

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

**BY-LAW NO. 08-798**

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**Being a by-law to authorize the Mayor and Chief Administrative Officer/Clerk to execute an Agreement with the Ministry of Natural Resources for 2008 Bear Wise Funding.**

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**AND WHEREAS** under Section 8. (1) (a) and (b) of the Municipal Act, 2001, S.O., 2001, c.25, as amended, the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer 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.


**WHEREAS** under Section 9 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;

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

1. That the Chief Administrative Officer is hereby authorized and directed to execute the agreement attached hereto as Schedule "A" to this bylaw.
2. This bylaw shall come into force and take effect upon final passing thereof.

BE TAKEN AS READ A FIRST time on this 24<sup>th</sup> day of July, 2008.

READ A SECOND AND THIRD time and finally passed this 24<sup>th</sup> day of July, 2008.

  
\_\_\_\_\_  
MAYOR

  
\_\_\_\_\_  
CAO/CLERK

## Form 5 2008 Community Funding Agreement

This agreement is made with effect as of Thursday, July 10, 2008

BETWEEN:

**HER MAJESTY THE QUEEN** in right of Ontario as represented by the Minister of Natural Resources ("the Crown")

AND

**Corporation of the Town of Temagami ("Recipient")**

BACKGROUND:

- A. The Province of Ontario has established the BEAR WISE Community Funding Program led by the Ministry of Natural Resources, to facilitate the awareness and prevention of human-bear conflicts.
- B. Recipient proposes to carry out a BEAR WISE awareness and/or prevention project for which funding is sought from the Crown.
- C. The Crown wishes to provide financial assistance toward the costs of the project.

AGREEMENT:

Now therefore, in consideration of the mutual promises and agreements contained in this agreement and other good and valuable consideration, the parties agree as follows:

### 1 Interpretation

In this agreement,

"agreement" means this main body of this agreement and the Schedules listed in subsection 6.1 below, which are incorporated by reference in and form part of this agreement;

"conditional contribution" means the amount of money to be paid by the Crown to the Recipient, subject to the terms and conditions of this agreement;

"deliverables" means the project deliverables listed in Schedule B attached hereto;

"eligible project costs" means eligible costs incurred by Recipient in carrying out the project subject to the limits for each category as set out in Parts 1, 2 and 3 of Schedule C attached hereto, and excludes those costs listed in subsection 1.7 of Schedule A;

“expenditures” means amounts paid for actual expenses and amounts applied towards in-kind costs, estimates of which are set out in Schedule C;

“project” means the work to be performed in accordance with the provisions of this agreement, including production or performance of the deliverables on or before the target dates set out in Schedule B attached hereto;

“Schedule” means a schedule attached to and forming part of this agreement;

“Term” means the term of this agreement as defined in section 2 below.

## **2 Term**

2.1 The Term of this agreement will start on Thursday, July 10, 2008 and end on October 31, 2008.

## **3 Financial matters**

3.1 Subject to the provisions of this agreement, the Crown will contribute toward eligible project costs an aggregate amount equal to:

(i) \$20,000.00 (the funding amount approved by the Crown); or

(ii) the total cash amount actually spent on eligible project costs,

whichever is least.

3.2 Subject to adjustment in accordance with the provisions of this agreement, the Crown will pay the “conditional contribution” shown under the heading “Amount” of Part B of Parts 1, 2 and / or 3 of Schedule C to the Recipient upon submission of a final project report and copies of all pertinent invoices marked and signed as paid by the vendor (subsections 2.3 & 2.4, Schedule A).

3.3 Submission of final reports shall be no later than March 1<sup>st</sup> and invoices no later than by February 1<sup>st</sup>, or earlier as deemed by the Crown to be more appropriate for the approved project. The date shall be specified by the Crown in Schedule E of this Agreement.

