

ADMINISTRATIVE REPORT

Subject: Entering into an easement agreement with the Township of Alberton

Date: August 3, 2022

To: Mayor and Council

From: Travis Rob, Manager Operations & Facilities



ISSUE:

Council of the Town of Fort Frances received a request from the property owner of 11 Highway 11 for water services to their property in the Township of Alberton on June 14, 2021. The installation of the water and sanitary sewer services will cross property owned by the Township of Alberton.

ADMINISTRATIVE RECOMMENDATION:

Council approval of report number AP-22-0022 will ensure:

THAT the Town of Fort Frances enter into an easement agreement with The Township of Alberton for the purposes of supplying water services to 11 Highway 11.

FURTHER THAT a by-law be prepared authorizing the Mayor and Clerk to execute the easement agreement on behalf of the corporation.

STRATEGIC IMPACT:

Objective 5 - Improve relationships with neighboring communities

OPTIONS & ALTERNATIVES:

N/A

HISTORY:

Council of the Town of Fort Frances received a request from the property owner of 11 Highway 11 for water services to their property in the Township of Alberton. The property owner has been working through the planning aspects of this request with the Township of Alberton and has completed the Official Plan amendment required to allow the servicing of the property from water provided by the Town of Fort Frances. Given that the water main is on the Town's portion of the roadway, in order for the service to cross the road to our demarcation point at property line, the Town needs an easement from the Township of Alberton.

ANALYSIS:

The proponent has had an easement agreement drafted by their legal council and presented it to the Town. The Town's legal council has reviewed the agreement and agrees that the terms are suitable for this endeavor.

Further this is a similar agreement to one that the Town entered into with Alberton in 2017 for servicing another property along Oakwood Road.

Currently the proponent is working on their servicing agreement, which will be required to be completed before we can start to work on installation of services either by Town forces, or through contractor, or through inclusion in an annual capital road works job, which ever is most cost advantageous.

CONSULTATION:

- Clare Allan Brunetta Law Office

SUPPORTING DOCUMENTS:

[Easement Agreement - 501801 v3 2022 07 26 \(00753468-3xD67E1\)](#)

EASEMENT AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2022.

B E T W E E N :

THE CORPORATION OF THE TOWNSHIP OF ALBERTON

(hereinafter referred to as "**Alberton**")

OF THE FIRST PART

- and -

THE CORPORATION OF THE TOWN OF FORT FRANCES

(hereinafter referred to as "**Fort Frances**")

OF THE SECOND PART

WHEREAS

- A. The *Municipal Act, 2001*, SO 2001, c. 25, as amended (herein referred to as the "**Act**"), confers upon municipalities natural person powers which may be exercised within the spheres of jurisdiction identified therein, which the council of a municipality may exercise by by-law;
- B. Section 19 of the Act authorizes a municipality to exercise its power to provide a municipal system to provide a service or thing in an area in another municipality if one of the purposes for so acting is for that municipality's own purposes and, in accordance with Section 19(2)2, if the other municipality is a single-tier municipality and the service or thing is provided with its consent;
- C. Oakwood Road (herein referred to as the "**Highway**") is a highway in the District of Rainy River, Province of Ontario, that forms part of a boundary road between Alberton and Fort Frances (herein collectively referred to as the "**Parties**");
- D. Steve William Both, in the capacity of trustee for 501801 Ontario Limited (the "**Owner**") is the registered owner of certain lands and premises located in Alberton which:
 - i. has frontage on the west side of the Highway;
 - ii. is municipally known as Fire Numbers 11A, 11B, 11D, and 11G, Highway 11/71, Alberton, Ontario;
 - iii. is legally described as PCL 25801 SEC RAINY RIVER; PT LT 1 RIVER RANGE CROZIER PT 3, 48R3462; ALBERTON; and
 - iv. is identified as PIN 56021-0439,(the "**Property**");
- E. The Property is currently serviced by private non-municipal septic and well systems;
- F. The Owner submitted to the Council for Fort Frances a request for the Property to be connected to and serviced by water service provided by Fort Frances, and if and when it becomes available, sanitary sewer services provided by Fort Frances (together, "**Sewer and Water Service**");
- G. The Owner submitted to the Council for Alberton an Official Plan Amendment Application to permit Sewer and Water Service for the sole benefit of the Property, and to allow construction and installation of certain infrastructure, works and things required for directly pertaining to the provision of such Sewer and Water Service (collectively referred to as the "**Facilities**") for such purpose;
- H. Alberton is the registered owner of the western portion of the Highway located within Alberton, which abuts the eastern boundary of the Property and is legally described as RDAL BTN TWP OF MCIRVINE & TWP OF CROZIER LYING W OF THE CENTRE LINE & LYING S OF 48R3934; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1, PLAN 48R-4509, AS IN RD34324; TOWNSHIP OF ALBERTON, and identified as PIN 56021-0606 (the "**Alberton Lands**");
- I. In order to allow the Sewer and Water Service to be provided to the Property, a portion of the Facilities are required to be located and constructed in, under and upon a portion of the Alberton Lands (such portion of the Facilities located and constructed in, under, and upon the Alberton Lands are herein collectively referred to as the "**Facilities Within Alberton**"), which will necessitate the granting of an easement (the "**Easement**") in the form attached hereto as Schedule "A" by Alberton to Fort Frances, and otherwise as Alberton requires as set out and provided for in this Agreement;

