. The Pathway shall not be connected to any CP railway structures including any crossing equipment. All construction and maintenance work on the said planked rail crossing shall be carried out by the CP. No work may be performed within the CP Lands without a CP flagman. All costs and expenses incurred in connection with the construction, maintenance and use of the said crossing shall be borne by the City.

In no event shall CP be responsible for any activities related to the Pathway or the License Area or to monitor or patrol the Pathway and any Persons using or accessing the Pathway. However, CP reserves the right to eject any Person from the License Area that CP deems, in its sole discretion, to be acting in an inappropriate manner. The City agrees to use all reasonable efforts and precautions to prevent members of the public from leaving the Pathway and entering onto the Right of Way. «

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Conformity

The City shall ensure that the Pathway and Associated Works shall be suitable in every respect for the purposes for which it is intended and shall be maintained in a manner satisfactory to CP, and the construction and installation of same shall be in accordance with any applicable laws, regulations, or orders (including orders of Transport Canada, the Canadian Transportation Agency, or its successors) as well as any requirements imposed by any other authority having jurisdiction, in all cases, at the sole cost and expense of the City.

ARTICLE 6 – CONSTRUCTION AND MAINTENANCE

6.1 Regulatory Compliance

The City acknowledges and agrees that it has obtained all necessary approvals for the Pathway and Associated Works, including:

(a) obtaining, at its sole expense, any permits or approvals of any governmental authority, including but not limited to Transport Canada or its successors, and the Canadian Transportation Agency, or any other authority having jurisdiction over the work described in this Agreement or over CP’s railway operations; and

(b) compliance with all applicable laws and regulations, including, the Railway Safety Act and Notice of Railway Works Regulations.

6.2 Maintenance

The City shall schedule all maintenance work in order to avoid disruption of CP’s railway operations. In the event that CP re-schedules, delays or diverts trains to accommodate any maintenance work, the City shall pay to CP the Actual Cost incurred by CP as a result of any re-scheduling, delay or diversion, upon receipt of CP’s invoice therefor together with supporting documentation. CP shall give notice to the City in advance of CP’s decision to re-schedule, delay or divert a train. The City will have the option of suffering a delay in maintenance as an alternative to paying the prorated cost of a re-scheduling, delay or diversion. Such option must be exercised by the City in writing at least forty-eight (48) hours prior to the train schedule.

The City agrees that prior to commencing any construction or installation work, the City and its contractors shall notify CP’s Track Maintenance Supervisor and contact CP’s Call-Before-You-Dig Line at 1-888-248-4410. However, the City agrees that it has the ultimate responsibility to make all reasonable efforts to ascertain the existence and location of all public and private utility facilities (including cable, telephone, fibre optic cables, gas and water lines) as well as protections and relocations on or under the CP Lands, and CP’s approval of the maintenance plans shall not relieve the City from this obligation.

The provisions of this Section 6.2 shall apply mutatis mutandis to any and all construction, installation, operation, maintenance, repair, replacement, removal or any other work with respect to the Pathway.

6.3 Signage

The City agrees to install and maintain at its own expense a minimum of two (2) signs on the License Area indicating that:

(a) CP is the owner of the License Area;

(b) the right to enter the License Area and use the Pathway is by permission of CP;

(c) CP may expel any Person from the Pathway who is not acting appropriately, in CP’s sole discretion;

(d) all Persons who enter upon and use the License Area and Pathway do so at their sole risk; and

(e) access to the Right of Way is strictly prohibited and constitutes trespassing onto CP Lands.

6.5 Minimum Safety Requirements

During the performance of maintenance and other obligations under this Agreement, the City shall comply with CP’s policies, and safety rules and procedures including the Minimum Safety Requirements for Contractors Working on CP Property, attached to this Agreement as Schedule “B”.

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6.6 **Property Protection**

If, during the performance of the City’s maintenance obligations under this Agreement, CP deems it necessary to place watchmen, flagmen, inspectors or supervisors for the protection of CP’s property, operations or the Right of Way, the City shall reimburse CP for the cost and expense of doing so, based upon the Actual Cost incurred by CP. All such protection must be approved and coordinated through CP’s Service Area Manager - Engineering Services.

6.7 **Maintenance**

The City shall perform all maintenance, repairs and clean-up with respect to the Pathway, the Associated Works and License Area, in accordance with City standards and to CP’s reasonable satisfaction during the Term, which obligations hereunder shall include:

(a) inspecting the Pathway and Associated Works on a regular basis to ensure that all remains in good repair and condition;

(b) maintaining the Pathway in a safe condition in accordance with City standards;

(c) maintaining the License Area in a clean condition free of graffiti, waste, litter and any combustible materials;

(d) maintaining all signage required in Section 6.4 in a readable condition, and replacing as necessary;

(e) maintaining any drainage facilities to allow for appropriate drainage from the License Area, and to prevent drainage from accumulating on the Right of Way;

(f) re-grading and resurfacing any holes, indentations, mounds or other irregularities that occur on the Pathway of License Area in accordance with City standards;

(g) controlling and inhibiting the growth of weeds on the License Area through the use of vegetation control products approved by CP’s Environmental Affairs Department; and

(h) any other maintenance or work required by CP to maintain the License Area to CP’s reasonable satisfaction.

