

THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN

BY-LAW NO. 2013-25

Being a by-law to authorize an agreement with the Minister of Rural Affairs for funding support under the SRNMIF - Capacity Program.

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WHEREAS the Council of the Corporation of the Municipality of Magnetawan deems it desirable to enter into an agreement with the Minister of Rural Affairs to access funding for the development of an Asset Management Plan.

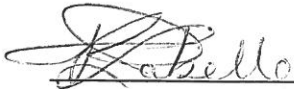
NOW THEREFORE BE IT ENACTED AS FOLLOWS:

1. That the Mayor and Clerk be authorized to execute the attached agreement.
2. That this by-law becomes effective on the date of its adoption.

ADOPTED December 18, 2013.

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Mayor



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Clerk

Ministry of Agriculture  
and Food

Ministère de l'Agriculture et De  
L'Alimentation

Ministry of Rural Affairs

Ministère des Affaires rurales

4th Floor  
1 Stone Road West  
Guelph, Ontario N1G 4Y2  
1-877-424-1300  
FAX (519) 826-4336

4<sup>e</sup> étage  
1 Stone Road West  
Guelph (Ontario) N1G 4Y2  
1-877-424-1300  
FAX (519) 826-4336



## Rural Programs Branch

December 9, 2013

File Number: SRN-CPY-103

Linda Saunders, Treasurer  
Municipality of Magnetawan  
4304 Highway 520, P.O. Box 70,  
Magnetawan, Ontario  
POA 1P0

### Small Rural and Northern Municipal Infrastructure Fund – Capacity Funding Contribution Agreement for Municipality of Magnetawan

Dear Linda Saunders,

I am pleased to confirm conditional funding support under the Small Rural and Northern Municipal Infrastructure Fund – Capacity Program (SRN-CPY), subject to the execution and return of the attached SRN-CPY Contribution Agreement between the Municipality of Magnetawan and Ontario.

We ask that you do the following please:

1. Print three copies of the attached PDF of the Contribution Agreement;
2. Print or type the names of the municipal signatories on or around page 14 of the Contribution Agreement;
3. Have the signatories sign and please affix Corporate Seal next to the signatories. If your municipality does not have a Corporate Seal, please indicate that in your cover letter back to us with the signed Agreements;
4. Include a certified copy of the municipal by-law or council resolution designating the signing officers and authorizing the execution of the Contribution Agreement, and;
5. Return all three hardcopies of the Agreement back to this office via post or courier no later than **Friday, January 10, 2014**. Provided that they have been properly completed, we will then arrange for the execution of the Contribution Agreements and return one original copy to you for your files.

Should you have questions regarding this process, please call our Contact Centre at 1-877-424-1300.

Sincerely,

Jennifer Bousfield, Manager  
Program Operations

encl.

Council MTG. of DEC. 18 - 2013  
Agenda Item # 7.1



Good Things  
Grow in Ontario  
À bonne terre,  
bons produits



**Small, Rural and Northern Municipal Infrastructure Fund – Capacity Funding**

**THE AGREEMENT** effective as of the 4th day of October, 2013.

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,**  
as represented by the Minister of Rural Affairs

("MRA")

- and -

**The Corporation of the Municipality of Magnetawan**

(the "Recipient")

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

**ARTICLE 1. DEFINITIONS**

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

- 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.** In the Agreement, the following terms shall have the following meanings:

"**Aboriginal Groups**" include the Indian, Inuit and the Métis peoples of Canada or any other group that has legally been recognized as holding Aboriginal or treaty rights under section 35 of the *Constitution Act, 1982*.

"**Agreement**" means this agreement entered into between MRA and the Recipient and includes all of the Schedules listed in section 26.1.

"**BPSAA**" means the *Broader Public Sector Accountability Act, 2010* (Ontario), including any directives issued pursuant to that Act.

"**Budget**" means the budget attached to the Agreement as Schedule "B".

"**Business Day**" means any working day, Monday to Friday inclusive, but excluding statutory and other holidays, and any other day which the Ministry has elected to be closed for business.

"**Effective Date**" means the date first set out at the top of the Agreement.

## Small, Rural and Northern Municipal Infrastructure Fund – Capacity Funding

"**Event of Default**" has the meaning ascribed to it in section 13.1.

"**Force Majeure**" has the meaning ascribed to it in Article 24.

"**Funds**" means the money provided by MRA to the Recipient pursuant to the Agreement.

"**Indemnified Parties**" means Her Majesty the Queen in right of Ontario, Her Ministers, agents, appointees and employees.

"**Maximum Funds**" means \$ 21,440.40.

"**MOI**" means the Ministry of Infrastructure.

"**Notice**" means a communication required to be given pursuant to the Agreement.

"**Parties**" means MRA and the Recipient.

"**Party**" means either MRA or the Recipient.

