

THE CORPORATION OF THE
TOWNSHIP OF MATACHEWAN

BY-LAW No. 2018-07

Being a By-law to appoint a
Joint Compliance Audit Committee

WHEREAS Section 88.37 (1) of the *Municipal Elections Act, 1996, as amended* requires a council or local board shall establish a Compliance Audit Committee before October 1 of an election year for the purposes of the Act.

AND WHEREAS Section 88.37 (2) of the *Municipal Elections Act, 1996, as amended* states the committee shall be composed of not fewer than three and not more than seven members and shall not include:

- (a) Employees or officers of the municipality or local board;
- (b) Members of the council or local board;
- (c) Any persons who are candidates in the election for which the committee is established; or
- (d) Any persons who are registered third party advertisers in the municipality in the election for which the committee is established

AND WHEREAS Section 88.37 (3) of the *Municipal Elections Act, 1996, as amended* states a person who has such qualifications and satisfies such eligibility requirements as may be prescribed is eligible for appointment to the committee.

AND WHEREAS Section 88.37 (4) of the *Municipal Elections Act, 1996, as amended* states in appointing persons to the committee, the council or local board shall have regard to the prescribed eligibility criteria.

AND WHEREAS the Townships of Armstrong, Brethour, Casey, Chamberlain, Coleman, Evanturel, Gauthier, Harley, Harris, Hilliard, Hudson, James, Kerns, Larder Lake, Latchford, Matachewan, McGarry, Village of Thornloe, Municipality of Charlton and Dack and Temagami, and the Towns of Cobalt, Englehart, Kirkland Lake and Temiskaming Shores deem it expedient to establish a Joint Compliance Audit Committee.

NOW THEREFORE THE COUNCIL OF THE TOWNSHIP OF MATACHEWAN HEREBY ENACTS AS FOLLOWS:

1. **THAT** a Committee, to be known as the Joint Compliance Audit Committee, is hereby established to deal with the matters provided for in Section 88.33, 88.34 and 88.35 of the *Municipal Elections Act, 1996, as amended*.
2. **AND THAT** the Joint Compliance Audit Committee shall consist of the following individuals representing Expertise for Municipalities (E4m), who shall deal with each compliance audit request in accordance with the Terms of Reference attached hereto as Schedule "A":

Peggy Young-Lovelace
Theresa Cassan
Chris Wray
3. **AND THAT** the business of the Joint Compliance Audit Committee be conducted in accordance with the procedures set out in the 2018 Municipal Elections Procedures and the Terms of Reference set out in Schedule "A" attached hereto, which shall form part of this By-law.
4. **AND THAT** this By-law shall come into force and take effect on the date of passage.
5. **AND THAT** By-law No. 2014-13 and all other by-laws or resolutions, or parts thereof, contrary hereto or inconsistent herewith, be and the same are hereby repealed.

READ A FIRST, SECOND AND THIRD TIME IN OPEN COUNCIL AND FINALLY PASSED THIS 19TH DAY OF APRIL, 2018.


Cheryl Drummond
Mayor


Anne Kmyta
CAO-Clerk-Treasurer

February 22, 2018

SOLICITOR-CLIENT PRIVILEGED

VIA EMAIL

ATTN : Amy Vickery-Menard, Clerk-Treasurer
The Corporation of the Township of Evanturel
245453 Highway 589, PO Box 209
Englehart, ON P0J 1H0

ATTN : Calvin Rodgers, Clerk-Treasurer
Chamberlain Township
465701 Chamberlain Rd. 5
Englehart ON P0J 1H0

Dear Ms Vickery-Menard and Mr. Rodgers,

**Re: Temiskaming Building Association (the "TMSA")
Our File No. 16977-2**

We are writing to advise of the steps that must be taken now that the Temiskaming Municipal Services Association (the "TMSA") has been incorporated to have that non-profit entity perform building code services for member municipalities as well as other services as may be agreed by the member municipalities and the TMSA directors.

Section 4.1 of the *Building Code Act, 1992* (the "Act") provides the legal authority for municipalities to enter into agreements with registered code agencies authorizing for the performance of the following functions in respect of the construction a building or class of buildings:

1. Review designs and other materials to determine whether the proposed construction of a building complies with the building code.
2. Issue plans review certificates.
3. Issue change certificates.
4. Inspect the construction of a building for which a permit has been issued under this Act.
5. Issue final certificates.
6. Perform such other functions as may be authorized under the Act or in the building code.

Step 1

To perform the above-noted functions on behalf of the member municipalities, the Act requires that the TMSA become a registered code agency with the Ministry of Municipal Affairs and Housing.

To be qualified, the TMSA is required to file certain information on certain individuals who have successfully completed the Ministry's examination program. The examination program for registered code agencies requires the successful completion of a legal/process examination and applicable technical examinations. These examinations can be completed on behalf of the TMSA by one its directors, officers, or employees.

Additionally, all persons who carry out plans review and inspection functions for the TMSA, will have to successfully complete the Ministry's examination program.

Registration for examinations requires a Building Code Identification Number from the Ministry. This can be applied for online.

Registration with the Ministry is done through the Qualification Registration Tracking System (QuARTS) and requires payment of an initial fee (\$419). Registered code agencies and practitioners are listed on a public registry.

Step 2

The TMSA must carry professional indemnity insurance meeting the requirements in section 2.21 of the building code and provide the Ministry a signed copy an Insurance Certificate evidencing same.

Step 3

Employees carrying out building code services on behalf of the Temiskaming Building Association (the "TBA") should become employees of the TMSA. As the TMSA will be performing such services moving forward, the employees' employment will be deemed not to have been terminated or severed under section 9 of the *Employment Standards Act, 2001* ("ESA").

The case law reveals:

1. That neither the ESA or the common law obliges an employee to accept employment with the TMSA. Employees have the option of rejecting the TMSA's offer of employment and treating their employment as being terminated or severed and claiming benefits from such termination or severance; and
2. It is irrelevant that the terms and conditions of employment with the TMSA are radically or fundamentally different than those that existed while they were providing building code services on behalf of the TMSA for section 9 of the ESA to apply.

