

THE CORPORATION OF THE TOWN OF MATTAWA

BY-LAW 23-35

BEING a by-law authorizing the signing of a Transfer Payment Agreement with His Majesty the King in right of Canada hereby represented by the Minister of Fisheries and Oceans to transfer all of is right, title and interest in the property.

WHEREAS the property is located at firstly: Part of Hudson Bay Reserve Plan 2 Mattawan as in MA106 Except MA3832, Part 8 NRD1985, Part 1 NRD2249; Mattawa; District of Nipissing, secondly: Part of Hudson Bay Reserve Registered Plan 2, Part of the Bed of the Ottawa River in front of the Hudson Bay Reserve Registered Plan 2, designated as Part 1 on Plan 36R-15115; Mattawa; District of Nipissing;

AND WHEREAS Section 5, subsection 3 of the Ontario Municipal Act 2001, S. O. 2001, c. 25 empowers and authorizes a municipal Council to pass by-laws enacting agreements.

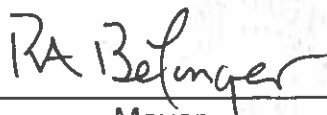
AND WHEREAS the attached Transfer Payment Agreement, Appendix "A" outlines the funding agreement details and therefore forms part of this By-law.

NOW THEREFORE, the Council of the Corporation Town of Mattawa enacts as follows:

1. **THAT** the Mayor and Interim CAO/Treasurer are hereby authorized to execute the aforesaid Agreement on behalf of the Council of the Corporation of the Town of Mattawa, in accordance with the terms and conditions referred to in this agreement attached to this By-law and known as Appendix "A".
2. **THAT** this Agreement shall be effective and shall remain in effect and force in accordance with the terms of the agreement subject to any amendments thereto or the termination of the said agreement.

READ A FIRST and SECOND TIME, this 18th day of December, 2023.

READ THIRD TIME and FINALLY PASSED, this 18th day of December, 2023.



Mayor



Clerk

TRANSFER AGREEMENT

THIS AGREEMENT is made as of the 13th day of December 2023.

BETWEEN:

HIS MAJESTY THE KING IN RIGHT OF CANADA
as represented by the Minister of Fisheries and Oceans

(hereinafter referred to as the "His Majesty" or "DFO")

AND:

CORPORATION OF THE TOWN OF MATTAWA

(hereinafter referred to as the "Transferee" or the "Town")

RECITALS:

- A. DFO is the owner in fee simple of the lands more particularly set out in Schedule "A" (the "Property");
- B. By letter dated April 3, 2023, the Algonquins of Ontario ("AOO") confirmed to DFO that the conditions precedent as defined in Section 2 of the *Memorandum of Agreement Between Algonquin Property Preservation Inc. and the Minister of Fisheries and Oceans Regarding the Transfer of Title to Certain Small Craft Harbour Facilities in the Algonquins of Ontario Settlement Area* (the "AOO Agreement") have been attained to AOO's satisfaction;
- C. By resolution made the 18th day of December 2023, the Council of The Corporation of the Town of Mattawa authorized the Transferee to execute this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and the sum of Two (\$2.00) Dollars paid by each of DFO and the Town to the other and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereby agree and declare as follows:

1. **AGREEMENT TO TRANSFER**

DFO will transfer all of its right, title and interest to the Town, and the Town will accept from DFO all of its right, title and interest in the Property (mines and minerals excepted).

2. **CONSIDERATION**

The consideration for the transfer of the Property from DFO to the Town shall consist of the amount of One Dollar of lawful money of Canada (the receipt and sufficiency of which is hereby acknowledged by DFO), and the covenant of the Town to operate the Property for the purpose of a public harbour as more particularly set out in Section 11.

3. **CLOSING DATE**

This Agreement shall be completed (the "Closing") no later than 5:00 PM on _____, 2023 or such other date as the parties or their solicitors may agree to in writing (the "Closing Date") at which time vacant possession of the Property shall be given to the Town. If the Closing Date shall fall on a date upon which the Land Registry Office is closed then this transaction shall be completed on the next day that the Land Registry Office is open for business.

