

IN THE MATTER OF

PROCEEDING COMMENCED UNDER section 100.1(7) of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended

Appellant: Nipissing-Parry Sound Catholic District School Board
Respondent: Corporation of the Municipality of East Ferris
Subject of appeal: Order to pay in relation to the clean up a spill
Property Address / Description: 1990 Corbeil Road
Municipality: Municipality of East Ferris
ERT Case No.: 17-032
ERT Case Name: *Nipissing-Parry Sound Catholic District School Board v. East Ferris (Municipality)*

- AND -

IN THE MATTER OF

Court File No. CV-16-6608

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

THE MUNICIPALITY OF EAST FERRIS

Plaintiff

- and -

NIPISSING-PARRY SOUND CATHOLIC DISTRICT SCHOOL BOARD

Defendant

SETTLEMENT AGREEMENT

(the “**Agreement**”)

Between:

The Corporation of the Municipality of East Ferris (the “**Municipality**”)

- and -

Nipissing-Parry Sound Catholic District School Board (“**NPSCDSB**”)

RECITALS

- A. The “**Contamination**” for the purpose of these proceedings is fuel oil. The Contamination was first discovered by the NPSCDSB in 2000, during the course of the removal of two underground storage tanks associated with a school located at the former St. Theresa School site, located at 1990 Corbeil Road, East Ferris, in the Province of Ontario, which consists of three land parcels legally described in **Schedule “A”** attached hereto (the “**School Site**”). At the time of their removal, one of the fuel tanks was found to be leaking the Contamination into the subsurface;
- B. A consultant retained by the NPSCDSB undertook some remediation work on the School Site in 2000 and 2001;
- C. From the construction of the former St. Theresa School until 2009, the School Site was under the ownership, management and control of the NPSCDSB, or prior school boards to which the NPSCDSB is the legal successor;
- D. The Municipality acquired the School Site from NPSCDSB in 2009; further Contamination was discovered by the Municipality in 2012, during the course of demolition work in and around the foundation of the former school building, as well as in a historic septic tank;
- E. It has been determined that Contamination extends in a westerly direction from the School Site, onto the adjacent right of way of Corbeil Road, owned by the Municipality (the “**Corbeil Road Road Allowance**”), and beyond onto adjacent lands owned by the Municipality and known as “**Memorial Park**”;
- F. It has been determined that Contamination also extends onto lands owned by third parties beyond the Memorial Park referred to herein as the “**Third Party Lands**”, which are comprised of the adjacent section of Highway 94, owned by the Province of Ontario and under the jurisdiction of the Ministry of Transportation, and the Seniors Villa of East Ferris property, which is municipally known as 440 and 450 Hwy. 94, East Ferris;
- G. The Municipality issued an order to pay on NPSCDSB on April 10, 2017 (“**Order**”), which order to pay NPSCDSB appealed to the Environmental Review Tribunal (the “**ERT**”), and which appeal bears ERT Case No. 17-032 (“**ERT Case No. 17-032**”);
- H. In an oral order on May 7, 2020, the ERT permitted the Municipality to amend the Order to include additional costs incurred by the Municipality since April of 2017 (the “**Amended Order**”);
- I. The Municipality commenced a civil action in the Superior Court of Justice against NPSCDSB (“**Court File No. CV-16-6608**”);
- J. The Director (the “**Director**”) of the Ministry of the Environment, Conservation and Parks (the “**Ministry**”) issued Director’s Order Number 0844-AWTHJ7 (the “**Director’s Order**”) to the Municipality and NPSCDSB on July 13, 2018; both the Municipality and NPSCDSB appealed and requested a hearing before the ERT with respect to the Director’s Order (“**ERT Case No. 18-039**” and “**ERT Case No. 18-040**”, respectively);

- K. Section 2.1, Item No. 3 of the Director's Order requires that, "the Orderees shall submit to the Director [...] a detailed remediation plan that identifies off-Site impacts resulting from the spilled oil, measures that will be taken to remediate these impacts and any additional action needed to prevent further off-Site migration of oil";
- L. The consultants on behalf of the Municipality, Knight Piésold Consulting ("**Knight Piésold**"), and the consultants on behalf of NPSCDSB, XCG Consulting Limited, jointly submitted a remedial action plan to the Director's satisfaction, dated November 4, 2019, a copy of which is attached to this Agreement as **Schedule "B"** (the "**RAP**");
- M. The Director, the Municipality, and NPSCDSB entered into minutes of settlement executed February 25, 2020 (the "**February 25, 2020 Minutes of Settlement**"), pursuant to which the ERT dismissed ERT Case Nos. 18-039 and 18-040 by order issued March 9, 2020;
- N. In accordance with the said February 25, 2020 Minutes of Settlement, the Director issued an amendment to the Director's Order ("**Director's Order Amendment No. 1**") and the Parties agreed not to appeal same;
- O. The said February 25, 2020 Minutes of Settlement provided, inter alia, that nothing in that agreement would prejudice any right the Municipality may have to seek compensation and/or damages from the NPSCDSB in relation to the Contamination, or any right that NPSCDSB may have to make answer and defence with respect thereto; and
- P. The Municipality and NPSCDSB (the "**Parties**", each a "**Party**") have now agreed to settle all outstanding, pending, and potential claims related to Contamination originating from the School Site, including, without limitation, ERT Case No. 17-032 and Court File No. CV-16-6608 (collectively referred to herein as the "**Proceedings**").

