

**THE CORPORATION OF THE  
MUNICIPALITY OF TEMAGAMI**

**BY-LAW NO. 16-1308**

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**Being a by-law to authorize a Pit Operator and Site Plan Agreement with Nimke Mining  
Services Corp.**

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**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;


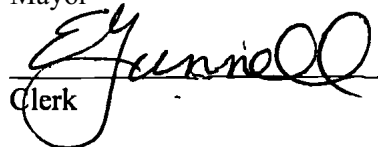
**AND WHEREAS** the Council of the Municipality of Temagami passed Resolution 16-331 on the 30<sup>th</sup> day of June, 2016 to direct staff to work with Nimkie Mining Services Corp, and seek appropriate legal advice on drafting an agreement to transfer aggregate permit 16321 to Nimkie Mining Services Corp, with provisions to maintain access to the site for storage of materials for municipal purposes and bring the draft agreement back to Council for execution by by-law;

**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" and forming part of this bylaw.
2. That this by-law 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.

TAKEN AS READ A FIRST time on this 1<sup>st</sup> day of September 2016.

READ A SECOND AND THIRD time and finally passed this 1<sup>st</sup> day of September 2016.

  
\_\_\_\_\_  
Mayor  
  
\_\_\_\_\_  
Clerk

**PIT OPERATOR AND SITE PLAN AGREEMENT**

DATED September 1, 2016

THIS AGREEMENT MADE BETWEEN:

**NIMKE MINING SERVICES CORP.**

hereinafter called the "Operator"  
OF THE FIRST PART

-AND-

**THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI**

hereinafter called the "Municipality"  
OF THE SECOND PART

WHEREAS the lands affected by this Agreement are the lands shown on the attached Schedule "A" (the "subject lands");

AND WHEREAS the Municipality maintains a permit, registered as permit number 16321, to operate a category 9 pit on the subject lands, and a copy of the said permit is attached hereto as Schedule "B" (the "Permit");

AND WHEREAS the Municipality has established a pit on the subject lands (the "Pit");

AND WHEREAS the Municipality and the Operator have agreed to transfer the Permit from the Municipality to the Operator subject to the terms and conditions set forth in this Agreement;

AND WHEREAS the Operator intends to apply for a category 11 permit with respect to the subject lands upon completion of this Agreement;

AND WHEREAS the Municipality wishes to ensure its continued access to the subject lands for the purposes of storage and removal of aggregate material and equipment of the Municipality;

AND WHEREAS the Operator will comply with the Municipality's By-laws and Official Plan(s);

AND WHEREAS the parties deem it in the public interest to enter into this Agreement;

AND WHEREAS the parties deem it in the public interest to address several issues in this agreement, including Public Safety, Dust and Noise, Environmental Matters and Health and Safety;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree with one another as follows:

1. SCOPE OF AGREEMENT

1.1 Description Of Lands - See Schedule "A".

1.2 Conformity With Agreement - The Operator covenants and agrees that all development and pit activities on the subject lands shall be in compliance with:

- a) the provisions of this Agreement;
- b) the operating standards set out in Schedule "B", being the Permit issued by the Province of Ontario to the Municipality or any subsequent permit issued by the Province with respect to the subject lands;
- c) all applicable Provincial/Federal legislation, regulations and guidelines;
- d) all By-laws and the Official Plan of the Municipality including all amendments thereto;

1.3 Schedules Attached - The following schedules are attached to this Agreement and form part of this Agreement:

Schedule "A" - Description of subject lands  
Schedule "B" - Permit

## 2. TRANSFER OF CLASS 9 PERMIT AND APPLICATION FOR CLASS 11 PERMIT

- 2.1 Subject to the terms and conditions set forth in this Agreement, the Municipality agrees to transfer the Permit to the Operator.
- 2.2 Following the execution of this Agreement, the Operator shall apply for a category 11 permit with respect to the subject lands. The Operator acknowledges that any operations commenced on the subject lands will comply with the new category 11 permit and that operations will not commence until the category 11 permit has been issued

## 3. MODIFICATION OF PLANS AND SPECIFICATIONS

- 3.1 There shall be no changes to this Agreement or to the schedules attached hereto or to any plans, reports, specifications etc. filed and accepted by the Municipality concerning the subject lands except by written agreement of the parties.

