



17 July 2019

MEMO TO: Neil Garbe, City Manager, City of Richmond Hill

COPY TO: Italo Brutto, P.Eng., Commissioner, Environment & Infrastructure Services

FROM: Jeremy Wychreschuk, P.Eng.
Manager, Water Resources, Corporate Asset Management & Environment Services Division, EIS

SUBJECT: **Stream Gauge License Agreement with the Toronto and Region Conservation Authority**

Notes:

The attached agreement is categorized as minor in nature and falls under the scope of delegated approval authority for the City Manager, consistent with staff report SRCM.19.02 as approved by Council on June 11, 2019.

PURPOSE:

To authorize a License Agreement with the Toronto and Region Conservation Authority (TRCA) for the installation, operation and maintenance of a stream gauge on City of Richmond Hill property in German Mills Creek.

RECOMMENDATION(S):

That, upon the recommendation of the Commissioner of Environment & Infrastructure, the City Manager on delegated Authority of the Mayor and Clerk authorize a License Agreement with the Toronto and Region Conservation Authority (TRCA) for the installation, operation and maintenance of a stream gauge by TRCA on German Mills Creek at Industrial Road.

Contact: Terry Ricketts, P.Eng., Director of Environment Services, ext. 6504
Jeremy Wychreschuk, P.Eng., Manager of Water Resources, ext. 5495

Submitted by:

Italo Brutto, P. Eng.
Commissioner of Environment and Infrastructure Services

BACKGROUND:

TRCA Stream Monitoring Network

The Toronto and Region Conservation Authority (TRCA) has requested permission from the City of Richmond Hill for the installation of a new stream gauge in German Mills Creek on City property. The TRCA collects stream data using gauges installed throughout their jurisdiction. The TRCA has 20 stream gauges strategically located to provide coverage of watershed areas in their jurisdiction, but currently does not have any within Richmond Hill.

Stream gauges are widely used to record stream water levels and provide the information needed for flood warnings and emergency bulletins. TRCA's objective for the new sensor installation is to increase the real-time data resolution capabilities of their existing Real-Time Flood Warning Network in order to provide greater stream flow accuracy and improve flood forecasting in Richmond Hill and the Don River watershed. It will collect stream data for a number of established programs, including the TRCA's Regional Watershed Monitoring Network program and Flood Management Service program, and will provide real-time information to TRCA for these programs. The stream gauge station would become part of a series of specially designed gauges capable of collecting stream data year round.

Value for Richmond Hill

Data collected from these gauges are freely shared with TRCA's municipal partners, including Richmond Hill. This data is regularly used for the design and development of municipal infrastructure, such as roads, storm ponds and storm sewers, as well as for studies conducted by the City. Data collected within Richmond Hill is particularly useful as it accurately reflects local conditions.

Proposed Stream Gauge

The proposed gauge will be installed, operated and maintained by the TRCA. The gauge will be located in German Mills Creek to the north of Industrial Road within the City's right-of-way (near Yonge Street and Elgin Mills Road East). The new station location abuts the properties municipally known as 47 and 59 Industrial Road, as indicated with the highlighted red rectangle on Figure 1 in Attachment A. This area is an identified Flood Vulnerable Area (FVA) by the TRCA and the City. An example of a typical stream gauge station setup is provided as Figure 2 in Attachment A.

Stream Gauge License Agreement

A License Agreement has been developed between the City and TRCA to allow for the station to be installed and maintained. This agreement was based on a similar agreement executed with TRCA in 2013 for the installation and maintenance of a precipitation gauge located on a City building (SREIS.13.012). Through the execution of the License Agreement, the TRCA will be solely responsible for the installation, operation and maintenance of the equipment for the entire time that it is installed. City of Richmond Hill staff will be provided with data collected and reports prepared by the TRCA for this station.

FINANCIAL/STAFFING/OTHER IMPLICATIONS:

The TRCA will cover all costs for the equipment, installation, maintenance and decommissioning of the gauge. As such, there are no financial implications for the City related to this equipment. There will be minor staff resources required for inspection when the stream gauge is first installed.

