



The Municipal Corporation of the Town of Fort Erie

By-law No. 109-2021

Being a By-law to Authorize the Entry into Agreement of Purchase and Sale with Her Majesty the Queen in Right of the Province of Ontario, Represented by the Minister of Transportation for the Province of Ontario for the Purchase of Part Block H, RP 505, Bertie (West Side of Concession Road, South of Bertie Street) – Extension of Hagey Avenue

Whereas Report No. CAO-05/LC-03-2021 was approved at the Special Council Meeting held on March 22, 2022, to authorize the acquisition of the lands legally described as Part Block H, RP 505, Bertie; designated as Part 3 on 59R-13644; Town of Fort Erie, being all of PIN 64220-0292 (LT), for the extension of Hagey Avenue; and

Whereas it is deemed desirable to enter into an Agreement of Purchase and Sale with Her Majesty the Queen in Right of the Province of Ontario, represented by the Minister of Transportation for the Province of Ontario for the acquisition of the said property;

Now therefore the Municipal Council of The Corporation of the Town of Fort Erie enacts as follows:

- 1. That** the entry into an Agreement of Purchase and Sale with Her Majesty the Queen in Right of the Province of Ontario, represented by the Minister of Transportation for the Province of Ontario for the lands identified as Part Block H, RP 505, Bertie; designated as Part 3 on 59R-13644; being all of PIN 64220-0292 (LT), in the form attached hereto as Schedule "A" and forming part of this by-law, is authorized and approved.
- 2. That** the Chief Administrative Officer or his designate, is authorized and directed to execute the Agreement of Purchase and Sale and all other documentation necessary to complete the transaction, and to affix the corporate seal thereto.
- 3. That** the Clerk of the Town is authorized to effect any minor modifications, corrections or omissions, solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after the passage of this by-law.

Read a first, second and third time and finally passed this 20th day of September, 2021.

Mayor

Clerk

I, Carol Schofield, the Clerk, of The Corporation of the Town of Fort Erie certifies the foregoing to be a true copy of By-law No. 109-2021 of the said Town. Given under my hand and the seal of the said Corporation, this _____ day of _____, 20__.



M.T.O File: T-08055

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT, MADE IN DUPLICATE THE 30th DAY OF JULY 2021

BETWEEN:

HER MAJESTY THE QUEEN in right of the Province of Ontario, represented by the Minister of Transportation for the Province of Ontario

(hereinafter called the "Vendor")

- and -

The Corporation of the Town of Fort Erie

(hereinafter called the "Purchaser")

WHEREAS:

Under this Agreement the Vendor shall sell and the Purchaser shall buy the Lands described as: Part Block H, RP 505; Geographic Township of Bertie, Town of Fort Erie, Regional Municipality of Niagara; Designated as Part 3 on 59R-13644 (P-2511-0251); Being All of PIN 64220-0292(LT), hereinafter known as the "Lands".

The Vendor has agreed to transfer the Lands to the Purchaser on the terms and conditions set out herein.

NOW THEREFORE in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the parties hereto agree as follows:

1. The above recitals are true and correct.

DEFINITIONS

2. As used in this Agreement, the following terms shall have the following meanings:
 - (a) "Authority" means any governmental authority, quasi-governmental authority, agency, body or department whether federal, provincial or municipal, having jurisdiction over the Lands, or use thereof.
 - (b) "Deposit" means the deposit provided in clause 3 (1) (i) of this Agreement.
 - (c) "Date of Closing," means the day which is thirty (30) days from the date that the Purchaser's Condition (as hereinafter defined) has been satisfied or waived or such other date as the parties or their respective solicitors may in writing mutually agree to.
 - (d) "Inspection Period" means that period of time, which is sixty (60) days following the date of acceptance of this Agreement by the Vendor or the Purchaser, as the case may be.
 - (e) "Minister" means the Minister of Transportation and/or its servants or agents.