The City shall ensure that any of its employees, contractors or agents who enter the License Area to perform any maintenance or repairs are fully qualified and are in full compliance with any Worker’s Compensation legislation.

The City shall ensure that members of the public or other Persons not authorized by the City and CP, are restricted from accessing the License Area while the City is undertaking any maintenance or repair work.

6.8 **Temporary Maintenance Closure**

The City agrees to temporarily close the Pathway, upon receiving fifteen (15) days prior written notice from CP, if CP determines, in its sole discretion, that such temporary closure is necessary or desirable in order to carry out any maintenance or repairs to the License Area, or to the Right of Way. Such written notice shall stipulate the number of days that the Pathway is to remain temporarily closed. In the event that CP determines, in its sole discretion, that an emergency situation exists, requiring such temporary closure to be carried out immediately, CP shall have the right to effect immediate temporary closure of the Pathway without further notice to the City. To the extent that such maintenance or repairs are impeded, hindered or otherwise rendered more costly by the existence of the Pathway, the City agrees to fully indemnify CP for any and all such additional cost immediately upon demand.

6.9 **Damages**

If any damage is done to the track, the ballast or to the Right of Way by the installation, operation, maintenance, repairs, reinstallation, replacement and removal of the Pathway or any part thereof, or any Associated Work, by or on behalf of the City, CP, in its sole discretion, may elect to have the City repair such damage. If not repaired by the City within fifteen (15) days of written notice by CP to the City of such damages, CP may undertake such repair at the sole expense of the City, who shall reimburse CP for such expenses immediately upon receipt by the City of a written statement of such expenses. All such repairs conducted by the City shall be made to CP’s reasonable satisfaction.
7.1 Environmental

The City shall comply with the provisions of any applicable federal, provincial or municipal laws concerning the environment. The City shall be responsible for any Environmental Contamination created or caused as a result of the Pathway and shall indemnify and save harmless CP from and against any and all Claims or Losses in respect thereof. The City shall immediately take all measures which CP, in its sole discretion, based upon applicable safety and regulatory requirements, may consider necessary to keep the License Area in an environmentally clean state and clear of all Environmental Contamination resulting from the use of the License Area, or from the Pathway and the Associated Works. The City shall be solely responsible for the cost of all work carried out to correct any Environmental Contamination which occurs on other lands as a result of its use of the License Area. If requested by CP, the City shall obtain at its sole cost and expense a report from an independent consultant approved by CP verifying the removal of any Environmental Contamination which has been deposited or spilled in, under or upon the CP Lands or any other affected lands, or, if that is not the case, reporting the extent and nature of failure to comply with the provisions of this Section. If the City fails to correct any Environmental Contamination for which it is responsible pursuant to the terms hereof to the satisfaction of CP or any public authority having jurisdiction, CP may undertake the corrective measures necessary, in its sole discretion, and charge the City for the Actual Costs incurred by CP plus fifteen percent (15%) for administrative fees. The City shall pay CP’s invoice immediately upon receipt of each invoice.

Upon termination of this Agreement, the City shall leave the CP Lands free of any Environmental Contamination subject only to any Environmental Contamination that was in existence prior to construction of the Pathway. The onus of establishing that the CP Lands were left in the same environmental condition as they were before the Pathway was constructed shall be upon the City.

The City’s obligations under this Section shall survive termination of this Agreement.

ARTICLE 8 - TAXES

8.1 Taxes

The City shall pay when due and shall indemnify and save harmless CP from and against all applicable goods and services, value added, sales tax, real property tax, or any other tax under any statute, laws, ordinances, regulations, rules, orders, but excluding any tax on or calculated with respect to the net income or capital of CP, with respect to installation or use of the License Area, Pathway or Associated Works. Without limiting the generality of the foregoing, in the event that CP is required to pay any federal goods and services tax relating to such amounts or services, then the City shall fully reimburse CP for such payment immediately upon demand.

ARTICLE 9 - INSURANCE

9.1 Required Insurance Coverage

Throughout the Term, the City shall, at its sole cost and expense, obtain and maintain the following insurance coverage:

(a) Comprehensive General Liability Insurance

Comprehensive general liability insurance with a policy limit of not less than Five Million Dollars ($5,000,000) per occurrence for bodily injury, death and damage to or destruction of property, including the loss of use thereof. The policy shall, by its wording or by endorsement:

(i) include Canadian Pacific Railway Company as additional insured;

(ii) provide a "cross liability" clause which shall have the effect of insuring each person, firm or corporation 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) extend to cover the liabilities assumed by the City under this Agreement;

(iv) provide non-owned auto liability coverage, and

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(b) **Automobile Public Liability and Property Damage Insurance**

Automobile public liability and property damage insurance in an amount not less than Two Million Dollars ($2,000,000) all inclusive covering the ownership, use and operation of any motor vehicles and trailers licensed for use on public highways and which are owned, leased or controlled by the City and used in regards to this Agreement.

