

THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN

By-Law no. 2012-09

Being a by-law to authorize the execution of a funding agreement with FedNor for the Magnetawan Community Recovery Program. (\$27,000)

WHEREAS the Council of the Corporation of the Municipality of Magnetawan deems it desirable to execute an agreement with FedNor for funding in support of the Magnetawan Community Recovery Program.

NOW THEREFORE, be enacted as follows:

1. That the attached funding agreement between the Municipality of Magnetawan and FedNor be adopted.
2. That the Mayor and the Clerk be authorized to execute the agreement.
3. That this by-law take effect retroactive March 12, 2012.

AND FURTHER THAT this by-law be read a first, a second and third time, and be adopted this 25th day of April 2012.



Mayor



Clerk

Council MTG. of April 25, 2012

Agenda Item # 6.1



Industry Canada

Industrie Canada

MAR 20 2012

FedNor

FedNor

19 Lisgar Street
Suite 307
Sudbury, Ontario
P3E 3L4

19, rue Lisgar
Bureau 307
Sudbury (Ontario)
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Tel.: 705 671-0711
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Protected

Project Number: 851- 509650

THIS AGREEMENT made as of: **MAR 02 2012**

BETWEEN

HER MAJESTY THE QUEEN in right of Canada
as represented by the Minister of Industry
(the "Minister")

- and -

Corporation of the Municipality of Magnetawan
(the "Recipient")

WHEREAS in response to an application from the Recipient dated September, 29, 2011, the Minister has agreed to provide a non-repayable Contribution under the Planning and Decision Making component to the Recipient (the Minister and the Recipient collectively referred to as the Parties and individually as a Party) for the Project described in Annex 1 on the terms and conditions herein contained.

IN CONSIDERATION of the mutual covenants and agreements herein contained (the receipt and sufficiency of which is hereby acknowledged), the Parties hereto hereby covenant and agree as follows:

1.0 The Agreement

1.1 The following Annexes form part of this Agreement:

- Annex 1 - The Project - Statement of Work
- Annex 2 - FedNor News Release Summary
- Annex 3 - Costing Memorandum
- Annex 4 - Authorization to Enter Contract

(collectively the "Agreement")

This Agreement supersedes all prior agreements, documents, undertakings and negotiations, whether oral or written of the Parties, related to its subject matter.

1.2 **Precedence.** In the event of, and only to the extent of, any conflict or inconsistency between the part of the Agreement that precedes the signatures of the Parties, and the annexes that follow, the part of this Agreement that precedes the signatures of the Parties shall apply. The order of precedence amongst the annexes of this Agreement will be:

Annex 1 – The Project-Statement of Work
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Annex 4 - Recipient representation documents per section 9.0

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

1.4 **Date of Acceptance.** The date of acceptance shall be the date the duplicate copy of this Agreement, duly executed by the Recipient, is received by the Minister (the "Date of Acceptance").

1.5 **Duration of Agreement.** This Agreement comes into force on the Date of Acceptance and will terminate:

- (a) twelve (12) months after the earlier of:
 - i) the completion of the Project to the satisfaction of the Minister; or
 - ii) the Completion Date; or
- (b) upon the date on which all amounts due by the Recipient to the Minister under this Agreement, have been paid in full,

whichever is the latter, unless terminated earlier in accordance with the terms of this Agreement.

1.6 **Survival.** Notwithstanding the provisions of subsection 1.5 above, the rights and obligations of the Parties set forth in the following sections, shall survive the expiry or early termination of this Agreement, and shall remain in full force and effect for a period of six (6) years after the expiry or early termination of this Agreement:

Section 4 - Project Deliverables
Section 5 - Other Government Assistance
Section 8 - Monitoring and Audit
Section 13 - Indemnification and Limitation of Liability
Section 14 - Default and Remedies
Section 17 - Project Assets
Section 18 - General

2.0 The Project

- 2.1 The Recipient shall ensure that the Project described in Annex 1 (the “Project”) commences on or before March 19, 2012 (the “Commencement Date”) and is completed on or before September 30, 2012 (the “Completion Date”).
- 2.2 The Recipient shall not alter the scope, timing or location of the Project without the prior written consent of the Minister.

3.0 The Contribution

- 3.1 The Minister will make a Contribution (the “Contribution”) to the Recipient in respect of the Project in an amount not exceeding the lesser of:
 - (a) 45% of the Eligible & Supported Costs of \$60,000 of the Project incurred, and
 - (b) \$27,000.
- 3.2 The Minister shall not contribute to any Eligible and Supported Costs incurred prior to September 29, 2011 or later than the Completion Date.

The Minister shall not make any payment of the Contribution in respect of costs for which the Recipient has entered into a legal commitment prior to September 29, 2011.
- 3.3 The Minister may, at his or her sole discretion, limit to 10% of the Contribution the amount paid towards Eligible and Supported Costs incurred by the Recipient between the date that the Application was received and the Commencement Date.
- 3.4 The Recipient shall use the Contribution solely and exclusively to support the Eligible and Supported Costs of the Project as detailed in Annexes 1 and 3 and shall carry out the Project in a diligent and professional manner.
- 3.5 The Recipient shall be responsible for all costs of the Project, including cost overruns, if any.