Attachment A

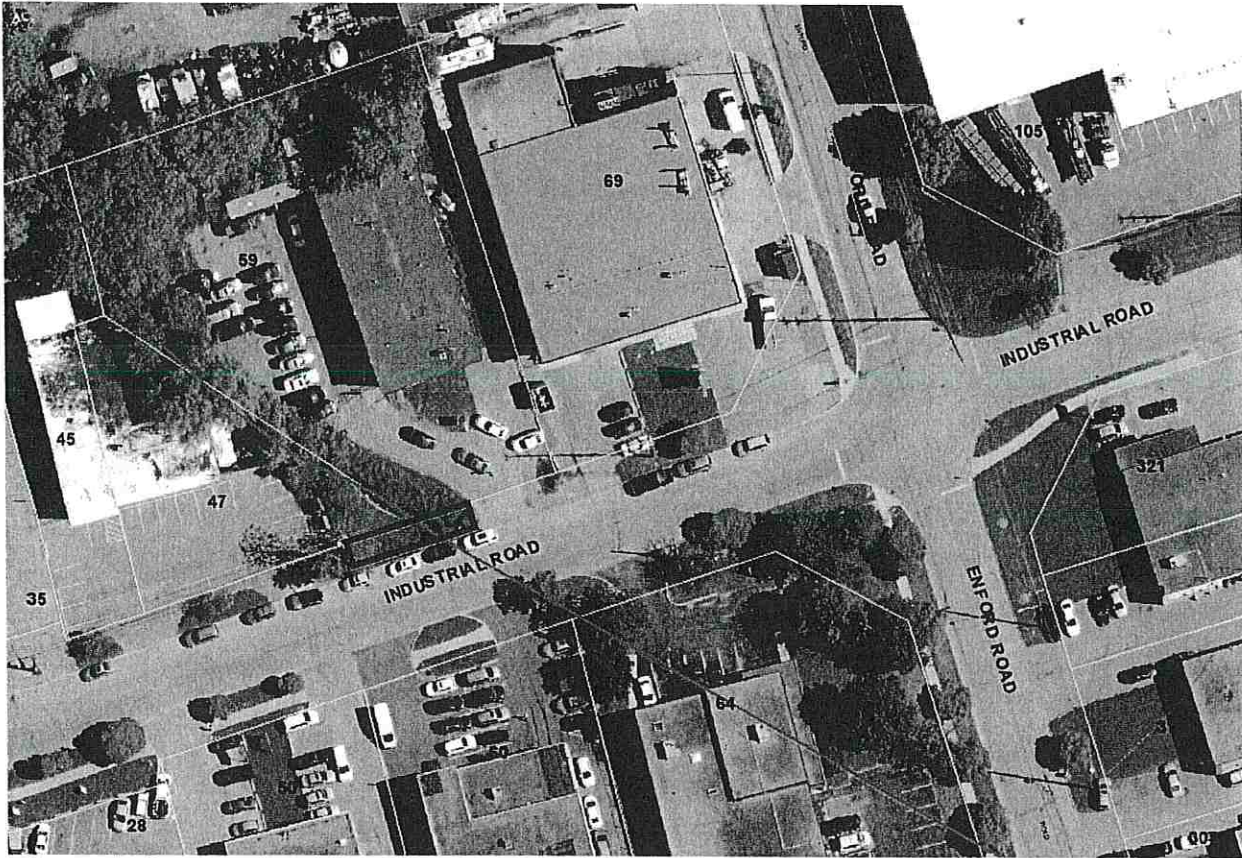


Figure 1: Proposed real-time stream gauge location is highlighted with a red rectangle (abuts 47 and 59 Industrial Road properties)

