

APPENDIX A - Draft Elgin Street CNR Pipe Crossing Agreement

Railway File: _____

City File: _____

Standard Pipe Crossing Agreement No.: _____

THIS AGREEMENT entered into at _____, Province of _____, this ____ day of _____, 20__.

BETWEEN: **CANADIAN NATIONAL RAILWAY COMPANY**, a corporation having its head office at 935 de la Gauchetière Street West, Montreal, Quebec H3B 2M9

(hereinafter the "Railway")

AND: **The Corporation of the City of Brantford**
100 Wellington Square, Brantford, Ontario, Canada, N3T 2M2

(hereinafter the "City")

WHEREAS Order No. 1991-R-381 authorizes the Railway to reconstruct the subway carrying Elgin Street across and under the tracks at Mile 22.44 on the Dundas Subdivision, in the City of Brantford, in the Province of Ontario.

WHEREAS the parties wish to enter into an agreement regarding the maintenance road work consisting of the replacement of the 125mm depth concrete sidewalk on the North side (hereafter "Road Work") and reconstruction of the water mains and storm sewers (hereafter "Utility Work") under the Elgin Street Bridge, within the Railway's right-of-way, at Mile 22.44 on the Dundas Subdivision, in the City of Brantford, Province of Ontario, as shown on Plan(s) No. 3-3004-3, dated/revised May 16th, 2018 (hereinafter the "Plan(s)"), attached hereto as Appendix A and forming an integral part hereof.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the mutual covenants and agreements herein and subject to the terms and conditions set out in this Agreement, the parties agree as follows:

1. The City will carry out the work as shown on the Plan(s) and in accordance with Railway requirements respecting safe railway operations, and no works shall proceed until the Agreement has been signed and the Plan(s) has/have been approved by the Railway.
2. The parties are required to fulfill their respective obligations under the Railway Safety Act. For the purposes of the Railway Safety Act, the City is considered to be the "proposing party" (hereinafter the "proponent").
3. The Utility Work shall be constructed and at all times maintained by the City, in accordance with the *Railway*

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Safety Act and regulations, plans or specifications in force, adopted or approved by Transport Canada respecting pipe crossings under Railways, including the latest *Standards Respecting Pipeline Crossings Under Railways, TC E-10*, attached hereto as Appendix B and forming an integral part hereof, as amended from time to time, and any subsequent replacement document, according to the plans and specifications approved by the Railway.

4. The physical work associated with the Road Work shall be the responsibility of the City.
5. All costs associated with the construction, the replacement, the use and the maintenance of the Utility Work and the Road Work, including flagging, location of underground cables and engineering fees, shall be paid by the City.
6. Under certain circumstances, before giving its permission to proceed to any work, the Railway may, at its discretion, assign an inspector to supervise the work to take place on its property. While so engaged, the inspector's wages and expenses will be chargeable to the City and shall be paid by the City immediately upon request by the Railway.
7. No maintenance work shall be done without first obtaining the Railway's consent. In the event that emergency repairs to the Utility Work and/or the Road Work are required, the City will contact CN's Emergency number at 1-800-465-9239 or such other numbers as may be provided by the Railway.
8. The cost to maintain the substructure, and superstructure of the subway shall be paid by the Railway and all other costs of maintaining the subway including the cost of maintaining the highway approaches, road surface, sidewalks, highway drainage and lighting shall be paid by the City, pursuant to Order No. 1991-R-381 attached hereto as Appendix C.
9. Should it become necessary or expedient for the purposes of repair or improvement on the said Railway that the Utility Work be removed, relocated or modified, the City shall, at its risk and expense, comply with the request of the Railway, failing which the Railway shall have the right to execute or have executed, at the risk and expense of the City, any work required to remove, relocate or modify the said works.
10. The City shall indemnify and hold harmless the Railway from any losses, liens, damages, liability, and expenses ("Damages") incurred by the Railway arising from the City's, or its employees, agents, contractors or sub-contractors', breach of its obligations or warranties under this Agreement; any third party claims associated with or arising under this Agreement; or the City's access to the Railway's or the Railway's affiliates' premises. In the event that the Railway has incurred Damages, the Railway shall notify the City and the City shall indemnify the Railway for the Damages and defend and hold harmless the Railway against any third party legal claims associated with the Damages. No third party claim may be settled without the consent of the Railway, which consent shall not be unreasonably withheld.
11. The City shall immediately carry out all measures which the Railway, in its sole discretion, considers necessary to keep the works free and clear of all environmental contaminants or residue (hereinafter referred to as "Environmental Contamination") resulting from the City's occupation or use of the Railway's premises (hereinafter the "Premises"), such condition to be confirmed (at the option of the Railway and at the sole expense of the City) by a post-termination environmental inspection/audit of the Premises to be carried out by the Railway. The City shall be solely responsible for the cost of all work carried out to correct any Environmental Contamination which occurs on the Premises, or which occurs on other lands as a result of

