

CORPORATION OF THE TOWNSHIP OF PRINCE

BY-LAW NO. 2014-11

Being a by-law to authorize execution by the Reeve and Administrator of an agreement between the City of Sault Ste. Marie and the Township of Prince

THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF PRINCE
HEREBY ENACTS AS FOLLOWS:

1. THAT the Reeve and Administrator are hereby authorized to execute and affix the Corporate Seal to an Agreement between the City of Sault Ste. Marie and the Township of Prince, which Agreement is attached hereto as Schedule "A", with the following amendment:

That the wording in Section 8 f) of Schedule "A" acknowledges that any expenses related directly or indirectly to the Project that are greater than the estimated costs, be jointly agreed to by both the City of Sault Ste. Marie and the Township of Prince.

2. SCHEDULE "A"

Schedule "A" forms part of this by-law.



Reeve

CAO/Administrator

This Agreement made the 18th day of February, 2014

BETWEEN

THE CORPORATION OF THE CITY OF SAULT STE. MARIE
(the "City")

- and -

THE CORPORATION OF THE TOWNSHIP OF PRINCE
(the "Township")

WHEREAS the City and the Township are collectively undertaking the replacement of four (4) critical bridges that are in disrepair on perimeter roads in the City of Sault Ste. Marie and the Township of Prince (the "Project");

AND WHEREAS the Her Majesty the Queen in right of Ontario, through the Minister of Rural Affairs (the "MRA"), is investing in infrastructure by implementing the Ontario's Small Rural and Northern Municipal Infrastructure Fund – Top Up Program (the "Program");

AND WHEREAS the Program will provide capital assistance to small, rural and northern municipalities and Local Service Boards to support critical road, bridge, water and wastewater projects;

AND WHEREAS the City has applied to the MRA for funds from the Program to assist the City and the Township in carrying out the aforementioned Project;

AND WHEREAS the MRA has agreed to provide funding for up to ninety (90%) percent of the Total Net Eligible Costs for the Project as defined in the Small Rural and Northern Municipal Infrastructure Fund Top Up Transfer Payment Agreement between the City and the MRA ("Funding Agreement"), subject to the terms and conditions of the said Funding Agreement which is appended hereto as Schedule "A" to this Agreement;

AND WHEREAS the Township has reviewed and accepts the terms and conditions set out in the Funding Agreement, and acknowledges that it is a Partner of the City, as defined in the Funding Agreement for the purpose of completing the aforesaid Project;

AND WHEREAS Section 4.10 of the Funding Agreement requires the City and the Township to enter into an agreement that incorporates by reference the terms and conditions of the Funding Agreement and which sets out the respective roles, responsibilities, administration requirements, management functions and financial contributions of the City and the Township with respect to the Project;

AND WHEREAS the City and the Township have agreed to their respective roles, responsibilities, administration requirements, management functions and financial contributions with respect to the Project and desire to set forth same herein;

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties hereto agree as follows:

1. TERM

This Agreement shall be for a term commencing February 3, 2014 and ending on December 31, 2016 (the "Term").

2. FUNDING AGREEMENT

The City and Township both acknowledge that the City has applied for and has become a party to the Funding Agreement with the MRA on behalf of both the

City and the Township for the purposes of completing the Project. The Funding Agreement is appended as Schedule "A" to this Agreement. The parties hereto acknowledge and agree to be bound by the terms and conditions of the said Funding Agreement. Pursuant to Section 4.10 of the Funding Agreement, the parties hereto acknowledge and agree that the City shall compel the Township to perform and satisfy all of the Township's covenants and obligations as set out in this Agreement and otherwise enforce its terms and conditions at the direction of and for the benefit of Ontario. The parties further acknowledge and agree that the City shall enforce the terms and conditions of this Agreement with the Township. The parties further acknowledge and agree that the words contained in this Agreement shall have the same meaning as set forth and defined in the Funding Agreement.

3. TOWNSHIP - PARTNER

The Township acknowledges and agrees that all references to the term "Partner" which appear in the Funding Agreement means the Township. The Township shall meet all the obligations of the "Partner" as per the Funding Agreement.

4. TOWNSHIP INFORMATION

In accordance with section (a) of Schedule "F" of the Funding Agreement, the Township provides the following particulars:

- a) Full Legal Name: The Corporation of the Township of Prince;
- b) Address: 3042 Second Line West, Prince Township, ON P6A 6K4;
- c) Location of Records: Township Address as set forth above in Section 4(b) herein; and
- d) Contact Person: Peggy Greco – Chief Administrative Officer/Administrator.

5. INDEMNITY

The Township hereby agrees to indemnify and hold harmless Her Majesty the Queen in right of Ontario, Her Ministers, agents, appointees and employees (the "Indemnified Parties") from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of actions, actions, claims, demands, lawsuits or other proceedings, by whomever made, sustained, incurred, brought or prosecuted in any way arising out of or in connection with the Project or otherwise in connection with the Funding Agreement unless caused by the negligence or wilful misconduct of MRA.