"**Project**" means the undertaking described in Schedule "A".

"**Reports**" means the reports described in Schedule "C".

"**Requirements of Law**" means all applicable requirements of law, as may be set out in statutes, regulations, by-laws, codes, rules, ordinances, official plans, approvals, permits, licences, authorizations, decrees, injunctions, orders and declarations or any other similar requirement of law that could be imposed upon a Recipient, by authorities that now or at any time hereafter during the term of Program may have jurisdiction over the Recipient.

"**Timelines**" means the Project schedule set out in Schedule "A".

"**Wind Down Costs**" means the Recipient's reasonable costs to wind down the Project.

### 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) any information the Recipient provided to MRA 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 in every respect.

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

## Small, Rural and Northern Municipal Infrastructure Fund – Capacity Funding

- b) it has taken all necessary actions to authorize the execution of the Agreement (including if necessary passing a Local Services Board resolution or a municipal by-law or resolution authorizing the Recipient to enter into the Agreement with MRA).

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) a code of conduct and ethical responsibilities for all persons at all levels of the Recipient's organization;
- b) procedures to ensure the ongoing effective functioning of the Recipient;
- c) decision-making mechanisms;
- d) procedures to provide for the prudent and effective management of the Funds;
- e) procedures to enable the successful completion of the Project;
- f) procedures to enable the timely identification of risks to the completion of the Project and strategies to address the identified risks;
- g) procedures to enable the preparation, delivery and maintenance of all Reports required pursuant to Article 6; and
- h) 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 MRA 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, 2014, unless terminated earlier pursuant to Article 11, Article 12 or Article 13.

### ARTICLE 4. FUNDS AND CARRYING OUT THE PROJECT

4.1. **Funds Provided.** MRA shall:

- a) provide funding up to the Maximum Funds to the Recipient for the purpose of carrying out the Project;
- b) provide the Funds to the Recipient in accordance with the payment schedule attached to the Agreement as Schedule "D";
- c) deposit the Funds into an account designated by the Recipient provided that the account:
  - i) is with a Canadian financial institution; and
  - ii) is in the name of the Recipient.

4.2. **Limitation on Payment of Funds.** Despite section 4.1, MRA:

- a) may not provide any Funds to the Recipient until the Recipient provides the insurance certificate or other documents provided for in section 10.2;

## Small, Rural and Northern Municipal Infrastructure Fund – Capacity Funding

- b) if, pursuant to the provisions of the *Financial Administration Act* (Ontario), as amended, MRA does not receive the necessary appropriation from the Ontario Legislature for any payment MRA is obligated to make under the Agreement, MRA is not obligated to make the payment and MRA may, pursuant to section 12.1, terminate the Agreement or may reduce the amount of the Funds and, in consultation with the Recipient, change the Project.

### 4.3. Use of Funding and Project. The Recipient shall:

- a) carry out the Project;
  - i) in accordance with the terms of the Agreement; and
  - ii) in compliance with all Requirements of Law related to any aspect of the Project;
- b) use the Funds only for the purpose of carrying out the Project to completion; and
- c) spend the Funds only on Eligible Costs in accordance with Section B.1 of Schedule “B”.
- d) not spend the Funds on Ineligible Costs as set out in Section B.2 of Schedule “B”.

### 4.4. No Changes. The Recipient shall:

- a) not make any changes to the Project, the Timelines and/or the Budget without the prior written consent of MRA; and
- b) abide by the terms and conditions MRA may require pursuant to any consent.

### 4.5. Interest Bearing Account. If MRA provides Funds to the Recipient prior to the Recipient's immediate need for the Funds the Recipient shall place the Funds in an interest bearing account in the name of the Recipient at a Canadian financial institution.

### 4.6. Interest. If the Recipient earns any interest on the Funds:

- a) MRA may deduct an amount equal to the interest from any further instalments of Funds; or
- b) the Recipient shall pay an amount equal to the interest to MRA as directed by MRA.

### 4.7. Maximum Funds. The Recipient acknowledges and accepts that, notwithstanding any other provision herein, the Funds available to it pursuant to the Agreement shall not exceed the Maximum Funds.

### 4.8. Rebates, Credits and Refunds. The Recipient shall not use the Funds for any costs including taxes for which it has received, will receive, or is eligible to receive a rebate, credit or refund.

## ARTICLE 5. CONFLICT OF INTEREST

### 5.1. No Conflict of Interest. The Recipient shall carry out the Project and use the Funds without an actual, potential or perceived conflict of interest.

### 5.2. Conflict of Interest Includes. For the purposes of this Article, a conflict of interest includes any circumstances where:

- a) the Recipient; or



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- 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.

### 5.3. **Disclosure to MRA.** The Recipient shall:

- a) disclose to MRA without delay any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest; and
- b) comply with any terms and conditions that MRA may prescribe as a result of the disclosure.

