

The Corporation of the Town of Tecumseh

By-Law Number 2022-097

Being a by-law to authorize the execution of a Infrastructure Contract (Crossing and Permission to Access) Agreement between The Corporation of the Town of Tecumseh and VIA Rail Canada

Whereas The Corporation of the Town of Tecumseh (Town) has applied to VIA Rail Canada (VIA) for permission to construct, use and maintain a construct, two (2) 44 m long steel casings across the railway owned by VIA at Mile 99.31 on the Chatham Subdivision, located in the Town.

And Whereas under Section 5 of the *Municipal Act 2001*, S.O. 2001 c.M.25, the powers of a municipality shall be exercised by its Council by by-law.

Now Therefore the Council of The Corporation of The Town of Tecumseh enacts as follows:

1. **That** the Mayor and the Clerk be and they are hereby authorized and empowered on behalf of The Corporation of the Town of Tecumseh, to execute an Infrastructure Contact Agreement between The Corporation of the Town of Tecumseh and VIA Rail Canada, dated the 13th day of December, 2022, a copy of which Agreement is attached hereto and forms part of the by-law and to do such further and other acts which may be necessary to implement the said Agreement.
2. **That** this by-law shall come into force and take effect upon on the date of the third and final reading thereof.

Read a first, second, third time and finally passed this 13th day of December, 2022.

Gary McNamara, Mayor

Jennifer Alexander, Acting Clerk



INFRASTRUCTURE CONTRACT (CROSSING AND PERMISSION TO ACCESS)

VIA Contract No.	38672
Other Party	Corporation of the Town of Tecumseh
VIA Contract Administrator	Paul Charbachi
VIA Department	VIA Infrastructure / Transportation and safety

INFRASTRUCTURE CONTRACT (CROSSING AND PERMISSION TO ACCESS)

BETWEEN:

VIA RAIL CANADA INC.

3, Place Ville-Marie, Suite 500, Montréal, Québec,
H3B 2C9

(Hereinafter “**VIA**”)

AND:

Corporation of the Town of Tecumseh

917 Lesperance Road, Tecumseh, Ontario, N8B 1W9

(Hereinafter the “**Applicant**”)

THE PARTIES AGREE AS FOLLOWS:

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

1.1 In this Contract, unless the context requires otherwise, the following terms and expressions have the meaning mentioned below:

- 1.1.1 “VIA and its Representatives” The terms “VIA and its Representatives” shall include, collectively and individually, VIA, its directors, officers, shareholders, employees, mandataries, agents, servants, representatives, subcontractors, consultants and those for whom VIA is in law responsible.
- 1.1.2 “Applicant and its Representatives” The terms “Applicant and its Representatives” shall include, collectively and individually, the Applicant, its directors, officers, shareholders, employees, mandataries, agents, servants, representatives, subcontractors, consultants and those for whom the Applicant is in law responsible.
- 1.1.3 “Claims” The term “Claims” shall, in particular, include all claims, costs, charges, losses, liabilities, damages, demands, legal actions, Attorney Fees and expenses from whatever nature, source and kind in any manner. “Claims” shall also include any awards made against VIA and its Representatives under any statute for the protection of workmen.
- 1.1.4 “Attorney Fees” The terms “Attorney Fees” shall include, without limitation, attorneys’ costs and fees, of whatever nature, reasonably incurred in the context of:

VIA	Applicant
-----	-----------

- (i) a judicial action (judicial and extra judicial costs and fees); and/or
- (ii) a dispute arising from an enforcement or interpretation of this Contract or any other circumstances directly or indirectly related to the performance or non-performance of this Contract.

1.1.5 “Extrinsic Elements” The term “Extrinsic Elements” shall include any document or information, whether written or oral, regardless of the nature of the medium, with the exception of the information and documents specifically mentioned in this Contract. For example, an Extrinsic Element shall include any negotiation, correspondence, draft contract, letter of intent, etc.

2. PREAMBLE, SUBCONTRACTS AND APPENDICES

- 2.1 The preamble to this Contract, its attached Subcontracts to the extent that they have been checked and all its Appendices form an integral part hereof.
- 2.2 In the event of this Contract’s interpretation, the stipulations, terms and conditions of the Sub-Contracts shall prevail over those of the preamble, of the Appendices and of the General Terms and Conditions.