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the City's occupation or use of the Premises.

- 11.1. Notwithstanding the foregoing, in the event that the Railway, at any time, suspects that a potential source of Environmental Contamination may be either present on the Premises or at risk of escaping from or onto the Premises to or from the adjoining lands, the Railway shall have the right to enter upon the Premises, at all reasonable times and from time to time, in order to inspect the Premises and conduct or require the City to conduct, at the City's expense, such tests as may be required to verify the condition of the Premises. The City shall, at its expense, take any and all action as shall be required to prevent such Environmental Contamination from occurring or escaping from or onto the Premises.
- 11.2. The City shall be responsible to notify the Railway of all Environmental Contamination that the City suspects is occurring on or escaping onto the Premises from adjacent lands or resulting from third party occupation.
- 11.3. If the City fails to correct any Environmental Contamination to the satisfaction of the Railway and any public authority having jurisdiction, the Railway may have such work performed by its employees or agents. The Railway may charge the City from time to time for all the costs incurred by the Railway in correcting such Environmental Contamination, plus fifteen per cent (15%) for overhead, and the City shall pay the Railway's invoice or invoices for such costs within ten (10) days of receipt of each invoice. In the event such remedial work is carried out by any public authority, the cost of such work shall be borne by the City.
- 11.4. The City shall comply with the provisions of any federal, provincial or municipal laws applicable to the Premises with respect to maintaining a clean environment. If any public authority having jurisdiction with respect to environmental protection or fire protection requires the installation of equipment or apparatus on the Premises to improve the environment or to improve fire protection facilities, then the City shall promptly install such equipment or apparatus or take such measures as may be required by such public authority. The City shall be solely responsible for the cost of all work carried out to comply with the requirements of a public authority.
- 11.5. Upon the termination of this Agreement, the City shall leave the Premises in a clean and tidy condition, free of any Environmental Contamination resulting from or occurring during the City's occupation or use of the Premises. If the City has installed any facility on or under the Premises, the City shall remove such facility, subject to the provisions of clause 15. The City shall have the burden of proving that any Environmental Contamination has not resulted from or occurred during its occupation or use of the Premises.
- 11.6. The responsibility of the City to the Railway with respect to the environmental obligations contained herein shall continue to be enforceable by the Railway notwithstanding the termination of this Agreement.
12. The City shall, at its sole expense, provide and maintain in full force and effect during the term of this Agreement, and for any subsequent renewal term, insurance coverage as follows:
 - 12.1. Commercial General Liability, in the amount of no less than 10 million dollars (\$10,000,000) per occurrence, combined single limit for bodily/personal injury (including death), or for damage to or

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destruction of property (including loss of use) caused by accident or occurrence. This policy shall name the Railway as an additional insured and shall contain a cross-liability clause.

