

CORPORATION OF THE TOWNSHIP OF WHITEWATER REGION

BY-LAW # 13-04-610

Being a By-Law to authorize the Mayor and CAO to execute a Heat Line Agreement with Fritz Klaesi and Paul Klaesi.

WHEREAS pursuant to the Municipal Act, .S.O. 2001 as amended, a Council may enter into agreements;

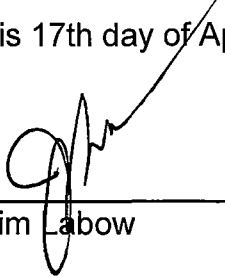
AND FURTHER that the Municipal Council for the Township of Whitewater Region deem it necessary to enter into an agreement with Fritz Klaesi and Paul Klaesi regarding the execution of a Heat Line Agreement granting non exclusive access to and the use of the Road Allowance described as Part Forced Road lying in the north half Lot 3, Concession 6 Ross, being all of PIN 57244-0074 (LT) to install a heat line across and along said Road Allowance between their residence and farm properties.

THEREFORE the Council of the Corporation of the Township of Whitewater Region enacts that:

1. The Mayor and the CAO are hereby authorized to execute this Heat Line Agreement between Fritz Klaesi and Paul Klaesi and the Township of Whitewater Region as in Schedule "A" attached hereto.

All By-Laws or parts of By-Laws previously passed that are inconsistent with the provisions of By-Law 13-04-610 are hereby repealed.

Passed this 17th day of April, 2013



MAYOR Jim Labow



CAO/CLERK Christine FitzSimons

Schedule "A" to By-Law Number 13-04-610

THIS AGREEMENT made this 17th day of April, 2013

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF WHITEWATER REGION
(Hereinafter referred to as the "Township")

and

FRITZ KLAESI and PAUL KLAESI
(Hereinafter referred to as "Klaesi")

WHEREAS Paul Klaesi is the registered owner of lands within the Township of Whitewater Region, legally described as Part Lot 2, Concession 6 As In R314854, being all of PIN 57224-0071 (LT), upon which lands he owns a residence.

AND WHEREAS Fritz Klaesi and Paul Klaesi are the registered owners of lands within the Township Of Whitewater Region, legally described as Part Lot 1, Concession 6 Ross As In R314852, Subject To Easement In Gross Over Parts 2, 3 & 4, Plan 49R-16933 As In R103840, being all of PIN 57224-0043 (LT), upon which they operate a farm.

AND WHEREAS the Township is the Public Authority which owns the travelled road legally described as Part Forced Road Lying In The North Half Lot 3, Concession 6 Ross, being all of PIN 57244-0074 (LT), hereinafter referred to as the "Road Allowance".

AND WHEREAS Klaesi wishes to install a heat line across and along the Road Allowance between the aforementioned residence and farm properties.

AND WHEREAS subject to the terms and conditions of this Agreement, the Township is willing to grant Klaesi non exclusive access to and the use of the Road Allowance, provided that such use will not unduly interfere with the public use and enjoyment of the Road Allowance and the Township's service requirements and use of the Road Allowance.

NOW THEREFORE in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

TERM:

- 1.1 This Agreement shall commence on the 17th day of April, 2013 and shall, unless renewed terminate five years after said date.
- 1.2 Notwithstanding the provisions of Section 1.1 herein, this Agreement shall automatically renew for successive one year periods on the same terms and conditions unless either the Township or Klaesi give written notice of non renewal to the other, not less than six (6) months prior to the expiration of this Agreement or any renewal term, at which time this Agreement shall terminate and on the day so named in such Notice this Agreement and all rights and privileges thereunder shall come to an end.

- 1.3 Notwithstanding the expiry or non renewal or termination of this Agreement, the liabilities and obligations of Klaesi, their contractors and agents under this Agreement, including all fees and payments, shall continue and remain in full force and effect with respect to the Road Allowance used by Klaesi until all of Klaesi's equipment is removed from the Road Allowance or a new Agreement is in place.