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- 4.1 As part of the Project deliverables, the Recipient shall:

The proponent agrees to provide FedNor with quarterly claims, including narrative reports outlining current activities related to the project. The proponent further agrees to provide a final report outlining the overall success of the project. FedNor will receive recognition on media material, web-sites and print material as a financial partner in this project. An electronic copy or 2 print copies of report(s) shall be submitted to FedNor at the completion of the project.

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4.2 For evaluation purposes, the Recipient shall, in addition to reporting measures outlined in subsections 7.1, 7.5 and section 8:

- a) annually as well as at the project end, report on how the project met the intended measurable results that were detailed in their project proposal and request for funding;
- b) at project end, report the outcomes and impacts of the project on the community, region or stakeholders, and how the project contributed to FedNor's priorities that were noted in their project proposal and request for funding; and
- c) ensure tracking of relevant information in order to measure longer term impacts of funded projects. This information will be reported to FedNor up to five years following project completion.

5.0 Other Government Assistance

5.1 The Minister and the Recipient hereby acknowledge that for the purposes of this Agreement, the Recipient has applied for or has received the following federal, provincial, or municipal assistance for the Project:

Northern Ontario Heritage Fund Corporation (NOHFC) \$27,000
Municipality of Magetawan \$6,000

5.2 The Recipient shall promptly inform the Minister in writing in the event additional other government financial support has been requested or received during the term of this Agreement, and acknowledges and agrees that an adjustment to the amount of the Contribution and a request for repayment of part or all of the amounts paid to the Recipient may be made as a result thereof. The amount of such repayment requested will constitute a debt due to Her Majesty the Queen in Right of Canada and will be recovered as such from the Recipient.

5.3 In no instance will the total government assistance be allowed to exceed the Eligible Costs and in no instance will the total government financial support towards the same eligible costs being supported under this Agreement be allowed to exceed 100% of the Eligible and Supported costs under this Agreement.

6.0 Intellectual Property

6.1 Title to any intellectual property created solely by the Recipient as part of or in respect of the Project will vest with the Recipient or will be determined by applicable Canadian law, provided that the Minister shall be given the right to the use of any of such intellectual property (e.g. brochures, awareness, packages, etc.) for any governmental purposes.

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6.2 All reports and other information that the Minister collects, manages or has a right to receive or produce in accordance with this Agreement, or that the Recipient collects, creates, manages and shares with the Minister, shall be deemed to be "Canada Information". The Minister shall have the right, subject to the provisions of the *Access to Information Act*, to release to the public, table before Parliament, or publish by any means, any Canada Information, including such excerpts or summaries of the Canada Information as he or she may, from time to time, determine.

7.0 Claims and Payments

7.1 **Claims Procedures.** The Recipient shall submit claims for reimbursement of Eligible and Supported Costs incurred, not more frequently than monthly, in a form satisfactory to the Minister. Each claim will include the following information:

- a) an itemized summary of Eligible and Supported Costs incurred;
- b) for each expense being claimed, a copy of the invoice rendered to the Recipient (or if no invoice is available, the contract vendor's name and contact information, the date(s) that goods and services were provided, and the date the contract vendor was paid), if required by the Minister;
- c) a Progress Report on activities and deliverables in a form to be agreed upon by the Parties;
- d) identification of any deferred payment amounts;
- e) a certification of the claim by an officer of the Recipient or other person satisfactory to the Minister, confirming the accuracy of the claim and all supporting information provided; and
- f) any other documentation in support of the claim as may be required by the Minister.

7.2 **Advance Payments.** Where the Minister is satisfied and has determined that the Recipient requires an advance against the Contribution amounts payable under this Agreement in order to meet cash flow requirements of the Project and that the advance payment is critical for the success of the Project, the Minister may, at his or her sole discretion, make advance payments to the Recipient. An initial advance may be made equal to the Eligible and Supported Cost requirements of the Recipient on the basis of a projected cashflow submitted by the Recipient and approved by the Minister and the Minister may elect to make subsequent advances.

7.3 If the Recipient earns any interest as a consequence of the advance payment of the Contribution or earns any revenue as a result of the Project or if it receives any revenue from another level of government for the Project, the Minister may in his or her absolute discretion reduce the Contribution by all or by such portion of the revenue (including the interest) as he or she deems appropriate.

7.4 **Payment Procedures**

a) The Minister shall review and approve the documentation submitted by the Recipient following the receipt of the Recipient's claim, or will notify the Recipient of any deficiency in the documentation submitted which deficiency the Recipient shall immediately take action to address and rectify.

b) Subject to the maximum Contribution amounts set forth in subsection 3.1 and all other conditions in this Agreement, the Minister shall pay to the Recipient the Minister's portion of the Eligible and Supported Costs set forth in the Recipient's claim in accordance with the Minister's customary payment practices.

c) The Minister may request at any time that the Recipient provide satisfactory evidence to demonstrate that all Eligible and Supported Costs claimed have been paid.

d) The Minister may require that any claim submitted for payment of the Contribution be certified by the Recipient's external auditor or by an auditor approved by the Minister.

