

# CITY OF KELOWNA

## BYLAW NO. 10383

### Heritage Revitalization Agreement Authorization Bylaw HRA10-0001– 1177 Ellis Street – Kelowna Train Station Inc.

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WHEREAS a local government may, by bylaw, enter into a heritage revitalization agreement with the Owner of property which Council deems to be of heritage value pursuant to section 966 of the *Local Government Act*,

AND WHEREAS the Municipal Council of the City of Kelowna is desirous of entering into a Heritage Revitalization Agreement with Kelowna Train Station Inc for the property located at 1177 Ellis Street, Kelowna, B.C.;

THEREFORE the Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1. The Municipal Council of the City of Kelowna hereby authorizes the City of Kelowna to enter into a Heritage Revitalization Agreement with Kelowna Train Station Inc for the property located at 1177 Ellis Street Kelowna, B.C., and legally described as:

Lot A, District Lot 139, ODYD, Plan 42511

In the form of such Agreement attached to and forming part of this bylaw as Schedule "A".

2. The Mayor and City Clerk are hereby authorized to execute the attached agreement, as well as any conveyances, deeds, receipts and other documents in connection with the attached agreement, and to affix the corporate seal of the City of Kelowna to same.

AND THAT Bylaw No. 8512 being Heritage Revitalization Agreement Authorization Bylaw - Former CN Train Station and all amendments thereto, are hereby repealed.

Read a first time by the Municipal Council this 12<sup>th</sup> day of July, 2010.

Considered at a Public Hearing this 10<sup>th</sup> day of August, 2010.

Read a second and third time by the Municipal Council this 10<sup>th</sup> day of August, 2010.

Adopted by the Municipal Council of the City of Kelowna this

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Mayor

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City Clerk

**SCHEDULE "A"**  
**HERITAGE REVITALIZATION AGREEMENT**

DOCUMENT APPROVAL			
Document No. HRA10-0001			
Cir	Department	Date	Init.
	L.U.M.	10/06/30	<i>[Signature]</i>
	Dev. Eng.	10/06/30	<i>[Signature]</i>
	Build. Serv.	10/02/30	<i>MS</i>
	City Clerks	10/06/30	<i>SEP</i>

THIS AGREEMENT dated as of the 2<sup>nd</sup> day of July, 2010.

BETWEEN:

CITY OF KELOWNA, a Municipal Corporation having offices at  
 1435 Water Street, Kelowna, British Columbia V1Y 1J4

(herein called the "CITY")

AND:

Kelowna Train Station Inc.  
 5711 1<sup>st</sup> Street SE  
 Calgary, Alberta T2H 1H9

(herein called the "OWNER")

WHEREAS a local government may, by bylaw, enter into a Heritage Revitalization Agreement with the Owner of property identified as having heritage value, pursuant to Section 966 of the *Local Government Act*;

AND WHEREAS the Owner owns certain real property on which is situated a building of heritage value know as the "CNR Train Station", pursuant to the City's Heritage Register, which property and building are located at 520 Clement Avenue, Kelowna, British Columbia and legally described as:

Parcel Identifier: 024-929-409

Legal Description: Lot A, District Lot 139, ODYD, Plan KAP68238

(herein called the "CNR Train Station")

AND WHEREAS the Owner has presented to the City a proposal for the use, development and preservation of the CNR Train Station and has voluntarily and without any requirement by the City, entered into this agreement pursuant to Section 966 of the *Local Government Act*;

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AND WHEREAS a local government must hold a Public Hearing on the matter before entering into, or amending, a Heritage Revitalization Agreement if the agreement or amendment would permit a change to the use or density of use that is not otherwise authorized by the applicable zoning of the CNR Train Station and for these purposes Section 890 through 894 of the *Local Government Act* apply;

AND WHEREAS within thirty days after entering into, or amending, a Heritage Revitalization Agreement the local government must file a notice in the Land Title Office in accordance with Section 976 of the *Local Government Act* and give notice to the Minister responsible for the *Heritage Conservation Act* in accordance with Section 977 of the *Local Government Act*;

