

# THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI

## BY-LAW NO. 12-1081

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**Being a by-law to authorize the Mayor and Clerk to execute an agreement with the Ministry of Northern Development and Mines under the Northern Community Investment Readiness Program for shared funding of a Comparative/Competitive analysis of Key Economic Factors.**

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**WHEREAS** under Section 8. (1) 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;

**AND 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;

**AND WHEREAS** Council deems it desirable to enter into an agreement with the Ministry of Northern Development and Mines under the Northern Community Investment Readiness (NCIR) Program for 75% project funding up to a maximum of \$7,500.00 to hire a consultant to complete a Comparative / Competitive analysis of Key Economic Factors to six (6) other competitor municipalities of similar size;

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

1. That the Mayor and the Clerk are hereby authorized and directed to execute the Agreement attached hereto as Schedule "A" and forming part of this bylaw.
2. This bylaw shall come into force and take effect upon final passing thereof.
3. 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.

BE TAKEN AS READ A FIRST time on this 30<sup>th</sup> day of August 2012;

READ A SECOND AND THIRD time and finally passed this 30<sup>th</sup> day of August 2012.

Mayor

Clerk

4459 - MIWt

THE CORPORATION OF THE  
MUNICIPALITY OF TEMAGAMI  
P.O. BOX 220  
TEMAGAMI, ONTARIO P0H 2H0  
(705) 569-3421  
FAX: (705) 569-2834  
E-MAIL: [visit@temagami.ca](mailto:visit@temagami.ca)  
WEBSITE: [www.temagami.ca](http://www.temagami.ca)



September 7, 2012

Ministry of Northern Development and Mines  
Attention: Michael Dunlop, NCIR Program Advisor  
435 James Street South, Suite 332  
Thunder Bay, ON P7E 6S7

Elaine Gunnell


Re: Competitive Analysis, NCIR Project Funding Agreement

Dear Mr. Dunlop:

Please find enclosed three (3) copies of the above agreement with original signatures and sealed with our corporate seal, along with a copy of the bylaw authorizing the signing of the agreement. I trust that you will find this in order. Please return **one copy of the** agreement for our records once signed by a ministry official.

Once again we would like to thank you for your support of this project.

Yours truly,

  
Elaine Gunnell  
Municipal Clerk

Enc.



File^incomingnothBr

Mayor ☐

Council ☐ I DA

CAO ☐

Building ☐

Finance ☒ OS DC

EcDev ☐ OS DC

Parks & Rec ☐ OS OC

Planning ☐ OS DC

Public Wks ☐ OS DC

PPP ☐

Social Services ☐

☒ **OrviixLL**

☐

Attach to  
Bylaw  
12-1081

**THE AGREEMENT** effective as of the 01 day of August, 2012.

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO  
as represented by the Minister of Northern Development and Mines**

**(the "Province")**

**- and -**

**The Corporation of the Municipality of Temagami**

**CONSIDERATION:**

In consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Parties agree as follows:

**ARTICLE 1  
INTERPRETATION AND DEFINITIONS**

**1.1 Interpretation.** For the purposes of interpretation:

- (a) words in the singular include the plural and vice-versa;
- (b) words in one gender include all genders;
- (c) the background and the headings do not form part of the Agreement; they are for reference only and shall not affect the interpretation of the Agreement;
- (d) any reference to dollars or currency shall be to Canadian dollars and currency; and
- (e) "include", "includes" and "including" shall not denote an exhaustive list.

**1.2 Definitions.** Capitalized terms used herein have the meanings set out in Schedule "A" hereto.

**ARTICLE 2  
REPRESENTATIONS, WARRANTIES AND COVENANTS**

**2.1 General.** The Recipient represents, warrants and covenants that:

- (a) it is, and shall continue to be for the term of the Agreement, a validly existing legal entity with full power to fulfill its obligations under the Agreement;
- (b) it has, and shall continue to have for the term of the Agreement, the experience and expertise necessary to carry out the Project; and
- (c) unless otherwise provided for in the Agreement, any information the Recipient provided to the Province in support of its request for funds (including information relating to any eligibility requirements) was true and complete at the time the Recipient provided it and shall continue to be true and complete for the term of the Agreement.