We recommend trying to match, as closely as reasonably possible, the terms and conditions of employment when the employees become employed by the TMSA. This will mitigate the risk that they will treat the TMSA's offer of employment as a termination or severance of their employment and hopefully reduce the possibility of turn-over.

Step 4

After registration, the municipalities should enter into an agreement with the TMSA. By-laws should then be passed appointing the TMSA to perform the functions set out in the agreement and appointing the TMSA staff as officials of each municipality. This will ensure that the municipalities comply with appointment requirements for chief building officials and inspectors under section 3 of the Act.

Enclosed with this letter is a draft TMSA By-law No. 1, draft member services agreement, and template municipal appointment by-law.

If you have any questions, please do not hesitate to contact the undersigned.

Yours very truly,
WISHART LAW FIRM LLP

Tim J. Harmar
Telephone Ext.: 233
Email: tharmar@wishartlaw.com
Assistant: Linda Hurdle
Email: lhurdle@wishartlaw.com
TJH:lh

A by-law relating generally to the conduct
of the affairs of

TEMISKAMING MUNICIPAL SERVICES CORPORATION

(the "Corporation")

BE IT ENACTED as a by-law of the Corporation as follows:

1. Definition

In this by-law and all other by-laws of the Corporation, unless the context otherwise requires:

"**Act**" means the *Canada Not-For-Profit Corporations Act* S.C. 2009, c. 23 including the Regulations made pursuant to the Act, and any statute or regulations that may be substituted, as amended from time to time;

"**articles**" means the original or restated articles of incorporation or articles of amendment, amalgamation, continuance, reorganization, arrangement or revival of the Corporation;

"**board**" means the board of directors of the Corporation and "director" means a member of the board;

"**by-law**" means this by-law and any other by-law of the Corporation as amended and which are, from time to time, in force and effect;

"**meeting of members**" includes an annual meeting of members or a special meeting of members; "special meeting of members" includes a meeting of any class or classes of members and a special meeting of all members entitled to vote at an annual meeting of members;

"**ordinary resolution**" means a resolution passed by a majority of not less than 50% plus 1 of the votes cast on that resolution;

"**proposal**" means a proposal submitted by a member of the Corporation that meets the requirements of section 163 (Member Proposals) of the Act;

"**Regulations**" means the regulations made under the Act, as amended, restated or in effect from time to time; and

"**special resolution**" means a resolution passed by a majority of not less than two-thirds (2/3) of the votes cast on that resolution.

2. Interpretation

In the interpretation of this by-law, words in the singular include the plural and vice-versa, words in one gender include all genders, and "person" includes an individual, body corporate, partnership, trust and unincorporated organization.

Other than as specified above, words and expressions defined in the Act have the same meanings when used in these by-laws.

3. Mission

The mission of the Corporation is to provide building code enforcement and other services to its members more efficiently and cost effectively than each of them could independently.

4. First Directors

The persons set out in the articles shall be the first directors of the Corporation whose term of office shall continue until their successors are elected at the first meeting of the members. The board elected at the first meeting of the members following incorporation shall replace the first directors.

5. Director Qualifications

Each director shall be an individual who is at least eighteen (18) years of age, has not been found by a court in Canada or elsewhere to be mentally incompetent, does not have the status of bankrupt, in full agreement with the governing documents of the Corporation, and is an administrative employee or municipal councilor of a member.

6. Director Election and Term

- a. Subject to the articles, directors shall be elected by the members by ordinary resolution at each annual meeting of the members at which an election of directors is required. The directors' term of office shall be four (4) years calculated from the date of the meeting at which they are elected until the close of the annual meeting next following or until their successors are elected.
- b. If directors are not elected at an annual meeting of the members, the incumbent directors shall continue in office until their successors are elected.
- c. The board shall retire at the annual meeting at which the election of directors is to be made but subject to the provisions of the by-laws, shall be eligible for re-election. There is no maximum number of terms of office for a director and as such, a director will be eligible for re-election on a consecutive basis thereafter provided that such director continues to meet the qualification requirements to be a director.

7. Board Policies

The board may adopt, amend, or repeal such board policies that are not inconsistent with the by-laws of the Corporation relating to the management and operation of the Corporation as the board may deem appropriate. Any board policy adopted by the board shall continue to have force and effect until amended, repealed, or replaced by a subsequent resolution of the board.

8. Execution of Documents

Deeds, transfers, assignments, contracts, obligations and other instruments in writing requiring execution by the Corporation may be signed by any two (2) of its officers or directors. In addition, the board may from time to time direct the manner in which and the

person or persons by whom a particular document or type of document shall be executed. Any person authorized to sign any document may affix the corporate seal (if any) to the document. Any signing officer may certify a copy of any instrument, resolution, by-law or other document of the Corporation to be a true copy thereof.

9. Financial Year

The financial year end of the Corporation shall be determined by the board of directors.

10. Banking Arrangements

The banking business of the Corporation shall be transacted at such bank, trust company or other firm or corporation carrying on a banking business in Canada or elsewhere as the board of directors may designate, appoint or authorize from time to time by resolution. The banking business or any part of it shall be transacted by an officer or officers of the Corporation and/or other persons as the board of directors may by resolution from time to time designate, direct or authorize.

11. Borrowing Powers

If authorized by a by-law which is duly adopted by the directors and confirmed by ordinary resolution of the members, the directors of the corporation may from time to time:

- i. borrow money on the credit of the corporation;
- ii. issue, reissue, sell, pledge or hypothecate debt obligations of the corporation; and
- iii. mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the corporation, owned or subsequently acquired, to secure any debt obligation of the corporation.

Any such by-law may provide for the delegation of such powers by the directors to such officers or directors of the corporation to such extent and in such manner as may be set out in the by-law.

Nothing herein limits or restricts the borrowing of money by the corporation on bills of exchange or promissory notes made, drawn, accepted or endorsed by or on behalf of the corporation.

12. Annual Budget

The board of directors shall prepare an annual budget for the operations and capital of the Corporation before March 31 of the given year.

