



FILE

Development Services – Planning Division
P. O. Box 630, 180 Kent Street West
Lindsay ON K9V 4S5
Tel: (705) 324-9411 Ext. 239
Fax: (705) 324-4027
e-mail: rdanziger@city.kawarthalakes.on.ca
website: www.city.kawarthalakes.on.ca

December 12, 2003

File No.: D01-16-103

Mr. Tony Ferragine
Ferma Aggregates Inc.
2666 Rena Road
Mississauga, ON L4T 3C8

Dear Mr. Ferragine:

Re: Terms of Haul Route Agreement – Ferma Aggregates and City of Kawartha Lakes

Further to our meeting of December 11, 2003, we propose the following terms in relation to the Haul Route Agreement:

- (a) The Ferma haul route would be Horncastle Road to McNamee Road, west on McNamee Road to Kirkfield Road (No. 6), west on Kirkfield Road (No. 6) to Brechin Road (No. 47), west on Brechin Road (No. 47) to Miller Road, south on Miller Road to Scotts Road, west on Scotts Road to Mara/Carden Boundary Road (No. 47), south on Mara/Carden Boundary Road (No. 47) to Simcoe Road 47. This is described as Route 3A in the Ontario Municipal Board decision on the Ferma Quarry. Any short-term deviations from the haul route for specific job purposes would have to be approved by the Director of Engineering. Please confirm at your earliest convenience the acceptability of the above conditions.
- (b) Ferma agrees to pay an additional \$0.02 (two) cents per tonne over the \$0.06 (six) cents per tonne currently paid to the Province. The \$0.02 per tonne would be paid directly to the City.
- (c) The improvements of gravel widening of McNamee Road would be site-specific and determined in the field between City Engineering Department officials and Ferma. The resurfacing of McNamee Road would become a municipal responsibility and paid for by the revenue from Ferma's \$0.06 per tonne paid to the Province and the additional \$0.02 per tonne paid directly to the City of Kawartha Lakes.
- (d) Ferma Aggregates remains responsible for the construction and maintenance of Horncastle Road to standards satisfactory to the City. In addition, a licencing agreement will be required for the use of Horncastle Road.

If these conditions are generally satisfactory, they will be presented to Council for their consideration and confirmation. Because these conditions are different than those originally determined by Council, there will be an expectation that any cost issues related to the Ontario Municipal Board hearing will be dropped by Ferma.

If you have any questions or require any further comments please feel free to contact the writer.

Yours truly,

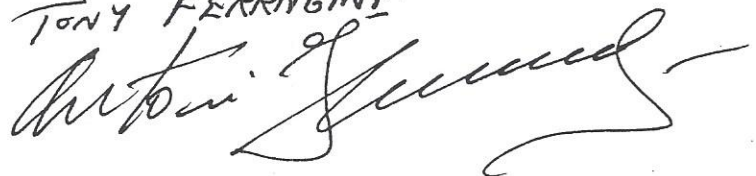
Richard Danziger,
Director

RD:jas

c.c.: Wayne Hancock
Robert Griffiths

I am IN AGREEMENT WITH THIS PROPOSAL.

TONY FERRAGINE

A handwritten signature in black ink, appearing to read "Tony Ferragine", with a long, sweeping horizontal line extending to the right.

THIS AGREEMENT made this 17th day of December, 2003.

BETWEEN:

THE CORPORATION OF THE CITY OF KAWARTHA LAKES

(hereinafter called the "City")

OF THE FIRST PART

- and -

FERMA AGGREGATES INC.

(hereinafter called "Ferma")

OF THE SECOND PART

WHEREAS the City has jurisdiction over **Horncastle Road**, an unopened road allowance in the former Township of Carden, now the City of Kawartha Lakes;

AND WHEREAS Ferma has been granted an Aggregate Licence on lands which abut Horncastle Road, being Part of Lots 6 and 10, and all of Lots 7, 8 and 9, Concession 9, the City of Kawartha Lakes (former Township of Carden) (hereinafter called the "Quarry Lands");

AND WHEREAS the Ontario Municipal Board, in its Decision #1464 dated October 29, 2002, designated a portion of Horncastle Road as the haul route for the quarry being developed by Ferma on the Quarry Lands;

AND WHEREAS pursuant to Section 35 of the *Municipal Act*, S.O. 2001, c. 25, the City wishes to restrict the common law right of passage by the public over a portion of Horncastle Road;

