

THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN
BY-LAW NO. 2009 - 41

Being a By-law to enter into an Agreement with Canada Post to place
Group Boxes within the Municipal Right of Way

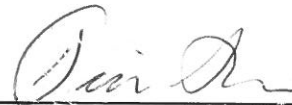
WHEREAS Section 9 of the Municipal Act, 2001, S.O. 2001, c. 25 as amended, states that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Municipal Act or any other Act;

AND WHEREAS the Council of the Municipality of Magnetawan deems it appropriate to permit Canada Post to locate their group boxes within the municipal right of way.

NOW THEREFORE the Council of the Corporation of the Municipality of Magnetawan enacts as follows:

1. The Municipality of Magnetawan enters into an agreement with Canada Post for the placement of group boxes within the municipal right of way as approved.
2. On behalf of the Municipality of Magnetawan, hereby ratifies the agreement attached to this by-law and marked as Schedule "A".

**READ A FIRST, SECOND AND THIRD TIME,
AND PASSED THIS 10th DAY OF June, 2009**



Dick Smith, Mayor



David R. Free, CAO/Clerk

THIS AGREEMENT made in triplicate this 2 day of June 2009.

BETWEEN

THE CORPORATION OF THE MUNICIPALITY OF
MAGNETAWAN (Hereinafter called the "Municipality")

OF THE FIRST PART;

AND

CANADA POST CORPORATION
(Hereinafter called "Canada Post")

OF THE SECOND PART;

WHEREAS pursuant to the Canada Post Corporation Act, R.S.C. 1985, c. C-10, Canada Post was established as Agent of Her Majesty to, inter alia, establish and operate a postal service for the collection, transmission and delivery of mail and to provide such products and services as are, in the opinion of Canada Post, necessary or incidental to such postal service;

AND WHEREAS the Mail Receptacles Regulations, made pursuant to the Canada Post Corporation Act with the approval of the Governor in Council, authorize Canada Post to install, erect or relocate, or cause to be installed, erected or relocated in any public roadway, any receptacle or device to be used for the collection, delivery or storage of mail;

AND WHEREAS Canada Post desires to install, erect and relocate, when necessary, such receptacles or devices, commonly referred to as "Community Mailboxes", at specific convenient locations on public roadways within the Municipality, title to which is vested in the Municipality;

AND WHEREAS the title to the public roadways is vested in the Municipality;

AND WHEREAS the Parties hereto desire to enter into an Agreement governing Community Mailbox site selection, liability, maintenance, repair, replacement, removal and relocation;

NOW THEREFORE THIS AGREEMENT WINESSETH that the Municipality and Canada Post, each in consideration of the execution of this Agreement by the other, mutually agree as follows:

1. In this Agreement:
 - (a) "Council" shall mean the Council of The Corporation of the Municipality of Magnetawan;
 - (b) "Municipal Official" shall mean the City Engineer;
 - (c) "Municipality" shall mean The Corporation of the Municipality of Magnetawan;
 - (d) "Roadway" shall include public road allowances, highways, streets, lanes, walkways, sidewalks and boulevards with in the jurisdiction of the Municipality;
 - (e) "Utility" shall include the City Engineer's Department of the Municipality, the Hydro Electric Commission, Union Gas, Bell Canada and cable television companies.
2. Subject to the terms and conditions herein contained, Canada Post shall:
 - (a) install, erect and relocate, when it deems necessary, Community Mailboxes only at specific locations on roadways within the Municipality, the suitability of which sites having been established in accordance with Canada Post's location criteria and subsequently reviewed and approved by the Municipal Official (which review will be expeditious and which approval shall not unreasonably be withheld) in accordance with the details which are attached hereto as Schedule

“A”, which Schedule shall form part of the Agreement;

- (b) at its expense, satisfactorily maintain such Community Mailboxes including concrete slabs and access pads, landscaping and Community Mailbox sites and including, without limitation, general upkeep and litter control on a regular basis;
 - (c) provide, at its own expense, for snow clearing of the areas adjacent to the Community Mailboxes to provide access thereto during the winter for the public; provided, however, that no snow shall be placed on any traveled portion of the roadway or sidewalk by Canada Post or its contractor;
 - (d) indemnify and save harmless the Municipality from and against all claims for injury or damage by whomsoever made, brought or prosecuted, in any manner based upon, arising out of or in any way attributable to the construction, installation, maintenance or use of the Community Mailboxes, except arising out of the negligence of the Municipality;
 - (e) assume all loss, injury or damage and risk of loss, injury or damage to any works of the Municipality or that of any public utility which may in, on, over or under the roadway, at the location of the Community Mailboxes, except for that arising out of negligence of the Municipality or any public utility.
3. Should the Municipal Official not approve the suitability of any site for the installation, erection or relocation of Community Mailboxes or should the Municipal Official, in future, desire that any Community Mailbox erected or installed by Canada Post upon a roadway pursuant to the terms of this Agreement be relocated, the Municipal Official shall immediately so notify Canada Post in writing and such notice shall set forth the reasons for such disapproval or desire for relocation. Forthwith upon receipt of such notice, Canada Post and the Municipal Official shall work together in good faith to expeditiously resolve the Municipality's concerns and objectives in this regard and, if required, select an alternative location meeting the approval of the Parties as herein provided. Upon removal of any Community Mailbox from the roadway, Canada Post shall satisfactorily restore the affected portion of the roadway to a standard equivalent to the condition of the roadways in its vicinity, and upon failure of Canada Post to restore the affected portion of the roadway, the Municipality, upon advance notice in writing to Canada Post, may do so at the expense of Canada Post which undertakes and agrees to pay to the Municipality such expenses (including supervisory and clerical work) on demand.
 4. Canada Post may at any time, at its sole discretion and for any reason, give notice in writing to the Municipal Official of its intention to remove any or all of the Community Mailboxes from the roadways. Upon removal of any or all Community Mailboxes from the roadways, Canada Post shall satisfactorily restore the affected portion of the roadways to a standard equivalent to the condition of the roadways in its vicinity, and upon failure of Canada Post to restore the affected portion of the roadways, the Municipality, upon advance notice in writing to Canada Post, may do so at the expense of Canada Post which undertakes and agrees to pay to the Municipality such expenses (including supervisory and clerical work) on demand. All notices in writing referred to three (3) days after the date of mailing.
 5. Canada Post acknowledges and agrees that the Municipality is the owner of and has jurisdiction over the roadways within the Municipality affected by this Agreement and that the Municipality reserves the right to use the roadway at or on which a Community Mailbox is located for the purposes of constructing and maintaining therein sewers, water mains, electric light and power conduits and cables, telephone conduits, gas lines and all other services and appliances, whether under its control or the control of a public utility or other government authority.
 6. If, in the event of an emergency, it becomes necessary for Canada Post to do work on, across or along any roadways without consultation with the Municipal Official, then Canada Post shall, as soon as reasonably possible, provide the Municipal Official with details of the emergency and the work done in response thereto. In such emergency situations, Canada Post shall expeditiously restore the roadway to a condition as near as reasonably possible to the condition it was prior to the start of any such work. Upon failure of Canada Post to so restore the

