

THE CORPORATION OF THE COUNTY OF PRINCE EDWARD
BY-LAW NO. 32-2022

**A BY-LAW TO AUTHORIZE THE MAYOR AND CLERK TO
EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE
CORPORATION OF THE COUNTY OF PRINCE EDWARD
AND TENACITY CAPITAL PEC INC.
("Tip of the Bay" Property)**

WHEREAS Section 10 (1) of the Municipal Act, 2001, S.O. 2001, c.25 as amended, states a single-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS the Council of the Corporation of the County of Prince Edward desires to execute a Memorandum of Understanding with Tenacity Capital PEC Inc. as attached hereto as Schedule 'A' to this by-law.

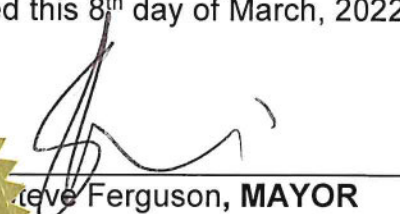
NOW THEREFORE the Council of the Corporation of the County of Prince Edward enacts as follows;

1. **THAT** the Memorandum of Understanding between the Corporation of the County of Prince Edward and Tenacity Capital PEC Inc. substantially in the form attached hereto as Schedule 'A' to this By-law be and the same is hereby authorized and approved.
2. **THAT** the Mayor and the Clerk are hereby authorized and directed to execute the said Memorandum of Understanding attached hereto as Schedule 'A' on behalf of the Corporation and to affix to it the corporate seal of the Corporation of the County of Prince Edward.
3. **THAT** By-law 2890-2011 be and is hereby rescinded.
4. **THAT** the provisions of this by-law shall come into force and effect on the day of final passing thereof.

Read a first, second and a third time and finally passed this 8th day of March, 2022.


Catalina Blumenberg, **CLERK**




Steve Ferguson, **MAYOR**

THIS AGREEMENT MADE THIS 10 DAY OF March, 2022

B E T W E E N:

THE CORPORATION OF THE COUNTY OF PRINCE EDWARD
(hereinafter referred to as the "Municipality")

and

Tenacity Capital PEC Inc.
(hereinafter referred to as the "Owner")

WHEREAS the Owner is the registered Owner in fee simple of the lands described in Schedule "A" attached to this Agreement (hereinafter referred to as the "Subject Lands");

AND WHEREAS the Municipality has received an easement across a portion of the shoreline at the Subject Lands for the purposes of allowing for public access, at no cost, to the entirety of the Owner's Boardwalk;

AND WHEREAS as a condition of the easement's creation, Council for the Municipality required the owner to enter into an Agreement with the Municipality in accordance with the provisions of the Planning Act RSO 1990, c. P.13, as amended and in particular Sections 53 (12) and Section 51 (26) thereof;

AND WHEREAS the original agreement no longer reflects new property ownership and an elapsed time of 10 years prior to the reconstruction of the boardwalk;

NOW THEREFORE IN CONSIDERATION of the premises herein contained and other good and valuable consideration and the sum of TWO DOLLARS (\$2.00), (the receipt and sufficiency of which is acknowledged by the parties hereto), the parties hereto hereby agree as follows:

1. The Owner hereby covenants and agrees with the Municipality that the Owner shall immediately commence construction of the Boardwalk in accordance with the Boardwalk design, standards and specifications that are attached to and form part of the Agreement as Schedule "B" (hereinafter the "Boardwalk"). The construction of the Boardwalk will include the construction/replacement of the existing boardwalk that is located partially over the water and on the Municipality's easement on the Subject

Lands, see schedule "A". The design of the Boardwalk, the width and the material for construction of the Boardwalk, lighting, landscaping, seating, accessibility, safety and construction standards and ancillary landscaping, will, be as set out in Schedule "B" attached hereto together with any amendments that may be required by a Third Party as a condition of providing a necessary approval.

