

THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI

BY-LAW NO. 05-595

Being a by-law to authorize Mayor to affix his signature on a Memorandum of Understanding with the Ministry of Natural Resources for the purpose of a partnership to undertake a pilot project in support of MNR's Temagami Integrated Planning project.

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 is 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 10th day of February, 2005.

READ A SECOND AND THIRD time and finally passed this 10th day of February, 2005.


MAYOR


CAO

MEMORANDUM OF UNDERSTANDING

Agreement made in triplicate thind daylay of *February* 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 d[^]Temagami
hereinafter referred to as the "Partner"

WHEREAS the Crown and the Partner are committed to work in partnership to undertake a pilot project in support of MNR's Temagami Integrated Planning (TIP) project, 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 *2nd* day of *February*, 2005, and shall be completed by November 1, 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:

**Rick Calhoun, A/Temagami Area Supervisor
Ministry of Natural Resources
3301 Trout Lake Road
North Bay, ON P1B 4L7
705-475-5516**

iii) For the Partner is:

**Robert Small, CAO
The Municipality of Temagami
P.O. Box 220
Temagami, ON POH 2H0
705-569-3421**

iv) 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 \$ 30,000.00 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 \$ 30,000.00 that maybe 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.
- ih) 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.

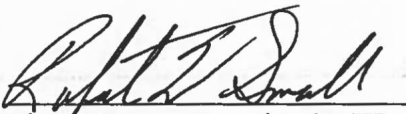
17. SCHEDULES

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.

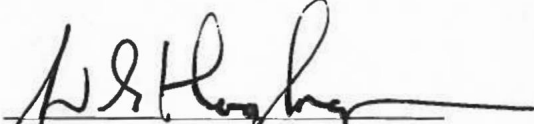
IN WITNESS WHEREOF the parties hereto have executed this Agreement

SIGNED, SEALED AND DELIVERED)
in the presence of)

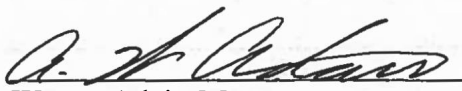

witness as to execution by Bill Hagborg)


witness as to execution by Wayne Adair)

HER MAJESTY THE QUEEN
in right of Ontario


Bill Hagborg, A/District Manager
North Bay District 1
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:

- Movement toward or contribution to implementation of the Temagami Integrated Planning project, specifically:
 - o Acquire building materials to support the construction of **up to** 100 pit privy boxes for use on campsites across the Temagami land base.
 - o To construct and install the above noted pit privy boxes in full accordance with the standards established and used by Ontario Parks in such construction.
 - o To conduct campsite cleaning and portage maintenance (including cutting and removal of blowdown and development of corduroy pathways where required) throughout the unregulated Crown land base in the Temagami management area.
 - o To hire local crews to undertake the above noted works.
 - o To work with MNR and Ontario Parks to develop signage plans and to produce, acquire and install agreed upon signage for use on campsites and portages on the unregulated Crown land base.
 - o To provide educational opportunities for local youth with respect to back-country tourism and maintenance.

Completion Date: November 1, 2005.

In addition the Partner agrees to:

1. Administer all aspects of the work
2. Consult with the Ministry of Natural Resources, Temagami Area Supervisor and the Temagami Canoeing and Outfitting Alliance to establish acceptable methods and standards for campsite and canoe/portage route maintenance.
3. In consultation with the Ministry of Natural Resources, Temagami Area Supervisor and the Temagami Canoeing and Outfitting Alliance, identify and prioritize campsites and canoe/portage routes requiring maintenance.
4. Provide necessary training, equipment and supervision of crews.
5. Cover any additional contract expenses that may be necessary to complete the Project as described above beyond the \$30,000.00 contribution of the Crown.