13. Annual Financial Statements

The Corporation shall send to the members a copy of the annual financial statements and other documents referred to in subsection 172(1) (Annual Financial Statements) of the Act or a copy of a publication of the Corporation reproducing the information contained in the documents. Instead of sending the documents, the Corporation may send a summary to each member along with a notice informing the member of the procedure for obtaining a copy of the documents themselves free of charge. The Corporation is not

required to send the documents or a summary to a member who, in writing, declines to receive such documents.

14. Membership Conditions

Subject to the articles, there shall be one class of members in the Corporation. The members of the Corporation are the municipalities in the zones set out in Schedule "A" to this by-law. Additional members may be added upon application and acceptance in the Corporation by the resolution of the board or in such other manner as may be determined by the board. Each member shall be entitled to receive notice of, attend and vote at all meetings of the members of the Corporation.

Pursuant to subsection 197(1) (Fundamental Change) of the Act, a special resolution of the members is required to make any amendments to this section of the by-laws if those amendments affect membership rights and/or conditions described in paragraphs 197(1)(e), (h), (l) or (m).

15. Membership Transferability

A membership may only be transferred to the Corporation. Pursuant to section 197(1) (Fundamental Change) of the Act, a special resolution of the members is required to make any amendment to add, change or delete this section of the by-laws.

16. Notice of Members Meeting

Notice of the time and place of a meeting of members shall be given to each member entitled to vote at the meeting by the following means:

- a. by mail, courier or personal delivery to each member entitled to vote at the meeting, during a period of 21 to 60 days before the day on which the meeting is to be held; or
- b. by telephonic, electronic or other communication facility to each member entitled to vote at the meeting, during a period of 21 to 35 days before the day on which the meeting is to be held.

Pursuant to subsection 197(1) (Fundamental Change) of the Act, a special resolution of the members is required to make any amendment to the by-laws of the Corporation to change the manner of giving notice to members entitled to vote at a meeting of members.

17. Members Calling a Members' Meeting

The board of directors shall call a special meeting of members in accordance with section 167 of the Act, on written requisition of members carrying not less than 5% of the voting rights. If the directors do not call a meeting within twenty-one (21) days of receiving the requisition, any member who signed the requisition may call the meeting.

18. Membership Dues

Membership dues shall be payable annually based on the budget passed by the board of directors. The dues payable by each member shall be apportioned based on their respective number of issued building permits. Members shall be notified in writing of the membership dues payable by them and the date by which payment is due.

19. Member Insurance

Each member shall take out and maintain appropriate policies of insurance. Such insurance shall include public liability insurance in appropriate limits, but no less than \$2,000,000 per single occurrence, and \$10,000,000 in aggregate. The members shall remit Certificates of insurance within ten (10) days of policy renewal to the Corporation.

20. Termination of Membership

A membership is terminated (1) when the Corporation is liquidated or dissolved under the Act (2) by the member failing to pay their membership dues within one (1) month of date by which payment for them is due, or (3) by the member providing the Corporation with twelve (12) months' prior written notice.

21. Effect of Termination of Membership

Subject to the articles, upon any termination of membership, the rights of the member, including any rights in the property of the Corporation, automatically cease to exist.

22. Proposals Nominating Directors at Annual Members' Meetings

Subject to the Regulations under the Act, any proposal may include nominations for the election of directors if the proposal is signed by not less than 5% of members entitled to vote at the meeting at which the proposal is to be presented.

23. Cost of Publishing Proposals for Annual Members' Meetings

The member who submitted the proposal shall pay the cost of including the proposal and any statement in the notice of meeting at which the proposal is to be presented unless otherwise provided by ordinary resolution of the members present at the meeting.

24. Place of Members' Meeting

Subject to compliance with section 159 (Place of Members' Meetings) of the Act, meetings of the members may be held at any place within any member's municipality as determined by the board or, if all of the members entitled to vote at such meeting so agree, another location.

25. Persons Entitled to be Present at Members' Meetings

Aside from meetings the directors, accountant, and legal counsel of the Corporation, the only persons entitled to be present at a meeting of members are members' designated representatives. Each member shall appoint, by by-law, which by-law shall be provided to the Corporation, an elected official or officer who shall act as the member's designated representative to attend and vote on the member's behalf at members' meetings. Any other person may be admitted only on the invitation of the chair of the meeting or by resolution of the members.

26. Chair of Members' Meetings

In the event that the chair of the board and the vice-chair of the board are absent, the members who are present and entitled to vote at the meeting shall choose one of their number to chair the meeting.

27. Quorum at Members' Meetings

A quorum at any meeting of the members (unless a greater number of members are required to be present by the Act) shall be a majority of the members entitled to vote at the meeting. If a quorum is present at the opening of a meeting of members, the members present may proceed with the business of the meeting even if a quorum is not present throughout the meeting.

28. Votes to Govern at Members' Meetings

At any meeting of members every question shall, unless otherwise provided by the articles or by-laws or by the Act, be determined by a majority of the votes cast on the questions. In case of an equality of votes either on a show of hands or on a ballot or on the results of electronic voting, the chair of the meeting in addition to an original vote shall have a second or casting vote.

29. Participation by Electronic Means at Members' Meetings

If the Corporation chooses to make available a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during a meeting of members, any person entitled to attend such meeting may participate in the meeting by means of such telephonic, electronic or other communication facility in the manner provided by the Act. A person participating in a meeting by such means is deemed to be present at the meeting. Notwithstanding any other provision of this by-law, any person participating in a meeting of members pursuant to this section who is entitled to vote at that meeting may vote, in accordance with the Act, by means of any telephonic, electronic or other communication facility that the Corporation has made available for that purpose.

30. Members' Meeting Held Entirely by Electronic Means

If the directors or members of the Corporation call a meeting of members pursuant to the Act, those directors or members, as the case may be, may determine that the meeting shall be held, in accordance with the Act and the Regulations, entirely by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting.

31. Number of Directors

The board shall consist of seven (7) directors. There shall be one (1) director for each of the five (5) zones set out in Schedule "A" and two (2) directors at large.

32. Calling of Meetings of Board of Directors

Meetings of the board may be called by the chair of the board, the vice-chair of the board or any two (2) directors at any time; provided that for the first organization meeting following incorporation, such meeting may be called by any director or incorporator. If the Corporation has only one director, that director may call and constitute a meeting.