(c) **Workers Compensation**

The City shall obtain written advice from the Workers' Compensation Board that they have complied in all respects with the Workers' Compensation Act of Ontario.

The form of the said insurances shall be acceptable to CP and shall be maintained continuously during the term of this Agreement. The policies shall contain an endorsement, which provides that CP shall be given not less than thirty (30) days notice in advance of cancellation, termination, change or amendments restricting coverage. In the event that said insurance policies are allowed to lapse during the Term, this Agreement shall, subject to all the rights and privileges of CP under this Agreement and notwithstanding any other clause herein, forthwith terminate at the option of CP without any notice whatsoever being given to the City. The City shall provide CP with certified evidence of the above policies of insurance.

Any insurance coverage acquired hereunder shall in no manner restrict or limit the liabilities assumed by the City under this Agreement.

9.2 **Contractor Insurance**

In the event the City uses Agents to undertake maintenance of the Pathway and Associated Works, the City shall ensure that such Agents provide the following coverage:

(a) **Contractor Comprehensive General Liability Insurance**

The Agent shall, at its sole cost and expense obtain and maintain comprehensive general liability insurance with a policy limit of not less than Five Million Dollars ($5,000,000) per occurrence for bodily injury, death and damage to or destruction of property, including the loss of use thereof. The policy shall, by its wording or by endorsement:

(i) include Canadian Pacific Railway Company as additional insured;

(ii) provide a "cross liability" clause which shall have the effect of insuring each person, firm or corporation 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) extend to cover the liabilities assumed by the Agent under this Agreement;

(iv) provide non-owned auto liability coverage; and

(v) include the clean up of pollutants or the actual, alleged or threatened discharge, dispersal, release or escape of pollutants as a result of a collision, or overturning of any vehicle.

(b) **Contractor Automobile Public Liability and Property Damage Insurance**

The Agent shall obtain and maintain, at its sole cost and expense, automobile public liability and property damage insurance in an amount not less than Two Million Dollars ($2,000,000) all inclusive covering the ownership, use and operation of any motor vehicles and trailers licensed for use on public highways and which are owned, leased or controlled by the Agent and used in regards to this Agreement.

(c) **All Risk Contractors Equipment Insurance**

The Agent shall obtain and maintain, at its sole cost and expense, all risk contractors equipment insurance for all equipment for which the Agent owns, leases or is legally liable for. All equipment must be insured on a replacement cost basis.

(d) **Contractor Workers Compensation**

The Agent shall obtain written advice from the Workers' Compensation Board or Commission of the Province of Ontario that the Agent has complied in all respects with the Workers' Compensation Act of Ontario.

The form of the said insurances shall be acceptable to CP and shall be maintained continuously during the term of this Agreement. The policies shall contain an endorsement, which provides that CP shall be
given not less than thirty (30) days notice in advance of cancellation, termination, change or amendments restricting coverage. In the event that said insurance policies are allowed to lapse during the term hereof, this Agreement shall, subject to all the rights and privileges of CP under this Agreement and notwithstanding any other clause herein, forthwith terminate at the option of CP without any notice whatsoever being given to the City or its Agent. The Agent shall provide CP with certified evidence of the above policies of insurance.

Any insurance coverage acquired hereunder shall in no manner restrict or limit the liabilities assumed by the City and its Agents under this Agreement.

ARTICLE 10 - INDEMNIFICATION AND WAIVER

10.1 Indemnification and Waiver

The City and its Agent hereby waive and relinquish all claims, causes of action, costs, damages, losses, demands and obligations of any kind or nature whatsoever that the City and its Agents may have against CP, its directors, officers, employees or agents for any injury, including injury resulting in death, loss or damage to property suffered or sustained by the City, and its Agents, or its employees or by any other Person which is based upon, arises out of or is connected with this Agreement or anything done or maintained hereunder or anything not done or maintained as required hereunder except where caused by the negligence of CP.

Except to the extent of CP’s own negligence, the City and its Agents hereby agree to indemnify and save harmless CP and CP’s directors, officers, employees and agents, as follows:

(a) from and against any and all claims, judgement or awards made under worker’s compensation legislation;

(b) from and against any and all Claims or Losses by whomsoever made, brought or prosecuted, in respect of loss or damage to, or destruction of, property, and personal injury including death;

(c) from and against any and all Claims or Losses suffered or incurred by CP or its employees including injuries, as well as those resulting in death, and damage to or destruction of property including CP’s property (including locomotives, railcars and their contents, all other rolling stock, vehicles and equipment); and

(d) any and all fines, expenses and costs suffered, incurred or sustained by CP (including, without limitation, such fines, expenses and costs resulting from the City and its Agents in violation or non-compliance with any Law);

that may arise out of or be connected with (directly or indirectly, wholly or in part) this Agreement or anything done or maintained or not done or maintained as required under it whether or not such claims, demands, awards, actions, proceedings, loss, damages, expenses, injuries, damage or destruction are caused or contributed to by CP or its officers, employees and agents.

