

CORPORATION OF THE TOWN OF GANANOQUE

BYLAW NO. 2012-027

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BEING A BY-LAW TO AUTHORIZE THE TOWN OF GANANOQUE TO ENTER INTO AN AGREEMENT WITH CANADIAN NIAGARA POWER INC. AND PAGING NETWORK OF CANADA INC. FOR THE PURPOSE OF PERMITTING A COMMUNICATION ANTENNA ON THE TOWN'S WATER TOWER.

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WHEREAS by Section 5 of the Municipal Act, 2001, S.O. 2001, c. 25, the powers of a municipal corporation are to be exercised by its Council;

AND WHEREAS the Municipal Act, 2001, S.O. 2001, c. 25, provides that the powers of every Council are to be exercised by Bylaw.

AND WHEREAS Council of the Town of Gananoque, on May 04, 2010 in motion number 2010-171, authorized the installation of a communication antenna on the Town's water tower.

NOW THEREFORE be it resolved that the Council of the Corporation of the Town of Gananoque enacts as follows;

1. That the Council hereby authorizes entering an agreement, with Canadian Niagara Power Inc and Paging network of Canada Inc., as per Schedule 'A' attached hereto and forming part of this by-law, for the purpose of installing a communication antenna on the Town's water tower.
2. That the Mayor and Clerk are hereby authorized to execute all documents in regard to said 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 06<sup>th</sup> day of March, 2012.



\_\_\_\_\_  
Mayor, Erika Demchuk



\_\_\_\_\_  
Clerk, Bonnie Dingwall

**TOWER AGREEMENT**

THIS AGREEMENT made in triplicate this ~~2<sup>nd</sup>~~ the day of ~~FEBRUARY~~ <sup>2012</sup> 2010.

BETWEEN:

**THE CORPORATION OF THE TOWN OF GANANOQUE,**

(hereinafter referred to as the "Town")

OF THE FIRST PART

- and -

**CANADIAN NIAGARA POWER INC.,**

(hereinafter referred to as the "LDC")

- and -

OF THE SECOND PART

**PAGING NETWORK OF CANADA INC.,**

(hereinafter referred to as the "PN")

OF THE THIRD PART

WHEREAS LDC operates a receiving and transmitting system;

AND WHEREAS the parties hereto have agreed to enter into a lease (the "Lease") to allow LDC and PN use of the Gananoque Elevated Water Tank and the property legally described in Schedule "A" attached hereto, in the Town of Gananoque (the "Leased Premises") subject to the terms and conditions hereinafter contained;

AND WHEREAS LDC wishes to incorporate certain lands and premises owned by the Town as a servicing component of said system;

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements herein contained the Town hereby demises and leases to LDC and PN the area identified and access rights (both as set out in this lease agreement) at the Site (as defined herein) together with the right to connect to and use appropriate utilities and electricity to be provided by the Town on the term and conditions, as follows:

1. THE TOWN COVENANTS AND AGREES, subject to the provisions of the within agreement:
  - (a) to allow PN to install an equipment shelter and to replace, operate, maintain and remove its communication equipment and antenna system, including, if required, the equipment shelter, for the sole use of LDC's smart metering system. (which is hereinafter referred to as the "EQUIPMENT") within the Leased Premises all in accordance with approved Site Plan No. ■ **[Note to Draft: Town to provide number]** on file with the Town (the area where such installations are to be made, both on the ground and on the Gananoque elevated water tank to be hereinafter referred to as the "SITE");
  - (b) to grant to PN a right of access to the Site during normal business hours, to enable PN, its agents, employees, contractors or any assignee, to install, reconfigure, attach, operate, maintain and replace the equipment, including but not limited to connecting its equipment to the public telephone and utility network, pursuant to

the public telephone and utility's requirements or recommendations and any required right-of-ways, to be accompanied by Town Water Operations Staff in all instances with twenty-four hours advance notice required, except for emergency access whereby PN can go unaccompanied to perform necessary repairs without any notice being required;

