

**DRAFT AGREEMENT
To Establish a Joint Process for the Review of
the Milton Logistics Hub Project**

Between

**The Minister of Environment and Climate Change
- and -
The Chair of the Canadian Transportation Agency**

PREAMBLE

WHEREAS the Minister of Environment and Climate Change has statutory responsibilities pursuant to the *Canadian Environmental Assessment Act, 2012*; and

WHEREAS the Canadian Transportation Agency has statutory responsibilities pursuant to the *Canada Transportation Act, S.C. 1996, c. 10*; and

WHEREAS the former Minister of the Environment, having considered whether the Canadian National Railway Company's proposed Milton Logistics Hub Project may cause significant adverse environmental effects, and the public concerns related to such possible significant environmental effects, referred the environmental assessment of the project to a review panel in accordance with subsection 38(1) of the *Canadian Environmental Assessment Act, 2012*; and

WHEREAS aspects of the project require approval from the Canadian Transportation Agency pursuant to section 98 of the *Canada Transportation Act* and the project is subject to an environmental assessment under the *Canadian Environmental Assessment Act, 2012*; and

WHEREAS the Chair of the Canadian Transportation Agency and the Minister of Environment and Climate Change have together determined that a joint process for the review of the project will ensure an efficient single window process for the Canadian National Railway Company, those localities that will be affected by the project, and other review participants; and

WHEREAS the Chair of the Canadian Transportation Agency and the Minister of Environment and Climate Change have together determined that the joint process for the review of the project should be conducted in a manner consistent with the spirit and requirements of their respective authorities, under the *Canada Transportation Act* and the *Canadian Environmental Assessment Act, 2012*, as applicable;

WHEREAS the Chair of the Canadian Transportation Agency and the Minister of Environment and Climate Change have entered into this agreement as partners to ensure that the joint process for the review of the project can draw upon the experience and expertise of both organizations; and

THEREFORE, the Chair of the Canadian Transportation Agency and the Minister of Environment and Climate Change together hereby establish a joint process for the review of the project in accordance with the provisions of this Agreement and the Terms of Reference, attached as Appendix 1 to this Agreement.

1. Definitions

For the purpose of this Agreement and of the Appendix attached to it,

“Application” means the Canadian National Railway Company's application made pursuant to section 98 of the *Canada Transportation Act* (CTA) for approval to construct railway lines which form a component of the Milton Logistics Hub Project;

“CEA Agency” means the Canadian Environmental Assessment Agency established under the *Canadian Environmental Assessment Act, 2012*;

“CEAA 2012” means the *Canadian Environmental Assessment Act, 2012*;

“Canadian Transportation Agency” means the Canadian Transportation Agency established under the CTA;

“CN” means the Canadian National Railway Company;

“CTA” means the *Canada Transportation Act*, S.C. 1996, c. 10;

“EIS Guidelines” refers to the *Guidelines for the Preparation of an Environmental Impact Statement for the Milton Logistics Hub Project*. The EIS Guidelines were released on July 20, 2015;

“Environment” means the components of the Earth as defined in CEAA 2012, and includes:
(a) land, water and air, including all layers of the atmosphere,
(b) all organic and inorganic matter and living organisms, and
(c) the interacting natural systems that include components referred to in (a) and (b);

“Environmental Assessment” has the same definition as in CEAA 2012;

“Environmental Effects” means, for the purposes of the review, those effects described in section 5 of CEAA 2012;

“Environmental Impact Statement (EIS)” refers to CN's detailed technical document that identifies the potential adverse environmental effects of the project, measures to mitigate those effects, and an evaluation of whether the project is likely to cause any significant adverse environmental effects. The EIS was received by the CEA Agency on December 7, 2015;

“Follow-up Program” means a program for:
(a) verifying the accuracy of the environmental assessment of the project, and
(b) determining the effectiveness of any mitigation measures;

“Indigenous” describes those Aboriginal peoples of Canada as defined in the *Constitution Act, 1982*, subsection 35(2) including the Indian, Inuit and Métis peoples of Canada;

“Interested Party” means any person who the Review Panel determines, with respect to the project, is directly affected by the carrying out of the project or has relevant information or expertise;

