

CORPORATION OF THE TOWN OF GANANOQUE

BYLAW NO. 2010-61

BEING A BY-LAW TO ENTER INTO AGREEMENT WITH HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTRY OF OCEANS AND FISHERIES TO ASSUME OWNERSHIP OF THE HARBOUR COMMONLY KNOWN AS THE CUSTOM'S WHARF.

WHEREAS the Municipal Act, section 5 provides that a municipality's power shall be exercised by bylaw.

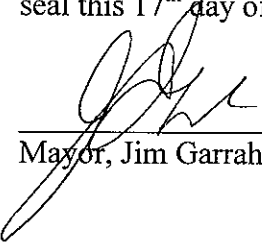
AND WHEREAS the Municipal Act, Section 3.1 provides a municipality with the authority to enter into agreements with the Crown in right of Canada

AND WHEREAS Council of the Corporation of the Town of Gananoque deems it expedient to purchase the Custom's Wharf.

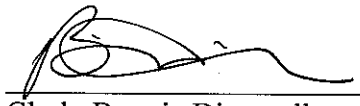
NOW THEREFORE the Council of the Corporation of the Town of Gananoque hereby enacts as follows:

- 1) That the Town of Gananoque hereby accepts the proposal from Her Majesty the Queen in Right of Canada as represented by the Minister of Fisheries and Oceans as laid out in the agreement attached hereto as Schedule A and forming part of this bylaw.
- 2) That the Mayor and Clerk are hereby authorized to execute any applicable agreement.
- 3) That this bylaw shall come into force and effect on the date of passing.

READ A FIRST, SECOND, and THIRD TIME, passed, signed, and sealed with the corporate seal this 17th day of August, 2010.



Mayor, Jim Garrah



Clerk, Bonnie Dingwall



ORIGINAL

No. F2930 10 002

GRANT

AGREEMENT

CONVENTION

SMALL CRAFT HARBOURS BRANCH
AND

DIRECTION DES PORTS POUR PETITES EMBARCATIONS
ET

THE CORPORATION OF THE TOWN OF GANANOQUE

AUTHORITY
Autorisation _____

DATE OF DOCUMENT
Document daté du _____

BEGINNING OF TERM
La période de location commence le _____

END OF TERM
La période de location se termine le _____

RENT PAYABLE
Loyer payable _____

LANDS OR RIGHTS DEMISED
Cession ou transfert OUTLINED IN APPENDIX "A"

FILE No.
No de dossier 5882 'D' Gananoque

REMARKS / Remarques

THIS GRANT AGREEMENT provides for a payment of Six hundred thousand dollars (\$600,000) to the Corporation of the Town of Gananoque payable upon transfer of the federal property and infrastructure described herein and locally known as the Gananoque Harbour facility.

THIS AGREEMENT, made this _____ day of _____, 2010.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
(hereinafter called "Her Majesty"), as represented by the
Minister of Fisheries and Oceans (the "Minister")

AND:

THE CORPORATION OF THE TOWN OF GANANOQUE
(hereinafter called the "Recipient")

RECITALS:

WHEREAS pursuant to departmental objectives and the Harbour Disposal Program, the Minister wishes to transfer to the Recipient ownership of the Harbour at Gananoque as more fully described in the attached Appendix "A".

WHEREAS the Recipient has declared its intention (in a municipal resolution, letter, etc) to assume ownership of the Harbour described in Appendix "A."

WHEREAS the Recipient agrees to continue to operate and maintain the Harbour for its current purpose as specified in the Transfer Agreement commencing from the date of the transfer of title of the Harbour to the Recipient.

WHEREAS the Recipient agrees to accept full responsibility and all future liabilities related to the Harbour in "as is" condition in return for a payment by the Minister "in lieu" of Her Majesty performing repairs/improvements or demolition to the Harbour prior to or after the transfer of the Harbour.

AND WHEREAS the Minister and the Recipient wish to enter into this Agreement for a Grant to facilitate the transfer of the Harbour to the Recipient.

