

APPENDIX A

CPR Rail Limited Right of Access Agreement

THIS AGREEMENT dated this _____day of September, 2017.

BETWEEN:

CANADIAN PACIFIC RAILWAY COMPANY
("CP")
- and -

THE CITY OF WINNIPEG
(the "Grantee")

LIMITED RIGHT OF ACCESS AGREEMENT

RECITALS:

A. The Grantee has requested that CP allow the Grantee the Right to enter upon the CP Lands at Mile 4.12 of the Glenboro Subdivision (the "Lands"), for the purpose of the Saskatchewan avenue bridge reconstruction (the "Works").

NOW THEREFORE THE PARTIES HERETO AGREE AS FOLLOWS:

1. CPR hereby grants to the Grantee a limited, revocable right and license to enter onto the CP Lands for the purpose of completing the Works, for a period of 6 Months (the "Term"), commencing the 1st day of October, 2017, all subject to the terms and conditions as set out in this agreement and at the Grantee's expense. The rights granted to the Grantee under the agreement shall terminate at the end of the Term, unless extended by agreement of CP.
2. The Grantee shall, during the term of the agreement, give the local Roadmaster (or designate) of CP at least 72 hours prior notice of the Grantee's intention to enter upon the Lands. This notice shall **not include** Saturdays, Sundays or holidays. The entry onto the Lands shall, if required by CP, be subject to the supervision of a representative of CP whose instructions shall be strictly followed and whose wages and expenses for such supervision shall be paid by the Grantee upon receipt of an invoice from CP, however such supervision shall not relieve or diminish any of the Grantee's obligations under this agreement. The Grantee agrees that CP may refuse entry to the Lands during the Works for any period of time as CP in its sole discretion may deem necessary in order that the movement of its trains along the tracks on the Lands will not be interfered with or endangered.

Once the scope of work has been determined with the Roadmaster, if assistance from CP personnel is required (flagging, track protection, etc.) all charges for this work will be the responsibility of the Grantee.

3. This license shall allow entry by the Grantee, its employees or agents. All persons entering upon the Lands relating to the matters set out herein shall assume all risk of such use of the Lands and CP shall not be liable for any injury or death, loss, damage, expense, or liability whatsoever to any such person entering upon the Lands for the purpose set out in this agreement, except in the event of negligence of CP or its employees or agents. Except in the event of negligence of CP or its employees or agents, the Grantee shall indemnify and save harmless CP against all claims and demands arising or resulting from any injury, death, loss, damage, claim, action, demand or liability whatsoever in relation to the access being granted to the Grantee, its employees or agents.

4. Except in the event of negligence of CP or its employees or agents, the Grantee agrees to indemnify and save harmless CP from any and all actions or causes of actions, claims, demands, costs, expenses, or liabilities whatsoever that CP may put or may suffer either directly or indirectly by reason of the access and use by the Grantee of the Lands as granted herein.
5. The provisions of paragraphs 3 and 4 herein shall survive termination or expiration of this agreement.
6. The **Grantee** agrees to remove all materials from CP's lands as part of the Works to the satisfaction of CP.
 - a) at the end of the term of this agreement,or,
 - b) within a one (1) month period of this license being revoked by CP as per paragraph 1,and restore any surface or subsurface disturbance or damage to the satisfaction of CP.
7. **Prior** to the commencement of the Work, the Grantee or any agent acting on its behalf will comply with CP's insurance requirements as stipulated in Appendix A attached hereto.
8. The Grantee shall comply with all federal, provincial, municipal laws, regulations, rules or guidelines that may apply to the license granted hereunder and the activities of the Grantee or its agents pursuant to the license.
9. The Grantee shall not assign or transfer this Agreement or the rights or privileges conferred therein without the consent in writing of CP first obtained.
10. All persons entering upon the Lands relating to the matters set out herein will be governed by CP policy "Minimum Safety Requirements for Contractors Working on Railway Property" This document is attached in Appendix B.

IN WITNESS OF WHICH the parties have executed this agreement with effect as of the date first above written.

CANADIAN PACIFIC RAILWAY COMPANY

Authorized Signatory

THE CITY OF WINNIPEG

Authorized Signatory

Witness

APPENDIX "A"

CANADIAN PACIFIC RAILWAY COMPANY (CP)

INSURANCE REQUIREMENTS FOR GRANTEE FOR WORKS PERFORMED ON AND/OR IN PROXIMITY TO THE RAILWAY OR WITHIN RAILWAY RIGHT OF WAY

During the term of the construction or re-construction of any works on and/or in proximity to the railway or within the railway right-of-way and before any work is started, the Grantee and/or its agents shall effect and maintain with insurance companies, satisfactory to the Canadian Pacific Railway Company, the following liability insurances:

Grantee and/or its agents, at its sole cost and expense, shall take out and keep in full force and effect and pay all premiums for, throughout the term and during such other time as this agreement remains in force, the following insurance:

i) comprehensive general liability insurance covering the activities conducted by the Grantee and/or its agents and any other sub-contractor and those for whom Grantee and/or its agents is responsible. Such policies shall have inclusive limits of not less than FIVE MILLION (\$5,000,000.00) DOLLARS for each occurrence involving bodily injury, death or property damage, or such higher limits as the Railway may from time to time reasonably require and shall:

(a) name CP as an additional insured

(b) contain 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;

(c) extend to insure the liabilities herein assumed by the Grantee and/or its agents ;

(d) include but not limited to the clean-up of pollutants or the actual, alleged or threatened discharge, dispersal, release or escape of pollutants;

(e) provide non-owned automobile liability coverage;

ii) automobile liability and property damage insurance with an inclusive limit of not less than TWO MILLION (\$2,000,000.00) DOLLARS or such other amount as CP may reasonably require from time to time covering the ownership, use and operation of any motor vehicle for use on public highways and which are owned, leased or controlled by the Grantee and/or its agents:

iii) Such policies shall not be terminated, canceled or materially altered unless written notice of such termination, cancellation or material change is given by the insurers to CP at least thirty (30) days prior to the effective date thereof.

iv) Worker's Compensation - Statutory in compliance with the requirements of the province of the place of Work.

v) CP shall have no obligation to examine such certificate(s) or to advise Grantee if its Insurance coverage is not in compliance with this agreement. Acceptance of any certificate(s) which are not compliant with the requirements set out herein shall in no way whatsoever imply that CP has waived its insurance requirements.

vi) All policies of insurance stipulated in this Appendix will be with insurers acceptable to the Railway and in a form satisfactory to the Railway, and the Grantee and/or its agents will see that a copy of all policies or certificates of insurance are delivered to CP (address below) prior to the date that the Grantee and/or its agents commences operations and prior to any insurance renewal thereof.

Risk Management
Canadian Pacific Railway Company
7550 Ogden Dale Road SE
Calgary, AB., T2C 4x9

vii) Any insurance coverage acquired by the Grantee and/or its agents hereunder will, in no manner, restrict or limit the liabilities assumed by the Grantee and/or its agents under this agreement.

viii) The insurance coverage required to be maintained pursuant this agreement shall be primary and not excess of any other insurance that may be available. Unless otherwise provided above, all insurance coverage shall take place in the form of an occurrence basis policy and not a claims made policy.