USE OF THE ROAD ALLOWANCE:

- 2.1 The Township hereby grants to Klaesi a non exclusive licence to enter upon and use the Road Allowance for the purpose of installing, operating, maintaining, locating and removing the equipment for a heat line subject to the terms and conditions contained in this Agreement and in accordance with all Federal, Provincial and Municipal statutes, laws and by-laws or the rules and regulations pertaining to the application and use of the Road Allowance or the equipment. For the purposes of this Agreement, "equipment" means Klaesi's high density pipe and any other chattels installed on the Road Allowance relating to the heat line.
- 2.2 Klaesi agrees that their use of the Road Allowance shall not unduly interfere with the public use and enjoyment of the Road Allowance.
- 2.3 Klaesi covenants and agrees that:
 - A. Ownership and title to the Road Allowance is vested in the Township.
 - B. Use of the Road Allowance under this Agreement shall not create or vest in Klaesi any ownership or property rights in the Road Allowance and Klaesi shall be and remain a non exclusive licensee of the Road Allowance.
 - C. Klaesi shall not register or permit to be registered any Instrument claiming an estate, interest or property right in the Road Allowance or other property of the Township in any real or personal property registry under or by virtue of Klaesi's use of the Road Allowance or this Agreement.
 - D. Klaesi shall not permit any lien to be filed or registered against the Road Allowance directly resulting from the operation or activities of Klaesi. Within thirty (30) days following notice from the Township to Klaesi of the existence of a lien, Klaesi shall commence the process of removing the lien from the title to the Road Allowance and shall diligently pursue its removal.
 - E. If this Agreement is terminated by the Township, any unfulfilled covenants, indemnities and obligations of Klaesi hereunder shall survive such termination.
 - F. The Township has made no representation or warranty as to the state of repair of the Road Allowance, the suitability of the Road Allowance and Klaesi hereby agrees to use the Road Allowance at its own risk on an "as is" basis.
- 2.4 The Township acknowledges that Klaesi owns the equipment.

APPROVAL OF LOCATION AND INSTALLATION:

- 3.1 Klaesi shall not install any of its equipment in, on, under, over, along or across the Road Allowance without providing complete drawings and other materials to the Township setting out the location and method of construction in the Road Allowance,

and obtaining the written approval of the Township with regards to the proposed location of the equipment. The Township shall establish the terms and conditions under which such work shall be undertaken by Klaesi.

- 3.2 Klaesi shall be required to register the location of the heat line with Ontario One Call (ON1Call) and shall provide Ontario One Call with complete drawings setting out the location of the heat line and any other documentation which may be required by Ontario One Call.
- 3.3 Prior to the installation of any equipment, Klaesi shall be required to utilize the services of Ontario One Call to determine the location of any other services or utilities in the area in which Klaesi wishes to install the heat line.

MANNER OF WORK:

- 4.1 All work conducted by Klaesi on the Road Allowance, including installation, maintenance and removal of its equipment, shall be subject to the following conditions:
 - A. All work shall be conducted and completed to the satisfaction of the Township, in accordance with the Township's standards and regulations. Klaesi undertakes and agrees to construct, operate and maintain its equipment in accordance with good engineering practice and applicable Government Standards.
 - B. If Klaesi breaks the surface of the Road Allowance, Klaesi shall repair and reinstate the surface to substantially the same condition as it was before such work was undertaken to the satisfaction of the Township in accordance with the Township's standards as amended from time to time.
 - C. Klaesi shall, at their own expense, maintain that portion of the Road Allowance by repairing any settling caused by Klaesi's work in the Road Allowance, in accordance with the Township Standards.
 - D. If Klaesi fails to repair and reinstate the Road Allowance to the satisfaction of the Township, within ten (10) days of being notified by the Township, the Township may effect such repairs and charge all costs related thereto to Klaesi, which costs may be collected as if the costs were arrears of taxes.
 - E. The Township shall not be liable for any damage to Klaesi's equipment by reason of the work undertaken by the Township pursuant to this paragraph, except for any damage caused by the gross negligence of the Township.
 - F. If the Township requires the installation, maintenance or removal of the equipment to be stopped for any engineering or safety reasons, Klaesi shall cease all such installation, maintenance or removal forthwith upon receipt of such stop work notice from the Township. The Township shall provide written reasons to Klaesi within twenty-four (24) hours.
 - G. Klaesi is responsible for all installation, maintenance and removal of the equipment including the costs of such work.