7.5 **Final Claim Procedures**

a) In addition to the requirements set out in subsection 7.1 Claims Procedures, the Recipient's claim for the final reimbursement of any Eligible and Supported Costs and/or the final reconciliation of any outstanding advances, shall be signed by an officer of the Recipient, or such other representative of the Recipient satisfactory to the Minister, and accompanied by the following, in a form satisfactory to the Minister in scope and detail:

- (i) a final itemized statement of all Eligible and Supported Costs incurred by the Recipient;
- (ii) a final statement of total Project costs;
- (iii) a statement of the total funding provided from all sources for the Project, including total Canadian government funding received;
- (iv) a Final Report on the Project in a form to be agreed upon by the Parties;
- (v) certification by the Recipient with respect to its compliance with the terms and conditions of this Agreement; and
- (vi) certification by the Recipient that this is the final claim for payment and as such, it includes all final Eligible and Supported Costs submitted for payment.

b) The Recipient shall submit the final claim for reimbursement of Eligible and Supported Costs to the satisfaction of the Minister no later than six(6) months after the Completion Date. The Minister shall have no obligation to pay any claims submitted after that date.

7.6 **Holdbacks.** Notwithstanding any other provision of this Agreement, the Minister may, at the Minister's sole discretion, withhold up to 10% of the Contribution amount until :

a) the Project is completed to the satisfaction of the Minister;

b) the Final Report has been submitted to the satisfaction of the Minister;

c) audits, where required by the Minister have been completed to the satisfaction of the Minister; and

d) the Minister has approved the final claim described in subsection 7.5.

7.7 **Overpayment or non-entitlement.** Where for any reason the Recipient is not entitled to the Contribution or the amount paid to the Recipient exceeds the amount to which the Recipient is entitled, the Recipient shall repay the Minister promptly and in any case no later than 30 days from the date of the Minister's demand for payment, the amount of the Contribution disbursed or the amount of the overpayment, as the case may be, together with the average bank interest rate in accordance with the *Interest and Administrative Charges Regulations*, in effect on the due date, plus 3% compounded monthly on overdue balances payable, from the date of the demand, until payment in full is received by the Minister.

7.8 **Sharing Ratios.** If the Minister makes individual payments that represent higher sharing ratios than those authorized for the total Contribution, in no event shall the overall sharing ratio calculated on the total Eligible and Supported Costs of the Project exceed the maximum authorized sharing ratios as provided in subsection 3.1 a).

8.0 Monitoring and Audit

8.1 The Recipient shall submit to the Minister Progress Reports and a Final Report as provided in sections 7.1 and 7.5, satisfactory to the Minister in scope and detail.

8.2 The reports referred to in subsection 8.1 shall contain information sufficient to allow the Minister to assess the progress of the Project (e.g. work completed to date). Upon request of the Minister and at no cost to him, the Recipient will promptly elaborate upon any report submitted.

- 8.3 The Minister may request that the Recipient submit to him a copy of its financial statements, within 120 days of each Recipient fiscal year end or within such longer period as may be authorized by the Minister.
- 8.4 The Recipient may provide to the Minister a copy of any report or publication produced as a result of this Agreement, whether interim or final, as soon as the same becomes available.
- 8.5 The Recipient shall, throughout the term of this Agreement and for a period of six (6) years after the Completion Date of the Project, at its own expense:
- (a) keep, maintain, preserve and make available for audit and examination by the Minister's representatives, proper books, accounts and records of the costs of the Project, wherever such books, and records may be located, and permit any authorized representative of the Minister to conduct such independent audits and evaluations as the Minister in his or her discretion may require;
 - (b) permit any authorized representatives of the Minister reasonable access to the Recipient's premises to inspect and assess the progress and results of the Project; and
 - (c) supply promptly, on request, such information in respect of the Project and its results as the Minister may require for purposes of this Agreement and for statistical purposes.
- 8.6 The Minister may require that his or her authorized representative be granted the right to attend as an observer at such meetings as the Minister may deem necessary.
- 8.7 The Minister shall have the right, at his or her own expense, and as and when he or she determines necessary, to perform audits of the Recipient's books, accounts, records, financial statements and claims for reimbursement of Eligible and Supported Costs, and the Recipient's administrative, financial and claim certification processes and procedures, for the purposes of verifying the costs of the Project, validating claims for reimbursement of Eligible and Supported Costs, ensuring compliance with the terms of this Agreement, and confirming amounts repayable to the Minister under the provisions of this Agreement.
- 8.8 Any audits performed hereunder will be carried out by auditors selected by the Minister, which may include any of the following: Department of Industry officials, an independent auditing firm, and the Recipient's external auditors. The Minister will provide the Recipient with a description of the scope and criteria of the audit and the expected time frames for completion of the audit and public release of the related reports.

Auditor General of Canada. The Recipient acknowledges that the Auditor General of Canada may, at the Auditor General's cost, after consultation with the Recipient, conduct an inquiry under the authority of subsection 7.1(1) of the *Auditor General Act* in relation to any funding agreement (as defined in subsection 42.(4) of the *Financial Administration Act*) with respect to the use of funds received.

