

# THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI

BY-LAW NO. 11-1000

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**Being a by-law to authorize the Mayor and Clerk to execute a Renewal Agreement with Ontario Northland for a Licence - Occupation of Land - Encroachment - Temagami Train Station.**

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**WHEREAS** under Section 8 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, the powers of a municipality shall be interpreted broadly to enable it to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

**AND WHEREAS** under Section 9 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

**AND WHEREAS** the Council of the Municipality of Temagami deems it advisable to enter into an agreement with Ontario Northland giving the Municipality licence to occupy land due to the encroachment of the Temagami Train Station building onto railway lands;

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

1. That the Mayor and Clerk are hereby authorized and directed to execute the agreement attached hereto as Schedule "A" to this bylaw.
2. This bylaw shall come into force and take effect upon final passing thereof.
3. That the Clerk of the Municipality of Temagami is hereby authorized to make minor modifications or corrections of a grammatical or typographical nature to the by-law and schedule, after the passage of this by-law, where such modifications or corrections do not alter the intent of the by-law.

BE TAKEN AS READ A FIRST time on this 28<sup>th</sup> day of April, 2011

READ A SECOND AND THIRD time and finally passed this 28<sup>th</sup> day of April, 2011

  
MAYOR

  
CLERK

3264-

OM&.

8 June 2011

The Municipality of Temagami  
PO Box 220  
Temagami, ON POH 2H0

Attention: Elaine Gunnell, Municipal Clerk

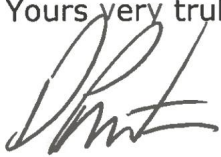
Dear Ms. Gunnell:

**RE: Licence - Occupation of Land  
Encroachment - Temagami Station  
Our File Number: 7518-891**

Please find enclosed the duplicate executed copy of the above captioned agreement for your retention. The original document has been filed in our Legal Department as agreement number 10025 and a copy is on file in our Rail Services Division.

Thank you for your co-operation in this regard.

Yours very truly,



Mr. Dale W. Proctor  
Legal Assistant

Direct Fax Line: (705)472-1051  
Voice Mail Extension: 353  
E-mail: [dale.proctor@ontarionorthland.ca](mailto:dale.proctor@ontarionorthland.ca)

DWP/krd

c.c. B. Craig  
T. Chapman



File (incoming) ☒ Other  
Mayor ☐  
Council ☐ I DA  
CAO ☐  
Pulling ☐  
Firsnce OS DC  
EcDev DS DC  
Parks & Rec DS DC  
Phoning Ds DC  
Public Wks OS DC  
PPP CJ  
Social Services ☐ ftrfk-# 7V  
**ORIGINAL BYLAW**  
**AGREEMENT 11-1000.**

THIS AGREEMENT made in duplicate this ~~30~~ day of

/fa y

2011

**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**

**LICENCE - OCCUPATION OF LAND - ENCROACHMENT - TEMAGAMI STATION**

**WHEREAS** ONTC is the owner of certain lands and premises more particularly described as the Ontario Northland Railway right-of-way, located in the Municipality of Temagami, in the District of Nipissing, hereinafter referred to as the "Railway Lands".

**AND WHEREAS** ONTC has sold that portion of the Railway Lands in the vicinity of the Temagami Station to the Licensee which is legally described as part of Parcel 3150 Nipissing, designated as Parts 1, 2, 3, 4, 6, 7, 8, 9, 10, 11 and 12 on Plan 36R-10947 and will hereinafter be referred to as the "Sale Property".

**AND WHEREAS** the Temagami Station is not located within the Sale Property but is located on the Railway Lands to be retained by ONTC.

**AND WHEREAS** ONTC has leased to the Licensee a portion of the Railway Lands occupied by the Temagami Station designated as Part 5, Plan 36R-10947 to the Licensee.

**AND WHEREAS** a portion of the Temagami Station is not located within the Sale Property or the property being leased to the Licensee but encroaches onto the Railway Lands.

**AND WHEREAS** ONTC, in fulfilment of the terms of the Agreement of Purchase and Sale for the Sale Property, has agreed to provide the Licensee with an Encroachment Agreement to accommodate their encroachment of the Temagami Station onto the railway lands.

**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 for the purpose of allowing the Temagami Station to encroach onto the Railway Lands by up to 3.5 feet.

**2. TERM**

- (a) The term of this Licence Agreement shall be for a period of ten (10) years commencing on the 2<sup>nd</sup> day of May, 2011 and terminating on the 1<sup>st</sup> day of May, 2021 subject to the provisions for termination hereinafter contained.
- (b) This Agreement be renewed for a further term upon such terms and conditions as are mutually agreed upon between the Licensee and ONTC at the end often (10) years as long as the Licensee has given at least sixty (60) days notice prior to the termination of this Licence to ONTC indicating its desire to have the terms and conditions of the Licence renewed upon terms and conditions as the parties may mutually agree.

**3. CONSIDERATION**

The Licensee shall pay to ONTC a base licence fee of One (\$1.00) Dollar, plus applicable taxes, receipt of which is hereby acknowledged.

Payment of any amount due under this Licence shall be made by the Licensee to "Ontario Northland Transportation Commission" by cheque mailed to ONTC at the address set forth in paragraph 10 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 encroachment of the Temagami Station onto the Railway Lands shall be deemed to be with the consent of ONTC to the extent that neither the Licensee nor any person claiming under it shall acquire any easement or other right in respect of the said encroachment.
- (b) In making any of its installations, the Licensee shall observe and carry them out according to good engineering practice in accordance with all applicable governmental laws, regulations or requirements concerning the same.
- (c) The Licensee shall submit to ONTC a copy of any licence to install or maintain any such installations as required by the appropriate governmental authorities.