33. Notice of Meeting of Board of Directors

Notice of the time and place for the holding of a meeting of the board shall be given in the manner provided in the section on giving notice of meeting of directors of this by-

law to every director of the Corporation not less than 7 days before the time when the meeting is to be held. Notice of a meeting shall not be necessary if all of the directors are present, and none objects to the holding of the meeting, or if those absent have waived notice of or have otherwise signified their consent to the holding of such meeting. Notice of an adjourned meeting is not required if the time and place of the adjourned meeting is announced at the original meeting. Unless the by-law otherwise provides, no notice of meeting need specify the purpose or the business to be transacted at the meeting except that a notice of meeting of directors shall specify any matter referred to in subsection 138(2) (Limits on Authority) of the Act that is to be dealt with at the meeting.

34. Regular Meetings of the Board of Directors

The board may appoint a day or days in any month or months for regular meetings of the board at a place and hour to be named. A copy of any resolution of the board fixing the place and time of such regular meetings of the board shall be sent to each director forthwith after being passed, but no other notice shall be required for any such regular meeting except if subsection 136(3) (Notice of Meeting) of the Act requires the purpose thereof or the business to be transacted to be specified in the notice.

35. Votes to Govern at Meetings of the Board of Directors

At all meetings of the board, every question shall be decided by a majority of the votes cast on the question. In case of an equality of votes, the chair of the meeting in addition to an original vote shall have a second or casting vote.

36. Committees of the Board of Directors

The board may from time to time appoint any committee or other advisory body, as it deems necessary or appropriate for such purposes and, subject to the Act, with such powers as the board shall see fit. may formulate its own rules of procedure, subject to such regulations or directions as the board may from time to time make. The membership of any shall consist of one administrative employee from each of zones set out in Schedule "A" to this by-law.

37. Appointment of Officers

The board may designate the offices of the Corporation, appoint officers on an annual or more frequent basis, specify their duties and, subject to the Act, delegate to such officers the power to manage the affairs of the Corporation. A director may be appointed to any office of the Corporation. An officer must be a director unless these by-laws otherwise provide. Two or more offices may be held by the same person.

38. Description of Offices

Unless otherwise specified by the board (which may, subject to the Act modify, restrict or supplement such duties and powers), the offices of the Corporation, if designated and if officers are appointed, shall have the following duties and powers associated with their positions:

- a. Chair of the Board – The chair of the board, if one is to be appointed, shall be a director. The chair of the board, if any, shall, when present, preside at all meetings

of the board of directors and of the members. The chair shall have such other duties and powers as the board may specify.

- b. Vice-Chair of the Board – The vice-chair of the board, if one is to be appointed, shall be a director. If the chair of the board is absent or is unable or refuses to act, the vice-chair of the board, if any, shall, when present, preside at all meetings of the board of directors and of the members. The vice-chair shall have such other duties and powers as the board may specify.
- c. President – If appointed, the president shall be the chief executive officer of the Corporation and shall be responsible for implementing the strategic plans and policies of the Corporation. The president shall, subject to the authority of the board, have general supervision of the affairs of the Corporation.
- d. Secretary – If appointed, the secretary shall attend and be the secretary of all meetings of the board, members and committees of the board. The secretary shall enter or cause to be entered in the Corporation's minute book, minutes of all proceedings at such meetings; the secretary shall give, or cause to be given, as and when instructed, notices to members, directors, the public accountant and members of committees; the secretary shall be the custodian of all books, papers, records, documents and other instruments belonging to the Corporation.
- e. Treasurer – If appointed, the treasurer shall have such powers and duties as the board may specify.

39. Vacancy in Office

In the absence of a written agreement to the contrary, the board may remove, whether for cause or without cause, any officer of the Corporation. Unless so removed, an officer shall hold office until the earlier of:

- a. the officer's successor being appointed,
- b. the officer's resignation,
- c. such officer ceasing to be a director (if a necessary qualification of appointment)
or
- d. such officer's death.

If the office of any officer of the Corporation shall be or become vacant, the directors may, by resolution, appoint a person to fill such vacancy.

40. Method of Giving Any Notice

Any notice (which term includes any communication or document), other than notice of a meeting of members or a meeting of the board of directors, to be given (which term includes sent, delivered or served) pursuant to the Act, the articles, the by-laws or otherwise to a member, director, officer or member of a committee of the board or to the public accountant shall be sufficiently given:

- a. if delivered personally to the person to whom it is to be given or if delivered to such person's address as shown in the records of the Corporation or in the case of notice to a director to the latest address as shown in the last notice that was sent by the Corporation in accordance with section 128 (Notice of directors) or 134 (Notice of change of directors);
- b. if mailed to such person at such person's recorded address by prepaid ordinary or air mail;
- c. if sent to such person by telephonic, electronic or other communication facility at such person's recorded address for that purpose; or
- d. if provided in the form of an electronic document in accordance with Part 17 of the Act.

A notice so delivered shall be deemed to have been given when it is delivered personally or to the recorded address as aforesaid; a notice so mailed shall be deemed to have been given when deposited in a post office or public letter box; and a notice so sent by any means of transmitted or recorded communication shall be deemed to have been given when dispatched or delivered to the appropriate communication company or agency or its representative for dispatch. The secretary may change or cause to be changed the recorded address of any member, director, officer, public accountant or member of a committee of the board in accordance with any information believed by the secretary to be reliable. The declaration by the secretary that notice has been given pursuant to this by-law shall be sufficient and conclusive evidence of the giving of such notice. The signature of any director or officer of the Corporation to any notice or other document to be given by the Corporation may be written, stamped, type-written or printed or partly written, stamped, type-written or printed.

41. Invalidity of any Provisions of this By-law

The invalidity or unenforceability of any provision of this by-law shall not affect the validity or enforceability of the remaining provisions of this by-law.

42. Omissions and Errors

The accidental omission to give any notice to any member, director, officer, member of a committee of the board or public accountant, or the non-receipt of any notice by any such person where the Corporation has provided notice in accordance with the by-laws or any error in any notice not affecting its substance shall not invalidate any action taken at any meeting to which the notice pertained or otherwise founded on such notice.

