

THE CORPORATION OF THE TOWN OF PELHAM

BY-LAW NUMBER 3740(2016)

A by-law to authorize certain new capital works of the Corporation of the Town of Pelham (the "lower-tier municipality"); to authorize the submission of an application to Ontario Infrastructure and Lands Corporation ("OILC") for financing such capital works; to authorize temporary borrowing from OILC to meet expenditures 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 OILC.

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 it is now deemed to be expedient to authorize for the purposes of the Lower-tier Municipality the new capital work(s) described in column (2) of Schedule "A" (individually a "**Capital Work**", collectively the "**Capital Works**", as the case may be) attached hereto and forming part of this By-law ("**Schedule "A"**") in the amount of the respective estimated expenditure set out in column (3) of Schedule "A", subject in each case to approval by OILC of the financing for such Capital Work(s) that will be requested by the Lower-tier Municipality in the Application as hereinafter defined;

AND WHEREAS in accordance with section 4 of Ontario Regulation 403/02 (the "Regulation"), the Council of the Lower-tier Municipality had its Treasurer calculate an updated limit in respect of its most recent annual debt and financial obligation limit received from the Ministry of Municipal Affairs and Housing (as so updated, the "**Updated Limit**"), and, on the basis of the authorized estimated expenditure for the Capital Work or for each Capital Work, as the case may be, as set out in column (3) of Schedule "A" (the "**Authorized Expenditure**" for any such Capital Work) the Treasurer calculated the estimated annual amount payable in respect of the Capital Work or each Capital Work, as the case may be, (collectively the "**Estimated Annual Amount Payable**"), and determined that the Estimated Annual Amount Payable does not cause the Lower-tier Municipality to exceed the Updated Limit, and accordingly the approval of the Ontario Municipal Board pursuant to the Regulation is not required before any such Capital Work is authorized by the Council of the Lower-tier Municipality;

AND WHEREAS subsection 405(1) of the Act provides, amongst other things, 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, 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;

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 Capital Work(s) and will request that the Upper-tier Municipality do so;

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 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 OILC has invited Ontario municipalities desirous of obtaining temporary and long term debt financing in order to meet capital expenditures incurred on or after January 1, 2004 in connection with eligible capital works to make application to OILC for such financing by completing and submitting an application in the form provided by OILC;

AND WHEREAS the Lower-tier Municipality requested the Upper-tier Municipality to issue debentures for the Capital Work(s) and in this connection the Upper-tier Municipality and the Lower-tier Municipality completed and submitted an application to OILC (the "**Application**") to request financing for the Capital Work(s) by way of long term borrowing pursuant to section 403 of the Act through the issue of debentures to OILC by the Upper-tier Municipality and by way of temporary borrowing by the Lower-tier Municipality from OILC pending the issue of such debentures;

AND WHEREAS OILC has accepted and has approved the Application;

AND WHEREAS the Upper-tier Municipality has approved the issue of debentures for the Capital Work(s) to OILC in the maximum aggregate principal amount of \$36,204,777.00 (the "**Debentures**"); and OILC 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 Capital Work(s);

AND WHEREAS the Lower-tier Municipality will enter into a financing agreement with OILC pursuant to the terms of which OILC will provide temporary advances to the Lower-tier Municipality in respect of the Capital Work(s);

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 execution by the Mayor and Treasurer of the Application and the submission by such authorized official of the Application, duly executed by such authorized official, to OILC, in cooperation with the Upper-tier Municipality, for the financing of the Capital Work(s) by way of temporary borrowing from OILC, pending the issue of the Debentures, in the maximum aggregate principal amount of \$36,204,777.00, substantially in the form of Schedule "B" hereto and forming part of this By-law, with such changes thereon as such authorized official may hereafter approve, such execution and delivery to be conclusive evidence of such approval.