- 12.2. The City shall provide the Railway with proof of insurance in the form of an insurance certificate, which certificate shall detail the coverage requirements and shall obligate the insurers to give the Railway a thirty (30) day prior written notice of cancellation or non-renewal, or of any material change affecting the coverage provided therein.
13. The City's property, and any other person's property, shall, while located on the Railway's premises to fulfill any obligation covered by the present Agreement, be deemed to be there at the risk of the City as to damages, loss or theft attributable to any cause whatsoever.
14. This Agreement is binding upon the respective employees, agents, successors and representatives of the Railway and the City; however, the City may not assign or transfer this Agreement, in whole or in part, or any of the rights and privileges resulting there from, without the prior written consent of the Railway. Said consent may not be unreasonably withheld.
15. This Agreement will continue in force from the date hereof to its termination, at any time, by giving a written notice to the other party of a maximum of ninety (90) days prior to the proposed date of termination.
16. Should the City fail to comply with any provisions of this Agreement or should the City fail within thirty (30) days of being notified by the Railway in writing of such default, to:
- i. cure the default, or depending on the seriousness of the default;
 - ii. commence to cure the default provided that the maximum curing period does not exceed one hundred and eighty (180) days from the date of notification

then the Agreement will forthwith be terminated upon receipt of written notice of such termination. In either case, it is understood that the Railway will not reimburse the City for any monies in advance under the provisions of this Agreement.

17. Unless otherwise specified, all notices, accounts, statements, reports, documents or instructions to be given by any party under the terms of this Agreement must be given in writing at the following address:

FOR THE RAILWAY:

Attention: Contracts Department

Facsimile: _____

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FOR THE CITY:

Attention: _____

Facsimile: _____

Notice shall be sufficiently given if delivered by courier or facsimile, or if mailed by prepaid registered mail to the above address or to such other place as may be specified in writing. Any notice or other document, 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 was mailed. In the event of an actual or imminent disruption of postal service in Canada, the notice shall be delivered by courier.

18. At the expiry of the present Agreement or, in the case of cancellation of the Agreement within the period determined in writing by the Railway, the City will, at its risk and expense, remove from the Railway's property all works constructed under this Agreement, as well as all material not belonging to the Railway, except for the metal casing which will remain in place in perpetuity. As for the pipe installed inside the metal casing, the City will, at its discretion, have the option of either leaving the pipe or removing it. The City will be required to fill the casing and any pipes left within with cement and restore the Railway's property to the satisfaction of the Railway. Should the City fail to comply with the requirements of this clause, the Railway reserves the right, at its discretion, to do the work that the City should have done in accordance with this clause, or to have the work done, at the risk and expense of the City. Under such circumstances, all the material located on the Railway's property shall become the property of the Railway, without compensation to the City and without prejudice to the Railway's right to recourse against the City for compensation for any costs or damages incurred by the Railway as a result of the City's default.
19. The City shall not, at any time and in any way, impede the operation, the maintenance or the enjoyment of the Railway's property by the Railway and its representatives. If the Railway deems, at its discretion, that the work being undertaken or the method used to undertake the work will impede the Railway in any way, the Railway may order the work stopped, recommend a different methodology, require that adequate protective measures be taken and generally impose any measures or any combination of measures that the Railway may deem necessary under the circumstances. The City will comply with the requirements of this clause, at its risk and expense and without recourse against the Railway except for damages, if justified.
20. The City agrees not to register this Agreement or to file or register any caveat or other encumbrance based on this Agreement against the title for the said Works without first obtaining the written consent of the Railway.
21. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, and all applicable federal laws and regulations.
22. This Agreement is confidential and the Agreement or any of its terms and conditions shall not be disclosed to any third party, person or association except and to the extent as may be required by law or upon the prior written consent of all parties hereto.
23. The parties agree to settle disputes by way of negotiations. Should negotiations fail, the parties agree that

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any dispute relating to the wording and interpretation of the clauses in this Agreement will be resolved in accordance with the Arbitration Act of the Province in which the works are located.

24. The preamble to this Agreement and all of its Appendices form an integral part of the Agreement.

CANADIAN NATIONAL RAILWAY COMPANY

Signed in the presence of:

Witness Signature

Signature

Witness Name [please print]

Name [please print]

Date

Title [please print]

Date

THE CORPORATION OF THE CITY OF BRANTFORD

Signed in the presence of:

Witness Signature

Signature

Witness Name [please print]

Name [please print]

Date

MAYOR

Date

THE CORPORATION OF THE CITY OF BRANTFORD

Signed in the presence of:

Witness Signature

Signature

Witness Name [please print]

Name [please print]

Date

CLERK

Date

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City _____

PLAN(S)

RTD-10

ORDER 1991-R-381