

**THE CORPORATION OF THE
MUNICIPALITY OF TEMAGAMI**

BY-LAW NO. 04-569

**Being a by-law to authorize the execution of a Private Crossing Agreement Mileage 1.73
Sherman Spur with Ontario Northland Transportation Commission.**

**NOW THEREFORE the Council of the Corporation of the Municipality of Temagami
hereby enacts as follows:**

1. That the Mayor and the Chief Administrative Officer are hereby authorized and directed to execute the agreement attached hereto as Schedule "A" to this bylaw.

BE TAKEN AS READ A FIRST time on this 24th day of June, 2004.

READ A SECOND AND THIRD time and finally passed this 24th day of June, 2004.


MAYOR


CAO

THIS AGREEMENT made in duplicate this

day of

2004

BETWEEN:

ONTARIO NORTHLAND TRANSPORTATION COMMISSION

(hereinafter referred to as "ONTC")

OF THE FIRST PART

AND:

THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI.

(hereinafter referred to as the "Licensee")

OF THE SECOND PART

PRIVATE CROSSING AGREEMENT

WHEREAS ONTC is the owner of certain lands comprising a rail right-of-way located at Mileage 1.73 Sherman Spur in the Province of Ontario.

AND WHEREAS the Licensee has requested ONTC to construct and maintain a crossing over the right-of-way at the above mentioned mileage point

IN CONSIDERATION OF the recitals and the provisions contained in this Agreement, the parties agree as follows:

1. LICENCE

Subject to the terms and conditions of this Licence, ONTC hereby grants a Licence to the Licensee to:

- (a) use a private crossing over the ONTC right-of-way at Mileage 1.73 Sherman Spur.
- (b) The Licensee agrees not to place or permit any building, structures, equipment or vehicles upon the ONTC right-of-way.
- (c) The Licensee further agrees to remove any such building, structures, equipment or vehicles forthwith upon receipt of written notice from the Sr. Director Track & Structures of ONTC.
- (d) It is understood and agreed that, in the event the Licensee does not remove any such building, structures, equipment or vehicles within thirty (30) days of receipt of written notice from the Sr. Director Track & Structures, this building, structure, equipment or vehicle will be removed by ONTC at the sole cost and expense of the Licensee.

2. TERM

The term of this Licence Agreement shall be for a period of five (5) years commencing on the 1st day of June 2004 and terminating on the 31st day of May 2009, subject to the provisions for termination hereinafter contained.

3. CONSIDERATION

- (a) The Licensee shall pay to ONTC a base licence fee of Seventy-five Dollars (\$75.00), plus applicable G.S.T., payable on the 1st day of June 2004 and payable thereafter in yearly instalments due on the anniversary date of this Agreement
- (b) The Licensee shall pay the actual cost of maintenance, including flag protection, track repairs, field work and field inspection by payment of the amount determined by the Sr. Director Track & Structures of ONTC, within 30 days or receipt of invoice;
- (c) The Licensee agrees to pay to ONTC a document preparation fee of Seventy-five Dollars (\$75.00), plus applicable G.S.T. upon execution of this Agreement
- (d) ONTC shall submit an account for the cost and expenses incurred by ONTC to the Licensee which the Licensee shall pay within 30 days.

Payment of any amounts due under this Licence shall be made by the Licensee to "Ontario Northland Transportation Commission" by cheque mailed to ONTC at the address set out for notice in paragraph 9 or at such other address and to such other person as ONTC may direct the Licensee in writing.

4. OBLIGATIONS OF THE LICENSEE

- (a) The Licensee shall comply with all statutes, regulations, by-laws, codes and requirements of all governments and governmental authorities and all boards and commissions applicable thereto with respect to the use of the crossing.
- (b) The Licensee shall not interfere with ONTC's operation, maintenance or use of its right-of-way.
- (c) ONTC agrees to install signs at each end of the said crossing, reading as follows:

PRIVATE CROSSING
USE AT YOUR OWN RISK
TRAVERSE PRIVÉE
UTILISEZ A VOS RISQUES

The Licensee agrees to report any damage to or destruction of the said signs forthwith to the Sr. Director Track & Structures of ONTC.

