

**THE CORPORATION OF THE
MUNICIPALITY OF TEMAGAMI**

BY-LAW NO. 14-1178

**Being a by-law to authorize the execution of an Agency Appointment Agreement with
Local Authority Services (LAS) for the LAS Electricity Procurement Program.**

WHEREAS Section 8(1) of the Municipal Act, 2001, S.O., 2001, c.25, as amended (the Act) confers broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues.

AND WHEREAS under Section 10(2) of the Act, a municipality may pass by-laws respecting the financial management of the municipality;

AND WHEREAS under Section 9 of the Act, 2001 a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other act;

AND WHEREAS on the 13th day of March 2014, the Council of the Corporation of the Municipality of Temagami adopted the recommendation of Report 2014-025 to enter into an Agency Appointment Agreement with Local Authority Services (LAS) for the LAS Electricity Procurement Program, for an initial period of two (2) years commencing on the date of the execution of the Agreement;

NOW THEREFORE the Council of the Corporation of the Municipality of Temagami hereby enacts as follows:

1. That the Mayor and Clerk are hereby authorized and directed to execute the agreement attached hereto as Schedule "A" and forming part of this by-law.
2. That the Clerk of the Municipality of Temagami is hereby authorized to make minor modifications or corrections of a grammatical or typographical nature to the by-law and schedule, after the passage of this by-law, where such modifications or corrections do not alter the intent of the by-law.
3. That this bylaw shall come into force and take effect upon the final passing thereof.

TAKEN AS READ A FIRST time on this 13th day of March 2014;

READ A SECOND AND THIRD time and finally passed this 13th day of March 2014.

Mayor

Clerk

This Electricity Agency Appointment and Retainer Agreement (“**Agreement**”) is made and entered into as of this __ day of _____, 20__.

BETWEEN:

Local Authority Services (“LAS”)

-AND-

The Corporation of the Municipality of Temagami (“Member”)

Each of the foregoing entities being referred to individually as “**Party**” or collectively as “**Parties**”.

WHEREAS the Member wishes to retain LAS on an exclusive basis to provide professional services regarding advice on price hedging options for electricity and to act as its agent in taking certain actions related to such price hedging activity as set forth herein;

AND WHEREAS the Member acknowledges that the price hedging options may include but are not limited to (i) entering into financial agreements and transactions providing a fixed contract price for a notional quantity of electricity without the physical delivery of electricity and/or (ii) entering into agreements pursuant to which the Member is billed the Hourly Ontario Electricity Price (“**HOEP**”) for all or part of its electricity needs and/or (iii) entering into agreements pursuant to which a retailer arranges for its electricity needs and the Member is billed a fixed price for all or part its electricity needs and HOEP for a portion of its electricity needs (all of which agreements or transactions referred to as “**Financial Agreements**”);

AND WHEREAS the Member wishes to enter into Financial Agreements to minimize the cost or financial risk associated with the procurement of electricity;

AND WHEREAS the Member has passed the necessary by-laws or resolutions to permit the Member to enter into Financial Agreements and transactions thereunder;

AND WHEREAS the Member has adopted a statement of policies and goals relating to the use of financial agreements to address commodity pricing and costs and has passed the necessary by-laws or resolutions authorizing LAS to act as its agent;

AND WHEREAS the Member has provided LAS with copies of the aforementioned policies, goals, bylaws or resolutions;

NOW THEREFORE THE PARTIES agree as follows:

1. **APPOINTMENT AND AUTHORIZATION OF LAS**

1.1 The Member appoints LAS as its exclusive agent in respect of all matters specified in this Agreement including the solicitation and analysis of offers, negotiating and execution of Financial Agreements and the management and administration associated with such Financial Agreements.

