

THE CORPORATION OF THE TOWNSHIP OF ESSA

BY-LAW 2010 - 03

**A By-law authorizing the Mayor and the Clerk to enter into an Agreement with 811550 Ontario Limited for access and payment of the lands described as Part Lot 28, Concession 3, in the Township of Essa, County of Simcoe, designated as Parts 1, 2 and 4 on Plan 51R-18294, s/t RO1039816; being all of PIN: 58110-0146 (LT).**

WHEREAS Sections 8 and 44(1) of the *Municipal Act, 2001* S.O. 2001, c. 25, authorizes municipalities to enter into agreements to acquire and maintain roads; and

WHEREAS 811550 Ontario Limited is the owner of the lands described as Part Lot 28, Concession 3, in the Township of Essa, County of Simcoe, designated as Parts 1, 2 and 4 on Plan 51R-18294, s/t RO1039816; being all of PIN: 58110-0146 (LT); and

WHEREAS the Township requires lands for road widening purposes to widen Willoughby Road; and

WHEREAS the Township and 811550 entered into a written letter agreement wherein the Township agreed to purchase Part of Lot 28, Concession 3, in the Township of Essa, County of Simcoe, designated as Part 1 on Plan 51R-36991, being part of PIN 58110-0146 (LT) (the Subject Property) for \$73,600.00 with the Township paying all surveying and legal costs in relation to the transaction; and

WHEREAS the transaction cannot close at this time due to the fact that 811550 inadvertently allowed it's corporate status to be dissolved due to failure to file required forms with the Provincial Government; and

WHEREAS 811550 is in the process of having its corporate status revived by the Provincial Government; and

WHEREAS the Township is desirous of completing work on the Subject Property, including the cutting and removal of trees, excavating material, topsoiling, hydro seeding and other work (the Works) as required to accommodate the road construction on Willoughby Road; and

WHEREAS in order to commence the Works the Township has authorized the entering into of an agreement, attached, to allow for access to the Subject Property and to deal with other matters; and

WHEREAS the Township has agreed to pay 811550 a partial payment of \$32,165.96 upon execution of the agreement by both Parties in exchange for the right to access the property to

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commence the Works and in exchange for other consideration as set out further in this Agreement, with the balance of \$24,840.00 being paid when the land transfer has been finalized;

NOW THEREFORE the Council of the Corporation of the Township of Essa enacts as follows:

1. That the Agreement attached hereto and forming part of this By-law is hereby approved by Council.
2. The Mayor and Clerk are hereby authorized to execute the subject Agreement.
3. That this By-law shall come into force and take effect upon final passing thereof.

READ A FIRST, AND TAKEN AS READ A SECOND AND THIRD TIME AND FINALLY PASSED on this Twentieth day of January, 2010.

  
\_\_\_\_\_  
David Guergis, Mayor

  
\_\_\_\_\_  
Mike Galloway, Clerk

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**AGREEMENT****BETWEEN:****THE CORPORATION OF THE TOWNSHIP OF ESSA**

Hereinafter referred to as the "Township"

OF THE FIRST PART

- AND -

**811550 ONTARIO LIMITED**

Hereinafter referred to as the "811550"

OF THE SECOND PART

All of which are collectively referred to as "the Parties".