For purposes of any such inquiry undertaken by the Auditor General, the Recipient shall provide, upon request and in a timely manner, to the Auditor General or anyone acting on behalf of the Auditor General:

(a) all records held by the Recipient, or by agents or contractors of the Recipient relating to this Agreement and to the use of the Contribution; and

(b) such further information and explanations as the Auditor General, or anyone acting on behalf of the Auditor General, may request relating to this Agreement or the Contribution.

8.9

Representations

9.0

The Recipient represents and warrants that:

(a) it is a municipality and in good standing under the laws of Ontario, and it shall remain as such for the duration of the Agreement. A certified copy of the Charter for this organization together with a certified copy of the Resolution and/or by-laws authorizing this transaction is attached to this Agreement as Annex 4;

(b) it has the power and authority, and has met all legal requirements, necessary to carry on business, hold property, and to enter into, deliver and perform this Agreement;

(c) the signatories to this Agreement, on behalf of the Recipient, have been duly authorized to execute and deliver this Agreement;

(d) this Agreement constitutes a legally binding obligation of the Recipient, enforceable against it in accordance with its terms, subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies;

e) the execution and delivery of this Agreement and the performance by the Recipient of its obligations hereunder will not, with or without the giving of notice or the passage of time or both:

- i. violate the provisions of the Recipient's by-laws, any other corporate governance document subscribed to by the Recipient or any resolution of the Recipient;
- ii. violate any judgment, decree, order or award of any court, government agency, regulatory authority or arbitrator; or
- iii. conflict with or result in the breach or termination of any material term or provision of, or constitute a default under, or cause any acceleration under, any license, permit, concession, franchise, indenture, mortgage, lease, equipment lease, contract, permit, deed of trust or any other instrument or agreement by which it is bound.

f) there are no actions, suits, investigations or other proceedings pending or, to the knowledge of the Recipient, threatened and there is no order, judgment or decree of any court or governmental agency which could materially and adversely affect the Recipient's ability to carry out the activities contemplated by this Agreement.

g) The Recipient has acquired adequate property damage and general liability insurance that is consistent with the level of risk exposure associated with the Project, as described in the Annex 1 - The Project Statement of Work and will maintain such from the Commencement Date to the Project Completion Date.

10.0 Announcements, Events and other Communications Activities

10.1 The Recipient hereby consents to participate in a public announcement of the Project by or on behalf of the Minister in the form of a news release and/or media event.

10.2 The Minister, through Industry Canada/FedNor, shall inform the Recipient of the date the public announcement is to be made, and the Recipient shall maintain the confidentiality of this Agreement until such date.

10.3 The Recipient hereby agrees to display promotional material provided by Industry Canada/FedNor at the event.

10.4 The Recipient hereby agrees to place federal government logos as directed by Industry Canada/FedNor on all Project-related promotional or advertising materials (unless prior exemption is obtained from Industry Canada/FedNor), including, but not limited to, electronic media (web, television, video), and print media (signs, print advertising, brochures, magazines, maps, posters).

This does not apply to advertising related to recruitment or the tendering process, with the exception of recruitment ads placed for Youth Internships.

The appropriate Industry Canada/FedNor logos can be found in various electronic formats at <http://ic.gc.ca/FedNor> as part of the Logos and Advertising Templates section.

For assistance with logo placement or inquiries related to communications activities, please contact the FedNor Communications Team at 1-877-333-6673.

10.5 The Minister may, by notice in writing given to the Recipient, require that recognition of the support provided by the Minister not be made in any public communication of the Recipient

11.0 Official Languages

11.1 The Recipient in completing the Project will not be providing services to or communicating with members of an official languages minority community. Should there be a change in circumstances such that the Recipient will be providing services to and communicating with an official languages minority community, the Recipient agrees to comply with the requirements of the *Official Languages Act*, from that date forward.

12.0 Environmental and Other Requirements

12.1 The Minister has determined that the Project is not a "project" as defined by the *Canadian Environmental Assessment Act*.

12.2 The Recipient shall comply with all federal, provincial, territorial, municipal and other applicable laws governing the Recipient or the Project, or both, including but not limited to, statutes, regulations, by-laws, rules, ordinances and decrees. This includes legal requirements and regulations relating to environmental protection.

12.3 The Recipient will provide the Minister with reasonable access to any Project site for the purpose of ensuring that the terms and conditions of any environmental approval are met, and that any mitigation, monitoring or follow-up measures required have been carried out.

except to the extent to which such claims and demands, losses, costs, damages, actions, suits, or other proceedings relate to the willful act or omission of an official, employee, or agent of the Minister in the performance of his or her duties.