“Interests of Localities” means as referenced in section 98 of the CTA;

“Minister” means the Minister of the Environment and Climate Change;

“Mitigation Measures” means, in respect of the project, the elimination, reduction or control of the adverse environmental effects of the project, and includes restitution for any damage to the environment caused by such effects through replacement, restoration, compensation or any other means;

“**Project**” means the Canadian National Railway Company's proposed Milton Logistics Hub, a designated project pursuant to CEAA 2012, and components of which are reviewable pursuant to the CTA;

“**Public Registry**” means the Canadian Environmental Assessment Registry Internet site established under section 78 of CEAA 2012;

“**Report**” means the document produced by the Review Panel, pursuant to section 5 of this Agreement, and the Review Panel's Terms of Reference;

“**Review Panel**” means the panel established by this agreement, and which will consist of members appointed by the Minister of Environment and Climate Change pursuant subsection 42(2) of CEAA 2012 through the process described in section 3 of this agreement; and

“**Signatories**” means the Chair of the Canada Transportation Agency and the Minister.

2. Establishment of the Joint Process

2.1. A joint process is hereby established:

2.1.1. To create a Review Panel for the purposes of the review of the project in a manner consistent with the *Canadian Environmental Assessment Act, 2012*.

2.1.2. For the Canadian Transportation Agency to hear comments from the localities and responses by CN concerning the location of the railway lines taking into consideration requirements for railway operations and services and interests of the localities that will be affected by the lines consistent with the *Canada Transportation Act*.

2.2. The Chair of the Canadian Transportation Agency will, pursuant to section 13 of the *Canada Transportation Act*, assign a Member of the Canadian Transportation Agency (CTA Member) for the purpose of making the Canadian Transportation Agency's determination under section 98 of the CTA.

3. Constitution of the Review Panel

3.1. The Review Panel will consist of three members, appointed by the Minister, one of whom shall be the CTA Member. The Minister shall appoint one of the members to be the chairperson.

3.2. The Review Panel shall be unbiased and free from any conflict of interest relative to the project and have knowledge or experience relevant to the anticipated environmental effects and transportation issues associated with the project.

3.3. In the event that a Review Panel member resigns or is unable to continue to work, the remaining members shall constitute the Review Panel, unless otherwise determined by the Minister.

3.4. In the event that the CTA Member resigns or is otherwise unable to continue to work on the Review Panel, the Chair of the Canadian Transportation Agency will assign a replacement member, as per section 2.2, who will be appointed to the Review Panel as per section 3.1.

4. Secretariat

- 4.1. Administrative, technical, and procedural support requested by the Review Panel shall be provided by a Secretariat, which shall be the responsibility of the CEA Agency.
- 4.2. To ensure the Secretariat has the relevant expertise to support the Review Panel, one staff member of the Canadian Transportation Agency will be seconded to the CEA Agency to participate on the Secretariat. Secretariat staff shall be free from any conflict of interest, and shall be guided in their work and professional conduct by the Values and Ethics Code for the Public Service.
- 4.3. The Secretariat will report to the Review Panel and will be structured so as to allow the Review Panel to conduct its review in an efficient and cost-effective manner.

5. Record of the Review Panel and Report

- 5.1. A public registry will be maintained by the CEA Agency during the course of the review in a manner that provides for convenient public access and for the purposes of compliance with sections 79 to 81 of CEAA 2012.
- 5.2. Subject to sections 45(3), (4), and (5) and 79(3) of CEAA 2012, the public registry will include all records relating to the review, including submissions, correspondence, hearing transcripts, exhibits and other information received by the Review Panel and all public information produced by the Review Panel relating to the review of the project.
- 5.3. Following the completion of the public hearing, once the Review Panel determines that it has all of the information that it requires, the Review Panel will close the record for the review, and shall prepare a report that will meet the requirements described in paragraph 43(1)(d) of CEAA 2012.
- 5.4. The report will be conveyed to the Minister within the overall time limit for the environmental assessment established by the Minister.
- 5.5. After the report is submitted, the CEA Agency will maintain the public registry in accordance with its normal practices and procedures.
- 5.6. The CEA Agency will be responsible for the translation of public notifications, releases, and the report prepared by the Review Panel into the official languages of Canada. The CEA Agency will use all reasonable efforts to expedite the translation of the report.

