

**THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN**

**BY-LAW 2020 - 51**

**BEING A BY-LAW TO PROVIDE FOR THE EXECUTION OF AN AGREEMENT WITH THE LICENSEE OF THE LANDS – (DARYL CARY) KNOWN AS TRANQUILITY TRAIL AND ARE LEGALLY DESCRIBED AS A PUBLIC HIGHWAY LAID OUT IN PLAN M406, IN THE MUNICIPALITY OF MAGNETAWAN**

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**AND WHEREAS**, the Licensee has sought permission to construct a turning circle on the unopened road allowance laid out in Plan M406;

**AND WHEREAS**, Council has passed Resolution #2020-150 and agreed to permit the Licensee to construct a “turning circle” subject to the requirement that the Licensee enter into an agreement with the Municipality;

**AND WHEREAS**, Council is satisfied that the proposed development of the lands is appropriate and in conformity with the Municipality’s requirements;

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

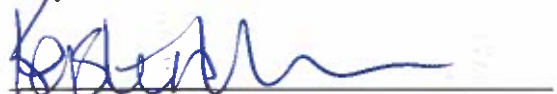
1. That the Municipality of Magnetawan enter into this agreement substantially in the form attached hereto as “This Agreement.”
2. That the Mayor and the Clerk are hereby authorized to execute the Agreement and all documents in connection with the Agreement.
3. The Municipality’s solicitor is hereby authorized to register the Agreement against the title of the lands to which it applies.

**READ A FIRST, SECOND, AND THIRD TIME**, passed, signed and the Seal of the Corporation affixed hereto, this 2<sup>nd</sup> day of September, 2020

**THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN**



Mayor



CAO/Clerk

THIS AGREEMENT MADE BETWEEN:

**THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN**  
(hereinafter called the "Municipality")  
OF THE FIRST PART

- and -

**DARYL CARY**  
(hereinafter jointly called the "Licensee")  
OF THE SECOND PART

WHEREAS the Licensee and the owners of other property in the area obtain access via an unopened and unassumed road known as Tranquility Trail (a public highway laid out in Plan M406);

AND WHEREAS the Licensee has sought permission to construct a turning circle on the unopened road allowance laid out in Plan M406;

AND WHEREAS the Municipality has agreed to permit the Licensee to construct a "turning circle" subject to the requirement that the Licensee enter into an agreement with the Municipality;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT IN CONSIDERATION OF THE PREMISES AND THE COVENANTS HEREINAFTER SET FORTH, AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT WHEREOF IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO COVENANT AND AGREE WITH EACH OTHER AS FOLLOWS:

1. LICENCE

For the purposes of this agreement the Licensed Area is as shown on the plans attached as Schedule A hereto (which Schedule A includes the Approved Plans).

The Municipality grants to the Licensee the non-exclusive right to enter upon Licensed Area for the purpose of undertaking improvements to and/or upon the Licensed Area for the purpose of creating a turning circle as shown on the plans attached as Schedule A hereto. Such License includes the temporary right to enter upon those portions of the Municipality's Lands abutting the Licensed Area during the conduct of construction and maintenance activities, however the improvements authorized hereunder shall only occur on the Licensed Area. Such improvements include excavation, alteration, installation of road base and related drainage works and the placement of aggregates.

2. INDEMNIFICATION FROM LIABILITY AND RELEASE

The Licensee covenants and agrees with the Municipality that the Licensee will indemnify

and save harmless the Municipality, its officers, servants, officials and agents from any claim or demand, loss, cost, charge or expense which the Municipality may incur or be liable for in consequence of the permission hereinbefore granted and/or the exercise by the Licensee of such permission.

The Licensee hereby releases and forever discharges the Municipality, its officers, servants, officials and agents from any claim, demand, loss, cost, charge or expense which may arise as a result of the Municipality performing any municipal work in or upon the Licensed Area.

3. TERM

This Licence Agreement shall be effective upon the date of execution by the Municipality and shall terminate as provided for in section 4.