4. **AS IS CONDITION**

- (a) The Town acknowledges that DFO has provided it with the opportunity to conduct its own environmental and physical investigations of the Property in order to satisfy itself as to the nature and extent of the condition of the Property. The Town acknowledges that it has relied on its own review and investigations and has fully satisfied itself with respect to the condition of the Property.
- (b) The Town acknowledges and agrees that it is acquiring the Property on an "as is" basis at its own risk and without any express or implied agreement, representation, or warranty of any kind whatsoever as to the condition, suitability for development, fitness for a particular purpose, merchantability, physical characteristics, profitability, use or zoning, existence of latent defects, quality, or any other aspect or characteristic thereof.
- (c) From and after the Closing Date, the Town agrees to release DFO from all costs, claims, demands, suits, actions and damages (collectively, the "Claims") relating in any manner or way arising from environmental contamination or any substance which is a pollutant, contaminant, material which may impair, waste, hazardous or subject waste, toxic substance or dangerous good as defined in or pursuant to any environmental law (the "Hazardous Substances") at the Property.
- (d) The Town acknowledges and agrees that DFO has not made any warranties or representations relating to the environmental or physical condition of the

Property, including without limitation, the existence of any Hazardous Substances in, on or under the Property, or with respect to any other matter relating to the Property.

- (e) The Town covenants and agrees that its acknowledgements, covenants and agreements set forth in Section 4 of this Agreement shall not merge on Closing and shall be binding upon the Town, its successors and assigns, and shall enure to the benefit of DFO and its successors and assigns.

5. NO ADJUSTMENT FOR TAXES

There will be no adjustments to the Purchase Price for municipal property taxes.

6. TRANSFER, REGISTRATION, CLOSING COSTS AND TAXES

His Majesty's solicitor shall deliver to the Town's solicitor an electronic Transfer for the Property prior to Closing. The Town shall prepare and execute, at the Town's expense, any required affidavit under the *Land Transfer Tax Act* (Ontario). Each party hereto shall pay for and be liable for its own legal costs. The Town shall be responsible for the cost of registration of the Transfer and for the payment of any applicable Land Transfer Tax and any other Federal, Provincial or Municipal or other third party registration costs, fees or charges.

7. HST

With respect to harmonized sales tax ("HST") payable pursuant to the *Excise Tax Act* (Canada) (the "Act"), the parties covenant and agree as follows:

- (a) The Town is registered under the Act, and shall file such returns and remit such HST to the Receiver General for Canada when and to the extent required by the Act;
- (c) The Town shall, in connection with the transfer of the Property as contemplated by this Agreement, indemnify and save harmless DFO from any liability under the Act arising from the breach of the obligations of the Town set out in this subsection or arising under the Act in connection with the transfer of the Property together with all loss, costs and expenses resulting from such breach;
- (d) The Town shall provide an HST Certificate and Indemnity in a form satisfactory to the Department of Justice (the "HST Certificate") on Closing with respect to the matters noted in this section; and
- (e) the provisions this section shall survive the Closing of this transaction.

8. **TITLE AND TITLE SEARCH**

The Town agrees that:

- (a) it has satisfied itself as to the state of title and agrees to accept ownership of the Property on an "as is" basis. The Town shall be allowed until 5:00 p.m. on the tenth (10th) business day prior to the Closing Date (the "**Requisition Date**") to perform all searches or subsearches as may be necessary to satisfy itself in its sole, absolute, arbitrary and unfettered discretion with respect to title to the Property, and with respect to its off-title searches. If within that time any valid objection to any title or off-title matters is made in writing to the Department of Justice, which DFO shall be unwilling or unable to remove, remedy or satisfy, then this Agreement, notwithstanding any intermediate actions or negotiations in respect of such objections, shall terminate and be at an end and all monies paid shall be returned without interest or deduction and neither party shall be liable to the other for any costs or damages arising from the termination of the Agreement pursuant to this Section 8.
- (b) On Closing, the Town shall be conclusively deemed to have accepted DFO's title to the Property without recourse to DFO.

9. **DFO'S REPRESENTATIONS AND WARRANTIES**

DFO hereby represents and warrants to the Town, which has relied thereupon, and which representations and warranties are true as of the date hereof and shall be true as of the Closing Date, and shall not merge but will survive closing of this transaction, as follows:

- (a) the execution and delivery of this Agreement and the consummation of the transaction provided for herein has been duly authorized by all necessary action on the part of DFO and is in compliance with all applicable laws; and
- (b) this Agreement, upon execution and delivery, constitutes a legal, valid and binding obligation of DFO enforceable against DFO in accordance with its terms except as they may be limited by law.