NOW THEREFORE in consideration of the mutual promises contained in this agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1.0 Heritage Revitalization**

- 1.1 The parties agree that the CNR Train Station has heritage value, deserving of protection and conservation and the Owner specifically agrees to restore, maintain, preserve and protect the heritage character of the heritage buildings located on the CNR Train Station in accordance with attached Schedules "A" and "B";
- 1.2 The parties agree that the CNR Train Station may be used for the principal and secondary uses permitted by the City of Kelowna Zoning Bylaw No. 8000, C4lp/lrs - Urban Centre Commercial (Liquor Primary / Retail Liquor Sales) Zone.
- 1.3 The parties agree that, except as varied or supplemented by the provisions of this Agreement, all bylaws and regulations of the City and all laws of any authority having jurisdiction shall apply to the heritage property.
- 1.4 Where a minor Heritage Alteration Permit is required, the discretion to approve, refuse, or revise such permit is delegated by council to the Director of the Land Use Management Department.

**2.0 Conservation and Maintenance of Existing Development**

- 2.1 The Owner agrees not to alter any heritage element or heritage character as described in Schedule "A" & "B" except pursuant to a Heritage Alteration Permit issued by the City.
- 2.2 The Owner shall maintain the Former CNR Train Station to ensure the integrity and preservation of existing heritage elements as defined in Schedule "B" through regular maintenance and repair to prevent deterioration of the building. This will include heating and the prevention of water intrusion and damage from sun, wind, and other infestations. Maintenance and repair includes the replacement of roofing, windows, and damaged exterior material and, when necessary, painting to protect exterior features.
- 2.3 If original features must be replaced, the new material shall be similar or identical to the original and shall be subject to the issuance of a minor Heritage Alteration Permit.

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Where original features were removed through earlier renovations or alterations and the replacements were not in keeping with the original style of the building, any subsequent replacement of these features shall complement the building's heritage style.

**3.0 Future Development**

3.1 The owner agrees that future development of the site will:

- a) Be in accordance with the dimensions, siting, exterior design / finish and landscaping as illustrated in Schedule "AA", "BB" and "CC";
- b) Maintain the heritage elements described in schedule "A" and "B";
- c) Be in accordance with the provisions of the City of Kelowna's Zoning Bylaw No. 8000, and Sign Bylaw No. 8235 and the specific requirements of the C4lp/lrs - Urban Centre Commercial (Liquor Primary / Retail Liquor Sales) Zone unless otherwise permitted or regulated through a major Heritage Alteration Permit, a minor Heritage Alteration Permit, a Development and/or Development Variance Permit, or an amendment to this Agreement;
- d) Be in general conformance with the *Downtown North Area Structure Plan Development and Design Guidelines* approved by Kelowna City Council as part of the *Downtown North Area Structure Plan*;
- e) Provide a 'Heritage Garden' located at the SW corner of Clement Avenue and Ellis Street that is sited and developed in accordance with Schedule "CC";
- f) Protect the existing ginkgo tree located at the northern property line and the surrounding area will be developed in accordance with "AA", "BB" and "CC";
- g) Preserve views to Knox Mountain by limiting the height of any future buildings located at the NW corner of the property to two storeys in accordance with "AA" and "BB".

3.2 No additional buildings will be permitted between the south façade of the Former CNR Train Station and Clement Avenue nor between the west façade and Ellis Street. Any additional buildings developed on the east and north sides of the existing building must match or complement proportions, forms, materials, and heritage elements of the Former CNR Train Station listed in Schedule "B". All new buildings must be approved by City Council through the Heritage alteration Permit process or an amendment to this Agreement;

**4.0 Proposed Development**

The parties agree that variances to the following subsections of **Section 6 - General Development Regulations** of City of Kelowna Zoning Bylaw No. 8000 be granted through this agreement:

**Zoning Bylaw No. 8000 - Table 8.1 - Parking Schedule:**

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Section 8.1 - Parking Schedule - C4

Vary the parking requirement from 53 stalls required to 47 stalls proposed as shown in Schedule "AA" attached to this agreement.

