The Corporation of the Town of South Bruce Peninsula

By-Law Number 54-2017

Being a By-Law to Authorize the Mayor and Clerk to Sign a Lease Extension Agreement with Her Majesty the Queen in Right of Ontario as Represented by the Minister of Public Infrastructure Renewal

Whereas Section 8 of the Municipal Act, 2001, Chapter 25, as amended, provides that Section 8 shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality’s ability to respond to municipal issues;

And whereas Section 9 of the Municipal Act, 2001, Chapter 25, as amended, provides that 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 former Township of Amabel did enter into a lease agreement with Her Majesty the Queen in Right of Ontario as represented by the Minister of Public Infrastructure Renewal for the lands more particularly described as a part of the main floor of the building located at 21 Sauble Falls Parkway, Sauble Beach, Ontario comprising of 111.48 square metres of space as shown on Schedule “A” attached to the original agreement;

And Whereas a Lease Extension Agreement entered into by the Town of South Bruce Peninsula dated March 10, 2008 extended the term to April 30, 2013;

And whereas a Lease Extension Agreement entered into by the Town of South Bruce Peninsula dated April 1, 2013 extended the term to April 30, 2018;

And whereas the Town of South Bruce Peninsula has deemed it expedient to enter into a further five year Lease Extension Agreement commencing on May 1, 2018 and ending on April 30, 2023.

Now therefore the Council of the Corporation of the Town of South Bruce Peninsula enacts as follows:

1) That the Mayor and Clerk are hereby authorized to sign the lease extension with Her Majesty the Queen in right of Ontario as represented by the Chair of the Management Board of Cabinet.

2) That the lease agreement as referred to herein shall be attached hereto and form part of this by-law.
3) That any by-law inconsistent with this by-law shall be hereby repealed.

4) That the agreement shall come into force and effect for the terms stated therein upon passing by Council and upon execution thereof by all parties.

Read a first and second time this 6th day of June, 2017.

[Signatures]

Mayor

Clerk

Read a third time and finally passed this 6th day of June, 2017.

[Signatures]

Mayor

Clerk
Seventh Lease Extension and Amending Agreement

This Agreement made in triplicate as of May 1, 2018.

Between:

The Corporation of the Town of South Bruce Peninsula
(the “Landlord”)

Of the First Part

- and -

Her Majesty the Queen in Right of Ontario as Represented by the Minister of Infrastructure
(the “Tenant”)

Of the Second Part

Whereas:

A. By a lease dated May 1, 1981 (the “Original Lease”), The Corporation of the Township of Amabel (the “Original Landlord”) leased to Her Majesty the Queen in right of Ontario as represented by the Minister of Government Services (“MGS”) the premises more particularly described as a portion of the main floor, comprising a rentable area of approximately one thousand, two hundred (1,200) square feet (the “Rentable Area of the Premises”), in the building municipally known as 21 Sauble Falls Parkway (the “Building”), in the City of Sauble Beach, in the Province of Ontario, as more particularly described in Schedule “B” thereto (the “Premises”) for a term of five (5) years, commencing on May 1, 1981 and expiring on April 30, 1986 (the “Original Term”), in addition to other terms and conditions as set out therein.

B. By a lease renewal agreement dated May 1, 1986 (the “First Lease Extension and Amending Agreement”), the Original Landlord and MGS agreed to extend the Original Term for an addition term of five (5) years, commencing on May 1, 1986 and expiring on April 30, 1991 (the “First Extension Term”), in addition to other terms and conditions as set out therein.

C. By a lease renewal agreement dated May 1, 1991 (the “Second Lease Extension and Amending Agreement”), the Original Landlord and MGS agreed to extend the First Extension Term for an additional term of five (5) years, commencing on
May 1, 1991 and expiring on April 30, 1996 (the "Second Extension Term"), in addition to other terms and conditions as set out therein.