AND WHEREAS the City wishes to grant Ferma a licence to use a portion of Horncastle Road as a haul route for the quarry being established on the Quarry Lands;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the sum of One (\$1.00) Dollar paid by each of the parties to the other and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by the parties hereto) the parties covenant and agree as follows:

1. The City hereby grants to Ferma an exclusive licence to use the portion of **Horncastle Road** lying south of Black Bear Road and north of McNamee Road (hereinafter referred to as the "Ferma Haul Road") as a haul road for the quarry being established on the Quarry Lands.
2. Ferma shall, at its sole cost, improve the Ferma Haul Road to a standard that is satisfactory to the City and Ferma for use as a private haul road and Ferma shall further be responsible for maintenance and dust control on the private haul road.
3. Ferma shall construct gates at each end of the Ferma Haul Road and shall install signs indicating that the Ferma Haul Road is a private haul road for the Ferma quarry and is not open to the public.

4. Prior to construction of the Ferma Haul Road, Ferma shall provide the City with confirmation of insurance coverage in the form of a comprehensive general liability policy in an amount not less than \$5,000,000 and the policy shall name the City as a co-insured under the policy.

5. Ferma hereby covenants and agrees to indemnify and save harmless the City from and against all actions, causes of action, losses, liens, damages, suits, judgments, orders, awards, claims and demands whatsoever, made against the City arising either directly or indirectly by reason of or a consequence of the use, occupation or reconstruction of the Ferma Haul Road.

6. Ferma shall not call into question, directly or indirectly, in any proceeding whatsoever in law or equity or before any administrative tribunal, the right of the City to enter into this agreement and to enforce each and every covenant and condition herein contained. This clause may be pleaded as an estoppel against Ferma in any such proceedings.

7. The parties hereto agree that any amendment to this agreement shall be in writing and executed by both parties.

8. In the event that Ferma sells, assigns, or licences the quarry on the Quarry Lands, such sale, assignment or licence shall be subject to the purchaser, assignee or licensee becoming a party to this agreement and providing the City with the insurance and indemnity as provided for herein.


9. The parties hereto each of them covenant and agree that they will and shall upon reasonable request to the other party do, execute or cause or be done or execute all such further and other lawful acts, deeds and or assurances whatsoever for the better or more perfect and absolute performance of the terms and conditions of this agreement.

10. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

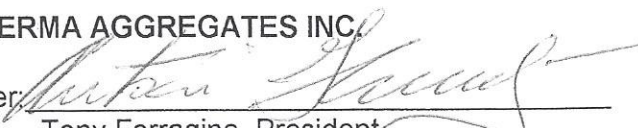
IN WITNESS WHEREOF the parties hereto have hereunto set their hands or their corporate seals to be affixed thereto duly attested to or applicable by the hands of proper signing officers as of the day and year first written above.

SIGNED, SEALED & DELIVERED
in the presence of

) THE CORPORATION OF THE
) CITY OF KAWARTHA LAKES

) Per: 
) W. J. Harcock, Director of Public Works
) I HAVE THE AUTHORITY TO BIND THE CORPORATION

) FERMA AGGREGATES INC.

) Per: 
) Tony Ferragine, President
) I HAVE THE AUTHORITY TO BIND THE CORPORATION

**ENVIRONMENTAL SERVICES**

July 23, 2003.

Mr. Tony Ferragine,
President,
Ferma Road Construction Limited,
2666 Renda Road,
Mississauga, Ontario.
L4T 3C8

Dear Mr. Ferragine:

RE: Alternate Haul Routes

Further to our telephone conversation, this letter is to confirm your request to use alternate haul routes for the delivery of materials.

My position has been that materials being shipped to the west will use the designated haul route. Materials that are being shipped to any other location can use alternate routes through Kirkfield, Victoria Corners or any other routes that will legally allow for trucking. This delivery is specific to those job sites and your office will confirm with City Public Works staff that the trucking operation is not causing damage to these roadways.

I trust, this is as discussed and if you have any further questions, please do not hesitate to contact the undersigned.

Yours truly,

A handwritten signature in black ink, appearing to read "Wayne Hancock".

Wayne Hancock, P. Eng.,
Director of Public Works.

WH:cs

cc.- File

Environmental Services
50 Wolfe Street, Lindsay, Ontario K9V 2J2
Tele: (705) 878-1282 Fax (705) 328-3122
website: www.city.kawarthalakes.on.ca
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