

November 7, 2012

Report To: Mayor & Council

From: Doug Brown, Manager Operations & Facilities



SUBJECT: Lease with CNR for Planting of Trees on their Property

Back in May of 1989, the Town entered into a lease agreement with CNR to allow the Town to plant trees on CNR property (35 feet by 1135 feet) just south of the Fifth Street ROW between York Avenue and Webster Avenue. See attached drawing showing the CNR property in question. The cost back in 1989 was \$ 250 (GST extra) per year to lease the CNR land and the Town would be responsible to pay all property taxes. See attached copy of the original lease agreement. In May of 1992 the cost to lease the property was increase by CNR to \$300 per year. However, there has been some dispute over the tax rate for this property since 2006 as the Town is exempt from property taxes. The Town and CNR staff has been trying to get the leased property exempt from property taxes and it appears that this will occur in the near future

At this time CNR is requesting that the lease be amended or modified where the cost would be increased to \$ 500 (HST extra) per year for a 5-year term commencing on May 1st, 2013 to April 30, 2018. See attached information.

The Operations & Facilities Executive Committee recommends the following:

- 1) Administration try to negotiate will CNR officials where there is no requirement for the Town to lease above mentioned CNR property in the future as the trees are beneficial to both parties.

- 2) Should negotiation as outlined above fail, that prior to the Town renewing the original lease that CNR will ensure that the property in question is changed to a tax exempted status as the Town is not required to pay property or land taxes for municipal services or infrastructure within Town limits.
- 3) Should negotiation as outlined above fail, that the Mayor and Clerk be authorizing to amend the original 1989 lease agreement for a 5-year term commencing May 1, 2013 to April 30, 2018 where the cost per year would be \$ 500 (HST extra) on behalf of the Corporation of the Town of Fort Frances.