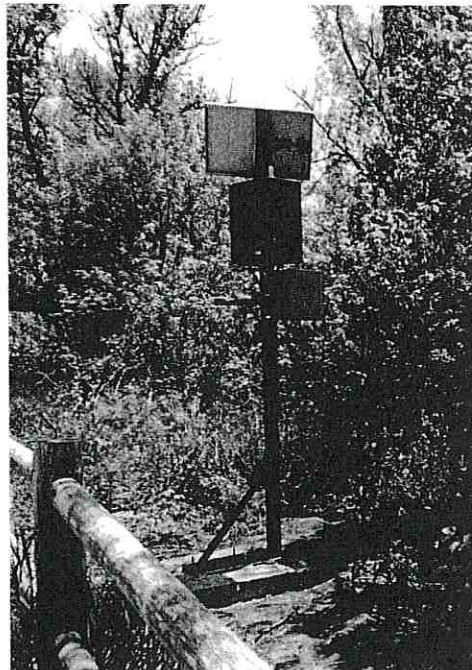


Figure 2: Example of real-time stream gauge installation



**Environment & Infrastructure Services
COMMISSIONER SIGN-OFF SHEET**

Request date:	17 July 2019
Requestor:	Jeremy Wychreschuk
Deadline Date:	
Agreement / Project Name:	Stream Gauge License Agreement with the Toronto and Region Conservation Authority
Approvers to sign:	Neil Garbe, City Manager
Commissioner's Sign-off:	
Director's Sign-off:	

Notes:

Staff is seeking the City Manager's signed approval to execute the attached License Agreement. Environment Services

The attached agreement is categorized as minor in nature and falls under the scope of delegated approval authority for the City Manager, consistent with part "I" under the Recommendations section of staff report SRCM.19.06 as approved by Council on June 25, 2019.

Also attached is a memo that outlines the purpose and terms of the agreement. In summary, the Toronto and Region Conservation Authority (TRCA) is requesting permission from the City of Richmond Hill for the installation of a new stream gauge to collect flow data in German Mills Creek. A License Agreement has been developed between TRCA and the City of Richmond Hill for this installation. The gauge will provide data used to support both municipal and TRCA programs. Staff recommend that the City Manager, on behalf of Mayor & Council, authorize the License Agreement with the TRCA for the new gauge station on German Mills Creek.

LICENCE AGREEMENT

THIS AGREEMENT made this 6th day of March, 2019.

BETWEEN:

THE CORPORATION OF THE TOWN OF RICHMOND HILL

(hereinafter referred to as the "Licensor")

OF THE FIRST PART.

- and -

TORONTO AND REGION CONSERVATION AUTHORITY

(hereinafter referred to as the "Licensee")

OF THE SECOND PART.

WHEREAS the Licensor has jurisdiction over the public highway in the Town of Richmond Hill, known as Industrial Road;

AND WHEREAS the Licensee wishes to construct and maintain a real-time stream gauge (the "Equipment") within that portion of Industrial Road that abuts the properties municipally known as 47 and 59 Industrial Road, as shown in the highlighted red rectangle on Schedule "A" attached (the "Town's Lands");

AND WHEREAS the Licensor has agreed to permit the Licensee to construct and maintain the Equipment within the Town's Lands, subject to the terms and conditions hereinafter contained and the conditions of any other requisite Licensor approvals.

NOW THEREFORE in consideration of the sum of TWO (\$2.00) DOLLARS and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The Licensor hereby grants to the Licensee, subject to the terms and conditions of this Agreement, a non-exclusive license (hereinafter called the "Licence") to install, use, repair, reconstruct (whether by way of replacement or by way of renovation to existing structures) and maintain the Equipment as shown on Schedule "B" within the Town's Lands for the purpose of collecting real-time water level data for flood warning purposes and operated for the sole use and benefit of the Licensor and the Licensee.
2. In consideration of the Licensor granting the Licence herein, the Licensee shall provide the Licensor with copies of reports relating to the water level data within thirty (30) days of a request for same by the Licensor. The Licensee shall not pay rent to the Licensor, its successors and assigns, for the use of and access to the Town's Lands as granted by the Licensor herein provided that the Equipment is operated exclusively for the sole use and benefit of the Licensor.
3. The Licensee agrees that the Equipment shall be removed from the Town's Lands and the Town's Lands be restored to the original or better condition within sixty (60) days written notice from the Licensor. In the event the Equipment is not removed as aforesaid, the Licensor may, upon fourteen (14) days written notice to the Licensee, undertake the removal of the Equipment and complete the restoration to the satisfaction of the Licensor at the expense of the Licensee.
4. In the event of such termination by either party, the parties shall be released from any further obligations with respect to any matter to the Town's Lands under this Agreement and Licence and the Licensee shall remove the Equipment from the Town's Lands on or before the termination date provided for in the written notice. The Licensor agrees that the Equipment shall not become a fixture of the Town's Lands but shall be and remain the property of the Licensee.