43. Mediation and Arbitration

Disputes or controversies among members, directors, officers, committee members, or volunteers of the Corporation are as much as possible to be resolved in accordance with mediation and/or arbitration as provided in the section on dispute resolution mechanism of this by-law.

44. Dispute Resolution Mechanism

In the event that a dispute or controversy among members, directors, officers, committee members or volunteers of the Corporation arising out of or related to the articles or by-laws, or out of any aspect of the operations of the Corporation is not resolved in private meetings between the parties then without prejudice to or in any other way derogating from the rights of the members, directors, officers, committee members, employees or volunteers of the Corporation as set out in the articles, by-laws or the Act, and as an alternative to such person instituting a law suit or legal action, such dispute or controversy shall be settled by a process of dispute resolution as follows:

- The dispute or controversy shall first be submitted to a panel of mediators whereby the one party appoints one mediator, the other party (or if applicable the board of the Corporation) appoints one mediator, and the two mediators so appointed jointly appoint a third mediator. The three mediators will then meet with the parties in question in an attempt to mediate a resolution between the parties.
- The number of mediators may be reduced from three to one or two upon agreement of the parties.
- If the parties are not successful in resolving the dispute through mediation, then the parties agree that the dispute shall be settled by arbitration before a single arbitrator, who shall not be any one of the mediators referred to above, in accordance with the rules for expedited arbitration of ADR Chambers of Toronto, Ontario, as amended from time to time, The parties agree that all proceedings relating to arbitration shall be kept confidential and there shall be no disclosure of any kind. The decision of the arbitrator shall be final and binding and shall not be subject to appeal on a question of fact, law or mixed fact and law.

All costs of the mediators appointed in accordance with this section shall be borne equally by the parties to the dispute or the controversy. All costs of the arbitrators appointed in accordance with this section shall be borne by such parties as may be determined by the arbitrators.

45. By-laws and Effective Date

Subject to the articles, the board of directors may, by resolution, make, amend or repeal any by-laws that regulate the activities or affairs of the Corporation. Any such by-law, amendment or repeal shall be effective from the date of the resolution of directors until the next meeting of members where it may be confirmed, rejected or amended by the members by ordinary resolution. If the by-law, amendment or repeal is confirmed or confirmed as amended by the members it remains effective in the form in which it was confirmed. The by-law, amendment or repeal ceases to have effect if it is not submitted to the members at the next meeting of members or if it is rejected by the members at the meeting.

This section does not apply to a by-law that requires a special resolution of the members according to subsection 197(1) (fundamental change) of the Act because such by-law amendments or repeals are only effective when confirmed by members.

ENACTED by the board of directors of the Corporation this ___ day of _____, 2018

Chair of the Board

Secretary

SCHEDULE "A"

Zone 1	Zone 2	Zone 3	Zone 4	Zone 5
• Town of Cobalt	• Township of Brethour	• Township of Hilliard	• Township of Evanturel	• Township of McGarry
• Township of James	• Township of Kerns	• Township of Harris	• Town of Englehart	• Township of Larder Lake
• Township of Coleman	• Township of Harley	• Village of Thornloe	• Municipality of Charlton and Dack	• Township of Gauthier
• Town of Latchford	• Township of Hudson	• Township of Armstrong	• Township of Chamberlain	• Township of Matachewan
	• Township of Casey			

THIS AGREEMENT is made effective as of the ____ day of _____, 2018,

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF ARMSTRONG

-AND-

THE CORPORATION OF THE TOWNSHIP OF BRETHOUR

-AND-

THE CORPORATION OF THE TOWNSHIP OF CASEY

-AND-

THE CORPORATION OF THE TOWNSHIP OF CHAMBERLAIN

-AND-

THE CORPORATION OF THE MUNICIPALITY OF CHARLTON AND DACK

-AND-

THE CORPORATION OF THE TOWN OF COBALT

-AND-

THE CORPORATION OF THE TOWNSHIP OF COLEMAN

-AND-

THE CORPORATION OF THE TOWN OF ENGLEHART

-AND-

THE CORPORATION OF THE TOWNSHIP OF EVANTUREL

-AND-

THE CORPORATION OF THE TOWNSHIP OF GAUTHIER

-AND-

THE CORPORATION OF THE TOWNSHIP OF HARLEY

-AND-

THE CORPORATION OF THE TOWNSHIP OF HARRIS

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-AND-

TEMISKAMING MUNICIPAL SERVICES ASSOCIATION

**ARTICLE 1
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 - (d) "Indemnified Parties" shall mean the Municipalities and each of their officers, servants, and agents.
 - (e) "Municipalities" shall mean collectively the municipal corporation parties to this agreement.
 - (f) "Service Provider" shall mean Temiskaming Municipal Services Association.

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SCOPE OF WORK**

- 2.1. Service Provider's Services. The services to be provided by the Service Provider shall include:
- (a) Providing a staff member for appointment as (1) Chief Building Official by each of the municipal corporation parties and (2) such building inspectors as are necessary for the enforcement of the Act within the areas in which each municipal corporation party has jurisdiction.
 - (b) Maintaining all required qualifications and registrations as outlined in the Act and the building code.
 - (c) The building permit fees charged shall be in accordance with the current schedule of fees set down by each of the Municipalities respectively.
 - (d) Exercise responsibilities under legislative authority of the Act and various municipal by-laws and provincial programs.
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- (g) Supervise and process permit applications by accepting the application, checking for accuracy and completeness, calculating fees, and monitoring application progress.
- (h) Supervise the accurate and timely maintenance of records of the permit process; input, maintain and compile a variety of data on permitting activity, such as the number of permits by type, valuations, permit fees, review time, problem areas, conditions imposed, actions taken, etc.
- (i) Assure that policies and procedures are followed in the receipt, routing and processing of permit applications.
- (j) Coordinate the scheduling of requests for field inspections, complete building inspections at key points of construction and maintain an inspection activity log.
- (k) Respond to complaints of potential by-law violations relating to building construction. Confer with Council and legal representatives as to interpretation and direction.
- (l) Submit forms to Municipal Property Assessment Corporation with details on building permits and status of construction activities with the Municipalities.