3. COMPLIANCE WITH LAWS

- 3.1 The Applicant and its Representatives shall comply with all applicable laws, including environmental laws and the *Railway Safety Act* as well as all federal regulatory requirements and acknowledge having received a copy of the General Safety Rules attached as Appendix “A” and agree to fully abide by them. The Applicant and its Representatives shall exercise caution at all times when near railway tracks or corridor or in the vicinity of an active railway track, or performing work near railway tracks or corridor or in the vicinity of an active railway track, and remain alert to the approach of trains, engines or cars, or other railway equipment from either direction and at any times.
- 3.2 The Works (as defined in Infrastructure Sub-Contract “A” attached hereto) shall be constructed and at all times maintained at the Applicant’s sole cost and expense in accordance with the *Railway Safety Act*, R.S.C. 1985, c. 32 (4th Supp.) and all rules, requirements, regulations, directives, orders or plans adopted or approved by the Canadian Transportation Agency, Transport Canada, or any predecessor or successor governmental agency or body whose rules, requirements, regulations, directives or plans may have effect on the Works. The Applicant agrees to observe and perform all the terms and conditions of the said rules, requirements, regulations, directives, orders or plans with respect to construction and maintenance of the Works.

4. EXPULSION IN THE EVENT OF VIOLATION

- 4.1 The Applicant and its Representatives acknowledge that should they neglect, fail or refuse to abide fully with the stipulations, terms and conditions of this Contract, they may be expelled from the

VIA	Applicant
-----	-----------

Premises (as defined in Infrastructure Sub-Contract “B” attached hereto), up until such time that the matter has been resolved at VIA’s full satisfaction.

5. SAFETY AND CAUTION NEAR TRACKS

- 5.1 No person shall, without lawful excuse, enter on land on which a line work is situated.
- 5.2 The Applicant and its Representatives must keep the railway line clear and shall not place any material or equipment on railway tracks.
- 5.3 The Applicant and its Representatives shall not, at any time and in any way, obstruct or impede the operation, the maintenance or the enjoyment of VIA’s property by VIA and its Representatives or foul the track with equipment and shall act with care and diligence at all times. If VIA deems, without restriction, that the Works being undertaken or the method used to undertake the Works will impede VIA in any way, VIA may order the Works stopped, recommend a different methodology, require that adequate protective measures be taken and generally impose any measures or any combination of measures that VIA may deem necessary under the circumstances. The Applicant shall comply with the requirement of this Section, at its risk and expense and without recourse against VIA.
- 5.4 The Applicant and its Representatives shall take all necessary measures with respect to safety and fire protection.
- 5.5 If applicable, the Applicant and its Representatives shall, prior to the commencement of the Works, ensure that all employees and subcontractors who will be performing the Works participate in a compulsory safety briefing and information session, and shall complete VIA Online Safety Test (www.erailsafe.com/canada). VIA shall have the right to verify compliance to the safety rules.

6. CONTRACTUAL LIABILITY AND INDEMNITY

- 6.1 The Applicant and its Representatives shall fully indemnify and save harmless VIA and its Representatives, and shall furthermore act as warrantor and take up VIA and its Representatives’ defence to answer for all financial consequences for all Claims, including those for bodily injuries, death and any Claims of third parties, of whatever source, nature and kind in any manner, howsoever arising with respect to the Applicant and its Representatives’ obligations under the Contract provided that the Applicant may assert any valid defense against a third party Claim and the Applicant is not a warrantor with respect to the negligent acts or omissions of VIA and its Representatives where the Applicant has duly performed its obligations under the Contract.
- 6.2 The Applicant and its Representatives are liable for any material loss resulting from their actions, omissions, fault and negligence.
- 6.3 The Applicant and its Representatives shall waive all Claims they may have against VIA and its Representatives arising out of an accident or otherwise, resulting from VIA and its Representatives’ operations, ownership, use or possession of any property, or any person under

VIA	Applicant
-----	-----------

VIA and its Representatives' control, provided the claim does not arise from VIA and its Representatives' wilfully reckless act or act of gross negligence.

- 6.4 The Applicant agrees to obtain a waiver of liability from its Representatives. Such waiver and indemnity shall apply notwithstanding the failure by the Applicant to obtain any written and signed waivers from its Representatives. The Applicant and its Representatives further agree to pay compensation for any damage caused by the Applicant and its Representatives to the property of VIA and its Representatives or a third party, and to indemnify VIA and its Representatives against any Claim that a third party may present to it regarding damage so caused to its property or injury (including death) arising out of the use of VIA's property.
- 6.5 The Applicant and its Representatives agree that in no event they will enter into any settlement which involves the admission of liability by VIA and its Representatives, the imposition of any liability on VIA and its Representatives without VIA's prior and express written consent. VIA and its Representatives agree that in no event they will enter into any settlement which involves the admission of liability by the Applicant and its Representatives, the imposition of any liability on the Applicant and its Representatives without the Applicant's prior and express written consent.