**PREAMBLE**

1. WHEREAS 811550 is the owner of the lands described as Part Lot 28, Concession 3, in the Township of Essa, County of Simcoe, designated as Parts 1, 2 and 4 on Plan 51R-18294, s/t RO1039816; being all of PIN: 58110-0146 (LT);
2. AND WHEREAS the Township requires lands for road widening purposes to widen Willoughby Road;
3. AND WHEREAS the Township and 811550 entered into a written letter agreement wherein the Township agreed to purchase Part of Lot 28, Concession 3, in the Township of Essa, County of Simcoe designated as Part 1 on Plan 51R-36991, being part of PIN 58110-0146 LT (the Subject Property) for \$73,600.00 with the Township paying all surveying and legal costs in relation to the transaction;
4. AND WHEREAS the transaction cannot close at this time due to the fact that 811550 inadvertently allowed it's corporate status to be dissolved due to failure to file required forms with the Provincial Government;
5. AND WHEREAS 811550 is in the process of having it's corporate status revived by the Provincial Government;
6. AND WHEREAS the Township is desirous of completing work of the Subject Property, including the cutting and removal of trees, excavating material, topsoiling, hydro seeding and other work (the Works) as required to accommodate the road construction on Willoughby Road;
7. AND WHEREAS in order to commence the Works the Township has authorized the entering into of this agreement (the Agreement) to allow for access to the Subject Property and to deal with other matters;
8. AND WHEREAS the Township has agreed to pay 811550 the purchase price of \$73,600.00 upon execution of this Agreement by both Parties in exchange for the right to access the property to commence the Works and in exchange for other consideration as set out further in this Agreement;
9. AND WHEREAS Sections 8 and 44(1) of the Municipal Act, 2001 (S.O.2001, c.25) authorizes municipalities to enter into agreements to acquire and maintain roads.

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NOW THEREFORE in consideration of the sum of One Dollar (\$1.00) now paid by each of the Parties herein to the other and for other good and valuable consideration (the receipt and sufficiency whereof is acknowledged by the execution of this Agreement) and in consideration of the premises as the covenants and agreements contained herein, the Parties hereto covenant and agree as follows:

1. 811550 and the Township agree that the Preamble is deemed to be true and shall be incorporated into the Agreement.
2. 811550 acknowledges and agrees that it has executed all required documentation to transfer the Subject Property to the Township and confirms that all of these documents have been provided to the Township's solicitor.
3. 811550 acknowledges and agrees that all of the executed transfer documents may be released and used by the Township's solicitor and registered on title at any time after execution of the Agreement by both Parties and payment to 811550 of the sum of \$48,760.00 upon execution of the Agreement and the balance of \$24,840.00 upon registration of the Transfer by the Township's Solicitor without the further consent of 811550 or notification to 811550.
4. 811550 acknowledges and agrees that after execution and compliance with all terms of the Agreement by both Parties, the Township will become the beneficial owner of the Subject Property and shall be entitled to treat the Subject Property as though it was fully owned by the Township in all respects, and the Township acknowledges that 811550 will have no further responsibility or obligations in respect to the Subject Property.
5. 811550 acknowledges and agrees that upon execution of the Agreement by both Parties and compliance with all terms of the Agreement, the Township, its agents and all those authorized by the Township shall have free and unrestricted access to the Subject Lands with their supplies, machinery, materials, vehicles and equipment as may be necessary to complete the Works or otherwise and to cut down and remove trees, excavate material, topsoil and hydro seed and complete any other work as required by the Township, all at the Township's expense.
6. The Township agrees to maintain all existing entrances from the Subject Lands to Willoughby Road during and after construction.
7. The Township agrees to indemnify and save harmless 811550 from and against all claims for personal injuries, property damage or both that arise due to (i) the entry onto the Property by the Township or those acting for them, and (ii) work completed by the Township or its agents on the Subject Property during the term of this Agreement. This obligation shall extend to all expenses and fees that may be incurred by 811550 that would not have been incurred but for the entry by the Township under this Agreement.
8. The Township agrees to be responsible for all legal costs related to the negotiation, preparation or termination of this Agreement.
9. 811550 agrees that out of the proceeds received by it from the payment to it of \$48,760.00, it must pay all tax arrears to the Township, and directs the Township's solicitor to complete this on it's behalf.
- 10 (a) 811550 agrees that in the event that 811550's corporate status is not revived and therefore title to the Subject Property cannot be transferred to the Township in fee simple, free and clear of encumbrances by December 31, 2010, then the Township may request the return of the payment to 811550 in the amount of \$48,760.00 and if payment is not made to the Township within fourteen (14) days of the written request to do so, the Township may add this amount to the tax roll for the remainder of 811550's property, being Parts 2 & 4, on Plan 51R-18294 and collect them in a like manner as with taxes, pursuant to Sections 427 and 349(1) of The Municipal Act 2001 S.O. 2001, c. 25.

