

# **THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI**

**BY-LAW NO. 05-592**

---

**Being a by-law to authorize Mayor and Chief Administrative Officer to affix their signature on a partnership agreement with the Ministry of Natural Resources to complete the transfer of the Rabbit Lake Access Point located in the Township of Askin.**

---

WHEREAS under Section 8 of the Municipal Act, 2001, S.O., 2001, c.25, as amended, 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 under section 9. (1) (a) and (b) of the Municipal Act, 2001, S.O., 2001, c.25, as amended, Section 8 shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate and to enhance their ability to respond to municipal issues;


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

1. That the Mayor and the Chief Administrative Officer are hereby authorized and directed to execute the agreement attached hereto as Schedule "A" to this bylaw.

BE TAKEN AS READ A FIRST time on this 27<sup>th</sup> day of January, 2005.

READ A SECOND AND THIRD time and finally passed this 27<sup>th</sup> day of January, 2005.

  
MAYOR

  
CAO

# MEMORANDUM OF UNDERSTANDING

Agreement made in triplicate this 17 day / of 2005.

## BETWEEN:

**HER MAJESTY THE QUEEN** in right of Ontario, as represented by the Minister of Natural Resources, hereinafter referred to as the "Crown"

-and -

**The Municipality of Temagami**  
hereinafter referred to as the "Partner"

WHEREAS the Crown and the Partner are committed to work in partnership to complete the transfer of the Rabbit Lake Access Point located in the Township of Askin, hereinafter referred to as the "Project";

AND WHEREAS the Crown and the Partner agree to complete the Project as outlined in Schedule "A";

NOW THEREFORE the Crown and the Partner agree as follows:

## 1. INTERPRETATION

It is understood that the use of the term "partner" is not intended and does not create a partnership at law between the parties.

## 2. TERM

This Agreement shall commence on the 17 day of June, 2005, and shall be completed by September 30, 2005.

## 3. DESIGNATED REPRESENTATIVES

- i) The Partner agrees that the Crown, for the purposes of this Agreement, may act through any individual designated by the Crown. -
- ii) For the purposes of this Agreement, the designated representative for the Crown is:

*Don Farintosh* \* ~~Rick Calhoun~~ \* **A/Temagami Area Supervisor**  
**Ministry of Natural Resources**  
**3301 Trout Lake Road**  
**North Bay, ON P1A4L7**  
**705-475-5516**

For the Partner is: **Robert Small, CAO**  
**The Municipality of Temagami**  
**P.O. Box 220**  
**Temagami, ON P0H2H0**  
**705-569-3421**

- iii) Both the Crown and the Partner agree that they may designate a different representative by providing notice in writing.

## 4. CROWN OBLIGATIONS

- i) The Crown agrees to provide a transfer payment of \$ 10,000.00 to the Partner toward completion of the tasks outlined in Schedule "A" upon execution of this Agreement
- ii) The Crown agrees to provide any technical advice or guidance that may be requested by the Partner.

## **5. PARTNER OBLIGATIONS**

- i) The Partner agrees to pay any costs beyond the Crown's contribution of \$10,000.00 that may be required to complete the Project as outlined in this Agreement.
- ii) The Partner agrees to administer all aspects of the Project.
- iii) The Partner shall perform the work and services as outlined in this Agreement with due diligence and care and in keeping with the expertise expected from it and in a manner acceptable to the Crown.
- iv) The Partner agrees to administer the funds and use fair purchasing practices in the acquisition of supplies and services associated with this Agreement.
- v) The Partner will report to the Crown's designated representative on the progress of the Project under this Agreement upon request by the representative and at the conclusion of the project. These reports will include a detailed account of expenditures and a summary of activities and achievements of this Project.

## **6. AUDIT**

The Partner shall prepare and maintain books and records of accounts, including all financial expenditures, respecting its obligations under this Agreement. Upon reasonable demand the Partner shall permit the Crown or any person designated by the Crown, to examine, audit and copy any invoices, accounts, receipts or other records or materials relating to the Partner's obligations under this Agreement or to the provisions of the payment. This provision shall survive for a period of three years after expiration or termination of this Agreement. The Partner's books may be kept by an independent chartered accountant.

## **7. TERMINATION**

- i) If the Partner does not perform its obligations as required by this Agreement, the Crown shall notify the Partner, in writing, of the deficiency with particulars thereof and the Partner shall within 25 days of receipt of notice;
  - a) rectify the deficiency; or
  - b) meet with the Crown or a designate, in order to agree to the appropriate remedial action.
- ii) If the deficiency is not rectified or appropriate remedial action is not taken within a five day period after the meeting noted in clause 7.i) b), the Crown may demand repayment of all or part of the money disbursed under this Agreement and that money shall forthwith become due and payable.

## **8. WAIVER OF TERM**

The failure of the Crown to insist in one or more instances upon the performance by the Partner of any of the terms or conditions of this Agreement, shall not be construed as a waiver of the right of the Crown to require future performance of any such terms or conditions and the obligations of the Partner with respect to such future performance shall continue in full force and effect. A waiver is binding on the Crown only if it is in writing.

## **9. ASSIGNMENT**

The Partner agrees that this Agreement, or any part thereof, shall not be assigned or subcontracted without the prior written consent of the Crown, which approval may be withheld by the Crown in its sole discretion.