For the purposes of this Section, any reference to CP shall include CP and its affiliates, together with the directors, officers, employees, representatives and agents of CP and its affiliates.

The provisions of this Article 10 shall survive expiration or termination of this Agreement.

ARTICLE 11 – DEFAULT AND TERMINATION

11.1 Event of Default

Any of the following events shall constitute an event of default (an “Event of Default”):

(a) the City fails to perform or fulfill any obligation in this Agreement relating to insurance;

(b) the City fails to pay the Fees or other sums required pursuant to this Agreement, and such failure continues for more than fifteen (15) days after notice of non-payment is given by CP;

(c) the City fails to observe or perform or comply with any provision of this Agreement where such failure, in the sole opinion of CP, brings into question issues of safety, interferes with or endangers CP’s railway operations or adversely impacts the Right of Way;
(d) the City permits the License Area or any part of it to be used by any other Person for any purpose other than as expressly provided in this Agreement;

(e) the City ceases to use the Pathway or License Area or any part thereof for the purposes contemplated herein, for a continuous period of ninety (90) days, or the Pathway or License Area is closed to the public for a continuous period of ninety (90) days (except for temporary periods of construction, reconstruction, maintenance or repair which have been approved in writing by CP); or

(f) the City fails to observe or perform any term, provision, covenant or obligation under this Agreement and such failure continues for a period of fifteen (15) calendar days after CP shall have first sent written notice to the City of such failure.

11.2 Remedies Upon an Event of Default

Upon the occurrence of any Event of Default and subject to the notice provisions in this Agreement, where applicable, CP may at its sole option:

(a) terminate this Agreement;

(b) perform any obligation of the City which is then in default for so long and in such manner and as often as CP acting reasonably may determine;

(c) take such other actions as CP acting reasonably may determine necessary in order to stop or prevent any action or conduct which has given rise to the Event of Default; or

(d) charge the City for any sum expended by CP in correcting or curing any Event of Default under or in respect of this Agreement, plus fifteen percent (15%) for administration fees which shall immediately become due and payable. Interest shall accumulate thereon at the annual rate charged by the Bank of Montreal to its prime commercial borrowers plus two percent (2.0%) from the date that any such amounts are incurred by CP until the date when paid; and

(e) CP may exercise any remedy it has by operation of law or equity.

11.3 Exercise of Remedies

(a) CP shall have the right to exercise any and all rights or remedies available at law or equity on account of an Event of Default, including, without limitation, injunctive relief. The City expressly acknowledges that the nature and purpose of this Agreement is such that, in the Event of Default or breach thereof, damages may not be an adequate remedy, and equitable relief, such as an injunction, mandatory or otherwise, may be necessary.

(b) Each right and remedy provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy now or hereafter existing at law or in equity by statute or otherwise. The whole or partial exercise or beginning of the exercise by CP of any one or more of the rights or remedies provided in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by CP of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise.

(c) Notwithstanding anything to the contrary, CP is under no obligation to exercise any particular remedy in respect of any Event of Default. The failure by CP to exercise a remedy, the correction or curing of an Event of Default by CP, or the performance by CP of an obligation of the City shall not in any way constitute a waiver by CP of the applicable Event of Default, and shall not limit any claim CP may subsequently make against the City in respect of an Event of Default.

(d) In the event the License is terminated under this sub-article 11.4, all monies paid by the City for such License will be kept by CP as liquidated damages.

11.4 Termination

In addition to the rights and remedies set out in this Section 11, this Agreement may be terminated at any time without liability for the following reasons:

(a) if this License becomes contrary to any law, regulation, order or other direction of the Canadian Transportation Agency, Transport Canada or any other authority having jurisdiction over CP or its operations, this Agreement shall immediately terminate;
(b) if CP is required by the Canadian Transportation Agency, Transport Canada or any other authority having jurisdiction over CP or its operations, to make changes to its railway track, or related railway facilities as would, in CP's opinion, necessitate the moving and relocating of all or any part of the Pathway, CP shall have the right to terminate this Agreement upon 90 days written notice to the City;

(c) if CP determines in its sole discretion, that: (i) the License Area is required for railway purposes; or (ii) the Pathway or Associated Works interfere or conflict, in any way, with its present or future operations (including any safety concerns); or (iii) the Pathway or Associated Works interfere with CP's right to carry on its business and deal with its assets in the normal course of its business, including the right to alter, reconfigure, relocate or add additional lines of railway and other structures on CP Lands, CP shall have the right to terminate this Agreement at any time upon 90 days written notice to the City; or

(d) either party may terminate this Agreement, without cause, upon giving the other party advance written notice of at least 90 days.