**2.2 Execution of Agreement.** The Recipient represents and warrants that:

- (a) it has the full power and authority to enter into the Agreement; and
  - (b) it has taken all necessary actions to authorize the execution of the Agreement.
- 2.3 **Governance.** The Recipient represents, warrants and covenants that it has, and shall maintain, in writing, for the period during which the Agreement is in effect:
- (a) procedures to ensure the ongoing effective functioning of the Recipient;
  - (b) decision-making mechanisms;
  - (c) procedures to provide for the prudent and effective management of the Funds;
  - (d) procedures to enable the successful completion of the Project;
  - (e) procedures to enable the timely identification of risks to the completion of the Project and strategies to address the identified risks;
  - (f) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7; and
  - (g) procedures to deal with such other matters as the Recipient considers necessary to ensure that the Recipient carries out its obligations under the Agreement.
- 2.4 **Supporting Documentation.** Upon request, the Recipient shall provide the Province with proof of the matters referred to in this Article 2.

### ARTICLE 3 TERM OF THE AGREEMENT

- 3.1 **Term.** The term of the Agreement shall commence on the Effective Date and shall expire on December 31, 2012 unless terminated earlier pursuant to Article 12, Article 13 or Article 14 or amended under Article 32.2.

### ARTICLE 4 FUNDS AND CARRYING OUT THE PROJECT

- 4.1 **Obligation to Fund.**
- (a) Subject to the terms and conditions of the Agreement, the Province shall reimburse the Recipient for Eligible Project Costs paid by the Recipient to carry out the Project up to the amount of the Maximum Funds.
  - (b) The Province is not responsible for any cost overruns related to the Project. The Recipient shall provide its own funds or funds from other sources for all Ineligible Project Costs. For further clarification, and without limiting the generality of the foregoing, the Recipient is responsible for all costs that exceed the estimated costs set out in the Project Costs chart in Schedule "C".
- 4.2 **Funds Adjustment.** If any cost that is incurred by the Recipient is less than that set out in the Budget, the reimbursement provided for in Schedule "D" to this Agreement shall be reduced by such difference (for greater certainty, this provision does not apply to any cost incurred that is greater than the amount set out in the Budget).
- 4.3 **Funds Provided.** Subject to the terms and conditions of the Agreement, including the Conditions Precedent at Section 4.4, the Province shall:

- (a) provide the Funds to the Recipient on a reimbursement basis in accordance with this Article 4, the Budget attached to the Agreement as Schedule "C"; and
- (b) issue a cheque made payable to the Recipient or deposit the Funds into an account designated by the Recipient provided that the account resides at a Canadian financial institution and is in the name of the Recipient.

**4.4 Conditions precedent of funding.** The Province's obligation to provide Funds to the Recipient is subject to fulfillment of the following conditions precedent to the Province's satisfaction:

- (a) the Province is not obligated to provide any Funds to the Recipient until the Recipient provides the insurance certificate or other proof as provided for in section 11.2;
- (b) the Province is not obligated to provide the Funds until all of the tasks set out in Schedule "B" are completed to the satisfaction of the Province;
- (c) the Province shall have received and been satisfied with the information provided by the Recipient pursuant to Section 7.1. If the Province is not satisfied with such information, it may adjust the amount of Funds it provides to the Recipient in any Funding Year;
- (d) the Recipient shall have provided written evidence satisfactory to the Province that the funds from other sources set out in the Project Funding chart in Schedule "C" (the "**Project Funding Chart**") necessary to complete the Project have been committed;
- (e) the Province shall have received and been satisfied with any information it may reasonably require to conduct a due diligence review of the Recipient and the Project;
- (f) the Province shall have received and been satisfied with copies of all invoices or such other evidence satisfactory to the Province in its sole discretion, of Eligible Project Costs claimed by the Recipient and evidence of payment of such Eligible Project Costs;
- (g) the Province shall have received and been satisfied with a completed Request for Reimbursement in the form attached hereto as Schedule "E"; and
- (h) pursuant to the provisions of the *Financial Administration Act* (Ontario), the Province shall have received the necessary appropriation from the Ontario Legislature for payment under the Agreement. If the Province does not receive such appropriation, the Province is not obligated to make any payment of the Funds, and, as a consequence, the Province may:
  - (i) reduce the amount of the Funds and, in consultation with the Recipient, change the Project; or
  - (ii) ) terminate the Agreement pursuant to section 13.1.

