

THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN

BY-LAW NO. 2013-16

Being a by-law to authorize the execution of an Agreement between the Corporation of the Municipality of Magnetawan and the Ministry of Municipal Affairs and Housing.

WHEREAS the Council of the Corporation of the Municipality of Magnetawan deems it desirable to enter into an agreement with the Ministry of Municipal Affairs and Housing for a grant through the Ontario Disaster Relief Assistance Program (ODRAP) in the amount of two-hundred and fifteen thousand dollars (\$215,000.00).

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN ENACTS AS FOLLOWS:

- 1. That the grant agreement attached as Appendix "A" to this by-law be approved.**
- 2. That the Mayor and the Clerk-Administrator be hereby authorized to execute the grant agreement.**
- 3. That this by-law be effective upon its adoption.**

ADOPTED THIS 14th DAY of AUGUST 2013.



Mayor, Sam Dunnett



Clerk-Administrator, Roger Labelle

**Ministry of
Municipal Affairs
and Housing**

Municipal Services Office
North (Sudbury)
159 Cedar Street, Suite 401
Sudbury ON P3E 6A5
Telephone: 705 564-0120
Toll Free: 1 800-461-1193
Fax: 705 564-6863

**Ministère des
Affaires municipales
et du Logement**

Bureau des services aux municipalités
du Nord (Sudbury)
159, rue Cedar, bureau 401
Sudbury ON P3E 6A5
Téléphone : 705 564-0120
Sans frais : 1 800 461-1193
Télécopieur : 705 564-6863



July 22, 2013

Your Worship
Mayor Sam Dunnett
Municipality of Magnetawan
PO Box 70
4304 Highway #520
Magnetawan ON POA 1PO

Dear Mayor Dunnett:

Further to the May 16, 2013, letter from the Honourable Linda Jeffrey regarding the spring flooding that impacted your municipality, please find enclosed three copies of a grant agreement regarding the \$215,000 to be provided by the Ministry of Municipal Affairs and Housing. The agreement outlines the terms, conditions and reporting requirements in relation to this grant.

I would request that your Council adopt the appropriate by-law authorizing the execution of the agreement, and that all copies of the agreement be signed by the authorized signing officers and returned to our office at the address indicated below:

Ministry of Municipal Affairs and Housing, Northern Municipal Services Office, 159 Cedar Street, Suite 401, Sudbury ON P3E 6A5.

Following receipt of the signed agreements and by-law, we will arrange for the Minister's signature and a payment will be made electronically into the municipality's bank account.

Should you have any questions regarding this agreement, please contact Mr. Bryan Searle, Municipal Advisor, by telephone at 1-800-461-1193, ext. 46861, or by email at bryan.searle@ontario.ca.

Sincerely,

Lynn Buckham
Regional Director

Encl.

Council MTG. of _____
Agenda Item # _____

APPENDIX 'A'

TO BY-LAW NO. 2013-16

GRANT AGREEMENT

THIS AGREEMENT ("Agreement") made in triplicate as of the day of , 2013.

B E T W E E N:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
As represented by the Minister of Municipal Affairs and Housing

(referred to as the "**Ministry**")

AND:

THE CORPORATION OF THE MUNICIPALITY OF MAGNETAWAN
(referred to as the "**Municipality**")

WHEREAS subsection 302(2) of the *Municipal Act, 2001* empowers the Minister, upon such conditions as may be considered advisable, to make grants and loans and provide other financial assistance to a municipality;

AND WHEREAS the Municipality experienced extreme spring flooding in April 2013, which damaged the Municipality's infrastructure;

AND WHEREAS the Ontario Disaster Relief Assistance Program (ODRAP) is the program of Ontario Government coordinated by the Ministry of Municipal Affairs and Housing to provide financial assistance to municipalities which have incurred losses from natural disasters;

AND WHEREAS the Municipality has asked the Ministry for assistance under ODRAP for the Municipality's eligible incremental or extraordinary costs incurred as a result of the extreme spring flooding in April 2013;

AND WHEREAS the Ministry wishes to assist the Municipality for the Municipality's eligible extraordinary costs related to extreme rainstorm and flooding.

NOW THEREFORE in consideration of their respective agreements set out below, the parties covenant and agree as follows:

1.0 DEFINITIONS

1.1 In this Agreement the following words shall have the following meanings:

- (a) "Agreement" means this Agreement entered into between the Ministry and the Municipality and all schedules and attachments to this Agreement and any instrument amending this Agreement;

- (b) "Conflict of Interest" includes, but is not limited to, any circumstance where in relation to the performance of its obligations under this Agreement, the Municipality's other commitments, relationships or financial interests:
 - (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement, or
 - (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations;
- (c) Eligible Capital Project Costs means the costs of the capital projects listed in Schedule "A" of the Agreement;
- (d) Grant Fund(s)(ing)" means funds that may be or are provided to the Municipality, as the context may require, by the Ministry pursuant to this Agreement;
- (e) "Treasurer" means the treasurer of the Municipality.