1.2 The Member acknowledges and agrees that LAS, as its exclusive agent has full and complete authorization and discretion to take the following actions on behalf of the Member:

- (a) access any and all information relating to the Member which is in the possession and control of the distribution utility which relates to the supply and delivery of electricity at any service address of the Member;
- (b) negotiate on behalf of the Member Financial Agreements including the specific terms and conditions contained therein, and execute the same together with other related agreements and documents reasonably requested by the counterparty to the Financial Agreements, on the Member's behalf;
- (c) disclose to any third party any information of the Member which is necessary to disclose for the purposes of this Agreement or any Financial Agreement or for the purpose of billing, settlement or accounts and administrative matters or for any other purpose relating to the Financial Agreements;
- (d) as agent for the Member enter into transactions under the Financial Agreements in the name of the Member, and to execute on behalf of the Member confirmations evidencing such transactions;
- (e) enrol, or appoint another party as the Member's retailer to enroll, the Member's electricity account(s) with the Local Distribution Company ("LDC") to ensure billing of the account(s);
- (f) carry out or direct the Member to carry out any ongoing responsibilities of the Member specified in any Financial Agreements or exercise any rights as required to implement said Financial Agreements;
- (g) terminate any of the Financial Agreements including any or all of the transactions under the Financial Agreements or any related agreements entered into with the counterparty to the Financial Agreements, on the Member's behalf;
- (h) act as retailer for the Member or in the event that LAS elects not to act as the Member's retailer to contract with and otherwise appoint on the Member's behalf any third party licensed to act as retailer in the Province of Ontario as selected by LAS in its sole discretion for the purpose of acting as the Member's retailer;
- (i) terminate any contract with or any appointment of any third party appointed to act as the Member's retailer;

- (j) contract with and otherwise appoint any third party selected by LAS in its sole discretion for the purposes of carrying out any responsibilities of LAS contained in this Agreement (any such appointee, consultant, service provider or delegate shall be engaged on terms satisfactory to LAS); and
- (k) carry out any duties or responsibilities and take any actions on the Member's behalf not otherwise specified herein that are incidental or related to carrying out its role as agent herein.

2. **LAS OBLIGATIONS**

2.1 LAS will:

- (a) solicit and analyze offers, negotiate and where appropriate enter into Financial Agreements in the name of the Member as agent for the Member;
- (b) monitor the regulatory developments concerning electricity and where appropriate provide recommendations to the Members on Financial Agreements;
- (c) continuously search for and solicit Financial Agreements on the Member's behalf;
- (d) account to the Member for all amounts paid to or to be paid by the Member under the Financial Agreements or this Agreement;
- (e) receive information from LDC(s), settle billing amounts, receive payments due to or from the Member, and pay Financial Agreement counterparties;
- (f) notify the Member promptly of any amounts due from the Member in excess of the amounts paid by the Member to the applicable LDC(s) on account of the Financial Agreements; and
- (g) take such other action as the LAS deems appropriate in the exercise of its authority and performance of its obligations under this Agreement.

3. **MEMBER UNDERTAKINGS**

3.1 The Member will:

- (a) remain liable as principal for all obligations incurred under or relating to the Member's Financial Agreements whether arising out of actions taken by LAS or the Member;
- (b) provide all necessary accurate data to enable LAS to solicit bids, negotiate and manage new Financial Agreements prudently and as LAS believes to be in the Member's best interest;

- (c) forward to LAS all notices or other communication received by the Member relating to the Financial Agreements or services provided under this Agreement by LAS;
- (d) provide credit and financial information and collateral or performance assurances if required under any Financial Agreement or this Agreement;
- (e) keep confidential the terms of this Agreement and any of the advice, details or arrangements provided to it by LAS or any of its third party providers;
- (f) inform LAS of any statement of policies and goals relating to the use of Financial Agreements and any amendments thereto;
- (g) if requested by LAS, provide prudential support to LAS, in order to permit: (i) LAS to enter into a service agreement with the member's distributor(s); (ii) LAS to satisfy any prudential support required by the distributor under such service agreement; and
- (h) execute any such documentation as may be deemed necessary by LAS to permit LAS to undertake any of the functions specified under this Agreement including the Notice of Appointment of Agent as set forth in Appendix A to this Agreement.