NOW THEREFORE, in consideration of the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1: DEFINITIONS

- 1.1 "Agreement" means this Grant Agreement and Appendices "A", and "B"
- 1.2 "Audit" means an examination of a Recipient's accounts, records, or other evidence deemed, by the Minister, to be necessary.
- 1.3 "Business Day" means a day other than Saturday, Sunday or a statutory holiday in the Province of Ontario.
- 1.4 "Department" means the Department of Fisheries and Oceans Canada.
- 1.5 "Grant" means any payment by Her Majesty to the Recipient that is the subject of this Agreement.
- 1.6 "Grant Objective" means the transfer of the title of the Harbour to the Recipient in "as is" condition and the Recipient accepting full responsibility and all future liabilities related to the Harbour in "as is" condition in return for a payment by the Minister "in lieu" of Her Majesty performing repairs/improvements or demolition to the Harbour prior to or after the transfer of title of the Harbour to the Recipient.
- 1.7 "Harbour" means the property and facilities described in Appendix "A."

- 1.8 **“Lawyer”** refers to the legal counsel of the Recipient.
- 1.9 **“Minister”** means the Minister of Fisheries and Oceans Canada and his authorized representative.
- 1.10 **“Transfer Agreement”** means the signed agreement between the parties wherein it is agreed that Her Majesty will transfer title of the Harbour to the Recipient and which sets out the set of terms and conditions of the transfer of title and is registered as a caveat to the Recipient’s title to the Harbour.
- 1.11 **“Year”** means a period of 12 consecutive months commencing on April 1st, unless otherwise specified in this Agreement.

SECTION 2: INTERPRETATION

2.1 Number and Gender

Words importing the singular shall include the plural and vice versa and words importing a particular gender shall include all genders. The necessary grammatical changes required to make the provisions of this Agreement apply shall, in all instances, be assumed as though fully expressed in each case.

2.2 Headings

The division of this Agreement into sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

2.3 Accounting Terms and Principles

All accounting and financial terms used in this Agreement shall, except where otherwise provided either expressly or by necessary implication in this Agreement, be interpreted and applied in accordance with generally accepted accounting principles and generally accepted auditing standards in Canada, as determined by the Canadian Institute of Chartered Accountants or any successor.

2.4 Business Day

If the day on which any act or payment is required to be performed or made under this Agreement is a day that is not a Business Day, then such act or payment shall be duly performed or made on the next following Business Day.

2.5 Appendix

Any document attached hereto as an Appendix forms part of this Agreement.

2.6 Statutes, Regulations and Rules

Any reference in this Agreement to all or any part of any statute, regulation or rule shall, unless otherwise stated, be a reference to that statute, regulation or rule as amended, substituted, replaced or re-enacted from time to time.

2.7 Governing Law

This Agreement shall be interpreted in accordance with the laws in force in the Province of Ontario, subject to any paramount or applicable federal laws. Nothing in this Agreement is intended to or shall be construed as limiting, waiving or derogating from any Federal Crown prerogative.

SECTION 3: TERM OF AGREEMENT

This Agreement shall come into effect on the date of its execution by the last of the parties and shall terminate on the date the Recipient receives payment of the Grant unless terminated earlier in accordance with the provisions of this Agreement.

SECTION 4: APPROPRIATIONS AND CHANGE IN FUNDING FROM

PARLIAMENT

- 4.1 Payment of the Grant is subject to appropriations approved by Parliament. The Grant shall be cancelled or reduced in the event that funds are not available in the Year in which payment is to be made. Therefore, nothing herein contained obliges the Minister to make any payment under this Agreement unless and until the necessary funds have been voted by Parliament in that behalf.
- 4.2 Should the amount of the Grant be reduced as a result of this section, either party may terminate this Agreement by providing thirty (30) days) written notice to the other setting out the reduction as the reason for the termination. In the event of termination under this section, each party shall be responsible for its own costs of any nature whatsoever associated with this Agreement and shall have no claim against the other for such costs.

SECTION 5: PAYMENT OF GRANT

Subject to the provisions of this Agreement, the Minister agrees to pay to the Recipient, and the Recipient agrees to accept, a total Grant in the amount of \$600,000.00. The Grant is payable, without interest, upon receipt by the Minister, of a copy of the original duplicate registered Transfer Agreement.

SECTION 6: STACKING OF FINANCIAL ASSISTANCE

- 6.1 The Recipient declares that at the time of executing this Agreement, it has applied for, received, or expects to receive Government Financial Assistance for the repairs and improvements reasonably required to bring the Harbour to a condition where it can be operated to ensure safe public access for a minimum period of five years commencing from the date of transfer of title to the Recipient. The Minister has considered these amounts in determining the amount of the Grant.