- c) any omission or other willful or negligent act or delay of the Recipient or third party and their respective employees, officers, or agents,
- b) the performance or non-performance of this Agreement, or the breach or failure to comply with any term, condition, representation or warranty of this Agreement, by the Recipient, its officers, employees and agents, or by a third party or its officers, employees, or agents; or,
- a) the Project, its operation, conduct or any other aspect thereof;

13.2 The Recipient shall at all times indemnify and save harmless the Minister, his or her officials, employees and agents, from and against all claims and demands, losses, costs, damages, actions, suits or other proceedings (including, without limitation, those relating to injury to persons, damage to or loss or destruction of property, economic loss or infringement of rights) by whomsoever brought or prosecuted, or threatened to be brought or prosecuted, in any manner based upon, caused by, or arising directly or indirectly from:

13.1 This Agreement is a contribution agreement only, not a contract for services or a contract of service or employment, and nothing in this Agreement, or the parties' relationship or actions is intended to create, nor shall be construed as creating, a partnership, employment or agency relationship between them. The Recipient is not in any way authorized to make a promise, agreement or contract or to incur any liability on behalf of the Minister, nor shall the Recipient make a promise, agreement or contract and incur any liability on behalf of the Minister, and the Recipient shall be solely responsible for any and all payments and deductions required by applicable laws.

13.0 Indemnification and Limitation of Liability

12.5 **Aboriginal consultation.** The Recipient acknowledges that the Minister's obligation to pay the Contribution is conditional upon Canada satisfying any obligation that Canada may have to consult with or to accommodate any Aboriginal groups that may be affected by the terms of this Agreement.

12.4 If a change that would trigger a re-assessment of the Project under the *Canadian Environmental Assessment Act* is proposed for, or made to, the Project, the Parties agree that despite any other provision in this Agreement, the Minister's obligations under this Agreement will be suspended until an environmental assessment is completed and the Minister determines that the Project as modified is unlikely to result in any significant adverse environmental effects.

13.3 The Minister shall have no liability under this Agreement except for payments of the Contribution in accordance with the provisions of this Agreement. Without limiting the foregoing, the Minister shall not be liable for any direct, indirect, special or consequential damages, or damages for loss of revenues or profits of the Recipient.

13.4 The Minister, his or her agents, employees and servants will not be held liable in the event the Recipient enters into loan, a capital lease or other long-term obligation in relation to the Project for which the Contribution is provided.

14.0 Default and Remedies

14.1 **Events of Default.** The following constitute events of default:

- (a) the Recipient becomes bankrupt or insolvent, goes into receivership, or takes the benefit of any statute from time to time in force relating to bankrupt or insolvent debtors;
- (b) an order is made or resolution passed for the winding up of the Recipient, or the Recipient is dissolved;
- (c) in the opinion of the Minister, the Recipient ceases to operate or has sold all or substantially all its assets;
- (d) the Recipient has submitted incomplete, false or misleading information to the Minister, or makes a false representation in this Agreement or any document relating to the Contribution;
- (e) in the opinion of the Minister, there is a material adverse change in risk;
- (f) in the opinion of the Minister, the Recipient fails to comply with a term, undertaking or condition of this Agreement; and
- (g) in the opinion of the Minister, the Recipient has failed to proceed diligently with the Project including, but not limited to, failure to meet deadlines stipulated in this Agreement except where such failure is due to causes which, in the opinion of the Minister, are beyond the control of the Recipient.

14.2 **Notice and Rectification Period.** The Minister may make a declaration of default by providing written notice to the Recipient of the condition or event which, in the Minister's opinion, constitutes an event of default under subsection 14.1. Except in the circumstances described in subsections (a) and (b) of section 14.1, the Minister may, in his or her discretion, advise the Recipient of the condition or event, and allow the Recipient a period of fifteen (15) days, or such other time as the Minister may in his or her sole discretion deem appropriate, to correct the condition or event complained of, or to demonstrate to the satisfaction of the Minister that it has taken the necessary steps to correct the condition, failing which the Minister may immediately declare that an event of default has occurred. Notification by the Recipient of rectification shall be made in writing within the period of fifteen (15) days or such other time as the Minister may decide.

14.3 **Remedies.** If the Minister declares that an event of default has occurred, the Minister may immediately exercise any one or more of the following remedies:

(a) terminate any obligation by the Minister to make any payment under this Agreement, including any obligation to pay an amount owing prior to such termination;

(b) suspend any obligation by the Minister to make any payment under this Agreement, including any obligation to pay an amount owing prior to such suspension;

(c) require the Recipient to repay forthwith to the Minister all or part of the Contribution which amount shall constitute a debt due to Her Majesty; and

(d) exercise any other remedy available to the Minister at law.

15.0 **Notice**

15.1 Any notice, information or document required under this Agreement shall be effectively given if delivered or sent by letter, electronic correspondence or facsimile (postage or other charges prepaid). Any notice that is delivered shall be deemed to have been received on delivery; any notice sent by electronic correspondence or facsimile shall be deemed to have been received one working day after being sent, any notice that is mailed shall be deemed to have been received eight (8) business days after being mailed.

15.2 Any notice or correspondence to the Minister shall be addressed to:

Industry Canada/FedNor
107 Shirreff Avenue, Suite 202
North Bay ON P1B 7K8

Attention: Ron Bégin
Planning and Decision Making component
Northern Ontario Development Program

or to such other address as may be designated by the Minister in writing.