## 4. ACCESS

- 4.1 The Operator agrees to allow the Municipality access to the subject lands for the purpose of storage and/or removal of aggregate material and equipment owned by the Municipality.

## 5. PUBLIC SAFETY

- 5.1 The Operator agrees to the following;
  - a) to comply with all of the Municipality's By-laws requiring the Operator to obtain an entrance permit, and to install and maintain warning signs, operator's signs, entrance gates, and fencing as required pursuant to the Municipality's By-laws;
  - b) to maintain appropriate setbacks from as well as sight lines in both directions, for all open and maintained public highways and roadways and to maintain the snow plow turnabout;
  - c) to comply with and maintain all Ministry of Labour and/or Ministry of Transportation requirements and regulations including but not limited to ensuring access to the pit is suitable for emergency vehicles, ensuring that all trucks are loaded safely, that loads are properly secured and that trucks are not overloaded;
  - d) to comply with all Provincial and Federal Statutes, Regulations and Guidelines applicable to the Operator and obtain all approvals and permits as required.

## 6. DUST AND NOISE

- 6.1 The Operator will take all measures necessary to ensure dust suppression, including spraying water, application of environmentally safe chemical solutions, the proper maintenance of all equipment used on site, and minimizing the amount of land devoid of vegetation at any point in time;
- 6.2 The hours of operation will be Monday to Friday 7:00 am. to 7:00 p.m.;

## 7. ENVIRONMENTAL MATTERS AND MONITORING

- 7.1 The Operator will ensure that all personnel use proper fuel handling and containment techniques, and have spill kits accessible at all times.
- 7.2 The parties acknowledge and agree, that matters concerning potential environmental impacts on the water table and/or surface waters are within the jurisdiction of the Province, its legislation and regulations and are subject to enforcement by the Ministry of Environment and Climate Change (MOECC). By entering into this agreement with the Operator acknowledges and agrees that the Municipality has not issued any approval and is not responsible for ensuring compliance with the *Environmental Protection Act* or its regulations.

## 8. HEALTH AND SAFETY

- 8.1 The Operator will take all reasonable steps to ensure the health and safety of all personnel on site, and specifically, will ensure compliance with all Federal and Provincial Statutes, Regulations and Guidelines, to ensure the health and safety of all workers on site at all times and that all personnel comply with all applicable Health and Safety Statutes, Regulations and Guidelines;
- 8.2 The Municipality will ensure that its staff adhere to all applicable health and safety regulations while on the subject lands.

## 9. FIRST RIGHT OF REFUSAL

- 9.1 In the event that the Operator receives a bona fide offer to purchase the Permit, or any subsequent permit in respect of the subject lands, or to otherwise acquire an interest in the subject lands, which offer the Operator would accept were it not for the provisions of this clause, before accepting such an offer, the Operator shall give notice in writing to the Municipality (a "notice of offer") stating the terms, conditions and price of such offer. The Municipality shall then have the right, option and privilege, to be exercised by notice in writing given to Operator within ten (10) days of receipt of the notice of offer, to purchase all but not less than all of the Operator's interest in the subject lands so offered for sale at the same purchase price and on the same terms and conditions set out in the notice of offer. In the event that the Municipality does not elect to purchase the Operator's interest in the subject lands so offered for sale, the Operator shall, for a period of thirty (30) days after the expiration of the said period of ten (10) days, be at liberty to accept such bona fide offer or otherwise to sell, assign, transfer, or dispose of the Operator's interest in the subject lands to any other person or persons at a price and on terms and subject to conditions not more favourable to the purchaser than the price, terms and conditions set out in the original bona fide offer. If an agreement to sell the said interest in the subject lands is not entered into within the said period of thirty (30) days and the sale successfully completed, the provisions of this clause shall apply again, and so on from time to time.