6. INSURANCE

The Township represents and warrants that it has, and shall maintain for the Term of this Agreement and the Funding 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 person carrying out a project similar to the Project 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 Five Million (\$5,000,000.00) Dollars per occurrence. The policy shall include the following:

- a) The City and the Indemnified Parties shall be added as additional insureds with respect to liability arising in the course of the performance of the City and the Township's obligations under, or otherwise in connection with this Agreement or the Funding Agreement;
- b) a cross liability clause;
- c) contractual liability coverage; and

- d) thirty (30) days' written notice of cancellation, termination or material change.

7. ADDITIONAL INSURANCE REQUIREMENTS

- a) The Township shall provide the City or MRA with Certificates of Insurance, or such other proof as may be requested by the City or MRA, that confirms the insurance coverage as provided for in Section 6 of this Agreement if so requested by the City or MRA. If requested by the City or MRA, the Township shall also make available to the City or to MRA, as applicable, a copy of each insurance policy.
- b) The Township accepts that the Indemnified Parties shall have a right of "First Call" or priority over any other person, including the City or the Township, to use or enjoy the benefits of the proceeds from the insurance policy required under Section 6 of this Agreement to pay any suits, judgments, claims, demands, expenses, actions, causes of action and losses (including, without limitation, reasonable legal expenses and any claim for lien made pursuant to the *Construction Lien Act*, R.S.O. 1990, c. C.30 and for any and all liability damages to property and injury to persons (including death) that may be brought against the Indemnified Parties as a result of this Agreement or the Funding Agreement.

8. CONTRIBUTIONS

- a) The Parties hereto acknowledge and agree that the Project's Estimated Total Net Eligible Costs is as set out in Schedule "B" to the Funding Agreement, specifically Three Million Eight Hundred and Eighty Thousand (\$3,880,000.00) Dollars.
- b) The Parties acknowledge and agree that MRA shall provide funding for up to Ninety (90%) Percent of the Project's Estimated Total Net Eligible Costs, subject to the terms and conditions of the Funding Agreement, which MRA Contribution shall be Three Million Four Hundred and Ninety Two Thousand (\$3,492,000.00) Dollars (the "MRA Contribution").
- c) The Parties acknowledge and agree that the Project's Estimated Total Net Eligible Costs not covered by the MRA Contribution is estimated to be Three Hundred and Eighty-Eight Thousand (\$388,000.00) Dollars (the "Remaining Contribution"). The Parties hereto further acknowledge and agree that the Remaining Contribution is to be evenly divided and payable by each of the Parties hereto.
- d) The City acknowledges and agrees that the City's share of the Remaining Contribution for the Project is estimated to be One Hundred and Ninety Four Thousand (\$194,000.00) Dollars.
- e) The Township acknowledges and agrees that the Township's share of the Remaining Contribution for the Project is estimated to be One Hundred and Ninety Four Thousand (\$194,000.00) Dollars.
- f) Notwithstanding anything to the contrary set out herein, the Parties hereto acknowledge and agree that the Project's costs as set out herein are an estimate only, and that the actual costs for the Project may be greater than or less than the Project's estimated costs. The Parties hereto further acknowledge and agree that the MRA Contribution is subject to the terms and conditions of the Funding Agreement and is not guaranteed. The Parties hereto acknowledge and agree that the Total Actual Costs for the Project, meaning each and every expense related directly or indirectly to the Project as determined solely by the City given its administration and management of the Project, less any contribution made by MRA, if any, shall be shared equally by the Parties hereto. The Township shall pay its

respective share of the Total Actual Costs for the Project to the City upon Substantial Completion of the project, defined as the date at which the project is ready for use or is being used for the purpose intended. The parties hereto acknowledge and agree that any expenses related directly or indirectly to the Project that are greater than the estimated costs, be jointly agreed to by both the City of Sault Ste. Marie and the Township of Prince.

9. FUNDS RECEIVED FROM MRA RELATING TO THE PROJECT

The Parties hereto acknowledge and agree that all funds received by MRA in relation to the Project shall be received by the City. The City shall ensure that the funds are used solely for the Project, in accordance with the Funding Agreement, and the City shall complete the necessary accounting and financial reporting as set out in the Funding Agreement.

10. ADMINISTRATION, MANAGEMENT AND AUDIT ARRANGEMENTS

- a) The City shall undertake to complete all administration, management and audit arrangements required under the Funding Agreement.
- b) The City shall, at its sole discretion, enter into all contractual relationships with any and all necessary contractors to complete the Project. The City may, at its sole discretion, permit the Township to enter into a joint contract with the City and a contractor upon the request of the Township and/or Contractor.

11. REPORTING AND ACCOUNTING OBLIGATIONS

The City shall fulfill all reporting and accounting requirements as set out in the Funding Agreement. The City shall provide a copy of all reporting documents to the Township.