Respectfully submitted,
Operations & Facilities Division

Doug Brown

Doug Brown, P. Eng.
Manager Operations & Facilities

RECOMMENDED

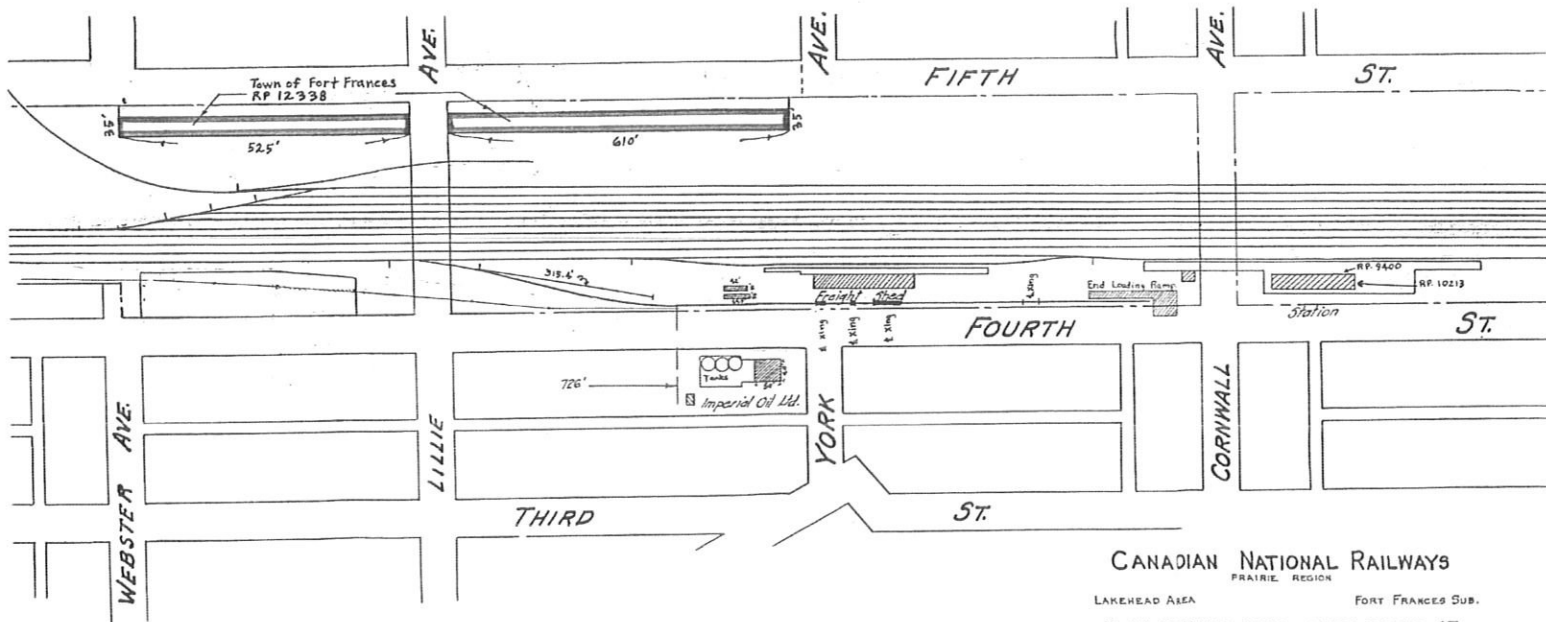
NOV - 7 2012

DIV. MNG.

EXECUTIVE COMM.

Council approval of this report will ensure the following:

- 1) Administration try to negotiate will CNR officials where there is no requirement for the Town to lease above mentioned CNR property in the future as the trees are beneficial to both parties.
- 2) Should negotiation as outlined above fail, that prior to the Town renewing the original lease that CNR will ensure that the property in question is changed to a tax exempted status as the Town is not required to pay property or land taxes for municipal services or infrastructure within Town limits.
- 3) Should negotiation as outlined above fail, that the Mayor and Clerk be authorizing to amend the original 1989 lease agreement for a 5-year term commencing May 1, 2013 to April 30, 2018 where the cost per year would be \$ 500 (HST extra) on behalf of the Corporation of the Town of Fort Frances.



CANADIAN NATIONAL RAILWAYS
PRAIRIE REGION

LAKEHEAD AREA FORT FRANCES SUB.

PLAN SHOWING LAND TO BE LEASED AT

FORT FRANCES-ONTARIO

SCALE: 1" = 200'

LAND SURVEY OFFICE

Oct. 24 1968

May 5 1969

May 8 1967

WINNIPEG, MAN.

June 1968 Nov. 18 1969

Mar. 1967 10 Feb. 1970

July 25 1968 18 Aug. 1972

17 Oct. 1968 21 Aug. 1972

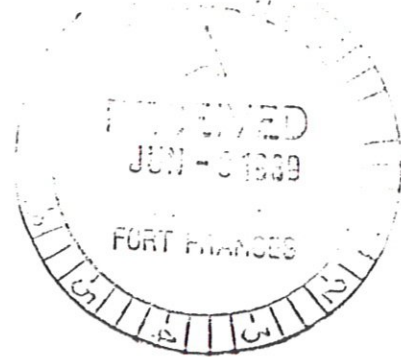
14 Oct. 1969 15 Nov. 1972

CC-KS.
EB.

5 June 1989

Our file: RP 12338 Fort Frances

Town of Fort Frances
P.O. Box 38
Fort Frances, ON
P9A 3M5



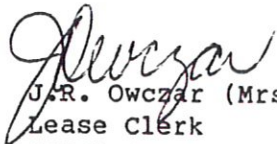
Attention: G. W. Treftlin, Clerk

Re: License RP 12338 - Tree Planting Site - Fort Frances, ON

With reference to previous correspondence regarding the above captioned license agreement, enclosed for your records is a fully executed duplicate original of the new license dated 01 May 1989.

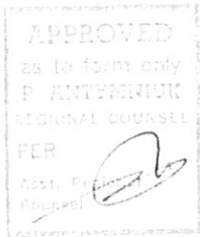
Yours truly,

→ Glenn


J.R. Owczar (Mrs.)
Lease Clerk
(204) 988-8409

JRO/cf7886c(0475c)
Encl.

PERMISSION is hereby given by:



CANADIAN NATIONAL RAILWAY COMPANY

(hereinafter called the "Company")

- to -

THE TOWN OF FORT FRANCES

(hereinafter called the "Licensee")

to use certain lands of the Company (hereinafter referred to as the "premises") at Fort Frances, in the Province of Ontario, for the purpose of planting trees thereon, the said premises being shown outlined in red on the attached plan which forms part hereof.