AMOUNT

SOURCE

\$

\$

- 6.2 “**Government Financial Assistance**” means any financial assistance, including loan guarantees, forgivable, low interest or interest free loans, and investment tax credits provided by the federal, provincial or municipal government or agencies
- 6.3 During the term of this Agreement, the Recipient shall immediately declare to the Minister, in writing, any Government Financial Assistance, excluding the amount of the Grant, that it has applied for, received, or expects to receive that was not declared under subsection 6.1, and the Recipient shall renew this declaration prior to release of the Grant.
- 6.4 Where the Minister determines that the amount of the Grant should be reduced because of any additional Government Financial Assistance referred to in this Article 6.0 and received by the Recipient, the Minister may reduce the amount of the Grant, and if the Grant has already been paid, the Recipient shall repay the excess amount immediately upon notice from the Minister. Interest shall accrue on the excess amount at the rate set out in the *Interest and Administrative Charges Regulations* enacted under the Financial Administration Act, and the excess amount and interest are recoverable as a debt due to the Crown.

SECTION 7: LONG TERM OBLIGATIONS

The Recipient shall have no claim of any nature whatsoever against Her Majesty related to any loan, capital lease or long term obligation it enters into in relation to this Agreement.

SECTION 8: SPECIAL CONDITIONS

This Agreement is made pursuant to the Recipient’s acceptance of the following conditions:

- 8.1 The Recipient agrees to purchase the Harbour, on an “as is” basis for the sum of **ONE DOLLAR** (\$1) and to sign the Transfer Agreement, where applicable, and any other documents required to transfer title of the Harbour to the Recipient. Her Majesty agrees to sell the Harbour to the Recipient for the sum of **ONE DOLLAR** (\$1) and to sign the Transfer Agreement and any other documents required to transfer title of the Harbour to the Recipient. The Transfer Agreement should be signed within thirty (30) days of the following conditions being completed to the satisfaction of the parties:

- Examination of aboriginal rights including aboriginal titles, if applicable;
- Examination of title;
- Preparation of a technical description of the Harbour by a certified land surveyor;
- Completion of an environmental assessment required under the *Canadian Environmental Assessment Act*, if applicable, and compliance with any environmental standards; and
- Conclusion of any agreement with the province, if applicable, such as the granting of permission to occupy the waterlot.

- 8.1.1 The costs of the above examinations, except for any waterlot agreements that must be negotiated directly between the province and the Recipient, will be borne by the Minister. The Recipient will pay all costs for any additional examinations, technical descriptions, assessments, agreements or requirements it may obtain in order to satisfy itself that the above conditions have been met unless otherwise agreed to in writing by the parties.

8.1.2 If any of the above conditions have not been met to the reasonable satisfaction of a party, that party may terminate this Agreement on thirty (30) days written notice to the other setting out the condition(s) that has/have not been met and the reasons why. In the event of termination under this subsection, each party shall be responsible for its own costs of any nature whatsoever associated with this Agreement and shall have no claim against the other for such costs.

8.2 The Recipient agrees to continue to operate and maintain the Harbour for its current purpose as specified in the Transfer Agreement.

SECTION 9: DEFAULT AND REMEDY

The Minister may, in addition to any other remedies available to him, terminate this Agreement or any obligation of the Minister under this Agreement upon ten (10) days notice to Recipient, if during the term of this Agreement:

- 9.1 The Recipient fails to comply with any of the terms and conditions of this Agreement.
- 9.2 The Recipient becomes bankrupt or insolvent, goes into receivership or takes the benefit of any statute from time to time relating to bankrupt or insolvent debtors, or is required to wind up or dissolve by any order or resolution, or is unable to meet its liabilities as they become due;
- 9.3 The Recipient is convicted of any offence against a law, order or regulation, the conditions of any licence, or of being an accessory to any such offence, if such offence is committed in connection with the Harbour;
- 9.4 In the opinion of the Minister the Recipient has ceased carrying on business;
- 9.5 The Recipient has submitted false or misleading information to the Minister;
- 9.6 In the opinion of the Minister, a material adverse change in risk to Her Majesty has or will occur.

SECTION 10: LOBBYIST REGISTRATION

The Recipient shall ensure that any person lobbying on behalf of the Recipient is registered pursuant to the Lobbyist Registration Act.