**4.5 Use of Funds and Project.** The Recipient shall:

- (a) carry out the Project:
  - (i) in accordance with the terms and conditions of the Agreement; and
  - (ii) in compliance with all federal and provincial laws and regulations, all municipal by-laws, and any other orders, rules and by-laws related to any aspect of the Project;

- (b) at its own expense obtain all permits, licences, approvals and authorizations required to complete the Project and satisfy the terms and conditions of the Agreement;
  - (c) comply with the Ontario Travel, Meal and Hospitality Expenses Directive;
  - (d) use the Funds only on Eligible Project Costs for the purpose of carrying out the Project; and
  - (e) spend the Funds only in accordance with the Budget
- 4.6 **No Changes.** The Recipient shall not make any changes to the Project and/or the Budget without the prior written consent of the Province.
- 4.7 **Maximum Funds.** The Recipient acknowledges that the Funds available to it pursuant to the Agreement shall not exceed the Maximum Funds.
- 4.8 **Rebates, Credits and Refunds.** The Recipient acknowledges that the amount of Funds available to it pursuant to the Agreement is based on the actual costs to the Recipient, less any costs (including taxes) for which the Recipient has received, will receive, or is eligible to receive, a rebate, credit or refund.
- 4.9 **Other Government Assistance.** The Recipient shall not use the Funds for any Eligible Project Costs for which the Recipient is or will be in receipt of funds from other federal, provincial or municipal government sources ("**Government Sources**"). The Recipient shall promptly notify the Province if:
- (a) funds are received from other Government Sources than those set out in the Project Funding Chart; or
  - (b) funds are received from the Government Sources set out in the Project Funding Chart in an amount or amounts that is/are greater than the amount or amounts set out in the Project Funding Chart.

In the event of the occurrence of (a) and/or (b), in its sole discretion, the Province may reduce the amount of the Funds it provides to the Recipient by, or demand the repayment of, an amount equal to the amount of the additional funds as described above, whereupon the amount demanded by the Province shall immediately become due and payable, to ensure that there is no duplication of government funding for the Project.

## ARTICLE 5 ACQUISITION OF GOODS AND SERVICES

- 5.1 **Acquisition of Services.** Subject to section 30.1, if the Recipient acquires services with the Funds, it shall do so through a process that promotes the best value for money.
- 5.2 **Third-Party Contracts over \$25,000.** If the Recipient selects third-party contracts to perform any of the Project for an amount greater than \$25,000, the Recipient, unless otherwise consented by the Province, use a competitive process, including a written request for at least three (3) proposals, written evaluation of bids received and a written agreement with the successful bidder. The Recipient will ensure that the Province is granted sufficient licence or other rights in all materials produced by the Recipient or a third party contract for the Project to enable the Province to use, reproduce and share materials with other Ontario government ministries and agencies.

## ARTICLE 6 CONFLICT OF INTEREST

- 6.1 **No Conflict of Interest.** The Recipient shall carry out the Project and use the Funds without an actual, potential or perceived conflict of interest.
- 6.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where:
- (a) the Recipient; or
  - (b) any person who has the capacity to influence the Recipient's decisions,
- has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project and the use of the Funds.
- 6.3 **Disclosure to Province.** The Recipient shall:
- (a) disclose to the Province, without delay, any situation that a reasonable person would interpret as either an actual, potential or perceived conflict of interest; and
  - (b) comply with any terms and conditions that the Province may prescribe as a result of the disclosure.

## ARTICLE 7 REPORTING, ACCOUNTING AND REVIEW

- 7.1 **Preparation and Submission.** The Recipient shall:
- (a) submit to the Province at the address provided in section 16.1, all Reports in accordance with the requirements set out in Schedule "E", or in a form as specified by the Province from time to time;
  - (b) submit to the Province at the address provided in section 16.1, any other reports as may be requested by the Province in accordance with the requirements specified by the Province;
  - (c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and
  - (d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signing officer.
- 7.2 **Record Maintenance.** The Recipient shall keep and maintain:
- (a) all financial records (including invoices) relating to the Funds or otherwise to the Project in a manner consistent with generally accepted accounting principles; and
  - (b) all non-financial documents and records relating to the Funds or otherwise to the Project.
- 7.3 **Inspection.** The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours Notice to the Recipient and during normal business hours, enter upon the Recipient's premises to review the progress of the Project and the Recipient's expenditure of the Funds and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may:
- (a) inspect and copy the records and documents referred to in section 7.2; and

- (b) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds and/or the Project.