- H. In the course of constructing, maintaining and repairing the equipment, Klaesi shall take all reasonable steps to protect all equipment already installed in the Road Allowance. Klaesi agrees to indemnify and save harmless the Township from any claims, demands, causes of action, loss, costs or damages that the Township may suffer, incur or be liable for resulting from the construction, maintenance or repair of the equipment by Klaesi.
 - I. After completion of any work related to the installation, maintenance, repair, replacement or removal of the equipment, Klaesi shall leave the Road Allowance in substantially the same condition and to the satisfaction of the Township.
 - J. Klaesi warrants its repairs to the Road Allowance for three (3) years from the date of completion.
- 4.2 Klaesi shall, within two (2) months of completing the installation of any equipment, provide two copies of drawings to the Township sufficient to accurately establish the location, elevation and length of equipment in a manner consistent with the level of detail and accuracy provided to the Township by similar utilities.
- 4.3 Klaesi shall provide the Township with emergency contact information and shall ensure that this information is always current.

ENVIRONMENTAL RESPONSIBILITY:

- 5.1 The Township is not responsible, either directly or indirectly, for any damage to property or injury to a person arising from the installation of the heat line. Klaesi assumes all liabilities relating to their use of the Road Allowance and hereby agrees to indemnify and save harmless the Township for any causes of action relating to Klaesi's use of the Road Allowance.

RELOCATION OR ADJUSTMENT OF EQUIPMENT:

- 6.1 If Klaesi's equipment must be relocated or adjusted for bona fide Municipal reasons, Klaesi shall, within forty five (45) days of receiving written notice from the Township, commence and diligently work to relocate or adjust its equipment within the Road Allowance. The parties shall work together in good faith to ensure that interruptions to the Klaesi's heat line are minimized.
- 6.2 In case of an emergency where public health and safety are affected, the Township, having first attempted to contact Klaesi, may take any measures it deems necessary for public safety with respect to the relocation or adjustment of the heat line at Klaesi's expense. The Township shall not be liable for any damage of any nature caused to the equipment by reason of such relocation, and Klaesi hereby indemnifies and saves harmless the Township therefrom, save and except for damage caused by the gross negligence of the Township.

LIABILITY AND INDEMNIFICATION:

- 7.1 The Township shall not be responsible, directly or indirectly, for any damage to the equipment that might occur during its installation, maintenance or removal, nor is the Township liable for any losses, claims, charges, damages and expenses suffered by Klaesi or its agents while working on the Road Allowance, unless such damages, losses, costs and actions or claims are related to the gross negligence, willful acts or omissions of the Township, its officers, agents or employees.

- 7.2 Except in cases of the Township's gross negligence or willful misconduct, Klaesi covenants and agrees to indemnify and save harmless the Township, its agents, officers, elected officials, employees and assigns from and against all losses, claims, including a claim for injurious affection, charges, damages and expenses which the Township may sustain on account of the placement, installation, relocation or maintenance of the equipment on or under the Road Allowance. Klaesi will, upon demand and at its own risk and expense, defend all suits, actions and all other legal proceedings which may be brought or instituted by third persons against the Township on any such claim and will pay and satisfy any Judgment which may be rendered against the Township and will reimburse the Township for any legal expenses incurred in connection therewith. Klaesi's obligation to indemnify and save harmless the Township shall survive the termination of this Agreement.

INSURANCE:

- 8.1 Klaesi shall maintain insurance in sufficient amount and description as will protect Klaesi and the Township from any claims, damages, personal injury which arise from the placement of the heat line on the Road Allowance pursuant to this Agreement.
- 8.2 Klaesi covenants and agrees that:
- A. The limits of liability for personal injury, death, bodily injury and property damage, including loss thereof, shall not be less than Five Million Dollars (\$5,000,000.00) for each occurrence.
 - B. The Comprehensive General Liability Insurance shall be in the name of Klaesi and shall name the Township as an additional insured thereunder.
 - C. All policies shall provide that they cannot be cancelled, lapsed or materially changed without at least thirty (30) days notice to the Township by registered mail.
 - D. Evidence of insurance satisfactory to the Township shall be provided prior to the execution of this Agreement.