- 4.1 The Owner agrees to undertake and maintain landscaping on the subject property in general accordance with the landscape plans attached hereto as Schedule "CC" and forming part of this agreement. The applicant also agrees to retain the area between buildings 'B' & 'C' as a public amenity space and will replace the ginko tree where possible in accordance with an arborist's recommendation.

(herein after called the "Landscaping Works")

- 4.2 The Owner agrees to provide and pay for all servicing required by the proposed development of the CNR Train Station and to provide required bonding for same, including, but not limited to: domestic water and fire protection, sanitary sewer, storm drainage, road improvements, road dedications and statutory rights-of-way for utility servicing, power and telecommunication services and street lighting all as noted below - "Development Engineering Branch Requirements", and forming part of this agreement.

(herein after called the "Development Engineering Branch Requirements")

Development Engineering Branch Requirements

Development Engineering have the following requirements associated with this application. The road and utility upgrading requirements outlined in this report will be a requirement of this development.

4.2.1 Domestic Water and Fire Protection

- (a) The existing lots are serviced with small diameter copper water services. The developer's consulting mechanical engineer will determine the domestic and fire protection requirements of this proposed development and establish hydrant requirements and service needs.
- (b) Only one service will be permitted for this development. The applicant, at his cost, will arrange for the decommissioning of all existing small diameters services and the installation of one new larger metered water service.
- (c) A water meter is mandatory for this development and must be installed inside the building on the water service inlet as required by the City Plumbing Regulation and Water Regulation bylaws. The developer or building contractor must purchase the meter from the City at the time of application for a building permit from the Inspection Services Department, and prepare the meter setter at his cost. Boulevard landscaping, complete with underground irrigation system, must be integrated with the on-site irrigation system. The estimated cost of construction is **\$13,268.00**

4.2.2 Sanitary Sewer

- (a) The development site is presently serviced with 100mm-diameter sanitary sewer services. The developer must engage a consulting mechanical engineer to determine the requirements of this development. Only one service will be permitted for each lot. The applicant, at his cost, will arrange for the

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disconnection of abandoned services at the main and the installation of one larger service. The estimated cost of construction is **\$1,496.00**

4.2.3 Storm Drainage

- (a) The developer must engage a consulting civil engineer to provide a Storm Water Management Plan for the site, which meets the requirements of the City Storm Water Management Policy and Design Manual. The storm water management plan must also include provision of lot grading plan, minimum basement elevation (MBE), and on-site drainage containment and disposal systems.
- (b) The on-site drainage system may be connected to the existing or proposed storm drainage mains with an overflow service. Only one overflow service will be permitted for this development.
- (c) It must be understood that the storm drainage systems in this vicinity are relatively shallow as the level of Okanagan Lake influences drainage. The drainage systems are inundated in water at times of high lake levels.
- (d) It will be necessary for the developer to construct a piped storm drainage system for the full length of Clement Avenue. The estimated cost of construction is **\$44,632.00**

4.2.4 Road Improvements

Ellis Street

The existing barrier curb and concrete sidewalk fronting this development is in a deteriorated state with redundant driveway letdowns. The existing curb and sidewalk will be removed and replaced with a new barrier curb, 1.8m wide concrete sidewalk for the full frontage of this development, commercial driveway crossing and re-location or adjustment of existing utility appurtenances to accommodate this construction.

Clement Avenue

Clement Avenue must be upgraded to a full urban standard including a 2.0m wide concrete sidewalk, landscaped boulevard complete with tree grates and underground irrigation system, fillet pavement, road line markings, piped drainage system, and the re-location or adjustment of existing utility appurtenances if required to accommodate this construction.