10. **THE TOWN'S REPRESENTATIONS AND WARRANTIES**

The Town hereby represents and warrants to DFO, which DFO has relied thereupon, and which representations and warranties are true as of the date hereof and shall be true as of the Closing Date and shall not merge but will survive closing of this transaction, as follows:

- (a) the execution and delivery of this Agreement and the consummation of the transaction provided for herein has been duly authorized by all necessary action on the part of the Town and is in compliance with all applicable laws;
- (b) the Town received a copy of the AOO Agreement referred to in Recital "B" before it executed this Agreement; and
- (c) this Agreement, upon execution and delivery, constitutes a legal, valid and binding obligation of the Town enforceable against the Town in accordance with its terms except as they may be limited by law.

11. **PUBLIC USE COVENANTS OF THE TOWN**

- (a) As an inducement to, and as further consideration for, DFO's agreement to transfer the Property to the Transferee upon the terms and conditions set forth in this Agreement, the Transferee covenants and agrees to the following contractual covenants, which covenants shall survive the closing of the transactions contemplated in this Agreement and shall not merge:
- i. The Transferee covenants and agrees to use the lands described herein for the purpose of a public harbour for a period of five (5) years commencing on the date of registration of the Transfer Instruments on title to the Property, and covenants to operate the Property as a public harbour during the said five (5) year period at substantially the same level of operations as existed on the Property during 2023;
 - ii. In the event that at any time within the said period of five (5) years commencing on the date of the registration of the Transfer Instruments the Town ceases to use the lands described herein for the purpose of a public harbour at substantially the same level of operation as existed in on the Property during 2023, or the Town disposes of all or part of the Property, the Town shall pay forthwith to DFO the sum of Two Hundred and Seventy Thousand Dollars (\$270,000.00).

12. **CLOSING DOCUMENTS AND MATTERS**

- (a) DFO shall prepare and deliver on or before Closing:
- i. an electronic Transfer in Teraview for that portion of the Property comprising all of PIN 49100-0344LT (Firstly);
 - ii. an Instrument of Grant for the portion of the Property for which there is no PIN (Secondly);
 - iii. a Statement of Adjustments;
 - iv. an undertaking to readjust; and
 - v. all other certificates, documents and instruments required to be delivered to the Town pursuant to this Agreement or otherwise necessary or reasonably required to effectively complete the Closing.

For the purposes of this Agreement the electronic Transfer and the Instrument of Grant are collectively referred as the "**Transfer Instruments**".

- (b) The Town shall prepare and deliver on or before Closing:

- i. an HST certificate, undertaking and indemnity;
- ii. an undertaking to readjust;
- iii. a resolution of the Corporation of the Town of Mattawa authorizing the Town to enter into this Agreement; and
- iv. all other certificates, documents and instruments required to be delivered by the Town to DFO pursuant to this Agreement or otherwise necessary or reasonably required to effectively complete the Closing.

13. **RISK**

DFO is self-insured. Until Closing, all risk with regards to the Property remains with DFO. This Agreement does not grant or create in the Town an insurable interest in the Property.

14. **NOTICE**

All notices hereunder shall be in writing and shall be delivered personally or shall be sent by registered mail, by courier or email, and shall be addressed to the parties as follows:

(a) To The Town:

Corporation of the Town of Mattawa
160 Water Street,
P.O. Box 390
Mattawa, ON,
P0H 1V0

Attention: Paul Lapertiere, Interim CAO/Treasurer
Email: cao@mattawa.ca

(b) To Fisheries and Oceans Canada:

Small Craft Harbours
Fisheries and Oceans Canada
867 Lakeshore Road,
Burlington, ON, L7S 1A1

Attention: Annette Winter, Client Services Manager - East
Email: annette.winter@dfo-mpo.gc.ca

With a copy to:

Department of Justice
Ontario Regional Office,
120 Adelaide Street West, Suite 400
Toronto, ON, M5H 1T1

