

**AFFIDAVIT**

FEDERAL COURT

BETWEEN:

ATTAWAPISKAT FIRST NATION  
AS REPRESENTED BY CHIEF AND COUNSEL,  
Applicant

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,  
AS REPRESENTED BY THE MINISTER OF ABORIGINAL AFFAIRS AND NORTHERN  
DEVELOPMENT CANADA,  
Respondent

APPLICATION UNDER SECTION 18.1 OF THE *FEDERAL COURTS ACT*

**AFFIDAVIT OF CLAYTON KENNEDY**

I, Clayton Kennedy, residing at Attawapiskat First Nation, in the Province of Ontario,  
make oath and say :

**Role with First Nation**

1. I am the Co-Manager and Director of Finance of Attawapiskat First Nation (the "First Nation"), and as such have knowledge of the matters hereinafter deposed.
2. I was appointed Co-Manager of the First Nation on July 16, 2010, by its (then) Chief and Council.
3. I also served as the First Nation's Director of Finance, Co-Manager and Band Manager from 2001 to 2004. For part of that period, I was also the First Nation's Manager, and

represented the First Nation in negotiations concerning an Impact Benefit Agreement.

### **Background, Education and Training**

4. I am the owner and operator of Moo Shum Enterprises Inc., a consulting company serving First Nations and providing expertise and advice primarily in the areas of finance and management. In addition to the services I have provided to the First Nation, I have been employed or retained by several other First Nations since 2000, in relation to finance, project management, and administration.
5. From 1973 to 1979, I completed four of the five necessary levels of training for a designation as a Certified General Accountant.
6. After 1979, I began to work in the public accounting field. I managed the George Jeffrey Children's Centre in Thunder Bay, Ontario for approximately 15 years, among other positions.
7. I have a two-year certificate in Healthcare Administration from Certified Health Services Executives, in Ottawa, Ontario, completed in approximately 1997.

### **Co-Management Role with First Nation**

8. Pursuant to the Agreement I have entered into with the First Nation, my duties as co-manager are as follows:
  - a) Implement procedures for: the completion of annual audit requirements; achieving month end cut off; the monthly review, analysis and information sharing of financial statements and associated reports; and for a system of accountability;
  - b) Directly supervise all finance staff, including delegating and following up with Program Managers regarding the Reporting requirements for ANAC, FNIHB and CMHC report deadlines;

- c) Prepare the cash flow for the year, including assistance with the development of funding proposals, and primary responsibility for ensuring that operational, capital and program activities are within budget; and
- d) Provide assistance to (i) efficiently and effectively operate the day-to-day affairs of the First Nation government, (ii) provide Chief and Council with timely and accurate information to make sound executive / governance decisions, and (iii) develop realistic plans / budgets for Chief and Council consideration.

Attached hereto and marked as Exhibit A to this my affidavit is a copy of the Co-Management Agreement between the Attawapiskat First Nation and Moo Shum Enterprises Inc., effective July 1, 2011.

- 9. Since assuming my current position with the First Nation, which began in July 2010, the following tasks have been accomplished:
  - a. The First Nation's cumulative debt has been reduced by approximately \$3 million as of March 31, 2011;
  - b. The First Nation has repaid or negotiated debt repayment plans with most creditors, with debt scheduled to be repaid within approximately 4 years;
  - c. The last Audit for the First Nation was filed on time, before July 31, 2011, and complied with the Public Sector Accounting Board's recommendations and policies;
  - d. Human resources and administration training policies and practices have been put in place, and are in the final stages of review;
  - e. Measures have been updated or initiated to track and reconcile revenue, deficits and surpluses within all categories of spending, including monthly and quarterly financial reports to council and programs;
  - f. Spending and budgeting by the First Nation now conforms to budgeted amounts, as well as available revenue and funding (taking debt repayment plan into account); and
  - g. Chief and Council ratified a Remedial Financial Plan (in December 2010),

which was implemented in January 2011, and which objective was to ensure that the First Nations' revenues and expenditures were balanced, and that debt was repaid as promptly as possible.

10. The Minister of Indian Affairs and Northern Development and the First Nation signed a Funding Agreement effective April 1, 2011 until March 31, 2012 (the "Agreement"). Two amendments have been made since the Agreement was first signed. Attached hereto and marked as Exhibit **B** to this my affidavit is a copy of the Agreement. The Funding Agreement is not a negotiated instrument, entered into freely by the First Nation; its execution is a pre-condition to receiving funding. No negotiations of its terms is undertaken or expected. The First Nation is free to "take it or leave it" but because the very survival of its people depends on such funding, rejection of the Funding Agreement is not a realistic option.
11. The Agreement sets out provisions regarding the objectives, interpretation of terms in the Agreement, funding provisions and adjustments, Council's responsibilities and accountability to members, delegation of obligations under the Agreement by either party, circumstances and remedies of default of the Agreement by Council, dispute resolution procedures, termination of the Agreement, and how notice between parties may be effected.
12. The First Nation receives approximately \$580,000 every year from Canada for housing, which must cover housing policy and administration, renovations and repairs, and construction. Because of material, labour and transportation costs in this remote, northern location, it costs approximately \$250,000 to build one housing unit. Unfortunately, due to the state of repair of the First Nation's existing housing stock, for the last several years, most of the housing budget is used for repair and renovation, rather than constructing new housing, with a view to keeping as much of the existing housing stock as possible inhabitable.
13. The First Nation also receives approximately \$530,000 per year from Canada for minor capital costs. All of this annual amount is currently dedicated to debt servicing, as authorized by Chief and Council, with the result that no minor capital improvements (road, sewer, drainage, infrastructure, etc.) are funded by revenue from Canada.