NOW THEREFORE, in consideration of the payment, one to the other, of the sum of TWO DOLLARS (\$2.00), together with such other good and valuable consideration, including the terms, conditions, and mutual covenants herein described, the receipt and sufficiency of which is hereby mutually acknowledged, the undersigned parties have agreed to settle the Proceedings, on the following basis:

Recitals & Schedules

- 1. The recitals above are true and accurate, and form an integral part of this Agreement.
- 2. The following is a list of schedules attached hereto, which form an integral part of this Agreement for all purposes:
 - (a) Schedule "A" – Legal Description of the School Site
 - (b) Schedule "B" – Remedial Action Plan
 - (c) Schedule "C" – Payment Schedule
 - (d) Schedule "D" – Mutual Full and Final Release
 - (e) Schedule "E" – Consent for Dismissal (ERT)
 - (f) Schedule "F" – Consent and Draft Dismissal Order (Court)

- (g) Schedule “G” – Acknowledgement and Assumption Agreement to be Signed by Subsequent Owners
- (h) Schedule “H” – Arbitration Procedure
- (i) Schedule “I” – Transition Plan

Payment for Past Costs Incurred and Claimed to Date

3. With respect to costs claimed by the Municipality in the Order and Amended Order and damages claimed in Court File No. CV-16-6608, NPSCDSB shall pay to the Municipality a one-time lump sum of **TWO MILLION** Canadian Dollars (CAD **\$2,000,000.00**). The said payment shall be payable by NPSCDSB in accordance with the payment schedule attached hereto as Schedule “C”.

Apportionment of Ongoing and Future Costs

4. NPSCDSB and the Municipality agree to share all ongoing and future costs incurred from the Effective Date onward, for the delineation, monitoring, sampling, risk assessment, management, reporting and/or remediation (including, without limitation, consulting, contracting and sub-contracting costs, fees and expenses, staff time directly and reasonably related to activities described in this section (for greater clarity, this does not include staff time spent on administration or litigation), maintenance costs, the costs of any equipment and/or materials required and the cost of restoring any areas disturbed as a result of such work to their previous condition) of the Contamination as may be required in order to maintain compliance with the Director’s Order or otherwise manage the Contamination in accordance with applicable environmental laws, subject to paragraphs **Error! Reference source not found., Error! Reference source not found.** and 8, and in accordance with the Transition Plan attached hereto as Schedule “I” (“Ongoing and Future Costs”). All data and work product generated in connection with the Ongoing and Future Costs shall be shared with both Parties.
5. The Ongoing and Future Costs shall be apportioned to the Parties on the following basis, save and except as otherwise provided for in this Agreement including, without limitation, paragraphs **Error! Reference source not found., Error! Reference source not found.** and 8:
 - (a) 80% borne by NPSCDSB; and
 - (b) 20% borne by the Municipality.

It is agreed that whichever Party incurs an expense in relation to Ongoing and Future Costs shall invoice the other Party for its share of the same, and the other Party shall pay the said invoice within 60 days.

6. Notwithstanding any other provision contained herein, the Parties are agreed that NPSCDSB’s share of the Ongoing and Future Costs for the period commencing April 1, 2020 until the Effective Date shall be \$600,000 (Canadian Dollars), payable to the Municipality in a lump sum within 60 days of the Effective Date.

Redevelopment Costs

7. Notwithstanding the foregoing, it is specifically agreed that the Ongoing and Future Costs shall not include any costs associated with the redevelopment of the School Site and Memorial Park and/or the Corbeil Road Allowance including any costs of environmental remediation and/or risk management measures that arise from the said redevelopment (including soil or groundwater management and disposal costs) (the “**Redevelopment Costs**”), which shall be the sole responsibility and at the sole expense of the Municipality. For greater certainty, it is agreed that any costs incurred in connection with the continuation of the current uses, as they exist as of the date of this Agreement, of the School Site, Memorial Park and/or the Corbeil Road Allowance shall not constitute Redevelopment Costs.

Trench Collection System

8. Notwithstanding the foregoing and paragraph 9, it is specifically agreed that from the date of the Amended Order, the Municipality shall retain sole responsibility for the control and operation of and costs related to the remediation trenches installed within the Memorial Park. For further certainty, such costs shall include the costs of all supplies, monitoring and maintenance related to the said remediation trenches, as well as the costs of decommissioning the same.

Direction and Control of Work

9. As of the Effective Date, the Parties agree that NPSCDSB is hereby authorized to and shall assume control over all aspects of Contamination management with respect to the Contamination going forward, including, without limitation, primary decision-making power in dealings with the MECP with respect to the Director’s Order and the RAP, and authority to make decisions regarding the implementation of the same, save and except as otherwise provided for in this Agreement, including without limitation paragraph 10.
10. Subject to maintaining compliance with the Director’s Order, the Parties agree that no work shall be undertaken on or adjacent to lands owned by the Municipality if, in the opinion of the Municipality acting reasonably, the said work would interfere with the use or redevelopment of the said lands. Prior to undertaking any work on or adjacent to lands owned by the Municipality, the NPSCDSB shall consult with the Municipality and, should the Municipality raise a concern pursuant to this paragraph, the Parties agree to work cooperatively to identify alternative approaches that avoid the concerns raised by the Municipality. The Parties agree that the Municipality will retain the right to redevelop any portion of its properties as it sees fit at its own expense in accordance with paragraph **Error! Reference source not found.**, with advance notice to NPSCDSB so that said redevelopment can be coordinated with the RAP.
11. The Parties agree to instruct their respective consultants to share with the other party and its consultants all data and work product, as may be necessary for the purposes of this Agreement. The Parties shall consent to the other party retaining any consultants, as may be required.

Reciprocal Obligation to Consult

12. Where a party has control over certain work in accordance with this Agreement (a “**Controlling Party**”), in exercising its authority, the Controlling Party is required to consult the other, either directly or through their respective consultants. However, the Controlling Party need not implement the recommendations, if any, of the other party or its consultants, and the Controlling Party shall have final authority to unilaterally make any and all decisions in respect of the work under its control.
13. The Controlling Party shall keep the other party apprised of the work under its control, including providing the other party, in a timely manner, with all data and reports generated in connection therewith.
14. It is agreed that the Controlling Party shall direct all consultants, contractors or other agents retained in connection with the Contaminant management to extend third party reliance to the other party with respect to the said controlled work.

External Sources

15. The Parties agree that any funding received by either party from third party sources following the Effective Date, which funding is received specifically for the purpose of meeting Ongoing and Future Costs shall be applied to the same. NPSCDSB and the Municipality shall cooperate in seeking to maximize funding from external sources, in order to reduce the Ongoing and Future Costs. Notwithstanding the foregoing, it is agreed that this paragraph shall not apply to funding received by either party for general or other purposes. Without limiting the generality of the previous sentence, it is specifically agreed that this paragraph shall not apply to funding received by the Municipality for the redevelopment of the School Site, the Memorial Park and/or the Corbeil Road Allowance.

