

THE CORPORATION OF THE  
TOWN OF PELHAM

BY-LAW NO 2558 (2004)

A BY-LAW TO AUTHORIZE CERTAIN CAPITAL WORKS OF THE CORPORATION OF THE TOWN OF PELHAM (THE "MUNICIPALITY"); TO AUTHORIZE THE SUBMISSION OF AN APPLICATION TO THE ONTARIO MUNICIPAL ECONOMIC INFRASTRUCTURE FINANCING AUTHORITY ("OMEIFA") FOR FINANCING SUCH WORKS AND CERTAIN OTHER ONGOING WORKS; TO AUTHORIZE TEMPORARY BORROWING FROM OMEIFA TO MEET EXPENDITURES MADE IN CONNECTION WITH SUCH WORKS; AND TO AUTHORIZE LONG TERM BORROWING FOR SUCH WORKS THROUGH THE ISSUE OF DEBENTURES BY THE REGIONAL MUNICIPALITY OF NIAGARA (THE "UPPER-TIER MUNICIPALITY") TO OMEIFA

WHEREAS the *Municipal Act, 2001* (Ontario), as amended, (the "Act") provides that a municipal power shall be exercised by by-law unless the municipality is specifically authorized to do otherwise;

AND WHEREAS the Council of the Lower-tier Municipality has passed the by-laws enumerated in column (1) of Schedule "A" attached hereto and forming part of this By-law ("**Schedule "A"**") authorizing the ongoing capital works described in column (2) of Schedule "A" (individually, a "**Project**", collectively, the "**Projects**") in the amount of the respective estimated expenditure set out in column (3) of Schedule "A";

AND WHEREAS before the Council of the Lower-tier Municipality approved each Project, in accordance with section 4 of Ontario Regulation 403/02, the Council of the Lower-tier Municipality had its Treasurer update its most recent annual debt and financial obligation limit received from the Ministry of Municipal Affairs (as so updated, the "**Prior Updated Limit**"), and, on the basis of the authorized expenditure for each Project as set out in column (3) of Schedule "A" (referred to hereinafter as the "**Authorized Expenditure**" for each such Project) the Treasurer calculated the estimated annual amount payable in respect of each Project and determined that the estimated annual amount payable in respect of each Project would not exceed the Prior Updated Limit, and accordingly the approval of the Ontario Municipal Board under the *Ontario Municipal Board Act* (Ontario), as amended, was not required before any such Project was authorized by Council;

AND WHEREAS subsection 405(1) of the Act provides that a municipality may authorize temporary borrowing to meet expenditures made in connection with a work to be financed in whole or in part by the issue of debentures if,

- (a) the municipality is an upper-tier municipality, a lower-tier municipality in a county or a single-tier municipality and it has approved the issue of debentures for the work;
- (b) the municipality is a lower-tier municipality in a regional municipality and it has approved the work and the upper-tier municipality has approved the issue of debentures for the work; or
- (c) the municipality has approved the issue of debentures for another municipality or a school board under section 404;

AND WHEREAS subsection 405(4) of the Act provides that a municipality may delegate the power set out in subsection 405(1) to the head of council, to the treasurer, or to both of them;

AND WHEREAS subsection 403(1) of the Act provides that a by-law of an upper-tier municipality authorizing the issuing of debentures for the purposes or joint purposes of one or more of its lower-tier municipalities may require those lower-tier municipalities to make payments in each year to the upper-tier municipality in the amounts and on the dates specified in the by-law;

AND WHEREAS subsection 401(1) of the Act provides that a municipality may incur a debt for municipal purposes, whether by borrowing money or in any other way, and may issue debentures and prescribed financial instruments and enter prescribed financial agreements for or in relation to the debt;

AND WHEREAS subsection 401(3) of the Act provides that a lower-tier municipality in a regional municipality does not have the power to issue debentures and accordingly the Lower-tier Municipality intends that the Upper-tier Municipality will issue debentures in respect of the Projects and will request that the Upper-tier Municipality do so;

AND WHEREAS the Act also provides that a municipality shall authorize long term borrowing by the issue of debentures or through another municipality under section 403 or 404 of the Act and subsection 403(7) of the Act provides that all debentures issued under a by-law passed by an upper-tier municipality under section 403 are direct, joint and several obligations of the upper-tier municipality and its lower-tier municipalities;

AND WHEREAS OMEIFA has invited Ontario municipalities desirous of obtaining temporary and long term debt financing in order to meet capital expenditures incurred after December 31, 2002 in connection with eligible capital projects to make application to OMEIFA for such financing by completing and submitting an application in the form provided by OMEIFA;

AND WHEREAS the Lower-tier Municipality requested the Upper-tier Municipality to issue debentures for the Projects and in this connection the Upper-tier Municipality and the Lower-tier Municipality submitted an Application (hereinafter the "**Application**") to OMEIFA to request financing in order to meet capital expenditures incurred after December 31, 2002 in connection with the Projects (the "**Project Expenditures**") by way of long term borrowing pursuant to section 403 of the Act through the issue of debentures to OMEIFA and by way of temporary borrowing pursuant to section 405 of the Act;

