



**CORPORATION OF THE TOWN OF INGERSOLL
BY-LAW NO. 10 - 4548**

**A by-law to authorize the execution of an Agreement with
County of Oxford
(Debenture – Loan Agreement – King St. West)**

WHEREAS the Town of Ingersoll desires to debenture certain capital works authorized by By-Law No. 09-4493;

AND WHEREAS The Municipal Act, 2001, as amended provides that a lower-tier municipality in a regional municipality does not have the power to issue debentures;

AND WHEREAS the Corporation of the Town of Ingersoll desires to enter into an agreement with County of Oxford to issue debentures for certain capital works on the municipality's behalf;

NOW THEREFORE the Council of The Corporation of the Town of Ingersoll enacts as follows:

- (1) That the Mayor and the Clerk Deputy-Administrator are hereby authorized to execute an agreement with the County of Oxford and to affix the seal of The Corporation of the Town of Ingersoll hereto.
- (2) That a copy of the said agreement shall be annexed to and form part of this by-law.

READ a first and second time in Open Council this 26th day of April 2010.

READ a third time in Open Council and passed this 26th day of April 2010.

THE CORPORATION OF THE TOWN OF INGERSOLL

Paul Holbrough, Mayor

Elaine Clark, Clerk/Deputy Administrator

AGREEMENT

DEBENTURE - LOAN AGREEMENT

MUNICIPAL INFRASTRUCTURE LENDING PROGRAM

This Agreement made in duplicate as of May 1, 2010

BETWEEN:

County of Oxford
(referred to herein as the "County")

AND:

The Corporation of the Town of Ingersoll
(referred to herein as the "Town")

Capitalized terms used in this Agreement and not defined below shall have the meanings ascribed to them in the Debenture – Loan Agreement between Canada Mortgage and Housing Corporation ("CMHC") and the County dated as of May 1, 2010, a copy of which agreement is attached as Schedule A to this Agreement (the "Debenture – Loan Agreement").

DEFINITIONS AND INTERPRETATION

"Project" means each project of the Town described in Schedule "A" to the Debenture – Loan Agreement;

"Project Budget" means the budget for all Eligible Costs for each Project, as prepared by the Town and approved by the Town/Project Engineer prior to the disbursement of the Loan, which shall be provided by the Lender in the form of a line by line itemization of Eligible Costs and which is attached as Schedule "B";

WHEREAS the *Municipal Act, 2001*, as amended (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 further provides that a lower-tier municipality in a regional municipality does not have the power to issue debentures;

AND WHEREAS the Act also provides that the "regional municipality" means an upper-tier municipality that was a regional or district municipality or the County of Oxford on December 31, 2002;

AND WHEREAS CMHC has developed a municipal infrastructure lending program available for municipal, housing-related infrastructure projects;

AND WHEREAS the Council of the Town, that constitutes a lower-tier municipality of the County, has requested that the County submit an application to CMHC for long term borrowing through the issue of debentures of the County to CMHC in respect of each Project and the County has submitted such application;

AND WHEREAS the County has entered into the Debenture – Loan Agreement on behalf of the Town in respect of the debentures of the County for each Project, dated May 1, 2010;

AND WHEREAS the Debenture – Loan Agreement includes various responsibilities, obligations, representations and warranties in respect of the Projects that the County has been asked to provide to CMHC but which the County can only provide on the basis that the Town agrees to fulfill all of such responsibilities, obligations, representations and warranties;

THEREFORE for the purposes of the provisions of the Debenture – Loan Agreement relating to each Project and in consideration of the County agreeing to enter into the Debenture – Loan Agreement and to issue debentures on behalf of the Town in respect of the Projects, and the premises contained herein, it is mutually understood and agreed by and among the Parties as follows:

1. RESPONSIBILITIES, OBLIGATIONS, REPRESENTATIONS AND WARRANTIES OF THE TOWN

1.1 The Town agrees to assume and fully discharge the responsibilities, obligations, representations and warranties of the Borrower in respect of each Project set out in the Debenture – Loan Agreement, including, without limiting the generality of the foregoing, those that are set out in the following sections of the Debenture – Loan Agreement (references to the Borrower shall be deemed to be references to the Town): 2.4, 3.2, 6.1.1, 6.1.4, 6.1.5, 6.1.6, 6.1.7, 6.3.1, Article 7, Article 8 and Article 9. All payments to be made by the Town to the County hereunder shall be made without counterclaim and without set-off or any deduction of any kind.