3.2 The Member acknowledges that bids may be solicited by LAS and transactions under the Financial Agreements may be negotiated on behalf of a number of members. The Member further acknowledges and agrees that LAS may determine in its sole discretion whether the Member participates in any particular transaction under its Financial Agreement.

3.3 The Member acknowledges that the fixed price for any transaction under its Financial Agreements could at any time be below, above or equal to the price charged by the Member's LDC(s) or HOEP. The Member also acknowledges that the Financial Agreements will contain provisions which may result in the Member owing a termination payment following default under the Financial Agreements even though the member is not the defaulting party.

3.4 The Member acknowledges that LAS or a retailer appointed by LAS may charge and the Member agrees to pay a finance charge for each megawatt hour supplied provided that such charge reasonably represents the cost of LAS and/or its retailer (including specified affiliates) providing collateral or performance assurance under hedges or financial agreements with third party suppliers related to the Financial Agreements.

4. **LAS FEES**

4.1 The Member agrees to pay the fees set forth in Appendix B to this Agreement to LAS. The payment of these fees to LAS shall cover the costs of managing and administering the LAS electricity program on behalf of the Member including the costs of billing and settlement of accounts and the cost of any third party engaged by LAS to assist in

providing services under this Agreement or under the program. The Member acknowledges that these fees may be included on the Members bill from the distributor or billed directly to the Member by the retailer.

- 4.2 The Member acknowledges that a retailer appointed by LAS under Section 1.2 (j), may charge the Member a finance charge as set forth in Appendix B to this Agreement, related to such retailer's obligation to provide credit assurances to a third party with which retailer has entered into a financial agreement for the benefit of the Member.

5. **TERM**

- 5.1 The term of this Agreement shall commence on the date of execution and shall remain in effect for an initial period of two (2) years and thereafter shall automatically renew from year to year unless and until terminated by either Party upon one hundred and eighty (180) days prior written notice; provided, however, that this Agreement and any other documents executed and delivered hereunder shall remain in effect until the last transaction entered into under any of the Financial Agreements expires. The obligation to make payment under Section 4 and Appendix B, and the liability and indemnification provisions shall survive the termination of this Agreement.

6. **LIABILITY AND INDEMNIFICATION**

- 6.1 While LAS takes proactive measures for the protection of the Member's interests, LAS cannot provide unconditional protection from the occurrence of unanticipated and uncontrollable events resulting in adverse financial consequences for the Member. LAS does warrant that the services provided by LAS under this Agreement will be performed in a professional manner. The Member agrees that if LAS breaches this warranty in performing services provided under this Agreement, the sole and complete liability of LAS for such breach will be limited to the return of the fees paid by the Member for services under this Agreement.
- 6.2 LAS liability under or for breach of this Agreement shall not exceed the amount of fees paid by the Member under this Agreement. In no event shall LAS be liable to the Member for incidental, indirect, special, punitive, exemplary or consequential damages howsoever caused, whether for breach of warranty, in tort, for contract or otherwise even if LAS has been advised of the possibility of such damages.
- 6.3 The Member hereby indemnifies LAS, its affiliates, its respective officers, directors, energy committee members, employees, agents, sub-agents, contractors, and consultants and holds them harmless from and against all losses, costs, liabilities, damages and expenses (including without limitation reasonable legal fees) it may incur as a result of LAS acting as the Member's agent as provided herein and the Member hereby agrees that it is liable for all obligations which LAS enters into on the Member's behalf.