Settlement

16. NPSCDSB and the Municipality agree to settle all outstanding, pending, and potential claims related to the Contamination originating from the School Site, including, without limitation, the Proceedings, on the terms and conditions set forth in this Agreement. The Parties agree that this Agreement supplants all prior agreements with respect to the sharing of costs related to the Contamination originating from the School Site. The consideration pursuant to this Agreement, including without limitation the terms, obligations, covenants, and payments provided for herein, is in satisfaction of all claims, costs, damages, including punitive damages, losses, expenses incurred and to be incurred, and interest claimed by the Municipality in any and all outstanding, pending, and potential claims related to or connected with the Contamination originating from the School Site, including, without limitation, the Proceedings, on the terms and conditions set forth in this Agreement except as set out in paragraphs 17 and 18, below.
17. Notwithstanding the preceding paragraph, should either Party be the subject of any claim, order or other proceeding commenced by a third party and relating to the Contamination, the Parties agree that they shall cooperate in defending and or responding to any such claim order or other proceeding, and that all costs or expenses, including, without limitation of

the foregoing, legal and expert fees as well as damages payable, shall be shared by the Parties with 80% being payable by the NPSCDSB and 20% being payable by the Municipality, in the same manner as Ongoing and Future Costs.

18. Without otherwise limiting the generality of paragraph 16, above, the Parties understand and agree that any rights, covenants and obligations that accrue to the parties pursuant to the February 25, 2020 Minutes of Settlement continue to apply, save and except for Paragraph 5 therein, which rights are expressly settled pursuant to this Agreement. The Parties further understand and agree that Director's Order Amendment No. 1 continues to apply and that, in accordance with Paragraph 4 of the February 25, 2020 Minutes of Settlement, if in the future the Ministry requires the implementation of the RAP in a manner not agreed to by the Municipality and/or NPSCDSB, it will be done by the issuance of a new Director's order to both the Municipality and NPSCDSB, thereby providing further rights of review and appeal that are not extinguished by this Agreement.
19. Contemporaneously with the execution of this Agreement, NPSCDSB and the Municipality shall execute the mutual release, substantially in the form attached hereto as **Schedule "D"** (the "**Mutual Release**").
20. On or as soon as reasonably practical following execution of this Agreement, NPSCDSB and the Municipality shall execute, file or cause to be filed, and cooperate in seeking to obtain, in accordance with the terms of this Agreement,
 - (a) a consent for dismissal of ERT Case No. 17-032 without costs, substantially in the form attached as **Schedule "E"** hereto;
 - (b) a settlement order from the ERT, to which the Parties agree to request this Agreement be attached and form part thereof; and
 - (c) a consent and a dismissal order from the Superior Court of Justice, dismissing Court File No. CV-16-6608 without costs, substantially in the form attached as **Schedule "F"** hereto.

Cooperation

21. NPSCDSB and the Municipality agree to act reasonably and in good faith, and to work cooperatively, and to direct their consultants to work cooperatively, in carrying out the terms, spirit, and intent of this Agreement.
22. It is intended that the Parties shall be bound by and shall perform the obligations set out in this Agreement and the Parties covenant and agree, at each Party's sole cost (except as otherwise provided in this Agreement) and upon written request of the other Party, to duly execute and deliver, or cause to be duly executed and delivered, to the other Party such further contracts, agreements, documents, filings and instruments and do and cause to be done such further acts as may be necessary or proper in the reasonable opinion of the other Party to carry out more effectively the provisions of this Agreement.

Enurement

23. The Parties agree that the covenants, rights, duties, provisos, conditions and obligations contained in this Agreement, as they apply to each Party, shall enure to the benefit of and be binding upon the Parties and their respective successors and assigns. For the purpose of this Agreement, “successors and assigns” means, as the context requires, the heirs, executors, administrators, successors and assigns of each Party, including all subsequent owners of all or any portion of the School Site.

Transfer

24. The Municipality covenants and agrees with NPSCDSB that, upon any sale or transfer of the School Site, any part thereof, or any interest therein, it will cause the transferee to execute and deliver to NPSCDSB an agreement in the form annexed hereto as **Schedule “G”**, whereby the transferee agrees to be bound by and observe the Municipality’s covenants and obligations under this Agreement and the February 25, 2020 Minutes of Settlement, including without limitation the Mutual Release, from and after the sale or transfer as if it were an original signatory thereto, to the extent of the interest therein of the Municipality being acquired by the transferee.
25. Save and except with respect to the Municipality’s obligations contained herein and in the February 25, 2020 Minutes of Settlement subject to paragraph 16 herein, the Municipality shall be released from any future obligations under this Agreement and the February 25, 2020 Minutes of Settlement arising in respect of the period following a sale or transfer to the extent of the School Site or portion thereof or interest therein being sold or transferred by the Municipality if the sale or transfer is to a third party dealing at arm's length with the Municipality, and subject to such third party assuming and agreeing to be bound by and observe the terms and conditions of this Agreement and the February 25, 2020 Minutes of Settlement in accordance with paragraph 24 above.
26. No transfer or sale of the School Site shall be effective to convey or create any interest in all or any portion of the School Site until the Municipality has complied with paragraph 24 above.
27. With respect to any condominiums to be created on all or any part of the School Site, the Municipality hereby agrees that:
 - (a) The disclosure statement for such condominium shall disclose the existence of this Agreement; and
 - (b) The declaration for such condominium will require the condominium corporation to enter into an assignment and assumption agreement in substantially the form attached hereto as **Schedule “G”** whereby it agrees to be bound by the obligations of the Municipality under this Agreement in respect of the property governed by such declaration and that the condominium corporation will deliver a copy of the same to NPSCDSB.

Default

28. The Parties acknowledge and agree that the following events shall constitute a default (“**Default**”) under this Agreement:
- (a) When either of the Parties fails to fulfill any obligation under this Agreement, when put on notice in writing by the other Party, as the case may be, and fails to take steps to remedy same within thirty (30) days; and
 - (b) When either of the Parties fails to make any payments to the other Party, as the case may be, as required under this Agreement, including the Payment Schedule at Schedule “C”, within thirty (30) business days after being advised by same that the amounts are due and outstanding.
29. Notice of Default shall be given by the other Party within fifteen (15) days of their learning of such Default.