4. TERMINATION OF AGREEMENT

This Agreement shall terminate no later than twelve (12) from the date of execution of work subject to the following. Termination may occur on an earlier date whereupon the following conditions are satisfied:

- (a) upon written confirmation from the Licensee's contractor that it has completed the proposed improvements in accordance with plans that were filed with the Municipality and that all equipment, machinery and unused construction materials have been removed from the Municipality's Lands; and
- (b) upon the Municipality's Public Works Superintendent confirming in writing that the contractor has left the Municipality's Lands (including the Licensed Area) in a condition that is neat and tidy.

5. CONDUCT OF WORK

In consideration of the permission and consent hereby given, the Licensee:

- (a) shall, at its own expense, construct the improvements upon the Licensed Area;
- (b) shall, at its own expense, obtain all required governmental approvals for the construction of the improvements;
- (c) shall, at its own expense, keep and maintain the Licensed Area improvements in a safe, condition during the currency of this License.

6. SURVEYS IF NECESSARY

The Licensee acknowledges that it is the Licensee's obligation to ensure that works authorized hereunder does not encroach upon abutting privately owned lands. The Licensee shall be responsible for obtaining the assistance (if necessary) of a professional surveyor for such purpose and the cost thereof.

7. MAINTENANCE DURING CONSTRUCTION

If the Licensee fails to maintain Licensed Area, during the term of this agreement, in safe condition, required by this Agreement, the Municipality may give written notice to the Licensee to rectify the situation. If the Licensee has not rectified the situation to the Municipality's satisfaction within 5 days of the date of the written notice, the Municipality may rectify the unsafe condition at the expense of the Licensee and the Certificate of the Clerk of the Municipality as to the expense thereof shall be final and binding upon the Licensee. In addition to any other remedy provided for in this agreement or at law, the Municipality may recover the same from the Licensee in any court of competent jurisdiction as a debt due and owing to the Municipality.

**8. INDEMNIFICATION**

The Licensee shall at all times indemnify and save harmless the Municipality from and against any and all claims, demands, losses, costs, charges, expenses, actions and other proceedings (including those in connection with workers' compensation or any similar or successor arrangement) made, brought against, suffered by or imposed on the Municipality or its property in respect of any failure by the Licensee to fulfill any of its obligations under this agreement or for any reason whatsoever or in respect of any loss, damage or injury (including injury resulting in death) to any person or property (including, without restricting the generality of the foregoing, employees, contractors, agents and property of the Municipality) directly or indirectly arising out of, resulting from or sustained by reason of the authorization granted hereunder or the occupation of and/or construction of the improvements on the Municipality's Lands by the Licensee or its agents.

9. LIENS

The Licensee shall fully indemnify and save harmless the Municipality from and against all construction liens and related costs and other claims in connection with Licensed Area or the Municipality's Lands arising from or in relation to the conduct of any improvements by the Licensee or its agents.

10. INSURANCE

The Licensee shall lodge with the Municipality, on or prior to the execution of the Agreement, a copy of its contractor's insurance certificate from an Insurance Company satisfactory to the Municipality, and insuring for the joint benefit of the Contractor, the Licensee and the Municipality against any liability that may arise out of authorization granted hereunder, during the occupation of and/or construction of the improvements upon the Licensed Area.

Such Comprehensive General Liability policy shall carry limits of liability in the amount to be specified by the Municipality, but in no event shall it be less than \$5,000,000.00 inclusive comprehensive general liability and such policy shall:

- a. include a cross-liability clause;
- b. include product/completed operation coverage;
- c. shall not have an exclusion pertaining to blasting,
- d. include the Corporation of the Municipality of Magnetawan as an additional insured;
- e. include a provision that the insurance company agrees to notify the Municipality 15 days in advance of any material change or cancellation of the said insurance policy.

Any certificate of coverage filed with the Municipal solicitor shall specifically contain confirmation that the coverage as specified above is in effect. The issuance of such Policy of Insurance shall not be construed as relieving the Licensee from responsibility for other or larger claims, if any, and for which it may be held responsible.

11. NO INTEREST IN LAND

The Licensee acknowledges that this Agreement shall in no way create any interest in land or easement rights.