1.2 Further to Section 1.1 of this Agreement, and in accordance with Section 6.2 of the Debenture-Loan Agreement, for clarification, in the event that the Lender requires the County to pay amounts to the Lender to recoup its cost in respect of a delay in the Planned Disbursement Date or the Lender requires the County to pay amounts to the Lender as compensation on a present value basis in the event that the Lender terminates the Debenture-Loan Agreement the Town will pay to the County all such amounts that relate to each Project.

1.3 Further to Section 1.1 of this Agreement, and in accordance with Section 6.3.2 of the Debenture – Loan Agreement, for clarification, in the event that the Loan is reduced by the Lender, and a portion of the Loan and other amounts described in section 6.3.2 are payable by the County, the Town agrees to pay to the County all amounts owing to the Lender by the County pursuant to section 6.3.2 of the Debenture – Loan Agreement in respect of each Project.

1.4 Further to Section 1.1 of this Agreement, and in accordance with Section 6.7 of the Debenture – Loan Agreement, for clarification, in the event that the Lender calls the entire Loan or any part of it, the Town agrees to pay to the County all amounts owing to the Lender by the County pursuant to section 6.7 of the Debenture – Loan Agreement in respect of each Project.

2. INDEMNITY

2.1 **Indemnify.** The Town agrees to indemnify and hold harmless the County, its officers, servants, employees or agents, from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings by whomsoever brought or prosecuted in any manner based upon, or occasioned by any injury to persons, damage to or loss or destruction of property, economic loss or infringement of rights caused by or arising directly or indirectly from:

- (a) each Project;
- (b) the performance of this Agreement or the breach of any term or condition of this Agreement by the Town, its officers, employees and agents;
- (c) the design, construction, operation, maintenance and repair of any part of each Project; and
- (d) any omission or other wilful or negligent act of the Indemnifier and its employees, officers, or agents.

2.2 **Exception.** Except to the extent to which such claims and demands, losses, costs, damages, actions, suits, or other proceedings related to the act or negligence of an officer, employee, or agent of CMHC in the performance of his or her duties.

3. NOTICE

3.1. **Notice.** Any notice, information or document provided for under this Agreement will be effectively given if delivered or sent by letter, postage or other charges prepaid, or by facsimile or email. Any notice that is delivered will have been received on delivery; and any notice mailed shall be deemed to have been received on the eighth (8th) calendar day following the day on which it was mailed.

3.3. **Addresses for Notice.** Further to Section 4.1 of this Agreement, notice can be given at the following addresses:

If to the County:

County of Oxford
21 Reeve Street
P.O. Box 1614
Woodstock, ON
N4S 7Y3

Telephone: (519) 539-9800

Facsimile: (519) 421-4713

If to the Town:

Town of Ingersoll
130 Oxford Street
Ingersoll, ON
N5C 2V5

Telephone: (519) 485-0120

Facsimile: (519) 485-3543

4. **MISCELLANEOUS**

- 4.1. **Severability.** If for any reason a provision of this Agreement that is not a fundamental term is found to be or becomes invalid or unenforceable, in whole or in part, it will be deemed to be severable and will be deleted from this Agreement, but all the other terms and conditions of this Agreement will continue to be valid and enforceable.
- 4.2. **No waiver.** The failure of the County to insist in one or more instances on performance by the Town of any of the terms or conditions of this Agreement shall not be construed as a waiver of the County's right to require further performance of any such terms or conditions, and the obligations of the Town with respect to such performance shall continue in full force and effect.
- 4.3. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in Ontario.
- 4.4. **Priority.** In the event of a conflict, the part of this Agreement that precedes the signature of the parties to this Agreement will take precedence over the Schedules.
- 4.5. **Counterparts and Facsimile.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and such counterparts together shall constitute one and the same agreement. For the purposes of this Section, the delivery of a facsimile copy or a scanned portable document format (PDF) version of an executed counterpart of this Agreement shall be deemed to be valid execution and delivery of this Agreement.

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5. SIGNATURES

IN WITNESS WHEREOF, the County and the Town have respectively executed, sealed and delivered this Agreement on the date set out on the front page.

By:

County of Oxford

Name:
Title:

Date

Name:
Title:

Date

By:

**The Corporation of the Town of
Ingersoll**

Name:
Title:

Date

Name:
Title:

Date

SCHEDULE "A"
DEBENTURE – LOAN AGREEMENT