Dispute Resolution

30. In the event of any claim, question, difference of opinion or difference of position of any nature between NPSCDSB and the Municipality in any way related to or arising out of this Agreement, including without limitation the Schedules (a “**Dispute**”), notice of the Dispute shall be delivered on the other Party.
31. In the event that the Parties are unable to resolve any Dispute, then the Parties agree to resolve the Dispute by structured and binding arbitration before a jointly agreed upon arbitrator in accordance with the arbitration procedure set out in **Schedule “H”** hereto.

Notice

32. Unless otherwise expressly provided in this Agreement, any notice, request, demand or other communication to be given pursuant to this Agreement (“**Notice**”) shall be delivered by email, mail, or fax to counsel for the intended recipient at the following addresses:

- (a) To NPSCDSB at:

Nipissing-Parry Sound Catholic District School Board
Attention: Grace Barnhardt
Address: 1000 High Street
North Bay, ON P1B 6S6
Phone: 705.472.1201 x 31225
Fax: 705.472.0507
Email: barnharg@npssc.ca

WITH A COPY TO:

Borden Ladner Gervais LLP
Attention: Rick Coburn
Address: Bay Adelaide Centre, East Tower
22 Adelaide St. W., Suite 2800

Toronto, ON M5H 4E3
Phone: 416.367.6038
Fax: 416.367.6749
Email: rcoburn@blg.com

(b) To the Municipality at:

The Corporation of the Municipality of East Ferris
Attention: Jason Trottier
Address: 390 Highway 94
Corbeil, ON P0H 1K0
Phone: 705.752.2740 x 226
Fax: 705.752.2452
Email: jason.trottier@eastferris.ca

WITH A COPY TO:

Thomson, Rogers
Attention: David N. Germain
Address: 390 Bay Street, Suite 3100
Toronto, ON M5H 1W2
Phone: 416.868.3162
Fax: 416.868.3134
Email: dgermain@thomsonrogers.com

33. These addresses for service may be changed by any Party from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the changed address.
34. A Notice is deemed to be delivered and received:
- (a) if sent by personal delivery, on the date of delivery if it is sent on any day of the year other than a Saturday, a Sunday, or any day on which major banks are closed for business in Toronto (“**Business Day**”) and the delivery was made prior to 4:00 p.m. (local time in place of receipt), and otherwise on the next Business Day;
 - (b) if sent by same-day service courier, on the date of delivery if sent on a Business Day and delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day;
 - (c) if sent by overnight courier, on the next Business Day; or
 - (d) if sent by fax or email, on the date on which the fax or e-mail is sent.

Miscellaneous

35. No amendments to this Agreement will be valid or binding unless in writing and executed by the Parties.

36. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, and no waiver will be binding unless executed in writing by the Party to be bound by the waiver.
37. This Agreement will be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable herein.
38. Each provision of this Agreement shall, whenever possible, be interpreted in such manner as to be effective and valid under Ontario law. If any provision of this Agreement is deemed to be illegal, invalid, or unenforceable by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect. For greater clarity, the validity, legality or enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, to the extent possible.
39. The Parties acknowledge that, in this Agreement, words importing the singular include the plural and vice versa as may be required for the context, and words importing gender include all genders as may be required for the context.
40. The Parties acknowledge that the headings contained in this Agreement form no part of this Agreement but shall be deemed to be inserted for convenience of reference only.
41. Time is of the essence in all respects in carrying out the terms of this Agreement.
42. This Agreement may be executed in any number of counterparts (including counterparts delivered electronically) and all such counterparts taken together will be deemed to be originals constituting one and the same instrument.
43. The Parties agree that electronic signatures and electronically transmitted signatures shall be accepted and adopted as original signatures of the Party or Parties, as the case may be.
44. The Parties are entering into this Agreement fully and voluntarily on their own information and investigation and are aware that their own advisors, agents and lawyers may discover facts different from or in addition to the facts that they know or believe to be true with respect to the subject matter of this Agreement. The Parties agree and acknowledge that they, through their representatives, have read this Agreement and have obtained, or have had the opportunity to obtain, independent legal advice with respect thereto.
45. All signatories represent and warrant that they have taken all necessary steps to ensure that they have instructions to execute this Agreement on behalf of the Parties.

[signature page follows]

DATED this ____ day of _____, 2021 (the “**Effective Date**”).

In witness hereof, the Parties have duly executed this Agreement as of the Effective Date.

Nipissing-Parry Sound Catholic District School Board

Name: Anna Marie Bitonti

Title: Director of Education

Name: Leo de Jourdan

Title: Chair

I/We have the authority to bind the corporation

The Corporation of the Municipality of East Ferris

Name:

Title:

Name:

Title:

I/We have the authority to bind the corporation

Schedule “A”

LEGAL DESCRIPTION OF THE SCHOOL SITE

FIRSTLY:

PCL 895 SEC NIP; PT LT 14 CON 11 EAST FERRIS AS IN NP658; EAST FERRIS;
DISTRICT OF NIPISSING, being all of PIN 49183-0409 (LT)

SECONDLY:

PCL 9992 SEC WF; PT LT 14 CON 11 EAST FERRIS PT 1, NR1870; EAST FERRIS;
DISTRICT OF NIPISSING, being all of PIN 49183-0405 (LT)

THIRDLY:

PCL 5636 SEC WF; PT LT 14 CON 11 EAST FERRIS AS IN LT73573; EAST FERRIS;
DISTRICT OF NIPISSING, being all of PIN 49183-0408 (LT)

Schedule “B”

REMEDIAL ACTION PLAN (the “RAP”)

[attached]

Schedule “C”

PAYMENT SCHEDULE

The NPSCDSB shall make the following payments to the Municipality on the following dates:

1. Within 30 days of the Effective Date - \$1,000,000
2. Within 60 days of the Effective Date – a further \$1,000,000
3. Within 60 days of the Effective Date – a further \$600,000.