NOW THEREFORE in consideration of the covenants and agreements set forth in this Agreement, the Parties agree as follows:

ARTICLE 1.00 - RECITALS

1.1 The Parties hereto do hereby irrevocably and mutually acknowledge and confirm that the statements contained in the foregoing recitals are true in substance and in fact.

ARTICLE 2.00 - INTERPRETATION

2.1 Definitions. In this Agreement, the following terms have the following meanings:

2.1.1 “**Agreement**” means this agreement, the easement, and any schedule attached hereto, and “**section**” means a section in this Agreement and includes all subsections and paragraphs therein;

2.1.2 “**Alberton Lands**” means the western portion of the Highway which is located within Alberton and is legally described as RDAL BTN TWP OF MCIRVINE & TWP OF CROZIER LYING W OF THE CENTRE LINE & LYING S OF 48R3934; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1, PLAN 48R-4509, AS IN RD34324; TOWNSHIP OF ALBERTON, and identified as PIN 56021-0606

2.1.3 “**Easement**” means the easement which is granted by Alberton to Fort Frances pursuant to the terms of this Agreement, as more particularly set out in the Transfer of Easement attached hereto as Schedule “A”;

2.1.4 “**Facilities**” has the meaning set out in Recital G above;

2.1.5 “**Facilities within Alberton**” has the meaning set out in Recital I above;

2.1.6 “**Highway**” means Oakwood Road;

2.1.7 “**Parties**” means all of the parties to this Agreement, and “**Party**” shall mean any one of the Parties;

2.1.8 “**Property**” means the real property municipally known as Fire Numbers 11A, 11B, 11D, and 11G, Highway 11/71, Alberton, Ontario, legally described as PCL 25801 SEC RAINY RIVER; PT LT 1 RIVER RANGE CROZIER PT 3, 48R3462; ALBERTON, and identified as PIN 56021-0439;

2.1.9 “**Sewer and Water Service**” has the meaning set out in Recital F above;

2.2 Number and Gender. In this Agreement words importing the singular shall include the plural and vice versa; words importing the masculine gender shall include the feminine and neuter, and shall include one or more persons, their heirs, executors, administrators, successors or assigns, as the case may be.

2.3 Headings. The headings of the Articles of this Agreement are inserted for convenience of reference only; they do not constitute a part of this Agreement and shall not affect the interpretation or construction of this Agreement.

2.4 Statutes, Regulations, etc. Any references herein to any law, by-law, rule, regulation, order or act of any governmental body or other regulatory body shall be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor thereto.

2.5 Schedules. Any schedules listed hereinafter shall form part of this Agreement and are hereby incorporated by reference. The following are the Schedules which are attached to and form part of this Agreement:

Schedule “A” – Easement

ARTICLE 3.00 - EASEMENT AGREEMENT

3.1 Subject to the terms and conditions set out in this Agreement, Alberton:

3.1.1 consents and agrees to Fort Frances providing Sewer and Water Service to and for the sole benefit of the Property and to the construction of the Facilities Within Alberton, and such further and other things as may be necessary therefor, and this shall be and be deemed to constitute consent for the purposes of Section 19(2)(2) of the Act; and

3.1.2 grants to Fort Frances the Easement in the form set out in Schedule “A” attached hereto.