St Paul Street

The existing barrier curb fronting this development is in a deteriorated state with redundant driveway letdowns. The existing curb, with driveway letdowns will be removed and replaced for the full frontage of this development and upgrades will also include the construction of a 1.5m monolithic concrete sidewalk complete with a new driveway letdown, boulevard landscaping, with underground irrigation system, re-location or adjustment of existing utility appurtenances to accommodate this construction.

The construction cost estimate for the road improvements is **\$168,621.00** not including Fortis and Telus construction costs.

4.2.5 Road Dedication and Subdivision Requirements

By registered plan to provide the following:

Grant statutory-rights-of-way without charge, if required for utility services.

4.2.6 Electric Power and Telecommunication Services

The electrical and telecommunication services to this building as well as the local distribution wiring must be installed in an underground duct system, and the building must be connected by underground ducting. It is the developer's responsibility to make a servicing application with the respective electric power, telephone and cable transmission companies to arrange for these services which would be at the applicant's cost.

4.2.7 Engineering

Road and utility construction design, construction supervision, and quality control supervision of all off-site and site services including on-site ground recharge drainage collection and disposal systems, must be performed by an approved consulting civil engineer. Designs must be submitted to the City Engineering Department for review and marked "issued for construction" by the City Engineer before construction may begin.

4.2.8 Geotechnical and Environmental Report

As a requirement of this application and/or prior to issue of a building permit, the following will be required:

- (a) A geotechnical assessment to verify the site suitability for development, unstable soils, etc.
- (b) List extraordinary requirements that may be required to accommodate construction of roads and underground utilities as well as building foundation designs.
- (c) Provide an environmental site profile to identify any site contamination, which may be the result of former land uses.

4.2.9 Survey Monuments and Iron Pins

If any legal survey monuments or property iron pins are removed or disturbed during construction, the developer will be invoiced a flat sum of \$1,200.00 per incident to cover the cost of replacement and legal registration. Security bonding will not be released until restitution is made.

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4.2.10 Bonding and Levy Summary

(d) Bonding

Water servicing requirements	\$ 13,268
Sanitary Servicing Requirements	\$ 1,496
Storm Main Construction - Clement	\$ 44,632
Road Frontage Improvements	\$168,621
Total Construction Costs	\$228,017
Add 30% contingency	\$ 68,405
Total Bonding	<b>\$296,400 (Rounded)</b>

NOTE: The owner has engaged a consulting civil engineer who has provided engineering designs and construction cost estimates. The bonding amounts shown above are comprised of the estimated construction costs escalated by 130% to include contingency protection. Bonding for required off-site construction must be provided, and may be in the form of cash or an irrevocable letter of credit, in an approved format.

The owner must also enter into a servicing agreement in a form provided by the City.

4.2.11 Development Cost Charge Reduction Consideration

If development cost charges are applicable to this public development, the proposed construction on Clement Avenue is eligible to receive a DCC credit for a portion of the pavement widening and storm pipe installation. The amount of the DCC credit will be determined when the design engineer has submitted construction tender costs. DCC credit cannot exceed the actual DCC assessed by the City, nor shall it exceed the actual cost of construction as is substantiated by the actual construction cost.

4.2.12 Site Related Issues

- (a) Provide a Lot Grading Plan.
- (b) The applicant is advised that, should traffic conditions or safety issues arise, the City of Kelowna reserves the right to restrict the Ellis Street access to right in, right out only by a raised median.

4.2.13 Administration Charge

An administration charge will be assessed for processing of this application, review and approval of engineering designs and construction inspection. The administration charge is calculated as (3% of Total Off-Site Construction Cost plus GST) in the amount of **\$7,182.00** (\$6,840.00 + 342.00 GST)

**5.0 Commencement and Completion**

- 5.1 The Owner agrees to commence and maintain the Landscaping Works, and Development Engineering Branch requirements forthwith upon adoption of City of Kelowna Heritage Revitalization Agreement Authorization Bylaw No. 10177 and to



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complete all such Works in accordance with the landscape phasing plan attached as 'CC' and no later than October 1, 2011.