ON THE FOLLOWING TERMS AND CONDITIONS:

THE LICENSEE AGREES:

1. To use the premises for the purpose of planting trees only and for no other purpose.
2. To keep the premises in a neat and tidy condition, and to allow no refuse of any nature to accumulate on the premises or in the vicinity thereof.
3. That all persons entering upon the premises or other lands of the Company for any purpose connected with the privileges herein granted shall do so at the entire risk of the Licensee and the Licensee shall at all times indemnify and save harmless the Company from and against all loss, expense or damage arising from any negligence of the Company, its servants or agents, and from and against all claims and demands, loss, costs, actions, suits or other proceedings by whomsoever made, brought or prosecuted, whether arising by reason of accidents, damages or injuries to persons (including the Company's servants or agents) or to property or otherwise, in any manner based upon, occasioned by, arising out of, or attributable to the existence of these presents, or any privileges granted, or action taken or things done or maintained by virtue hereof, or the exercise in any manner of rights arising hereunder, and the Licensee hereby waives as against the Company all claims and demands of whatsoever nature or kind, whether arising directly or indirectly out of the existence of these presents or any privileges granted or action taken or things done by virtue hereof.
4. To obtain and keep in force during the continuance of this License, at its own cost and expense, comprehensive general liability insurance with limits of not less than One Million Dollars (\$1,000,000),

any one occurrence, to protect both the Licensee and the Company from any claim by whomsoever made, against bodily injury, death and/or property damage, attributable to the exercise by the Licensee or others of any of the rights herein granted, or in any manner arising out of the existence of this License. The policy shall name the Company as an additional assured and shall contain a cross liability clause protecting each name assured as if separately insured, and the policy shall be extended by endorsement to cover the liability assumed by the Licensee under the terms of this License. The policy shall also be endorsed to provide that 30 days' advance notice in writing will be given to the Company of cancellation or any changes which modify the coverage thereunder.

5. To pay to the Company for the privileges herein granted the sum of Two Hundred and Fifty Dollars (\$250.00) per annum, payable in advance, effective from the date hereof.

6. To pay all lawful rates, taxes and assessments that may during the existence of these presents become payable in respect of the premises, including but without limitation of the generality of the foregoing, taxes assessed for local improvements, and business taxes.

7. To undertake the responsibility for and the entire expense of planting the trees, ensuring in each case that underground facilities (i.e. pipes, wires, etc.) remain undisturbed both during planting and in the future as roots grow.

8. That deciduous trees (only) shall be planted on that portion of the premises along Fifth Street West.

9. That all trees shall be trimmed on a regular basis in order to prevent interference with overhead power and/or telephone lines.

10. That road access onto the Company's property at Lillie Street from Fifth Street West shall not in any way be interfered with or blocked by trees.

11. In order to maintain sight lines at the public crossing at the intersection of Webster Avenue and Fifth Street West, no trees whatsoever shall be planted west of the first pole east of Webster Avenue.

12. Not to assign or sublet this License, nor any of the privileges herein granted, without the consent in writing of the Company.

13. That this License shall continue in effect for a period of one year from the date hereof, and thereafter from year to year, subject to cancellation at any time by either party giving to the other thirty (30) days' notice in writing.

14. Upon termination of this License to restore the premises to a condition satisfactory to the Company. In the event of the Licensee failing so to do, the Company may perform such work at the risk and expense of the Licensee.

IN WITNESS WHEREOF the parties hereto have duly executed this License as at the first day of May, 1989.

Ariza
(Witness)

) CANADIAN NATIONAL RAILWAY COMPANY

A. E. Campbell

THE TOWN OF FORT FRANCES

[Signature]
MAYOR

CLERK

DATED.....1st May.....A.D.1988.

CANADIAN NATIONAL RAILWAY COMPANY

- and -

THE TOWN OF FORT FRANCES

LICENSE

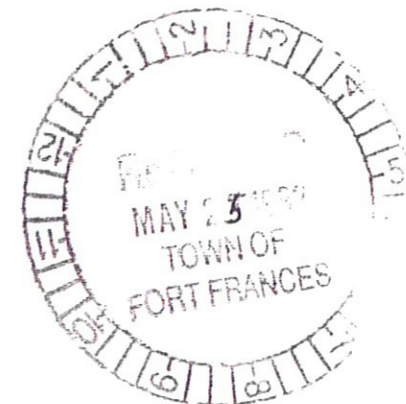
File No.: RP 12338 Fort Frances

P. ANTNYNIUK
Regional Counsel
Canadian National Railways
Winnipeg, Manitoba



10004-104 Avenue
Edmonton, Alberta
T5J 0K2

10004-104^e avenue
Edmonton, Alberta
T5J 0K2



May 13, 1992.