PAYMENT OF PURCHASE PRICE

3. (1) The Vendor agrees to sell to the Purchaser and the Purchaser agrees to purchase from the Vendor the Lands for the Purchase Price of SIXTY EIGHT THOUSAND (\$68,000.00) (the "Purchase Price") of lawful money in Canada and shall be made payable to the Minister of Finance.
 - (i) the sum of SIX THOUSAND EIGHT HUNDRED (\$6,800.00) (the "Deposit") by certified cheque or bank draft, as a deposit upon submission of the Agreement of Purchase and Sale document to be credited to the Purchase Price on the Date of Closing and
 - (ii) any remaining balance of the Purchase Price, subject to the usual adjustments, by certified cheque or bank draft, on the Date of Closing.
- (2) The Purchase Price of the Lands does not include Harmonized Sales Tax (HST) payable by the Purchaser in respect of the purchase of the Lands pursuant to the Excise Tax Act (Canada) (the "Act"). The Purchaser shall, on the Date of Closing, as a condition of completion of this transaction of purchase and sale, remit to the Vendor payable to the Minister of Finance, by certified cheque or bank draft, the Purchase Price of the Lands plus the applicable HST. However, if the Purchaser provides to the Vendor, prior to the Date of Closing, confirmation that the Purchaser is a registrant under the Act, including the Purchaser's registration number, together with an undertaking in a form reasonably acceptable to the Vendor to the effect that the Purchaser shall remit as required by the Act any HST payable in respect of the sale of the Lands to the Purchaser and shall indemnify the Vendor in respect of any HST so payable, then the Purchaser shall not be required to remit to the Vendor HST on the Date of Closing as aforesaid.

INSPECTION AND CONDITION

4. The Purchaser agrees to purchase the Lands in their current condition on the Date of Closing on an "as-is, where is" basis subject however to the provisions of Sections 6 and 7 of this Agreement and further agrees that the Vendor shall not be obligated to perform any work in respect of the Lands in order to bring the Lands, or any part of the Lands into compliance with any applicable standards of any relevant Authority. The Purchaser also agrees not to make any claim against the Vendor in respect of any such work that may be required in order to bring the Lands or any part thereof into compliance.
5. Upon the request of the Purchaser, the Vendor shall forthwith deliver letters addressed to such Authorities as may be requested by the Purchaser or its solicitors authorizing each such Authority to release to the Purchaser such information and material presently in their files with respect to the Lands. Provided any such authorizations shall not impose any additional monetary or other obligations upon the Vendor, as owner of the Lands.
6. During the Inspection Period the Purchaser shall be allowed to satisfy itself with respect to all matters respecting the condition of the Lands including geoenvironmental and geophysical conditions. The Vendor hereby grants to the Purchaser the right to enter upon the Lands and to conduct such inspections, investigations, surveys, and tests as the Purchaser deems necessary provided that the Purchaser takes all reasonable care in the conduct of such investigations, surveys and tests. The Vendor assumes no responsibility for any claims, demands, costs, damages, expenses and liabilities (together the "Claims") whatsoever arising out of the Purchaser's presence on the Lands or out of its activities on or in connection with the Lands. The Purchaser covenants to indemnify and save harmless the Vendor in respect of any Claims. The Purchaser further covenants to make good any damage to the Lands caused by the Purchaser or those for whom the Purchaser is in law, responsible, caused

during the conduct of such inspections, investigations, surveys and tests, which obligation shall survive the termination of this Agreement.

PURCHASER'S CONDITION

7. This Agreement is subject to the conditions set forth in this Section, which have been inserted for the sole benefit of the Purchaser, and any one or more of such conditions may be waived by the Purchaser in its sole and absolute discretion, or by its solicitors on its behalf. Each condition shall be waived or fulfilled within the time limits, if any, as set out herein.