## ARTICLE 6. REPORTING, ACCOUNTING AND REVIEW

### 6.1. **Preparation and Submission.** The Recipient shall:

- a) submit to MRA at the address provided in Section 17.1, all Reports in accordance with their respective timelines and content requirements set out in Schedule "C", or in a form as specified by MRA from time to time;
- b) submit to MRA at the address provided in Section 17.1, any other reports requested by MRA in accordance with timeline and content requirements specified by MRA;
- c) ensure that all Reports and other reports are completed to the satisfaction of MRA; and

ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signing officer.

### 6.2. **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.

### 6.3. **Inspection.** MRA, its authorized representatives or an independent auditor identified by MRA may, at MRA's 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 MRA, its authorized representatives or an independent auditor identified by MRA, may:

- a) inspect and copy the records and documents referred to in section 6.2; and
- b) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds and/or Project.

### 6.4. **Disclosure.** To assist in respect of the rights set out in Section 6.3, the Recipient shall disclose any information reasonably requested by MRA, its authorized representatives or an independent auditor identified by MRA, and shall do so in a form reasonably requested by MRA, its authorized representatives or an independent auditor identified by MRA, as the case may be.

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- 6.5. **No Control Over Unrelated Information.** No provision of the Agreement shall be construed so as to give MRA any control whatsoever over the Recipient's documentation or information that is not related to the Project or to the expenditure of Funds.
- 6.6. **Auditor General.** For greater certainty, MRA'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 7. CREDIT

- 7.1. **Acknowledge Support.** Unless otherwise directed by MRA, the Recipient shall, in a form approved by MRA, acknowledge the support of Ontario in any publication of any kind, written or oral, relating to the Project.
- 7.2. **Publication.** If the Recipient publishes any material of any kind, written or oral, relating to the Project, the Recipient shall indicate in the material that the views expressed in the material are the views of the Recipient and do not necessarily reflect those of MRA.

### ARTICLE 8. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

- 8.1. **FIPPA.** The Recipient acknowledges that MRA is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario), as amended from time to time, and that any information provided to MRA in connection with the Project or otherwise in connection with the Agreement is subject to disclosure in accordance with that Act.

### ARTICLE 9. INDEMNITY

- 9.1. **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 (collectively, "Claims"), by whomever made, sustained, incurred, brought or prosecuted, in any way 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 MRA.

### ARTICLE 10. INSURANCE

- 10.1. **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 (\$2,000,000.00) per occurrence. The policy shall include the following:

- i) 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;
- ii) a cross-liability clause;
- iii) contractual liability coverage; and



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- iv) thirty (30) day written notice of cancellation, termination or material change.

10.2. **Proof of Insurance.** The Recipient shall provide MRA with certificates of insurance, or other proof as may be requested by MRA, that confirms the insurance coverage as provided for in section 10.1. Upon the request of MRA, the Recipient shall make available to MRA a copy of each insurance policy.

### ARTICLE 11. TERMINATION ON NOTICE

11.1. **Termination on Notice.** MRA may terminate the Agreement at any time upon giving at least thirty (30) days' Notice to the Recipient.

11.2. **Consequences of Termination.** If MRA terminates the Agreement pursuant to section 12.1, MRA may:

- a) demand the repayment of any Funds remaining in the possession or under the control of the Recipient; and
- b) determine the Wind Down Costs, and:
  - i) permit the Recipient to offset the Wind Down Costs against any amount the Recipient may owe at the time that the Agreement is terminated; and
  - ii) subject to section 4.7, provide Funds to the Recipient to cover the Wind Down Costs.

### ARTICLE 12. TERMINATION WHERE NO APPROPRIATION

12.1. **Termination Where No Appropriation.** If, as provided for in section 4.2(b), MRA does not receive the necessary appropriation from the Ontario Legislature for any payment MRA is obligated to make under the Agreement, MRA may terminate the Agreement immediately by giving Notice to the Recipient.

12.2. **Consequences of Termination.** If MRA terminates the Agreement pursuant to section 12.1, MRA may:

- a) demand the repayment of any Funds remaining in the possession or under the control of the Recipient; and/or
- b) determine the Wind Down Costs; and  
permit the Recipient to offset such Wind Down Costs against any amount owing at the time that the Agreement is terminated.

12.3. **No Additional Funds.** For purposes of clarity, if the Wind Down Costs exceed the Funds remaining in the possession or under the control of the Recipient, MRA shall not provide additional Funds to the Recipient.