THIRD PARTY ATTACHMENTS:

- 9.1 Klaesi shall provide promptly to the Township:
- A. The names and addresses of all third parties who propose to attach or are attached to its equipment.
 - B. The location of all proposed third party attachments to the equipment.
- 9.2 Klaesi may allow a third party to attach to its equipment and to charge and recover a fee from the third party provided:
- A. The third has entered into a Municipal Access Agreement with the Township.
 - B. Klaesi does not charge a fee for the third party's use of the Road Allowance.

TERMINATION:

- 10.1 If Klaesi defaults in any of their obligations under this Agreement and fails to correct the default within sixty (60) days of written notice from the Township, the Township may, at its option, after written notice to Klaesi:
 - A. Terminate this Agreement.
 - B. Perform the obligation at Klaesi's expense.
 - C. Take action for an order of specific performance directing Klaesi to fulfill its obligations under this Agreement.

- 10.2 Default shall include:
 - A. Klaesi defaulting in the payment of any amounts payable pursuant to this Agreement.
 - B. If there is filed by or against Klaesi in any Court an uncontested petition for bankruptcy or insolvency or for the appointment of a liquidator of Klaesi's property, or if Klaesi makes an assignment or petitions for or enters into an arrangement for the benefit of creditors and any such petition remains undismissed after thirty (30) days or stayed on appeal.

- 10.3 Subject to paragraph 10.4, in the event of termination of this Agreement by the Township, pursuant to paragraph 10.1, or in the event of Klaesi's abandonment pursuant to paragraph 10.5, the equipment shall either:
 - A. Be removed from the Road Allowance by Klaesi within a reasonable period of time and the Road Allowance restored to its pre-removal condition. Failing removal of the equipment within sixty (60) days of termination of the Agreement, the Township may complete the removal and restoration and charge all costs to Klaesi, and the ownership of any equipment will vest in the Township without compensation.
 - B. At Klaesi's request and with the approval of the Township, remain in or on the Road Allowance, in which case it will be surrendered by Klaesi and shall become the absolute property of the Township.

- 10.4 Notwithstanding paragraph 10.3 A, where the Township determines that the equipment cannot be removed by Klaesi without significantly disturbing the Road Allowance, such equipment shall remain in the Road Allowance and will be surrendered by Klaesi and will become the absolute property of the Township.

- 10.5 Where Klaesi ceases to use and will not in the future use any portion or all of the equipment within the Road Allowance, it shall, within thirty (30) days of such abandonment, file with the Township a statement in writing giving in detail the location of the equipment that has been abandoned.

- 10.6 Notwithstanding any other provision of this Agreement, if this Agreement has been terminated or expires, other than pursuant to paragraph 10.2, whether during its initial term or any renewal term, and Klaesi has not abandoned or removed the equipment, notwithstanding such termination or expiration:
 - A. This Agreement shall remain in full force and effect with respect to all equipment used by Klaesi at the time of the termination or expiration until a new Agreement has been finalized.

- B. The parties shall enter into meaningful and good faith negotiations to execute a new Agreement or engage in legal or arbitration means to establish the terms of the new Agreement.

ARBITRATION:

- 11.1 In the event of any dispute between the parties as to the meaning or interpretation of this Agreement, or as to the respective rights and obligations of the parties, either party may refer such dispute to arbitration under the provisions of paragraph 11.2.
- 11.2 The procedure upon arbitration shall be as follows:
 - A. Within twenty (20) days of a written request of either of the parties, for arbitration, each party shall appoint one arbitrator and the two so appointed, shall within twenty (20) days after the expiration of the twenty (20) day period select a third arbitrator.
 - B. In case either party fails to name an arbitrator within twenty (20) days after the written request for arbitration, the arbitrator appointed shall be the only arbitrator. If the two appointed arbitrators are unable to agree on a third arbitrator within twenty (20) days after the expiration of the first twenty (20) day period, application shall be made as soon as reasonably possible to any Judge of the Superior Court Of Justice for the appointment of a third arbitrator.
 - C. The arbitrator or arbitrators so appointed shall have all the powers accorded arbitrators by the *Arbitration's Act*, S.O. 1991, c.17 as amended from time to time, or any Act in substitution thereof.
 - D. The decision of the said arbitrator or arbitrators (or of a majority of such arbitrators) shall be final and binding on the parties.