The parties agree that upon any such termination there shall be no refund of Fees paid in advance.

11.5 **Actions upon Termination or Expiration of the Agreement**

Upon the expiration or termination of this Agreement, the City shall:

(a) vacate the License Area and remove all personal property and equipment of the City at its own risk, cost and expense, and promptly and continuously carry out all other obligations applicable to the City to and after termination or expiration as may be required under this Agreement; and

(b) at the option of CP, demolish and remove from the License Area the Pathway, any or all of the Associated Works, or such other improvements as directed by CP, at the City's own risk, cost and expense. The City further agrees to fill and compact all excavations resulting therefrom and leave the License Area in a neat, clean and level condition free and clear of all debris and rubbish all to the reasonable satisfaction of CP, and the City shall make good any and all damages caused by such demolition, removal, filling and compacting.

**ARTICLE 12 – MISCELLANEOUS**

12.1 **Non-interference**

The City shall exercise its rights under this Agreement in a manner which does not interfere with existing or new rights of third parties occupying or using any part of the License Area and CP Lands, including any public or private utilities.

By granting this License, the parties agree that CP is not conveying title to the CP Lands nor any easement or other real property interest that runs with CP Lands nor any right, title or interest not specifically set forth hereunder. CP makes no representation or warranty whatsoever with respect to title to the License Area, or any part thereof. The rights granted to the City herein constitute a license only and shall not under any circumstances whatsoever constitute a right by the City to have or claim exclusive possession of the License Area. CP shall have the right at any time to: (i) enter upon and use the License Area in common with the City and (ii) grant license rights, permit rights, easement rights and/or other rights in, upon, over, under, along with, or on the License Area to third parties including public or private utilities, provided that the City receives prior written notice of the granting of such rights and that such entry, use or granting of rights by CP does not materially and adversely affect the City's permitted uses under this Agreement.

Upon expiration or termination of this Agreement, the License Area shall be free and clear of all rights or claims of the City and its successors and assigns.

12.2 **Registration**

This Agreement shall not be registered by the City against title to CP Lands or otherwise and any such registration by the City shall automatically constitute an event of default under Section 11.**

"PLEASE INITIAL"
12.3 Discharge of Encumbrances

The City covenants and agrees that it shall not create or permit to remain, but will remove and discharge or cause to be removed and to be discharged promptly at its cost and expense any lien, encumbrance, charge, claim of lien, privilege, hypothec or mortgage upon CP Lands or any other lands owned by CP, which arises out of the use hereunder by the City or by reason of labour material or services furnished or claimed to have been furnished for the City under this Agreement.

12.4 Confidential Information

The parties understand and agree that the terms and conditions of this Agreement and all materials, maps, engineering documents, construction plans and other technical information as may be necessarily exchanged between them in fulfilling the provisions and intent of this Agreement are and shall be confidential. This obligation shall continue to bind any party after it shall cease to be a party for whatever reason and shall survive termination of this Agreement for a period of five (5) years.

12.5 Notices

Except as otherwise expressly stated herein, any notice, report or other document required or permitted to be given by any party must be in writing and shall be sufficiently given if delivered by courier or facsimile, or if mailed by prepaid registered mail, and addressed:

to CP:

Canadian Pacific Railway Company
Real Estate Marketing - Eastern Canada
Suite 800, 1290 Central Parkway West
Mississauga, ON LSC 4R3
Facsimile: (905) 803-3228
Attention: Manager, Leasing & Support

to the City:

The Corporation of the City of Peterborough
500 George Street North
Peterborough, Ontario K9H 3R9
Attention: Brian Buchardt, Planner, Urban Design

or at such other place as may be specified in writing. Any notice or other documents, 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, on the third business day following the date on which it is mailed. In the event of an actual or imminent disruption of postal service in Canada, notice shall be delivered by courier.

12.6 General Provisions

(a) The rights, duties, obligations and liabilities of the parties pursuant to the relationship created in this Agreement shall be limited to those rights, duties, obligations and liabilities set out in this Agreement. Nothing herein contained shall be construed to create a partnership or joint venture between the parties. Except as expressly authorized by the terms and conditions hereof, nothing herein contained shall be construed to authorize a party to act as the agent of any other party, or to permit any party to act on behalf of or bind any other party.

(b) If any provision of this Agreement shall be adjudged illegal, invalid or unenforceable, such provision will be deemed not to be part of this Agreement, but all other provisions will remain in full force and effect.

(c) No term, covenant or provision of this Agreement or any right under it or in respect of it shall be deemed to have been waived by a party hereto except by express waiver in writing signed by such party to this Agreement.