- (c) to allow PN to have the use of any existing access driveway and parking space situate on the Leased Premises for the purposes of accessing and using the Site and Equipment, vehicles not to be left unattended for periods over twenty-four (24) hours;
- (d) to permit LDC, at its own cost and expense, to connect to and draw power from the Town's electric power supply, if adequate capacity is available;
- (e) that the equipment shall not become fixtures, but shall be and remain the property of LDC and may be removed from the Site at any time and from time to time by LDC or PN during the term or within a reasonable time after expiration or early termination of this agreement, as long as LDC or PN is not in default of any provisions of the within agreement and as long as adequate security is put in place to ensure that LDC or PN will address any damage causes by such removal (reasonable wear and tear excepted) all damage to engineered coating system to be repaired to satisfaction of the Town;
- (f) that PN and any Assignee may, with the consent of the Town, which consent will not be unreasonably withheld, make any alterations and/or improvements during the term and any subsequent extension thereof, with the consent of the Town. Such improvements may include, but are not limited to the expansion of existing, or the installation of new shelters, antennae and/or various equipment deemed necessary on the Site. Request for such consent shall be accompanied by the drawings to show details of the proposed installation of work and evidence that all necessary approvals and permits have been obtained from agencies required, authorized or empowered to give the same and PN will, if the Town so requires provide "as constructed" plans of any part of the antenna system or work done in connection therewith;
- (g) that LDC paying the rent hereby reserved and LDC and PN performing the covenants herein contained, LDC and PN shall and may peaceably possess and enjoy the premises demised by this lease agreement for the term hereby granted without any interruption or disturbance from the Town or any other person lawfully claiming by, from or under the Town.

2. LDC OR PN COVENANTS AND AGREES, subject to the provisions of the within lease agreement:

- (a) to abide by all orders, instructions or regulations which may be issued by the Town or its authorized representatives referable to the Site;
- (b) subject to the Town's approval, which approval shall not be unreasonably withheld or delayed, at LDC's or PN's own expense, to install, attach, repair, operate and maintain its Equipment in a good and workmanlike manner, all in accordance with installation plans and specifications submitted by PN to the Town;
- (c) to repair, restore and replace, at LDC's or PN's own expense, to the satisfaction of the Town, all damage, structural or otherwise, (save and except reasonable wear and tear) that it may cause to the Site, including without limiting the generality of the foregoing, all building situate thereon, by reason of the installation, reconfiguration, attachment, maintenance, operation, or removal by LDC or PN, its employees, agents, contractors or any assignee of LDC's Equipment during the term(s) or upon termination of the rights herein provided;
- (d) to operate and maintain the equipment at all times in compliance with all regulatory requirements;

- (e) not to use the Site for any purpose other than for the purpose authorized by this agreement and without limiting the generality of the foregoing, shall not affix or display any sign or advertising device to or on the elevated water tank or on the Site;
- (f) not to assign or sublet the whole or any part of the Equipment or Site or rights of access thereto without the prior written consent of the Town, except that LDC or PN shall have the right to assign, sublet or assign to a parent, subsidiary or affiliated corporation without the consent of the Town. LDC and PN shall remain liable on the covenants herein provided notwithstanding such assignment or subletting;
- (g) that failure by LDC or PN to remove its Equipment from the Site within a reasonable time after expiration or early termination of this agreement and upon LDC or PN receiving at least ninety (90) days' prior written notice from the Town to remove the said equipment.

3. THE PARTIES HERETO COVENANT AND AGREE, subject to the provisions of the within lease agreement:

- (a) that in the event any building structure object or works of any nature or kind whatsoever, including third party telecommunications works or equipment is erected, installed or discovered in the vicinity of the Site, which screens, shields or interferes in any manner with the signals transmitted or received by the Equipment, or should the operation of the Equipment become technologically or economically impractical, difficult or impossible by reason of any government law, regulation, requirement, municipal by-law or technological change or advancements, or should there be irreparable damage to or destruction of the Equipment, LDC or PN may, in their sole discretions, terminate this agreement by giving thirty (30) days' prior written notice to the Town and LDC or PN thereafter. In the event of such termination, the Town shall refund pro-rata any payment, if any, herein provided for, accruing due after the date of the said termination and the parties hereto shall be released from any further obligations with respect to any matter under this lease agreement; and
- (b) that no change or modification to this lease agreement shall be valid, unless it is in writing and is fully executed by all three parties hereto;
- (c) that any notice required by this lease agreement shall be made in writing and shall be considered given or made on the day of delivery, if delivered before 4:30 p.m. local time by facsimile or electronic mail (including acknowledgement of receipt) or by personal delivery, upon any officers of LDC and PN, or three (3) business days after the day of delivery if sent by prepaid registered mail upon the Town, addressed as follows:

THE CORPORATION OF THE TOWN OF GANANOQUE  
30 King Street East, Box 100  
Gananoque, ON K7G 2T6

Attention: Robert W. Small, CAO  
Facsimile: 613-382-8587

And in the case of CANADIAN NIAGARA POWER INC. to:

EASTER ONTARIO POWER  
1001 Sydney Street, P.O. Box 1179  
Cornwall, Ontario K6H 5V3

Attention: Regional Manager      Facsimile: 1-613-932-8972

and in the case of PAGENET to:

PAGING NETWORK OF CANADA INC.  
1685 Tech Avenue  
Mississauga, ON L4W 0A7

Attention: CFO

Facsimile: 905-614-3173

Either party hereto may change its aforesaid address for notices in accordance with the provisions of this lease agreement;