10. CLOSURE/REHABILITATION OF THE PIT

- 10.1 The Operator will bear all costs of pit closure and rehabilitation;
- 10.2 The Operator shall ensure that all garbage and debris is removed from the site on a continuous basis during the project.

11. APPROVED PLANS AND GENERAL DEVELOPMENT STANDARDS

- 11.1 The Notes to/on the Permit referenced in Schedule "B" form a component of this agreement.

12. INDEMNIFICATION FROM LIABILITY AND RELEASE

- 12.1 The Operator covenants and agrees with the Municipality, on behalf of itself, its successors and assigns, to indemnify and save harmless the Municipality from any and all actions, suits, claims and demands whatsoever which may arise either directly or indirectly by reason of any work performed by the Operator or on his behalf in connection with the carrying out of the provisions of this Agreement.
- 12.2 The Operator further covenants and agrees to release and forever discharge the Municipality from and against all claims, demands, causes of actions, of every nature and type whatsoever that may arise either as a result of the failure of the Municipality to carry out any of its obligations under this Agreement, or, as a result of the Municipality performing any municipal work on adjacent properties which may damage or interfere with the works of the Operator, provided that such default, failure or neglect was not caused intentionally or through negligence on the part of the Municipality, its servants, agents or subcontractors.

13. REMEDIES IN THE EVENT OF BREACH

- 13.1 In the event that the Operator breaches the Agreement, the Municipality shall have the right to apply to a Court of competent jurisdiction in order to seek a declaration that the Operator is in breach of the Agreement, along with any remedies deemed appropriate by the Court including compensation for any breach, a judgment for the cost of the remediation of any breaches, and/or an Order that the Operator remedy the breaches at its own cost.

14. NOTICE TO PARTIES

- 14.1 Any Notice to be given by any part under this Agreement may be given by:
- a) personal service on the parties hereto, or
  - b) pre-paid first class mail addressed to the other party at their last known address and which shall be deemed to have been received 72 hours after mailing.
- 14.2 For the purposes of the foregoing, the addresses for the parties to this agreement are as follows:
- Operator: P.O. Box 291, Temagami, Ontario, POH 2H0
- Municipality: P.O. Box 220, Temagami, Ontario, POH 2H0

15. TIME OF THE ESSENCE

- 15.1 The parties hereto agree that the time shall be of the essence in this Agreement.

16. ESTOPPEL OF OWNER

- 16.1 Without prejudice to any present or future aboriginal land claim that may be brought by Temagami First Nation, the Operator agrees to not call into question directly or indirectly in any proceeding 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 Agreement may be pleaded as an estoppel against the Operator in any such proceedings.

17. INTERPRETATION

- 17.1 It is hereby agreed that in constructing these presents the word "Operator" and the personal pronoun "he" or "his" relating thereto and used therewith, shall be read and construed as "Operator" and "his", "hers", "its" or "their" respectively as the number and gender of the party or parties referred to in each case requires and the number of the verb agreeing therewith shall be so construed as agreeing with the said word or pronoun so substituted.
- 17.2 And that all covenants, liabilities and obligations entered into and imposed hereunder upon the owner shall be equally binding upon his, her, its or their heirs, executors, administrators and assigns, or successors and assigns as the case may be, and that all such covenants and liabilities and obligations shall be joint and several.

18. REPRESENTATIONS AND WARRANTIES

- 18.1 It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement other than as expressed herein in writing.