(d) This Agreement may not be modified or amended except in writing signed by all parties to the Agreement.

(e) The City shall not assign or transfer this Agreement or any right or interest arising hereunder without the prior written consent of CP.

[Signature]

Agrm #XP4041790A
Page 12 of 13 • Schedules “A” & “B”
1. View to train bridge in area of proposed crossing.

2. Location of proposed ramp up to tracks (south side of tracks).

3. View north from finished section of trail to train bridge.

4. Proposed Crossing Site looking north to Otonabee River Trail.

5. Proposed Crossing Site looking south from Otonabee River Trail.
(f) This Agreement shall be governed by and interpreted in accordance with the laws of Ontario and the parties shall submit to the jurisdiction of the courts in Ontario.

IN WITNESS WHEREOF the parties hereto have affixed their respective corporate seals, attested to by the hands of their duly authorized officers in that behalf, as of the day and year first above written.

CORPORATION OF THE CITY OF PETERBOROUGH

Per:

Name:

Title:

CANADIAN PACIFIC RAILWAY COMPANY

Per:

Name:

Title:
MINIMUM SAFETY REQUIREMENTS FOR CONTRACTORS
WORKING ON CP PROPERTY IN CANADA

Effective September 15, 2010

No job on our Railway will ever be so important that we can't take the time to do it safely.

Work Smart, Stay Safe

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INTRODUCTION

At Canadian Pacific, 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.

1.1 Application

1.1.1 These Minimum Safety Requirements apply to all 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 being conducted and written consent has been provided by Manager in Charge.

1.1.3 Notwithstanding the foregoing, these Minimum Safety Requirements do not apply to other federally certified railway companies, and provincial railway companies who come under federal jurisdiction through various agreements with Transport Canada, and who only operate trains on CP Property under various trackage or interchange agreements. However, these companies may be subject to CP’s Minimum Requirements For Third Party Railway Operators on CP Property.

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, provincial, and municipal governmental body, including those of its agencies, having authority over CP and, or 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, 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;

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(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 proximity (time or space) to CP Personnel;

(h) “Foul of Track” means being in proximity to a track such that the individual or equipment could be struck by a moving train or track unit, or in any case within 4 feet (1.2 meters) of the outside of the nearest rail;

(i) “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.

(j) “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.

(k) “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;

(l) “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;

(m) “Railway Equipment” means trains, locomotives, railcars, track units, hi-rail vehicles and any other equipment designed to operate or move on railway tracks;

(n) “Safety Management Plan” means a documented plan which set out how Work is to be conducted in a safe manner, as required by Applicable Legislation and may also be referred to as Occupational Health and Safety Program, or Safety Management System;

(o) “Work” means the provision of products and services and related activities;

(p) “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.
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, are 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.

3.1 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 licence, 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 Contractor shall provide Contractor Personnel, at its own expense, any and 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.

3.1.5 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 Safety Management 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.

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. Safety Management Plan

4.1 General Requirements

4.1.1 Prior to starting any Work on CP Property, the Contractor must have a written Safety Management 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 for CP, for example:
   (i) Construction, maintenance or inspections of buildings;
   (ii) Working on or adjacent to railway tracks;
   (iii) Maintenance or inspection or railway tracks, crossings or signal systems;
   (iv) Operating Railway Equipment on CP tracks; or
   (v) Co-mingled Work with 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.

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.

6.1 General Requirements

6.1.1 Prior to beginning Work, all Contractor Personnel shall participate in 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 In recognition of the successful completion of such safety orientation CP will provide Contractor Personnel with an identification card, or other form of proof of completion as determined by CP from time to time. This identification authorizes the Contractor Personnel access to CP Property for the purposes of conducting Work. The identification card or other form of proof issued by CP shall be worn or be made visible at all times, or produced upon request and cannot be transferred under any circumstances.

7 SAFETY JOB BRIEFING

7.1.1 Contractor Personnel shall attend all Job Briefings as and when conducted. Contractor Personnel shall be solely and fully responsible for understanding the content of the Job 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 an emergency response plan/evacuation procedures.

7.1.2 Where Co-Mingled Work is being performed, job briefings must include both CP Personnel and Contractor Personnel, and any other third parties. The job 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 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

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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. APPLICABLE LEGISLATION

8.1 General Requirements

8.1.1 Contractor and Contractor Personnel shall be solely responsible for identifying and complying with all Applicable Legislation. CP is governed by federal legislations and therefore, Contractors and Contractor Personnel providing Work to CP are likewise required to comply with all Applicable 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.

8.3 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

8.4.1 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

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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.

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.

9.1.2 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 Security Awareness

9.2.1 Each Contractor shall have a security awareness program that educates Contractor Personnel to:

(a) understand the railway security challenges, rules and procedures;
(b) monitor and report any suspicious persons, activities or objects; and
(c) stay alert to the environment.