D. By Order in Council No. 356/93, approved and ordered February 3, 1993, all the powers and duties assigned by law to the MGS were assigned and transferred to the Chair of the Management Board of Cabinet (the "Chair").

E. By a lease extension agreement dated May 1, 1996 (the "Third Lease Extension and Amending Agreement"), the Original Landlord and the Chair agreed to extend the Second Extension Term for an additional term of five (5) years, commencing on May 1, 1996 and expiring on April 30, 2001 (the "Third Extension Term"), in addition to other terms and conditions as set out therein.

F. By an order made under the Municipal Act R.S.O. 1990 C.m.48 Subsection 2(2) dated January 30, 1998, the Original Landlord changed its name to become the Landlord.

G. The Chair occupied the Premises for the period from May 1, 2001 until April 30, 2003 on an overhold basis as a month-to-month tenant. It is agreed and understood that the Chair has satisfied all of its covenants and responsibilities during this period.

H. By a lease amending and extension agreement dated September 18, 2003 (the "Fourth Lease Extension and Amending Agreement"), the Landlord and the Chair agreed to extend the Third Extension Term for an additional term of five (5) years, commencing on May 1, 2003 and expiring on April 30, 2008 (the "Fourth Extension Term"), in addition to other terms and conditions as set out therein.

I. By Order in Council No. 1487/2005, approved and ordered September 21, 2005, all of the powers and duties assigned by law to the Chair in respect of the acquisition and disposition of real property, or interests therein, by any means and the holding and management of real property, or interests therein, were assigned to the Minister of Public Infrastructure Renewal ("MPIR").

J. By a lease extension and amending agreement dated March 19, 2008 (the "Fifth Lease Extension and Amending Agreement"), the Landlord and MPIR agreed to extend the Fourth Extension Term for an additional term of five (5) years, commencing on May 1, 2008 and expiring on April 30, 2013 (the "Fifth Extension Term"), in addition to other terms and conditions as set out therein.

K. By Order in Council No. 1617/2008, approved and ordered September 17, 2008, all of the powers and duties assigned by law to the MPIR in respect of infrastructure and any other matters were transferred and assigned to Minister of Energy and Infrastructure ("MEI").

L. By Order in Council No. 1320/2010, approved and ordered September 15, 2010, all of the powers and duties assigned by law to the MEI under Order in Council No. 1617/2008 in respect of infrastructure matters, including but not limited to the
powers, duties, functions and responsibilities of the MEI in respect of the Ministry of Government Services Act, R.S.O. 1990, c.M.25 in respect of real property matters, were transferred and assigned to the Minister of Infrastructure ("MOI").

M. Ontario Infrastructure and Lands Corporation ("OILC") has been delegated MOI’s authorities and responsibilities with respect to real property in the name of MOI subject to certain conditions by Delegation of Authority of Ontario Infrastructure and Lands Corporation under the Ministry of Infrastructure Act, 2011 dated June 6, 2011.

N. By Order in Council No. 1376/2011, approved and ordered July 19, 2011, the MOI shall exercise the powers and duties assigned by law to the MOI or that may otherwise be assigned to or undertaken by the MOI in respect of infrastructure and any other matters related to the MOI’s portfolio.

O. By a lease extension and amending agreement dated April 1, 2013 (the “Sixth Lease Extension and Amending Agreement”), the Landlord and MOI agreed to extend the Sixth Term for an additional term of five (5) years, commencing on May 1, 2013 and expiring on April 30, 2018 (the “Sixth Extension Term”), in addition to other terms and conditions as set out therein.

P. By Order in Council No. 219/2015, approved and ordered February 18, 2015, all of the powers and duties previously assigned and transferred to the MOI under Order in Council No. 1376/2011, save and except as set out in Order in Council No. 219/2015, were assigned and transferred to the Minister of Economic Development, Employment and Infrastructure ("MEDEI").

Q. By Order in Council No. 1342/2016, approved and ordered September 14, 2016, all of the powers and duties previously assigned and transferred to the Minister of Economic Development, Employment and Infrastructure under Order in Council No. 219/2015 in respect of infrastructure and other matters are assigned and transferred to MOI.