- 7.4 **Disclosure.** To assist in respect of the rights set out in section 7.3, the Recipient shall disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and shall do so in a form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.
- 7.5 **No Control of Records.** No provision of the Agreement shall be construed so as to give the Province any control whatsoever over the Recipient's records.
- 7.6 **Auditor General.** For greater certainty, the Province's rights under this Article are in addition to any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

## ARTICLE 8 CREDIT

- 8.1 **Acknowledge Support.** Unless otherwise directed by the Province, the Recipient shall, in a form approved by the Province, acknowledge the support of the Province in any publication of any kind, written or oral, relating to the Project.
- 8.2 **Publication.** The Recipient shall indicate, in any of its publications, of any kind, written or oral, relating to the Project, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

## ARTICLE 9 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

- 9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

## ARTICLE 10 INDEMNITY

- 10.1 **Indemnification.** The Recipient hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, by whomever made, sustained, incurred, brought or prosecuted, in anyway arising out of or in connection with the Project or otherwise in connection with the Agreement, unless solely caused by the negligence or wilful misconduct of the Province.

## ARTICLE 11 INSURANCE

- 11.1 **Recipient's Insurance.** The Recipient represents and warrants that it has, and shall maintain for the term of the Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person carrying out a project similar to the Project would maintain, including 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 two million dollars (\$2,000,000) per occurrence. The policy shall include the following:



- (a) the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement;
- (b) a cross-liability clause;
- (c) contractual liability coverage; and
- (d) a 30 day written notice of cancellation, termination or material change.

11.2 **Proof of Insurance.** The Recipient shall provide the Province with certificates of insurance, or other proof as may be requested by the Province, that confirms the insurance coverage as provided for in section 11.1. Upon the request of the Province, the Recipient shall make available to the Province a copy of each insurance policy.

## ARTICLE 12 TERMINATION ON NOTICE

12.1 **Termination on Notice.** The Province may terminate the Agreement at any time upon giving at least 30 days Notice to the Recipient.

12.2 **Consequences of Termination on Notice by the Province.** If the Province terminates the Agreement pursuant to section 12.1, the Province may:

- (a) cancel all further instalments of Funds;
- (b) demand the repayment of any Funds remaining in the possession or under the control of the Recipient; and/or
- (c) determine the reasonable costs for the Recipient to wind down the Project, and:
  - (i) permit the Recipient to offset the costs determined pursuant to section 12.2(c), against the amount owing pursuant to section 12.2(b); and/or
  - (ii) subject to section 4.9, provide Funds to the Recipient to cover the costs determined pursuant to section 12.2(c).

## ARTICLE 13 TERMINATION WHERE NO APPROPRIATION

13.1 **Termination Where No Appropriation.** If, as provided for in section 4.4(h), the Province does not receive the necessary appropriation from the Ontario Legislature for any payment the Province is to make pursuant to the Agreement, the Province may terminate the Agreement immediately by giving Notice to the Recipient.

13.2 **Consequences of Termination Where No Appropriation.** If the Province terminates the Agreement pursuant to section 13.1, the Province may:

- (a) cancel all further instalments of Funds;
- (b) demand the repayment of any Funds remaining in the possession or under the control of the Recipient; and/or
- (c) determine the reasonable costs for the Recipient to wind down the Project and permit the Recipient to offset such costs against the amount owing pursuant to section 13.2(b).

- 13.3 **No Additional Funds.** For purposes of clarity, if the costs determined pursuant to section 13.2(c) exceed the Funds remaining in the possession or under the control of the Recipient, the Province shall not provide additional Funds to the Recipient.

**ARTICLE 14**  
**EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT**

- 14.1 **Events of Default.** Each of the following events shall constitute an Event of Default:

- (a) in the opinion of the Province, the Recipient breaches any representation, warranty, covenant or other material term of the Agreement, including failing to do any of the following in accordance with the terms and conditions of the Agreement:
  - (i) carry out the Project;
  - (ii) use or spend Funds; and/or
  - (iii) provide, in accordance with section 7.1, Reports or such other reports as may have been requested pursuant to section 7.1(b);
- (b) the Recipient's operations, or its organizational structure, changes such that it no longer meets one or more of the applicable eligibility requirements of the program under which the Province provides the Funds;
- (c) the Recipient makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or is petitioned into bankruptcy, or files for the appointment of a receiver;
- (d) the Recipient ceases to operate; and
- (e) an event of Force Majeure that continues for a period of 60 days or more.