If a condition is not fulfilled within the applicable time period and the Purchaser fails to notify the Vendor or the Vendor's solicitors that such condition has been waived within the applicable time period allowed, this Agreement shall be null and void, notwithstanding any intermediate act or negotiations, and, neither the Vendor or the Purchaser shall be liable to the other for any loss, costs or damages, and all Deposit monies paid by the Purchaser shall be returned to the Purchaser without deduction.

The condition set out in this Section is a condition of the obligation of the Purchaser to complete this Agreement on the Date of Closing and is not a condition precedent to this Agreement.

The said conditions (the "Purchaser's Conditions") are as follows:

- (a) upon the expiry of the Inspection Period, the Purchaser being satisfied in its sole discretion with respect to the geoenvironmental and geophysical condition of the Lands.
8. The Purchaser shall be responsible for and hereby indemnifies and saves harmless the Vendor from any costs, including legal and witness costs, claims, demands, civil actions, prosecutions, or administrative hearings, fines, judgements or awards, including awards of costs, that may arise as a result of the condition of the Lands in respect of its condition as of the Date of Closing. This covenant shall not merge but shall survive the Date of Closing.

VACANT POSSESSION

9. The Purchaser shall have vacant possession of the Lands on the Date of Closing.

PLANNING ACT

10. This Agreement is subject to compliance with Section 50 of The Planning Act, R.S.O. 1990, as amended. The parties acknowledge that the registered owner is by virtue of clause 50(3) (c) of the Act, exempt from compliance with Section 50 and agree therefore that no consent will be obtained for the conveyance or transfer of the Lands.

TITLE

11. The Purchaser shall accept title subject to:
- (a) all easements existing at the date of acceptance of this Agreement;
 - (b) any unregistered hydro easements;
 - (c) other agreements and restrictions on title to the extent that they have been complied with;
 - (d) any restriction contained in this Agreement may, at the Vendor's discretion, be included on the Transfer/Deed of Land to the Purchaser,

including any restriction, term or condition contained in this Agreement which has not been fulfilled on the Date of Closing.

INVESTIGATION OF TITLE

12. (a) The Purchaser shall have **thirty (30) days** from the Date of Acceptance of this Agreement to investigate title at the Purchaser's expense and if within that time the Purchaser furnishes the Vendor in writing with any valid objection to title which the Vendor is unwilling or unable to correct, this Agreement shall be terminated notwithstanding any intermediate acts or negotiations with respect to such objection and the Deposit monies shall be returned to the Purchaser without interest and the Vendor shall not be liable for any costs or damages.

The Purchaser agrees not to call for the production of any title deed, abstract, survey or other evidence of title to the Lands except such as are in the possession or control of the Vendor.

- (b) The Purchaser shall satisfy itself as to compliance with any Subdivision or other Agreement or restriction and the Vendor shall have no obligation to obtain any release or to provide any evidence of compliance.
- (c) The title to the Lands is in the name of Her Majesty the Queen, in right of Ontario as represented by the Minister of Transportation and Communications for the Province of Ontario. Pursuant to the provisions of Section 2 of the Public Transportation and Highway Improvement Act, R.S.O. 1990, c. P.50 title to the Lands is vested in the Minister of Transportation. On the Date of Closing the Vendor agrees to provide and the Purchaser agrees to accept a Transfer/Deed of Land for the Lands from Her Majesty the Queen in right of the Province of Ontario, represented by the Minister of Transportation for the Province of Ontario.

ASSIGNMENT OR REGISTRATION

13. The Purchaser shall not assign or register this Agreement or any assignment of this Agreement or any part of either or register a Caution in relation thereto without first obtaining the prior written consent of the Vendor, which consent the Vendor may arbitrarily withhold.

PREPARATION OF DOCUMENTS

14. The Transfers/Deed of Land will be prepared in registrable form by the Vendor except the Affidavit of Residence and Value of the Consideration, and each party shall pay its own legal and registration costs.