NOTICE:

- 12.1 Any notice required or permitted to be given or any tender or delivery of documents may be sufficiently given by personal delivery or, if other than delivery of an original document by facsimile transmission to the Township at the following address:

Corporation Of The Township Of Whitewater Region
Attention: Christine FitzSimons, Chief Administrative Officer
P.O. Box 40
44 Main Street
Cobden, Ontario
K0J 1K0

Telephone: 613-646-2282
Fax: 613-646-2283

And to Klaesi at the following address:

Paul Klaesi

Fritz Klaesi

Any notice may also be given by prepaid registered mail, and such notice shall be effective five (5) days following the date of mailing.

ASSIGNMENT:

13.1 Klaesi shall not assign, transfer or sublet any rights or privileges granted hereunder without the consent of the Township.

GENERAL:

14.1 Nothing in this Agreement shall be construed as affecting any rights of others who are not a party to this Agreement to use the Road Allowance in accordance with the Township's legal authority.

14.2 This Agreement forms the entire Agreement between the Township and Klaesi; and there are no conditions, warranties or representations, express or implied, other than as are specifically contained in this Agreement. No collateral Agreement shall be binding upon the parties unless it is endorsed in writing by the parties.

14.3 This Agreement shall ensure to the benefit of and be binding upon the Township and Klaesi and their successors and assigns.

14.4 Any term, condition or provision of this Agreement which is deemed to be void, prohibited or unenforceable, shall be severable and ineffective to the extent of such avoidance, prohibition or unenforceability, without in any way invalidating the remaining terms of the Agreement.

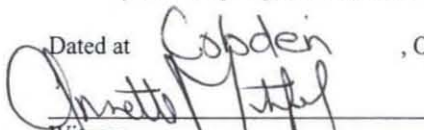
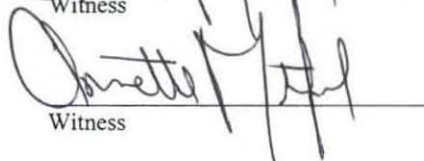
14.5 This Agreement creates contractual rights only between the Township and Klaesi and not an interest in the Road Allowance. Klaesi covenants and agrees with the Township that Klaesi shall desist always from any registration of this Agreement or of any right whatsoever arising under it.

14.6 The failure of either party to enforce any of the terms and conditions of this Agreement, or to exercise any rights under same shall not constitute a waiver or a relinquishment of any such terms.

14.7 Modification of this Agreement may be made by mutual consent of the parties, but no modification shall be valid unless in writing and then signed by the parties.

14.8 Nothing contained in this Agreement shall be construed to create an agency, partnership or joint venture relationship between the parties.

Dated at Cobden, Ontario this 2nd day of April, 2013

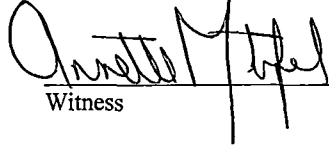

Witness

Witness


Paul Klaesi

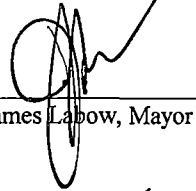
Fritz Klaesi

Dated at Cobden, Ontario this 17th day of April, 2013.

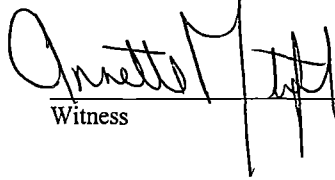
The Corporation Of The Township
Of Whitewater Region



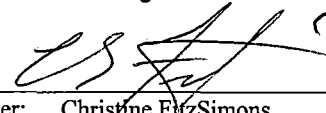
Witness



Per: James Lapow, Mayor



Witness



Per: Christine FitzSimons,
Chief Administrative Officer
We have the authority to bind the Corporation.