14. Prior to my appointment as Co-Manager, I understand from conversations with Chief and Council, and the First Nation's administration, and from reviewing the First Nation's financial and other documents, that the First Nation's Co-Manager was BDO Dunwoody, from October 2009 to June 2010. It is my understanding and my assessment, based on those conversations and my review of the First Nation's financial documents, that there was little progress with respect to the remediation of the First Nation's finances during the time that BDO Dunwoody served as Co-Manager. BDO Dunwoody's Agreement with the First Nation provided for monthly payments of an average of approximately \$23,860.00 for co-management services, which was to come from the First Nation's funds and revenue. It is my understanding from my conversations with Chief and Council and my review of the First Nation's documents, that BDO Dunwoody was fired as the First Nation's Co-Manager because no progress was being made with respect to the First Nation's financial well-being.
  
15. BDO Dunwoody was also retained by the First Nation in 2006 to manage its Major Capital Expenditures fund and for community projects.
  
16. In 2004, Council requested that a forensic audit be performed to ensure that there was no improper use of funds over the last several years. That audit has yet to be commissioned. It is my assessment, based on my own review of the First Nation's financial and other documents, and my discussions with First Nation's staff and Chief and Council, that while it is possible that funds were improperly used, the First Nation's current financial state, and by extension, its housing situation, is the result of :
  - a. Chronic underfunding by Aboriginal Affairs and Northern Development Canada ("AANDC");
  - b. Overspending (based on funding amounts) by the First Nation, particularly in the areas of program staffing and security;
  - c. Unique circumstances, including a sewage backup, flooding, and bureaucratic, auditing and reporting requirements and delays.
  
17. For the last year, all feedback that I and (to my knowledge) the First Nation have received

from AANDC concerning the First Nation's finances and changes to the First Nation's finances has been positive. The July 31, 2011 Audit was accepted, as was the December 2010 Remedial Financial Plan. Ministerial loan guarantees for Canada Mortgage and Housing Corporation funding for 9 new housing units was withheld in 2010 based on concerns about the First Nation's finances but was granted on June 30, 2011, based in part on the Remedial Financial Plan and changes made by the First Nation since July 2010.

18. AANDC has raised no new or different concerns regarding the First Nation's finances since I assumed my current position in July 2010.
19. On December 13, 2011, the First Nation received a Financial Adjustment to its Comprehensive Funding Agreement with Canada, dated November 21, 2011. The only amendment listed in that document was an adjustment of \$4,500.00, bringing the total budget for the year ending March 31, 2011 to \$12,904,111.00. Attached hereto and marked as Exhibit C to this my affidavit is a copy of that amendment and associated documents.
20. Chief Spence declared a State of Emergency on October 28, 2011. In early November, the First Nation requested and received approval from Canada for funding for \$499,500 to renovate existing housing stock. Attached please find a letter from Joanne Wilkinson, Regional Director General, Ontario Region (AANDC) confirming authorization of that amount, as well as an emergency draw of \$350,000 from the First Nation's existing funding.
21. At the First Nation's request, Mushkewgowuk Council Technical Services has undertaken an assessment of renovation costs for five homes that are currently inhabitable or barely uninhabitable, and have assessed that two of those homes are not worth repairing (from an economic standpoint). Three of the homes will require \$300,000 in repairs, collectively, to address health and safety concerns, collectively.
22. In late November 2011, at the direction of Chief and Council, I sought quotes from a number of firms that construct modular housing and trailers. As a result of that activity, EHL Homes submitted a proposal to build 14 or more modular homes (2-3 bedrooms each). That

proposal was amended on December 2, 2011 to contemplate the building of nine (9), 2-bedroom homes, nine (9), 3-bedroom homes, and four (4), 1-bedroom homes – a total of 22 homes – at a cost of approximately \$2.4 million. Attached hereto and marked as Exhibit D to this my affidavit is a copy of the EHL Homes' document received by me on or about December 2, 2011 and detailing the costs associated with the building of those homes.

23. Each of the Third Party Manager and the First Nation have executed a contract with EHL Homes authorizing the construction of the 22 modular homes, effective December 13, 2011. EHL has advised me that the first of these homes will be ready for occupation during the first week in January 2012. Attached hereto and marked as Exhibit E to this my affidavit is copy of an exchange of emails between the purported Third Party Manager, Jacques Marion, and myself discussing the contractual requirements authorizing the construction of the homes.

24. The First Nation has also developed a budget and workplan for converting rooms in the First Nation's Healing Lodge into temporary residences for its families. We anticipate that this work will be completed in February 2011 and will provide housing for 19 families.

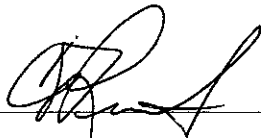
Sworn before me at the City of Thunder Bay, in the Thunder Bay District, Ontario, on Thursday, December 15, 2011.



Commissioner for Taking Affidavits

(or as the case may be)

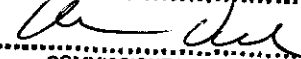
**KAREN DRAKE**  
Barrister and Solicitor



(Signature of Deponent)

This is Exhibit A referred to in the affidavit of Clayton Kennedy sworn before me, this 15<sup>th</sup> day of December, 2011

CO-MANAGEMENT AGREEMENT  
BETWEEN  
THE ATTAWAPISKAT FIRST NATION  
AND MOO SHUM ENTERPRISES INC.

  
COMMISSIONER FOR TAKING AFFIDAVITS

KAREN DRAKE  
Barrister and Solicitor

**PURPOSE AND PRINCIPLES OF THIS AGREEMENT**

The purpose of this agreement is to identify and describe the responsibilities and obligations of the Attawapiskat First Nation and Moo Shum Enterprises Inc. to ensure that Co-Management services are provided to the Attawapiskat First Nation for the period July 1, 2011 to June 30, 2013, which will be the duration of this agreement.