### ARTICLE 13. EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

13.1. **Event of Default.** Each of the following events shall constitute an "Event of Default":

## Small, Rural and Northern Municipal Infrastructure Fund – Capacity Funding

- a) in the opinion of MRA the Recipient has knowingly provided false or misleading information regarding its request for funds or in any other communication with MRA;
- b) in the opinion of MRA the Recipient breaches any representation, warranty, covenant or material requirement of the Agreement, including failing to do any of the following in accordance with the terms of the Agreement:
  - i) carry out the Project;
  - ii) use or spend Funds; and/or
  - iii) provide Reports or such reports as may have been requested;
- c) the nature of the Recipient's operations, its corporate status or its organizational structure changes so that it no longer meets one or more of the applicable eligibility requirements of the program under which MRA provides the Funds;
- d) 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;
- e) the Recipient ceases to operate; and
- f) an event of Force Majeure continues for a period of sixty (60) days or more.

13.2. **Corrective Action.** If an Event of Default occurs, MRA may, at any time, take one or more of the following actions:

- a) initiate any action MRA considers necessary in order to facilitate the successful continuation or completion of the Project;
- b) suspend the payment of Funds for such period as MRA determines appropriate;
- c) reduce the amount of the Funds;
- d) cancel further payments, if any, of the Funds;
- e) demand the repayment of any Funds remaining in the possession or under the control of the Recipient;
- f) demand the repayment of an amount equal to any Funds the Recipient used for purposes not agreed upon by MRA;
- g) demand the repayment of an amount equal to any Funds MRA provided to the Recipient; and/or
- h) terminate the Agreement at any time, including immediately, upon giving Notice to the Recipient.

13.3. **Opportunity to Remedy.** In addition to its rights provided for in section 13.2, MRA may at its sole discretion provide the Recipient an opportunity to remedy the Event of Default by providing Notice to the Recipient:

- a) of the particulars of the Event of Default; and
- b) of the period of time within which the Recipient is required to remedy the Event of Default.

13.4. **Recipient not Remediating.** If MRA has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 13.3 and:

## Small, Rural and Northern Municipal Infrastructure Fund – Capacity Funding

- a) the Recipient does not remedy the Event of Default within the time period specified in the Notice;
- b) it becomes apparent to MRA that the Recipient cannot completely remedy the Event of Default within the time specified in the Notice or such further period of time as MRA considers reasonable; or
- c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to MRA.

MRA may initiate any one or more of the actions provided for in subsections 13.2 (a), (b), (c), (d), (e), (f), (g) and (h).

**13.5. Effective Date of Termination.** Termination under this Article shall take effect as set out in the Notice.

### ARTICLE 14. FUNDS AT THE END OF THE AGREEMENT

**14.1. Funds at the End of the Agreement.** Without limiting any rights of MRA under Article 13, if the Recipient has not spent all of the Funds as provided for in the Budget when the Agreement expires, MRA may:

- a) demand the return to MRA of the unspent Funds; or
- b) reduce the amount of any further instalments of Funds accordingly.

### ARTICLE 15. FUNDS UPON EXPIRY

**15.1. Funds Upon Expiry.** Without limiting any rights of MRA under Article 13, the Recipient shall, upon expiry of the Agreement, return to MRA any Funds remaining in its possession or under its control.

### ARTICLE 16. REPAYMENT

**16.1. Debt Due.** If MRA demands the payment of any monies, including any Funds from the Recipient or if the Recipient owes any monies, including any Funds, to MRA, whether or not their return or repayment has been demanded by MRA, such monies shall be deemed to be a debt due and owing to MRA by the Recipient, and the Recipient shall pay or return the amount to MRA immediately unless MRA directs otherwise.

**16.2. Interest Rate.** MRA may charge the Recipient interest on any monies owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

**16.3. Cheque Payable To.** The Recipient shall pay any monies owing to MRA by cheque payable to the "Minister of Finance" and mailed to MRA at the address provided in section 17.1.

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### ARTICLE 17. NOTICE

17.1. **Notice in Writing and Addressed.** Notice shall be in writing and shall be delivered by postage-prepaid mail or personal delivery, and shall be addressed to, MRA and the Recipient respectively, as set out below:

To MRA:

Ministry of Rural Affairs  
4<sup>th</sup> Floor  
1 Stone Road West  
Guelph, ON  
N1G 4Y2

Attention: Jennifer Bousfield  
Manager, Programs Operations  
Rural Programs Branch

To the Recipient:

Municipality of Magnetawan  
4304 Highway 520, P.O. Box 70  
Magnetawan, ON  
P0A 1P0

Attention: Linda Saunders  
Treasurer

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

- a) in the case of postage-prepaid mail, five (5) Business Days after such Notice is mailed; or
- b) in the case of personal or email delivery, the same Business Day such Notice is delivered to the other Party.

17.3. **Postal Disruption.** Despite subsection 17.2(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 personal delivery.

### 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 17. 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 MRA 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 any Funds without the prior written consent of MRA which MRA may, in its sole discretion, provide or withhold.