#### 4 Terms and Conditions

- 4.1 Recipient shall produce or perform the deliverables substantially in accordance with the work plan set out in Schedule B.
- 4.2 Recipient shall comply with the standard terms and conditions set out in Schedule A and with any additional terms and conditions set out in subsection 4.3 below.
- 4.3 Additional terms and conditions: no additional conditions

#### 5 Contacts

- 5.1 Notices and any documents to be provided under this agreement shall be addressed as follows:

The Crown: Micheline Finley

Bear Management Technician

3301 Trout Lake road

North Bay, ON

P1A4L7

Tel: (705) 475-5543

Fax: (705) 475-5500

E-Mail: [micheline.finley@ontario.ca](mailto:micheline.finley@ontario.ca)

Recipient: Deb Larochelle

Corporation of the Municipality of Temagami

PO Box 220

Temagami, ON

P0H 2H0

Tel: (705) 569-3272

Fax: (705) 569-4151

E-mail: [publicworks@temagami.ca](mailto:publicworks@temagami.ca)

**6 Documents included in this agreement**

6.1 The following document(s) form part of this agreement and are incorporated in it by reference:

- (i) Schedule A (standard terms and conditions)
- (ii) Schedule B (project deliverables)
- (iii) Schedule C (project financing)
- (iv) Schedule D (request for payment)
- (v) Schedule E (final report - template)

The parties to this agreement acknowledge that they have read it, understand it, and agree to be bound by it. The persons signing this agreement certify that they have authority to sign and to bind the entity on behalf of which they are signing.

Corporation of the Municipality of Temagami

By: 

Name:

Position:

By: 

Name:

Position:

CAO/Clerk

**HER MAJESTY THE QUEEN in right of  
Ontario as represented by the Minister of  
Natural Resources**

By: 

Name: Randy Morrison

Position: Nipissing Area Supervisor

*Note: Signatories should also initial the last page of each Schedule to evidence their review of, and agreement with, its provisions.*

**SCHEDULE A**  
**STANDARD TERMS AND CONDITIONS OF CONTRIBUTION AGREEMENTS**

**1. PAYMENTS****Before disbursement**

- 1.1 Recipient must provide written evidence satisfactory to the Crown, in its sole opinion, that the additional financial assistance set out in Schedule C has been committed to the project.
- 1.2 If the Recipient is legally required to do so, it has passed a by-law or resolution authorizing its entry into this agreement.

**Basis of contribution**

- 1.3 The Crown makes the contribution on the basis of reimbursement for eligible project costs incurred.
- 1.4 On expiry or termination of this agreement, the Crown may recover any excess of funds provided to Recipient and such amount is considered to be a debt to the Crown.

**Eligible project costs**

- 1.5 The Crown's contribution toward eligible project costs listed in any of Parts 1, 2 and 3 of Schedule C shall not exceed the "conditional contribution" shown under the heading "Amount" of Part B of Parts 1, 2 and / or 3 of Schedule C. In order to be payable, eligible project costs must be verified by submission of invoices marked paid by the vendor, and a final project report.
- 1.6 The Crown's decision as to whether or not a particular cost is an eligible project cost shall be final.

**Ineligible project costs**

- 1.7 The Crown will not make a contribution in respect of any of the following costs associated with this Agreement:
- - (i) costs incurred prior to the date of the notice of project approval from the Crown (Ministry of Natural Resources District Office);
  - (ii) locally produced publications, brochures, promotional items (stickers, fridge magnets, etc.);
  - (iii) purchase of trucks, or modifications to existing trucks to empty bear-resistant dumpsters;
  - (iv) costs incurred for garbage collection, or modified garbage collection;
  - (v) costs of a nature which would have been incurred by the Recipient in the normal course of business (e.g. signage, enforcement, policing);
  - (vi) costs that are not directly attributable to the implementation and successful completion of the project;
  - (vii) costs which are not, in the Crown's sole opinion, eligible project costs.

Calculating non-Crown expenditures

1.8 For purposes of calculating expenditures made by the Recipient on eligible project costs, cash expenditures will be recognized subject to the following conditions:

- (i) cash expenditures must be direct (meaning they are spent directly on goods and services consumed in the project costs, not indirect costs such as Recipient's general overhead costs);
- (ii) the Crown may require such written evidence of fair market value as it considers reasonably necessary and may exclude any amount which has not, in the Crown's sole opinion, been substantiated;
- (iii) the Crown will not contribute financially to in-kind expenditures.

Other public funding

- 1.9 Recipient shall notify the Crown within five (5) business days if any other funding relating to or in connection with the project is received from a public sector source other than as set out in Schedule C.
- 1.10 If Recipient receives funding from public sector sources in addition to the funding under this agreement, in its sole discretion the Crown may reduce the amount of the contribution by an amount equal to the other funding to ensure that there is no duplication in public sector funding.