roadway, then the Municipality may do so and charge the cost of doing so back to Canada Post. Restoration includes but is not limited to any required repair to the roadway concerned by reason of any settlement of the original restoration work by Canada Post.

7. If, in the event of an emergency, it becomes necessary for the Municipality or other utility to work at any location of a Community Mailbox without the permission of Canada Post, the Municipality shall, as soon as reasonably possible or within 24 hours notice to the Municipality by the utility, provide Canada Post with details of the emergency and the work done in response thereto. In such situations the Municipality or the utility, as the case may be, shall temporarily relocate and anchor any such Community Mailbox in as close proximity to its original site as reasonably possible, having regard to the temporary nature of the relocation to facilitate its continued use in a reasonable and safe manner. The Municipality or the utility, as the case may be, shall expeditiously restore the Community Mailbox location to a condition as near reasonably possible to the condition prior to the start of any such work.
8. Canada Post shall, at its own cost and expense, cause any and all liens or privileges registered pursuant to applicable laws relating to construction liens or privileges on municipal property for labour, service or material alleged to have been furnished or to have been charged by or for Canada Post or anyone on its behalf on the roadways or any improvements or facilities therein or thereon, to be paid, satisfied, released, cancelled and vacated within thirty (30) days after the Municipality shall have sent to Canada Post written notice by prepaid cost of any claim for such lien or privilege. Provided, however, that in the event of a bona fide dispute by Canada Post of the validity or correctness of any claim for any such lien or privilege, Canada Post shall not be bound by the foregoing but shall be entitled to defend against the same in any proceedings brought in respect thereof after first paying into court the amount claimed and such costs as the court may direct and registering all such documents as may be necessary to discharge such lien or privilege, or providing such other security in respect of such claim as will result in the discharge of such lien or privilege. In respect to such liens or privileges, Canada Post in addition hereby covenants and agrees to indemnify and keep indemnified the Municipality of all liability or judgements arising out of any liens or privileges registered as a result of the construction of a Community Mailbox and its related facilities by Canada Post, its contractors, subcontractors, material suppliers and workers.
9. Any notice required to be given to the Municipality hereunder shall be sufficiently given personally or delivered or sent by prepaid priority courier addressed to:

The Municipality of Magnatawan
 PO Box 70
 4304 Hwy #520
 Magnetawan ON P0A 1P0

and any such notice, if mailed, shall be deemed to have been received by the Municipality on the second business day after the date on which it shall have been so mailed.

Any notice required to be given to Canada Post hereunder shall be sufficiently given personally or delivered or sent by prepaid courier addressed to:

DELIVERY SAFETY
 CANADA POST CORPORATION
 300 WELLINGTON STREET
 LONDON ON N6B 3P2

and any such notice, if mailed, shall be deemed to have been received by Canada Post on the second business day after the date on which it shall have been so mailed.

10. This Agreement incorporates all the terms and conditions governing the installation, erection and relocation of Community Mailboxes on roadways within the Municipality and there is no representation or collateral agreement affecting this Agreement other than as expressed herein in writing.

- 11. This Agreement may not be assigned or transferred by either party without the prior written consent of the other party.

- 12. This Agreement shall be binding upon the Parties hereto, their successors and assigns.

IN WITNESS WHEREOF the Parties have caused their respective corporate seals to be hereto affixed as attested by the hands of their respective proper officers in that behalf the day of the year first above written.

THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN

Richard Jones - Mayor.

CANADA POST CORPORATION

Manager
Delivery Planning

SCHEDULE "A"

MUNICIPALITY OF MAGNETAWAN STANDARDS AND GUIDELINES FOR THE INSTALLATION OF COMMUNITY MAILBOXES

- 1)
- 2)
- 3)
- 4)
- 5)
- 6)