- (d) The Licensee agrees to ensure that there are no visual obstructions which may impede the view of persons using the crossing to see clearly the movements of any ONTC vehicles or equipment.
- (e) The Licensee agrees to construct and install at its own expense the approach, grades, ditching and any necessary culverts. If ONTC considers that the Licensee has failed to properly construct or maintain the approaches to the crossing or the ditches or culverts or bridging, ONTC may by notice in writing to the Licensee, direct the Licensee to make such modification or repairs as are in the opinion of ONTC necessary. Should the Licensee fail within forty-eight (48) hours from the dispatch of such notice to reply with such request from ONTC, ONTC may forthwith proceed to do the necessary work and the cost of all labour and all materials and equipment necessary or required for such repairs or renewal shall be paid for by the Licensee.
- (f) The Licensee agrees to install at its own expense a suitable barrier in the form of a gate or posts and chains on each side of the crossing which shall be kept locked at all times except when being used by the Licensee.
- (g) The Licensee shall make full and complete compensation for any damage caused to ONTC's physical property or that of any other user of ONTCs property by the Licensee's act or omission or that of any of its officers, employees, servants, agents, contractors or invitees or those for whom it is at law responsible or for damage attributable to the equipment owned or operated by the Licensee, its officers, employees, servants, agents, contractors or invitees or those for whom it is at law responsible.
- (h) The Licensee shall make full and complete compensation for any bodily injury or death to any person caused by the Licensee's act or omission or that of any of its officers, employees, servants, agents, contractors or invitees or those for whom it is at law responsible or for bodily injury or death attributable to the equipment owned or operated by the Licensee, its officers, employees, servants, agents, contractors or invitees or those for whom it is at law responsible.
- (i) The Licensee agrees to indemnify ONTC and save it harmless from and against any and all actions, suits, claims, damage, costs, liability and expenses (including the effect of any applicable environmental legislation) which may arise by reason of the exercise of the rights and privileges granted herein by the Licensee or as a result of any breach of the terms of this Agreement by the Licensee or by any act or omission of the Licensee or those for whom the Licensee is at law responsible, including all legal costs and expenses reasonably incurred by ONTC in connection with the defence or settlement of any such claim, unless such claim or damage is caused by the negligent act or omission of ONTC, its servants, employees, officers, agents, contractors or those for whom it is at law responsible.
- (j) The Licensee shall waive against ONTC, its officers, employees, agents, or contractors any claims of any kind whether directly or indirectly arising out of or connected with the existence of this Agreement and for any injury to or death of any person or for any loss of or damage to any property belonging to the Licensee or its employees, servants, agents, invitees, licensees, contractors or visitors unless caused by the negligent act or omission of ONTC, its servants, employees, officers, agents, contractors or those for whom it is at law responsible.

5. INSURANCE

- (a) The Licensee shall maintain automobile liability, public liability and property damage insurance; such policies shall be written on a comprehensive basis with inclusive rights of not less than \$2,000,000.00 or such higher limits and including such additional terms and coverage as ONTC acting reasonably may require and shall include ONTC as an additional insured. Such insurance shall contain cross liability coverage and preclude subrogation claims by the insurer against ONTC.
- (b) Upon the request of ONTC, the Licensee shall provide to ONTC evidence of such insurance having been obtained and maintained in the form of a certificate of insurance and such insurance shall not be subject to cancellation except after at least thirty (30) days prior written notice to ONTC.

6. TERMINATION

- (a) Either ONTC or the Licensee may at any time during the term hereof terminate this Agreement by giving the other party not less than thirty (30) days prior written notice of termination and any amounts payable hereunder shall be apportioned as of the date of termination.
- (b) Notwithstanding the foregoing, if the Licensee shall be in default or breach in respect of any condition or provision of this Agreement or shall fail to pay any amounts due hereunder, ONTC may terminate this Agreement forthwith by written notice.
- (c) At the expiration of the term or upon the earlier termination of this Agreement ONTC shall remove the crossing at the expense of the Licensee who shall pay to ONTC forthwith the cost of such removal.

7. ASSIGNMENT

The rights contained in this Agreement may not be transferred, assigned or disposed of in any manner whatsoever without ONTC's prior written consent

8. RELATIONSHIP

Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, landlord and tenant, or of partnership or of joint venture between the parties hereto, it being understood and agreed that none of the provisions contained herein, nor any of the acts of the parties shall create any relationship between parties other than that of Licensor and Licensee as described in this Agreement

9. NOTICE

Any notice required by this Licence Agreement shall be in writing and shall be deemed to have been sufficiently given when personally delivered, telefaxed or sent by prepaid registered post addressed to ONTC to:

Vice-President Rail
555 Oak Street East
North Bay, ON P1B 8L3

and addressed to the Licensee to:

PO Box 220
Temagami, ON POH 2H0

Any notice made or given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof, or if made or given by telefax, on the first business day following the transmittal thereof, or, if sent by prepaid registered post, on the third business day following the day of mailing thereof except in the case of the interruption or anticipated interruption in the mail service in which case such notice shall be given by personal delivery or telefax.

10. OVERHOLDING LICENCE

If at the expiration of the term or other termination hereof the Licensee continues to use the crossing with or without the consent of ONTC and without any further written agreement, the Licensee shall become a licensee from month to month with each party having the ability to terminate the agreement upon 30 days written notice to the other and no other licence shall be created by implication of law or otherwise and the licence fee reserved hereunder shall be paid on the first day of each month during such overholding and such month to month licence shall otherwise be subject to all other terms of this licence as are applicable thereto.

11. SUCCESSORS

Subject to paragraph 7, this Licence Agreement and the covenants, provisions and obligations contained herein shall enure to the benefit of and be binding upon the Licensee, its heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the said parties hereto have signed these presents and affixed their respective seals under the hands of their respective officers duly authorized in that behalf

SIGNED, SEALED AND DELIVERED

in the presence of:

**ONTARIO NORTHLAND
TRANSPORTATION COMMISSION**

per _____
Vice-President Rail

Secretary

**THE CORPORATION OF THE
MUNICIPALITY OF TEMAGAMI**

per _____