7. **REPRESENTATIONS AND WARRANTIES**

- 7.1 The Member represents and warrants to LAS on an ongoing basis that:

- (a) all acts necessary to the valid execution, delivery and performance of this Agreement and the Financial Agreements, including without limitation, public notice or other required procedures have or will be taken and performed as required under the *Municipal Act, 2001*;
- (b) the authorizing by-law with respect to the Agreement and the Financial Agreements have been passed by the council of the Member in full compliance with the *Municipal Act, 2001*, the same was signed by the head of the council and the clerk and sealed with the municipal seal of the Member and no application has been made or action brought to quash, set aside or declared invalid such authorizing by-law nor has the same been in any way repealed, altered or amended and such authorizing by-law is now in full force and effect;
- (c) the aforesaid authorizing by-law and the Financial Agreements contemplated thereby do not conflict with or result in a breach or violation of any statutory provisions which apply to the Member or any agreement to which the Member is a party or under which the Member or any of its property is or may be bound, or, violate any order, award, judgment, determination, writ, injunction or decree applicable to the Member of any regulatory, administrative or other government or public body or authority, arbitrator or court;
- (d) no litigation or proceedings of any nature are now pending or threatened, attacking or in any way attempting to restrain or enjoin the Agreement or any of the Financial Agreements as authorized under the aforesaid authorizing by-law, or in any manner questioning the proceedings and authority under which any Financial Agreements will be entered into, or the capacity of the officers of the Member authorized thereunder to enter into any Financial Agreements, and no authority or proceedings for the Agreement or any Financial Agreements have been repealed, revoked or rescinded in whole or in part;
- (e) entry into and performance of this Agreement and the Financial Agreements by the Member are for a proper public purpose within the meaning of the *Municipal Act, 2001* and the regulations made thereunder;
- (f) the Member obligations to make payments hereunder are unsubordinated obligations and are not subject to any prior claim under any agreement or financial instrument to which the Member is a party;
- (g) the Member is not now subject to any restructuring order under Part V of the *Municipal Act, 2001* or other statutory authority; accordingly, no approval of the aforesaid authorizing by-law, the Agreement or the Financial Agreements is required to be given by any transition board or commission appointed in respect of the restructuring of the Member; and
- (i) to the extent that the term of any transaction entered into under a Financial Agreement exceeds the current Member council's term, before the Member

exercised any powers in respect of the transaction, the Member's treasurer calculated an updated debt limit under Ontario Regulation 403/02 and the treasurer determined that the transaction would not cause the Member to exceed its updated limit and that the approval of the Ontario Municipal Board in respect of the transaction was not required.

7.2 Each Party represents and warrants to the other on an ongoing basis that:

- (a) it has the capacity and authority to execute this Agreement and perform its obligations and has taken the necessary action to authorize the execution and performance of this Agreement and the person signing this Agreement is authorized and empowered to do so;
- (b) it has obtained or submitted any authorization or approval or notice to with any governmental authority or regulatory body that is required for the due execution, delivery and performance of this Agreement;
- (c) the execution, delivery and performance of this Agreement does not violate or conflict with any law applicable to it;
- (d) this Agreement constitutes a valid and legal binding obligations enforceable against it in accordance with its terms;

8. **MISCELLANEOUS**

8.1 This Agreement shall be governed by and construed in accordance with the laws of the province of Ontario.

8.2 This Agreement may be executed by the Parties in separate counterparts, and each executed counterpart shall have the same force and effect as the original instrument. The Parties agree to accept facsimile signatures in lieu of original signatures as evidence of the agreement of the other Party, but each Party shall deliver to the other Party an originally executed copy of this Agreement as soon as possible thereafter.

8.3 Each Party will from time to time and promptly upon request, sign and deliver all further documents including any notices of appointment of agent and take all further action as may be reasonably necessary or appropriate to give effect to the terms and intent of this Agreement and to complete the Financial Agreements contemplated by this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement by the duly authorized officers:

Local Authority Services

The Corporation of the Municipality of Temagami

Nancy Plumridge

[Name]

President

[Title]

Local Authority Services
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Appendix A

NOTICE OF APPOINTMENT OF AGENT

THIS NOTICE OF APPOINTMENT OF AGENT is made as of the _____ day of _____, 20__.