Recipient's obligations

1.11 Recipient must:

- (i) not be in default as defined in subsection 3.2 below;
- (ii) within thirty days of receipt of the notice of project approval, provide the Crown with a list of employees, contractors or volunteers involved in the project including name, position title, company, address, contact numbers and nature of involvement;
- (iii) obtain quotes from three suppliers for any purchases over \$1,000, demonstrating that appropriate purchasing procedures have been followed. Despite this provision, the Crown may consent in writing to allow single sourcing if, in the Crown's sole discretion, details of urgency, special expertise, confidentiality, savings or other special circumstances warrant it.
- (iv) carry out the project in accordance with this agreement with due diligence and in an economical and businesslike manner.

Cost overruns

1.12 The Crown is not responsible for any cost overruns related to the project.

## 2. MONITORING AND REPORTS

### Delays

- 2.1 Recipient must notify the Crown as soon as possible if it becomes aware of actual or possible delays or inability to complete the project.

### Monitoring

- 2.2 The Crown may require Recipient to implement or amend a tracking system to measure results of the project.

### Reports

2.3 The Recipient will submit two (2) copies of a final project report satisfactory to the Crown in the form of Schedule E. The final report shall be due on or before the submission date specified in Schedule B, but not later than March 1<sup>st</sup> of the year following project approval.

### Records

- 2.4 For a period of seven (7) years after the expiry or termination of this agreement, Recipient shall maintain:
- (i) financial records and books of account respecting the project in accordance with generally accepted accounting procedures, and
  - (ii) records of the carrying out of the project.

### Requests for information

- 2.5 At the request of the Crown or the Provincial Auditor, Recipient shall supply such information in respect of the project and its results as may be required for the purpose of monitoring the project.

### Access

- 2.6 Recipient shall allow the Crown and the Provincial Auditor access to Recipient's premises and to the project site to inspect and assess the progress and results of the project and the records " required to be kept under this agreement. This provision survives the expiry or termination of this agreement.

### Audit report

- 2.7 If the Crown or the Provincial Auditor believes that there are material inaccuracies in or inconsistencies between the statements of expenditures and Recipient's financial records and books of account, the Crown or the Provincial Auditor may request, and Recipient must provide at its own expense, an audit report from a public accountant licensed under the laws of Ontario. The audit report must be satisfactory to the Crown in form and content and address:



- (i) Crown funds received to date;
- (ii) expenditures made to date;
- (iii) whether the expenditures were made in accordance with the project and this agreement, and
- (iv) other financial information pertaining to this agreement as may be reasonably specified in the request.

### 3. DEFAULT

#### Recovery of contribution

- 3.1 If Recipient is in default, in its sole discretion the Crown may recover any funds advanced or an amount equal to the advanced funds and may refrain from making further payments.

#### Occurrences of default

3.2 Recipient is in default if:

- (i) it is in default of any of the terms and conditions of this agreement or, in the sole opinion of the Crown, Recipient fails to meet a term or condition of this agreement;
- (ii) it becomes bankrupt or insolvent, or
- (iii) goes into receivership, or
- (iv) takes the benefit of any statute from time to time in force relating to bankrupt or insolvent debtors, or
- (v) makes an arrangement with any of its creditors that will have an effect on the project or Recipient's operations, or
- (vi) in the sole opinion of the Crown, Recipient faces other serious financial difficulty, or
- (vii) an order is made or resolution passed for the winding up of Recipient, or
- (viii) it is dissolved or wound-up, or
- (ix) in the sole opinion of the Crown, Recipient ceases to operate, or
- (x) it submits false or misleading information to the Crown at any time or makes a false representation in this agreement, or
- (xi) in the sole opinion of the Crown, Recipient fails to proceed diligently with the project unless the failure is due to causes beyond the control of Recipient, or
- (xii) in the sole opinion of the Crown, funds provided to Recipient are used for purposes other than expenditures on eligible project costs.

#### 4. INDEMNITY AND INSURANCE

##### Indemnity

- 4.1 During and following the Term, Recipient shall indemnify and save harmless the Crown from all costs (including without limitation legal fees and expenses), losses, damages, judgments, claims, demands, suits, actions, claims of action or other proceeding that may be taken in any manner based on, occasioned by or attributed to anything done by Recipient or its officers, directors, partners, employees, agents, (sub)contractors or volunteers, in connection with anything purported to be or required to be provided by or done by Recipient pursuant to this agreement, or any warranty or covenant made by Recipient in this agreement, or otherwise in connection with the project.

