

THE CORPORATION OF THE MUNICIPALITY OF POWASSAN

BY-LAW NO. 2004-20

**Being a By-Law to establish policies for the use of
unopened road allowances for motor vehicle travel**

WHEREAS this Municipality is the owner of all road allowances within its jurisdiction;

AND WHEREAS this Municipality from time to time receives applications from ratepayers to use parts of original road allowances for motor vehicle passage purposes;

AND WHEREAS the purpose of this By-law is to establish policies with respect to the requirements of the Municipality, if Council approves of an unopened road allowance being used for vehicle purposes.

BE IT ENACTED AS A BY-LAW OF this Municipality as follows:

1. General Policy

It is the general policy of this Municipality that unopened road allowances shall not be used for motor vehicle travel purposes, and that any cutting down of trees or grading or removing of rocks or fill on unopened road allowances is prohibited without the express approval of Council.

2. Applications

If Council decides that an Application to use an unopened road allowance merits consideration, and approves of such use, the following are the conditions of approval:

2.1 Survey

Applicants are required to survey the road allowance to be sure that the proposed use will not encroach on adjacent lands.

2.2 Application's Expense

All work shall be done at the Applicant's expense. The Applicant shall file a cost estimate prior to the work taking place and file security for the value of the work.

2.3 Outline of Proposed Work

The Applicant shall prepare, and submit to Council for approval, a summary of the proposed work program including width, and care to be taken with respect to any environmentally sensitive areas.

2.4 No Assumption by the Municipality

Once the work is completed and motor vehicle access is possible, it is not a road which is “assumed” by the Municipality for public travel purposes.

2.5 Letter of Credit

The Applicant shall file a Letter of Credit (or cash) with Municipality for 10% of the value of the estimated cost of the work. This is to protect the Municipality against construction liens.

2.6 Inspection

The Municipality will inspect the work only to the extent to make certain that the Applicant has followed Council’s directions.

2.7 Posting of Sign

The Applicant shall be required to post signs “ROAD NOT ASSUMED BY THE MUNICIPALITY, USE AT YOUR OWN RISK”. If these signs are removed they shall immediately be replaced by the Applicant.

2.8 Group Application

If the Application is by a group of people who wish to make a trail along an unopened road allowance, consideration should be given to the forming of a Corporation that would be responsible for the maintenance of the road.

2.9 Insurance

The Applicant shall obtain liability insurance, with respect to the use of the road, and file a copy with the Municipality. The Municipality must be added as an insured on the policy. The insurance company must give an undertaking that the policy will not be cancelled or terminated without 30 days notice to the Municipality.

2.10 Waiver of Liability

The Applicant must enter into an Agreement with the Municipality waiving, releasing and discharging the Municipality of and from all claims, actions, causes of actions and damages for death, personal injury or damage to property arising out of the use of, the unopened road allowance.

2.11 Removal of Timber

Timber removal from the road allowance is the property of the Municipality of Powassan and must be purchased from the Municipality. Tree tops must be removed from site.

3. Further Conditions

Council shall add such additional conditions as it deems necessary having regard to the circumstances and area in which the proposed work is located.

Passed in open Council as read a First, Second and Third Time, this _____ day of _____, 2004

Mayor

Clerk

LICENCE AGREEMENT

FOR USE OF

AN UNOPENED MUNICIPAL ROAD ALLOWANCE

THIS AGREEMENT made in triplicate, this _____ day of _____, 2004.

BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF POWASSAN

Having its principle Municipal Offices at
P.O. Box 250, 466 Main Street
Powassan, Ontario P0H 1Z0

(Hereinafter called the “Municipality”)

OF THE FIRST PART

-AND-

Name:
Address:

(Hereinafter collectively referred to as “_____”)

OF THE SECOND PART

WHEREAS the Municipality is the owner of all unopened unassumed original road allowances in the geographic Municipality of Powassan;

AND WHEREAS _____ has applied to the Municipality for a licence to use certain parts of the original unopened road allowances in the geographic Municipality of Powassan;

AND WHEREAS Municipal By-Law No. _____ establishes policies for the use of unopened road allowances by Applicants;

NOW THEREFORE THIS AGREEMENT WITNESSETH, that in consideration of the covenants, agreements and terms hereinafter set out, the parties hereto covenant and agree with each other as follows:

1. **GRANT OF LICENCE**

The Municipality hereby grants to _____, a licence to use that portion of the original unopened road allowance, geographic Municipality of Powassan as a (enter purpose details and location etc...)

2. **TERM OF AGREEMENT**

This Licence Agreement shall be effective as of the _____ day of _____, 2004, and shall expire on the _____ day of _____, 2004.

3. **THIS LICENCE IS SUBJECT TO THE FOLLOWING ADDITIONAL CONDITIONS:**

3.1 **Boundary to be surveyed**

The centre line of the said Municipal road allowances, described in Paragraph 1 above, and shown on Schedule "A" attached, shall be marked and identified by a surveyor in order that there be no encroachments on adjacent lands.

3.2 **Clearance**

The portion of the road allowance to be used shall be cleared to a width not greater than _____ feet.

3.3 **Security Deposit**

There shall be deposited with the Municipality a security deposit _____ as a guarantee of the due performance of the terms of this Agreement.

3.4 **Signage**

There shall be erected a sign reading:

"Road not assumed by the Municipality: Use at your own risk."

This shall be placed on the road allowance between, where _____ proposes to commence its use of the said road allowance.

3.5 **Timber on Road Allowance**

All timber removed for the road allowance clearing, is the property of the Municipality and is to be purchased from the Municipality.

_____ shall submit to the Municipality, a calculation of the timber removed from the road allowance and within fifteen (15) days make payment for such timber.

3.6 **Treetops**

Treetops must be removed from the site.

3.7 **Liability Insurance**

_____ will forward to the Clerk of the Municipality, a Liability Insurance Policy showing the Municipality of Powassan named as an insured for the purpose of this Licence. The coverage shall be a minimum of One Million Dollars (\$1,000,000.00). The Policy must contain a provision that _____ agent will advise the Municipality within 10 days if the insurance coverage is cancelled.

3.8 **Expenses**

All expenses of the Municipality in connection with this Application, and the preparation of agreements, surveys, etc. are the responsibility of ORO.

3.9 **Licence not transferable**

This licence hereby granted is not transferable by _____ to any other party.

4. **RELEASE AND INDEMNITY**

4.1 _____ assumes all responsibility for, and releases the Municipality, its officers, employees and agents from and against all losses, damages, costs, expenses, claims, liabilities, actions, causes of actions and demands whatsoever, whether occurring on or for or after the term of this Agreement, including any environmental liability;

4.2 _____ shall indemnify the Municipality, its officers, employees and agents from and against all losses, damages, costs, expenses, claims, liabilities, actions, causes of actions and demands whether occurring or caused before or after the term of this Agreement, that the Municipality, its officers, employees and agents may suffer, incur, be subject to or liable for as a result of the operations of _____ on the unopened road allowances described above and shown on Schedule "A":

5. **TERMINATION OF AGREEMENT**

The Municipality may, at anytime, withdraw permission to use this unopened road allowance if _____ is in breach of any of the terms of this Agreement.

6. **NOTICE**

For the purpose of this Licence Agreement, Notice can be given to _____ by prepaid Registered Mail addressed to _____ at:

Notice shall be deemed to have been received on the _____ day after mailing.

7. **GENERAL**

This Agreement shall be for the benefit of, and be binding upon the parties hereto and their respective heirs, successors, administrators permitted assigns.

DATED this the _____ day of _____, 2004.

The Corporation of the Municipality of Powassan

Mayor

Clerk

DATED this the _____ day of _____, 2004.

(OWNER)

Witness

Owners signature