

THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI

BY-LAW NO. 11-975

Being a by-law to authorize the Mayor and Clerk to execute an agreement with Ontario Northland for Licence to Use Ontario Northland Ditch Draining to Net Lake Mileage 75.7 to 75.97 Temagami Subdivision.

WHEREAS under Section 8 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, the powers of a municipality shall be interpreted broadly to enable it to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

AND WHEREAS under Section 9 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, 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;

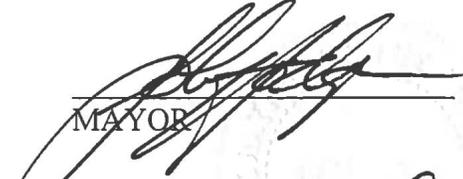
AND WHEREAS the Council of the Municipality of Temagami deems it advisable to enter into an agreement with Ontario Northland giving the Municipality licence to use Ontario Northland's ditch for as an outlet for the Temagami North Subdivision storm water management system;

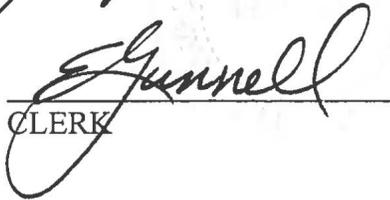
NOW THEREFORE the Council of the Corporation of the Municipality of Temagami hereby enacts as follows:

1. That the Mayor and Clerk are hereby authorized and directed to execute the agreement attached hereto as Schedule "A" to this bylaw.
2. This bylaw shall come into force and take effect upon final passing thereof.
3. That the Clerk of the Municipality of Temagami is hereby authorized to make minor modifications or corrections of a grammatical or typographical nature to the by-law and schedule, after the passage of this by-law, where such modifications or corrections do not alter the intent of the by-law.

BE TAKEN AS READ A FIRST time on this 13th day of January, 2011

READ A SECOND AND THIRD time and finally passed this 13th day of January, 2011


MAYOR


CLERK

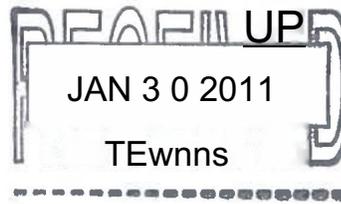
2938.
GMQ..

27 January 2011

The Municipality of Temagami
PO Box 220
Temagami, ON POH 2H0

Attention: Elaine Gunnell

Dear Ms. Gunnell:



File incoming DOLher

Mayor O

Council 01 CA

CAO (J)

Building D

Finance DS

EcOev DS DC

Parks & Rec DS DC

Planning DS DC

Public Wks DS DC

PPP

Social Services

1 bylaw book - original
Signed agreement

**RE: Licence to Use Ontario Northland Ditch
Draining to Net Lake - Mileage 75.7 to 75.97 Temagami Subdivision
Our File Number 7513-1480**

Please find enclosed the duplicate executed copy of the above captioned agreement for your retention. The original document has been filed in our Legal Department as agreement number 11515 and a copy is on file in our Rail Services Division.

Thank you for your co-operation in this regard.

Yours very truly,

Mr. Dale W. Proctor
Legal Assistant

Direct Fax Line: (705)472-1051

Voice Mail Extension: 353

E-mail: dale.proctor@ontarionorthland.ca

DWP/krd

c.c. B. Craig
T. Chapman

555 Oak Street East, North Bay, Ontario P1B 8L3
Tel: 1.705.472.4500 or 1.800.363.7512
Fax: 1.705.476.5598 • E-mail: info@ontarionorthland.ca

555, rue Oak Est, North Bay (Ontario) P1B 813
Telephone : 1.705.472.4500 ou 1.800.363.7512
Télécopieur: 1.705.476.5598 • Courriel : info@ontarionorthland.ca

AGREEMENT made in duplicate this day of

January 2012

BETWEEN:

ONTARIO NORTHLAND TRANSPORTATION COMMISSION
(hereinafter referred to as "ONTC")

OF THE FIRST PART

AND:

THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI
(hereinafter referred to as the "Licensee")

OF THE SECOND PART

**LICENCE TO USE ONTARIO NORTHLAND DITCH
DRAINING TO NET LAKE
MILEAGE 75.7 TO 75.97 TEMAGAMI SUBDIVISION**

WHEREAS ONTC is the owner of certain lands comprising a railway right-of-way located in the Municipality of Temagami, in the District of Nipissing, in the Province of Ontario, more particularly described as Mileage 75.7 to 75.97 Temagami Subdivision (hereinafter referred to as the "Lands").