7. INSURANCE

- 7.1 Upon the signing of this Contract and without restricting the generality of Section 6 "Contractual Liability and Indemnity" of the General Terms and Conditions of this Contract, the Applicant and its Representatives shall obtain and maintain for the term of this Contract the following insurance policies:
- 7.1.1 **Commercial General Liability Insurance** preferably an "occurrence" form, covering the liability of the Applicant and its Representatives, for bodily injury, including death, and damage to property for a minimum amount of ten million dollars (\$10,000,000.00) per occurrence. The insurance policy shall include VIA as an additional insured and shall provide for the following coverage: contractual liability, cross liability, contingent liability, liability arising out of the ownership, use and operation of passenger railway equipment and non-owner automobile insurance.
- 7.1.2 **Automobile Insurance** covering the Applicant and its Representatives' liability for any bodily injury, including death, caused by or arising out of or attributable to the vehicles, owned, rented or leased by the Applicant and its Representatives for a minimum amount of ten million dollars (\$10,000,000.00) per event.
- 7.2 The policies mentioned in Section 7 "Insurance" must include a rider specifying an obligation to serve VIA sixty (60) day written notice of any important modification or any termination of coverage. The automobile insurance shall have a standard thirty (30) day written notice.
- 7.3 Prior to the commencement of this Contract, the Applicant shall provide VIA with insurance certificates issued with VIA as an additional insured, dated and signed by an authorized representative of the Applicant's insurers and evidencing all insurance requirements mentioned

VIA	Applicant
-----	-----------

above including, if applicable. Notwithstanding the above, VIA reserves the right to ask for a certified copy of one or more insurance policy mentioned under Section 7 “Insurance” and the Applicant hereby agree to provide such copy within thirty (30) days of VIA’s request.

- 7.4 New insurance certificates evidencing renewal of the required insurance policies shall be submitted to VIA within thirty (30) days after renewal.
- 7.5 If the Applicant fails to obtain or maintain in force the insurance policies provided for under Section 7 “Insurance”, VIA has the right to obtain such policies of its own initiative and provide proof to the Applicant, who shall then pay the associate cost upon VIA’s request, or agree to let VIA deduct these cost from any amount owing.
- 7.6 The parties agree that VIA’s silence following:
- (a) the Applicant’s failure to comply with Section 7 “Insurance” or any of its subsections, whether or not VIA is aware of such failure; or
 - (b) the Applicant’s issuance of an insurance certificate or a policy that fails to comply with the requirements contained in this Contract,

does not exonerate the Applicant from these failures, nor does it constitute a waiver of the Applicant’s obligations by VIA.

- 7.7 The acquisition and maintenance of the above insurance by the Applicant and its Representatives shall in no manner be construed as to restrict or waive the liabilities, responsibilities or obligations of the Applicant and its Representatives under this Contract.
- 7.8 With regard to this Contract, any failure by the Applicant to comply with the obligations provided for under Section 7 “Insurance”, or any of its subsections, shall be deemed to be a material and substantial breach of this Contract. In such circumstances, VIA may withhold all sums and payments owed to the Applicant, in addition to all rights stipulated by law or by this Contract, until such failure has been corrected by the Applicant.

8. CONFIDENTIALITY AND NON-DISCLOSURE UNDERTAKING

- 8.1 The Applicant and its Representatives shall maintain confidential all information pertaining to VIA and this Contract acquired before, during and after the term of this Contract, and all reports, specifications, drawings and other documentation produced hereunder, and shall not disclose or use same for any purposes other than for the performance of the obligations of this Contract.
- 8.2 The Applicant agrees to comply with all applicable federal and provincial laws relative to the protection of personal information with respect to this Contract. VIA reserves its right to visit the Applicant to evaluate and verify the Applicant’s compliance with any applicable federal and provincial law relative to the protection of personal information.

VIA	Applicant
-----	-----------

8.3 This Contract and the information contained herein are confidential, subject to the provisions of the *Access to Information Act*, R.S.C. (1985), c. A-1 and the *Privacy Act*, R.S.C. (1985), c. P-21.

8.4 The provisions of Sections 8.1, 8.2 and 8.3 of this Contract shall survive the expiration or any termination of this Contract.

9. AMENDMENT

9.1 In no case shall this Contract be amended without the written consent of the parties.

10. NO ASSIGNMENT

10.1 This Contract is binding upon VIA and its Representatives and upon the Applicant and its Representatives. However, neither this Contract, in whole or in part, nor any right, interest or privilege granted hereunder may be assigned or sublicensed without the prior written consent of VIA (unless it is to a parent subsidiary or affiliate of the Applicant as defined in the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 in which case no consent is required). Said consent may not be unreasonably withheld.

10.2 Notwithstanding the above, in the event of the transfer of the Railway for continued operations, VIA will have the right to assign this Contract to any subsequent owner.