##### Insurance

- 4.2 Recipient agrees to put in effect and maintain throughout the Term, at its own cost and expense, in form and substance satisfactory to Risk Management & Insurance Services at Shared Services Bureau, Management Board Secretariat, all necessary and appropriate insurance, including but not limited to the following:
- (i) commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than \$2,000,000 per occurrence, \$2,000,000 products and completed operations aggregate. The policy is to include the following:
- The Ministry of Natural Resources (Ontario) as an additional insured
  - Contractual liability
  - Employer's liability
  - 30 days written notice of cancellation
  - tenant's legal liability (if applicable and with applicable sub-limits)
  - non-owned automobile coverage with blanket contractual coverage for hired automobiles

##### Third-party insurance

- 4.3 Recipient shall ensure that any third-party contributors and (sub)contractors retained to perform any part of the project shall have adequate insurance in place that is appropriate to the project risks and to the third party.

##### Evidence of insurance

- 4.4 Recipient shall provide to the Crown, without delay on receipt of a written request by the Crown, a valid certificate of the insurance required under this agreement and/or a certified copy of any policy of insurance required hereunder.

## 5. COMPLIANCE WITH LAWS AND WITH INSURANCE; CONFLICT OF INTEREST

### Laws

- 5.1 At all times, Recipient, its officers, directors, partners, employees, agents, subcontractors and volunteers shall comply with all applicable federal, provincial and municipal laws, ordinances, statutes, regulations, rules and orders in respect of the performance of the project and this agreement.
- 5.2 Payment by the Crown of monies that come due under this Agreement shall be subject to: (a) an appropriation to which that payment can be charged being available in the fiscal years in which the payment becomes due; or (b) the payment having been charged to an appropriation for a previous fiscal year.

### Permits

- 5.3 At its own expense, Recipient shall obtain all permits, licenses, approvals and authorizations required to perform the project and this agreement and shall comply with all federal, provincial and municipal laws, ordinances, statutes, regulations, rules and orders in respect of same.

### Insurance

- 5.4 Recipient shall comply with all provisions and requirements of any of Recipient's insurance policies applicable to the project and with all rules and regulations concerning safety and the proper conduct of work.

### Conflict of interest

- 5.5 For purposes of this agreement, a conflict of interest arises when Recipient's other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of Recipient's obligations under this agreement.
- 5.6 Recipient shall (i) avoid any conflict of interest in the performance of its obligations under this agreement, (ii) disclose without delay any actual or potential conflict of interest that arises during the performance of those obligations, and (iii) comply with any requirements prescribed by the Crown to resolve any conflict of interest. In addition to all other contractual rights or rights available at law or in equity, the Crown may, in its sole and absolute discretion, immediately terminate this agreement upon giving notice to Recipient if Recipient fails to comply with the requirements of this subsection 5.6 or if Recipient's conflict of interest cannot be resolved to the satisfaction of the Crown. This subsection 5.6 shall survive any termination or expiry of this agreement.

## 6. ACKNOWLEDGEMENTS

### Acknowledgement

- 6.1 Recipient shall acknowledge the Crown's contribution on all reports, news releases, exhibits, public statements, and publications regarding the project. This acknowledgement shall not imply endorsement by the Crown of any product or service. Recipient shall include in acknowledgements the Crown's BEAR WISE visual identifiers if reasonably practical to do so.

## 7. FREEDOM OF INFORMATION

### Legislation

- 7.1 Subject to the Ontario *Freedom of Information and Protection of Privacy Act*, the *Municipal Freedom of Information and Protection of Privacy Act* and any other applicable legislation respecting privacy and the protection of personal information, all information pertaining to the Crown's contribution and Recipient's obligations under this agreement is public information and may be released to third parties on request.

## 8. GENERAL

### Jurisdiction

- 8.1 This agreement is governed by and construed in accordance with the laws of Ontario.

### Amendment

- 8.2 This agreement may be amended only in writing, on agreement between the parties.

### Conflict

- 8.3 If there is a conflict between the main body of this agreement and any schedule, the main body of this agreement prevails.

### Entire agreement

- 8.4 This agreement forms the entire agreement between the parties with respect to the project.

### Severability

- 8.5 The invalidity or unenforceability of any provision of this agreement or any covenant in it will not have an effect on the validity or enforceability of any other provision or covenant in it and the invalid provision or covenant is deemed to be severable.