2.0 GRANT FUNDING

- 2.1 The Ministry shall pay to the Municipality Grant Funding of up to a maximum total amount of \$215,000.00 (Two Hundred Fifteen Thousand Dollars) for the Municipality's Eligible Capital Project Costs described in Schedule "A".
- 2.2 The Ministry shall not be obligated to make any payments under the Agreement except to the extent that sufficient funds are provided in the votes and estimates of the Province of Ontario for the Ministry of Municipal Affairs and Housing and allocated for such purpose.

3.0 DISBURSEMENTS

- 3.1 The Ministry shall make an initial payment of the Grant Funds of \$107,500.00 (One Hundred and Seven Thousand Five Hundred Dollars) for the Eligible Capital Project Costs described in Schedule "A" to the Municipality upon this Agreement being fully executed by both the Municipality and the Ministry.
- 3.2 The Ministry shall pay the balance of the grant amount of up to \$107,500.00 (One Hundred and Seven Thousand Five Hundred Dollars) for the Municipality's Eligible Capital Project Costs, upon submission by the Municipality to the Ministry's satisfaction of a final claim form, such form to be provided by the Ministry, supported with appropriate receipts and documentation to support that all costs were incurred as a result of the April 2013 spring flooding.
- 3.3 The detailed cost claims of the Municipality shall be verified and authorized by the Municipality's Treasurer.
- 3.4 The Ministry shall not provide any Grant Funds to the Municipality until,

- a) despite section 3.1, a copy of the insurance certificate and policy required by section 9.2 has been received by the Ministry; and
- b) a copy of this Agreement, fully executed as required by section 3.1, has been received by the Ministry.

4.0 MUNICIPALITY WARRANTS

- 4.1 The Municipality warrants that it shall carry out the purposes of the Agreement in compliance with all applicable federal, provincial or municipal laws or regulations.

5.0 USE OF GRANT FUNDING

- 5.1 The Municipality shall use Grant Funds exclusively to pay or reimburse itself for the costs described in Schedules "A" of this Agreement.

6.0 REPORTING REQUIREMENTS FOR MUNICIPALITY and DOCUMENT RETENTION

- 6.1 The Municipality shall by October 31, 2013 submit to the Ministry an interim financial report detailing the current status of the expenditure of any grant amount received by the Municipality to that date.
- 6.2 The Municipality shall by June 30, 2014 submit to the Ministry a final financial report detailing the expenditure of all grants received under this Agreement.
- 6.3 The financial report required by section 6.2 shall:
 - (a) be signed by the municipal Treasurer and include the municipal Treasurer's representation as to compliance by the Municipality with the Agreement;
 - (b) be supported by a resolution of council; and
 - (c) be audited by the municipal auditor in the Municipality's audit for the year the grant or a portion of the grant was received.
- 6.4 For six (6) years after the date upon which any amount of Grant Funds is fully expended, the Municipality shall maintain all necessary records to substantiate (a) all payments to the Municipality under this Agreement and (b) all expenditures of the Municipality for Eligible Costs made with or reimbursed by Grant Funds. For six (6) years after the date upon which any Grant Funds paid under Article 2 of the Agreement is fully expended, the Municipality shall permit and assist the Ministry in conducting audits of the operations of the Municipality to verify (a) and (b) above. The Ministry shall provide the Municipality with at least ten (10) business day's prior notice of its requirement for such audit.
- 6.5 The Municipality further agrees that if it is informed by the Ministry that the Ministry has made an application to the Government of Canada for assistance pursuant to the Disaster Financial Assistance Arrangements related to the April and May 2013 spring

flooding, the Municipality agrees that it maintain all relevant records described in section 6.4, until the Ministry informs the Municipality in writing that the application to the Government of Canada has been finalized.

7.0 CONFLICT OF INTEREST

7.1 The Municipality shall:

- (a) avoid any Conflict of Interest in the performance of this Agreement;
- (b) disclose to the Ministry without delay any actual or potential Conflict of Interest that arises during the performance of this Agreement.

8.0 LIMITATION OF LIABILITY AND INDEMNITY

8.1 The Ministry, its officers, employees and agents shall not be liable for any incidental, indirect, special or consequential damages, injury or any loss or use or profit of the Municipality arising out of or in any way related to the Agreement.

8.2 The Municipality shall indemnify the Ministry, its officers, employees and agents from and against all costs incurred as a result of a claim or proceeding related to the Agreement.

9.0 INSURANCE

9.1 The Municipality represents and warrants that it has, and shall maintain for the term of the Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent Municipality would maintain, including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than two million dollars (\$2,000,000) per occurrence. The policy shall include the following:

- (a) the Ministry as an additional insured with respect to liability arising in the course of performance of the Municipality's obligations under, or otherwise in connection with, the Agreement;
- (b) a cross-liability clause;
- (c) contractual liability coverage; and
- (d) a 30 day written notice of cancellation, termination or material change.