By: _____
a municipal corporation, having offices in the _____ of _____ in the Province of Ontario (hereinafter called "Customer"),

To: **All Interested Parties**
(each a "Notified Party").

1. Appointment. Customer confirms that it has entered into a contract relating to the retail sale of electricity (the "Contract") with LOCAL AUTHORITY SERVICES ("LAS"). In order to facilitate the retail sale of electricity described in the Contract, Customer gives notice to the Notified Party that it has appointed LAS as Customer's sole and exclusive electricity retailer and agent for purposes related to the supply of electricity to each "Service Address" and for matters relating to facilitation of such supply.
2. Enrollment. Customer authorizes and directs LAS to enroll Customer with any Notified Party. Customer approves of the switch from its current electricity supplier to LAS as its retailer.
3. Direction. Customer hereby requests, authorizes and directs Notified Party to release any and all information in such Distribution Co.'s possession and control relating to Customer and the supply and delivery of electricity to each Service Address set forth below including, but not limited to, Customer usage information, site usage history reports, credit and payment history, consumption history, utility account number and account information to LAS.
4. Effective Date. The appointments and directions are effective as of the date first set above.
5. Responsibility. Customer confirms that is has the authority to enter into an agreement for the supply of electricity to each Service Address and to appoint an agent in connection thereof.

The Corporation of the Municipality of Temagami

By: _____
Name:
Title:

Appendix B Fees

In accordance with Section 4.1, the Member agrees to pay LAS the following fees:

- (a) a fee of 0.1 cents per kilowatt-hour (kWh) for the notional quantity of electricity transacted under the Financial Agreements;
- (b) a fee of 0.05 cents per kilowatt-hour (kWh) for the billing and settlement services;
- (c) a fee of \$6 per month per account for all accounts billed on the spot market; and
- (d) such other fees as may be agreed upon between the retailer and/or LAS as consideration for the retailer acting as the Member's retailer.

In accordance with Section 4.2, the Member also acknowledges that LAS may hire a third party to act as retailer for Member, and that such retailer may hedge its obligations under the Financial Agreements with the Member by contracting with affiliates or third party suppliers. Further, Member acknowledges that if such retailer enters into hedges with third party suppliers related to the Financial Agreements, and such hedges require the retailer or its affiliates to provide performance assurances to the third party supplier, then the retailer may charge Member a finance fee for each megawatt hour supplied to Member to compensate retailer for the cost of providing such performance assurance, and such finance fee shall be billed under the Financial Agreement with the Member, and included on such invoice thereunder. Such finance fee shall be calculated as follows: $\text{Finance Fee/MWh} = (A \times B) / C$. Where, A = a per annum rate equal to (i) the sum of (a) 30 day LIBOR, determined by retailer, plus (b) twenty seven (27) basis points, (ii) divided by 12; B = the Aggregate Exposure (as defined below); and C = the total number of MWh being supplied by retailer to all participants in the LAS Program as of the date of determination. Member acknowledges that "C" may be equal to or greater than the number of MWh in the hedge transaction requiring credit support from retailer. For the purposes of this Section 3.4, "Aggregate Exposure" means the total of all Supplier Exposures. For the purposes of this Section 3.4, "Supplier Exposure" means, for each Supplier, the lesser of (i) the total mark-to-market exposure, if any, that retailer or its affiliates has with a Supplier who has entered into a hedge transaction with retailer, provided that if the amount is negative, then such amount shall be \$0, and (ii) the total mark-to-market exposure, if any, that retailer or its affiliates has with a Supplier under all hedge transactions with such Supplier that are associated with an outstanding transaction(s) between a Member and retailer, provided that if the amount is negative, then such amount shall be \$0.

Accepted and agreed to this ___ day of _____, 20__ by:

Local Authority Services

**The Corporation of the Municipality of
Temagami**

Nancy Plumridge

[Name]

President

[Title]

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