12. ERECTION OF WARNING SIGNS

The Licensee shall erect signs at the approach of the unopened road allowance which read as follows:

"THIS UNOPENED ROAD ALLOWANCE HAS NOT BEEN ASSUMED FOR PUBLIC USE BY THE MUNICIPALITY. MEMBERS OF THE PUBLIC MAY STILL USE THIS UNOPENED ROAD ALLOWANCE, BUT DO SO AT THEIR OWN RISK".

13. DEPOSITS

- (a) The Licensee shall lodge with the Municipality, as applicable, those cash deposits more particularly described in Schedule "B", prior to the date of execution of this Agreement by the Municipality.
- (b) Without limiting the generality of section 10, in the event any expenses incurred by the Municipality in the preparation and administration or enforcement of this agreement, exceeds the deposit, the Licensee shall pay such additional amounts to the Municipality as invoiced. Failure to pay such invoices within the time periods set out in this agreement or in the invoices shall be considered a default of this agreement.

14. EXPENSES TO BE PAID BY THE LICENSEE

- (a) Every provision of this Agreement by which the Licensee is obligated in any way shall be deemed to include the words "at the expense of the Licensee" unless the context otherwise requires.
- (b) The Licensee shall pay such reasonable fees as may be invoiced to the Municipality by its Solicitor, its Planner, and its Municipal Engineer in connection with all work to be performed as a result of the provisions of this Agreement.
- (c) All expenses for which demand for payment has been made by the Municipality, shall bear interest at the rate of 12% per annum commencing 30 days after demand is made.
- (d) In the event that the Municipality finds it is necessary to engage the services of an engineer or technical personnel not permanently employed by the Municipality to review the plans of the Licensee and/or carry out on-site inspections of the work performed, the Municipality will advise the Licensee accordingly of this need, and the costs of such outside engineers so engaged shall be the responsibility of the Licensee. The Municipality may require a deposit for this purpose.

15. LICENCE NON-TRANSFERABLE

The licence hereby granted may not be transferred by the Licensee without the prior consent in writing of the Municipality.

16. NOTICE

For the purpose of This Agreement, notice may be given to the Licensee by prepaid registered mail to the address shown on the last transfer registered against the Licensee's Lands and such notice shall be deemed to have been given and received on the fifth day after mailing.

***Remainder of Page Intentionally Blank***



17. ESTOPPEL OF LICENSEE

The Licensee 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 Licensee in any such proceedings.

This AGREEMENT SHALL enure to the benefit of and be binding upon the parties hereto and their permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed and set their hands and seals on This Agreement:

By the Municipality on the 2nd day of Sept, 2020.

THE CORPORATION OF THE  
MUNICIPALITY OF MAGNETAWAN

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

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

By the Licensee on the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Daryl Cary

THIS IS SCHEDULE A TO THE LICENSE AGREEMENT BETWEEN THE  
CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN AND DARYL CARY

SCHEDULE "A"