9.2 The Municipality shall provide the Ministry with certificates of insurance, or other proof as may be requested by the Ministry, that confirms the insurance coverage as provided for in section 9.1. Upon the request of the Ministry, the Municipality shall make available to the Ministry a copy of each insurance policy.

10.0 REPAYMENT

- 10.1 The Ministry may require the Municipality to repay to the Ministry any amount of grant received by the Municipality if used by the Municipality in contravention of the Agreement.
- 10.2 The Ministry may demand interest on any amount owing by the Municipality at the then current rate charged by the Province of Ontario on accounts receivable.
- 10.3 If the Municipality fails to pay any amount owing to the Ministry under the Agreement, the Municipality acknowledges and agrees that the Ministry or the Minister of Finance may deduct any unpaid amount from any money payable to the Municipality by the Province of Ontario, or may exercise any other remedies available to the Ministry or the Minister of Finance to collect the unpaid amounts.
- 10.4 The Municipality shall pay any amount owing to the Ministry under this Agreement by cheque payable to the "Minister of Finance" and mailed to the Ministry to the attention of the Ministry's Representative.

11.0 TERMINATION BY THE MINISTRY

- 11.1 The Ministry may in its sole discretion, without liability, cost or penalty, and without prejudice to any other rights or remedies of the Ministry under this Agreement or at law or in equity, terminate this Agreement at any time, for any reason, upon giving at least seven (7) days notice to the Recipient.

12.0 NOTICES

Means for Notice

- 12.1 Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery or facsimile and shall be addressed to the Ministry and the Municipality respectively as follows:

To the Ministry:

Ministry of Municipal Affairs and Housing
Municipal Services Office North (Sudbury)
Suite 401, 159 Cedar Street,
Sudbury, Ontario P3E 6A5
Attention: Lynn Buckham, Regional Director

And to the Municipality as follows:

The Corporation of the Municipality of Magnetawan
P.O. Box 70
4304 Hwy #520,
Magnetawan, Ontario

P0A 1P0
Attention: Municipal Clerk

- 12.2 Notices shall be deemed to have been given (a) in the case of postage-prepaid envelope, five (5) business days after such notice is mailed; or (b) in the case of personal delivery or facsimile, one (1) business day after such notice is received by the other party.

13.0 GOVERNING LAW

- 13.1 This Agreement and the rights, obligations and relations of the parties hereto shall be governed by and construed in accordance with the laws of the Province of Ontario.

14.0 SCHEDULE

- 14.1 The following are the schedule attached to and forming part of this Agreement:

Schedule "A" (Eligible Capital Project Costs of the Municipality);

15.0 ENTIRE AGREEMENT

- 15.1 This Agreement constitutes the entire Agreement between the parties with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations and Agreements.
- 15.2 This Agreement may only be modified by a written Agreement duly executed by the parties.

16.0 MUNICIPALITY'S POWER TO ENTER INTO AGREEMENT

- 16.1 The Municipality represents and warrants that it has the full right and power to enter into the Agreement and that it is not party to any other agreement that would in any way interfere with the rights of the Ministry under the Agreement. The parties both represent that their respective representatives have the authority to legally bind them.

17.0 MUNICIPALITY NOT A PARTNER OR AGENT

- 17.1 Nothing in the Agreement shall have the effect of creating a partnership or agency relationship between the Ministry and the Municipality.

18.0 RESPONSIBILITY OF THE MUNICIPALITY

- 18.1 The Municipality agrees that it is liable for the acts and omissions of its officers, employees, agents, partners, affiliates, volunteers and subcontractors. The Municipality shall be liable for all damages, costs, expenses, losses, claims or actions of any kind arising from any breach of the Agreement resulting from the actions of the above mentioned individuals and entities.

19.0 AGREEMENT BINDING AND SURVIVAL

- 19.1 The Agreement shall operate to the benefit of and be binding upon the parties and their successors, executors, administrators and their permitted assigns.
- 19.2 The provisions of Articles 4.0 (Recipient Warrants), 5.0 (Use of Grant Funding), 6.0 (Reporting Requirements for the Municipality and Document Retention), 8.0 (Limitation of Liability and Indemnity), 10.0 (Repayment), 13.0 (Governing Law), 18.0 (Responsibility of the Municipality) and 19.0 (Agreement Binding) shall survive termination or expiry of this Agreement for a period of seven (7) years from the date of expiry or termination of this Agreement.

20.0 CONDONATION NOT A WAIVER

- 20.1 Any failure by the Ministry to insist in one or more instances upon strict performance by the Municipality of any of the terms or conditions of the Agreement shall not be construed as a waiver by the Ministry of its right to require strict performance of any such terms or conditions, and the obligations of the Municipality with respect to such performance shall continue in full force and effect.

21.0 SEVERABILITY

- 21.1 If any term or condition of the Agreement is to any extent invalid or unenforceable, the remainder of the Agreement shall not be affected thereby.