Our File: RP 12338

DOUBLE REGISTERED MAIL.

Town of Fort Frances
P.O. Box 38
Fort Frances, Ontario
P9A 3M5

Dear Sirs:

Reference is made to your lease designated No. RP 12338, covering a Tree Planting Site at Fort Frances, Ontario.

Please be advised that CN's minimum lease rental has been increased to \$300.00 per annum, plus taxes.

This Amendment to Lease Rental Notice forms an integral part of your lease and should be affixed to the document which you have in your possession.

Your next Statement of Account will reflect the amended rental indicated herein.

Yours truly,

Dorele Reitel

for Patti Sawchuk,
Real Estate Assistant,
CN Real Estate.

PS/gr

Attach.

Phone: (403) 421-6821

AMENDMENT TO LEASE RENTAL

NOTICE

Re: Lease No. RP 12338, dated May 1, 1989
from CANADIAN NATIONAL RAILWAY COMPANY to:

TOWN OF FORT FRANCES

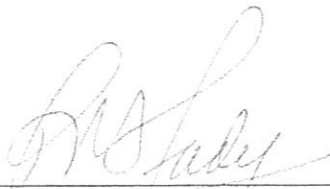
covering: 56,750.00 square feet
for the purpose of: Tree Planting

TAKE NOTICE that the rent payable under this lease is hereby adjusted from \$250.00 per annum, plus taxes, to a rental of \$300.00 per annum, plus taxes, payable commencing May 1, 1992.

AND FURTHER TAKE NOTICE that the provisions of this NOTICE shall, upon the execution hereof, be deemed to be incorporated in this lease to the intent that the rental payment hereunder is \$300.00 per annum, plus taxes, commencing May 1, 1992.

DATED this day of May 1992, at Edmonton, Alberta.

CANADIAN NATIONAL RAILWAY COMPANY



Regional Manager,
Real Estate Services

Laurie Witherspoon/Frances
10/30/2012 11:19 AM

To Mark McCaig/Frances@Frances, Doug
Brown/Frances@Frances, Milt Strachan/Frances@Frances
cc Glenn Treftlin/Frances@Frances
bcc
Subject Fw: 1000/3060064 Tree Planting Site

Doug,

See the attached agreement renewal with a proposed annual increase to \$500.00 should be brought forward for Council authorization. Let me know if you require a copy of the original June 5, 1989 Agreement.

Laurie A. Witherspoon, CMO
Treasurer
Town of Fort Frances
320 Portage Ave.
Fort Frances, ON P9A 3P9
Phone: (807) 274-5323 Ext. 248
Fax: (807) 274-8479

----- Forwarded by Laurie Witherspoon/Frances on 10/30/2012 11:12 AM -----



Susan Sze
<Susan.Sze@cn.ca>
10/30/2012 09:10 AM

To "lwitherspoon@fort-frances.com"
<lwitherspoon@fort-frances.com>
cc
Subject 1000/3060064 Tree Planting Site

Hi Laurie,

Further to our telephone conversation yesterday, I reviewed the account and the last rent the Town was paying is \$347.00, plus GST. The payment details are as follows:

Cheque #	Amount	Rent Period
4151	\$371.29	2006/05/01 – 2007/04/30
7316	\$367.82	2007/05/01 – 2008/04/30
10493	\$367.82	2008/05/01 – 2009/04/30

Our Property Tax Manager is looking into getting this leased property exempt from taxes and I will revert the billing back to \$347.00 p.a. + HST for the period 2009 to current. I will forward the revised invoices to you shortly.

Attached is a rent review letter we sent in 2008. Also enclosed is a Lease Renewal for your recommendation of the new rent to the Council. Please feel free to contact me for any issue or concerns regarding the lease renewal.

Thank you
Susan Sze
Asset Management Coordinator

CN
Business Development & Real Estate
1 Administration Road
Concord, Ontario
L4K 1B9

Phone: (905)760-5004
Fax: (905)760-5010



fort.PDF Town of Fort Frances Renewal.pdf



BUSINESS DEVELOPMENT & REAL ESTATE

Sylvia Klawitter
Conveyance Coordinator
Main Floor - Building B
10229 - 127 Avenue
Edmonton, Alberta, Canada T5E 0B9
Telephone: (780) 643-7655
Facsimile: (780) 377-4281
E-mail : sylvia.klawitter@cn.ca

Your File:

Our File: 3060064

August 12, 2008

Town of Fort Frances,
320 Portage Avenue,
Fort Frances, Ontario
P8A 3P9

Dear Sirs:

RE: REVIEW OF RENT: TREE PLANTING SITE
LOCATION: FORT FRANCES, ONTARIO

We have reviewed the rent payable under your Lease and would advise that effective **MAY 1ST, 2009** the new rent will be **\$500.00** per annum plus GST. Our Accounting Department will be billing you accordingly.