(d) that every covenant, proviso and agreement herein contained shall enure to the benefit of and be binding upon the parties hereto and their successors and assigns and that all covenants herein contained shall be construed as being joint and several, and that when the context requires or permits the singular number shall be read as if the plural were expressed and the masculine gender as if the feminine or neuter, as the case may be, were expressed;

(e) that the term of this lease agreement shall be five (5) years commencing on the 1<sup>st</sup> day of ~~■~~ 2010;

*JUNE*

(f) that as long as LDC and PN is not in breach of any of the provisions of the within lease agreement as of the end of the original term, then at the expiry of the term LDC and PN shall have the option to extend the within lease agreement for a further term of five (5) years and each upon the same terms and conditions as contained in said lease agreement;

(g) that rent shall be paid by LDC in one cheque submitted annually in advance beginning on the commencement date in part 3e of this lease agreement in the amount of three thousand dollars (\$3,000.00) plus HST; the Town's HST number is 10812 6541 RT0001; rent shall be adjusted annually during the term of this lease or any renewal term by the change in the consumer price index during the previous year.

4. In the event that:

(a) the Town enters into any agreement with a third party whereby such third party is authorized to also use a portion of the Leased Premises, for the purpose of radio frequency transmission and reception, the Town shall obtain from such third party, at the time of installation of the equipment by the third party ("Third Party Equipment"), written confirmation that all such equipment is in compliance with the Regulations, including, without limitation, Safety Code 6;

(b) either LDC and PN or any third party subsequently changes its Equipment or Third Party Equipment, respectively, in any manner, including, without limitation, the addition of new equipment (collectively "Revised Equipment") then LDC and PN or such third party shall confirm in writing that the Revised Equipment is in compliance with the Regulations, including, without limitation, Safety Code 6.

(c) Town to retain rights to prioritize, limit and/or regulate the number, size and position of existing and future equipment of the Town mounted on or contained within the water tower. Specifically, equipment used for the Town's own telecommunications purposes (e.g. public works, emergency services etc.) would remain highest priority;

(d) Town shall not be held responsible for any damage to equipment owned by LDC or PN caused by high humidity or water;

(e) Operation of equipment owned by LDC or PN shall not interfere with normal operations of the elevated water tower unless caused by the negligence of the Town;

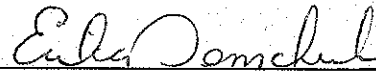
(f) LDC and PN acknowledge that operation of the elevated water tower for the purposes of supply and distribution of potable water to the residents and businesses of the Town remains highest priority at all times; and


- (g) In the event the Town requires use of the space (for installation of operational, safety or any other equipment necessary for the operation of the elevated water tower) where equipment owned by LDC or PN is located, the Town may request that LDC or PN relocate said equipment to the satisfaction of the Town. The Town shall provide LDC or PN at least 30 days notice of such relocation and another location for their equipment acceptable to LDC and PN, acting reasonably.

WITNESS the seals of the parties hereto duly attested thereto by the hands of their proper signing officers:

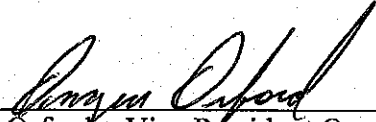
**THE CORPORATION OF THE TOWN OF GANANOQUE**

Per:

  
\_\_\_\_\_  
Mayor, Erika Demchuk

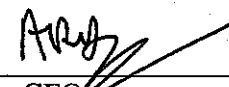
  
\_\_\_\_\_  
Clerk, Bonnie Dingwall

**CANADIAN NIAGARA POWER INC.**

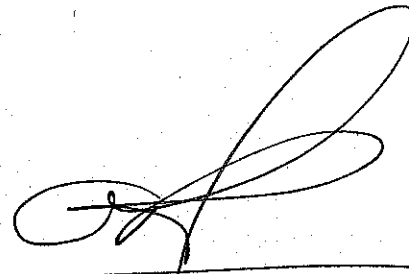
Per:   
\_\_\_\_\_  
Angus Orford - Vice President Operations

I have authority to bind the Corporation

**PAGING NETWORK OF CANADA INC.**

Per:   
\_\_\_\_\_  
Al Dykstra - CFO

I have authority to bind the Corporation

Per:   
\_\_\_\_\_  
Rob Germain - CTO.

**SCHEDULE A**

**LEGAL DESCRIPTION OF LEASED PREMISES**

**OWNERS' NAMES:** THE CORPORATION OF THE TOWN OF GANANOQUE

**LEGAL DESCRIPTION** Con 1 Pt Lot 13 Pt Lot 14 FORM Leeds Plan 86 Gan R ES