AND WHEREAS the Licensee desires to remove groundwater from the trailer park in the Temagami North subdivision and have the water drain from the trailer park site into Net Lake.

AND WHEREAS in order to be able to drain the water into Net Lake the Municipality requires the use of a ditch which traverses on ONTC's Lands (hereinafter referred to as the "Ditch").

IN CONSIDERATION OF the recitals and the provisions contained in this Agreement, the parties agree as follows:

1. LICENCE

Subject to the terms and conditions of this Licence, ONTC hereby grants a Licence to the Licensee to enter upon the ONTC right-of-way to extend, re-profile, maintain and use the existing Ditch which runs along the Lands between Mileages 75.7 to 75.97 Temagami Subdivision as shown of Schedule "A" attached hereto (O.N.Rail Infrastructure Plans A-6282 A & B) and for such purpose to take or permit to be taken upon the property (subject to the prior written approval of ONTC) such machinery, equipment, materials and workmen as may be desirable in that behalf, upon the terms and conditions hereinafter contained.

2. TERM

The term of this Licence Agreement shall be for a period of five (5) years commencing on the 1st day of December, 2010, and terminating on the 30th day of November, 2015, subject to the provisions for termination hereinafter contained and this Agreement shall be automatically extended for additional one year periods unless either party gives the other party written notice of termination at least thirty (30) days before the expiration of the initial or renewal term as the case may be.

3. CONSIDERATION

The Licensee shall pay to ONTC a base licence fee of \$1.00 the receipt and adequacy of which is hereby acknowledged.

4. OPERATIONAL REQUIREMENTS

- (a) Any installations, maintenance, repairs, or changes to the Licensee's use of the Ditch must first meet the requirements and approval of ONTC.
- (b) The Licensee agrees that before any work is performed in connection with the Ditch, the Licensee shall give to ONTC at least 48 hours prior notice thereof in writing and ONTC shall be entitled to appoint an inspector to see that the work is performed in such a manner as shall in all respects comply with this Agreement. No work shall at any time be done in such a manner as to obstruct or delay or in any way interfere with the operation of the trains, traffic or business of ONTC or any company using the works of ONTC.
- (c) The Licensee hereby acknowledges the presence of Ontera buried fibre optic cable in the area of the Lands. The Licensee agrees that it will not commence any digging on ONTC property without first arranging to have Ontera complete a cable locate (1-888-566-8372).
- (d) If ONTC at any time desires or is ordered by any authority having jurisdiction to make any changes in ONTC's tracks, structures or property as would, in the opinion of ONTC, necessitate the moving or alteration of the Ditch or any part thereof, or should it be found necessary by ONTC in order to protect tracks, structures or property owned or controlled by ONTC to make any changes in the location or construction of the Ditch, the Licensee shall at its own risk and expense to the entire satisfaction of ONTC, perform all such work of moving or alteration as may be deemed necessary within three (3) months of written notice to do so. Should the Licensee fail to perform such work of moving or altering within the time specified ONTC shall have the right to do or to have such work done and the Licensee shall pay ONTC the cost of such work forthwith on demand and all the provisions of this Agreement shall apply to the said equipment in its changed condition or location.