(THE NEXT PAGE IS THE SIGNING PAGE)

THIS AGREEMENT shall enure to the benefit of and be binding upon each of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the following dates:

By the Operator on the <2 day of, 2016. Sept

**Nimke Mining Services Corp.**

Per: Randy Becker

Name: Randy Becker

Title: C.E.O

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**RB** 4^have the authority to bind the corporation.

By the Municipality on the 1<sup>st</sup> day of Bcdv-, 2016.

**The Corporation of the Municipality of Temagami**

Per: L. Hunter

Name: Lone Hunter

Title: Mayor

Per: E. Gunnell

Name: Elaine Gunnell

Title: Municipal Clerk

We have the authority to bind the corporation.

Pit/Quarry. \_\_\_\_\_

**Override Section (Operating Standards)**

No gate required

**Aggregate Pennit Site Plan**

Site Plan Category: 3

Permit/Pit No. 16321

UTM Co-Ord E N. \_\_\_\_\_

Lot: Concession

Township: BKLG&S

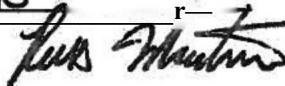
Permittee: TOWNSHIP OF TEMAGAMI

Address: P.O. Box 550

~Tg>Ag AMI, ONTARIO

POH-240

Signature of Permittee

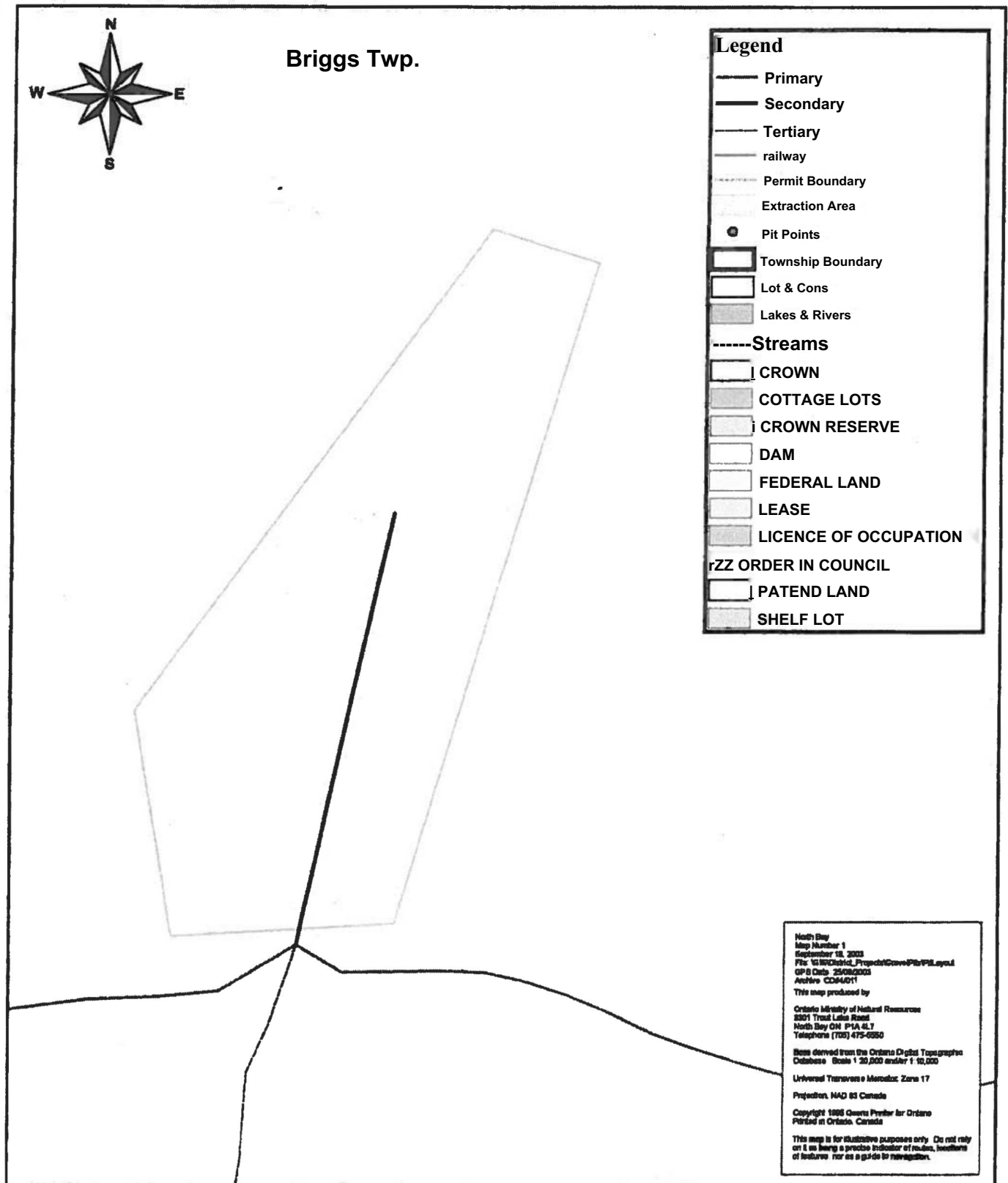


**Site Plan Notes**

- 1.7 Iliis site plan is prepared muter the Aggregate Resources Act for an Aggregate Permit Category 9
- 1.8 Prepared by J. W.S. Contracts
- 1.12 Permit area 4.4 hectares
- 1.17 There will be no buildings within the pennited area
- 1.18 There is a bush road running through the center of the frit from the south to die north
- 1.19 the surface water drains from the east to the west
- 1.20 Hie pennited area is surrounded by crown land and trees
- 1.21 Stockpiles of topsoil and overburden are stored along the inside of the 15m setback limits
- 1.22 Stockpiles of aggregate are stored at the entrance temporary on snowplow turn around.
- 1.23 There will be no scrap located on the site
- 1.24 There will be no fuel stored on the site
- 1.25 There is a lake to die north of the pennited area but is beyond the 120 meter limit