3.2 The Parties acknowledge and agree that:

3.2.1 The Facilities Within Alberton shall be comprised of water and sewer utility infrastructure owned by Fort Frances;

- 3.2.2 Fort Frances agrees that it shall indemnify, defend and save harmless Alberton from any liability, cost, demands, damages, expenses, claims and suits arising out of or in any way related to the obligations of Fort Frances to carry out its work or to otherwise meet its obligations provided for in this Agreement including the failure to perform such work adequately or at all, except to the extent that same is caused by the negligence or willful misconduct of the Alberton. This indemnity shall survive the early termination or expiry of this Agreement;
- 3.2.3 Fort Frances shall be solely responsible and bear the costs for the Facilities Within Alberton located in and under the Highway, and their construction, installation, operation, inspection and maintenance, except to the extent that same is caused by the negligence or willful misconduct of the Alberton and subject to any agreement between Fort Frances and the Owner;
- 3.2.4 as of the date of this Agreement, Alberton has no water, sewer, and/or utility infrastructure, and/or appurtenances thereto, located in, under or adjacent to the Highway; and
- 3.2.5 each Party shall name the other Party as an Additional Insured under its liability insurance policy re the Facilities Within Alberton as evidenced by the provision by each to the other of a completed Certificate of Insurance (proof of Insurance).
- 3.3 Subject to Section 3.2 of this Agreement, but otherwise notwithstanding anything contained in this Agreement, the consents and agreements of Alberton herein are and shall be and remain on the basis that Fort Frances shall not be required or liable to pay to Alberton any taxes, fees, charges, costs or otherwise in respect of or relating to the provision of Sewer and Water Service to the Property, the Easement, the Facilities, or the Facilities Within Alberton.
- 3.4 The consents and agreements of Alberton herein are and shall be and remain on basis that, subject to Section 3.2 of this Agreement, Alberton shall not be required or liable to pay to Fort Frances any taxes, fees, charges, costs or otherwise of any nature or kind in respect of or in any way relating to the provision of Sewer and Water Service to the Owners' Property, the Easement, the Facilities, or the Facilities Within Alberton.

ARTICLE 4.00 - GENERAL PROVISIONS

- 4.1 Enurement. This Agreement, including all rights, privileges, and benefits herein contained, shall extend to, be binding upon, and enure to the benefit of, the Parties hereto and their respective successors and assigns.
- 4.2 Severability. The Parties agree that all covenants and conditions contained in this Agreement shall be severable, and should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of the covenants and conditions and the remainder of this Agreement shall remain valid and not terminate thereby.
- 4.3 Choice of Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Province of Ontario and the laws of Canada applicable thereto.
- 4.4 Time of Essence. Time shall be of the essence of this Agreement and every part hereof.
- 4.5 Counterparts and Electronic Signatures. This Agreement may be executed in any number of counterparts each of which will be deemed to be an original, and all of which taken together will be deemed to constitute one and the same instrument. This Agreement, and transactions or documents contemplated by this Agreement, may be executed and delivered by electronic means and each of the Parties may rely on such electronic execution as though it were an original hand-written signature.

{remainder of page intentionally left blank; signature page to follow}

IN WITNESS WHEREOF the Parties have hereunto affixed their respective hands and seals to this Agreement on the day and year first written above.

SIGNED, SEALED AND DELIVERED

THE CORPORATION OF THE TOWNSHIP OF ALBERTON

Per: _____
Mike Ford, Reeve

Per: _____
Dawn Hayes, CAO/Clerk-Treasurer

WE HAVE AUTHORITY TO BIND THE CORPORATION. (seal)

THE CORPORATION OF THE TOWN OF FORT FRANCES

Per: _____
June Caul, Mayor

Per: _____
Gabrielle Lecuyer, Municipal Clerk

WE HAVE AUTHORITY TO BIND THE CORPORATION. (seal)

SCHEDULE "A"
TRANSFER OF EASEMENT

TRANSFER OF EASEMENT IN GROSS

RE: RDAL BTN TWP OF MCIRVINE & TWP OF CROZIER LYING W OF THE CENTRE LINE & LYING S OF 48R3934; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1, PLAN 48R-4509, AS IN RD34324; TOWNSHIP OF ALBERTON, identified as PIN 56021-0606 (the "**Easement Lands**")