AND WHEREAS OMEIFA has accepted and has approved such Application;

AND WHEREAS the Upper-tier Municipality has agreed to issue debentures for the Projects to OMEIFA in the maximum aggregate principal amount of \$2.5 million (the "**Debentures**"); and OMEIFA has indicated that pending the issue of the Debentures it will provide financing by way of temporary advances to the Lower-tier Municipality in respect of the Projects;

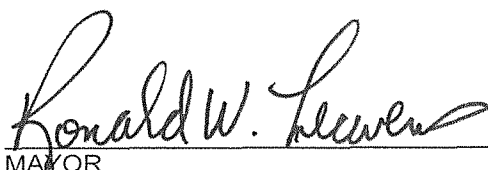
AND WHEREAS the Lower-tier Municipality will enter into a financing agreement with OMEIFA pursuant to the terms of which OMEIFA will provide temporary advances to the Lower-tier Municipality in respect of the Projects;

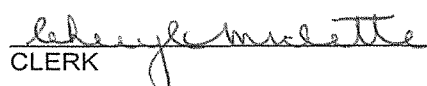
NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF PELHAM ENACTS AS FOLLOWS:

1. The Council of the Lower-tier Municipality hereby confirms, ratifies and approves the completion by the Treasurer of the Application and the submission by such authorized official of the Application, to OMEIFA, in cooperation with the Upper-tier Municipality, for the financing of the Projects by way of temporary borrowing from OMEIFA, pending the issue of Debentures, in the maximum aggregate principal amount of \$2.5 million substantially in the form of Schedule "B" attached hereto and forming part of this By-law, with such changes thereon as such authorized official approved.
2. The **Mayor** and the **Treasurer** are hereby authorized to negotiate and enter into, execute and deliver for and on behalf of the Lower-tier Municipality a financing agreement (a "**Financing Agreement**") with OMEIFA that provides for temporary borrowing from OMEIFA in respect of the Projects on such terms and conditions as such authorized officials may approve, such execution and delivery to be conclusive evidence of such approval.

3. The **Mayor** and/or the **Treasurer** are hereby authorized, pending the substantial completion of a Project or as otherwise agreed with OMEIFA, to make temporary borrowings pursuant to section 405 of the Act in respect of such Project, on the terms and conditions provided in the Financing Agreement and on such other terms and conditions as such authorized officials may agree, and to sign such evidence of indebtedness as OMEIFA may require (a "**Note**"); and the Treasurer is authorized to sign such certifications as OMEIFA may require in connection with such borrowings in respect of the Projects; provided that the amount of borrowings allocated to any Project does not exceed the Authorized Expenditure for such Project and does not exceed the loan amount set out in column (4) of Schedule "A" in respect of such Project as appropriate.
4. In accordance with the provisions of section 18 of the *Ontario Municipal Economic Infrastructure Financing Authority Act, 2002* (Ontario), as security for the payment by the Lower-tier Municipality of any indebtedness of the Lower-tier Municipality to OMEIFA incurred under the Note, and as security for the payment by the Lower-tier Municipality of any indebtedness of the Lower-tier Municipality to the Upper-tier Municipality in respect of Debentures issued for any Projects, the Lower-tier Municipality is hereby authorized to agree in writing with OMEIFA that the Minister of Finance is entitled to deduct from money appropriated by the Legislative Assembly of Ontario for payment to the Lower-tier Municipality, or from money appropriated by the Assembly for payment to the Lower-tier Municipality in respect of specified matters, amounts not exceeding the amounts that the Lower-tier Municipality fails to pay to OMEIFA on account of the outstanding indebtedness evidenced by the Note issued by the Lower-tier Municipality to OMEIFA and on account of the outstanding indebtedness evidenced by Debentures issued by the Upper-tier Municipality to OMEIFA for any Projects, and to pay such amounts to OMEIFA.
5. For purposes of meeting the obligations of the Lower-tier Municipality in respect of the Note and any Debentures issued by the Upper-tier Municipality to OMEIFA for any Projects, the Lower-tier Municipality shall provide for raising in each year as part of the general lower-tier levy the amounts of principal and interest payable in each year under the Note or any such Debentures, to the extent that the amounts have not been provided for by any other available source including other taxes or fees or charges imposed on persons or property by a by-law of any municipality.
6.
  - (a) The **Mayor** and/or the **Treasurer** are hereby authorized to execute and deliver the Note, the **Mayor** and the **Treasurer** are hereby authorized to enter into, execute and deliver the Financing Agreement, the Clerk and Treasurer are hereby severally authorized to generally do all things and to execute all other documents and papers in the name of the Lower-tier Municipality in order to perform the obligations of the Lower-tier Municipality under the Financing Agreement and the Note, and the Treasurer is authorized to affix the Lower-tier Municipality's municipal seal to any such documents and papers.
  - (b) The proceeds realized in respect of the Note after providing for the expenses related to its execution and delivery, if any, shall be apportioned and applied to the respective Projects and to no other purpose except as permitted by the Act.
7. This By-law takes effect on the day of passing.

ENACTED AND PASSED this 1<sup>st</sup>. day of March, A.D. 2004.

  
MAYOR

  
CLERK