This agreement is limited to funding and operations as provided by Aboriginal and Northern Affairs Canada agreement with the Attawapiskat First Nation and will require access to information, data, agreements and financial information for all other government funding and enterprises operated through and on behalf of the Attawapiskat First Nation relevant to the development of a Management Plan for presentation, discussion, amendment and approval by Chief and Council.

**Principles**

- Culture and tradition will guide all aspects of this agreement
- Open communication and trust will be exercised and respected
- This agreement is not intended or designed to limit or derogated the powers and responsibilities of the Chief and Council of the Attawapiskat First Nation
- Both parties are not aware of any past or present relationships between the First Nation and the Co-Manager that may be thought to be a conflict of interest

**OBJECTIVES OF THIS AGREEMENT**

The objectives to be achieved through the cooperative efforts of the Attawapiskat First Nation and Moo Shum Enterprises Inc. are set out in Appendix I and will immediately address:

- With the assistance of the Band Manager and Finance staff assess the accounting system and create program and management statements for Program Managers and Chief and Council
- With the assistance of the Band Manager and Finance staff address and develop an interim strategy regarding the First Nations line of credit and accounts payable for presentation and discussion with Chief and Council
- With the assistance of the Band Manager, staff and external parties working on behalf of the Attawapiskat First Nation assess and record the history of the Band operation deficit, ascertain INAC current levels of operations and capital funding, receive historical and financial data for all enterprises external to Band Operations (Casino Rama, IBA Trust, ARI, FNHIB et al) for the purposes of developing a Management Plan and options action plan for discussion, amendment and approval by Chief and Council and discussion with Aboriginal and Northern Affairs Canada representatives
- Identify and implement a working team to oversee the Co-Management agreement and Management Plan comprised of the Co-Manager, Band Manager, 2 representatives of Chief and Council and Aboriginal and Northern Affairs Canada representatives and provide progress reports to the membership
- Will discuss and give priority to the Implementation of the Organization Review as prepared by Chigneteo Consulting and focus on securing funding for the position of Chief Executive Officer.

## TERMS AND CONDITIONS

The parties to this agreement will cooperate and assist each other in achieving the objectives of this agreement as set down herein.

The parties agree to openly share all information necessary to achieving the objectives as set down herein. Further, the parties to the agreement will not prevent, delay or obstruct any other party from carrying out their responsibilities under this agreement.

All parties to this agreement hereby agree that their actions, at all times, will be in the best collective interests of the community members of the Attawapiskat First Nation.

Attawapiskat First Nation Chief and Council and Moo Shum Enterprises Inc. agree to consult with program managers and financial staff prior to commitment of First Nation funds by contractual agreement to outside parties.

## RESPONSIBILITIES OF MOO SHUM ENTERPRISES INC.

Moo Shum Enterprises Inc. will undertake the following to achieve the objectives outlined above:

- With the assistance of the Band Manager and finance staff, implement a procedure for the completion of the annual audit requirements.
- Will directly supervise all finance staff during the term of this agreement.
- With the assistance of the Band Manager and staff will establish processes in developing and fulfilling the Co-Management Schedule and Work Plan for presentation to Chief and Council. All priorities and time lines are subject to change through discussion by both parties.
- Prepare the cash flow for the year by linking the spreadsheet to the budgets prepared by the First Nation program managers and Moo Shum Enterprises Inc. and present to Chief and Council for approval. Ensure that the financial staff and program managers understand that this is essential to achieving good cash and credit control required to ensuring the Attawapiskat First Nation does not incur deficits.
- Implement a process of achieving month end cut off procedures. This will benefit the Attawapiskat Chief and Council, Band Manager and Program Managers with more meaningful financial statements at each month end. This will be achieved by doing a general ledger analysis each month end with Program Managers. The personnel in the finance department will be responsible for the reconciliation items of the balance sheet and reconciliation of revenues on a monthly basis.
- Ensure that monthly financial statements, including comparison to accepted program budgets are available for review by program managers, and senior management to determine the effectiveness of their program.
- Follow up and delegate with Program Managers the Reporting Requirements for ANAC, FNIHB, and CMHC report deadlines.
- Implement the monthly review, analysis and information sharing of financial statements and associated reports. At these monthly review meetings the Attawapiskat Chief and Council and Program Managers will be prepared to take immediate action to recover any over expenditures.
- Will take primary responsibility for ensuring that operational, capital and program activities are within budget. Will work closely with the Band Manager, Finance Manager, and Portfolio Councillor to achieve this objective.
- Will provide assistance to (a) efficiently and effectively operate the day-to-day affairs of the First Nation government, (b) provide the First Nation Chief and Council with timely and accurate information required to make sound executive/governance decisions and (c) develop realistic plans/budgets for Chief and Council consideration.

- Maintain a fully open proactive, consultative role with the AFN Band Manager on all proposed matters concerning any proposed activity, including discussions with program agents, funders and agencies.
- Will implement a system of accountability to the Minister of Aboriginal and Northern Affairs Canada and to the Attawapiskat First Nation members consistent with the principles of transparency, disclosure and redress as contained in the Comprehensive Funding Agreement.
- Will assist the Attawapiskat First Nation with the development of funding proposals to offset, to whatever extent possible, the cost to the First Nation Co-Management Agreement, also assist with the production a Capacity Development Plan for AFN Finance staff, and program managers, including and education program explaining the role of budgeting upon ability for effective program, and financial management protocols.
- Will notify the Attawapiskat First Nation Council if there is a possibility of a "Conflict of Interest" in the course of fulfilling it's obligation under this agreement.