2. The parties hereto acknowledge that a lease or licence agreement may be required for that portion of the Boardwalk that is located over the water of the Bay of Quinte and the Municipality hereby agrees to co-operate and facilitate the granting of any new licences required or the continuation of renewal of any existing licences. The Owner agrees that it will submit a complete application for any third-party approval that may be required for the construction of the Boardwalk.
3. The Municipality will be responsible for the payment of two-thirds of the actual cost of construction of the Boardwalk actually incurred by the Owner up to a maximum of Two Hundred and Fifty Thousand Dollars (\$250,000.00) inclusive of any applicable taxes and fees (which sum is hereinafter referred to as the "Municipality's Share") with the remainder of the cost of construction of the Boardwalk to be paid by the Owner. The Owner will provide to the Municipality, at the Municipality's request, all invoices, cheques or contractor agreements related to the construction of the Boardwalk sufficient to enable the Municipality to determine the actual cost of construction of the Boardwalk. Whether any expense of the Owner relates to the construction of the Boardwalk for the purposes of determining the Municipality's Share shall be as determined by the Municipality, acting reasonably.
4. Upon completion of the construction of the Boardwalk in accordance with the design specifications and standards set out Schedule "B" and Schedule "D" to this Agreement, as it may be amended pursuant to paragraph 1, the Municipality will pay to the owner the Municipality's Share. The reimbursement to the Owner shall be by cheques payable to Tenacity Capital PEC Inc., according to the payment schedule, Schedule "D".
5. The Parties hereto further acknowledge and agree that despite anything to the contrary in this Agreement, if the Owners fails to complete construction of the Boardwalk by December 31, 2022 and in accordance with the requirements of this Agreement the Municipality shall have no obligation whatsoever to reimburse the owner.
6. The owner hereby agrees to provide public access to the entirety of the boardwalk, at no cost.
7. Nothing contained herein shall be taken to limit the powers, rights, remedies, actions and/or proceedings whatsoever available to the Municipality arising from or out of any breach of the provisions and terms of this Agreement.
8. The Owner hereby agrees that the Owner and its successors and assigns shall be solely responsible for the maintenance and capital upkeep of the Boardwalk in accordance with the maintenance standards that are set out in Schedule "C" which is

attached to and forms part of this Agreement. The parties hereto agree that in addition to the Owner's responsibility to maintain the Boardwalk, the Municipality may inspect the Boardwalk to ensure that the maintenance and capital upkeep are in compliance with the standards as set out in Schedule "C" attached hereto. In the event the Municipality observes a deficiency in the maintenance or capital upkeep of the Boardwalk, the Municipality shall promptly notify the Owner in writing of the situation complained of and if the Owner fails to remedy the situation complain of within fourteen (14) days after the date such notice is given the Municipality or its agents will have full authority and license to enter on to the Subject Lands, not limited to the Easement Lands, and to purchase, lease or otherwise acquire such materials, tolls and machinery and to employ such workmen as in the opinion of the Municipality may be required to repair the Boardwalk and bring it into compliance with the standards as set out in Schedule "C", all at the cost and expense of the Owner. Any costs incurred by the Municipality for maintaining, repairing or securing the Boardwalk in accordance with this provision will constitute a debt to the Municipality recoverable by the Municipality in the same manner as property taxes in accordance with the provisions of Section 446 of the Municipal Act, 2001, SO 2001 c. 25, as amended.

9. On completion of the construction of the Boardwalk in accordance with the requirements of Schedule "B" the Municipality shall acknowledge in writing that the Boardwalk has been constructed in accordance with the provisions of this Agreement and from and after the date of the acknowledgement in writing by the Municipality, the Municipality agrees to be responsible for and indemnify and hold harmless the Owner from and against any injury or loss suffered or incurred by any member of the public while using the Easement Lands as a public walkway save and except for any injury or loss that may arise as a result directly or indirectly from any willful or negligent act or omission of the Owner or persons for whom the Owner is, at law, responsible, in the construction or maintenance of the Boardwalk.
10. The Owner shall be responsible for and will indemnify and hold harmless the Municipality from and against any injury or loss incurred by any person using the Easement Lands from the date first noted above until the date that the Municipality acknowledges in writing that the Boardwalk has been constructed in accordance with the provisions of paragraph 1 above.
11. The Municipality will not be liable for any payment to contractors, subcontractors or other organizations who are seeking payment or resolution of other matters from the Owner either in relation to the Subject Lands, the construction of the Boardwalk or otherwise. Without limiting the forgoing, the Owner agrees that the Municipality is not an "owner" of the Land for the purposes of the Construction Act, RSO 1990, c. C.30, as amended.
12. The Owner hereby acknowledges and agrees that despite the Boardwalk being identified in any background study or by-law required by the Development Charges Act, 1997, SO 1997, c. 27, as amended, that the Owner is not entitled, and nothing in this Agreement shall be construed as entitling, the Owner to any credit against

any development charge payable in respect to the Construction of the Boardwalk, the development or redevelopment of the Subject Lands or the development or redevelopment of any other lands or any deferral or reduction of development charges whatsoever.