Schedule “D”

MUTUAL FULL AND FINAL RELEASE

(the “**Mutual Release**”)

WHEREAS:

- A. The “**Contamination**” for the purpose of these proceedings is fuel oil. The Contamination was first discovered by the Nipissing Parry-Sound Catholic District School Board (“**NPSCDSB**”) in 2000, during the course of the removal of two underground storage tanks associated with a school located at the former St. Theresa School site, located at 1990 Corbeil Road, East Ferris, in the Province of Ontario, which consists of three land parcels (the “**School Site**”) legally described in Schedule “A” of the “**Full and Final Settlement Agreement**” to which this Mutual Release forms a schedule. At the time of their removal, one of the fuel tanks was found to be leaking the Contamination into the subsurface;
- B. A consultant retained by the NPSCDSB undertook some remediation work on the School Site in 2000 and 2001;
- C. From the construction of the former St. Theresa School until 2009, the School Site was under the ownership, management and control of the NPSCDSB, or prior school boards to which the NPSCDSB is the legal successor;
- D. The Corporation of the Municipality of East Ferris (“**Municipality**”) acquired the School Site from NPSCDSB in 2009;
- E. Further Contamination was discovered by the Municipality in 2012, during the course of demolition work in and around the foundation of the former school building, as well as in a historic septic tank;
- F. It has been determined that Contamination extends in a westerly direction from the School Site onto the adjacent right of way of Corbeil Road, owned by the Municipality (the “**Corbeil Road Road Allowance**”), and beyond onto adjacent lands owned by the Municipality and known as “**Memorial Park**”;
- G. It has been determined that Contamination also extends onto lands owned by third parties beyond the Memorial Park referred to as the “**Third Party Lands**”, which are comprised of the adjacent section of Highway 94, owned by the Province of Ontario and under the jurisdiction of the Ministry of Transportation, and the Seniors Villa of East Ferris property, which is municipally known as 440 and 450 Hwy. 94, East Ferris;
- H. The Municipality issued an order to pay on NPSCDSB on April 10, 2017 (“**Order**”), which order to pay NPSCDSB appealed to the Environmental Review Tribunal (the “**ERT**”), and which appeal bears ERT Case No. 17-032 (“**ERT Case No. 17-032**”);

- I. In an oral order on May 7, 2020, the ERT permitted the Municipality to amend the Order to include additional costs incurred by the Municipality since April of 2017 (the “**Amended Order**”);
- J. The Municipality commenced a civil action in the Superior Court of Justice against NPSCDSB (“**Court File No. CV-16-6608**”);
- K. The Director (“**Director**”) of the Ministry of the Environment, Conservation and Parks (the “**Ministry**”) issued Director’s Order Number 0844-AWTHJ7 (the “**Director’s Order**”) to the Municipality and NPSCDSB on July 13, 2018; both the Municipality and NPSCDSB appealed and requested a hearing before the ERT with respect to the Director’s Order (“**ERT Case No. 18-039**” and “**ERT Case No. 18-040**”, respectively);
- L. Section 2.1, Item No. 3 of the Director’s Order requires that, “the Orderees shall submit to the Director [...] a detailed remediation plan that identifies off-Site impacts resulting from the spilled oil, measures that will be taken to remediate these impacts and any additional action needed to prevent further off-Site migration of oil”;
- M. The consultants on behalf of the Municipality, Knight Piésold Consulting (“**Knight Piésold**”), and the consultants on behalf of NPSCDSB, XCG Consulting Limited, jointly submitted a remedial action plan to the Director’s satisfaction, dated November 4, 2019, a copy of which is attached to the Full and Final Settlement Agreement as **Schedule “B”** (the “**RAP**”);
- N. The Director, the Municipality, and NPSCDSB entered into minutes of settlement executed February 25, 2020 (the “**Minutes of Settlement**”), pursuant to which the ERT dismissed ERT Case Nos. 18-039 and 18-040 by order issued March 9, 2020;
- O. In accordance with the said February 25, 2020 Minutes of Settlement, the Director issued an amendment to the Director’s Order (“**Director’s Order Amendment No. 1**”) and the Parties agreed not to appeal same;
- P. The said February 25, 2020 Minutes of Settlement provided, inter alia, that nothing in that agreement would prejudice any right the Municipality may have to seek compensation and/or damages from the NPSCDSB in relation to the Contamination, or any right that NPSCDSB may have to make answer and defence with respect thereto; and
- Q. The Municipality and NPSCDSB (the “**Parties**”, each a “**Party**”) have now agreed to settle all outstanding, pending, and potential claims related to Contamination originating from the School Site, including, without limitation, ERT Case No. 17-032 and Court File No. CV-16-6608 (collectively referred to herein as the “**Proceedings**”), pursuant to the Full and Final Settlement Agreement between the parties, to which this Mutual Release is subject and forms a schedule.

NOW THEREFORE, IN CONSIDERATION OF the Full and Final Settlement Agreement of the Parties, the mutual covenants contained therein, and the sum of **TWO DOLLARS (\$2.00)** and other good and valuable consideration by each to the other (the “**Consideration**”), the receipt and sufficiency of which is hereby irrevocably acknowledged, the undersigned,

**THE CORPORATION OF THE MUNICIPALITY OF EAST FERRIS, and
NIPISSING PARRY-SOUND CATHOLIC DISTRICT SCHOOL BOARD,**

which includes their respective parents, subsidiaries, affiliates, related companies, and each of the respective directors, officers, shareholders, employees, servants, agents, trustees, and administrators, both present, future and former, and all of their successors, assigns and transferees, and any party or parties who claim a right or interest through them

(hereinafter referred to as the “**Parties**”),

DO HEREBY FULLY RELEASE, ACQUIT, AND FOREVER DISCHARGE EACH OTHER, WITHOUT QUALIFICATION OR LIMITATION with respect to any and all claims, actions, demands, manner of actions, causes of actions, suits, claims and demands for damages, debts, dues, duties, accounts, bonds, warranties, claims over, indemnities, contracts, losses, injuries, undertakings, complaints, sums of money, costs (except as may be apportioned in the Full and Final Settlement Agreement), interest in loss, damages, covenants and liabilities of whatever nature and kind at law or in equity, howsoever arising, whether actual, pending or potential, which hereto may have been or may hereafter be sustained, jointly or severally, one against the other, for or by reason or cause of any matter or thing existing up to the present time, arising out of, connected with or in any way related to,