#### RESPONSIBILITIES OF THE ATTAWAPISKAT FIRST NATION

The Chief and Council of the Attawapiskat First Nation will undertake the following to achieve the objectives set out above:

- Prepare a letter and Band Council Resolution to the appropriate banks to give signing authority to Clayton Kennedy of Moo Shum Enterprises Inc. on all bank accounts pertaining to Aboriginal and Northern Affairs Canada funding.
- Agree to fully disclose all information relevant to the operation of the Attawapiskat First Nation at monthly review meetings.
- Allow Moo Shum Enterprises Inc. to access the relevant financial information (general ledger, accounts payable, accounts receivable, reconciliation spreadsheets, cash flow projections) over the internet for monitoring purposes under the terms of this mandate.
- Attawapiskat First Nation Chief and Council are ultimately responsible to the people of the Attawapiskat First Nation and, therefore, must make every effort to improve their governance skills and to keep their constituency informed as to the financial performance and program delivery performance of the Attawapiskat First Nation government and its associated entities.
- Special emphasis will also be place upon formalizing and implementing the policy of Chief and Council Roles and Responsibilities within a formal and transparent working environment.
- Support Moo Shum Enterprises Inc. by way of direction in what Chief and Council would like to see implemented to ensure the successful delivery of this Co-Management Agreement. Chief and Council will discuss with Moo Shum Enterprises Inc. all issues that need to be addressed and implemented for the duration of this agreement.
- Meet with Moo Shum Enterprises Inc. on a regular basis, and communicate daily what requirements are needed for follow up.

#### TERMINATION OF THIS AGREEMENT

This agreement cannot be amended without the express written consent of both parties to the agreement.

Notice of Intent to terminate this agreement may be given to the other party of this agreement by serving 60 days (two month) advance notice in writing. A copy of the Notice of Intent to terminate must be forwarded to Aboriginal and Northern Affairs Canada Department for their records.

Attawapiskat First Nation shall pay Moo Shum Enterprises Inc. any/all outstanding invoices that are due to them at time of termination of agreement.

### REMUNERATION

Moo Shum Enterprises Inc. will be paid on a fee for service basis. Professional services will be invoiced to the Attawapiskat First Nation on the 1<sup>st</sup> day each month.

Costs are based upon this contract beginning July 1, 2011 and ending June 30, 2013. Cost is based upon Moo Shum Enterprises Inc. working in the community, three weeks on site, one week off site providing assistance by telephone, internet, fax and use of electronic file transfers. Moo Shum Enterprises Inc. will provide normal work day hours five days a week while on site during each three week tour with no accumulation of overtime at a daily rate of \$850 per day plus HST. Off site work will be billed at an hourly rate of \$100 per hour plus HST.

#### **Attawapiskat First Nation Costs**

- Flight costs from Thunder Bay, Ontario to Attawapiskat, Ontario and return including personal belongings at the implementation of this contract and upon termination of services.
- Flight costs from Attawapiskat, Ontario to Thunder Bay, Ontario and return for each one week tour that Moo Shum Enterprises is off site during the contract period.
- Professional fees invoiced at a daily rate of \$850 per day plus HST on site and an hourly rate of \$100 per hour plus HST for off site work performed. Invoices to be provided on the 15<sup>th</sup> and the last day of each month during the term of this contract.
- On site secured office space, desk, chair, telephone, secured filing storage, computer with access to band network and normal office supplies.
- Normal flight and travel expenses at AFN rates to attend meetings pertaining to Band business off site at the request of and on behalf of the Attawapiskat Chief and Council and or the Band Manager.

### TERMS OF THIS AGREEMENT

This Agreement will become effective and bind the Attawapiskat First Nation and Moo Shum Enterprises Inc. from July 1, 2011 to June 30, 2013.

### RENEWAL OF THIS AGREEMENT

Discussions regarding the review and renewal of this agreement will take place 90 days prior to June 30 each year during the term of the contract.

**ATTAWAPISKAT FIRST NATION AND MOO SHUM ENTERPRISES INC. AGREE TO THE TERMS AND CONDITIONS IN THIS AGREEMENT.**

Signed for and on behalf of the Attawapiskat First Nation as authorized by Chief and Council this day of July, 2011 in the presence of:

**Band Manager, Wayne Turner** \_\_\_\_\_

**Witness:** \_\_\_\_\_

Signed for and on behalf of Moo Shum Enterprises Inc. as represented by:

**President, Clayton Kennedy** \_\_\_\_\_

**Witness:** \_\_\_\_\_

This is Exhibit B referred to in the  
affidavit of Clayton Kennedy  
sworn before me, this 15<sup>th</sup>  
day of December 2011

  
A COMMISSIONER FOR TAKING AFFIDAVITS

**KAREN DRAKE**  
Barrister and Solicitor

**FUNDING AGREEMENT**

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,**  
as represented by the Minister of Indian Affairs and Northern Development;

(hereinafter referred to as "Canada")

**AND**

**THE ATTAWAPISKAT FIRST NATION,** a "band" as defined in the *Indian Act*,  
as represented by the Chief and Councillors of the ATTAWAPISKAT FIRST NATION

(hereinafter referred to as the "Council")

**WHEREAS:**

- A. The Council wishes to provide certain programs and services to, and to carry out certain activities for the benefit of, Members and Recipients as defined in this Agreement, and to be accountable for those programs, services and activities;
- B. Canada wishes to transfer funds to the Council for those programs, services and activities through the Department of Indian Affairs and Northern Development a federal institution over which the Minister of Indian Affairs and Northern Development presides; and
- C. The Council and Canada agree that the above objectives can be realized by entering into this Agreement.

**NOW THEREFORE the parties agree as follows:**

**1.0 INTERPRETATION**

**1.1 Definitions**

**1.1.1 In this Agreement, unless otherwise provided:**

"Agency" means an authority, board, committee or other entity authorized to act on behalf of the Council.