All other terms and conditions of the Lease will remain the same.

We trust you will find the above in order; should, however you have any questions or concerns, please do not hesitate to contact our offices.

Yours truly,

CN – BUSINESS DEVELOPMENT & REAL ESTATE

Per: 
SYLVIA KLAWITTER

sk

LEASE RENEWAL AND MODIFICATION

THIS LEASE made as of November 1, 2012.

BETWEEN:

CANADIAN NATIONAL RAILWAY COMPANY
1 ADMINISTRATION ROAD, CONCORD, ONTARIO L4K 1B9
(the "Lessor")

- and -

TOWN OF FORT FRANCES
320 PORTAGE AVE / FORT FRANCES ON P9A 3P9
(the "Lessee")

WHEREAS:

- A) By Lease dated May 1st, 1989, (JDE # 122171) (now SAP# 1000/3060064) (the "Original Lease"), the Lessor leased unto TOWN OF FORT FRANCES as Lessee, the premises located at FORT FRANCES Subdivision Mileage 89.32 - 89.33 Town of Fort Frances, Ontario shown on the Plan attached to Schedule "A" of the Original Lease (the "Premises") for the purposes of TREE PLANTING SITE, for the term described therein and on the terms, covenants and conditions set out in the Original Lease and any amendments thereto.
- B) The Original Lease is a valid and subsisting Lease.
- C) The Lessee wishes to renew and continue the Original Lease for a further term and the Lessor consents to the same.
- D) The Lessee and the Lessor are agreeable to modifying the Original Lease as hereinafter provided.

WITNESSETH THAT the Lessor and the Lessee covenant and agree as follows:

- 1) To renew and they hereby renew the Original Lease as aforesaid for the further term of FIVE (5) YEARS, commencing on May 1, 2013 and ending on April 30, 2018, subject to payment of the annual rent of FIVE HUNDRED DOLLARS (\$500.00) plus applicable HST. The Lessor's GST Registration Number is 100768779 RT. The said rent shall be due and payable in advance on the first day of May in each and every year during the renewal term, the first of such payments to be made on May 1, 2013 and subject to and with the benefit of the Lessee's and the Lessor's covenants and the provisos and conditions contained in the Original Lease.
- 2) That the Lessor and the Lessee shall perform and observe the covenants, provisos and stipulations in the Original Lease and amendments thereto as fully as if such covenants, provisos and stipulations had been repeated in this Lease in full with such modifications only as are necessary to make them applicable to this Lease as hereby renewed and modified.

IN WITNESS WHEREOF, the parties hereto have executed these presents.

CANADIAN NATIONAL RAILWAY COMPANY

Witness

Per: _____

Daniel Chan
Manager, Business Development & Real Estate

Print Preview of LOCL Page 00001 of 00002

Text Edit Goto System Help

Archive Print and Archive

Contract 1000/3060064 2007/02/15

Property - Receivable Lease
TREE PLANTING SITE

Page 1
2007.02.15 17:57:13 / 120925

General data

Old contract: 12217
 Tenancy type: Forest Products
 Contract currency: CAD

Business partner

Role	Partner	Name Address	Period
Master Tenant w/ Cust Acct	400000	TOWN OF FORT FRANCES / 320 PORTAGE AVE / FORT FRANCES ON P9A 3P9	[Unlimited]
Asset Manager	400000	GREG KENDALL / 214 DONALD STREET / WINNIPEG MB R3C 4B4	[Unlimited]
Tenant - Bill To Address	423094	FORT FRANCES, TOWN OF / 320 PORTAGE AVE / FORT FRANCES ON P9A 3P9	[Unlimited]

Term

Print the window's content PRD (1) (010) issprid12 OVR 15:57

Feb 19/07

Next review:

Increase to \$500.00 a month
effective May 1, 2008

Next review April 30 2013

AKmal