APPROVED PLANS



R: 60.00  
 A: 301.50  
 C: N84°39'10" E  
 66.00

CONCESSION

47

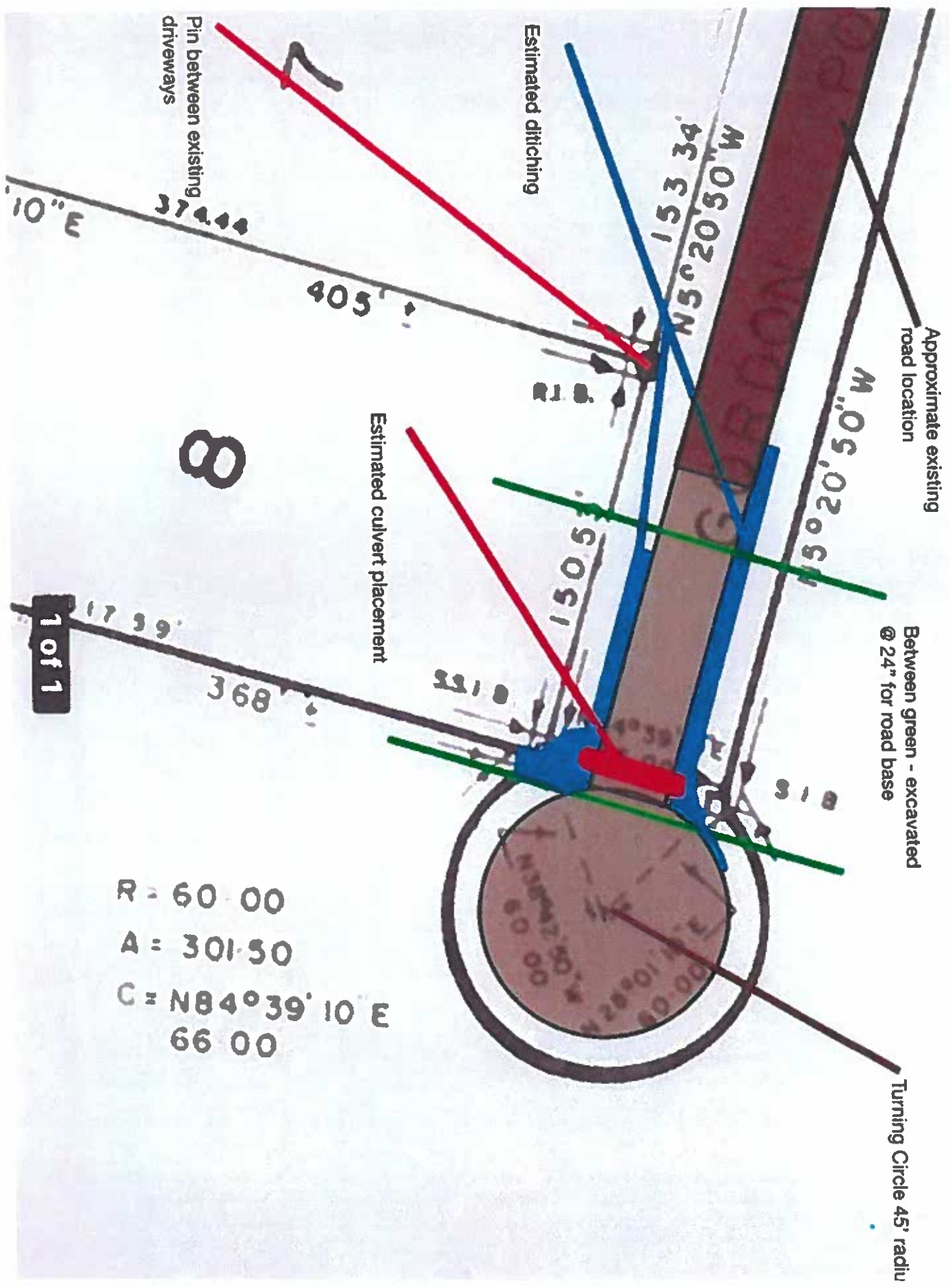


Untitled



**Rev # 1 - TRANQUILITY TRAIN TURNAROUND Plan M406**

- To complete installation of road extension (to like sizing and standard of existing road) and turning circle sized @45" radius to allow turning of 3 axles fire apparatus and additional emergency responders and larger trucks / snowplows, to like standards of existing road materials
- Areas as detailed with be excavated to a depth to allow removal of organics to base
- Road base to be built with pit run
- Road to be capped with 7/8' granular A – crowned as required
- Ditching and culverts to be installed as noted to reflect natural existing drainage
- Work to be completed by First Choice Landscaping – certificate of insurance included
- Scheduled start date week of Sept 14<sup>th</sup> 2020



THIS IS SCHEDULE A TO THE LICENSE AGREEMENT BETWEEN THE CORPORATION OF THE

SCHEDULE "B"

CASH DEPOSITS AND SECURITY

The Licensee shall, on the dates specified herein, lodge with the Municipality, the following described cash deposits and security.

1. TYPE OF SECURITY

Any security required to be filed under this Agreement, shall be by Certified Cheque or Bank Draft in the amount or amounts hereinafter set out.

2. CASH DEPOSITS

The following cash deposits are estimates only and are to be paid to the Municipality, as applicable, prior to the execution of this Agreement by the Municipality. In the event that the actual costs incurred by the Municipality exceed the deposits, such excess shall be invoiced to the Licensee and be due and payable 30 days after demand.

For legal, planning and engineering expenses and disbursements in connection with this Agreement, a deposit of \$NONE