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- (b) Access to and, where necessary, copies of existing reports, plans or other pertinent information showing or pertaining to existing conditions within the areas in which the Municipalities have jurisdiction area.
- (c) Provide general direction to the Service Provider in the provision of the Services, through a designated representative of the Administering Municipality.
- (d) Assist the Service Provider to arrange and make provision for the Service Provider's entry and ready access to properties, as necessary, to enable the performance of Service Provider's services.

- (e) The Service Provider shall be entitled to rely upon the information, direction and approvals provided pursuant to clauses (a) to (c) of this Article 2.2, inclusive, as being accurate in the performance of the Service Provider's services under this Agreement.

2.3. Standard of Conduct. In rendering services under this Agreement, the Service Provider shall conform to high professional standards of work and business ethics.

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ARTICLE 4 TERM AND TERMINATION

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4.4 Survival. The provisions of Articles 5, 7, 8 and 9 of this Agreement shall survive the termination of this Agreement and remain in full force and effect thereafter.

ARTICLE 5 CONFIDENTIAL INFORMATION

The Service Provider shall not divulge any specific information identified as confidential, communicated to or acquired by the Service Provider, or disclosed by the Municipalities in the course of carrying out the services provided for herein. These obligations of confidentiality shall not apply to information which is in the public domain, which is provided to the Service Provider by a third party without obligation of confidentiality, which is independently developed by the Service Provider without access to the Municipalities' information, or which is required to be disclosed by law or court order. No such information shall be used by the Service Provider without the approval in writing of the Municipalities.

**ARTICLE 6
CONFLICT OF INTEREST AND NON-SOLICITATION**

Service Provider covenants and agrees not to:

- (a) accept any gifts, favours, hospitality or entertainment from any clients and avoid all circumstances that could comprise professional integrity; or
- (b) perform any service for a local builder, realtor, Service Provider or developer which may be construed as creating a real or perceived conflict of interest. If any doubt exists regarding conflict of interest approval from the Administering Municipality must be granted before performing the service.

**ARTICLE 7
RIGHT TO INJUNCTIVE RELIEF**

The Service Provider acknowledges that the terms of Articles 5 and 6 of this Agreement are reasonably necessary to protect the legitimate interests of the Municipalities, are reasonable in scope and duration, and are not unduly restrictive. The Service Provider further acknowledges that a breach of any of the terms of Articles 5 or 6 of this Agreement will render irreparable harm to the Municipalities or any of them, and that a remedy at law for breach of the Agreement is inadequate, and that the Municipalities or any one of them shall therefore be entitled to seek any and all equitable relief, including, but not limited to, injunctive relief, and to any other remedy that may be available under any applicable law or agreement between the parties. The Service Provider acknowledges that an award of damages to the Municipalities or any of them does not preclude a court from ordering injunctive relief. Both damages and injunctive relief shall be proper modes of relief and are not to be considered as alternative remedies.

**ARTICLE 8
INDEMNIFICATION**

The Service Provider shall indemnify and save harmless the Indemnified Parties from and against all claims, allegations, actions, suits, demands, proceedings, liabilities, losses, expenses, professional fees (including all legal fees and disbursements on a solicitor and own client scale), costs or damages of every nature and kind whatsoever, by whomever made, sustained, brought, or prosecuted, whether based in contract, tort, fiduciary duty or any other right at law or in equity occasioned by, arising out of, or in any way related to this Agreement, which may be brought or made against the Indemnified Parties or which the Indemnified Parties may suffer, sustain, pay or incur, even if such arises in whole or in part from the negligence of the Indemnified Parties.

**ARTICLE 9
PERSONAL INFORMATION**

9.1 Collection. Where the Service Provider is collecting personal information in performing services under this Agreement, it must comply with the provisions regarding the authority to collect, the manner of collection and notice of collection as set out in sections 28, 29(1), and 29(2) of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 ("MFIPPA").

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ARTICLE 10 DISPUTE RESOLUTION

In the event that a dispute or controversy among the parties arising in connection with the interpretation, performance or implementation of this agreement is not resolved in private meetings between the parties then without prejudice to or in any other way derogating from the rights of the parties and as an alternative to such person instituting a law suit or legal action, such dispute or controversy shall be settled by a process of dispute resolution as follows:

- i. The dispute or controversy shall first be submitted to a panel of mediators whereby the one party appoints one mediator, the other party (or if applicable the board of the Corporation) appoints one mediator, and the two mediators so appointed jointly appoint a third mediator. The three mediators will then meet with the parties in question in an attempt to mediate a resolution between the parties.
- ii. The number of mediators may be reduced from three to one or two upon agreement of the parties.
- iii. If the parties are not successful in resolving the dispute through mediation, then the parties agree that the dispute shall be settled by arbitration before a single arbitrator, who shall not be any one of the mediators referred to above, in accordance with the rules for expedited arbitration of ADR Chambers of Toronto,

Ontario, as amended from time to time, The parties agree that all proceedings relating to arbitration shall be kept confidential and there shall be no disclosure of any kind. The decision of the arbitrator shall be final and binding and shall not be subject to appeal on a question of fact, law or mixed fact and law.

All costs of the mediators appointed in accordance with this section shall be borne equally by the parties to the dispute or the controversy. All costs of the arbitrators appointed in accordance with this section shall be borne by such parties as may be determined by the arbitrators.

ARTICLE 11 GENERAL PROVISIONS

11.1 Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the parties hereto shall enter into good faith negotiations to replace the invalid, illegal or unenforceable provision.

11.2 Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the Province of Ontario without regard to principles of conflict of law that would result in the application of any law other than the law of the Province of Ontario.

11.3 Entire Agreement. This Agreement integrates all the terms and conditions mentioned herein or incidental hereto and supersedes all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Agreement, the terms, conditions and provisions of this Agreement shall prevail.

11.4 Amendments. This Agreement may only be amended or modified by an instrument in writing signed by each of the Parties hereto or thereto.

11.5 Waiver of Breach. The waiver by a party of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any other or subsequent breach by the party in breach.

11.6 Successors and Assigns. This Agreement may not be assigned the Municipalities or the Service Provider without the other's prior written consent. The benefits and obligations of this Agreement shall be binding upon and inure to the parties hereto, their successors and assigns.