- (a) Any and all issues relating to or in any way arising out of any and all injuries, damages or losses that are alleged to have been sustained by the Parties, in relation to the Contamination originating from the School Site, including without limitation the Amended Order;
- (b) Any and all matters that were pleaded in, or could have been pleaded by, the Parties or any one of them, in the Proceedings or either of them;
- (c) Any and all rights that may have been preserved by Paragraph 5 of the February 25, 2020 Minutes of Settlement, which rights are expressly settled pursuant to the Full and Final Settlement Agreement between the Parties;
- (d) Any and all issues relating to or in any way arising out of any breach of any statutory duty imposed, including without limitation with respect to the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended;
- (e) Any and all issues relating to, or in way arising out of any breach of contract, breach of warranty, breach of statutory duty, negligence, breach or want of care, of any nature whatsoever, alleged or capable of being alleged against any of them whatsoever, in relation to the Municipality’s purchase of the School Site from NPSCDSB;
- (f) Legal costs and expenses in connection with the Proceedings; and
- (g) Any and all matters arising from or in any way related to the matters outlined above, and any damage, loss or injury arising out of the matters set forth above;

(together, the “**Released Matters**”).

AND IT IS HEREBY DECLARED, CONFIRMED AND ACKNOWLEDGED that the Parties have not been induced to execute this Mutual Release by reason of any representation or warranty of any nature or kind whatsoever, and that there is no condition, express or implied or collateral agreement affecting the said Mutual Release, except as may be provided for herein.

AND IT IS HEREBY DECLARED, CONFIRMED AND ACKNOWLEDGED that this Mutual Release is subject to the Full and Final Settlement Agreement to which this Mutual Release is a schedule.

AND FOR THE SAID CONSIDERATION the Parties understand, covenant and agree not to make, commence, or continue any claim, or take or advance any proceedings against any person, firm, partnership, business or corporation who might claim in any manner or forum, contribution from or indemnity in common law or in equity, or under the provisions of any statute or regulation, or otherwise, including without limitation the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended, in respect of the Released Matters discharged by this Mutual Release.

AND IT IS UNDERSTOOD AND AGREED that nothing herein shall preclude a claim being made by either Party against a consultant or contractor carrying out work pursuant to the Full and Final Settlement Agreement on the basis of negligence on the part of the said consultant or contractor.

AND THE PARTIES HEREBY CONFIRM that they have authorized and instructed their lawyers to settle the Released Matters, including without limitation the Proceedings, on the terms outlined herein, and to consent to the dismissal of the Proceedings, with prejudice and without costs.

AND FOR THE SAID CONSIDERATION the Parties hereby represent and warrant that they have not assigned to any person, firm or corporation any of the Released Matters discharged by this Mutual Release, and that they have full authority and capacity to release their respective right to the fullest extent allowed at law.

AND IT IS UNDERSTOOD AND AGREED that in agreeing to the Full and Final Settlement Agreement, and executing this Mutual Release, the Parties are concluding and are causing to be fully and finally compromised in settlement any claim capable of being asserted by them, or on behalf of them in connection with the Released Matters.

AND IT IS UNDERSTOOD AND AGREED that if either Party commences or continues such an action, or takes or advances such proceedings, and the other Party is added to such proceedings in any manner whatsoever, whether justified in law or not, the Party having commenced or advanced the said proceeding will immediately discontinue the proceedings and/or claims, and will be jointly and severally liable to the added Party for the legal costs incurred in any such proceeding. This Mutual Release shall operate conclusively as an estoppel in the event of any claim, action, complaint or proceeding that might be brought in the future by one Party against the other with respect to the Released Matters. This Mutual Release may be pleaded in the event any such claim, action, complaint or proceeding is brought, as a complete defence and reply and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a

summary basis and no objection will be raised by the initiating Party in any subsequent action that the other party or parties in the subsequent action were not privy to formation of this Mutual Release.

AND IT IS FURTHER UNDERSTOOD AND AGREED that nothing herein shall be construed or interpreted as an admission of liability or obligation of any kind whatsoever by the Parties in respect of the Released Matters, including without limitation the Proceedings, and any such liability or obligation is specifically denied.

AND IT IS HEREBY DECLARED that the terms of this Mutual Release are fully understood, that the Mutual Release is given voluntarily for the purpose of making a full and final settlement of all of the Released Matters, and that the Parties have had sufficient time and opportunity to read and consider this Mutual Release and to obtain such advice with respect to its terms as they each consider advisable.

AND IT IS UNDERSTOOD AND AGREED that in agreeing to this settlement, and in executing this Mutual Release, the Parties are concluding and are causing to be fully and finally compromised in settlement any claim capable of being asserted by them, or by any other party by way of subrogation.

AND IT IS UNDERSTOOD AND AGREED that this Mutual Release will be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable herein, and that any dispute arising from this Mutual Release will be adjudicated in accordance with the dispute resolution provisions of the full and final settlement agreement between the Parties.

AND IT IS HEREBY DECLARED this Mutual Release may be executed in any number of counterparts (including counterparts delivered electronically) and all such counterparts taken together will be deemed to be originals constituting one and the same instrument. The Parties further agree that electronic signatures and electronically transmitted signatures shall be accepted and adopted as original signatures of the Party or Parties, as the case may be.

[signature page follows]

DATED this ____ day of _____, 2021 (the “**Effective Date**”).

IN WITNESS WHEREOF, the Parties have duly executed this Mutual Release by their duly authorized representatives as of the Effective Date.