- 14.2 **Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

- (a) initiate any action the Province considers necessary in order to facilitate the successful continuation or completion of the Project;
- (b) provide the Recipient with an opportunity to remedy the Event of Default;
- (c) suspend the payment of Funds for such period as the Province determines appropriate;
- (d) reduce the amount of the Funds;
- (e) cancel all further installments of Funds;
- (f) demand the repayment of any Funds remaining in the possession or under the control of the Recipient;
- (g) demand the repayment of an amount equal to any Funds the Recipient used, but did not use in accordance with the Agreement;
- (h) demand the repayment of an amount equal to any Funds the Province provided to the Recipient;
- (i) terminate the Agreement at any time, including immediately, upon giving Notice to the

Recipient; and/or

0) exercise any other rights or remedies available to the Province under this Agreement or applicable law.

14.3 **Opportunity to Remedy.** If, in accordance with section 14.2(b), the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province shall provide Notice to the Recipient of:

- (a) the particulars of the Event of Default; and
- (b) the Notice Period.

14.4 **Recipient not Remediating.** If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 14.2(b), and:

- (a) the Recipient does not remedy the Event of Default within the Notice Period;
- (b) it becomes apparent to the Province that the Recipient cannot completely remedy the Event of Default within the Notice Period; or
- (c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend the Notice Period, or initiate any one or more of the actions provided for in sections 14.2(a), (c), (d), (e), (f), (g), (h), (i) and (j).

14.5 **When Termination Effective.** Termination under this Article shall take effect as set out in the Notice.

## ARTICLE 15 REPAYMENT

15.1 **Debt Due.** If:

- (a) the Province demands the payment of any Funds or any other money from the Recipient; or
- (b) the Recipient owes any Funds or any other money to the Province, whether or not their return or repayment has been demanded by the Province,

such Funds or other money shall be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient shall pay or return the amount to the Province immediately, unless the Province directs otherwise.

15.2 **Interest Rate.** The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

15.3 **Payment of Money to Province.** The Recipient shall pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and mailed to the Province at the address provided in section 16.1.

## ARTICLE 16 NOTICE

- 16.1 **Notice in Writing and Addressed.** Notice shall be in writing and shall be delivered by email, postage-prepaid mail, personal delivery or fax, and shall be addressed to the Province and the Recipient respectively as set out below, or as either Party later designates to the other by Notice:

**To the Province:**

Ministry of Northern Development  
and Mines  
Regional Economic Development  
Branch  
435 James Street South, Suite 332  
Thunder Bay, ON P7E 6S7

**Attention:** Michael Dunlop,  
Coordinator Northern Communities  
Investment Readiness Program  
Fax: 807-475-1573  
Email: [mike.dunlop@ontario.ca](mailto:mike.dunlop@ontario.ca)

**To the Recipients:**

The Municipality of Temagami  
7 Lakeshore Drive, P.O. Box 220  
Temagami ON P0H 2H0

**Attention: Mr. John Santarossa**  
**Economic Development Officer**  
Phone: 705 569 - 3421  
Fax: 705 569 - 2834

- 16.2 **Notice Given.** Notice shall be deemed to have been received:

- (a) in the case of postage-prepaid mail, seven days after a Party mails the Notice; or
- (b) in the case of email, personal delivery or fax, at the time the other Party receives the Notice.

- 16.3 **Postal Disruption.** Despite section 16.2(a), in the event of a postal disruption:

- (a) Notice by postage-prepaid mail shall not be deemed to be received; and
- (b) the Party giving Notice shall provide Notice by email, personal delivery or by fax.

**ARTICLE 17**  
**CONSENT BY PROVINCE**

- 17.1 **Consent.** The Province may impose any terms and/or conditions on any consent the Province may grant pursuant to the Agreement.

**ARTICLE 18**  
**SEVERABILITY OF PROVISIONS**

- 18.1 **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision shall be deemed to be severed.

**ARTICLE 19**  
**WAIVER**

- 19.1 **Waivers in Writing.** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 16. Any waiver must refer to a specific failure to comply and shall not have the effect of waiving any subsequent failures to comply.

**ARTICLE 20**  
**INDEPENDENT PARTIES**

- 20.1 **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient shall not take any actions that could establish or imply such a relationship.