11. SURVIVAL OF THE OBLIGATIONS

11.1 All obligations and liabilities that, by their nature, shall survive the termination or expiration of this Contract shall remain in full force and effect.

12. VIOLATION OF INTELLECTUAL PROPERTY RIGHTS

12.1 In no way may this Contract be interpreted as granting the Applicant the right to reproduce, in any manner howsoever, the names, logos, texts, trademarks or works protected by copyright without the consent of VIA and its Representatives.

12.2 The Applicant acknowledges that trademarks and copyrighted works are valuable assets for VIA.

13. NOTICES

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

VIA: **VIA RAIL CANADA INC.**
3, Place Ville-Marie, Suite 500
Montreal, Quebec,
H3B 2C9
Contract No.: 38672

VIA	Applicant
-----	-----------

- 18.1 At VIA's request, the Applicant and its Representatives shall provide and cause all persons assigned to this Contract to provide personal data for security clearance purposes. Such security clearance may include finger printing.

19. FULL AND ENTIRE CONTRACT

- 19.1 The parties acknowledge that this Contract faithfully constitutes the expression of their will and their common intention and is, therefore, the complete and entire agreement between the parties. It is understood that any Extrinsic Element does not represent the expression of the will of the parties nor their common intention and will not be used for the interpretation or application this Contract. Accordingly, the parties expressly agree not to adduce any Extrinsic Element as evidence in any dispute or litigation.

20. ACKNOWLEDGEMENT

- 20.1 The parties acknowledge that:

20.1.1 this Contract is written in easily legible type in plain language that is easily understood by the parties and constitutes the expression of will of the parties. The parties have entirely read and understood this Contract. If needed, the parties received adequate explanations on the nature and scope of the clauses in this Contract from an advisor of their choice; and

20.1.2 the parties negotiated this Contract jointly and this Contract shall be construed neither against nor in favour of either party, but rather so that each clause is given the meaning derived from this contract as a whole.

21. LANGUAGE

- 21.1 It is upon the express wish and agreement of the parties that this Contract is written in the English Language. *Ce contrat est rédigé dans la langue anglaise selon la volonté et l'entente expresses des parties.*

TERMS AND CONDITIONS FOR WORKS

22. MAINTENANCE OR WORK ON VIA'S PROPERTY

- 22.1 No maintenance work on VIA's property or any work that could affect VIA's property shall be done without first notifying VIA and obtaining VIA's written consent.
- 22.2 In no case shall the Applicant and its Representatives perform Works on VIA's property or any work that could affect VIA's property without an agent of VIA present, at the expense of the Applicant.

23. PLAN AND SAFE RAILWAY OPERATIONS

VIA	Applicant
-----	-----------

- 23.1 The Applicant shall carry out the Works as shown on the Plan approved by VIA, and in accordance with VIA's requirements respecting safe railway operations. No Works shall proceed until this Contract has been signed and Plan has been approved by VIA.

24. ARRANGEMENTS WITH UTILITY COMPANIES

- 24.1 The Applicant shall be fully responsible, at the expense of the Applicant, for making arrangements with, locating, taking necessary precaution, and notifying utility companies, including fiber optics companies, affected by the planned Works and shall provide VIA in writing with location of such utilities.

25. PERFORMANCE OF THE WORK

- 25.1 The Applicant shall assign duly qualified personnel to perform the Works and shall co-operate with VIA or any other legislative authority to ensure that all work is performed in accordance with all applicable regulations and by-laws and that all permits and authorizations are obtained by the Applicant. The Applicant shall be responsible to pay for all charges imposed by such regulations and by-laws. The Applicant shall also provide VIA with a road closure plan.

26. IMPROVEMENT OF THE RAILWAY LINE

- 26.1 Should it become necessary or expedient for the purpose of repair or improvement of the railway line that the Works be removed, relocated or modified, the Applicant shall, at its risk and expense, comply with the request of VIA, provided that VIA shall use good faith efforts to minimize any impact on the Works or interruption in the Applicant's provisioning of its services using the Works in connection with planning and executing any such repair or improvement of the railway line. VIA shall only request such removal where it is the only practical option available to VIA. If the Applicant fails to comply with the request of VIA to remove, relocate or modify the Works within a reasonable period of time, VIA shall have the right to execute or have executed, at the risk and expense of the Applicant, any work required to remove, relocate or modify the said Works.