11.7 Waiver of Contra Proferentem. The parties' desire is that the *contra proferentem* principle of contract interpretation is not to be applied to the Agreement; that is, any ambiguity or inconsistency in the Agreement is not to be resolved strictly against the party that drafted the ambiguous or inconsistent provision(s), but instead is to be resolved in accordance with the most reasonable construction.

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prepaid, registered or certified with return receipt requested or (d) if sent by facsimile with notice of completion of transmission.

If to the Municipalities:

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Box 546
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11.9 Independent Legal Advice. The parties have had the opportunity to read and understand the Agreement and has been given the opportunity to seek independent legal advice and are signing this agreement voluntarily and not under duress of any kind.

IN WITNESS WHEREOF, this Agreement is executed as of the Effective Date

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Clerk

Temiskaming Municipal Services Association

Per:

I have the authority to bind the corporation

THIS AGREEMENT is made effective as of the ____ day of _____, 2018,

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF ARMSTRONG

-AND-

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-AND-

THE CORPORATION OF THE TOWNSHIP OF CASEY

-AND-

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-AND-

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-AND-

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Temiskaming Municipal Services Association

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I have the authority to bind the corporation

Schedule 'A' to By-law 2018-07

**Joint District of Timiskaming 2018 Election
Compliance Audit Committee**

Terms of Reference	
1	<p><u>Name</u></p> <p>The name of the Committee is the "Joint District of Timiskaming 2018 Election Compliance Audit Committee" may consist of the following municipalities:</p> <p>Township of Armstrong Township of Brethour Township of Casey Township of Chamberlain Municipality of Charlton-Dack Township of Coleman Township of Evanturel Township of Harris Township of Harley Township of Hilliard Township of Hudson Township of James Township of Kerns Village of Thornloe Town of Englehart Town of Cobalt Town of Latchford Township of Matachewan Township of Gauthier Town of Kirkland Lake Township of McGarry Township of Larder Lake City of Temiskaming Shores Municipality of Temagami</p>
2	<p><u>Duration</u></p> <p>The term of office is from December 1, 2018 to November 14, 2022 to deal with applications from the 2018 election and any by-elections during Council's term.</p>
3	<p><u>Mandate</u></p> <p>The powers and functions of the Committee are set out in Sections 88.33 to 88.37 of the <i>Municipal Elections Act, 1996</i> (Appendix "A"). The Committee will perform the functions relating to the compliance audit application process as outlined in the Act. These functions include:</p> <p><u>Candidate Contravention – Application by Elector</u></p> <ol style="list-style-type: none"> a. within 30 days receipt of a compliance audit application by an elector, consider the application and decide whether it should be granted or rejected; b. give to the Candidate, the Clerk and the Applicant the decision of the Committee to grant or reject the application, and brief written reasons for the decision; c. if the application is granted, appoint a licensed auditor to conduct a compliance audit of the Candidate's election campaign finances; d. receive the auditor's report from the Clerk; e. within 30 days receipt of the auditor's report, consider the report; f. if the report concludes that the candidate appears to have contravened a provision of the Act relating to election campaign finances, decide whether to commence legal proceedings against the candidate for the apparent contravention; g. after reviewing the report, give to the Candidate, the Clerk and the Applicant the decision of the Committee, and brief written reasons for the decision. <p><u>Candidate Contributor Contravention – Application by Elector</u></p> <ol style="list-style-type: none"> a. within 30 days receipt of a report identifying each contributor to a candidate for office on a council who appears to have contravened any of the contribution limits, consider the report and decide whether to commence a legal proceeding against the contributor for an apparent contravention. b. after reviewing the report, give to the Contributor and the Clerk the decision of the Committee, and brief written reasons for the decision.

Registered Third Party Contravention – Application by Elector

- a. within 30 days receipt of a compliance audit application by an elector, consider the application and decide whether it should be granted or rejected;
- b. give to the Candidate, the Clerk and the Applicant the decision of the Committee to grant or reject the application, and brief written reasons for the decision;
- c. if the application is granted, appoint a licensed auditor to conduct a compliance audit of the Registered Third Party's campaign finances;
- d. receive the auditor's report from the Clerk;
- e. within 30 days receipt of the auditor's report, consider the report;
- f. if the report concludes that the Registered Third Party appears to have contravened a provision of the Act relating to campaign finances, decide whether to commence legal proceedings against the Registered Third Party for the apparent contravention;
- g. after reviewing the report, give to the Registered Third Party, the Clerk and the Applicant the decision of the Committee, and brief written reasons for the decision.

Registered Third Party Contributor Contravention – Application by Elector

- a. within 30 days receipt of the report, consider the report;
- b. if the report concludes that the Contributor appears to have contravened a provision of the Act relating to campaign finances, decide whether to commence legal proceedings against the Contributor for the apparent contravention;
- c. after reviewing the report, give to the Contributor and the Clerk the decision of the Committee, and brief written reasons for the decision.

Application by the Clerk

- a. Statutory obligations now obligate the Clerk to review contributions made to both candidates, by candidate contributors and registered third parties. Generally, upon review of the submitted financial statements, if the Clerk finds that the contribution limits were exceeded, the Clerk must report this exceedance to the Compliance Audit Committee via a written report.
- b. The reports noted above are mandatory on the Clerk and are not triggered by the request of an elector.
- c. Within 30 days of receiving a report from the Clerk, a Compliance Audit Committee must consider the report of the Clerk and decide if the Committee will commence a meeting to consider the content of the report(s).
- d. All Clerks should be guided by the provisions of the Municipal Elections Act, more precisely Section 88.34 (1) to 88.34 (7) and Section 88.36 (1) to 88.36 (4).

Auditor Selection

If the committee decides to grant the application, it shall appoint an auditor licensed under the *Public Accounting Act, 2004* to conduct a compliance audit of the Candidate's election campaign finances.

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Membership

The Committee shall be composed of at least three (3) voting members that would assume all the rights and privileges of a voting member if called upon. Alternate members shall be ranked and will be called upon to replace a voting member that has resigned from the Committee.