13. Any notice request, demand or other communication that may be required or permitted by the terms of this Agreement to be given by one party to another shall be given in writing by personal delivery, by e-mail, by fax or by first class mail, postage prepaid, addressed to such other party or delivered to such other party of follows:

- a) **To the Municipality at:**
The Corporation of the County of Prince Edward
332 Picton Main St. Picton, Ontario K0K 2T0
- b) **To the Owner at:**
Tenacity Capital PEC Inc.
8-35 Bridge St. Picton, Ontario K0K 2T0

or such other address as may be given by any of them to the others in writing from time to time and such Notice, request, demand or other communication shall be deemed to have given when faxed or delivered or, if mailed, 24 hours after 12:01am on the day following the day of the mailing thereof.

14. The Owner shall not call in to question, directly or indirectly, in any proceedings whatsoever in law or in equity or before any administrative tribunal the right of the Municipality to enter into this Agreement and to enforce each and every term, covenant and condition herein contained and this clause may be pleaded as an estoppel against the Owner Group or any of them in such proceedings.
15. The failure of the Municipality to insist on strict performance of any of the terms, provisions, covenants or obligations herein shall not be deemed to be waiver of any rights or remedies that the Municipality may have and shall not be deemed to be a waiver of any subsequent breach of default of the terms, provisions, covenants and obligations contained in this Agreement.
16. The Owner hereby covenants with the Municipality to reimburse the Municipality for all costs incurred by the Municipality associated with the preparation and registration of this Agreement.
17. The Owner hereby consents to the registration of notice of this Agreement on title to the Subject Lands by the Municipality, at the cost of the Owner, and at the request of the Municipality and also consents to provide notice of this Agreement to any subsequent Owners should the property ownership change.

18. Schedules "A", "B", "C" and "D" attached to this Agreement form an integral part of this Agreement.
19. Notwithstanding any other provision of this Agreement, the parties hereto agree with each other that none of the provisions of this Agreement is intended to operate, nor shall have the effect of operating, in any way to fetter either the Municipal Council which authorized the execution of this Agreement or any of its successor Councils in the exercise of any of Council's discretionary powers, duties or authorities. The Owner hereby acknowledges that they will not obtain any advantageous planning, servicing, financial or other consideration or treatment by virtue of it having entered into this Agreement or by virtue of the existence of this Agreement.
20. The Owners shall not assign this Agreement or any of its obligations hereunder without the prior written consent of the Municipality.
21. This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective successors, successors in title and assigns. The Owner hereby agrees to ensure any purchaser or other transferee of the Subject Lands has actual notice of this Agreement and their obligations hereunder.
22. This Agreement shall be interpreted under and be governed by the laws of the Province of Ontario. All references to statutes, by-laws and regulations are deemed to be references to those instruments as amended at the time first noted above and as they may be further amended or replaced from time to time.
23. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or electronic form and the Parties adopt any signatures received electronically as original signatures of the Parties.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals
as attested to by the hands of the proper signing officers duly authorized in that
regard.

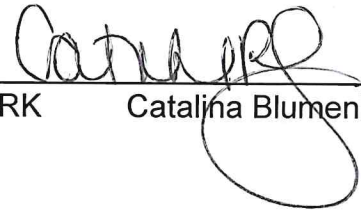
SIGNED, SEALED AND DELIVERED

**THE CORPORATION OF THE COUNTY
OF PRINCE EDWARD**

MAYOR


Steve Ferguson

CLERK


Catalina Blumenberg

Tenacity Capital PEC Inc.