#### **ARTICLE 21 ASSIGNMENT OF AGREEMENT OR FUNDS**

- 21.1 **No Assignment.** The Recipient shall not assign any part of the Agreement or the Funds without the prior written consent of the Province.
- 21.2 **Agreement to Extend.** All rights and obligations contained in the Agreement shall extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

#### **ARTICLE 22 GOVERNING LAW**

- 22.1 **Governing Law.** The Agreement and the rights, obligations and relations of the Parties shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement shall be conducted in Ontario.

#### **ARTICLE 23 FURTHER ASSURANCES**

- 23.1 **Agreement into Effect.** The Recipient shall do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

#### **ARTICLE 24 CIRCUMSTANCES BEYOND THE CONTROL OF EITHER PARTY**

- 24.1 **Failure to Fulfil Obligations.** Subject to section 14.1(e), the failure of either Party to fulfil any of its obligations under the Agreement shall not be considered to be a breach of, or Event of Default under, the Agreement to the extent that such failure to fulfill the obligation arose from an event of Force Majeure, if the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of the Agreement.

#### **ARTICLE 25 SURVIVAL**

- 25.1 **Survival.** The provisions in Article 1, any other applicable definitions, sections 7.1 (to the extent that the Recipient has not provided the Reports or other reports as may be requested by the Province to the satisfaction of the Province), 7.2, 7.3, 7.4, 7.5, 7.6, Articles 8 and 10, sections 12.2, 13.2, 13.3, 14.1, 14.2(d), (e), (f), (g) and (h), Articles 16, 18, 22, 25, 26, 28, 29 and 32 and all applicable cross-referenced provisions and schedules shall continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement.

#### **ARTICLE 26 SCHEDULES**

- 26.1 **Schedules.** The Agreement includes the following schedules:
- (a) Schedule "A" - Additional Definitions;

- (b) Schedule "B" - Project Description and Timelines;
- (c) Schedule "C" - Budget;
- (d) Schedule "D" - Request for Reimbursement and Final Report;
- (e) Schedule "E" - Final Report.

## **ARTICLE 27 COUNTERPARTS**

- 27.1 **Counterparts.** The Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

## **ARTICLE 28 JOINT AND SEVERAL LIABILITY**

- 28.1 **Joint and Several Liability.** Where the Recipient is comprised of more than one entity, all such entities shall be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

## **ARTICLE 29 RIGHTS AND REMEDIES CUMULATIVE**

- 29.1 **Rights and Remedies Cumulative.** The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

## **ARTICLE 30 BPSAA**

- 30.1 **BPSAA.** For the purposes of clarity, if the Recipient is subject to the BPSAA and there is a conflict between any of the requirements of the Agreement and the requirements of the BPSAA, the BPSAA shall prevail.

## **ARTICLE 31 FAILURE TO COMPLY WITH OTHER AGREEMENTS**

- 31.1 **Other Agreements.** If the Recipient:
- (a) has failed to comply (a "Failure") with any term, condition or obligation under any other agreement with Her Majesty the Queen in right of Ontario or a Crown agency;
  - (b) has been provided with notice of such Failure in accordance with the requirements of such other agreement;
  - (c) has, if applicable, failed to rectify such Failure in accordance with the requirements of such other agreement; and
  - (d) such Failure is continuing,


the Province may suspend the payment of Funds for such period as the Province determines appropriate.

**ARTICLE 32  
ENTIRE AGREEMENT**

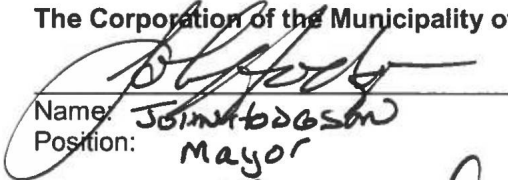
- 32.1 **Entire Agreement.** The Agreement constitutes the entire agreement between the Parties with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations and agreements.
- 32.2 **Modification of Agreement.** The Agreement may only be amended by a written agreement duly executed by the Parties.