**6.0 Damage or Destruction**

6.1 In the event that the Heritage Building is damaged, the parties agree as follows:

(a) The Owner may repair the Heritage Building in which event the Owner shall forthwith commence the repair work and complete same within one year of the date of damage;

OR, in the event that the Heritage Building is destroyed,

(b) The City will, by bylaw and subject to conducting a Public Hearing in the manner prescribed by Sections 890 through 894 of the *Local Government Act*, cancel this agreement whereupon all use and occupation of the CNR Train Station shall thenceforth be in accordance with the zoning bylaws of the City and in accordance with all other bylaws or regulations of the City or any other laws of authority having jurisdiction.

**7.0 Breach**

7.1 In the event that the Owner is in breach of any term of this Agreement, the City may give the Owner notice in writing of the breach and the Owner shall remedy the breach within 30 days of receipt of the notice. In the event that the Owner fails to remedy the breach within the time allotted by the notice, the City may by bylaw and subject to conducting a Public Hearing in the manner prescribed by Sections 890 through 894 of the *Local Government Act* cancel this Agreement whereupon all use and occupation of the CNR Train Station shall thenceforth be in accordance with the zoning bylaws of the City and in accordance with all other bylaws or regulations of the City or any other laws of authority having jurisdiction.

**8.0 Amendment**

8.1 The parties acknowledge and agree that this Agreement may only be amended by one of the following means:

(a) By bylaw with the consent of the parties provided that a Public Hearing shall be held if an amendment would permit a change to use or density of use on site or;

(b) By Heritage Alteration Permit (HAP), issued pursuant to Section 972 of the *Local Government Act*.

**9.0 Representations**

9.1 It is mutually understood and agreed upon between the parties that the City has made no representations, covenants, warranties, promises or agreements expressed or implied, other than those expressly contained in this Agreement.

**10.0 Statutory Functions**

10.1 Except as expressly varied or supplemented herein, this Agreement shall not prejudice or affect the rights and powers of the City in the exercise of its statutory functions and responsibilities including, but not limited to, the *Local Government Act* and its rights and powers under any enactments, bylaws, order or regulations, all of which, except as expressly varied or supplemented herein, are applicable to the CNR Train Station.

**11.0 Enurement**

11.1 This Agreement enures to the benefit of and is binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**12.0 Other Documents**

12.1 The Owner agrees at the request of the City, to execute and deliver or cause to be executed and delivered all such further agreements, documents and instruments and to do and perform or cause to be done and performed all such acts and things as may be required in the opinion of the City to give full effect to the intent of this Agreement.

**13.0 Notices**

13.1 Any notice required to be given pursuant to this Agreement shall be in writing and shall either be delivered mailed by registered mail as follows:

(a) To the City:

City of Kelowna  
1435 Water Street  
Kelowna, B.C. V1Y 1J4

ATTENTION: City Clerk

(b) To the Owner:

Kelowna Train Station Inc.  
5711 1<sup>st</sup> Street SE  
Calgary, Alberta T2H 1H9

Or, to such other address to which a party hereto may from time to time advise in writing.

**14.0 No Partnership or Agency**

14.1 The parties agree that nothing contained herein creates a relationship between the parties of partnership, joint venture or agency.

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto on the day and year first above written.

CITY OF KELOWNA  
by its authorized signatories

\_\_\_\_\_  
(Mayor)

\_\_\_\_\_  
(City Clerk)

KELOWNA TRAIN STATION INC.  
Signed by MICHAEL RYAN

In the presence of:

LUCIA COCHRANE

Witness (print name)

  
\_\_\_\_\_  
Michael Ryan

5711-1<sup>ST</sup> ST. SE, CALGARY, AB  
Address

PROJECT MANAGER  
Occupation