"I have the authority to bind the corporation"

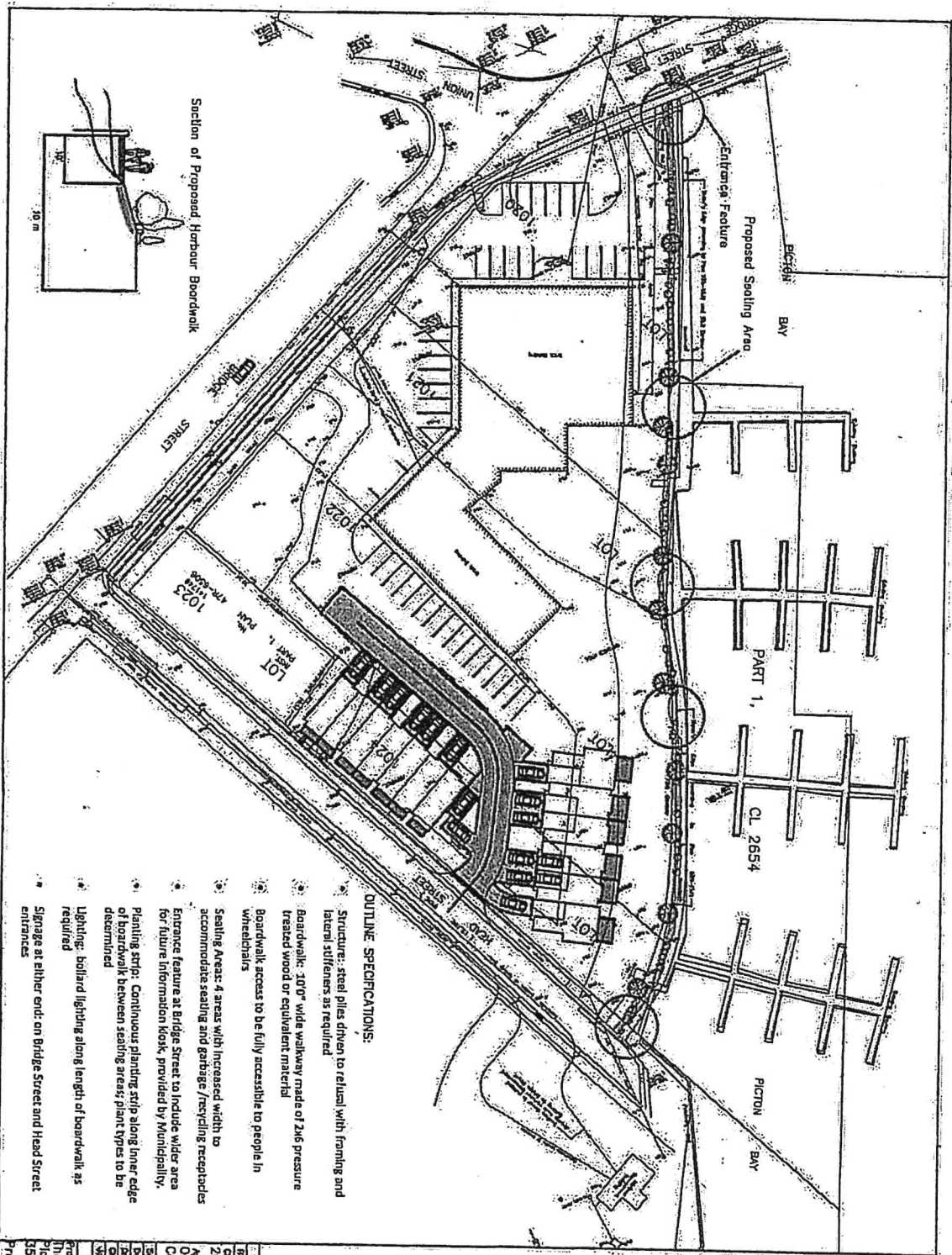
CJ Thompson - President

"I have the authority to bind the Corporation"

SCHEDULE A

- Lots 1020, 1021, 1022 and 1024 and Part of Lot 1023, Registered Plan 24 being designated as Parts 1 and 2 on Plan 47R-1331, County of Prince Edward.
- Reference Plan 47R-1331
- Reference Plan 47R-8469
- Easement Agreement 47R-8469
- Beach Management Agreement 3043-2012

SCHEDULE B



OUTLINE SPECIFICATIONS:

- Structure: steel piles driven to refusal with framing and lateral stiffeners as required
- Boardwalk: 10'0" wide walkway made of 2x6 pressure treated wood or equivalent material
- Boardwalk access to be fully accessible to people in wheelchairs
- Seating Areas: 4 areas with increased width to accommodate seating and garbage/recycling receptacles
- Entrance feature at Bridge Street to include wider area for future information kiosk, provided by Municipality.
- Planting strip: Continuous planting strip along inner edge of boardwalk between seating areas; plant types to be determined
- Lighting: bollard lighting along length of boardwalk as required
- Signage at either end: on Bridge Street and Head Street entrances

Project Title	Proposed Boardwalk
Client	2038787 Ontario Inc
Design By	One Development Corporation
Scale	1:200
Date	September 04, 2011
Drawn By	Shane Gaudreau
Checked	
Notes	

SCHEDULE C - MAINTENANCE SCHEDULE

This schedule applies to the Boardwalk referred to in Schedule "B" as approved by the Municipality.

The Owner shall, through annual inspections, make sure that the Boardwalk is maintained in a safe and usable condition for pedestrian traffic. Inspections are to be completed by the Owner annually with a written report submitted to the Municipality, summarizing maintenance activities undertaken in the previous year and anticipated maintenance activities in the coming year.

At minimum, inspections will include but are not be limited to:

- Checking for any lost, damaged or uneven sections of boardwalk or boardwalk elements and immediately repairing any damage using the same materials as the manufacturer.
- Ensuring that all handrailings are secure and fit for their intended use.
- Checking all benches for any lost, damaged or protruding boards or screws and immediately repairing any lost, damaged or protruding boards or screws.
- Checking for any damage to any part of the Boardwalk due to vandalism, accident, weather conditions or other cause and immediately repairing such damage.
- Ensuring that all lighting is secure and that all lights are working and fit for their intended use.

Using the Boardwalk manufacturer's maintenance schedule as a guide, and/or at the request of the Municipality, the Owner, at their own expense, will be responsible for arranging an inspection report to be undertaken and submitted by an Ontario Professional Engineer.

The Owner's obligation to maintain the boardwalk does not include the removal of snow and ice or application of salt and sand during the winter season. The Owner is responsible for closing or barricading the entry points to the boardwalk when snow / ice makes it unsafe for pedestrians.

The Owner shall ensure that the Boardwalk is compliant with Ontario's Accessibility Standards and the boardwalk specifications outlined by the Picton Harbour Task Team.

SCHEDULE D - PAYMENT SCHEDULE

The Municipality will be responsible for the payment of two-thirds of the actual cost of construction of the Boardwalk actually incurred by the Owner up to a maximum of Two Hundred and Fifty Thousand Dollars (\$250,000.00) inclusive of any applicable taxes and fees with the remainder of the cost of construction of the Boardwalk to be paid by the Owner.

The Owner will provide to the Municipality, at the Municipality's request, all invoices, cheques or contractor agreements related to the construction of the Boardwalk sufficient to enable the Municipality to determine the actual cost of construction of the Boardwalk. Whether any expense of the Owner relates to the construction of the Boardwalk for the purposes of determining the Municipalities Share shall be as determined by the Municipality, acting reasonably.

Upon completion of the following activities in the payment schedule, payments will be issued in up to three installments. Activities attached to each installment will be deemed "complete" following inspection and approval from the Chief Building Official, in conjunction with the Director of Community Services, Programs and Initiatives as well as Staff from other departments as deemed necessary. Upon each inspection, a letter will be issued from the Municipality to the Owner with payment details and/or any required work that needs to be completed to issue the payment. Payment will not be unreasonably withheld.

75% of funds	- Demotion and removal of old boardwalk and site preparation for new boardwalk. - Completion of the following items from Schedule B: • Steel piles driven to refusal with framing and lateral stiffeners as required. • Boardwalk 10'0" wide walkway made of 2x6 pressure treated wood or equivalent material • Boardwalk access to be fully accessible to people in wheelchairs.
25% of funds	- Completion of the following items from Schedule B: • Seating Areas - 4 areas with increased width to accommodate seating and garbage and recycling receptacles • Entrance feature at Bridge St. to include wider area for future information kiosk, provided by municipality. • Planting strip: continuous planting strip along inner edge of boardwalk between seating areas; plant types TBD. • Lighting - Bollard lighting along length of boardwalk, as required. • Signage at either end: on Bridge St. and Head St. entrances. - Closure of building permit and proof of boardwalk insurance.