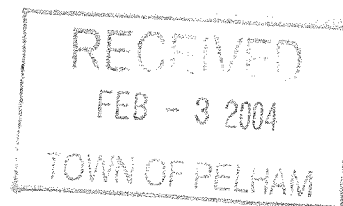




250 Thorold Road West, 3rd Floor Tel (905) 788-3135
Welland, Ontario L3C 3W2 Fax (905) 788-1121
E-mail: npca@conservation-niagara.on.ca

February 2, 2004

Ms. Cheryl Miclette, AMCT
Town Clerk - Town of Pelham
Pelham Municipal Building, 20 Pelham Town Square
Fonthill, Ontario
L0S 1E0



Dear Ms. Miclette,

RE: LANDOWNERS AGREEMENT – ORCHARD HILL ROAD STREAM GAUGE STATION

Please find enclosed the Town of Pelham's the final signed and sealed landowner's agreement between the Town of Pelham and the Niagara Peninsula Conservation Authority (NPCA).

The NPCA thanks the Town of Pelham for cooperating in this environmental project on the Twelve Mile Creek. Please do not hesitate to contact this office should you have any questions.

Sincerely,

Tim MacGillivray
Watershed Engineering Technician

LANDOWNERS AGREEMENT

MEMORANDUM OF UNDERSTANDING

Agreement made in duplicate this 29th day of JANUARY, 2004. 

BETWEEN: THE TOWN OF PELHAM
(Hereinafter referred to as the "Owner")
OF THE FIRST PART

-And-

**THE NIAGARA PENINSULA CONSERVATION
AUTHORITY**
(Hereinafter referred to as the "Authority")

OF THE SECOND PART

Throughout this Agreement, the term "Parties" mean the Owner, and the Niagara Peninsula Conservation Authority (NPCA).

WHEREAS the Authority is to undertake surface water flow monitoring (hereinafter called the "Works" described in Schedule A attached) on lands owned by the Owner, being the Town of Pelham, part of Lot 3, Concession 3 in the Province of Ontario (hereinafter called the "Lands").

AND WHEREAS the Owner and the Authority agree to the activities as outlined in Schedule "A";

NOW THEREFORE the Owner and the Authority agree as follows:

TERM OF AGREEMENT

The Parties agree:

That this Agreement shall remain in force from the date of signing and may be discontinued by a Party or the Parties acting under the PROVISIONS FOR CANCELLATION section of this agreement.

That this Agreement may be amended from time to time by mutual written agreement of the Parties.

That the equipment purchased and installed on the Lands by the Authority shall remain in the ownership of the Authority for the life of, and after termination of this agreement.

PROVISIONS FOR CANCELLATION

The Parties agree:

That this Agreement may be cancelled unilaterally by either Party by providing three (3) months notice in writing of the intention of cancel to the other Party or by mutual agreement with any agreed period of notice.

OWNER OBLIGATIONS

1. The Owner grants to the Authority, permission to enter upon the Lands for Works as outlined in Schedule 'A' attached to this agreement.
2. The Owner agrees not to remove, destroy or alter, in any way, the Works equipment without prior consultation and approval of the Authority.

AUTHORITY OBLIGATIONS

1. The Authority shall perform the work as outlined in Schedule A with due diligence and care and in keeping with the expertise expected from it.
2. Upon termination and without extension of this agreement, the Authority agrees to remove and retain possession of the existing equipment installed through the Works.
3. The Authority reserves the right to use the information generated by this program for the management and protection of the province's water resources and human health. All data shall be subject to disclosure as required under provincial legislation.
4. Upon request by the Owner, the Authority shall deliver to the Owner the water quantity and/or water quality data collected from the Owner's well by the Authority for the life of this agreement.

INSURANCE AND INDEMNITY

- i) During the entire term of this Agreement, the Authority agrees to obtain and keep in force a general public liability insurance policy in the maximum amount of five million dollars (\$ 5,000,000.00) of lawful money of Canada, that protects the

Authority and the employees of the Authority from all claims, demands, actions, causes of action that may be taken or made against them or any of them for any loss, damage or injury, including death, of any nature or kind whatsoever that may arise through any act or omission or both including negligent acts or omissions of the Authority or any employee or employees of the Authority.

- ii) The Authority agrees to protect, indemnify, keep indemnified and save harmless its officers, servants and agents from and against all claims, demands, costs, actions, causes of action, expenses, legal fees whatsoever which may be taken or made against them or any of them incurred or become payable by them or any of them for any loss, damage or injury, including death, of any nature or kind whatsoever arising out of or in consequence of any act, neglect or omission of the Authority or any employee(s) or subcontractors of the Authority in connection with the performance of this Agreement.

OCCUPATIONAL HAZARDS

- i) The Authority shall take special note on site of inherent occupational hazards, if any. The Authority shall be knowledgeable of, and abide by, the provisions of all legislative enactment, by-laws and regulations in regard to health and safety in the Province of Ontario including, without limitation, the Health and Safety Act of Ontario.
- ii) The Authority shall at all times have available a competent supervisor who is authorized to act on the Authority's behalf, and who is to ensure that the work and services are properly and safely carried out.

COMPLY WITH THE LAWS

The Authority employees and representatives, if any, shall at all times comply with any and all applicable federal, provincial and municipal laws, ordinances, statutes, rules, regulations and orders, and all by-laws of all relevant local authorities.

SCHEDULES

The Owner and the Authority agree that the provisions of Schedule 'A' to this Agreement form a part of this Agreement as if fully incorporated herein.

IN WITNESS WHEREOF the parties hereto have executed this Agreement

SIGNED, SEALED AND DELIVERED

THE TOWN OF PELHAM

Witness as to execution

Per: Ronald W. Leavens

Ronald W. Leavens, Mayor
Name and title

Per: Cheryl Miclette

Cheryl Miclette, Clerk
Name & Title

THE NIAGARA PENINSULA CONSERVATION AUTHORITY

Witness as to execution

Per: Andrew L. Burt

ANDREW L. BURT, GENERAL MANAGER
Name and title

SCHEDULE "A"

To the Agreement between the Owner and the Authority, all or some of the following activities will be conducted as part of the Works by the Authority, their employees and agents:

1. Perform any clean-up works necessary to ensure reasonable access to the stream gauge station and equipment including general site clean up and removal of obstructions to access and to the access road.
2. Installation of monitoring equipment including dataloggers and associated hardware and instrument shelter mounted on a concrete pad at the location agreed upon.
3. Regular visits (2 times/ month) to the gauge station to collect water level monitoring data. Site inspections and maintenance of the installed monitoring equipment, and to perform any minor clean-up work necessary to ensure on-going reasonable access to the gauge station will be also done at this time.
4. Training of new Authority personnel to ensure that assigned staff is properly trained in the operation and maintenance of the installed monitoring equipment.
5. An initial site visit to ensure that the Owner is given a briefing and documentation of the equipment housed at the well site. Additional periodic visits can be provided to the owner as required.