### Interpretation

- 8.6 Headings are not part of this agreement; they are included for convenience only.
- 8.7 Words importing the singular number include the plural and vice versa.

- 8.8 Words importing the masculine gender include the feminine and neuter genders and vice versa.
- 8.9 Words importing persons include individuals, sole proprietors, corporations, partnerships, trusts and unincorporated associations.

#### Notices

- 8.10 Any notices, reports, documents, correspondence under this agreement shall be in writing and given by personal delivery, prepaid registered mail, facsimile, or courier service and are deemed to have been effectively given on the date of personal delivery, facsimile or courier service or in the case of prepaid registered mail five (5) days after the date of mailing.

#### Project status

- 8.11 Recipient shall not alter the ownership, financing, location, cost, scope, content, objectives or timing of the project or permit or cause any other material change to the project, without the prior written consent of the Crown, which consent shall not be withheld unreasonably. The Crown's consent may be conditional on recovery of its contribution.

#### Assignment

- 8.12 Recipient shall not assign this agreement or any part of it, without the prior written consent of the Crown. In its sole discretion, the Crown may withhold its consent or give its consent on such terms and conditions as it requires.

#### Third parties

- 8.13 Recipient shall take all reasonable measures to ensure that its officers, directors, partners, employees, agents, contractors, subcontractors and volunteers shall be bound to observe the provisions of this agreement. In all contracts regarding the project, Recipient shall include terms and conditions similar to and not less favourable to the Crown than the terms and conditions of this agreement to the extent that they are applicable to the subject of the contract.

#### Contribution only

- 8.14 This agreement is a contract for conditional financial assistance only and nothing in it or done pursuant to it is to be construed as constituting any agency, partnership, joint venture or employment between Recipient and the Crown.

#### Waiver

- 8.15 The Crown's failure to insist in one or more instances on the performance by Recipient of any of the terms and conditions of this agreement shall not be construed as a waiver of the Crown's right to require future performance of any such terms or conditions and Recipient's obligations with respect to future performance continues in full force and effect.

Force Majeure

8.16 Neither party shall be responsible for failures in performance resulting from matters beyond the control of the party, including acts of God, riots or other civil insurrection, war, strikes and lock-outs.

Time of essence

8.17 Time is of the essence in the performance of obligations under this agreement.

Initialed:

Recipient

  
The Crown

**SCHEDULE B****2008 PROJECT DELIVERABLES AND WORK PLAN**

*[Note: include in this Schedule a list of deliverables, a list of all project participants and the work plan to complete the project]*

- Two custom-built lids for Garbage Bins at the Mine Landing
- ® Single Bag, Bear Resistant Containers for Parks and Picnic Areas
- Municipality will prepare cement platforms, install bins and provide Municipal operators and equipment.

Initialed:

\_\_\_\_\_  
Recipient

A handwritten signature in black ink, appearing to be 'J. H. H.', written over a horizontal line.

\_\_\_\_\_  
The Crown

A handwritten signature in black ink, appearing to be 'J.', written over a horizontal line.

The estimated eligible project costs are set out below:

Expense Description	Eligible Costs		Total Costs
	Cash	In kind Value	
Capital expenses:	\$0	\$0	\$0
MNR	\$0	\$0	\$0
Community	\$0	\$0	\$0
Other	\$0	\$0	\$0
Total:	\$0	\$0	\$0

The project will be financed in accordance with the following table:

Contributors	Financing Type	Amount
Corporation of the Municipality of Temagami	Cash	\$0
Corporation of the Municipality of Temagami	In Kind	\$0,
The Crown	Conditional Contribution	\$0
	TOTAL	\$0

## The Crown



**(NOTE: maximum funding limit for this sub-program is \$ 5,000)**

The estimated eligible project costs are set out below:

Expense Description	Eligible Costs		Total Costs
	Cash	In kind Value	
Capital expenses:	\$0	\$0	\$0
MNR	\$0	\$0	\$0
Community	\$0	\$0	\$0
Other	\$0	\$0	\$0
Total:	\$0	\$0	\$0

The project will be financed in accordance with the following table:

Contributors	Financing Type	Amount
Corporation of the Municipality of Temagami	Cash	\$0
Corporation of the Municipality of Temagami	In Kind	\$0
The Crown	Conditional Contribution	\$0
	TOTAL	\$0

**Initialed:**

**Recipient**

## The Crown