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.
10.1 Drug and Alcohol Prohibition

10.1.1 Entry onto CP Property when in possession of, or under the influence of alcohol, intoxicants, narcotics, or controlled substances is strictly prohibited.

10.1.2 Additionally, Contractor Personnel shall be free of any condition which may in any way adversely affect alertness, concentration, responsiveness, or the ability react calmly and responsibly to safety hazards.

10.1.3 CP reserves the right to request drug tests for Contractor Personnel 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.

10.3 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, and game players, I-pods & 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, Railway Equipment or Mobile Equipment, whether on and off CP Property.

10.3.2 The use electronic communication devices, including radio, cell phones, Blackberries, walkie-talkies, PDAs, GPS navigation units, Palm Pilots, 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 Railway Equipment or Mobile Equipment;
(c) while operating power tools, equipment or machinery;
(d) when Foul of Track for any reason; or
(e) whenever use of such a device creates an unsafe condition.

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

10.4 Smoking

10.4.1 Smoking is prohibited on all CP Property, and in or on all highway vehicles, Railway 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.

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;
(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 preferred), 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:

<table>
<thead>
<tr>
<th>Type of Protection</th>
<th>Additional Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hard Hats</td>
<td>Have hi-visibility characteristics which are not obscure by markings or decals</td>
</tr>
</tbody>
</table>

Initialed by 11
<table>
<thead>
<tr>
<th>Type of Protection</th>
<th>Additional Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Safety Eyewear</td>
<td>Tinted safety eyewear must meet Canadian Military Spec. J if operating Railway Equipment</td>
</tr>
<tr>
<td></td>
<td>Transition lenses are discouraged and should be worn with caution when working in changing light conditions</td>
</tr>
<tr>
<td></td>
<td>Personal sunglasses are discouraged and must not be worn when operating Railway Equipment</td>
</tr>
<tr>
<td>Safety Footwear</td>
<td>Have defined heels</td>
</tr>
<tr>
<td></td>
<td>Be laced and tied securely for ankle support</td>
</tr>
<tr>
<td>High-Visibility Apparel</td>
<td>Lime-green is recommended when working on, or near tracks, or when performing Co-mingled Work</td>
</tr>
</tbody>
</table>

11.2.4 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 (Lex, 8);
   (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 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.

12. RAILWAY TRACK PROTECTION

12.1 Contractor's Responsibilities for the Protection of Railway Traffic and Property

12.1.1 Where the Work Site is in close proximity to, or is located on, above, or below railway 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 railway 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 railway tracks and shall ensure that all Contractor Personnel are fully trained and equipped to work safely.

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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 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.

12.2 50 Feet 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 to be within 50 feet of the closest track centerline.

12.2.3 In the event Work must be carried out within 50 of the closet track centerline, written authorization must is 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 50 feet (approximately 15 metres) 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.

12.3 Flagging Protection

12.3.1 When the Work requires Contractor Personnel to be within 50 feet (approximately 15 metres) 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 closet 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.

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12.3.6 A job briefing between the CP flag person and all Contractor Personnel must occur before beginning any Work on or Foul of Track.

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.

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 at 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 metres) away from the ends of Railway Equipment when crossing the track;

(d) ensure a minimum of 50 feet (approximately 15 metres) 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 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

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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.

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 flagperson and only if the Work Site has been properly prepared for such a move. Tracked equipment will require a CP flagperson 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 a 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.

12.7 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.

13 WORKPLACE HAZARDOUS MATERIALS INFORMATION SYSTEM (WHMIS)

13.1 General Requirements
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 MSDS Documents

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 Material Safety Data Sheet (MSDS) to the Manager In Charge; and
(b) keep a copy of the MSDS 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, whether 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;
(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.
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 time. For greater certainty, such Contractor Personnel shall:

(a) hold a valid license for the class of vehicle being operated, in accordance with local provincial 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 11.

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 25 km/h (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; and

(k) where safe and practicable, back vehicles into marked parking spaces to avoid reverse collisions when exiting.

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 (15 mph).

14.6 Loads
14.6.1 Contractor Personnel shall ensure vehicles are loaded according to weight and dimensional requirements as authorized by provincial 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.

15.1 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 Legislations
(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) 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 Use of CP tools by Contractor Personnel is prohibited unless specifically authorized by local CP management.

15.2 Lockout – Hazardous Energy Control

15.2.1 Contractor Personnel shall employ such hazardous energy lockout procedure 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 Lockout – Hazardous Energy.

(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; and

(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 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

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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.

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 & evidence preservation

(d) restore railway 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:

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(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) prevent 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 railway 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 fire fighting equipment and trained Contractor Personnel on site, as required by Applicable Legislation.

17. REPORTABLE ACCIDENTS, INCIDENTS AND INJURIES

17.1 Reportable Injuries

17.1.1 Reportable injuries include any personal injury to:
(a) Contractor Personnel;
(b) any CP Personnel; or
(c) to any third party on CP Property.