5. The Licensee, its employees, agents, contractors, consultants, invitees and those for whom the Licensee is, in law, responsible, shall:

- (i) ensure that the Licensee and those for whom the Licensee is, in law, responsible, enter onto and use only that portion of the Town's Lands necessary for the construction and maintenance of the Equipment, and do not interfere with the function of the Town's Lands as a public highway whatsoever when doing so and do not occupy or otherwise make use of any other portion of the Town's Lands;
- (ii) undertake the installation of the Equipment (the "Work") at the sole cost and expense of the Licensee;
- (iii) be responsible for all legal obligations under the *Occupational Health and Safety Act* in respect of the Work;
- (iv) maintain the Town's Lands upon which the Equipment is located, in a clean and safe condition;
- (vi) upon the request of the Licensor, forthwith reimburse the Licensor for the cost of any restoration of the Town's Lands necessitated by the use of the Town's Lands by the Licensee pursuant to the terms of this Agreement or by the breach by the Licensee of any of its obligations under this Agreement; and
- (vii) not permit on the Town's Lands the presence of any environmental contaminant, except in strict compliance with all applicable laws of any relevant authority including, without limitation, environmental, lands use, occupational health and safety laws, regulations, requirements, permits and by-laws. For the purpose of this Agreement, "environmental contaminant" shall include any hazardous or toxic substances or materials, including without limitation, products of waste, contaminants, pollutants, dangerous substances, noxious substances, toxic substances, hazardous wastes, flammable, explosive or improperly handled friable materials including asbestos, PCBs and substances or any other materials declared or defined to be hazardous, toxic, contaminant or pollutant in or pursuant to any law of any authority, located, stored, manufactured, refined, disposed of, produced, processed or incorporated in or on any part of the Town's Lands, except in accordance with all laws of any applicable authority.

6. Throughout the Term of this Agreement, the Licensee shall make all payments and take all steps as may be necessary to ensure that no lien is registered against the Town's Lands as a result of the Work. The Licensee shall cause any such registration to be discharged or vacated immediately after notice thereof from the Licensor or within ten (10) days following such registration whichever is earlier. Claims, liens, damages, costs and expenses, including legal fees, arising in connection with any work, services or materials supplied to the Licensee or the Town's Lands. The Licensee shall indemnify and save harmless the Licensor from and against any liabilities,

If the Licensee fails to cause any such registration to be discharged or vacated as aforesaid, then, in addition to any other rights of the Licensor, the Licensor may, but shall not be obliged to, discharge the same by paying the amount claimed into court, and the amounts so paid and all related costs incurred in respect thereof by the Licensor, including all legal fees and disbursements, shall be paid by the Licensee to the Licensor forthwith upon demand.

7. The parties acknowledge and agree that no legal title or leasehold interest in the Town's Lands shall be deemed or construed to have been created or vested in the Licensee by anything contained in this Agreement.

8. The granting of the Licence set out in this Agreement in no way constitutes a release for damages that may be caused by the said Work and the Licensee's occupancy of the Town's Lands. During the Term of this Agreement, the Licensor shall not be liable or responsible in any way for any injury or death caused by or arising out of the occupancy of the Licensee of the Town's Lands, the undertaking of the Work or the maintenance of the Equipment thereon and the Licensor shall not be liable or responsible in any way for any damage to any property of the Licensee or any other persons or for any loss or consequential damages suffered by the Licensee or others arising from or out of any occurrence in, upon or relating to the use by the Licensee or the Licensee's presence or those for whom it is responsible in law on the Town's Lands the undertaking of the Work or the maintenance of the Equipment thereon, whether or

not such damage, loss, injury or death results from any negligence or nuisance of the Licensors or those for whom the Licensors may be responsible.

The Licensee will indemnify and save harmless the Licensors, its officers, employees, agents and elected officials from any kind of liability, suit, claim, demand, fine, action, or proceeding of any kind for which the Licensors may become liable or suffer by reason of the use, occupancy and performance of the Work on the Town's Lands or the maintenance of the Equipment by the Licensee or those for whom it is in law responsible including any breach of or non-performance by the Licensee of any provision of this Agreement.

If the Licensors shall, without fault on its part, be made a party to any litigation commenced by or against the Licensee arising out of the Licensee's use or occupancy of, or performance of the Work or the maintenance of the Equipment on the Town's Lands, then the Licensee shall protect, indemnify and hold the Licensors harmless and shall pay all costs, expenses and reasonable legal fees incurred or paid by the Licensors in connection with such litigation.