GENERAL

15. The Purchaser warrants that the Purchaser is not a non-resident of Canada pursuant to the Land Transfer Tax Act (Ontario).
16. Time shall be of the essence.
17. Any covenants in this Agreement not completed on or before the Date of Closing shall survive the closing of this transaction.
18. Any tender of documents or money hereunder may be made upon the Vendor or the Purchaser or their respective solicitors on the Date of Closing.
19. Signature of this Agreement by the Purchaser and submission thereof to the Vendor constitutes an offer under seal which is irrevocable until midnight on **October 28th, 2021**. This Agreement, when accepted, constitutes a binding contract of Purchase and Sale. If this offer is not accepted by the Vendor, the

Deposit monies will be returned to the Purchaser without interest or deduction.

20. This Agreement constitutes the entire agreement between the parties and there is no representation, warranty, collateral agreement, or condition affecting this Agreement or the Lands other than expressed herein.
21. Whenever the singular is used in this Agreement it shall mean and include the plural and whenever the masculine gender is used in this Agreement it shall mean and include the feminine gender if the context so requires.

VENDOR AND PURCHASER MUTUALLY AGREE

22. The Deposit will be held by the Vendor without interest. If the Purchaser fails to pay the balance of the Purchase Price within the time limit under this Agreement, the Vendor may elect to terminate this Agreement. Thereupon the Deposit will be forfeited to the Vendor. The Vendor may then sell, lease, or otherwise dispose of or deal with the Lands free of any claim of the Purchaser.
23. Each party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.
24. The Vendor and the Purchaser both agree that the subject Lands are being conveyed to the Purchaser at the rate of TWO HUNDRED TWENTY THOUSAND SIXTY-FOUR DOLLARS (\$220,064.00) per acre. If prior to the thirty first (31st) day of December 2026, the Purchaser enters into a binding Agreement of Purchase and Sale for all or any part of the subject Lands at a rate in excess of TWO HUNDRED TWENTY THOUSAND SIXTY-FOUR DOLLARS (\$220,064.00) per acre, the Purchaser shall forthwith pay to the Vendor, the difference between the rate per acre price in the subsequent agreement and the TWO HUNDRED TWENTY THOUSAND SIXTY-FOUR DOLLARS (\$220,064.00) per acre.

NOTICE

25. Any notice under this Agreement is sufficiently given if delivered personally or if sent by registered prepaid mail or prepaid courier or electronic mail or by electronic facsimile machine address to the Purchaser at:

The Corporation of the Town of Fort Erie
1 Municipal Centre Drive
Fort Erie, ON., L2A 2S6
Attention: Robert D. Judd, Municipal Engineer
Telephone: (905)-871-1600 ext. 2412
Email: rjudd@forterie.ca

and to the Vendor at:

Ministry of Transportation
Central Region
159 Sir William Hearst Avenue
3rd Floor, Property Section, Bldg. D
Toronto, ON., M3M 0B7
Attention: Sam Chung, Real Estate Officer
Telephone: (416) 303-9805
Email: sam.chung@ontario.ca

Or at such other addresses as the Vendor and the Purchaser may designate from time to time. Any such notice shall be conclusively deemed to have been given and received upon the same day if personally delivered or sent by facsimile or, if mailed, three (3) business days after the same is mailed. Any party may, at any time by notice given in writing to the other party, change the address for service of notice on it.

This Agreement shall enure to the benefit of and shall be binding on the parties and their respective heirs, legal representatives, successors and permitted assigns.

OFFERED BY the Purchaser this _____ day of _____, 2021.

The Corporation of the Town of Fort Erie

Tom Kuchyt
Chief Administrative Officer

ACCEPTED by the Vendor this _____ day of _____, 2021.

HER MAJESTY THE QUEEN in right
of the Province of Ontario, represented by
The Minister of Transportation for the
Province of Ontario

Steven McInnis, P.Eng.
Director, Design & Engineering