- (d) 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 its use and occupation of the Railway Lands.
- (e) The Licensee covenants to observe any rules and regulations which are in effect or may be placed in effect by ONTC with respect to the use and occupation of the Railway Lands.
- (f) The Licensee shall cause itself and its subcontractors to comply with and keep in good standing under the provisions of the Workplace Safety and Insurance Act, if applicable, and any changes or amendments thereto.
- (g) The Licensee shall indemnify and save harmless ONTC from any claim or demand against the Railway Lands for construction liens related to work done by or on behalf of the Licensee. All registrations or claims for lien shall be discharged by the Licensee within ten (10) days notice from ONTC.
- (h) The Licensee shall make full and complete compensation for any damage caused to ONTC's physical 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 those for whom it is at law responsible.
- (i) 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.
- (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 or for any injury to or death of any person or for any loss of or damage to any property or equipment belonging to the Licensee or its employees, servants, agents, invitees, licensees, contractors or visitors and for any loss or damage of the Licensee with respect to its use of the property, unless caused by the negligent act or omission of ONTC, its officers, employees, agents, contractors or those for whom it is at law responsible.
- (k) 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 the users 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.

## 5. INSURANCE

Licensee shall, at its own expense, obtain and maintain in full force and effect, throughout the entire term of this Agreement, the following insurance policies:

- i) Commercial General Liability insurance to a policy limit of at least two million dollars (\$2,000,000) in primary and umbrella/excess liability policy including but not limited to bodily injury, property damage, personal injury, product liability, tenants legal liability, contractual liability, owners and contractors protective, contingent employer's liability, non-owned automobile liability, cross liability and severability of interest clause. The policy shall contain a waiver of subrogation in favor of ONTO and shall include **Ontario Northland Transportation Commission** as an additional insured.
- ii) All risks property insurance for not less than full replacement cost value of the equipment and personal property. The policy shall contain a waiver of subrogation in favor of ONTC.
- iii) Licensee shall provide to ONTC a certificate(s) of insurance, as well as renewal certificates thereafter for the duration of the Agreement, evidencing that the required coverages are in full force and effect before the commencement of the Agreement, and such certificates shall contain a provision to the effect that the insurance policies cannot be cancelled without providing ONTC with at least thirty (30) days prior written notice.

## 6. OPERATIONAL REQUIREMENTS

- (a) Any installation, maintenance or changes to the Licensee's occupation must first meet with the requirements and approval of ONTC.
- (b) The Licensee agrees that no work shall at any time be done on the Railway Lands in such a manner as to obstruct, delay in any way or interfere with ONTC's operations.
- (c) The Licensee further agrees to ensure that ONTC's railway property shall be left in a condition acceptable to ONTC.
- (d) The Licensee shall not at any time register notice of a copy of this Licence on title to the property of which the Railway Lands form part without the consent of ONTC.

## 7. TERMINATION

- (a) If the Licensee shall be in default or breach in respect of any condition or provisions of the Agreement or shall fail to pay any amounts due hereunder, ONTC may terminate this Agreement upon thirty (30) days written notice in the event of a failure to pay or in the event of any other default or breach provided the Licensee has not commenced correction of such breach or default.

- (b) At the expiration of the term or upon the earlier termination of this Agreement, the Licensee shall remove its fixtures from the Railway Lands and shall leave the Railway Lands in a condition acceptable to ONTC. Removal shall be carried out in such a manner so as not to interrupt the use of the Railway Lands by ONTC or other parties. Prior to such removal, the Licensee shall give thirty (30) days prior written notice of the time of such removal. The Licensee agrees that if upon termination of this Agreement it has not removed its fixtures within a reasonable time in the opinion of ONTC, then ONTC may effect such removal, at the sole risk of the Licensee at the Licensee's expense.
- (c) In the event that the Temagami Station or any part thereof is razed, remove or destroyed, the Licensee shall cause any rebuilding or replacement of the Temagami Station to be such as will ensure that the encroachment onto ONTC's railway land is terminated.

#### **8. 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.

#### **9. 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 the parties other than that of Licensor and Licensee as described in this Agreement.

#### **10. 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 P1B8L3

and addressed to the Licensee to:

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.

**11. OVER HOLDING LICENCE**

If at the expiration of the term or other termination hereof the Licensee's encroachment of the Railway Lands remains in place with or without the consent of ONTC and without any further written agreement the Licensee shall become a licensee from month to month 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.

**12. SUCCESSORS**

Subject to paragraph 8, this Licence Agreement and the covenants, provisions and obligations herein contained shall enure to the benefit of and be binding upon the Licensee, its 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**

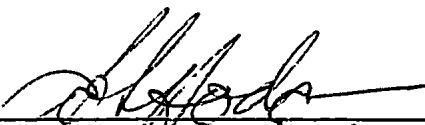
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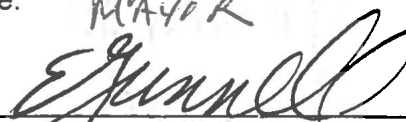
**ONTARIO NORTHLAND  
TRANSPORTATION COMMISSION**

per   
Vice President Rail

  
Secretary

**THE CORPORATION OF THE  
MUNICIPALITY OF TEMAGAMI**

per   
Name: John Henderson  
Title: Mayor

  
Name: Elaine Gunnell  
Title: Municipal Clerk.