

THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI

BY-LAW NO. 09-837

Being a by-law to authorize the Mayor and CAO to execute a Funding Agreement with Industry Canada for Ontario Potable Water Project Funding for the Upgrading of the Temagami North and South Water Treatment Plants.

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 Mayor 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 26th day of March 2009.

READ A SECOND AND THIRD time and finally passed this 26th day of March 2009.



M^YOR



CAO/Clerk

ONTARIO POTABLE WATER PROGRAM (OPWP)

THIS FUNDING AGREEMENT made as of the 30th day of kk Dec 4 , 2009.

BETWEEN:

HER MAJESTY IN RIGHT OF CANADA ("Canada")
represented by the Minister of Industry
(the "Minister")

- and -

The Corporation of the Municipality of Temagami
(the "Municipality")

WHEREAS:

1. The Municipality applied for and received a contribution from Canada through the Canada-Ontario Infrastructure Program (COIP), to assist in funding the installation of an option 1 potable water system (the "System"); and
2. As a result of the Walkerton, Ontario water contamination situation of 2000, the Ontario government brought into effect more stringent regulations to ensure drinking water safety which significantly increased the cost of the System; and
3. The increased cost of the System has resulted in unforeseen expenditures directly related to compliance with drinking water regulations that has and will continue to have an adverse impact on the economic development of the Municipality; and
4. Canada wishes to promote regional economic development in specific small and rural Ontario municipalities by addressing funding pressures incurred in the development of their COIP Systems to meet stringent Ontario drinking water regulations and for this reason has agreed to provide financial assistance by way of a grant through the Ontario Potable Water Program (the "Project"); and
5. The Municipality has applied for and been approved to receive a grant through the Project and the parties have entered into this Funding Agreement for the purpose of setting out the eligibility criteria for the payment of the Grant to the Municipality and the procedure by which the Grant is to be administered.

NOW THEREFORE in consideration of their respective obligations contained herein, the Parties covenant and agree as follows:

1. **Recitals**

The above recitals constitute part of this document and are true and correct.

2. **Interpretation**

2.1 Definitions

In addition to the terms defined in the recitals and elsewhere in this Agreement, a capitalized term has the meaning given to it in this Section unless the context indicates otherwise.

“Agreement” means this funding agreement and includes all schedules and any amendments hereto.

“Fiscal Year” means the period beginning April 1 of a year and ending March 31 of the following year.

“OMAFRA” means the Ontario Ministry of Agriculture, Food and Rural Affairs.

“Parties” means Canada or the Minister and the Municipality.

“Party” means Canada, the Minister or the Municipality.

2.2 Entire Agreement

This Agreement constitutes the entire agreement between the Parties pertaining to the matters contemplated hereby and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties

2.3 Governing Law

This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

2.4 Term

2.4.1 This Agreement becomes effective as of the date of execution by both Parties and shall continue in force until the earlier of:

- (a) March 31, 2011; or
- (b) 30 days after the Municipality receives payment in full of the Grant.

Unless extended or terminated by mutual consent of the Parties. All payments subsequent to March 31, 2011 must be made within the terms of the *Treasury Board Policy on Payables at Year End*.

2.4.2 Notwithstanding Section 2.4.1, the Parties' rights and obligations under Sections 4.3 (Eligibility Requirements), 4.5 (Other Government Assistance), 6 (Evaluation), 7 (Monitoring), 9 (Recovery), 10 (Remedies) and 11.13 (Indemnification) and any other Section which is required to give effect to the termination or to its consequences will survive the expiry or early termination of this Agreement.

3. Results

3.1 Expected Results of the Project

The expected outcome of the Project is to support the capacity of the Municipality to respond to economic development opportunities and challenges which contributes to the strategic outcome of Industry Canada of competitive industry and sustainable communities.

4. The Grant

4.1 The Minister acknowledges that the Municipality is eligible for a grant in the amount of \$505,084 (herein called the "Grant").

4.2 In no event shall the amount of the Grant exceed the actual total increased cost of the System as a result of the stringent regulations.

4.3 Eligibility Requirements

To maintain its eligibility to receive payment of any part of the Grant, the Municipality will be an Ontario municipality that has entered into a Canada-Ontario Infrastructure Program (COIP) contribution agreement for an option 1 potable water project, and will:

- 4.3.1 Have incurred increased costs for the System as a result of having to comply with Ontario drinking water regulations;
- 4.3.2 Have submitted the COIP project final claim and final report and all required documents related to the System confirming completion of the System and identifying the additional costs incurred by the Municipality to OMAFRA;
- 4.3.3 Have had these additional costs re-nominated by OMAFRA to the Minister for consideration of increased funding for the System;
- 4.3.4 Comply with all provisions of this Agreement; and
- 4.3.5 disburse the Grant in a manner that will further the economic development of the Municipality;

4.4 Appropriation and Funding Levels

- 4.4.1 A payment due by the Minister hereunder is conditional on a legislated appropriation for the Fiscal Year in which the payment is due;
- 4.4.2 The amount of a payment due by the Minister hereunder may be reduced in the event that the amount of the appropriation is reduced by Parliament.