R. The Landlord and the Tenant have now agreed to extend the Sixth Extension Term in accordance with the terms of the Original Lease, as amended and extended, with a seventh extension term commencing on May 1, 2018 and expiring on April 30, 2023 (the “Seventh Extension Term”), in addition to other terms and conditions as set out herein.

S. The Landlord and the Tenant have agreed on the amount of the annual rent for the Seventh Extension Term.

T. The Original Lease, the First Lease Extension and Amending Agreement, the Second Lease Extension and Amending Agreement, the Third Lease Extension and Amending Agreement, the Fourth Lease Extension and Amending Agreement, the Fifth Lease Extension and Amending Agreement, the Sixth Lease Extension and Amending Agreement and this seventh lease extension and amending agreement (the “Seventh Lease Extension and Amending
Agreement") are hereinafter collectively referred to as the "Lease", except as specifically set out herein.

Now therefore this agreement witnesses that in consideration of the mutual promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto agree as follows:

1. Confirmation of Recitals

The parties hereto confirm that the foregoing recitals are true in substance and in fact.

2. Extension of Lease

The parties hereto agree that:

(a) The Lease is hereby extended for the Seventh Extension Term.

(b) The Seventh Extension Term shall commence on May 1, 2018 and expire on April 30, 2023.

(c) The Tenant shall continue to have the right to cancel the Lease with such date of cancellation to be effective at any time by giving the Landlord no less than six (6) months' prior written notice of cancellation.

3. Rent for the Seventh Extension Term

(a) The annual rent payable for the Seventh Extension Term shall be Twenty-Two Thousand, Eight Hundred Dollars ($22,800.00) (based on a rate of Nineteen Dollars ($19.00) per square foot of the Rentable Area of the Premises per annum), payable in equal monthly instalments of One Thousand, Nine Hundred Dollars ($1,900.00), each on the first day of each month during the Seventh Extension Term, the first of such monthly instalments to be due and payable on May 1, 2018.

4. Amendment of Lease

The extension contemplated in Section 2 of this Seventh Lease Extension and Amending Agreement is subject to all the covenants and conditions contained in the Original Lease, as amended, renewed and extended from time to time, save and except that:

(a) The Tenant shall pay to the Landlord all applicable Sales Taxes assessed on the Rent payable by the Tenant to the Landlord under this Lease. The Sales Taxes shall not be deemed to be Additional Rent under this Lease, but may be recovered by the Landlord as though they were Additional Rent.

(b) The Landlord and the Tenant agree that the Tenant shall be granted two (2) further options to extend the term of the Lease for five (5) years each (each a
“Further Extension Term”). Each Further Extension Term shall be upon the same terms and conditions of the Original Lease, as extended, renewed or amended, as the case may be, except that there shall be no further right of extension beyond the last Further Extension Term and except for the annual rent, which shall for each Further Extension Term be based upon: (i) the Rentable Area of the Premises, and (ii) the Market Rental as of the date which is six (6) months prior to the commencement of the respective Further Extension Term. The annual rent for each Further Extension Term shall be determined by mutual agreement as of the date which is six (6) months prior to the expiry of the Seventh Extension Term or the respective Further Extension Term, as the case may be, or failing such agreement, by arbitration in accordance with Section 19 of the Provisos of the Original Lease.

The Tenant shall give written notice to the Landlord of its extension of the Lease at least six (6) months prior to the end of the Seventh Extension Term or the respective Further Extension Term, as the case may be.

The Landlord and Tenant acknowledge and agree that the extension rights granted in subsection 4(b) of this Seventh Lease Extension and Amending Agreement shall supersede the extension rights contained in the Original Lease or any prior extension and amending agreement and the extension rights contained in the Original Lease or any prior extension and amending agreement shall be of no further force and effect.