21.2. **Agreement to Extend.** The 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. **Agreement Governed By.** 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 Parties shall do or cause to be done all acts or things necessary to implement and carry into effect the terms of the Agreement to its full extent.

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

24.1. **Force Majeure Means.** For the purposes of the Agreement, "Force Majeure" means an event that is:

- a) beyond the reasonable control of a Party; and
- b) makes a Party's performance of its obligations under the Agreement impossible or so impracticable as reasonably to be considered impossible in the circumstances.

24.2. **Force Majeure Includes.** Force Majeure includes:

- a) infectious diseases, war, riots and civil disorder;
- b) storm, flood, earthquake or other severely adverse weather conditions;
- c) confiscation or other similar action by government agencies;
- d) lawful act by a public authority; and
- e) strikes, lockouts and other labour actions,

if such events meet the test set out in section 24.1.

24.3. **Force Majeure Shall Not Include.** Force Majeure shall not include:

- a) any event that is caused by the negligence or intentional action of a Party or such Party's agents or employees;
- 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.

## Small, Rural and Northern Municipal Infrastructure Fund – Capacity Funding

**24.4. Failure to Fulfil Obligations.** Subject to section 13.1(f), 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, subsection 4.6(b), sections 4.8, 6.1 (to the extent that the Recipient has not provided the Reports/reports), 6.2, 6.3, 6.4, 6.5 and 6.6, Articles 7 and 9, sections 11.2, 12.2, 12.3 and section 13.1, subsections 13.2 (c), (d), (e), (f) and (g), section 13.4, Articles 15, 16, 17, 18, 22, 26, 27, 29, 30 and 31, as well as all applicable definitions, cross-referenced provisions and Schedules, shall continue in full force and effect for a period of seven (7) 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” - Project (Background, Scope and Timelines);
- b) Schedule “B” - Budget;
- c) Schedule “C” - Financial and Performance Reports;
- d) Schedule “D” - Payment Schedule, and;
- e) Schedule “E” - Consultation Requirements.

### ARTICLE 27. ENTIRE AGREEMENT

**27.1. 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.

**27.2. Modification of Agreement.** The Agreement may only be amended by a written agreement duly executed by the Parties.

### ARTICLE 28. COUNTERPARTS

**28.1. 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 29. JOINT AND SEVERAL LIABILITY

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



**ARTICLE 30. RIGHTS AND REMEDIES CUMULATIVE**

30.1. **Rights and Remedies Cumulative.** The rights and remedies of MRA 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 31. BPSAA**

31.1. **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 32. FAILURE TO COMPLY WITH OTHER AGREEMENTS**

32.1. **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; and
- c) has, if applicable, failed to rectify such Failure in accordance with the requirements of such other agreement,

MRA may suspend the payment of any amount of Funds for such period as MRA determines appropriate.

**ARTICLE 33. CONSENT**

33.1. **Consent.** MRA may impose any terms and/or conditions on any consent MRA may grant pursuant to the Agreement.

**ARTICLE 34. JOINT AUTHORSHIP OF AGREEMENT**

35.1 **Joint Authorship of Agreement.** The Parties shall be considered joint authors of this Agreement and no provision herein shall be interpreted against one Part by the other Party because of authorship. No Party shall seek to avoid a provision herein because of its authorship through recourse to a third party, court, tribunal or arbitrator.

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 Rural Affairs  
by:

\_\_\_\_\_  
Name: Martin Bohl  
Title: Director, Rural Programs Branch

\_\_\_\_\_  
Date

Small, Rural and Northern Municipal Infrastructure Fund – Capacity Funding

RECIPIENT

by:

AFFIDAVIT  
CORPORATE

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Date

SEAL

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Date

I/we have authority to bind the Recipient.

Small, Rural and Northern Municipal Infrastructure Fund – Capacity Funding

SCHEDULE "A"

PROJECT

<b>1.</b>	<b>Background:</b>
	The Government of Ontario recognizes that small municipalities of less than 5,000 residents may have limited financial capacity to undertake asset management planning. In response, as part of the 2013 Budget, the Government of Ontario is providing \$4 million in capacity funding for asset management planning to small municipalities and Local Services Boards through the <i>Small, Rural and Northern Municipal Infrastructure Fund</i> .
<b>2.</b>	<b>Project Scope:</b>
	<p>The Recipient shall use the Funds to do the following:</p> <p>The Municipality of Magnetawan would use the funding to implement the asset management plan that is in the process of being developed</p> <p>And shall make its asset management plan publicly available, including online if it has a website, by May 30, 2014.</p>
<b>3.</b>	<b>Timelines:</b>
	All work must be completed no later than December 31, 2014.