9. The Licensee shall extend its general liability insurance policy or obtain a separate policy of commercial general liability insurance to provide coverage for the Licensors and, the Licensee's use of the Town's Lands for the purpose of installing and maintaining the Equipment. The policy must contain a minimum limit of liability of Two Million Dollars (\$2,000,000.00) and shall include contractual liability, non-owned automobile liability, products and completed operations coverage and a cross liability and severability of interest's clause. The policy must also list the Licensors as an additional insured and provide for thirty (30) days written notice of cancellation or material change to the Licensors.

Upon execution of this Agreement, and in any event prior to commencement of the Work, the Licensee shall, at its own expense, secure and deposit with the Manager of Risk & Insurance of the Licensors proof of such insurance on the Licensors' standard certificate of insurance form available on the Licensors' website at www.richmondhill.ca/certificatesofinsurance.

The Licensee is responsible for payment of any loss or losses within the deductible.

- (a) All policies of insurance shall be:
 - (i) written with an insurer licensed to do business in Ontario;
 - (ii) in form and content acceptable to the Licensors acting reasonably;
 - (iii) be non-contributing with, and will apply only as primary and not excess to any other insurance available to the Licensors to the extent of its rights as an additional insured; and
 - (iv) contain an undertaking by the insurers to notify the Licensors in writing not less than thirty (30) days before any material change or cancellation of the policies.
- (b) before the commencement of any operations hereunder, the Licensee shall provide the Licensors a certificate of insurance satisfactory to the Licensors to evidence the required insurance coverage.

10. The Licensee shall comply with all provisions of law, including, without limitation, all federal and provincial legislative enactments, municipal by-laws, other governmental or municipal by-laws, and any other authority regulations that relate to the Work and the conditions of any other required Licensors permits or approvals.

11. The Licensee acknowledges that it has submitted to and obtained approval of the Licensors' Commissioner of Environment & Infrastructure Services ("Commissioner of Environment") of a plan detailing the Equipment and details of its location, installation and construction. The Licensee shall implement the approved plan, to the satisfaction of the Commissioner of Environment. The Licensee shall undertake no work inconsistent with the aforesaid plans without the prior written approval of the Commissioner of Environment or his designee.

12. The Licensee shall restore the Town's Lands to the same or better condition as prior to undertaking the Work and entering onto the Town's Lands, to the satisfaction of the Commissioner of Environment.

If, the Licensee damages any services of the Licensor, or if such services are damaged as a consequence of the Work, the Licensee shall repair and replace such services, and return them to their prior state at no expense to the Licensor.

13. This Agreement, when executed by the said parties shall constitute a binding agreement which shall enure to and be binding on the said parties, their successors, and assigns.

14. It is agreed that there is no representation, warranty, collateral agreement or condition affecting the said Agreement or the property other than as expressed herein.

15. Any notice provided for herein shall be given by delivery thereof or by mailing the same, postage paid and addressed to the appropriate party as follows:

IF TO THE LICENSEE TO: 5 Shoreham Drive
Downsview, Ontario
M3N 1S4

Attention: Leland Wilbur

IF TO THE LICENSOR TO: 225 East Beaver Creek Road
Richmond Hill, Ontario
L4B 3P4

Attention: Commissioner of Environment & Infrastructure Services

or to such other address as the parties hereto or either of them may request by notice in writing to the other given in accordance with the provisions of this Agreement.

16. If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

17. The schedules attached hereto are incorporated in and form part of this Agreement.

18. If this Agreement is terminated for any reason, paragraphs 6, 7 and 8 shall continue to apply notwithstanding such termination.

19. This Licence, including all rights, privileges and benefits wherein contained shall extend to, be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators and assigns.

20. The Licensee shall not assign, sub-license or transfer the Licence or any interest(s) in this Licence without the prior consent of the Licensor.

21. The Licensee shall not file, register, suffer or permit to be filed or registered any instrument claiming an estate, interest, property right or lien against the property of the Licensor in any real or personal property registry under or by virtue of the Licensee's use of the Licensed Premises.

IN WITNESS WHEREOF the parties have hereunto executed this Agreement on the date and year herein provided.