4.5 Other Government Assistance

The determination of the amount of the Grant will take into consideration the total government assistance (federal, provincial and municipal) towards the total cost of the System. In no event will the total government assistance exceed 100% of the actual System costs.

The Municipality shall advise the Minister of any other government assistance that it has received or requested for the System costs and it shall notify the Minister immediately should the total assistance it receives from government (federal, provincial or municipal) organizations for the purposes of the System exceed the total cost of the System. The Minister may recover from the Municipality its proportionate share of such excess or reduce subsequent payments, if applicable. The Municipality acknowledges that failure to disclose this information to the Minister shall constitute an event of default under this Agreement pursuant to which the Minister may exercise its remedies contained in Section 10.

5. Payment of the Grant

The amount of the Grant has been determined after a review by the Minister of the COIP project final claim, the COIP project final report, the cash flow requirements of the Municipality and any other report or information required by the Minister. Payment of the Grant will be made within ninety (90) days of receipt from the Municipality of the executed Funding Agreement in accordance with Appendix B *Instalment Payments of Grants and Advance Payments of Contributions* of the Treasury Board Policy on Transfer Payments.

6. Evaluation

The Minister may, after consultation with the Municipality, choose to conduct an evaluation, by an evaluator(s) of his choosing, of the Agreement as an instrument of policy of the Government of Canada, at his own cost. The Municipality is encouraged to cooperate and provide access to the appropriate records to conduct such an evaluation. The Minister will share a copy of the resulting report with the Municipality and agrees to discuss any concerns raised in the evaluation with the Municipality.

7. Monitoring

The Municipality, when so requested by the Minister, is encouraged to provide such data, schedules, plans and reports in sufficient detail which shall enable the Minister to:

- (a) Assess the use of the Grant towards furthering the economic development of the Municipality;
- (b) Assess the compliance of documentation required under this Agreement; and
- (c) Report on the results of the grants provided by the Project.

8. Environment

The Parties acknowledge that the COIP project was subjected to environmental screening in accordance with Section 18(1) of the *Canadian Environmental Assessment Act (CEAA)*. The Municipality covenants that all necessary environmental authorizations and/or letters of advice are in place and that any environmental mitigation measures specified through such authorizations or letters of advice have been adhered to.

9. Recovery

The Minister may recover payment of all or part of the Grant made where:

- (a) The Municipality is not entitled to the Grant; or
- (b) The Municipality fails to maintain its eligibility; or
- (c) The amount of the Grant exceeds the amount to which the Municipality is entitled.

10. Remedies

In the event that the Municipality fails to comply with a material term or condition of this Agreement or fails to rectify or commence to rectify (to the satisfaction of the Minister) such non-compliance within the period of time specified by the Minister then, in addition to any other remedies available at law, the Minister may exercise the following remedies:

- (a) Suspend any obligation of the Minister to make payment of all or part of the Grant to the Municipality, including any obligation to pay any amount owing prior to the date of such suspension;
- (b) Terminate any obligation of the Minister to make payment of all or part of the Grant, including any obligation to pay any amount owing prior to the date of such termination;
- (c) Require the Municipality to repay all or part of the Grant previously paid to it;
- (d) Require the Municipality to pay any amounts due under this Agreement together with interest from the date of demand in accordance with the *Interest and Administrative Charges Regulations*;
- (e) Require that the Municipality rectify such default within a specified period of time and inform the Minister that it has done so; and
- (f) Terminate this Agreement.

11. Miscellaneous

11.1 Binding Obligations

Each Party declares to the other that the signing and execution of this Agreement was duly and validly authorized, and that each has incurred a legal and valid obligation in accordance with the terms and conditions of the Agreement.

11.2 Debts Due to The Minister

Any amount owed to the Minister under this Agreement will constitute a debt due to Canada, which the Municipality will reimburse forthwith, on demand, to Canada.

11.3 No Benefit

No member of the House of Commons or of the Senate of Canada will be admitted to any share or part of any Contract made pursuant to this Agreement or to any benefit arising therefrom.

11.4 No Agency

It is understood, recognized and agreed that no provision of this Agreement and no action by the Parties will establish or be deemed to establish a partnership, joint venture, principal-agent relationship, or employer-employee relationship in any way or for any purpose whatsoever between Canada and the Municipality or between Canada, the Municipality and a third party.

11.5 No Authority to Represent

Nothing in this Agreement is to be construed as authorizing one Party to contract for or to incur any obligation on behalf of the other or to act as agent for the other.

11.6 Counterpart Signature

This Agreement may be signed in counterpart, and the signed copies will, when attached, constitute an original Agreement.

11.7 Values and Ethics Code

No person governed by the post-employment, ethics and conflict of interest guidelines of Canada will derive a direct benefit from this Agreement unless that person complies with the applicable provisions.