6. Decision Making

- 6.1. Following the submission of the Review Panel report, the Minister will, within 150 days, make a decision under section 52 of CEAA 2012, and release a decision statement under section 54 of CEAA 2012.
- 6.2. Should the Minister's decision statement under section 54 of CEAA 2012 allow the project to proceed, the Canadian Transportation Agency will make a determination in accordance with section 98 of the CTA, taking into account the information described in section 2.1.2 and the record of the environmental assessment.
- 6.3. The Review Panel members that are not Members of the Canadian Transportation Agency will not participate in the section 98 determination.

7. Amending this Agreement

- 7.1. The terms and provisions of this Agreement may be amended by written memorandum executed by the Minister and the Chair of the Canadian Transportation Agency.
- 7.2. Subject to section 49 and 62 of CEEA 2012, this Agreement may be terminated at any time by an exchange of letters signed by both signatories.

8. Signatures

WHEREAS the signatories hereto have put their signatures

The Honourable Catherine McKenna
Minister of the Environment and Climate Change

Scott Streiner
Chair and Chief Executive Officer
Canadian Transportation Agency

Date

Date

Appendix 1 Terms of Reference

Pursuant to subsection 42(2) of CEAA 2012, the Minister must establish the Review Panel Terms of Reference. These Terms of Reference establish the mandate of the Review Panel and also set out the framework of the process that the Review Panel will follow during the course of the review.

1. Project Description

- 1.1 On March 23, 2015, the CEA Agency received the Project Description from CN. CN is proposing the construction and operation of a logistics hub, designed to transfer containers between trucks and railcars. The project would include a railway yard with more than 20 kilometres of track and be located in Milton, Ontario, about 50 kilometres west of Toronto.
- 1.2 The description of the project for the purpose of the environmental assessment is the construction, operation and where relevant, decommissioning of project components and physical activities, including mitigation measures that are proposed to mitigate the predicted environmental effects of the project. The requirements for a detailed description of the project are provided in the EIS Guidelines and the description was included in CN's EIS.
- 1.3 The project includes all components associated with the project that fall within CN's care and control. The project will include the construction and operation of the following project components:
 - yard tracks;
 - realignment of the existing mainline;
 - double track extension of the mainline;
 - work pads;
 - truck entrance/gate;
 - operations and maintenance buildings (including administration building, and garage);
 - storm water management ponds;
 - vegetation clearing, grading and berms;
 - realignments of Indian Creek and Tributary A;
 - realignment of overprinted petroleum pipelines;
 - Lower Base Line Road crossing;
 - intersection improvements;
 - surface paving activities and paved surfaces used to support operation of the Project; and
 - vehicular activity within the project footprint or awaiting access to the project site.

2. Mandate of the Review Panel

- 2.1 The Review Panel shall conduct an assessment of the environmental effects of the project in a manner consistent with the requirements of the CEAA 2012.
- 2.2 In accordance with section 43 of CEAA 2012, the Review Panel must:
 - a. conduct an environmental assessment of the project;
 - b. ensure that the information that it uses when conducting the environmental assessment is made available to the public;
 - c. hold hearings in a manner that offers any interested party an opportunity to participate in the environmental assessment;
 - d. prepare a report with respect to the environmental assessment that sets out:

- i. the rationale, conclusions and recommendations of the Review Panel, including any mitigation measures and follow-up program; and
- ii. a summary of any comments received from the public, including interested parties;
- e. submit the report with respect to the environmental assessment to the Minister; and
- f. on the Minister's request, clarify any of the conclusions and recommendations set out in its report with respect to the environmental assessment.

2.3 The Review Panel shall have all the powers and duties of a panel as described in section 45 of CEAA 2012.

2.4 The Review Panel shall receive and take into account information provided by participants with respect to whether any significant adverse environmental effects may be justified in the circumstances.