"Agreement" means this Agreement and includes all Schedules, any Notices of Budget Adjustment, and any amendments made in accordance with section 14.3 (Amendments), section 3.2 (Funding Subject to Appropriations and Funding Authorities), subsection 4.4.5 (extension of reporting deadlines) and section 4.6 (Adjustment of Cash Flow).

"Cash Flow" means the periodic payments Canada will make to the Council in accordance with Schedule "FED-1".

"Consolidated Audited Financial Statements" means the Council's annual consolidated financial statements prepared in accordance with section 4.4 (Reporting).

"Contributions" means funding provided under this Agreement for programs, services or activities for which expenditures must be accounted, ineligible expenditures must be reimbursed to Canada, and unexpended funding must be reimbursed to Canada unless otherwise specified in this Agreement.

"DIAND" means the Department of Indian Affairs and Northern Development.

"Federal Department" means DIAND or any other federal government institution over which a Minister representing Her Majesty the Queen in Right of Canada in this Agreement presides and through which Canada provides funding under this Agreement.

"First Nation" means a "band" within the meaning of the *Indian Act*.

"Fiscal Year" means a one year period, beginning April 1 of a year and ending March 31 of the following year, that covers or partly covers the term of this Agreement.

"Management Action Plan" means a plan, developed by the Council and acceptable to Canada, which reflects measures to be taken by the Council to remedy a default under this Agreement.

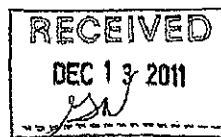


Indian and Northern  
Affairs Canada

Affaires indiennes  
et du Nord Canada

www.inac.gc.ca  
November 21, 2011

www.aicn.gc.ca



Your file - Votre référence

4219-3-143  
Our file - Notre référence  
CIDM#

Chief and Council  
Attawapiskat First Nation  
P.O. Box 248  
Attawapiskat, ON P0L 1A0

**Re: Financial Adjustment**

Attached for your records and information are the most current Month's Change/Approval/  
Financial Report regarding your 2010/2011 Funding Arrangement.

- Notice of Budget Adjustment
- Amendment to Funding Arrangement
- Revised Expenditure Plan /Pool Release
- Notice of Change(s) to Reporting Requirement(s)
- Expenditure Report - by Recipient
- Debt Management Report - Notification of Prior Year Audit Recoveries
- Single Capital Contribution Arrangement for Canada's Economic Action Plan (CEAP)

Should you have any questions, please contact James Marie, Program Assistant at (807) 624-4542.

Sincerely,

Laurie McLeod  
Manager Financial Arrangements - Administration

Ontario Region  
100 Anemki Drive, Suite 101  
THUNDER BAY, ON P7J 1A5

Moo Shum Enterprises Ltd.

Canada

This is Exhibit C referred to in the  
affidavit of Clayton Kennedy  
sworn before me, this 15th  
day of December 2011

COMMISSIONER FOR TAKING AFFIDAVITS

KAREN DRAKE  
Barrister and Solicitor

AMENDING AGREEMENT

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,  
as represented by the Minister of Indian Affairs and Northern Development;

(hereinafter referred to as "Canada")

AND

THE ATTAWAPISKAT FIRST NATION a "band" as defined in the *Indian Act*,  
as represented by the Chief and Councillors of the ATTAWAPISKAT FIRST NATION;

(hereinafter referred to as the "Council")

WHEREAS the parties entered into a funding agreement ("the Agreement") effective as of the 1st day of April, 2011 and wish to amend the Agreement in order to include additional program funding in the amount of \$4,500.00 as identified in the attached *SCHEDULE "FED-1" - Federal Departments Consolidated Cash Flow Statement* and *SCHEDULE "DIAND-2" Set, Fixed, Flexible and Grant* and the associated reporting requirements as identified in the attached *SCHEDULE "DIAND-4" Schedule of Reporting Requirements and Due Dates*.

NOW THEREFORE, the parties agree as follows:

- 1.0 *SCHEDULE "FED-1" Consolidated Cash Flow Statement* of the Agreement is deleted and replaced with an updated version of *SCHEDULE "FED-1" Consolidated Cash Flow Statement* as attached.
- 2.0 Subsection 2.1 of *Schedule "DIAND-2" Set, Fixed, Flexible and Grant Funding* of the Agreement is deleted and replaced by the following subsection 2.1:
  - 2.1 Subject in the terms and conditions of this Agreement, DIAND shall transfer to the Council:
    - (a) Set Contribution Funding (SET) in the following amounts:  
An amount of up to Two Million, Seven Hundred Ninety Thousand, Six Hundred Eighty-Two dollars (\$2,790,682.00) for Fiscal Year 2011/2012.
    - (b) Fixed Contribution Funding (FXBD) in the following amounts:  
An amount of up to Nine Million, One Hundred Thirty-Seven Thousand, One Hundred Fifty-Two dollars (\$9,137,152.00) for Fiscal Year 2011/2012.
    - (c) Flexible Contribution Funding (FLEX) in the following amounts:  
An amount of up to Zero dollars (\$0.00) for Fiscal Year 2011/2012.
    - (d) Grant Funding (GRANT) in the following amounts:  
An amount of up to Nine Hundred Seventy-Six Thousand, Two Hundred Seventy-Seven dollars (\$976,277.00) for Fiscal Year 2011/2012.
- 3.0 *SCHEDULE "DIAND-4" Schedule of Reporting Requirements and Due Dates*, as attached, includes the program reporting requirements relating to the additional program(s) and/or services.
- 4.0 Current outstanding amendments may not be included in the *Schedule "FED-1"* or reflected in the funding amounts in subsection 2.1 of *Schedule "DIAND-2"*.
- 5.0 All other terms and conditions of the Agreement will continue in full force and effect.

This Amendment has been executed on behalf of the Council and Canada by their duly authorized representatives.