15.3 Any notice or correspondence to the Recipient shall be addressed to

Mr. Roger Labelle

Clerk

Corporation of the Municipality of Magnetawan

4304 Highway 520

Magnetawan ON P0A 1P0

15.4 Either of the parties may change the address which they have stipulated in this Agreement by notifying the other party of the new address in writing, and such change shall be deemed to take effect 15 days after receipt of such notice.

16.0 Canadian Goods and Services

16.1 The Recipient in purchasing goods and services for the performance of the Project, shall provide a full and fair opportunity for use of Canadian carriers, suppliers and sub-contractors to the extent that they are competitive and available.

17.0 Project Assets

17.1 **Disposal of Assets.** The Recipient shall retain title to, and ownership of, the capital assets, the cost of which has been contributed to by the Minister under this Agreement for a minimum of six (6) years after the expiry or early termination of this Agreement, and shall not dispose of the same for a period of six (6) years after the expiry or early termination of this Agreement, without the prior written consent of the Minister. As a condition of such consent, the Minister may require the Recipient to repay the Minister the whole or any part of the Contribution paid to the Recipient hereunder.

- 18.0 **General**
- 18.1 Neither this Agreement nor any part thereof shall be assigned by the Recipient without the prior written consent of the Minister.
- 18.2 If the Recipient acquires supplies, equipment or services with the Funds it shall do so through a process that promotes the best value for money. The Recipient must provide and adhere to current Recipient procurement policies with evidence of competitive process and selection methodology. In the absence of Recipient procurement policy, if the Recipient is selecting third-party contractors from which to acquire supplies, equipment or services for the project for an amount greater than twenty-five thousand dollars (\$25,000) a competitive process must be used, including a written request for at least three proposals, written evaluation of bids received and a written agreement with the successful contractor. FedNor may, at its sole discretion, consent in writing to single sourcing if details of urgency, special expertise, confidentiality, savings or other circumstances warrants it.
- 18.3 Payment by the Minister of amounts due under this Agreement shall be conditional on there being a legislated appropriation for the fiscal year of the Government in which the payment is due. The Minister shall have the right to terminate or reduce the Contribution in the event that the amount of the appropriation is reduced or denied by Parliament. In the event that any portion of the Contribution has been paid to the Recipient and the legislated appropriation for the fiscal year of the Government in which such payment is made is not obtained, the Minister shall have the right to recover the amount so paid from the Recipient.
- 18.4 Without limiting the scope of the Set-off Rights provided for under the *Financial Administration Act*, it is understood that the Minister may set off against the Contribution, any amounts owed by the Recipient to Her Majesty the Queen in Right of Canada under legislation or contribution agreements and the Recipient shall declare to the Minister all amounts outstanding in that regard when making any claim under this Agreement.
- 18.5 This Agreement shall ensure to the benefit of and be binding upon the Recipient, its successors and permitted assigns.
- 18.6 Subject to the *Access to Information Act* (Canada), the *Privacy Act*, the *Library and Archives Act* of Canada, to section 10.0 of this Agreement and to Annex 2, the Parties shall keep confidential and shall not disclose the contents of this Agreement or the transactions contemplated hereby without the consent of all Parties.
- 18.7 Notwithstanding subsection 18.6, the Recipient waives any confidentiality rights to the extent such rights would impede Canada (Her Majesty the Queen in Right of Canada) from fulfilling its notification obligations to the World Trade Organization under Article 25 of the *Agreement on Subsidies and Countervailing Measures*.

- 18.15 It has not directly or indirectly promised or offered to any official or employee of the Minister, any bribe, gift, or other inducement, nor has it authorized any person to do so on its behalf, for or with a view to obtaining this Contribution;
- 18.14 The Recipient confirms that no current or former public servant or public office holder to whom the *Values and Ethics Code for the Public Service* or the *Conflict of Interest Act* apply, shall derive direct benefit from the Agreement, including any employment, payments or gifts, unless the provision or receipt of such benefits is in compliance with such codes and legislation. Where the Recipient employs or has a shareholder who is either a current or former (in the last twelve months) public office holder or public servant in the federal government, the Recipient shall demonstrate compliance with these codes and legislation.
- 18.13 The Recipient represents and warrants that no member of the House of Commons or the Senate of Canada shall be admitted to any share or part of this Agreement or to any benefit arising from it, that is not otherwise available to the general public.
- 18.12 Any tolerance or indulgence demonstrated by one Party to the other, or any partial or limited exercise of rights conferred on a Party, shall not constitute a waiver of rights, and unless expressly waived in writing both Parties shall be entitled to exercise any right and seek any remedy available under this Agreement or otherwise at law. Either Party may, by notice in writing, waive any of its rights under this Agreement.
- 18.11 No amendment to this Agreement shall be effective unless it is made in writing and signed by the Parties hereto.
- 18.10 If a dispute arises concerning the application or interpretation of this Agreement, the Parties shall attempt to resolve the matter through good faith negotiation, and may, if necessary and the Parties consent in writing, resolve the matter through mediation by a mutually acceptable mediator or arbitration in accordance with the Commercial Arbitration Code set out in the schedule to the *Commercial Arbitration Act* (Canada), and all regulations made pursuant to that Act.
- 18.9 This Agreement shall be subject to and construed in accordance with the laws of Canada and of Ontario and the parties hereto acknowledge the jurisdiction of the superior court of such province as defined in the *Interpretation Act* R.S., c. I-23, as amended from time to time.
- 18.8 The Recipient shall comply with all federal, provincial, territorial, municipal and other applicable laws governing the Recipient or the Project, or both, including but not limited to, statutes, regulations, by-laws, rules, ordinances and decrees. This includes legal requirements and regulations relating to environmental protection.