SECTION 11: NO PARTNERSHIP, JOINT VENTURE OR AGENCY

- 11.1 Her Majesty and the Recipient expressly disclaim any intention to create a partnership, joint venture or agency. It is understood, acknowledged and agreed that nothing contained in this Agreement nor any acts of Her Majesty or of the Recipient shall constitute or be deemed to constitute Her Majesty and the Recipient as partners, joint venturers or principal and agent in any way or for any purpose. The Recipient shall not represent or hold itself out to be an agent of Her Majesty. No party hereto shall have any authority to act for or to assume any obligations or responsibility on behalf of the other party hereto.

- 11.2 The Recipient agrees to indemnify Her Majesty for any liability that Her Majesty incurs by virtue of being found to be liable with the Recipient as a partner of, joint venturer with, or principal of the Recipient. For greater certainty, the foregoing indemnity shall not apply to any claim or liability arising as a result of an act or omission of Her Majesty or Her Majesty's agent other than those specific acts or omissions that are the basis for the finding that Her Majesty or Her Majesty's agent is a partner of, joint venturer with, or principal of the Recipient.

SECTION 12: INDEMNIFICATION

The Recipient shall indemnify and save harmless Her Majesty and the Minister and Her Majesty's officers and employees from and against all claims, including third party claims, losses, damages, costs, expenses, suits, actions, demands or other proceedings, made, sustained, brought, prosecuted, threatened to be brought or prosecuted in any manner based upon, occasioned by or attributable to any injury or death of a person or damage to or loss of property arising from any wilful or negligent act, omission or delay on the part of the Recipient, its employees or agents in relation to or arising from this Agreement.

SECTION 13: ARBITRATION

- 13.1 Any claim or dispute arising out of or in connection with this Agreement, other than any claim or dispute pertaining to a question of Public Law, shall be submitted by the parties hereto to binding arbitration pursuant to the federal *Commercial Arbitration Act*. The party requesting arbitration shall do so by 30 days written notice to the other party. The arbitration shall take place in the City of Burlington, Province of Ontario before an arbitrator to be chosen by the parties. The costs of the arbitration, including the fees of the arbitrator shall be determined by the arbitrator. If the parties cannot agree upon the choice of arbitrator within thirty (30) calendar days of the written notice to submit to arbitration, then each party shall choose an arbitrator who in turn will then select a third arbitrator.
- 13.2 The arbitrator shall determine the procedure to be followed and shall issue a written decision within thirty (30) calendar days of completion of the hearing. The decision shall be in a form enabling it to be entered for judgment in any court having jurisdiction.

SECTION 14: GENERAL PROVISIONS

- 14.1 This Agreement sets forth the entire agreement between the parties hereto concerning the subject matter hereof and supersedes and revokes all negotiations, arrangements or communications of any nature whatsoever, whether they be verbal or in writing, between the parties or their authorized representatives or any other person purporting to represent the Minister or the Recipient. No expression or warranty expressed, implied or otherwise is made by Her Majesty to the Recipient or by the Recipient to Her Majesty except as expressly set out in this Agreement. The parties each agree that:
- 14.1.1 It has not been induced to or coerced to enter into this Agreement nor has it relied upon any representations not set out in this Agreement; and
- 14.1.2 It has conducted its own due diligence examinations in order to satisfy itself of the full, true and accurate disclosure of facts.

- 14.2 The Recipient consents to public announcements of its receipt of the Grant and related information, subject to the Access to Information Act and the Privacy Act, in a manner and at a time to be determined by the Minister in his sole discretion.
- 14.3 The Recipient shall comply with the requirements of all applicable federal and provincial government regulatory bodies and agencies.

SECTION 15: HOUSE OF COMMONS

No member of the House of Commons shall be admitted to any share or part of this Agreement or to any benefit that arises therefrom.

SECTION 16: TIME OF ESSENCE

Time shall, in all respects, be of the essence of this Agreement.

SECTION 17: NOTICE

- 17.1 All notices or other communications necessary for the purposes of this Agreement shall be in writing and shall be delivered personally or shall be sent by registered mail, prepaid first class mail, facsimile, or e-mail to the following numbers and addresses:

17.1.1 In the case of Her Majesty, to:
Small Craft Harbours Branch
Central and Arctic Region
Fisheries and Oceans Canada
3027 Harvester Road, Suite 506
Burlington, Ontario
L7N 3G7
Attention: Mr. Mark Sandeman, Area Manager- Client Services
Telephone: (905) 639-2050
Facsimile: (905) 639-5975
E-mail: mark.sandeman@dfo-mpo.gc.ca

or to such other address, facsimile number, e-mail address or person as the Minister may designate in writing to the Recipient; and

17.1.2 In the case of the Recipient, to:
Corporation of the Town of Gananoque
30 King Street East, P.O. Box 100
Gananoque, Ontario
K7G 2T6
Attention: Mr. Darren Dalglish, CAO
Telephone: (613) 382-2149 ext.113
Facsimile: (613) 382-8587
E-mail: ddalglish@gananoque.ca

or to such other address, facsimile number, e-mail address or person as the Recipient may designate, in writing to the Minister.