SIGNED ON BEHALF OF HER MAJESTY  
THE QUEEN IN RIGHT OF CANADA, as represented by  
the Minister of Indian Affairs and Northern Development

SIGNED ON BEHALF OF  
ATTAWAPISKAT FIRST NATION

by: *Joseph Young*  
Director of Funding Services

by: *Therese Spence*  
*Therese Marie Spence, Chief*

in the presence of:

*PK*

Witness

Date: *Nov 15/11*

by: \_\_\_\_\_  
*Gerard Matthias, Deputy Chief*

by: \_\_\_\_\_  
*Moses Hookimaw, Councillor*

by: *[Signature]*  
*Steve Hookimaw, Councillor*

by: *[Signature]*  
*Xavier Hookimaw, Councillor*

by: *CKataquapit*  
*Christine Kataquapit, Councillor*

by: \_\_\_\_\_  
*Christopher Kataquapit, Councillor*

by: *[Signature]*  
*Andrew Koostachin, Councillor*

by: \_\_\_\_\_  
*Jerry Nakogee, Councillor*

by: \_\_\_\_\_  
*Mike Okimav, Councillor*

by: Margaret Okinaw-Lavalley  
Margaret Okinaw-Lavalley, Councillor

by: Benoit Okitigo  
Benoit Okitigo, Councillor

by: Gilbert Spence  
Gilbert Spence, Councillor

in the presence of:

Maurice Chokomoli  
Witness

Date: October 31, 2011











**SCHEDULE "FED-1" - Federal Departments Consolidated Cash Flow Statement**  
**1.0 - Program/Service Budgets, Authorities and Schedule of Monthly Payments Plan**

As of 2011/11/02/7

Arrangement #: 1112-04-000103  
 Arrangement Type: AREA (FN & TC)  
 Adjustment Type: Amendment  
 Replank: 0143 - ATTAWAPISKAT FIRST NATION  
 DEPARTMENT OF INDIAN AND NORTHERN AFFAIRS CANADA

FEDERAL GOVERNMENT SUPPLY												
GOVERNANCE AND INSTITUTIONS OF GOVERNMENT - BUDG												
BASE SUPPORT PERSONNEL - 0512												
TABLE	SI	ST	4TR	5TR	6TR	7TR	8TR	9TR	10TR	11TR	12TR	13TR
INDIAN AND NORTHERN AFFAIRS CANADA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL DEPARTMENT OF INDIAN AND NORTHERN AFFAIRS CANADA	1,835,837.24	112,210.88	112,210.88	112,210.88	112,210.88	112,210.88	112,210.88	112,210.88	112,210.88	112,210.88	112,210.88	112,210.88
TOTAL	1,835,837.24	112,210.88	112,210.88	112,210.88	112,210.88	112,210.88	112,210.88	112,210.88	112,210.88	112,210.88	112,210.88	112,210.88

**SCHEDULE "FED-1" - Federal Departments Consolidated Cash Flow Statement**  
**2.0 - Cash Flow by Fiscal Year by Department**  
As Of 2011/10/27

Arrangement #: 1112-04-000103  
Arrangement Type: ARFA (FN & TC)  
Recipient: 0143 - ATTAWAPISKAT FIRST NATION  
Current Year: 1 of 2

Budget	2011-2012
Department of Indian and Northern Affairs Canada	\$12,904,111.00
Total	\$12,904,111.00

**SCHEDULE "FED-1" - Federal Departments Consolidated Cash Flow Statement**  
**3.0 - Cash Flow by Month and Year - ALL FUNDING by type and month**

As Of 2011/10/27

Arrangement #: 1112-04-000103  
 Arrangement Type: ARFA (FN & TC)  
 Recipient: 0143 - ATTAWAPISKAT FIRST NATION  
 Current Year: 1 of 2

	2011-2012
April	\$1,898,407.00
May	\$712,278.00
June	-\$712,278.00
July	\$841,092.00
August	\$1,776,798.00
September	\$1,093,537.00
October	\$823,784.00
November	\$814,877.00
December	\$1,081,167.00
January	\$841,398.00
February	\$728,452.00
March	\$728,100.00
Pool	\$1,075,884.00
Releases	\$0.00
<b>Total</b>	<b>\$12,804,111.00</b>

**SCHEDULE "FED-1" - Federal Departments Consolidated Cash Flow Statement**  
**4.0 - Cash Flow by Month - Current Year - All Funding by Month and Department**

As of 2011/11/01/27

Arrangement #: 1112-04-000103  
 Arrangement Type: ARPA (PN & TC)  
 Recipient: 0143 - ATTAWAPISKAT FIRST NATION  
 Current Year: 1 of 2

	Total	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Post	Holdback
Department of Indian and Northern Affairs Canada	\$ 2,384,110.00	\$ 1,884,110.00	\$ 1,152,710.00	\$ 1,237,110.00	\$ 441,810.00	\$ 1,375,210.00	\$ 1,102,710.00	\$ 222,110.00	\$ 1,412,710.00	\$ 1,081,110.00	\$ 441,110.00	\$ 728,010.00	\$ 728,010.00	\$ 1,025,810.00	\$ 10.00
<b>Total</b>	\$ 2,384,110.00	\$ 1,884,110.00	\$ 1,152,710.00	\$ 1,237,110.00	\$ 441,810.00	\$ 1,375,210.00	\$ 1,102,710.00	\$ 222,110.00	\$ 1,412,710.00	\$ 1,081,110.00	\$ 441,110.00	\$ 728,010.00	\$ 728,010.00	\$ 1,025,810.00	\$ 10.00

DIAND-4  
Unclassified

**SCHEDULE "DIAND-4" - Schedule of Reporting Requirement and Due Dates**  
**ATTAWAPISKAT FIRST NATION (0143)**

Reporting Requirement Adjustments

Arrangement No.: 1112-04-000103  
Fiscal Year: 2011-2012  
Amendment Reference Number: 0005