3. Factors to be Considered

3.1 The Review Panel must take into account the following factors listed in subsections 19(1) and 19(3) of CEAA 2012:

- a. the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other physical activities that have been or will be carried out;
- b. the significance of the effects referred to in section 3.1(a);
- c. comments from the public that are received in accordance with CEAA 2012;
- d. mitigation measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the project;
- e. the requirements of the follow-up program in respect of the project;
- f. the purpose of the project;
- g. alternative means of carrying out the project that are technically and economically feasible and the environmental effects of any such alternative means;
- h. any change to the project that may be caused by the environment; and
- i. community knowledge and Aboriginal traditional knowledge.

3.2 As required by the Minister pursuant to paragraph 19(1)(j) of CEAA 2012, the Review Panel must also take into account the following matters that are relevant to section 98 of the CTA:

- a. requirements for railway operations and services; and
- b. the interests of the localities that will be affected by the line.

3.3 The Review Panel shall accept as part of its record of proceedings information presented concerning measures proposed to mitigate and/or avoid any identified adverse effects related to paragraph 19(1)(j) of CEAA 2012. The CTA Member will take into consideration the requirements for railway operations and services and the interests of the localities that will be affected by the line.

3.4 For greater certainty, the Review Panel will not make any conclusions or recommendations as to the reasonableness of the location of the railway line, which will be subsequently determined by the Canadian Transportation Agency pursuant to section 98 of the CTA.

4. Aboriginal Rights and Interests

The Review Panel shall accept as part of its record, and review information from Indigenous groups related to the nature and scope of potential or established Aboriginal or Treaty rights in the area of the project, as well as information on the potential adverse environmental effects that the project may have on potential or established Aboriginal or Treaty rights, and information regarding any measures proposed to avoid or mitigate the potential adverse effects of the project

on potential or established Aboriginal or Treaty rights. The Review Panel may also receive information provided in this regard by CN, interested parties, federal authorities or provincial departments.

- 4.1 The Review Panel will not make any conclusions or recommendations as to:
- a. the validity of potential or established Aboriginal or Treaty rights asserted by an Aboriginal group or the strength of such claims;
 - b. the scope of the Crown's duty to consult an Aboriginal group;
 - c. whether the Crown has met its respective duty to consult or accommodate in respect of rights recognized and affirmed by section 35 of the *Constitution Act, 1982*; and
 - d. whether the project would be an infringement of potential or established Aboriginal or Treaty rights.
- 4.2 The Review Panel shall accept as part of its record of proceedings:
- a. information presented regarding the location, extent and exercise of potential or established Aboriginal or Treaty rights that may be affected by the project;
 - b. information presented that relates to any potential adverse impacts of the project on potential or established Aboriginal or Treaty rights. Information received by the Review Panel may also be relevant to its assessment of the environmental effects of the project, including those environmental effects that might adversely impact potential or established Aboriginal or Treaty rights. Relevant information could include, but is not limited to:
 - i. any potential effects on current uses of lands and resources by Aboriginal persons for traditional purposes;
 - ii. any effects on hunting, fishing, trapping, cultural and other traditional uses of the land (e.g. collection of medicinal plants, use of sacred sites), as well as related effects on lifestyle, culture, health and quality of life of Indigenous persons;
 - iii. alterations to access into areas used by Aboriginal people for traditional uses;
 - iv. adverse effects of the project on the ability of future generations to pursue traditional activities or lifestyle; or
 - v. any effects of the project on heritage and archaeological resources in the project area that are of importance or concern to Indigenous communities;
 - c. information presented concerning measures proposed to mitigate and/or avoid any identified adverse effects on potential or established Aboriginal or Treaty rights and interests.
- 4.3 The Review Panel will provide a summary of such information received in the Review Panel Report.
- 4.4 The Review Panel may use the information received through the Review Panel process to make recommendations which, if implemented, would avoid or mitigate the environmental effects of the project, including those environmental effects that might adversely affect potential or established Aboriginal or Treaty rights.

5. Process and Timelines for the Review

The Secretariat

- 5.1 The Secretariat will report to the Review Panel and provide administrative, technical, and procedural support as requested.