- 1.26 No significant man-made features on and with-in 120 meters of the site
- 1.28 All equipment will be portable
- 1.29 Tracks, loaders, backhoes, buUdozers, crushers and screening plants
- 1.30 No 1.5 meter berm
- 1.31 No berms will be vegetated to prevent erosion
- 1.32 The direction of development of the pit will be from the south to the north
- 1.33 There will be 2 lifts, maximum height 7.0 meters
- 1.34 The southwest corner will be extracted first moving to the north and rehabilitated as other areas are depleted they will be sloped, topsoil spread and seeded
- 1.35 Overburden and topsoil will be spread on die slopes and pit floor during rehabilitation
- 1.36 Thee will be no diversion or discharge of surface water fro m the excavation area, all surface water will flow normally to the west
- 1.37 Area to be extracted-----hectares
- 1.38 Setbacks of 15 meters around the pennited area and 30m along the Tern access road.
- 1.39 The permitted area is naturally screened by crown trees, except for the south entrance
- 1.42 During progressive rehabilitation areas will be seeded with grass mixtures
- 1.43 Final rehabilitated areas will be allowed to regenerate naturally to local tree species
- 1.44 Estimated final floor elevation 96.0 meters
- 1.45 Final slopes 3:1, will be established with material from within die permit area
- 1.46 Hours of operation will not be restricted, normal operating hours 7.00am to 7.00pm
- 1.47 Final drainage will be naturally to the west
- 1.49 Merchantable trees will be utilized and non merchantable trees and stumps will be composted with the topsoil for pit rehabilitation
- 1.50 Unlimited number of tonnes maybe removed from the pit in any given year
- 1.51 Bedrock lies under pit with only signs of surface water present
- 1.52 No monitoring required



# Pit Locations Municipality of Temagami Aggregate Permit# 16321



50 25 0 50  
Meters

1:3,000