Aboriginal Recipient Funding Agreement (First Nations and Tribal Councils)

Program / Budget Activity / Report Name	Reports Due
EDUCATION	

**YOUTH EMPLOYMENT STRATEGY PROGRAM**

1898219 - (1898219) - First Nations and Inuit Youth Employment Strategy - Skills Link Program Report  
Annual #1

2012/03/31



## Expenditures by Recipient Report

Region: ONTARIO  
Fiscal Year: 2011-2012  
As Of 2011/11/21

0143 - ATTAWAPISKAT FIRST NATION  
P O BOX 248  
ATTAWAPISKAT, ON  
P0L1A0

ATTAWAPISKAT BANO  
CO-MANAGEMENT ACCT, TD BANK FINANCIAL GROUP  
6 PINE STREET SOUTH  
TIMMINS, ON  
P4N 7C5

### Expenditures by Recipient Report

Region: ONTARIO  
Fiscal Year: 2011-2012  
As Of 2011/11/21

Transaction Activity	Seq	Financial Coding	Paid Amount
01011 - BAND SUPPDRY FUNDING	1	1.410.0411.01011.0143.0000.3541	\$81,323.00
01016 - PENSION PLAN ADMINISTRATION COSTS AND EMPLOYER CONTRIBUTIONS TO NON-STATUTORY BENEFITS	1	1.383.0411.01018.0143.0000.3541	\$4,065.00
01017 - CPP/OPP AND PRIVATE PENSION PLANS - EMPLOYER CONTRIBUTIONS BY FIRST NATIONS	1	1.383.0411.01017.0143.0000.3541	\$17,160.00
02105 - INSTRUCTIONAL SERVICES FORMULA	1	1.374.0411.02105.0143.0000.3541	\$340,011.00
02107 - ENHANCED TEACHERS SALARIES	1	1.374.0411.02107.0143.0000.3541	\$25,660.00
02109 - LOW COST SPECIAL EDUCATION	1	1.374.0411.02109.0143.0000.3541	\$17,168.00
02137 - STUDENT TRANSPORTATION SERVICES - FEDERAL SCHOOLS	1	1.374.0411.02137.0143.0000.3541	\$3,530.00
02139 - GUIDANCE AND COUNSELLING	1	1.374.0411.02139.0143.0000.3541	\$6,016.00
02246 - BAND OPERATED SCHOOL - DIRECT SERVICES	1	1.381.0411.02246.0143.0000.3541	\$31,902.00
02305 - BASIC NEEDS	1	1.375.0411.02305.0143.0000.3541	\$64,165.00
02320 - SPECIAL NEEDS	1	1.375.0411.02320.0143.0000.3541	\$1,025.00
02330 - SERVICE DELIVERY	1	1.375.0411.02330.0143.0000.3541	\$16,724.00
02395 - IN-HOME CARE	1	1.375.0411.02395.0143.0000.3541	\$333.00
02440 - NATIONAL CHILD BENEFIT RE-INVESTMENT	1	1.375.0411.02440.0143.0000.3541	\$30,870.00
02468 - DAY-CARE (ONTARIO AND ALBERTA ONLY)	1	1.375.0411.02468.0143.0000.3541	\$3,892.00
08110 - COMMUNITY ECONOMIC DEVELOPMENT PROGRAM	1	1.372.0440.08110.0143.0000.3541	\$12,533.00
08565 - WASTEWATER SYSTEMS	1	1.379.0463.08565.0143.0000.3541	\$3,639.00
08566 - WATER SYSTEMS	1	1.379.0463.08566.0143.0000.3541	\$12,283.00
08635 - SCHOOLS - O&M	1	1.379.0463.08635.0143.0000.3541	\$95,983.00
08636 - TEACHERAGES/RESIDENCES/GRDUP HOMES - O&M	1	1.379.0463.08636.0143.0000.3541	\$19,928.00
08766 - FIRE PROTECTION	1	1.379.0463.08766.0143.0000.3541	\$3,647.00
08787 - ROADS AND BRIDGES	1	1.379.0463.08787.0143.0000.3541	\$8,891.00
08770 - COMMUNITY BUILDINGS	1	1.379.0463.08770.0143.0000.3541	\$8,898.00
08772 - OTHER PROTECTION	1	1.379.0411.08772.0143.0000.3541	\$2,083.00
08773 - TRAINING - FIRE PROTECTION	1	1.379.0411.08773.0143.0000.3541	\$5,312.00
08779 - SOLID WASTE	1	1.379.0463.08779.0143.0000.3541	\$445.00
Sub-Total			\$814,877.00

Note: Cheque # will only be displayed on the report the day after the payment has been processed.

### Expenditures by Recipient Report

Region: ONTARIO

Fiscal Year: 2011-2012

As Of 2011/11/21

Transaction Activity	Seq #	Financial Code	Paid Amount
02157 - NEW PATHS FOR EDUCATION - CAPACITY DEVELOPMENT - FN EDUCATION MANAGEMENT AND GOVERNANCE	1	1.374.0482.02157.0143.0000.3541	\$28,125.00
02158 - NEW PATHS FOR EDUCATION - IMPROVING SCHOOL EFFECTIVENESS	1	1.374.0482.02158.0143.0000.3541	\$19,000.00
02162 - NEW PATHS FOR EDUCATION - PARENTAL AND COMMUNITY INVOLVEMENT	1	1.374.0482.02162.0143.0000.3541	\$23,750.00
02163 - NEW PATHS FOR EDUCATION - TEACHER RETENTION AND RECRUITMENT	1	1.374.0482.02163.0143.0000.3541	\$34,639.00
02701 - FIRST NATIONS & INUIT - SUMMER WORK EXPERIENCE PROGRAM	1	1.374.0480.02701.0143.0000.3541	\$5,000.00
Sub-Total:			\$108,708.00