AND: Easement Agreement made between The Corporation of the Township of Alberton (the "**Transferor**") and The Corporation of the Town of Fort Frances (the "**Transferee**"), dated as of the ____ day of _____, 2022 (the "Agreement") to which this Transfer of Easement is attached as Schedule "A"

THIS TRANSFER OF EASEMENT made as of the ____ day of _____, 2022, between the Transferor and the Transferee,

WHEREAS the Transferor is the owner in fee simple of the lands and premises described in the Properties section of the Agreement to which this Schedule is attached, and which is defined herein as the Easement Lands.

IN CONSIDERATION of the sum of \$2.00 paid by the Transferee to the Transferor, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Transferor hereby grants to the Transferee, its employees, workers, contractors, licensees, agents, successors, assigns and other representatives, to be used and enjoyed as appurtenant to the Transferee's lands, the free, unencumbered, uninterrupted, and unobstructed perpetual rights, easements (in gross), rights of way, covenants, agreements, and privileges as herein set out in, through, under, over, across, along and upon the Easement Lands:

1. to lay down, construct bury, dig up, erect, maintain, operate, inspect, patrol, repair, replace, relocate, alter, upgrade, renew, reconstruct, make additions to, and/or remove, at any time and from time to time, storm sewers, sanitary sewers, watermain(s), drains, water supply and/or line(s), and for such other purposes and things as the Transferee may require relating thereto, together with and including without limitation all such equipment, installations, structures, markers, lines, pipes, anchors, maintenance holes, accesses, hydrants, service boxes, conduits, fixtures, equipment braces, catch basis, and/or appurtenances thereto and/or associated material and equipment, and all appurtenances thereto as the Transferee may from time to time or at any time hereafter deem requisite (all or any of which works are herein called the "**Facilities**");
2. to enter on, to exit from, and to pass and repass at any and all times. free and unimpeded, In, over, along, upon, across, through, and under the Easement Lands, with or without vehicles, supplies, machinery, plant, material, and equipment of all purposes.
3. to conduct engineering, legal, and other surveys and do soil and other tests, in, on, and over the Easement Lands; and
4. the right to remove, clear, trim, sever, and fell, any buildings, structures, and/or obstructions such as trees, roots, brush, stumps, boulders, rock, and/or otherwise encountered during the course of construction or subsequent maintenance or otherwise of the Facilities.

THE TRANSFEEE SHALL be responsible for any damage caused by it to the Easement Lands. When practical, the Transferee, after any of its activities, shall restore the Easement Lands appropriately.

NOTWITHSTANDING any rule or law or equity and even though any of the Facilities may become annexed or affixed to the Easement Lands, title to the Facilities shall nevertheless remain in the Transferee and the Facilities shall at any time, and from time to time, be removable in whole or in part by the Transferee, its successors and assigns.

THIS TRANSFER OF EASEMENT may be executed and delivered by electronic means, and in any number of counterparts each of which will be deemed to be an original, all of which taken together will be deemed to constitute one and the same instrument.

THIS TRANSFER OF EASEMENT shall be interpreted and governed by the laws of the Province of Ontario.

THE PARTIES AGREE THAT all covenants and conditions contained in this Transfer of Easement shall be severable, and should any covenant or condition in this Transfer of Easement be declared invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of the covenants and conditions and the remainder of this Transfer of Easement shall remain valid and not terminate thereby.

THIS TRANSFER OF EASEMENT including all rights, privileges, and benefits herein contained, shall extend to, be binding upon, and enure to the benefit of, the Parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the Parties have hereunto affixed their respective hands and seals to this Transfer of Easement on the day and year first written above.

SIGNED, SEALED AND DELIVERED

THE CORPORATION OF THE TOWNSHIP OF ALBERTON

Per: _____
Mike Ford, Reeve

Per: _____
Dawn Hayes, CAO/Clerk-Treasurer

(seal)

WE HAVE AUTHORITY TO BIND THE CORPORATION.

THE CORPORATION OF THE TOWN OF FORT FRANCES

Per: _____
June Caul, Mayor

Per: _____
Gabrielle Lecuyer, Municipal Clerk

(seal)

WE HAVE AUTHORITY TO BIND THE CORPORATION.