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- (b) In the event that this occurs, 811550 acknowledges and agrees that the Township may be required to expropriate the Subject Property and 811550 agrees to waive their right to request a Hearing of Necessity and a Compensation Hearing pursuant to the Expropriation Act R.S.O. 1990, c. E 26 and agrees to accept \$48,760.00 in full compensation thereof notwithstanding any other rights that 811550 may have under the Expropriation Act, R.S.O. 1990, c. E 26.
11. Any notices or other communications provided pursuant to the provisions of this agreement are to be given at the following addresses and are deemed given five (5) days after being mailed by regular mail on the day that they are faxed or e-mailed with proof that they have been sent:

**"TOWNSHIP":**

The Corporation of the Township of Essa  
5786 County Road 21  
Utopia, ON L0M 1T0

Attention: Greg Murphy, CAO/Manager of Public Works & Parks

Tel: (705) 424-9770  
Fax: (705) 424-2367  
Email: [gmurphy@essatownship.ca](mailto:gmurphy@essatownship.ca)

**"811550":**

811550 Ontario Limited  
155 West Beaver Creek Road  
Suite 1  
Richmond Hill, ON L4B 1E1

Attention: Mr. Jerry Fenc, President  
Mr. Robert Wilson, Vice-President and Secretary

Tel: (416) 284-4649 / (905) 470-7161  
Fax: (416) 633-8416 / (905) 764-9120  
Email: [rwilson@total.net](mailto:rwilson@total.net); [solveiefenc@sympatico.ca](mailto:solveiefenc@sympatico.ca)

12. This Agreement shall be effective from and on the date of execution by 811550 and terminate upon the date that the transfer to the Township, in fee simple, free of any encumbrances, is registered on title.
13. 811550 agrees that it had the opportunity to obtain Independent legal advice prior to executing this Agreement and has waived its right to Independent Legal Advice.
14. 811550 agrees that the Township, in its sole discretion, may register Notice of this Agreement in the Land Titles Office for Simcoe (No. 51) at Barrie, against the Subject Property.
15. 811550 agrees and confirms that it will not call into question, directly or indirectly, in any proceeding or action in court, or before any administrative tribunal the Township's right to enter into and enforce this Agreement. The law of contract applies to this Agreement and the Parties are entitled to all remedies arising from it. 811550 and the Township agree that adequate consideration has flowed from each Party to the other in relation to this paragraph and that the terms of this paragraph are not severable by either Party. The Owners further agree that they shall not take the benefit of this Agreement and allege entitlement to any greater rights than set out in this Agreement. The provisions of this

paragraph may be pleaded by either Party, in any action or proceeding, as an estoppel of any denial of such right.

- 16. 811550 agrees and commits to execute such further and other documents or consents as required for the purposes that may affect the provisions of this Agreement.
- 17. The failure of the Township at any time to require performance by 811550 of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the Township of the performance of any obligation hereunder be taken or be held to be a waiver of the performance of the same or any other obligation hereunder at any later time. The Township shall specifically retain its rights at law to enforce this Agreement.
- 18. 811550 and the Township agree that all covenants and conditions contained in this Agreement shall be severable unless specifically stated otherwise herein, and that should any covenant or condition in this Agreement be declared invalid or unenforceable by a Court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and not terminate thereby.
- 19. This Agreement shall be governed by and has been construed in accordance with the laws of the Province of Ontario and shall be treated in all respects as an Ontario contract.
- 20. No modification of, or amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by the Parties hereto.
- 21. This agreement shall be binding upon and inure to the benefit of the parties to this agreement and their respective administrators, successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this agreement

DATED: Jan 20/10

THE CORPORATION OF THE TOWNSHIP OF ESSA

Per: [Signature]  
Name: David Guergis  
Title: Mayor

Per: [Signature]  
Name: Mike Galloway  
Title: Clerk

We have authority to bind the corporation.

DATED: \_\_\_\_\_

811550 ONTARIO LIMITED

Per: [Signature]  
Name: Jerry Fenc  
Title: President

Per: [Signature]  
Name: Robert Wilson  
Title: Vice-President and Secretary

We have authority to bind the corporation.