27. ENVIRONMENTAL OBLIGATIONS

- 27.1 The Applicant shall, upon written notice from VIA, carry out all measures which VIA, without restriction, considers necessary to keep the Works free and clear of all environmental contaminants or residue (hereinafter referred to as "**Environmental Contamination**") resulting from the Applicant's occupation or use of the Premises, such condition to be confirmed (at the option of VIA and at the sole expense of the Applicant) by a post-termination environmental inspection/audit of the Premises to be carried out by VIA. The Applicant 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 the Applicant's occupation or use of the Premises, and will complete such work in a timely fashion and in all cases in accordance with applicable laws and regulations.

VIA	Applicant
-----	-----------

- 27.2 Notwithstanding the foregoing, in the event that VIA, 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 as a result of the Works of the Applicant, VIA 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 Applicant to conduct, at the Applicant's expense, such tests as may be required to verify the condition of the Premises. The Applicant shall, at its expense, take any and all action as shall be required to prevent such Environmental Contamination, which is attributable to the Works of the Applicant, from occurring or escaping from or onto the Premises.
- 27.3 The Applicant shall notify VIA in a reasonably prompt manner of all Environmental Contamination that the Applicant suspects is occurring on or escaping onto the Premises from adjacent lands or resulting from third party occupation to the extent such Environmental Contamination is caused by or related to the Applicant's Works.
- 27.4 If the Applicant fails to correct any Environmental Contamination caused by its Works within a reasonable timeframe to the satisfaction of VIA and of any public authority having jurisdiction, VIA and its Representatives may execute or have executed such work. VIA may charge the Applicant for all the costs incurred by VIA in correcting such Environmental Contamination, including, without limitation, judicial and extrajudicial fees and costs, plus fifteen per cent (15%) for overhead. The Applicant shall pay VIA's invoice or invoices for such costs within thirty (30) 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 Applicant.
- 27.5 The Applicant shall comply with the provisions of any federal, provincial or municipal laws applicable to the Applicant's Works on 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 as a result of the Applicant's Works to improve the environment or to improve fire protection facilities, then the Applicant shall promptly install such equipment or apparatus or take such measures as may be required by such public authority. The Applicant shall be solely responsible for the cost of all work carried out to comply with the requirements of a public authority where such requirements are imposed as a result of the Applicant's Works.
- 27.6 Upon expiration or termination of this Contract, the Applicant shall leave the Premises in a clean and tidy condition, free of any Environmental Contamination resulting from the Applicant's occupation or use of the Premises. If the Applicant has installed any facility on or under the Premises, the Applicant shall remove such facility, subject to the provisions of Section 31 of the General Terms and Conditions. The Applicant shall have the burden of proving that any Environmental Contamination which could reasonably have been caused by the Applicant's Works or use of the Premises has not resulted from or occurred during its occupation or use of the Premises.
- 27.7 The responsibility of the Applicant and its Representatives to VIA and its Representatives with respect to the environmental obligations contained herein shall continue to be enforceable by VIA notwithstanding the termination of this Contract.

VIA	Applicant
-----	-----------

28. APPLICANT'S AND OTHER'S PROPERTY

- 28.1 The Applicant's property, and any other person's property, shall, while located on the Premises to fulfill any obligation covered by the present Contract, be deemed to be there at the risk of the Applicant as to damages, loss or theft attributable to any cause whatsoever except to the extent caused by VIA's negligence or willful conduct or breach of the terms of this Contract.

29. CANCELLATION OF THE WORKS

- 29.1 If the Applicant cancels the Works less than 24 hours before they were scheduled to be performed, a five hundred dollars (\$500) fee shall be billed to the Applicant and a new application to schedule the Works shall be filled by the Applicant and submitted to VIA.

30. QUALITY CONTROL

- 30.1 All drawings must be signed and sealed by a professional competent in the province where the Works will be executed. All federal regulations compliance must be clearly marked in the foot note of the drawings.
- 30.2 A quality control as well as a detailed methodology report must be supplied to VIA.

31. REMOVAL OF THE WORKS

- 31.1 Prior to the expiry of this Contract (under Section 2.1 of Infrastructure Sub-Contract "A") or, in the event of cancellation of this Contract, the Applicant shall, within a period of six (6) months, at its risk and expense, remove from VIA's property all Works constructed under this Contract. Should the Applicant fail to comply with the requirements of this Section, VIA reserves its right, without restriction, to do the work that the Applicant should have done in accordance with this Section, or to have the work done, at the risk and expense of the Applicant. Under such circumstances, all the material located on VIA's property shall become the property of VIA, without compensation to the Applicant and without prejudice to VIA's right to recourse against the Applicant for compensation for any costs or damages incurred by VIA as a result of VIA's default.

[The signatures are found on the following page]

VIA	Applicant
-----	-----------

We have understood, consented to and signed this Contract.