**MAYOR AND COUNCIL**

Following Council's question at the meeting today, please refer to attached for eligible & ineligible costs for AMP funding.  
 Good news is that **Goes beyond implementation cost only!**



Roger Labelle, Clerk - Administrator  
 Commissioner for taking Oaths,  
 Municipality of Magnetawan,  
 District of Parry Sound

Dec. 18/13

c.c. Treasurer

SCHEDULE “B”

BUDGET

Expenditures	Maximum Funds (\$)
<p>The Eligible Costs for:</p> <ul style="list-style-type: none"> <li>○ Development, updating and implementation of asset management plans.</li> <li>○ Acquisition of asset management software, staff training related to asset management planning or implementation of asset management plans, asset inspections, etc.; and</li> <li>○ Small capital projects which are part of the asset management plan such as road re-surfacing and drainage improvements.</li> </ul>	<p>\$ 21,440.40</p>

**B.1 - Eligible Costs**

Subject to Section B.2 below, “**Eligible Costs**” under this Agreement are all direct costs which are in MRA’s sole and absolute opinion properly and reasonably incurred and paid by the Recipient under a contract for goods or services necessary for the implementation of the Project. Eligible Costs will include only the following:

- a) The costs of developing, updating and implementing asset management plans, including the costs of
  - i. studies, strategies or systems related to infrastructure integrated asset management, which may include software acquisition and implementation;
  - ii. studies, strategies, or systems related to infrastructure demand management;
  - iii. feasibility studies for specific infrastructure Projects which at the time of the study are not being actively considered for funding;
  - iv. the costs of adapting methodologies and technologies;
  - v. provincial long-term infrastructure plans;
  - vi. costs of travel, salaries and other benefits for employees directly engaged in the development, updating and implementation of asset management plans.
- b) The incremental costs to train staff about asset management planning or inspect assets;
- c) The costs of small capital projects which are part of the asset management plan, such as road re-surfacing and drainage improvements
- d) the costs of acquiring, constructing or renovating a tangible capital asset, as determined by MRA;
- e) the costs of joint communication activities (press releases, press conferences, translation, etc.) and road signage recognition;
- f) all planning (including plans and specifications) and assessment costs, such as the costs of environmental planning, surveying, engineering, architectural supervision,

## Small, Rural and Northern Municipal Infrastructure Fund – Capacity Funding

- testing and management consulting services to a maximum of 15% of total Eligible;
- g) the costs of environmental reviews, including environmental assessments and follow-up programs as defined in the *Canadian Environmental Assessment Act* and the costs of remedial activities, mitigation measures and follow-up identified in any environmental assessment;
  - h) the costs of Project-related signage, lighting, Project markings and utility adjustments;
  - i) costs of consulting with Aboriginal Group(s), including the translation of documents into languages spoken by the interested Aboriginal Group(s);
  - j) the costs of developing and implementing innovative techniques for carrying out the Project, as determined by MRA;
  - k) The costs of audit and evaluation costs as specified in this Agreement, with the exception of costs related to the retaining of an external auditor;
  - l) other costs that, in the sole opinion of MRA, are considered to be direct and necessary for the successful implementation of the Project and have been approved in writing prior to being incurred by an MRA Project oversight committee.



### B.2 - Ineligible Costs

The following costs are “**Ineligible Costs**” under this Agreement:

- a) Costs incurred prior to October 4, 2013;
- b) Costs incurred after December 31, 2014;
- c) Salaries and other employment benefits of any employees of the Recipient that are not dedicated for the Term of the Agreement to asset management activities;
- d) Overhead costs (e.g., supervision) for eligible staff members;
- e) Costs of hospitality, incidental or food expenses of consultants;
- f) Taxes for which the Recipient or a third party is eligible for a tax rebate and all other costs eligible for rebates;
- g) Financing charges and interest costs;
- h) Costs of capital leasing of equipment by the Recipient; and
- i) Legal fees.

**SCHEDULE “C”**

**REPORTS**

The following Reports are to be provided in a form and with such content that are satisfactory to MRA:

	<b>Name of Reports and Details Required</b>	<b>Position of Accountable Person who must Approve the Report</b>	<b>Due Date</b>
1.	Final Report (see details below)	Chief Administrative Officer or equivalent	March 31, 2015.
2.	Other Reports	TBD	TBD

***Report Details***

1. The Final Report shall include, but is not be limited to, the following and be required in a format as provided by MRA:
  - (i) Include an attestation that all Project expenditures were expended in accordance with Schedule “B” of this Agreement and have been used for the purposes identified in the Recipient’s Expression of Interest. Said attestation will be signed by the Chief Administrative Officer, the Board chair or equivalent if applicable, or as otherwise agreed to by MRA in writing.
  - (ii) Include a statement signed by the authorized official at the Recipient confirming the Recipient’s compliance with the terms and conditions of the Agreement.
  - (iii) Any additional information MRA may request.
  
2. Other Reports:
 

MRA will specify the timing and content of any other Reports as may be necessary, as well as the accountable officer.