18.16 The Recipient represents and warrants that:

- a) any person who, for consideration, directly or indirectly, communicated with or arranged a meeting with a public office holder, in respect of any aspect of this Agreement, prior to the execution of the Agreement, was in compliance with all requirements of the Lobbying Act, as amended from time to time;

- b) any person who, for consideration, directly or indirectly, during the term of this Agreement and in respect of any aspect of this Agreement, communicates with or arranges a meeting with a public office holder, will be in compliance with all requirements of the Lobbying Act;

- c) at all relevant times it has been, is and will continue to remain in compliance with the Lobbying Act;

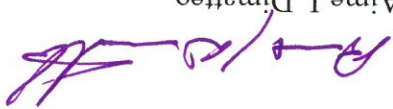
- d) it has not, nor has any person on its behalf, paid or provided or agreed to pay or provide, to any person, directly or indirectly, a commission, contingency fee or any other consideration (whether monetary or otherwise) that is dependant upon the execution of the Agreement or the person arranging a meeting with a public office holder; and

- e) it will not, during the term of this Agreement, pay or provide or agree to pay or provide to any person, directly or indirectly, a commission, contingency fee or any other consideration (whether monetary or otherwise) that is dependant upon the person arranging a meeting with any official or employee of Her Majesty the Queen in Right of Canada.


18.17 A breach of the representations and warranties contained in subsections 18.16 (d) and (e) will constitute an Event of Default for which the Minister may exercise the remedies available to him.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement

HER MAJESTY THE QUEEN in right of Canada as represented by the Minister of Industry

Per: 
 Name: Aime J. Dimatteo
 Title: Director General, FedNor
 Date: MAR 02 2012

RECIPIENT

Per: 
 Name: Sam Dumas
 Title: MPP
 Date: MARCH 19, 2012

Per: Roger Labelle, Clerk

Name: Commissioner for taking Oaths,
 Municipality of Magnetawan,
 District of Parry Sound,
 Date: March 18, 2012

I/we have authority to bind the Corporation

THE PROJECT - STATEMENT OF WORK

Recipient: Corporation of the Municipality of Magnetawan

Project No.: 851 - 509650

Project Location: Magnetawan

Timing: Project to commence on or before March 19, 2012 and be completed on or before September 30, 2012.

Purpose / Objectives / Activities of the Project:

The Municipality is seeking to retain a consulting team that can assist with a community recovery plan focussed on their historic downtown.

Expected Results of the Project:

As part of the Project deliverables:

- The Request for Proposals (RFP) identifies the following objectives:
- Identify key natural and cultural features;
- Identify opportunities for new development or redevelopment, recognizing the limitations of private sewage and water services in the village;
- Identify key economic drivers and opportunities in the region and the community;
- Identify public and privately owned lands;
- Consult the community throughout the study process to ensure community support for the final plan;
- Create a community development plan that is realistic, sustainable and appropriate for the village; and,
- Create a branding and marketing strategy for the downtown core.

Program and Financing:

<u>Project Costs:</u>			
Eligible Costs	FedNor	\$27,000	
-Supported	Provincial	\$27,000	
-Not Supported	Municipal		
Ineligible Costs	Bank		
	Proponent	\$6,000	
	Others		
			<u>\$60,000</u>
			<u>\$60,000</u>

<u>Eligible Costs:</u>				
Consultant fees, Urban rural design	Supported	\$60,000		
	Not Supported			
	Total			\$60,000
<u>TOTAL ELIGIBLE COSTS</u>				
<u>Ineligible Costs:</u>				
<u>TOTAL INELIGIBLE COSTS</u>				\$0
				\$0
<u>TOTAL PROJECT COSTS</u>				\$60,000

Please Note:

- (1) Eligible Costs include the amount of Harmonized Sales Tax, (HST), net of any refund or eligible credits due from the Canada Revenue Agency.
- (2) Any variance of Eligible Supported Costs for each itemized "Eligible Costs" identified in the Program and Financing section of this annex in excess of 15% requires the prior written approval of the Minister.

FEDNOR NEWS RELEASE SUMMARY

Annex 2

Protected

Project No.: 851- 509650

Northern Ontario Development Program
Planning and Decision Making component

Recipient Contact:

Name & Address of Recipient:

Sam Dunnett, Mayor
(705) 387-3947
Roger Labelle, Clerk
(705) 387-3947

Corporation of the Municipality of Magnetawan
4304 Highway 520
Magnetawan ON P0A 1P0

Project Type:

Project Location:

Study

Magnetawan

Strategic Objective:

Supported Sector:

Community Economic Development

Other Services (except Public Administration)

Project Description:

The Municipality is seeking to retain a consulting team that can assist with a community recovery plan focussed on their historic downtown.