Nipissing-Parry Sound Catholic District School Board

Name: Anna Marie Bitonti

Title: Director of Education

Name: Leo de Jourdan

Title: Chair

I/We have the authority to bind the corporation

The Corporation of the Municipality of East Ferris

Name:

Title:

Name:

Title:

I/We have the authority to bind the corporation

Schedule “E”

CONSENT FOR DISMISSAL (ERT)

[attached]

PROCEEDING COMMENCED UNDER section 100.1(7) of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended

Appellant: Nipissing-Parry Sound Catholic District School Board
Respondent: Corporation of the Municipality of East Ferris
Subject of appeal: Order to pay in relation to the clean up a spill
Property Address / Description: 1990 Corbeil Road
Municipality: Municipality of East Ferris
ERT Case No.: 17-032
ERT Case Name: *Nipissing-Parry Sound Catholic District School Board v. East Ferris (Municipality)*

CONSENT

The parties hereto, none of whom is under any legal disability, through their respective solicitors, hereby consent to an order of the Tribunal dismissing this matter without costs.

DATED at _____, Ontario, this ____ day of _____, 2021.

Borden Ladner Gervais LLP
on behalf of NPSCDSB

Rick Coburn, LSO# 306040

DATED at _____, Ontario, this ____ day of _____, 2021.

Thomson, Rogers
on behalf of the Municipality

David Germain, LSO# 52530M

Schedule “F”

CONSENT AND DRAFT DISMISSAL ORDER (COURT)

[attached]

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

THE MUNICIPALITY OF EAST FERRIS

Plaintiff

- and -

NIPISSING-PARRY SOUND CATHOLIC DISTRICT SCHOOL BOARD

Defendant

CONSENT

The parties hereto, none of whom is under any legal disability, through their respective solicitors, hereby consent to an order of the Court in the form attached hereto at Appendix "A".

DATED at _____, Ontario, this ____ day of _____, 2021.

Borden Ladner Gervais LLP
on behalf of NPSCDSB

Rick Coburn, LSO# 306040

DATED at _____, Ontario, this ____ day of _____, 2021.

Thomson, Rogers
on behalf of the Municipality

David Germain, LSO# 52530M

Appendix "A"

Court File No. CV-16-6608

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE MUNICIPALITY OF EAST FERRIS

Plaintiff

- and -

NIPISSING-PARRY SOUND CATHOLIC DISTRICT SCHOOL BOARD

Defendant

ORDER

BEFORE:

THE HONOURABLE

) THE DAY

)

) OF , 2021

THIS MOTION, brought by the Plaintiff for an order dismissing the action against the Defendant,
without costs.

ON READING the consent of the Plaintiff and Defendant filed:

1. **THIS COURT ORDERS** that the action against the Defendant be dismissed without costs.

Schedule "G"

ACKNOWLEDGEMENT AND ASSUMPTION AGREEMENT TO BE SIGNED BY SUBSEQUENT OWNERS

("Acknowledgement and Assumption")

TO: Nipissing-Parry Sound Catholic District School Board ("**NPSCDSB**")

AND TO: The Corporation of the Municipality of East Ferris (the "**Municipality**")

RE: FIRSTLY:

PCL 895 SEC NIP; PT LT 14 CON 11 EAST FERRIS AS IN NP658; EAST FERRIS;
DISTRICT OF NIPISSING , being all of PIN 49183-0409 (LT)

SECONDLY:

PCL 9992 SEC WF; PT LT 14 CON 11 EAST FERRIS PT 1, NR1870; EAST FERRIS;
DISTRICT OF NIPISSING , being all of PIN 49183-0405 (LT)

THIRDLY:

PCL 5636 SEC WF; PT LT 14 CON 11 EAST FERRIS AS IN LT73573; EAST FERRIS;
DISTRICT OF NIPISSING, being all of PIN 49183-0408 (LT)

together, the "**Subject Property**".

-
- A. NPSCDSB and the Municipality entered into a settlement agreement effective the ____ day of _____, _____ (the "**Agreement**") whereby they agreed to settle all outstanding, pending, and potential claims related to the contamination originating from the Subject Property and accept consideration as provided therein in satisfaction of all claims, costs, damages, including punitive damages, losses, expenses incurred and to be incurred, and interest claimed by the Municipality in any and all outstanding, pending, and potential claims related to the contamination originating from the Subject Property, on the terms and conditions set forth in that Agreement.
- B. The Municipality and the undersigned have entered into an agreement of purchase and sale wherein the Municipality has agreed to sell and transfer the Subject Property to the undersigned (the "**Subject Property Transaction**") to be completed on _____ [**insert date**] (the "**Closing Date**");
- C. By an assignment agreement between the Municipality and the undersigned dated _____ [**insert date**] the Municipality will assign the Agreement to the undersigned (the "**Assignment Agreement**"); and
- D. Pursuant to paragraph 26 of the Settlement Agreement, no transfer of the Subject Property shall be effective unless paragraph 24 of the Settlement Agreement has been complied with, and the undersigned wished to provide this acknowledgement and agreement to satisfy and comply with those sections.

In consideration of the payment of one dollar (\$1.00) by NPSCDSB to the undersigned (the receipt and sufficiency of which by the undersigned is acknowledged), the undersigned does hereby confirm the following:

1. The recitals herein are true and accurate in substance and in fact.
2. The undersigned hereby assumes, effective as at completion of the Subject Property Transaction on the Closing Date, all of the burdens and obligations of the Municipality contained in the Agreement, including (without limitation) the Mutual Release (as defined in the Agreement) and the obligation to obtain a further assumption agreement from any subsequent transferee (including any condominium corporation).
3. The undersigned acknowledges and confirms receipt of a copy of the fully executed Agreement, a copy of which is attached as a schedule hereto [**NTD: attach executed agreement**].