VIA RAIL CANADA INC.		CORPORATION OF THE TOWN OF TECUMSEH	
Signature:		Signature:	
Name:	Paul Charbach	Name:	
Title:	Sr. Engineer, Infrastructure	Title:	
Location:		Location:	
Date:		Date:	

INFRASTRUCTURE SUB-CONTRACT “A”
UNDERGROUND PIPES CROSSING ■

WHEREAS the Applicant hereby applies to VIA for permission to construct, use and maintain two (2) 44m long steel casings (406mm dia. and 508mm dia.) (hereinafter the “**Works**”) across the railway line owned by VIA at Mile 99.31 on the Chatham Subdivision, located in the municipality of The Corporation of the Town of Tecumseh, Province of Ontario as per drawings.

NOW THEREFORE, the parties agree as follows:

1. PERMISSION TO CONSTRUCT, USE AND MAINTAIN

- 1.1 VIA grants the Applicant permission to construct, use and maintain the Works across the railway line owned by VIA located at 99.31 Chatham Subdivision (hereinafter the “**Premises**”) for the duration of this Contract.

2. TERM

- 2.1 This Contract shall become effective on upon last signature and shall continue for a period of ninety-nine (99) years (hereinafter the “**Initial Term**”). Upon mutual agreement of the parties prior to the expiration of the Initial Term, this Contract may be renewed and extend. The Contract may be terminated at any time by either party, for a serious reason as determined by such party, acting reasonably, on the provision of a one (1) year written notice in writing to the other party. In the event of any failure by either party to comply with any provisions of this Contract, and upon such party being notified in writing by defaulting party alleging such failure and failing to remedy the failure within ninety (90) days of receiving such notice, the Contract may be forthwith terminated upon the non-defaulting party providing written notice of termination to the defaulting party.
- 2.2 The Works shall not start prior to the commencement of this Contract.

VIA	Applicant
-----	-----------

INFRASTRUCTURE SUB-CONTRACT “B”
PERMISSION TO ACCESS PREMISES AND LIABILITY RELEASE

WHEREAS the Applicant hereby applies to VIA to have access to the property owned or occupied by VIA located at 99.31 Chatham Subdivision (hereinafter the “**Premises**”);

NOW THEREFORE, the parties agree as follows:

1. PERMISSION

- 1.1 VIA grants the Applicant permission to have access to the Premises only for crossing improvement of Lesperance Road and associate underground work such as relocation fo rail signals as requested by VIA and installation of two (2) 44m long steel casings to remain empty for future utilities. The Applicant undertakes not to use its permission to have access to the Premises for any other purposes. Any work required by the Applicant on the Premises *other* than the installation of the two (2) steel casings, will require VIA’s prior written consent on a case-by-case basis; provided, however that the Applicant shall have no obligation to pay an additional time the fee indicated in Section 3 of Infrastructure Sub-Contract “A” so long as such work is for the purpose of housing utilities in the casings.

2. TERM

- 2.1 VIA grants the Applicant permission to have access to the Premises for the duration of this Contract, being from ninety-nine (99) years from this Contract’s last signature date.

3. COST

- 3.1 In consideration of the rights granted by this Contract, the Applicant agrees to pay VIA the sum of One thousand eight hundred two dollars and fifty cents dollars (\$1802.50) plus any applicable taxes. This fee is payable in advance by certified cheque.

VIA	Applicant
-----	-----------

INFRASTRUCTURE SUB-CONTRACT “C”
RAILWAY CROSSING ■

For the purpose of this Sub-Contract “C”, the Applicant is hereinafter called “Road Authority”.

WHEREAS Order No. 22-08584 of the Canadian Transportation Agency, attached as Appendix “D”, authorized The Corporation of the Town of Tecumseh to construct Lesperance Road Crossing located in the Municipality of Tecumseh, Province of Ontario (hereinafter the “**Highway**”) across the railway owned by VIA at mileage 99.31 of the Chatham subdivision (hereinafter the “**Railway**”);

WHEREAS the owner of the right-of-way and the Railway at this location is now VIA;

WHEREAS VIA is the Senior party at this location;

WHEREAS the mileage at the crossing of the Highway and the Railway (hereinafter the “**Crossing**”) is now 99.31 Chatham Subdivision.;

WHEREAS VIA has upgraded the warning system at the Crossing by installing a constant warning device and gates;

NOW THEREFORE, the parties agree as follows:

1. WARNING DEVICE

1.1 The Crossing is now equipped with flashing light, bell and gates.

2. TERM

2.1 This Contract shall become effective upon signature of both parties and shall continue until either VIA discontinues its Railway operations, or until the Road Authority closes the Highway, at this location, or upon written consent of both parties.