5. OBLIGATIONS OF THE LICENSEE

- (a) The construction, re-profiling and modifications made to the Ditch shall be completed at the sole cost and expense of the Licensee.
- (b) The Licensee understands that it will be responsible for re-establishing the connection of the Ditch to Net Lake, at its sole expense, and that it will implement the appropriate silt control measures.
- (c) The Licensee shall monitor the Ditch to ensure the unimpeded flow of water and any costs incurred for the monitoring, repair and clearing of debris, etc., from the Ditch shall be at the sole expense of the Licensee.
- (d) The Licensee shall limit the volume of water to be drained to 50,000 litres per day and shall not increase that volume without first obtaining the prior written consent of ONTC.
- (e) In making any of its installations, the Licensee shall observe and carry them out according to recognized good engineering practice and in accordance with all applicable governmental laws, regulations or requirements concerning the same.
- (f) The Licensee shall comply with all statutes, regulations, by-laws, codes and requirements of all governments and governmental authorities and all boards and commissions applicable thereto with respect to its use of the Lands.
- (g) The Licensee shall, at its sole expense, ensure that it will obtain any necessary permits from Fisheries and Oceans Canada and the Ministry of Natural Resources.
- (h) The Licensee shall submit to ONTC a copy of any licence to install or maintain such installation as required by the appropriate governmental authorities.
- (i) ONTC shall have the right to establish rules and regulations in the future in order to protect its investment and shall give written notice thereof to the Licensee and the Licensee shall comply with same provided same does not materially affect the rights and obligations of the parties contained herein.
- (j) Notwithstanding anything contained herein, ONTC shall not be responsible for indirect or consequential damages, including damages resulting from interruption of service.
- (k) The Licensee shall cause itself and its subcontractors to comply with and keep in good standing under the provisions of the Workplace Safety and Insurance Act, if applicable and any changes or amendments thereto.
- (l) The Licensee shall make full and complete compensation for any damage caused to ONTC's physical property or that of any other user of ONTC's property by the Licensee's act or omission or that of any of its officers, employees, servants, agents, contractors or invitees or those for whom it is at law responsible or for damage attributable to the equipment owned or

operated by the Licensee, its officers, employees, servants, agents, contractors or invitees or those for whom it is at law responsible.

- (m) The Licensee shall make full and complete compensation for any bodily injury or death to any person caused by the Licensee's act or omission or that of any of its officers, employees, servants, agents, contractors or invitees or those for whom it is at law responsible or for bodily injury or death attributable to the equipment owned or operated by the Licensee, its officers, employees, servants, agents, contractors or invitees or those for whom it is at law responsible.
- (n) The Licensee agrees to indemnify ONTC and save it harmless from and against any and all actions, suits, claims, damage, costs, liability and expenses (including the effect of any applicable environmental legislation) which may arise by reason of the exercise of the rights and privileges granted herein by the Licensee or as a result of any breach of the terms of this Agreement by the Licensee or by any act or omission of the Licensee or those for whom the Licensee is at law responsible, including all legal costs and expenses reasonably incurred by ONTC in connection with the defence or settlement of any such claim, unless such claim or damage is caused by the negligent act or omission of ONTC, its servants, employees, officers, agents, contractors or those for whom it is at law responsible.
- (o) The Licensee shall waive against ONTC, its officers, employees, agents, or contractors any claims of any kind whether directly or indirectly arising out of or connected with the existence of this Agreement and for any injury to or death of any person or for any loss of or damage to any property belonging to the Licensee or its employees, servants, agents, invitees, licensees, contractors or visitors unless caused by the negligent act or omission of ONTC, its servants, employees, officers, agents, contractors or those for whom it is at law responsible.

6. DRAINAGE

The Licensee shall indemnify ONTC for any damage or expenses sustained by ONTC as a result of any erosion caused to the ONTC right-of-way by water drainage into the Ditch from the Temagami North subdivision.

7. INSURANCE

Licensee shall, at its own expense, obtain and maintain in full force and effect, throughout the entire term of this Agreement, the following insurance policies:

- a) Commercial General Liability insurance to a policy limit of at least two million dollars (\$2,000,000) in primary and umbrella/excess liability policy including but not limited to bodily injury, property damage, personal injury, product liability, tenants legal liability, contractual liability, owners and contractors protective, contingent employer's liability, non-owned automobile liability, cross liability and severability of interest clause. The policy shall contain a waiver of subrogation in favor of ONTC and shall include **"Ontario Northland Transportation Commission"** as an additional insured.

- b) All risks property insurance for not less than full replacement cost value of the equipment and personal property. The policy shall contain a waiver of subrogation in favor of ONTC.
- c) Automobile Liability insurance with respect to owned or leased vehicles, having a policy limit of at least two million dollars (\$2,000,000) inclusive per occurrence.
- d) Licensee shall provide to ONTC a certificate(s) of insurance, as well as renewal certificates thereafter for the duration of the Agreement, evidencing that the required coverages are in full force and effect before the commencement of the Agreement, and such certificates shall contain a provision to the effect that the insurance policies cannot be cancelled without providing ONTC with at least thirty (30) days prior written notice.