FedNor Funding

(Authorized Assistance)

\$27,000

COSTING MEMORANDUM
NORTHERN ONTARIO DEVELOPMENT PROGRAM
PLANNING AND DECISION MAKING COMPONENT

- 1.0 **General Conditions**
- 1.1 Costs are Eligible Costs for the purposes of this Agreement only if they are, in the opinion of the Minister,
- (a) directly related to the Project;
- (b) reasonable;
- (c) appear in the "The Project-Statement of Work";
- (d) incurred in respect of activities which are incremental to the usual activities of the Recipient; and
- (e) incurred between September 29, 2011 and the Completion Date.
- 1.2 Costs incurred by way of the exercise of an option to purchase or hire are eligible only if the exercise of the option is at the sole discretion of the Recipient and the option has been exercised between September 29, 2011 and the Completion Date.
- 1.3 Costs of all goods and services (including labour) acquired from an entity which is, in the opinion of the Minister related to the Recipient, shall be valued at the cost which, in the opinion of the Minister, represents the fair market value of such goods or services, which cost shall not include any mark up for profit or return on investment.
- 1.4 No cost described in section 2.0 shall be eligible for inclusion in Eligible Costs unless the Recipient causes the supplying entity to maintain proper books, accounts and records of the costs related to the Project, and to provide to any representative of the Minister access to such books, accounts and records.

Where consistent with the approved Eligible and Supported costs, as defined in Annex 1 - The Project - Statement of Work, the following criteria will be used in determining eligibility of costs:

2.0 Eligible Costs

Eligible travel costs are those which are deemed necessary to the performance of the Project. To be eligible, travel costs must be clearly documented as to the purpose of each trip. Travel expenses, at economy rates, shall be charged as at actual costs, but only to the extent that they are considered reasonable by the Department.

Necessary return airfare, train fare or bus fare at economy rates for participation personnel. Where a personal automobile is to be used, kilometre (mileage) allowance will be based on current Treasury Board of Canada Travel Directives. Eligible Costs shall be limited to the cost that would have been incurred and paid had normal public transportation at economy rates been used.

Actual costs at the destination will be allowed for food, accommodation and surface transportation (i.e., taxis, etc.). Meal rates will be based on current Treasury Board of Canada Travel Directives. Please note receipts are required for all items except meals. Entertainment (hospitality) costs are not eligible.

2.2 Audit of Project Costs

If expressly approved in writing by the Minister, Eligible Costs may include the cost of professional accountants certifying the accuracy of any costs claimed.

2.3 Contractor/Consultants

Save as herein provided, the direct costs of studies and/or services carried out by a private contractor, consultant or Canadian University or Research Institute are eligible.

Where a contractor or consultant is to be used, prior consultation with the Minister is advised to ensure that the costs for these services are eligible. The Minister may not contribute to the cost of goods or services that are not, in the opinion of the Minister, provided by an entity who is at arm's length from the Recipient

The contractor, consultant, University or Institute shall not acquire any rights to the product or process developed as a result of services provided.

2.4 Calculation of Direct Labour Costs

The Recipient may claim only that time worked directly on the Project by its employees and may not claim for indirect time, non-project related time, holidays, vacation, paid sickness, etc. Paid overtime, where considered reasonable in the opinion of the Minister, may be claimed. Time off in lieu of payment is not eligible. Time claimed will normally be expressed in hours.

The payroll rate is the actual gross pay rate for each employee (normal periodic remuneration before deductions). The payroll rate excludes all premiums (e.g., overtime), shift differentials and any reimbursement or benefit conferred in lieu of salaries or wages except as noted in the last paragraph.

Employment benefits (CPP, EI, holidays, and vacations, etc.) not exceeding 20% of direct labour costs may be claimed (supporting documentation not required).

2.5 Harmonized Sales Tax (HST)

Eligible Costs include the amount of Harmonized Sales Tax (HST), net of any refund or eligible credits due from the Canada Revenue Agency.

In order to have the HST approved as an eligible cost on future claims, the Recipient may be required to provide documentation verifying the organization's status under HST legislation.

2.6 Patent and Copyright Costs

Relevant searches and filing fees related to North American or worldwide rights are eligible when detailed in the Statement of Work.

Ineligible Costs

For greater certainty, any costs not specifically described as Eligible Costs in accordance with section 2.0, shall be ineligible for inclusion in the Eligible Costs. By way of example only, ineligible costs include the following:

- (a) costs of intangible assets such as goodwill, whether capitalized or expensed;
- (b) depreciation or amortization expenses;
- (c) interest on invested capital, bonds, debentures, or mortgages;
- (d) bond discount;
- (e) losses on investments, bad debts;
- (f) fines or penalties;
- (g) costs related to litigation;
- (h) payments to any member or officer of the Recipient's Board of Directors;
- (i) opportunity costs;
- (j) entertainment costs.