Membership will be drawn from the following groups who has such qualifications and satisfies the eligibility requirements:

- a. accounting and audit - accountants or auditors with experience in preparing or auditing the financial statements of municipal candidates and registered third parties;
- b. legal;
- c. professionals who in the course of their duties are required to adhere to codes or standards of their profession which may be enforced by disciplinary tribunals; and/or
- d. other individuals with knowledge of the campaign financing rules of the *Municipal Elections Act, 1996*.

Municipal employees or officers of the municipality, members of Council or local board; any Candidates or any persons who are Registered Third Parties in the 2018 municipal election or in any by-election during the term of Council for any member municipality are ineligible to be appointed as a member of the Committee pursuant to subsection 88.37 (2) of the of the *Municipal Elections Act, 1996*.

Members may be required to participate in an orientation session as a condition of appointment.

5	<p>Membership Selection Members should be solicited having the qualifications as those individuals as set out under section 4 of the Terms of Reference. Recommended candidates will be submitted to the Council of each member municipality for consideration in a by-law of appointment.</p> <p>Members will be selected on the basis of the following:</p> <ol style="list-style-type: none"> a. demonstrated knowledge and understanding of municipal election financing rules; b. proven analytical and decision-making skills; c. experience working on a committee, task force or similar setting; d. availability and willingness to attend meetings; and e. excellent oral and written communication skills. <p>Any members appointed must also agree in writing they will not be a candidate or an individual who is a Registered Third Party in the current municipal election or in any by-election during the term of Council for any member municipality. Failure to adhere to this requirement will result in the individual being removed from the Committee.</p>
6	<p>Conflict of Interest The principles of the <i>Municipal Conflict of Interest Act</i>, apply to this Committee. Failure to adhere to this requirement will result in the individual being removed from the Committee.</p> <p>To avoid a conflict, any person appointed to the Committee must agree in writing not to prepare or audit the election financial statements of any candidate or registered third party for any of the member municipalities in the current municipal election. Failure to adhere to this requirement will result in the individual being removed from the Committee.</p>
7	<p>Chair The Committee will select a Chair from amongst its members at its first meeting when a compliance audit application is received.</p> <p>The Chair is the liaison between the members and the Secretary of the Committee on matters of policy and process. The Chair shall enforce the observance of order and decorum among the Committee members and the public at all meetings.</p>
8	<p>Staffing and Funding The Clerk from the applicable member municipality shall act as Secretary to the Committee.</p> <p>The member municipality requiring the services of the Committee shall be responsible for all associated expenses, including the auditor's costs.</p> <p>Committee Member Remuneration shall be set at \$150 per meeting, mileage included. Costs with respect to legal fees (if necessary) and the engagement of an auditor would be the responsibility of the member municipality.</p>
9	<p>Meetings Meetings of the Committee may be conducted electronically but shall be open to the public. The Clerk of the member municipality shall determine an adequate location for the public to physically attend or participate electronically and with the ability to have the Compliance Audit Committee members participate electronically.</p> <p><i>Timing of Meetings</i> Meetings shall be called by the Clerk of the member municipality when required. The date and time of the meeting will be determined by the Clerk and communicated directly to the Committee members. Subsequent meetings will be held at the call of the Chair in consultation with the Clerk.</p> <p>Committee activity shall be determined primarily by the number and complexity of applications for compliance audits that may be received. The frequency and duration of meetings will be determined by the Committee in consultation with the Clerk.</p> <p><i>Meeting Location</i> The Committee shall meet at the location determined in consultation with the member municipality.</p>

Electronic Meetings

A meeting of the Compliance Audit Committee may be conducted by means of visual or audio or audio electronic or other communications equipment, provided that the public is able to participate and the chairperson is in attendance at the meeting.

Committee members who are participating by electronic means in a meeting are deemed to be present.

In the case of an interruption in the communication link to the member(s) participating electronically, the Committee will recess to a maximum of 15 minutes until it is determined whether or not the link can be re-established. If communications are not re-established, the meeting will be dissolved and rescheduled and the Clerk shall note the same in the minutes.

Meeting Notices, Agendas & Minutes

The agenda shall constitute notice. The Clerk of the member municipality requiring the services of the Committee shall cause notice of the meetings to be provided:

- to members of the Committee, Candidate, and the Public for a meeting regarding an application by an elector;
- to members of the Committee, Contributor, Candidate and the Public for a meeting regarding a Candidate Contributor Contravention report;
- to members of the Committee, Contributor, Registered Third Party and the public for a meeting regarding a Registered Third Party Contributor Contravention.

A minimum of two (2) business days prior to the date of each meeting, not including weekends or holidays. The agendas and minutes of meetings shall be posted on the member municipality's website, where available.

Minutes of each meeting shall outline the general deliberations and specific actions and recommendations that result. The applicant and the candidate shall be permitted to make presentations as part of the process.

Agenda Format

1. Call to Order
2. Disclosure of Pecuniary Interest and General Nature Thereof
3. Consideration of Compliance Audit Application, Clerk's Report or Auditor's Report
4. Adjournment

Quorum

Quorum for meetings shall consist of a majority of the members of the Committee.

If no quorum is present thirty (30) minutes after the time appointed for a meeting, the Clerk shall record the names of the members present and the meeting shall stand adjourned until the date of the next meeting.

Meeting Attendance

Any member of the Committee, who misses three (3) consecutive meetings, without being excused by the Committee, may be removed from the Committee. The Committee must make recommendations, by a report to Council for the removal of any member.

Motions & Voting

A motion shall only need to be formally moved before the Chair can put the question or a motion can be recorded in the minutes.

A motion shall be reduced to writing and shall be signed by the Chair and Secretary.

Every Member present shall be deemed to vote against the motion if they decline or abstain from voting, unless disqualified from voting by reason of a declared pecuniary interest.

In the case of a tie vote, the motion shall be considered to have been lost. The manner of determining the vote on a motion shall be by show of hands. The Chair shall announce the result of every vote.

10 **Administrative Practices and Procedures**

The Terms of Reference constitute the Administrative Practices and Procedures of the Committee. Any responsibilities not clearly identified within these Terms of Reference shall be in accordance with Section 88.33 to 88.37 of the *Municipal Elections Act, 1996*.

The Clerk at any time has the right to develop additional administrative practices and procedures.