11.8 Severability

If for any reason a provision of this Agreement that is not a fundamental term is found to be or becomes invalid or unenforceable, in whole or in part, it will be deemed to be severable and will be deleted from this Agreement, but all the other terms and conditions of this Agreement will continue to be valid and enforceable.

11.9 Waiver

A Party may waive any right under this Agreement only in writing; and any tolerance or indulgence demonstrated by that Party will not constitute waiver of such right. Unless a waiver is executed in writing, that Party will be entitled to seek any remedy that it may have under this Agreement or under the law.

11.10 Lobbyists and Agent Fees

The Municipality warrants that:

- (a) It has not, nor has any person on its behalf, paid or provided or agreed to pay or provide, to any person, directly or indirectly, a commission, contingency

fee or any other consideration (whether monetary or otherwise) that is dependant upon the execution of the Agreement or the person arranging a meeting with any Public Office Holder as defined in the *Lobbyists Registration Act (the "Act")*;

- (b) It will not, during the term of this Agreement, pay or provide or agree to pay or provide to any person, directly or indirectly, a commission, contingency fee or any other consideration (whether monetary or otherwise) that is dependant upon the person arranging a meeting with any Public Office Holder;
- (c) Any person who, for consideration, directly or indirectly, communicated with or arranged a meeting with any Public Office Holder, in respect of any aspect of this Agreement, prior to the execution of the Agreement, was in compliance with all requirements of the Act;
- (d) Any person who, for consideration, directly or indirectly, during the term of this Agreement and in respect of any aspect of this Agreement, communicates with or arranges a meeting with any Public Office Holder will be in compliance with all requirements of the Act; and
- (e) At all relevant time the Municipality has been, is and will remain in compliance with the Act.

11.11 Notice

Any notice, information or document provided for under this Agreement will be effectively given if it is in writing and delivered or sent by letter, postage or other charges prepaid, or by facsimile or email. Any notice that is delivered will have been received on delivery; and any notice mailed will be deemed to have been received eight (8) calendar days after being mailed.

For the Municipality:

Name:

Title:

The Corporation of the Municipality of Temagami
P.O. Box 220,
Lakeshore Drive
Temagami, Ontario POH 2H0

For the Minister:

Director General
c/o Industry Canada
Infrastructure Operations
151 Yonge Street, 3rd Floor,
Toronto, Ontario M5C 2W7

Each Party may change the address that it has stipulated by notifying in writing the other party of the new address.

11.12 Amendments

Any amendments to this Agreement shall be by the written mutual consent of the Parties.

11.13 Indemnification

The Municipality shall indemnify and hold harmless Canada, its officers, servants, employees or agents, from and against all claims and demands, loss, damages, costs, expenses, actions, suits or other proceedings by whomsoever made, sustained, brought, prosecuted, threatened to be brought or prosecuted in any manner, based upon, occasioned by any injury to persons, damage to or loss or destruction of property, economic loss or infringement of rights caused by or arising directly or indirectly from:

- (a) The Project or the System;
- (b) The performance of this Agreement or the breach of any term or condition of this Agreement by the Municipality, its officers, employees and agents, or by a third party, its officers, employees or agents;
- (c) Any omission or other wilful or negligent act of the Municipality, its employees, officers or agents.

Except to the extent to which such claims and demands, losses, costs, damages, actions, suits or other proceedings relate to the act or negligence of an officer, employee or agent of Canada in the performance of his or her duties.

11.14 Communications

- 11.14.1 The Minister and the Municipality agree to undertake joint communications activities and collaborate on products to ensure open, transparent, proactive and effective communications with Canadians. This transparency and accountability will be achieved through appropriate and consistent public communications activities that recognize the contributions of all participating parties under this Agreement.
- 11.14.2 The Parties can carry out their own communications activities relating to the Project. However, such communications will nonetheless recognize and emphasize the source of the funds and the contributions of all parties.
- 11.14.3 The Parties agree that all communications products produced pursuant to this Agreement shall comply with the Federal Identity Program (FIP) and relevant provincial requirements. Branding standards and graphic guidelines will be developed by the Minister to guide development of communications products and activities for the Project.

11.15 Headings

The headings used in this Agreement are inserted for convenience of reference only and shall not affect its interpretation.

11.16 Assignment

The Municipality will not transfer or assign its rights or obligations under this Agreement without the prior written consent of the Minister. Any attempt by the Municipality to assign any of the rights, duties or obligations of this Agreement without the Minister's express written consent is void.


IN WITNESS WHEREOF the parties hereto have executed this Funding Agreement through their duly authorized representatives.

HER MAJESTY IN RIGHT OF CANADA
As represented by the Minister of Industry Canada

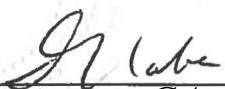
Per: 
Name: Jeff Moor[^]
Title: Director General
Sector Governance and Infrastructure Programs

Date: Mar 30/09

MUNICIPALITY

Per: 
Name: BRIAN KOSKI
Title: CAO/CLERK

Date:

Per: 
Name: IKE LAGA
Title: Mayor of P⁷ magam:

c/s