8. USE

It is expressly stipulated and agreed that the Lands shall be used only for the purposes of allowing the Licensee to extend, re-profile, maintain and use the existing Ditch which runs along the Lands between Mileages 75.7 to 75.97 Temagami Subdivision for the purposes of water drainage from the trailer park in the Temagami North into Net Lake and for such purpose to take or permit to be taken upon the property (subject to the prior written approval of ONTC) such machinery, equipment, materials and workmen as may be desirable in that behalf, upon the terms and conditions hereinafter contained.

9. TERMINATION

- (a) Either ONTC or the Licensee may at any time during the term hereof terminate this Agreement by giving the other party not less than sixty (60) days prior written notice of termination and any amounts payable hereunder shall be apportioned to the date of termination.
- (b) If the Licensee shall be in default or breach in respect of any condition or provision of this Agreement or shall fail to pay any amounts due hereunder, and the Licensee fails to correct such breach or default within thirty (30) days after receiving written notice from ONTC specifying the breach or default and requiring that such breach or default be remedied, this Agreement shall terminate forthwith upon the expiry of the thirty (30) days.
- (c) Upon the termination of this Agreement, the Licensee shall remove, at its sole risk and expense, its equipment from the Lands and shall leave the Lands in a condition acceptable to ONTC. Removal shall be carried out in such a manner so as not to interrupt the use of the Lands by ONTC or other users. Prior to such removal, the Licensee shall give thirty (30) days prior written notice of the time of such removal. The Licensee agrees that if, upon the termination of this Agreement, it has not removed its equipment within a reasonable time in the opinion of ONTC, then ONTC may effect such removal, at the sole risk of the Licensee, at the Licensee's expense.

10. ASSIGNMENT

The rights contained in this Agreement may not be transferred, assigned or disposed of in any manner whatsoever without ONTC's prior written consent.

11. RELATIONSHIP

Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, landlord and tenant, or of partnership or of joint venture between the parties hereto, it being understood and agreed that none of the provisions contained herein, nor any of the acts of the parties shall create any relationship between the parties other than that of Licensor and Licensee as described in this Agreement.

12. NOTICE

Any notice required by this Licence Agreement shall be in writing and shall be deemed to have been sufficiently given when personally delivered, telefaxed or sent by prepaid registered post addressed to ONTC to:

Vice President Rail
555 Oak Street East
North Bay, ON P1B 8L3

and addressed to the Licensee to:

PO Box 220
Temagami ON POH 2H0

or to such other address or facsimile number as any party may from time to time notify the others in accordance with this paragraph 11. Any notice made or given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof, or if made or given by telefax, on the first business day following the transmittal thereof, or, if sent by prepaid registered post, on the third business day following the day of mailing thereof except in the case of the interruption or anticipated interruption in the mail service in which case such notice shall be given by personal delivery or telefax.

13. OVERHOLDING LICENCE

If at the expiration of the term or other termination hereof the Licensee continues to use the crossing with or without the consent of ONTC and without any further written agreement, the Licensee shall become a licensee from month to month with each party having the ability to terminate the Agreement upon 30 days written notice to the other and no other licence shall be created by implication of law or otherwise and the licence fee reserved hereunder (which shall be a monthly rental equal to the product of the most recent annual base licence fee multiplied by 0.125) shall be paid on the first day of each month during such overholding and such month to month licence shall otherwise be subject to all other terms of this Licence as are applicable thereto.

14. GOVERNING LAW

This Agreement shall be governed by and constituted in accordance with the laws in force in the Province of Ontario. The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario for any legal proceedings arising out of this Agreement or the performance of the obligations hereunder.

15. SUCCESSORS

Subject to Paragraph 10, this Licence Agreement and the covenants, provisions and obligations herein contained shall enure to the benefit of and be binding upon the Licensee, its successors and assigns.

IN WITNESS WHEREOF the said parties hereto have signed these presents and affixed their respective seals under the hands of their respective officers duly authorized in that behalf.

SIGNED, SEALED and DELIVERED

in the presence of:

**ONTARIO NORTHLAND
TRANSPORTATION COMMISSION**

per 

Vice President Rail

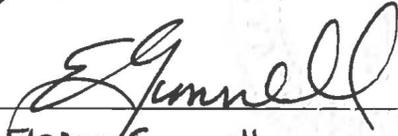


Secretary

**THE CORPORATION OF THE
MUNICIPALITY OF TEMAGAMI**

per 

Name: John Hodgson
Title: Mayor



Name: Elaine Gunnell
Title: Clerk