3. COSTS

3.1 The cost of maintenance and operation of the automatic warning system is to be borne and paid fifty percent (50%) by the Road Authority and Fifty (50%) by VIA.

3.2 The cost of maintaining the Highway approaches to the Crossing shall be paid by CORPORATION OF THE TOWN OF TECUMSEH .

3.3 The cost of Crossing rehabilitation shall be paid Fifty (50%) by the Road Authority and Fifty (50%) by VIA .

VIA	Applicant
-----	-----------

4. ACCOUNTS

- 4.1 VIA shall prepare all accounts on a monthly basis for work performed by VIA and send same to the Road Authority for payment using rates as stipulated in the latest *Guide to Railway Charges for Crossing Maintenance and Construction* as issued by the Canadian Transportation Agency. In the event that the Canadian Transportation Agency should discontinue publishing same, the accounts shall be prepared in accordance with standard rates adopted by the railway industry in Canada, or in their absence, in accordance with standard rates adopted by VIA. If there should be no standard rates in effect for work done by VIA, the accounts shall be based on actual costs plus allowances for VIA's overheads.

5. SIGHT LINE CLEARING

- 5.1 All initial and on-going sight line clearing is to be in accordance with *Transport Canada Railway-Highway Crossing at Grade Regulations* and TC Grade Crossings Standards (or any subsequent amendment thereof). The physical work associated with the sight line clearing of Road Authority's property shall be the responsibility of the Road Authority and the costs associated therewith shall be paid by the Road Authority. The physical work associated with the sight line clearing of VIA's property shall be the responsibility of VIA and the costs associated therewith shall be paid by VIA.

6. CONTRACT FOR FURTHER RECONSTRUCTION

- 6.1 If, at any time during the continuance of this Contract, either party wishes to widen, relocate, make more narrow, or otherwise upgrade the Crossing, the terms associated with the further reconstruction will be agreed to by the parties by means of a written contract between them. The same legal and regulatory compliance requirements as this Contract will apply to the contract for further reconstruction.

7. TERMINATION OF THIS CONTRACT

- 7.1 Upon termination of this Contract, unless terminated by a Crossing relocation or reconstruction, the terms of which are to be set out in a subsequent agreement, VIA Rail Canada Inc. as the initiator of the original Crossing, shall be responsible for all future costs associated with the existence of the Crossing, including the cost of maintaining the Crossing or dismantling the Crossing and restoring VIA's and the Road Authority property to its original or mutually agreed upon condition.
- 7.2 Notwithstanding the termination of this Contract, unless terminated by a Crossing relocation or reconstruction, the obligations of VIA Rail Canada Inc. set forth in this Section shall survive any such termination and shall remain in force until discharged.

8. COPY TO THE CANADIAN TRANSPORTATION AGENCY

VIA	Applicant
-----	-----------

- 8.1 Upon execution, VIA may file a copy of this Contract with the Canadian Transportation Agency.

VIA	Applicant
-----	-----------

APPENDIX “A”
GENERAL SAFETY RULES

See contract documents in the related rail request application

VIA	Applicant
-----	-----------

APPENDIX “B”
PLAN OF THE WORKS

See attached stamped drawings

VIA	Applicant
-----	-----------

APPENDIX “C”
PERMISSION TO ACCESS VIA’S PROPERTY
AND RELEASE OF LIABILITY

In consideration of VIA Rail Canada Inc. (hereinafter “**VIA**”) permitting the Corporation of the Town of Tecumseh (hereinafter the “**Applicant**”) and its employees, mandataries, agents, servants, representatives, subcontractors, consultants and those for whom the Applicant is in law responsible (hereinafter the “**Applicant and its Representatives**”) to enter upon the property owned or occupied by VIA located at Lesperance Road, Tecumseh (hereinafter the “**Premises**”) for the purposes of crossing improvement of Lesperance Road and associate underground work such as relocation fo rail signals as requested by VIA and installation of two (2) 44m long steel casings to remain empty for future utilities (hereinafter the “**Permission**”) at Mile 99.31 on the Chatham Subdivision.

LIABILITY AND INDEMNITY

The Applicant and its Representatives shall fully indemnify and save harmless VIA and its Representatives, and shall furthermore act as warrantor and take up VIA and its Representatives’ defence to answer for all financial consequences for all Claims, including those for bodily injuries, death and any Claims of third parties, of whatever source, nature and kind in any manner, howsoever arising with respect to the Applicant and its Representatives’ obligations under the Contract provided that the Applicant may assert any valid defense against a third party Claim and the Applicant is not a warrantor with respect to the negligent acts or omissions of VIA and its Representatives where the Applicant has duly performed its obligations under the Contract.

The Applicant and its Representatives are liable for any material loss resulting from their actions, omissions, fault and negligence.