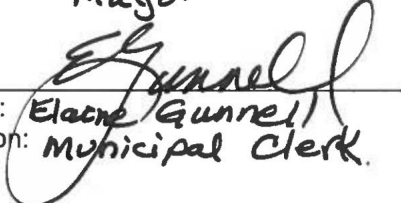
The Parties have executed the Agreement on the dates set out below.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**  
as represented by the Minister of Northern Development and Mines

  
Name: HELEN MULC Date: Sept 18/12  
Title: DIRECTOR -

**The Corporation of the Municipality of Temagami**

  
Name: John Hodgson Date: 9/5/12  
Position: Mayor

  
Name: Elaine Gunnell Date: 9/7/12  
Position: Municipal Clerk

I/We have authority to bind the corporation.

## SCHEDULE "A" ADDITIONAL DEFINITIONS

1. **"Agreement"** means this agreement entered into between the Province and the Recipient and includes all of the schedules listed in section 26.1 and any amending agreement entered into pursuant to section 32.2.
2. **"BPSAA"** means the *Broader Public Sector Accountability Act, 2010* (Ontario), including any directives issued pursuant to that Act.
3. **"Budget"** means the budget attached to the Agreement as Schedule "C".
4. **"Effective Date"** means the date set out at the top of the Agreement.
5. **"Eligible Project Costs"** means the costs paid by the Recipient for the purpose of carrying out the Project for which the Province may provide Funds and that are (a) incurred by the Recipient between **August 01, 2012** and the date of the expiry or termination of the Agreement; (b) in the sole opinion of the Province, reasonable and necessary for carrying out the Project; and (c) limited to the amounts and eligible Project cost categories set out in the Eligible Project Costs chart in Schedule "C".
6. **"Event of Default"** has the meaning ascribed to it in section 14.1.
7. **"Force Majeure"** has the means an event that is beyond the reasonable control of a Party, and makes a Party's performance of its obligations under the Agreement impossible, or so impracticable as reasonably to be considered impossible in the circumstances. Force Majeure includes: (a) infectious diseases, war, riots and civil disorder, (b) storm, flood, earthquake and other severely adverse weather conditions, (c) lawful act by a public authority, strikes, lockouts and other labour actions, and (d) if such events meet the definition of Force Majeure set out herein. Force Majeure, however, shall not include any event that is (a) caused by the negligence or intentional action of a Party or such Party's agents or employees, or (b) any event that a diligent Party could reasonably have been expected to (i) take into account at the time of the execution of the Agreement, and (ii) avoid or overcome in the carrying out of its obligations under the Agreement.
8. **"Funding Year"** means: (a) in the case of the first Funding Year, the period commencing on the Effective Date and ending on the following March 31, and (b) in the case of Funding Years subsequent to the first Funding Year, the period commencing on April 1 following the end of the previous Funding Year and ending on the following March 31.
9. **"Funds"** means the money the Province provides to the Recipient pursuant to the Agreement.
10. **"Indemnified Parties"** means her Majesty the Queen in right of Ontario, her ministers, agents, appointees and employees.
11. **"Ineligible Project Costs"** means all Project costs that are not Eligible Project Costs, including but not limited to: annual operating expenses, capital or rolling stock purchases, long term leases, advertising or promotional materials, outbound travel and accommodations, HST refundable payments, and project costs incurred prior to the approval date.
12. **"Maximum Funds"** means the maximum amount payable to the Recipient in respect of Eligible Project Costs paid by the Recipient to carry out the Project, which is the lesser of: (i) 75% of total Eligible Project Costs paid by the Recipient to carry out the Project, and (ii) **[Seven Thousand Five Hundred dollars] (\$7,500.00)**.
13. **"NCIR"** means the Northern Community Investment Readiness Program.



14. **"Notice"** means any communication given or required to be given pursuant to the Agreement.
15. **"Notice Period"** means the period of time within which the Recipient is required to remedy an Event of Default, and includes any such period or periods of time by which the Province considers it reasonable to extend that time.
16. **"Parties"** means the Province and the Recipient.
17. **"Party"** means either the Province or the Recipient.
18. **"Project"** means the undertaking described in Schedule "B".
19. **"Reports"** means the reports described in Schedule "E".

**SCHEDULE "B"**  
**PROJECT DESCRIPTION AND TIMELINES**

**Background**

The Northern Community Investment Readiness Program (NCIR) has been established by the Province with the intention promoting and supporting a strong and attractive investment climate in Northern Ontario. The objective of the program is assist communities in Northern Ontario to develop the tools and capabilities to attract, receive and successfully explore investment opportunities.

The Recipient has requested financial assistance from the Province to assist with its Project.

**The Project**

Hire an consultant to complete a Comparative / Competitive analysis of key economic factors to six (6) other competitor municipalities of similar size.

