

THE CORPORATION OF THE TOWN OF KINGSVILLE

BY-LAW - 40-2023

A BY-LAW TO AUTHORIZE THE SUBMISSION OF AN APPLICATION TO ONTARIO INFRASTRUCTURE AND LANDS CORPORATION ("OILC") FOR FINANCING OF CERTAIN ONGOING CAPITAL WORKS OF THE CORPORATION OF THE TOWN OF KINGSVILLE (THE "MUNICIPALITY"); TO AUTHORIZE TEMPORARY BORROWING FROM OILC TO MEET EXPENDITURES IN CONNECTION WITH SUCH CAPITAL WORKS; AND TO AUTHORIZE LONG-TERM BORROWING FOR SUCH CAPITAL WORKS THROUGH THE ISSUE OF DEBENTURES 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 the Council of the 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 capital works described in column (2) of Schedule "A" ("**Capital Works**") 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 Works requested by the Municipality in the Application as hereinafter defined;

AND WHEREAS before the Council of the Municipality approved the Capital Works in accordance with section 4 of Ontario Regulation 403/02 (the "**Regulation**"), the Council of the Municipality had its Treasurer calculate an updated limit in respect of its then 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 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, and determined that the estimated annual amount payable in respect of the Capital Work or each Capital Work, as the case may be, did not cause the Municipality to exceed the Updated Limit, and accordingly the approval of the Ontario Land Tribunal pursuant to the Regulation, was not required before any such Capital Work was authorized by the Council of the 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 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;

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 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 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 the year that is five years prior to the year of an application 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 Municipality has completed and submitted or is in the process of submitting an application to OILC, as the case may be (the “**Application**”) to request financing for the Capital Work(s) by way of long-term borrowing through the issue of debentures to OILC and by way of temporary borrowing from OILC pending the issue of such debentures;

AND WHEREAS OILC has accepted and has approved or will notify the Municipality only if it accepts and approves the Application, as the case may be;

NOW THEREFORE THE COUNCIL OF THE CORPOATOIN OF THE TOWN OF KINGSVILLE ENACTS AS FOLLOWS:

1. The Council of the Municipality hereby confirms, ratifies and approves the execution by the Treasurer of the Application and the submission by such authorized official of the Application, duly executed by such authorized official, to OILC for the financing of the Capital Works in the maximum aggregate principal amount of \$12,000,000 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. The Mayor and the Treasurer are hereby authorized to negotiate and enter into, execute and deliver for and on behalf of the Municipality a financing agreement (a “**Financing Agreement**”) with OILC that provides for temporary and long-term borrowing from OILC under the authority of this By-law in respect of the Capital Works on such terms and conditions as such authorized officials may approve, such execution and delivery to be conclusive evidence of such approval.
3. The Treasurer is hereby authorized, pending the substantial completion of the Capital Works 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 which Financing Agreement provides that the information contained in the Record, as defined in the Financing Agreement, in respect of such temporary borrowings shall be deemed final, conclusive and binding on the Municipality, and on such other terms and

conditions as such authorized officials may agree; and the Treasurer is authorized to sign such certifications as OILC may require in connection with such borrowings in respect of the Capital Works; 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.

4. Subject to the terms and conditions of the Financing Agreement and such other terms and conditions as OILC may otherwise require, the Mayor and the Treasurer are hereby authorized to long-term borrow for the Capital Work(s) and to issue debentures to OILC on the terms and conditions provided in the Financing Agreement and on such other terms and conditions as such authorized officials may agree (the "**Debentures**"); provided that the principal amount of the Debentures issued in respect of 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, the Municipality is hereby authorized to agree in writing with OILC that the Minister of Finance is entitled, without notice to the Municipality, to deduct from money appropriated by the Legislative Assembly of Ontario for payment to the Municipality, amounts not exceeding the amounts that the Municipality fails to pay to OILC on account of any unpaid indebtedness of the Municipality to OILC under any outstanding temporary borrowing and/or the Debentures, as the case may be (the "**Obligations**") and to pay such amounts to OILC from the Consolidated Revenue Fund.
6. For the purposes of meeting the Obligations, the Municipality shall provide for raising in each year as part of the general levy, the amounts of principal and interest payable in each year under any outstanding temporary borrowing and/or any Debenture outstanding pursuant to the Financing Agreement, 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 the Treasurer are hereby authorized to enter into, execute and deliver the Financing Agreement, and to issue the Debentures, one or more of the 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 Municipality in order to perform the Obligations of the Municipality under the Financing Agreement, to request and receive any temporary borrowing and to issue the Debentures, and the Treasurer is authorized to affix the Municipality's municipal seal to any such documents and papers.
 - (b) The money realized in respect of any temporary borrowing for the Capital Works and the Debentures, including any premium, and any earnings derived from the investment of that money, after providing for the expenses related to any such temporary borrowing and to the issue of the Debentures,

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 23rd day of May, A.D. 2023.

DENNIS ROGERS
MAYOR

PAULA PARKER
CLERK

**Schedule “A”
to By-Law 40-2023
(Ongoing Capital Works)**

(1)	(2)	(3)	(4)
<u>By-Law Number</u>	<u>Description of Capital Work</u>	<u>Estimated Expenditure</u>	<u>Loan Amount</u>
By-law 10-2022	Road 2 E – Road Reconstruction (2022)	\$1,916,589	\$1,437,442
By-law 13-2023	Road 2 E – Road Reconstruction (2023)	\$9,500,000	\$4,733,387
By-law 12-2021 /By-law 10-2022	Southwest Region (Road 2 E) Watermain Expansion (2021 & 2022)	\$6,378,556	\$3,579,171
By-law 13-2023	Southwest Region (Road 2 E) Watermain Expansion (2023)	\$3,000,000	\$2,250,000