SCHEDULE “D”

PAYMENT SCHEDULE

<b>Subject to subsection 4.1(c), PAYMENT EVENT</b>	<b>AMOUNT (\$)</b>
Upon execution of this Agreement by the Parties	\$ 21,440.40

SCHEDULE “E”

CONSULTATION REQUIREMENTS

**1.0 PURPOSE**

This Schedule sets out the responsibilities of Ontario and the Recipient in relation to consultations with Aboriginal Groups about the Project, and delegates procedural aspects of consultations from Ontario to the Recipient.

1.1 Definitions:

For the purposes of this Schedule:

“**Section 35 Duty**” means any duty Ontario may have to consult and, where appropriate, accommodate an Aboriginal Group in relation to the Project flowing from section 35 of the *Constitution Act, 1982*.

**2.0 RESPONSIBILITIES OF ONTARIO**

2.1 Ontario is responsible for:

- a) Determining which (if any) Aboriginal Group should be consulted in relation to the Project and advising the Recipient of the same;
- b) The preliminary and ongoing assessment of the depth of consultation required with any Aboriginal Group;
- c) At its discretion, delegating procedural aspects of consultation to the Recipient pursuant to this Schedule “E” of the Agreement;
- d) Satisfying itself, where it is necessary to do so, that the consultation process in relation to the Project has been adequate and the Recipient is in compliance with this Schedule “E” of the Agreement; and
- e) Satisfying itself, where any Aboriginal or treaty rights and asserted rights of any Aboriginal Group require accommodation, that that Aboriginal Group is appropriately accommodated in relation to the Project.

**3.0 RESPONSIBILITIES OF THE RECIPIENT**

3.1 The Recipient is responsible for:

- a) Giving notice to any Aboriginal Group regarding the Project as directed by Ontario, if such notice has not already been given by the Recipient or Ontario;
- b) Immediately notifying Ontario of contact by any Aboriginal Group regarding the Project and advising of the details of the same;
- c) Informing any Aboriginal Group interested about the Project and providing to those Aboriginal Groups a full description of the Project unless such description has been previously provided to them;

SCHEDULE “E” continued

**4.0 NO IMPLICIT ACKNOWLEDGEMENT**

4.1 Nothing in this Schedule “E” shall be construed as an admission, acknowledgment, agreement or concession by Ontario or the Recipient, that a Section 35 Duty applies in relation to the Project, nor that any responsibility set out herein is, under the Constitution of Canada, necessarily a mandatory aspect or requirement of any Section 35 Duty, nor that a particular aspect of consultation referred to in section 3.1 of this Schedule “E” hereof is an aspect of the Section 35 Duty that could not have lawfully been delegated to the Recipient had the Parties so agreed.

**5.0 GENERAL**

5.1 This Schedule shall be construed consistently with but does not substitute for any requirements or procedures in relation to Aboriginal consultation or the Section 35 Duty that may be imposed by a ministry, board, agency or other regulatory decision-maker acting pursuant to laws and regulations. Such decision-makers may have additional obligations or requirements. Nonetheless, the intent of Ontario is to promote coordination among provincial ministries, boards and agencies with roles in consulting with Aboriginal Groups so that the responsibilities outlined in this Agreement may be fulfilled efficiently and in a manner that avoids, to the extent possible, duplication of effort by Aboriginal Groups, the Recipient, Ontario, and provincial ministries, boards, agencies and other regulatory decision-makers.

**6.0 NOTICE AND CONTACT**

**6.1 *Recipient Shall Not Start Construction on Project Until Recipient Provides Evidence to Ontario that Notice of Project Has Been Given to Aboriginal Groups.*** The Recipient shall not itself commence or allow any third party to commence construction on any aspect of the Project for forty-five (45) Business Days, or such other time as Ontario may direct, after it has provided Ontario with written evidence that the Recipient has sent notice of the Project to the Aboriginal Groups identified in accordance with Schedule “E” of this Agreement.

6.2 All notices to Ontario pertaining to this Schedule “E” shall be in writing and shall be given by facsimile or other means of electronic transmission or by hand or courier delivery. Any notice to Ontario shall be addressed as follows:

Ministry of Rural Affairs  
1 Stone Road West, 4 NW  
Guelph, Ontario  
N1G 4Y2

Attention: Martin Bohl  
Telephone: 519-826-3419  
Fax: 519-826-4336  
Email: martin.bohl@ontario.ca