4. The Agreement shall for all purposes be treated as an agreement signed by the undersigned with NPSCDSB and the same shall be binding on the undersigned as if and on the same basis as if the undersigned is an original signatory to the Agreement, with all references therein to the Municipality being deemed to be references to the undersigned.
5. The undersigned shall, at the request of NPSCDSB, promptly do, execute or deliver, or cause to be done, executed or delivered, all such further acts, documents, assurances, and matters in connection with this Acknowledgment and Assumption as NPSCDSB may reasonably require from time to time for the purpose of carrying out the intent of this Acknowledgment and Assumption and to confirm the undersigned's assumption of all of the Municipality's obligations set out in the Agreement.
6. In the event the undersigned transfers, leases, subleases, assigns or licenses the whole or any part of the lands, the undersigned shall obtain from any such proposed transferee an acknowledgment and assumption substantially in the form set out herein.
7. From and after the Closing Date, any notice, certificates or other communications required or permitted to be given to the Municipality under the Agreement shall be delivered to the undersigned at the following address:

[insert name, address, attention, fax, email]

8. This Acknowledgement and Assumption and all rights and obligations arising from same shall extend to, be binding upon, and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
9. In this Acknowledgement and Assumption, the singular shall be deemed to include plural whenever the context so requires and the use of plural shall be deemed to include singular whenever the context so requires.
10. No waiver of any of the provisions of this Acknowledgement and Assumption will constitute a waiver of any other provision hereof and no waiver will be binding unless executed in writing by the party to be bound by the waiver.
11. This Acknowledgement and Assumption may be executed in original or electronically transmitted form and the parties adopt any signature received by electronic communication as an original signature of the undersigned.
12. This Acknowledgement and Assumption will be governed by, interpreted, and enforced in accordance with the applicable laws of the Province of Ontario and of Canada.

SIGNED AND SEALED this ____ day of _____, 20__.

Successor in Title

Per:

Name:

Title:

I have authority to bind the Corporation.

[NTD: attach signed agreement as schedule]

Schedule “H”

ARBITRATION PROCEDURE

DEFINITION OF DISPUTE

1. For the purpose of this Schedule of the Agreement, a dispute is any claim, question, difference of opinion or difference of position of any nature between NPSCDSB and the Municipality in any way related to or arising out of to the Agreement, including without limitation the Schedules (a “**Dispute**”).
2. NPSCDSB and the Municipality agree that should a Dispute arise, the procedure in this Schedule shall apply.

NOTICE OF ARBITRATION

3. In the event that NPSCDSB and the Municipality are unable to resolve a Dispute, then NPSCDSB and the Municipality shall be entitled to give written notice of its intention to arbitrate the Dispute (the “**Notice of Arbitration**”) to NPSCDSB and the Municipality, as the case may be.
4. The Notice of Arbitration shall be delivered in accordance with the provisions of the Agreement respecting Notice.

APPOINTMENT OF ARBITRATOR

5. NPSCDSB and the Municipality shall mutually appoint an arbitrator (“**Arbitrator**”).
6. If NPSCDSB and the Municipality are unable to agree on an Arbitrator or if the services of the Arbitrator are terminated by agreement of NPSCDSB and the Municipality pursuant to paragraph 16 of this Schedule, then NPSCDSB and the Municipality shall be entitled to bring an application in the Superior Court of Justice to appoint an Arbitrator and the Arbitrator shall determine the matter *mutatis mutandis*.

PROCEDURE

7. A Dispute shall be adjudicated by arbitration in accordance with the provisions of the *Arbitration Act, 1991*, S.O. 1991, c. 17, as may be amended, re-enacted or replaced from time to time, and this Schedule.
8. A Dispute shall be governed by the laws of Ontario.
9. The Arbitrator shall commence arbitration within thirty (30) calendar days of the date of service of the Notice of Arbitration, unless both NPSCDSB and the Municipality agree otherwise.
10. NPSCDSB and the Municipality shall agree upon the procedure to be adopted by the Arbitrator. In the event that NPSCDSB and the Municipality fail to do so, the Arbitrator

shall impose such procedure as he or she deems appropriate in the circumstances having regard for the subject matter of the Dispute and NPSCDSB and the Municipality's mutual intent to have the arbitration conducted in an expedited and cost-effective manner.

11. The Arbitrator shall have jurisdiction to arbitrate and order relief in respect of:
 - (a) a Dispute which is the subject of the Notice of Arbitration (which are generally described in paragraph 1 above);
 - (b) any Dispute which is in the nature of a claim for set-off or counterclaim that arises out of or is related to the Agreement;
 - (c) claims for interest and costs, including legal, engineering, consulting and related costs and disbursements;
 - (d) costs of the arbitrator; and
 - (e) clarification of procedure under this Schedule.
12. The Arbitrator shall also have jurisdiction to determine whether any dispute is or is not in any way related to or arises out of the Agreement.
13. NPSCDSB and the Municipality agree that any monetary award made against NPSCDSB and the Municipality as part of the Decision (defined below) shall be paid no later than fifteen (15) days from the date of the Decision.

DECISION AND APPEALS

14. NPSCDSB and the Municipality agree that any award or decision of the arbitrator ("**Decision**") shall be in writing and shall be final and binding upon NPSCDSB and the Municipality. The Decision shall not be subject to appeal to or judicial review by any court, tribunal or other authority whatsoever.
15. Any final award or decision of the Arbitrator may be entered as a judgment in any court having jurisdiction. NPSCDSB and/or the Municipality shall be entitled to make application for judicial recognition of the final award or decision of the Arbitrator or an order to enforce the award or decision of the Arbitrator, as the case may be.
16. Without limiting the generality of the foregoing, NPSCDSB and the Municipality agree that a Dispute shall not be the subject matter of any proceeding commenced in the Ontario Superior Court of Justice or any other forum in any jurisdiction save as expressly provided for herein.

TERMINATION OF ARBITRATOR

17. NPSCDSB and the Municipality may jointly agree to terminate the Arbitrator for any reason and appoint a new Arbitrator in accordance with this Schedule.

Schedule “I”

TRANSITION PLAN

The Parties agree, that as of the “Effective Date”, the Parties shall assume the following responsibilities, subject to the provisions of this agreement:

Municipality

1. Control and operation of the remediation trenches installed within the Memorial Park, in accordance with paragraph 8 of this agreement; and
2. Completion of the Seniors Villa Drinking Water Response Plan, in accordance with Item 8 of the RAP.

NPSCDSB

1. All other requirements of the RAP.

Prior to and following the Effective Date, the Parties shall direct their consultants to meet and to share such information as may be required to facilitate the transition of responsibilities outlined above. It is agreed that all consultant costs incurred in such meetings shall constitute Ongoing and Future Costs for the purposes of this agreement.