Recommended for Execution
In Accordance with By-law
No. 62-13

Commissioner of Environment
& Infrastructure Services

**THE CORPORATION OF THE TOWN
OF RICHMOND HILL**

Mayor

Clerk

We have authority to bind the corporation.

c/s

) **TORONTO AND REGION CONSERVATION**
) **AUTHORITY**

) _____
) Name:

) Title: c/s

) _____
) Name:

) Title:

) We have authority to bind the Corporation.

SCHEDULE "A"

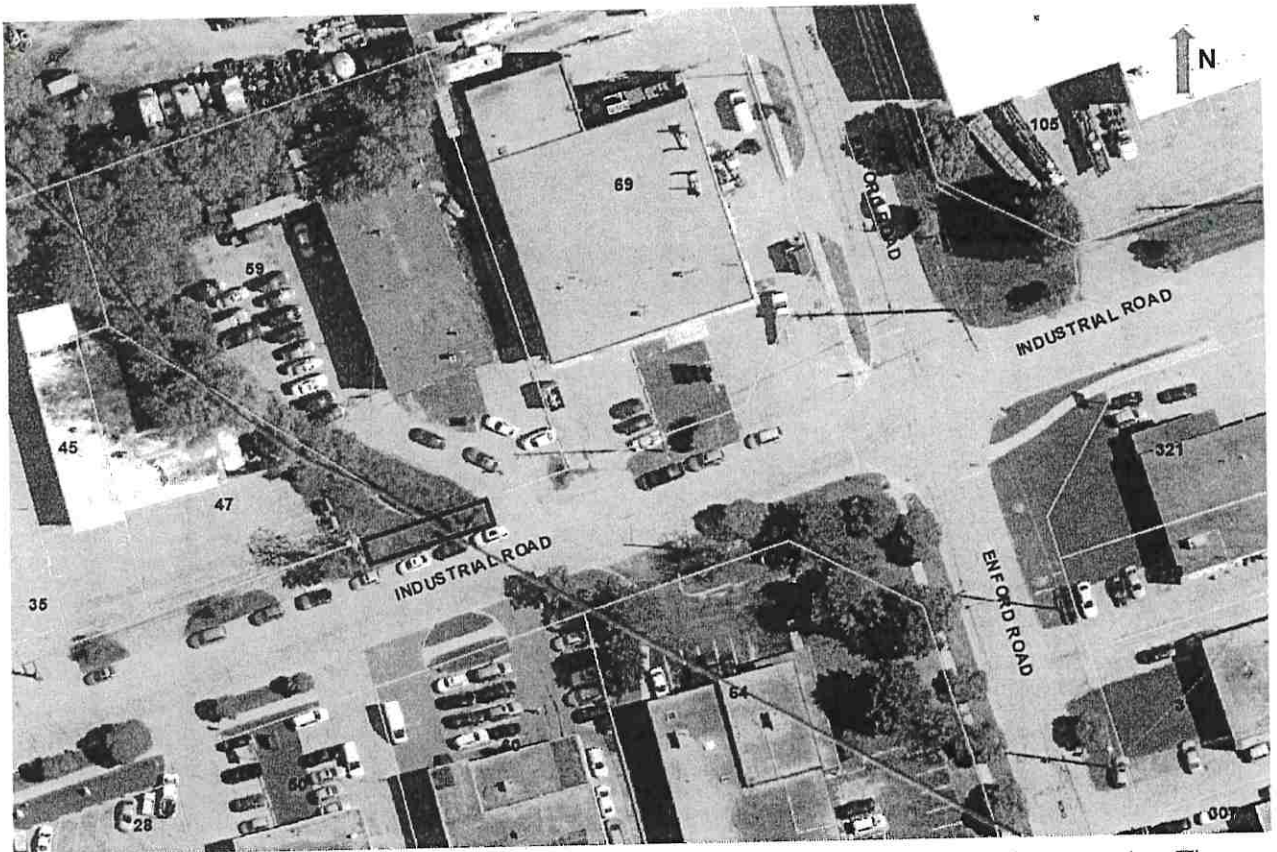


Figure 1 - Proposed real-time stream gauge location is highlighted with a red rectangle. The proposed area is Town land that abuts the south side of properties known as 47 and 59 Industrial Road.

SCHEDULE "B"



Figure 2 - Example of real-time stream gauge installation