**SCHEDULE “E” continued**

- d) Following up with any Aboriginal Group that has an issue, concern with or interest in the Project in an appropriate manner to ensure that the Aboriginal Group is aware of the opportunity to express comments and concerns about the Project, including any concerns regarding adverse impacts on hunting, trapping, fishing, plant harvesting or on burial grounds or archaeological sites of cultural significance to the Aboriginal Group, and immediately advising Ontario of the details of the same;
- e) Informing the Aboriginal Group of the regulatory and approval processes that apply to the Project of which the Recipient is aware after reasonable inquiry;
- f) Maintaining the Aboriginal Group on the Recipient’s mailing lists of interested parties for environmental assessment and other purposes and providing to the Aboriginal Group all notices and communications that the Recipient provides to interested parties and any notice of completion;
- g) Making all reasonable efforts to build a positive relationship with any Aboriginal Group that has an interest in the Project;
- h) Providing Aboriginal Groups with reasonable opportunities to meet with appropriate representatives of the Recipient and meeting with the Aboriginal Groups to discuss the Project (if requested);
- i) If appropriate, providing reasonable financial assistance to an Aboriginal Group to permit effective participation in consultation processes for the Project, but only after consulting with Ontario;
- j) Considering comments provided by any Aboriginal Groups with an interest in the Project regarding the potential impacts of the Project on Aboriginal or treaty rights or asserted rights, including adverse impacts on hunting, trapping, fishing, plant harvesting or on burial grounds or archaeological sites of cultural significance to an Aboriginal Group, or on other interests, or any other concerns or issues regarding the Project;
- k) Answering any reasonable questions to the extent of the Recipient’s ability and receiving comments from Aboriginal Groups, notifying Ontario of the nature of the questions or comments received and maintaining a chart showing the issues raised by any Aboriginal Group and any responses the Recipient has provided;
- l) Where an Aboriginal Group asks questions regarding the Project directly of Ontario, providing Ontario with the information reasonably necessary to answer the inquiry, upon Ontario’s request;
- m) Subject to subsection 3.1 (n), where appropriate, discussing with an Aboriginal Group potential accommodation, including mitigation of potential impacts on Aboriginal or treaty rights, asserted rights or associated interests regarding the Project and reporting to Ontario any comments or questions from the Aboriginal Group that relate to potential accommodation or mitigation of potential impacts;
- n) Consulting regularly with Ontario during all discussions with any Aboriginal Group regarding accommodation measures, if applicable, and presenting to Ontario for the

**SCHEDULE “E” continued**

purposes of subsection 2.1 (e) hereof, the results of such discussions prior to implementing any applicable accommodation measures;

- o) Complying with Ontario’s direction to take any actions, including without limitation, suspension of the Project, as Ontario may require; and
  - p) Providing in any contracts with third parties for the Recipient’s right and ability to respond to direction from Ontario as Ontario may provide in accordance with subsection 3.1 (o).
- 3.2 The Recipient hereby acknowledges, Ontario or any provincial ministry having an approval role in relation to the Project, or any responsible regulatory body, official, or provincial decision-maker, may participate in the matters and processes enumerated therein as they deem necessary.
- 3.3 The Recipient will carry out the following functions in relation to record keeping, information sharing and reporting to Ontario:
- a) Provide to Ontario, upon request, complete and accurate copies of all documents provided to any Aboriginal Group in relation to the Project;
  - b) Keep reasonable business records of all its activities in relation to consultation and provide Ontario with complete and accurate copies of such records upon request;
  - c) Provide Ontario with timely notice of any Recipient mailings to, or Recipient meetings with, the representatives of any Aboriginal Group in relation to the Project;
  - d) Immediately notify Ontario of any contact by any Aboriginal Group regarding the Project and provide copies to Ontario of any documentation received from Aboriginal Groups;
  - e) Immediately notify Ontario of any potential adverse impact of the Project on Aboriginal or treaty rights or asserted rights of which it becomes aware;
  - f) Immediately notify Ontario if any Aboriginal archaeological resources are discovered in the course of the Project;
  - g) Provide Ontario with summary reports or briefings on all of its activities in relation to consultation with any Aboriginal Group, as may be requested by Ontario;
  - h) If applicable, advise Ontario if the Recipient and an Aboriginal Group propose to enter into an agreement directed at mitigating or compensating for any impacts of the Project on Aboriginal or treaty rights or asserted rights (e.g. an impact-benefit agreement or other such similar agreement); and
  - i) If applicable, and if requested, provide Ontario with a copy of the non-financial information of any agreement the Recipient and an Aboriginal Group enter into that is directed at mitigating or compensating for any impacts of the Project on Aboriginal or treaty rights or asserted rights (e.g. an impact-benefit agreement or other such similar agreement).
- 3.4 The Recipient shall, upon request, lend assistance to Ontario by filing records and other appropriate evidence of the activities undertaken both by Ontario and by the Recipient in consulting with any Aboriginal Group in relation to the Project, attending any regulatory or other hearings, and making both written and oral submissions, as appropriate, regarding the fulfillment of Aboriginal consultation responsibilities by Ontario and by the Recipient, to the relevant regulatory or judicial decision-makers.