Transaction Activity	Seq #	Financial Code	Paid Amount
08752 - SPECIAL SERVICES (Core Capital Allocation)	1	1.377.0411.08752.0143.0000.3541	\$350,000.00
Sub-Total:			\$350,000.00

Supplier Total: \$1,273,585.00

0143 - ATTAWAPISKAT FIRST NATION Total: \$1,273,585.00

This is Exhibit D referred to in the affidavit of Galaxton Kennedy sworn before me this 15th day of December 2011

KAREN DRAKE  
Barrister and Solicitor

Attawapiskat First Nation  
Crisis Housing Materials and Budget  
Dec 2 2011

Material and Services Summary for Shacks  
Purchase of Trailers

Materials	UMH		EHL Home	
	Qty	Unit Cost	Qty	Unit Cost
14 X 56 Home 2 bedroom	9	48990	9	63838
14 X 56 Home 3 bedroom	9	50990	9	63838
14 x44 Home 1 bedroom 1 bathroom	4	46790	4	52625
UMH containers	2	5250		na
Central electric furnace			22	2690
Transportation				\$59,180
Thunder Bay to Cochrane	24	4000		n/a
Cochrane to Moosonee	22	2750	22	2750
Moosonee to Attawapiskat	22	9500	22	9500
				\$209,000
Set up per Home				\$269,500
2 bedroom	9	3000	9	2240
3 bedroom	9	3000	9	2240
1 bedroom	4	3000	4	2240
Skirting				\$8,960
2 bedroom	9	2400	9	2240
3 bedroom	9	2400	9	2240
1 bedroom	4	1800	4	2240
Install skirting at set up	22	3500	22	\$77,000
				\$126,280
Insulation and water sewer services hook up from curb	20			\$200,000
Entrance way Stairs constructed Installed	20			\$17,000

COMMISSIONER FOR TAKING AFFIDAVITS

Hydro hook-up	20	\$16,000	\$16,000
House demolition	5	\$30,000	\$30,000
Pad preparation costs		\$40,000	\$40,000
Weeping tile and crushed gravel		\$200,000	\$200,000
Accommodation food tray umh crew		\$5,000	\$5,000
Flight umh crew		\$10,000	\$10,000
<b>TOTAL ESTIMATED COSTS</b>		<u>\$2,174,380</u>	<u>\$2,381,824</u>

**ADDED TWO MORE THREE BEDROOM HOMES AS THERE ARE ONLY THREE HOUSES THAT CAN BE RENOVATED OUT OF THE FIVE FAMILIES IN TENT FRAMES**

EHL assembly line ready to go through Christmas has 4 assembly lines

From: "Clayton Kennedy" <Clayton.Kennedy@attawapiskat.org>  
Subject: FW: Purchase of mobile homes for individuals in shacks and 2 families from tent frame list  
Sent date: 12/13/2011 05:18:47 PM  
To: <katherine@henselbarristers.com>

**From:** Clayton Kennedy  
**Sent:** December-06-11 1:17 PM  
**To:** 'Marion, Jacques'  
**Cc:** Yves Chenier  
**Subject:** RE: Purchase of mobile homes for individuals in shacks and 2 families from tent frame list

Yves is getting back to me today. Will schedule and advise.

thanks

**From:** Marion, Jacques [<mailto:JMarion@bdo.ca>]  
**Sent:** December-06-11 1:01 PM  
**To:** Clayton Kennedy; 'Yves Chenier'; 'Leigh Jessen'; Paradoski, Russel  
**Cc:** [awturner@sympatico.ca](mailto:awturner@sympatico.ca); Theresa Spence; 'Stan Louttit'; Joseph Young  
**Subject:** RE: Purchase of mobile homes for individuals in shacks and 2 families from tent frame list

Great Clayton when did you want to set up the call we are available as needed.

Regards,

Jacques Marion

Partner

BDD Canada LLP/s.r.l./S.E.N.C.R.L.

Direct/ligne directe: 204 792 2982

Mobile/ligne mobile: 204 471 3653

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Winnipeg, Manitoba

R3C 4L5

Canada

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Fax/Téloc.: 204 926 7206

[www.bdo.ca](http://www.bdo.ca)

♻ Before you print think about the environment / Avant d'imprimer, pensez à l'environnement

This is Exhibit E referred to in the  
affidavit of Clayton Kennedy  
sworn before me this 15<sup>th</sup>  
day of December 2011

  
COMMISSIONER FOR TAKING AFFIDAVITS  
**KAREN DRAKE**  
Barrister and Solicitor

**From:** Clayton Kennedy [mailto:Clayton.Kennedy@attawapiskat.org]  
**Sent:** Tuesday, December 06, 2011 11:50 AM  
**To:** Yves Chenier; Leigh Jessen; Marion, Jacques; Paradoski, Russell  
**Cc:** awturner@sympatico.ca; Theresa Spence; Stan Louttit; Joseph Young  
**Subject:** Purchase of mobile homes for individuals in shacks and 2 families from tent frame list  
**Importance:** High

Good Afternoon

I have finalized the comparative quotes on the mobile home trailer purchase from UMH and EHL. I attach all documentation relevant to this purchase.

As I am led to believe that Mr Marion has the authority to purchase these items on our behalf, I have copied the 3<sup>rd</sup> party managers.

Let the politics play on their own. Let us discuss this acquisition and make it happen.

I would suggest a conference call if you please.

Note the unconfirmed budget for this was \$2Million, as you can see a slight overrun but I trust that this can be managed as we should have excess from the officially approved allocation of \$499,500 as we are only renovating the homes.

Currently working on the Healing Lodge budget. Will forward with inspection reports.

Will forward inspections for house renovation re: tent frame people – as we are only renovating 3 homes – the materials have been ordered

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