Attention: David Larmour, Counsel
Email: david.larmour@justice.gc.ca

15. **GENERAL PROVISIONS**

- (a) Time shall in all respects be of the essence hereof provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by DFO and the Town or by their respective solicitors who are hereby expressly appointed in this regard.
- (b) This Agreement shall be governed by and interpreted in accordance with applicable provisions of the laws of the Province of Ontario, subject always to any paramount or applicable federal laws. Nothing in this Agreement is intended to or is to be construed as limiting, waiving or derogating from any federal Crown prerogative.
- (c) This Agreement sets forth the entire agreement between the parties concerning the subject matter hereof. No representation or warranty expressed, implied or otherwise is made by DFO to the Town or by the Town to DFO except as expressly set out in this Agreement or the other agreements referred to in this Agreement. This Agreement supersedes and revokes all negotiations, arrangements, letters of intent, brochures, representations and information conveyed, whether oral or in writing, between the parties or their representatives or any other person purporting to represent DFO or the Town.
- (d) The covenants and agreements contained in Sections 4, 7, 8(b), 10 and 11 shall survive the transfer of the Property and shall not merge on the Closing Date.
- (e) Neither party shall assign this Agreement nor any of the party's rights, duties or obligations hereunder without the written consent of the other, which consent may not be unreasonably withheld. All of the covenants and agreements in this Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the parties hereto and their respective successors and their permitted assigns pursuant to the terms and conditions of this Agreement.
- (f) The failure by any party to insist in any one instance upon the strict performance by the other party of obligations hereunder shall not constitute a waiver or relinquishment of any such obligations as to any other instances, and the same shall continue in full force and effect. No covenant or condition of this Agreement may be waived by any party except by the written consent of that party, and forbearance or indulgence by that party in any regard whatsoever and no matter how long shall not constitute a waiver of the covenant or condition, and until performed or waived in writing that

party shall be entitled to invoke any remedy available to that party under this Agreement or by law, despite the forbearance or indulgence.

- (g) If, for any reason, any provision of this Agreement, other than any provision which is of fundamental importance to the arrangement between the parties, is to any extent held or rendered invalid or unenforceable, then the particular provision shall be deemed to be independent of and severed from the remainder of this Agreement and all the other provisions of this Agreement shall nevertheless continue in full force and effect.
- (h) DFO and the Town expressly disclaim any intention to create a partnership, joint venture or agency. It is understood, acknowledged and agreed that nothing contained in this Agreement nor any acts of DFO or the Town shall constitute or be deemed to constitute DFO and The Town as partners, joint ventures or principal and agent in any way or for any purpose. The Town shall not represent or hold itself out to be an agent of DFO. No party shall have any authority to act for or to assume any obligations or responsibilities on behalf of the other party.
- (i) Each of the parties hereto shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.
- (j) This Agreement may be executed in counterparts by wet or digital signature, and each counterpart, when executed either physically or digitally, shall be deemed to be an original, and all such counterparts shall together constitute one and the same agreement. Execution and delivery of this Agreement by electronic mail in portable document format ("PDF") or other electronic transmission, shall be deemed to have the same effect as physical delivery of this Agreement, and the parties agree that delivery of PDF copies of this Agreement shall for the purpose of the transaction contemplated by this Agreement constitute delivery of an original of same.
- (k) This transaction shall be completed by:
 - i. registration of an electronic transfer in Teraview pursuant to Part III of the *Land Registration Reform Act*, RSO 1990, c L.4 in relation to that portion of the Property identified as "Firstly" comprising all of PIN 49100-0344LT; and

- ii. registration of a federal Instrument of Grant using the paper registration process in Teraview in relation to that portion of the Property identified as "Secondly" for which there is no PIN.

His Majesty and the Town agree to instruct their respective solicitors to enter into the form of "Document Registration Agreement" approved by the Law Society of Ontario from time to time (the "DRA"). His Majesty and the Town acknowledge and agree that the delivery of documents and the release thereof will: (a) not occur at the same time as the registration of the transfer (and other documents intended to be registered in connection with the completion of this transaction); and (b) be subject to conditions whereby the solicitor(s) receiving documents and/or money will be required to hold them in escrow and not release them except in accordance with the terms of the DRA.

- (I) The Town shall not register this Agreement or notice of it on title to the Property.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as evidenced by the signatures of their duly authorized directors, officers or representatives on the day and year first above written.

CORPORATION OF THE TOWN OF MATTAWA

Per: RA Bélanger
Name: Raymond A. Bélanger
Title: Mayor

Per: Paul Laperriere
Name: Paul Laperriere
Title: Interim CAO/Treasurer

We have authority to bind the corporation.

c/s

HIS MAJESTY THE KING IN RIGHT OF CANADA, as represented by the Minister of Fisheries and Oceans

Per: _____
Name: Jennifer Thomas
Title: A/Regional Director, Small Craft Harbours

SCHEDULE "A"

Legal description of the lands to be transferred to the Town

FIRSTLY:

All of PIN 49100-0344 (LT)

Part of Hudson Bay Reserve Plan 2 Mattawan as in MA106 Except MA3832, Part 8
NRD1985, Part 1 NRD2249; Mattawa; District of Nipissing

SECONDLY:

Part of Hudson Bay Reserve Registered Plan 2, Part of the Bed of the Ottawa River in front
of the Hudson Bay Reserve Registered Plan 2, designated as Part 1 on Plan 36R-15115;
Mattawa; District of Nipissing