17.2 Reportable Accidents

17.2.1 Reportable accidents include any occurrence that results in:
(a) damage to railway tracks, right of way, buildings or other CP Property;
(b) damage to Railway Equipment;
(c) damage to CP highway vehicles;
(d) release of dangerous goods;
(e) spill or loss of transported commodities; and
(f) a threat to the environment.

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17.3 Reportable Incidents

17.3.1 Reportable incidents include:

(a) unintended movement of Railway Equipment;
(b) failure to provide track protection for Workers when required;
(c) movement of Railway Equipment beyond authorized limits;
(d) operation of Railway Equipment by an unqualified person;
(e) unauthorized handling of a track switch;
(f) damage, vandalism or tampering with any railway signals, structures or railway 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.

18.1 Emergency Reporting

18.1.1 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; and
(c) in all cases, also the CP Police Services Communication Center at toll free 1-800-716-9132 from any Canadian or U.S. location.

18.2 Accident, Incident, Injury Reporting

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

(a) immediately report it to the Manager In Charge or to the NMC; and
(b) follow instructions given to protect the scene.

18.2.2 CP does not report Contractor Personnel injuries to WCB. Such WCB reporting remains the Contractor's responsibility.

18.3 Information to Report

18.3.1 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);

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(e) description of any dangerous goods or Hazardous Materials involved;
(f) type & unit number of any Railway 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) such other information that CP may require.

18.4 Environmental Incidents and Spills

18.4.1 In the event of an environmental incident or spill that could have a negative impact on the environment, the Contractor must immediately:
(a) report the incident to the NMC, the Manager In Charge, and the designated CP Contact as per the governing agreement relating to the Work;
(b) take all reasonable actions to contain the spill;
(c) respond in accordance with its emergency response plan; and
(d) 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.

18.5 Additional Contractor Requirements

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

19. CONTRACTOR & CONTRACTOR PERSONNEL ACKNOWLEDGEMENT

19.1 Acknowledgement

Initialed by 23
19.1.1 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, as amended from time to time, and to agree to be bound by them.

19.1.2 These Minimum Safety Requirements For Contractors While Working On CP Property 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.

NOTES:


Work Smart, Stay Safe

Initialed by

24
# Attachment A: Emergency Information Sheet

<table>
<thead>
<tr>
<th>Emergency Contacts</th>
<th>Phone</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>CP Calgary Network Management Center</td>
<td>1-800-795-7851</td>
<td>West of and including Macleod, Ontario.</td>
</tr>
<tr>
<td>CP Montreal Operations Centre</td>
<td>1-800-363-3277</td>
<td>East of Macleod, Ontario plus southern Ontario</td>
</tr>
<tr>
<td>CP Police Services</td>
<td>1-800-716-9132</td>
<td></td>
</tr>
<tr>
<td>CP Railway Traffic Controller Radio Channel</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local Police Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local Fire Services:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Local EMS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hospital</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Physician</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aircraft Service, (if applicable):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Watercraft Service, (if applicable):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Emergency Services</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Emergency Evacuation Route

(Describe nearest evacuation assembly location OR Provide sketch on back)
<table>
<thead>
<tr>
<th>WORK SITE INFORMATION</th>
<th>PHONE</th>
<th>LOCATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Work Site Location Name</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Railway Subdivision &amp; Mileage</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Address, Number and Street</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nearest Town</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CP Manager in Charge</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Emergency Site Access Route</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Describe route from nearest emergency services location in detail including access roads &amp; physical landmarks OR provide sketch on back.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contractor Supervisor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site Telephone</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certified First Aid Attendant</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location of First Aid Supplies at Site</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location of Fire Extinguishing Equipment:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location of WHIMS data sheets</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>UTILITY INFORMATION</th>
<th>PHONE</th>
<th>LOCATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>UTILITIES CONTACT</td>
<td>PHONE</td>
<td>LOCATION</td>
</tr>
<tr>
<td>Natural Gas:</td>
<td>( )</td>
<td></td>
</tr>
<tr>
<td>Electrical:</td>
<td>( )</td>
<td></td>
</tr>
<tr>
<td>Fiber Optic Line:</td>
<td>( )</td>
<td></td>
</tr>
<tr>
<td>Water &amp; Sewer:</td>
<td>( )</td>
<td></td>
</tr>
<tr>
<td>Telephone:</td>
<td>( )</td>
<td></td>
</tr>
<tr>
<td>Cable System:</td>
<td>( )</td>
<td></td>
</tr>
<tr>
<td>Qualified employee(s) in:</td>
<td>( )</td>
<td></td>
</tr>
<tr>
<td>Confined Space Entry, (if applicable):</td>
<td>( )</td>
<td></td>
</tr>
<tr>
<td>Equipment requirements for Confined Space Entry, (if applicable):</td>
<td>( )</td>
<td></td>
</tr>
<tr>
<td>Other:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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[Signature]