Review Panel Process and Timelines

- 5.2 The Review Panel shall fulfill its mandate and submit its report to the Minister within 430 days of the date of establishment of the Review Panel. The 430 days does not include the time period(s) between when the Review Panel may request information from CN and receipt of the requested information by the Review Panel.

- 5.3 The Review Panel may request clarification of its Terms of Reference pursuant to its requirements under section 43 of CEAA 2012 by sending a letter signed by the chairperson to the President of the CEA Agency setting out the request. Upon receiving such a request, the President is authorized to act on behalf of the Minister to provide to the Review Panel such clarification. The President shall use best efforts to provide a response to the Review Panel within 14 calendar days. The Review Panel shall continue with the review to the extent possible while waiting for the response in order to adhere to the time periods of the original Terms of Reference. The Review Panel shall notify the public of any clarifications to its Terms of Reference pursuant to its requirements under section 43 of CEAA 2012.
- 5.4 The Review Panel may seek an amendment to its Terms of Reference pursuant to 43 of CEAA 2012 by sending a letter signed by the chairperson to the Minister and setting out the request. As appropriate, the Minister may delegate to the President of the CEA Agency the authority to act on the Minister's behalf and consider and respond to any request from the Review Panel to amend the Terms of Reference. The Minister, or the President in case of such delegation, shall use best efforts to ensure a response is provided to the Review Panel's letter within 14 calendar days. In the case that an amendment to the Terms of Reference is sought with respect to sections 3.2 of the terms of reference any decision and response shall be made jointly with the Chair of the Canadian Transportation Agency. The Review Panel shall continue with the review to the extent possible while waiting for the response in order to adhere to the timelines of these Terms of Reference. Any requests for amendments under this article, as well as any amendments to these Terms of Reference, shall be posted on the public registry.
- 5.5 The Review Panel shall undertake its mandate in three stages:
- Stage 1 – Review of the sufficiency of the EIS;
 - Stage 2 – Public hearing; and
 - Stage 3 – Report preparation.

Stage 1 – Review of the Sufficiency of the EIS

- 5.6 The EIS will be provided to the Review Panel upon appointment of the Members. The Review Panel will initiate a comment period of not less than 60 days to allow Indigenous groups, government bodies, the public, and other interested parties to submit comments to the Review Panel on the sufficiency and technical merit of the EIS.
- 5.7 If the Review Panel determines that the EIS is not sufficient to proceed to a public hearing, it shall require additional information to be provided by CN.
- 5.8 The Review Panel will allow for the review of and comment on additional information it receives from CN.
- 5.9 The process described in sections 5.7 and 5.8 above will apply, with any necessary adjustments, until such time as the Review Panel determines it has sufficient information to proceed to a public hearing.
- 5.10 The Review Panel may request specialist or expert information or knowledge with respect to the project, including those interests identified by localities potentially affected by the railway line, from federal or provincial authorities in possession of such information or knowledge.
- 5.11 The Review Panel may retain the services of independent non-government experts to provide advice on certain subjects with respect to the environmental assessment of the project. The Review Panel shall notify Indigenous groups, government bodies, CN, the public and other interested parties of the names of experts retained by the Review Panel, and any documents obtained or created by the experts that are submitted. This shall exclude any information subject to solicitor-client privilege.

- 5.12 The Review Panel may require any participant to appear at the public hearing to address the document(s) they have created or obtained and that were submitted to the Review Panel and made public in accordance with the preceding paragraphs.

Stage 2 – Public Hearing

- 5.13 Once the Review Panel determines that the EIS contains sufficient information to proceed to a public hearing, it will schedule and announce the public hearing. The Review Panel shall provide a minimum of 45-day notice of the start of the public hearing.
- 5.14 The Review Panel shall issue procedures for the conduct of the public hearing. These procedures will allow for the hearing to be open to Indigenous groups, government bodies, CN, the public and other interested parties, subject to subsection 45(3) of CEEA 2012, and be conducted in a manner that offers all interested parties an opportunity to participate in the hearing process.
- 5.15 The Review Panel shall, where practicable, hold the public hearing in the area(s) in closest proximity to the project to provide convenient access for potentially affected Indigenous and local communities.
- 5.16 The Review Panel shall take into account the timing of traditional activities in Indigenous and local communities when setting the time and location of the public hearing, where possible.