**Timelines**

The Project shall be completed no later than December 31, 2012.

**SCHEDULE "C"**  
**BUDGET**

**ELIGIBLE PROJECT COSTS**

<b>Eligible Project Cost Category</b>		<b>Costs</b>
Meal / Travel / Accommodations (as per provincial guidelines)		\$4,000.00
Consultant Fees		\$6,000.00
	<b>Total:</b>	\$10,000.00

**INELIGIBLE PROJECT COSTS**

<b>Ineligible Project Cost Category</b>		<b>Costs</b>
	<b>Total:</b>	

**TOTAL PROJECT COSTS**

<b>Project Cost Category</b>	<b>Costs</b>
Total Eligible Costs	\$10,000.00
Total Ineligible Costs	\$0.00
<b>Total:</b>	\$10,000.00

**PROJECT FUNDING**

<b>Source</b>	<b>Financing Type</b>	<b>Activities Funded</b>	<b>Funding Amount</b>
Province	Conditional Transfer Payment		\$7,500.00
Proponent	Cash		\$2,500.00
		<b>Total:</b>	\$10,000.00

## SCHEDULE "D"

### REQUEST FOR REIMBURSEMENT

## Request for Reimbursement Under the Northern Communities Investment Readiness Program

Note:

For contributions of up to \$5,000, one request for reimbursement form will be processed at the end of the project.

For contributions over \$5,000, up to two request for reimbursement forms will be processed for the project.

NCIR File Number:	Reimbursement Request no:																							
<p>The..... (name of lead municipality, First Nation or economic development corporation) in the District of.....hereby requests the release of funds, as detailed in the calculation of expenditures below, with respect to the contribution for the.....(name of project).</p>																								
Letter of approval date:					Project completion date:																			
<p><b>Calculation of expenditures</b></p> <table border="1"> <tr> <td>Total estimated project costs</td> <td>(1) \$</td> </tr> <tr> <td>Project contributions confirmed from other sources - including the Applicant</td> <td>(2) \$</td> </tr> <tr> <td>Total approved NCIR contribution</td> <td>(3) \$</td> </tr> <tr> <td>Total of previous requests for reimbursement</td> <td>(4) \$</td> </tr> <tr> <td>Total eligible expenditures claimed for this request</td> <td>(5) \$</td> </tr> <tr> <td>NCIR Contribution for this request (75 % X Line 5)</td> <td>(6) \$</td> </tr> <tr> <td>New balance = line (3) minus line (4) minus line (6)</td> <td>(7) \$</td> </tr> </table>											Total estimated project costs	(1) \$	Project contributions confirmed from other sources - including the Applicant	(2) \$	Total approved NCIR contribution	(3) \$	Total of previous requests for reimbursement	(4) \$	Total eligible expenditures claimed for this request	(5) \$	NCIR Contribution for this request (75 % X Line 5)	(6) \$	New balance = line (3) minus line (4) minus line (6)	(7) \$
Total estimated project costs	(1) \$																							
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Total eligible expenditures claimed for this request	(5) \$																							
NCIR Contribution for this request (75 % X Line 5)	(6) \$																							
New balance = line (3) minus line (4) minus line (6)	(7) \$																							
<p><b>Declaration of the municipal, First Nation or economic development corporation official</b></p> <p>I solemnly declare that the sum of money indicated on line (5) above has been paid as specified in the funding agreement, from funds belonging to this Municipality, Band Office/Corporation for the purposes of the above-named project and that Bona Fide invoices and receipts in support thereof are available for inspection upon request.</p>																								
Signature:					Street address/ PO Box:																			
Name:					City																			
Title (authorized signatory):					Province																			
Date:					Postal code:																			

## SCHEDULE "E"

### FINAL REPORT

#### Final project report

Page 2

This portion to be completed by the Applicant when the project is complete and/or final request for payment is submitted.

<b>Project description and activities</b>			
<b>Were the project activities successful? (Discuss)</b>			
<b>If a report or study was a deliverable, have appropriate copies been forwarded to the Ministry? (Comment)</b>			
<b>Declaration of the municipal, First Nation or economic development corporation official</b>			
I declare this project is now completed in accordance with the funding agreement.			
<b>Signature:</b>			
<b>Name:</b>			
<b>Title (authorized signatory):</b>			<b>Date:</b>