The Applicant and its Representatives shall waive all Claims they may have against VIA and its Representatives arising out of an accident or otherwise, resulting from VIA and its Representatives’ operations, ownership, use or possession of any property, or any person under VIA and its Representatives’ control, provided the claim does not arise from VIA and its Representatives’ wilfully reckless act or act of gross negligence.

The Applicant agrees to obtain a waiver of liability from its Representatives. Such waiver and indemnity shall apply notwithstanding the failure by the Applicant to obtain any written and signed waivers from its Representatives. The Applicant and its Representatives further agree to pay compensation for any damage caused by the Applicant and its Representatives to the property of VIA and its Representatives or a third party, and to indemnify VIA and its Representatives against any Claim that a third party may present to it regarding damage so caused to its property or injury (including death) arising out of the use of VIA’s property.

The Applicant and its Representatives agree that in no event they will enter into any settlement which involves the admission of liability by VIA and its Representatives, the imposition of any liability on

VIA	Applicant
-----	-----------

VIA and its Representatives without VIA's prior and express written consent. VIA and its Representatives agree that in no event they will enter into any settlement which involves the admission of liability by the Applicant and its Representatives, the imposition of any liability on the Applicant and its Representatives without the Applicant's prior and express written consent.

SAFETY AND CAUTION NEAR TRACKS

No person shall, without lawful excuse, enter on land on which a line work is situated.

The Applicant and its Representatives must keep the railway line clear and shall not place any material or equipment on railway tracks.

The Applicant and its Representatives shall not, at any time and in any way, obstruct or impede the operation, the maintenance or the enjoyment of VIA's property by VIA and its Representatives or foul the track with equipment and shall act with care and diligence at all times. If VIA deems, without restriction, that the Works being undertaken or the method used to undertake the Works will impede VIA in any way, VIA may order the Works stopped, recommend a different methodology, require that adequate protective measures be taken and generally impose any measures or any combination of measures that VIA may deem necessary under the circumstances. The Applicant shall comply with the requirement of this Section, at its risk and expense and without recourse against VIA.

The Applicant and its Representatives shall take all necessary measures with respect to safety and fire protection.

If applicable, the Applicant and its Representatives shall, prior to the commencement of the Works, ensure that all employees and subcontractors who will be performing the Works participate in a compulsory safety briefing and information session, and shall complete VIA Online Safety Test (www.erailsafe.com/canada). VIA shall have the right to verify compliance to the safety rules.

COMPLIANCE WITH LAWS

The Applicant and its Representatives shall comply with all applicable laws, including environmental laws and the *Railway Safety Act* as well as all federal regulatory requirements and acknowledge having received a copy of the General Safety Rules attached as Appendix "A" and agree to fully abide by them. The Applicant and its Representatives shall exercise caution at all times when near railway tracks or performing work near railway tracks and remain alert to the approach of trains, engines or cars from either direction and at any times.

The Works shall be constructed and at all times maintained at the Applicant's sole cost and expense in accordance with the *Railway Safety Act*, R.S.C. 1985, c. 32 (4th Supp.) and all rules, requirements, regulations, directives, orders or plans adopted or approved by the Canadian Transportation Agency, Transport Canada, or any predecessor or successor governmental agency or body whose rules, requirements, regulations, directives or plans may have effect on the Works. The Applicant agrees to

VIA	Applicant
-----	-----------

observe and perform all the terms and conditions of the said rules, requirements, regulations, directives, orders or plans.

MAINTENANCE OR WORK ON VIA'S PROPERTY

No maintenance work on VIA's property or any work that could affect VIA's property shall be done without first notifying VIA and obtaining VIA's written consent.

In no case shall the Applicant and its Representatives perform work on VIA's property or any work that could affect VIA's property without an agent of VIA present, at the expense of the Applicant.

FLAGGING PROTECTION

Under no circumstances may equipment be used within ten (10) meters of the nearest track without flagging protection provided by VIA at the expense of the Applicant. This minimum distance may be increased/decreased by VIA, dependent on the type of work to be done. Said protection must be arranged at least ten (10) working days in advance of the beginning of the work.

This Permission expires ninety-nine (99) years from its last signature date.

VIA RAIL CANADA INC.		CORPORATION OF THE TOWN OF TECUMSEH	
Signature:		Signature:	
Name:	Paul Charbachi	Name:	
Title:	Sr. Engineer, Infrastructure	Title:	
Location:		Location:	
Date:		Date:	

APPENDIX “D”
ORDER NO. [INSERT THE ORDER'S NUMBER]
OF THE [INSERT THE NAME OF THE AGENCY OR AUTHORITY]

VIA	Applicant
-----	-----------