## **10. INSURANCE AND INDEMNITY**

- i) During the entire term of this Agreement, the Partner agrees to obtain and keep in force a general public liability insurance policy in at least the amount of one million dollars (\$1,000,000.00) of lawful money of Canada, that protects the Partner and the employees of the

Partner from all claims, demands, actions, causes of action that may be taken or made against them or any of them for any loss, damage or injury, including death, of any nature or kind whatsoever that may arise through any act or omission or both including negligent acts or omissions of the Partner or any employee or employees of the Partner or any of them.

- ii) The Partner agrees to protect, indemnify, keep indemnified and save harmless the Crown and Her officers, servants and agents from and against all claims, demands, costs, actions, causes of action, expenses, legal fees whatsoever which may be taken or made against them or any of them incurred or become payable by them or any of them for any loss, damage or injury, including death, of any nature or kind whatsoever arising out of or in consequence of any act, neglect or omission of the Partner or any employee(s) or subcontractors of the Partner in connection with the performance of this Agreement.

#### **11. OCCUPATIONAL HAZARDS**

- i) The Partner shall take special note of inherent occupational hazards, if any. The Partner shall be knowledgeable of and abide by, the provisions of all legislative enactment, by-laws and regulations in regard to health and safety in the Province of Ontario, as well as and without limiting the generality of the foregoing, the Partner shall specifically ensure that the Partner is knowledgeable of and performs all obligations imposed by the Occupational Health and Safety Act of Ontario.
- ii) The Partner shall at all times have available a competent supervisor who is authorized to act on the Partner's behalf, and who is to ensure that the work and services are properly and safely carried out.

#### **12. INDEPENDENT CONTRACTOR**

The Partner agrees to be an independent Contractor for all intents and purposes and that the employees of sub-contractors of the Partner shall not be or be deemed to be employees of the Crown.

#### **13. COMPLY WITH THE LAWS**

The Partner and the Partner's employees and representatives, if any, shall at all times comply with any and all applicable federal, provincial and municipal laws, ordinances, statutes, rules, regulations and orders, and all by-laws of all relevant local authorities.

#### **14. CONFLICT OF INTEREST**

- i) The Partner, any of the sub-contractors and any of their respective advisors, partners, directors, officers, employees, agents and volunteers shall not engage in any activity or provide any services to the Crown where such activity or the provision of such services, creates a conflict of interest (actually or potentially in the sole opinion of the Crown) with provision of services pursuant to the Agreement. The Partner acknowledges and agrees that it shall be a conflict of interest for it to use confidential information of the Crown relevant to the services where the Crown has not specifically authorized such use.
- ii) The Partner shall disclose to the Crown without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest.
- iii) A breach of this Section by the Partner shall entitle the Crown to terminate the Agreement, in addition to any other remedies that the Crown has in the Agreement, in law or equity.

#### **15. GOODS & SERVICES TAX**

The Crown certifies that the supplies/equipment/services purchased hereby are solely for the use of the Crown and therefore not subject to the Goods and Services Tax.

## 16. ENTIRE AGREEMENT

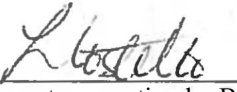
The parties hereto agree that this Agreement embodies the entire Agreement between the parties and the Partner represents that in entering into this Agreement, the Partner does not rely upon any previous oral or implied representation, inducement or understanding of any kind or nature.

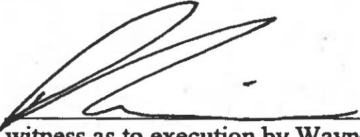
## 17. SCHEDULES

The Crown and the Partner agree that the provisions of Schedule "A" to this Agreement form a part of this Agreement as if fully incorporated herein.

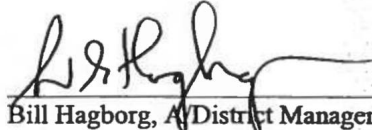
IN WITNESS WHEREOF the parties hereto have executed this Agreement

SIGNED, SEALED AND DELIVERED )  
in the presence of )

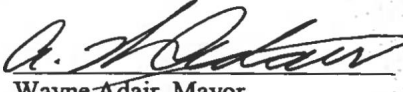
  
witness as to execution by Bill Hagborg )

  
witness as to execution by Wayne Adair )

HER MAJESTY THE QUEEN  
in right of Ontario

  
**Bill Hagborg, District Manager**  
North Bay District  
as authorized by the Minister of Natural  
Resources for the Province of Ontario

The Municipality of Temagami

  
**Wayne Adair, Mayor**  
The Municipality of Temagami

## **SCHEDULE "A"**

to the Agreement between the Crown in right of Ontario and The Municipality of Temagami.

The Crown and the Partner agree to work in partnership on the following project:

Completion of the transfer of the access point to the Partner and to provide appropriate signage and docking facilities pending the approval of a Resource Stewardship and Facility Development Environmental Assessment for the disposition of the access point from the Crown to the Municipality.

Specifically the Partner shall complete the following tasks within the specified timeframe;

1. Removal of unauthorized docks on Crown land at the access point
2. Construction of 3 docks
3. Repair to retaining wall
4. Road repair and maintenance on the road from the Rabbit Lake Road to the access point
5. Erecting signage at the access point
6. Improvements to the parking area

Completion Date: Sept 30, 2005

Following the installation and the repairs to the infrastructure, the Partner agrees to obtain a Land Use Permit for the site, subject to a Resource Stewardship and Facility Development Environmental Assessment and to maintain the access point for the benefit of all recreational users.

In addition the Partner agrees to:

1. Administer all aspects of the work
2. Cover any additional contract expenses that may be necessary to complete the Project as described above beyond the \$10,000.00 contribution of the Crown.