- 17.2 Any notice or other communication shall be deemed to be received:
- 17.2.1 If delivered by facsimile or by e-mail, twenty-four (24) hours after the time of successful transmission to the other party;

17.2.2 If delivered by pre-paid first class mail, on the earlier of the day it was received or the fifth (5th) day after it was post-marked; and

17.2.3 If delivered personally or by registered mail, on the date of delivery.

17.3 If postal service is interrupted, threatened to be interrupted, or is substantially delayed, any notice shall be delivered personally, by facsimile transmission or by e-mail.

SECTION 18: AMENDMENT

This Agreement may be amended only by a written agreement signed by the Minister and the Recipient at any time during the term of this Agreement.

SECTION 19: WAIVER

The failure by any party hereto to insist upon the strict performance by the other party hereto or its obligations under this Agreement shall not constitute a waiver or relinquishment of any such obligations.

SECTION 20: SEVERABILITY

If any provision of this Agreement is rendered invalid, void, illegal or unenforceable for any reason whatsoever, that particular provision shall be deemed to be independent of and severed from the remainder of this Agreement and all other provisions of this Agreement shall continue in full force and effect.

SECTION 21: ASSIGNMENT, SUCCESSOR AND ASSIGNS

24.1 The Recipient shall not assign its rights or obligations hereunder to any person without the express written consent of Her Majesty.

24.2 If the Recipient assigns its rights or obligations pursuant to Subsection 24.1 above, the Recipient shall be and remain jointly and severally liable for all obligations to Her Majesty notwithstanding any assignment.

24.3 This Agreement shall be binding upon and shall ensure to the benefit of Her Majesty and Her Majesty's successors, assigns, and of the Recipient and its successors and assigns.

24.4 No rights shall enure to the benefit of any transferee or assignees of the Recipient unless the transfer or assignment is consented to by Her Majesty.

24.5 Nothing expressed or implied in this Agreement is intended to or shall be construed as conferring on or to give any person, other than the parties hereto, and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement or any other agreement.

SECTION 22: CONFLICT OF INTEREST AND POST EMPLOYMENT CODE

No individual for whom the post-employment provisions of the Conflict of Interest and Post-Employment Code for Public Office Holders or the Conflict of Interest and Post-Employment Code for the Public Service apply shall derive any direct benefit from this Agreement unless that individual is in compliance with the applicable post-employment provisions.

SECTION 23: OFFICIAL LANGUAGES ACT

In accordance with the Treasury Board Policy on Grants and Contributions - Official Languages and in relation to Part IV (Communications and Services) of the *Official Languages Act*, the Recipient agrees to:

- a) make any announcements to the public concerning the Grant in both official languages; and
- b) make available in both official languages any documents for the general public relating to the Grant.

IN WITNESS WHEREOF, Her Majesty the Queen in Right of Canada has executed this Agreement at the ~~City~~^{Town} of Gananoque, in the Province of Ontario this ~~17th~~ day of August, 2010 and the Recipient has executed this Agreement at the Town of Gananoque, in the Province of Ontario this _____ day of _____, 2010.

**HER MAJESTY THE QUEEN IN RIGHT OF
CANADA, AS REPRESENTED BY THE
MINISTER OF FISHERIES AND OCEANS**

Witness

per: _____
Alan Kathan, Regional Director

RECIPIENT

Naum Chad
Witness

per: _____
[Signature]
James E. Garrah, Mayor

Witness

per: _____
[Signature]
Bonnie Dingwall, Clerk

APPENDIX "A"

DESCRIPTION OF PROPERTY

DESCRIPTION OF PROPERTY:

All those parcels or tracts of land in the Town of Gananoque, County of Leeds, designated as Parts 1, 2, 3, 4, 5 and 6 on Plan 28R-11843

APPENDIX "B"

DEBTS OWING TO HER MAJESTY

SOURCE OF DEBT

AMOUNT OF DEBT

(Put NIL if no debt is owing to Her Majesty)

(Add additional spaces if necessary)