12. OTHER FINANCIAL ARRANGEMENTS RELATING TO THE PROJECT

The Township shall disclose to the City and MRA forthwith that it has applied for, received or will receive any other contribution to the Project at any time from any source.

13. TOWNSHIP DUTIES

The Township shall provide any and all information required to fulfill the obligations of the City under this Agreement and the Funding Agreement, including, but not limited to, financial documents, prior contracts, maps and PIN searches. The Township agrees and shall provide the requested information in the manner requested by the City.

14. NOTICE

Any notice required or permitted to be given under this Agreement shall be in writing and may be given by delivering or mailing the notice to:

In the case of the City:

The Corporation of the City of Sault Ste. Marie
 Attention: Commissioner of Engineering & Planning
 Engineering & Planning Department
 99 Foster Drive
 Sault Ste. Marie, ON P6A 5N1

In the case of the Township:

The Corporation of the Township of Prince
 Attention: CAO/Administrator
 3042 Second Line West
 Prince Township, ON P6A 6K4

In the case of MRA:

In accordance with Section 17.1 of the Funding Agreement.

Notice shall be deemed to have been received in accordance with the times set forth in paragraph 17.2 of the Funding Agreement.

15. ASSIGNMENT AND TRANSFERABILITY

Except as otherwise provided in this Agreement, the rights and obligations created by this Agreement are exclusive to and shall not be transferred or assigned by either Party, except by written consent of the other Party and MRA.

16. COMPLIANCE WITH LAWS

The Township shall comply with the terms and conditions set out in this Agreement and the Funding Agreement, and further shall comply with all Laws, By-Laws, Rules and Regulations of any governing body respecting this Agreement and the Funding Agreement, and shall save harmless and fully indemnify the City from and against all losses, costs, damages and expenses, of every kind or nature which the City may suffer, be at or be put to by reason of or in consequence of the noncompliance by the Township with the Funding Agreement, this Agreement and any such Laws, By-Laws, Rules and Regulations.

17. GOVERNING LAW

This Agreement and all matters or issues incident hereto shall be governed by and construed under and in accordance with the laws of the Province of Ontario. The Parties hereto attorn to the jurisdiction of the Courts of Ontario. This Agreement shall be treated in all respects as an Ontario contract.

18. ENUREMENT

This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and assigns.

19. SURVIVAL

The Parties hereto acknowledge and agree that Sections 2, 3, 4-13 inclusive, 15-18 inclusive and 20-23 inclusive shall survive the termination of this Agreement.

20. AMENDMENTS

This Agreement may only be amended by a written agreement duly executed by the Parties hereto, with notice to MRA.

21. PARTIES INDEPENDENT

The Parties hereto acknowledge and agree that neither Party is the agent, joint venturer, partner or employee of the other Party. The Parties acknowledge and agree that they shall not take any actions that could establish or imply such a relationship.

22. AGREEMENT INTO EFFECT

The Parties shall do or cause to be done all acts or things necessary to implement and carry into effect the terms of this Agreement and Funding Agreement to its full extent.

23. ENTIRE AGREEMENT

This Agreement, including its recitals and Schedule "A" appended hereto contains the entire agreement between the Parties hereto. The Parties acknowledge and agree that there are no prior representations, either oral or written, between them other than those set forth in this Agreement. This Agreement supersedes and revokes all previous negotiations, arrangements, representations and information conveyed, whether oral or written, between the Parties hereto. The Parties acknowledge and agree that they have not relied upon any statement, representation, agreement or warranty except those expressly set out in this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement effective the date first stated above.

THE CORPORATION OF THE CITY OF SAULT STE. MARIE

Per:

APPROVED BY
CITY OF SAULT STE. MARIE

BY-LAW# 2014-47


ACTING MAYOR – TERRY SHEEHAN

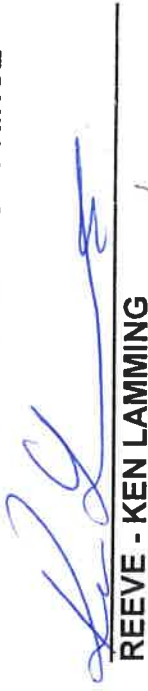

CITY CLERK – MALCOLM WHITE

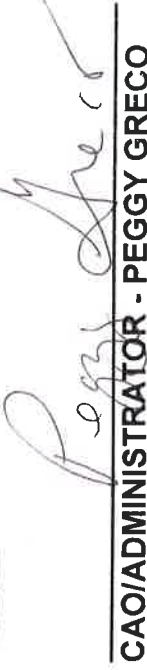
We have the authority to bind the Corporation.

THE CORPORATION OF THE TOWNSHIP OF PRINCE

Per:

Approved by
Prince Township
By-law # 2014-11


REEVE - KEN LAMMING


CAO/ADMINISTRATOR - PEGGY GRECO

We have authority to bind the Corporation