“Market Rental” means, at any given time, the then current market net rental rate as indicated by market comparables (including, if possible and without limitation, the length of the term and the frequency of adjustments in rent, if any) entered into at arm’s length with comparable tenants with financial standing comparable to the Tenant for Unimproved office premises of comparable size, effective age, quality and use in comparable buildings in the vicinity in which the Building is located (or, where necessary, similar markets in the Province of Ontario), taking into account the incidence of tenant inducements and allowances or initial rent-free or reduced rent periods then prevailing in the relevant market areas, and making the necessary adjustments for any differences.

(c) The Original Lease is amended as follows:

(i) Section 21 of the Provisos, Notices, is amended to provide for the following address for the Tenant:

    Ontario Infrastructure and Lands Corporation
    One Stone Road West, 4th Floor
    Guelph, Ontario N1G 4Y2
    Attention: Vice President, Asset Management
    Fax: (519) 826-3330

    With a copy to:
Ontario Infrastructure and Lands Corporation
777 Bay Street, Suite 900
Toronto, Ontario M5G 2C8
Attention: Director, Legal Services (Real Estate and Leasing)
Fax: (416) 326-2854

And an additional copy to:

CBRE Limited
18 King Street East, Suite 1100
Toronto, Ontario M5C 1C4
Attention: Global Workplace Solutions - Director, Lease Administration – OILC
Fax: (416) 775-3989

(ii) In the Definitions section of the Original Lease, the definition of "Open Data" shall be inserted:

""Open Data" means data that is required to be released to the public pursuant to the Open Data Directive."

(iii) In the Definitions section of the Original Lease, the definition of "Open Data Directive" shall be inserted:

""Open Data Directive" means the Management Board of Cabinet's Open Data Directive, updated on April 29, 2016, as amended from time to time.”

(d) The Landlord agrees that upon the request of the Tenant, the Landlord, and any Person hired by the Landlord: (i) to do work on the Premises; or (ii) who requires access to the Premises to do any work, whether to the Premises or otherwise, shall undergo security screening checks in compliance with Ontario Government policies. The Landlord further agrees that any Person hired by the Landlord to supply janitorial services to the Building shall be reputable and all of its employees shall be bonded.

(e) All sections, clauses or provisions of the Lease which obligate the Tenant to pay interest to the Landlord for any reason whatsoever are hereby amended to delete the obligation of the Tenant to pay interest to the Landlord, in order to conform with the Tenant's obligation to comply with the Financial Administration Act, R.S.O. 1990, c.F.12, as amended.

5. General
(a) The Landlord and the Tenant hereby mutually covenant and agree that during the Seventh Extension Term they shall perform and observe all of the covenants, provisos and obligations on their respective parts to be performed pursuant to the terms of the Lease, as amended and extended hereby.

(b) The Lease shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns, subject to the express restrictions contained therein.

(c) Capitalized expressions used herein, unless separately defined herein, have the same meaning as defined in the Lease, as amended and extended.

(d) The provisions of this Seventh Lease Extension and Amending Agreement shall be interpreted and governed by the laws of the Province of Ontario.

The remainder of this page is intentionally left blank.
(e) The Landlord acknowledges that this Lease and any information contained herein, may be required to be released pursuant to the provisions of the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31 and the Open Data Directive as amended. This acknowledgement shall not be construed as a waiver of any right to object to the release of this Lease or of any information or documents.

Executed by each of the parties hereto under seal on the date written below.

Signed, sealed and delivered  

Dated this 6th day of June, 2017.

The Corporation of the Town of South Bruce Peninsula

Per:

Name: Janice Jackson  
Title: Mayor 
Authorized Signing Officer

Per: 

Name: Angela Catharine  
Title: Clerk 
Authorized Signing Officer
Dated this ___day of __________, 20__.

Her Majesty the Queen in Right of Ontario as Represented by the Minister of Infrastructure, as Represented by Ontario Infrastructure and Lands Corporation

Per:

Name:
Title:

Authorized Signing Officer