Stage 3 – Review Panel Report

- 5.17 Following the completion of the public hearing, once the Review Panel determines that it has all of the information that it requires, the Review Panel will close the record for the environmental assessment and shall prepare and submit a report to the Minister.
- 5.18 The report shall include:
- a. An executive summary in both official languages of Canada;
 - b. The rationale, conclusions and recommendations of the Review Panel on the environmental assessment of the project including any mitigation measures and follow up programs;
 - c. A summary of any comments received, including those from Indigenous groups, government bodies, the public and other interested parties;
 - d. An identification of those conclusions that relate to the environmental effects of the project defined in section 5 of CEEA 2012;
 - e. An identification of recommended mitigation measures and follow-up programs that relate to the environmental effects of the project defined in section 5 of CEEA 2012, including, as appropriate, any commitments identified by CN in the EIS or during the Review Panel process.
- 5.19 If, taking into account the implementation of any mitigation measures, the Review Panel concludes that the project is likely to cause significant adverse environmental effects, the Review Panel may include in its report information that it has received with respect to whether those significant adverse environmental effects are justified in the circumstances.
- 5.20 The report shall reflect the views of each member of the Review Panel with respect to the environmental assessment.
- 5.21 The Review Panel must consider any requests made by Indigenous groups to have the executive summary of the report translated into their Indigenous language(s). If the Review Panel agrees with such a request, it must recommend to the CEA Agency that such translations be provided by the CEA Agency in a timely manner.

- 5.22 The Review Panel will submit its report to the Minister at the earliest possible date and within the overall time limit established by the Minister.
- 5.23 Upon receiving the report submitted by the Review Panel, the Minister will make the report available and advise CN, Indigenous groups, government bodies, the public and other interested parties that the report is available.
- 5.24 In accordance with subsection 43(1)(f) of CEAA 2012, the Review Panel may be required to clarify any of the conclusions and recommendations set out in its report with respect to the environmental assessment.

Decision Making Process and Timelines

- 5.25 In accordance with sections 47 and 52 of CEAA 2012, the Minister must decide if the project is likely to cause significant adverse environmental effects. If the Minister decides that the project is likely to cause significant adverse environmental effects, the Minister will refer the matter to the Governor in Council (Cabinet) who must decide whether those environmental effects are justified in the circumstances.
- 5.26 The Minister will issue a decision statement in accordance with section 54 of CEAA 2012. If the project is allowed to proceed because the Minister decides that the project is not likely to cause significant adverse environmental effects, or the Governor in Council decides such effects are justifiable in the circumstances, the decision statement would include legally binding conditions to CN.
- 5.27 The Minister's decisions under CEAA 2012 must be completed within 150 days from the date of the submission of the Review Panel report.
- 5.28 Subject to the Minister's decision statement under section 54 of CEAA 2012, the Canadian Transportation Agency will make a determination in accordance with section 98 of the CTA, taking into consideration the comments from the localities concerning the location of the railway lines, requirements for railway operations and services and interests that will be affected by the lines, any questions and responses to those comments filed by CN and any replies to CN's comments received from the localities.
- 5.29 The Canadian Transportation Agency can, as part of its deliberations, conduct investigations and request additional information as is required in order to render its determination.
- 5.30 If, for the purposes of a determination in accordance with section 98 of the CTA, the Chair of the Canadian Transportation Agency decides that more than one Member of that Agency is required to make that determination, the member of the Review Panel taking part in that determination shall do nothing to divulge the deliberations or otherwise compromise the confidentiality of the Review Panel.
- 5.31 The Canadian Transportation Agency will post its determination on its web site.

6. Record of the Review

- 6.1 From the appointment of the Review Panel to the submission of the Review Panel Report, a public registry will be maintained by the Secretariat in a manner that provides for convenient public access, and that complies with sections 79 to 81 of CEAA 2012.
- 6.2 Subject to subsections 45(3), (4) and (5) and 79(3) of CEAA 2012, the public registry will include all records produced, collected or submitted relating to the environmental assessment of the project.