2. (a) The undertaking of the Capital Work or of each Capital Work, as the case may be, in the amount of the respective Authorized Expenditure set out in column (3) of Schedule "A" is hereby approved and authorized;

(b) any one or more of the Mayor and Treasurer are hereby authorized to conclude contracts on behalf of the Lower-tier Municipality for the undertaking of the Capital Work or of each Capital Work, as the case may be, in accordance with the Lower-tier Municipality's usual protocol;

(c) where applicable, the Engineer of the Lower-tier Municipality will forthwith make such plans, profiles and specifications and furnish such information as in the opinion of the Engineer are necessary for the undertaking of the Capital Work or of each Capital Work, as the case may be; and

(d) where applicable, the undertaking of the Capital Work or of each Capital Work, as the case may be, shall be carried on and executed under the superintendence and according to the direction and orders of such Engineer.

3. The Mayor and 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 OILC that provides for temporary borrowing from OILC in respect of the Capital Work(s) on such terms and conditions as such authorized officials may approve, such execution and delivery to be conclusive evidence of such approval.

4. The Mayor and/or the Treasurer are hereby authorized, pending the substantial completion of the Capital Work or of each Capital Work, as the case may be, or as otherwise agreed with OILC, to make temporary borrowings pursuant to section 405 of the Act in respect of the Capital Work or of each Capital Work, as the case may be, 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 OILC may require (the "**Note**") and to deliver the Note to OILC, such execution and delivery to be conclusive evidence of such agreement; and the Treasurer is authorized to sign such certifications as OILC may require in connection with such borrowings in respect of the Capital Work(s); provided that the amount of borrowings allocated to the Capital Work or of each Capital Work, as the case may be, does not exceed the Authorized Expenditure for such Capital Work and does not exceed the related loan amount set out in column (4) of Schedule "A" in respect of such Capital Work.

5. In accordance with the provisions of section 25 of the *Ontario Infrastructure and Lands Corporation Act, 2011*, as amended from time to time hereafter, as security for the payment by the Lower-tier Municipality of the indebtedness of the Lower-tier Municipality to OILC 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 the Debentures issued for any Capital Work (the "**Obligations**"), the Lower-tier Municipality is hereby authorized to agree in writing with OILC that the Minister of Finance is entitled, without notice to the the Lower-tier Municipality, to deduct from money appropriated by the Legislative Assembly of Ontario for payment to the Lower-tier Municipality, amounts not exceeding the amounts that the Lower-tier Municipality fails to pay to OILC on account of the Obligations and to pay such amounts to OILC from the Consolidated Revenue Fund.

6. For the purposes of meeting the Obligations, 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 and/or any outstanding Debenture, 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.

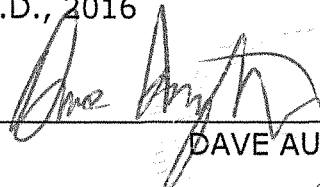
7. (a) The Mayor and/or the Treasurer are hereby authorized to execute and deliver the Note, the Mayor and the Treasurer are hereby authorized to enter into, execute and deliver the Financing Agreement, one or more of Clerk and the Treasurer are hereby authorized to generally do all things and to execute 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, to execute and deliver the

Note, and the Treasurer is authorized to affix the Lower-tier Municipality's municipal seal to any such documents and papers.

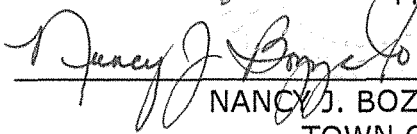
(b) The money realized in respect of the Note and the Debentures, including any premium, and any earnings derived from the investment of that money, after providing for the expenses related to the execution and delivery of the Note and to the issue of the Debentures by the Upper-tier Municipality, if any, shall be apportioned and applied to the respective Capital Work and to no other purpose except as permitted by the Act.

8. This By-law takes effect on the day of passing.

ENACTED AND PASSED this 2nd DAY OF MAY, A.D., 2016



DAVE AUGUSTYN
MAYOR



NANCY J. BOZZATO
TOWN CLERK