

GRANT AGREEMENT

THIS AGREEMENT ("Agreement") made in triplicate as of the day of , 2020.

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 CITY OF CLARENCE–ROCKLAND

(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 spring flooding starting on April 19, 2019, which damaged some of the Municipality's infrastructure;

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

AND WHEREAS the Municipality has requested assistance from the Ministry under MDRA for the Municipality's eligible incremental or extraordinary costs incurred as a result of the 2019 spring flood event;

AND WHEREAS the Ministry wishes to assist the Municipality for the Municipality's eligible extraordinary costs related to the 2019 spring flood event which started on April 19, 2019.

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 judgment, 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) "Eligible Extraordinary Operating Costs" means the costs described in Schedule "B" to the Agreement;
- (e) "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;
- (f) "Own Purpose Taxation Levy" means the amount recorded as the Municipality's Taxation – Own Purposes in the latest Financial Information Return submitted by the Municipality prior to April 19, 2019.
- (g) "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 \$1,036,186.71 (One Million Thirty-Six Thousand One Hundred Eighty-Six Dollars and Seventy-One Cents).
- 2.2 The Grant Funding is made up of a grant of up to \$562,068.14 (Five Hundred Sixty-Two Thousand Sixty-Eight Dollars and Fourteen Cents) for the Municipality's Eligible Capital Project Costs described in Schedule "A" and up to \$474,118.57 (Four Hundred Seventy-Four Thousand One Hundred Eighteen Dollars and Fifty-Seven Cents) for the Municipality's Eligible Extraordinary Operating Costs described in Schedule "B".
- 2.3 The Ministry shall pay to the Municipality,
 - (a) 75% of the costs that would otherwise be payable under the Agreement, that are equal to 3% of the Municipality's Own Purpose Taxation Levy; and
 - (b) 95% of all other costs that would otherwise be payable under the Agreement.

- 2.4 The Ministry shall not be obligated to make any payments under the Agreement if the Eligible Capital Project Costs and Eligible Extraordinary Operating costs are less than 3% of the Municipality's Own Purpose Taxation Levy.
- 2.5 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 FINAL CLAIM FORM

- 3.1 The Municipality shall submit to the Ministry a final claim form supported with appropriate receipts and documentation to support to the Ministry's satisfaction that all costs were incurred as a result of the 2019 spring flood event which started on April 19, 2019.
- 3.2 The detailed cost claims of the Municipality shall be verified and authorized by the Treasurer.
- 3.3 The Ministry shall not provide any Grant Funds to the Municipality until,
 - (a) a copy of the insurance certificate and policy required by section 9.2 has been received by the Ministry; and
 - (b) the final claim form satisfactory to the Ministry has been received by the Ministry.
- 3.4 Despite section 3.3, the Ministry may make interim payments of the Grant Funds to the Municipality, if the Municipality has provided the Ministry with appropriate receipts and documentation to support to the Ministry's satisfaction that all the interim costs were incurred as a result of the 2019 spring flood event which started on April 19, 2019.

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" and "B" of this Agreement.

6.0 AUDIT AND DOCUMENT RETENTION

- 6.1 For six (6) years after the date of the last payment of the Grant Funds by the Ministry to the Municipality, 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 of the last payment of the Grant Funds by the Ministry to the

Municipality, 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.

- 6.2 If requested by the Ministry during the period described in section 6.1, the Municipality shall provide the Ministry with the originals of the records described in section 6.1.

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 email, postage-prepaid envelope, personal delivery or facsimile and shall be addressed to the Ministry and the Municipality respectively as follows:

To the Ministry:
The Ministry of Municipal Affairs and Housing
Municipal Services Office- East (Kingston)
Rockwood House
8 Estate Lane
Kingston, ON
K7M 9A8
Attention: Local Government and Housing Manager, Alison Fath-York (A)
Alison.Fath-York@ontario.ca

and to the Municipality:
The City of Clarence–Rockland
1560 Laurier Street
Rockland, ON
K4K 1P7
Attention: Treasurer, Frédéric Desnoyers
fdesnoyers@clarence-rockland.com

- 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 e-mail, 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 SCHEDULES

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

- (a) Schedule “A” (Eligible Capital Project Costs of the Municipality);
- (b) Schedule “B” (Eligible Extraordinary Operating 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 and Survival) 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.

22.0 FORCE MAJEURE

22.1 Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Agreement where such delay or failure is caused by an event beyond its reasonable control.

IN WITNESS WHEREOF the parties hereto have executed and affixed their seals to the Agreement.

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

The Honourable Steve Clark

Date

THE CORPORATION OF THE CITY OF CLARENCE–ROCKLAND

By: _____
Name: Guy Desjardins
Title: Mayor

Date

By: _____
Name: Frédéric Desnoyers
Title: Treasurer

Date

SCHEDULE "A"
ELIGIBLE CAPITAL PROJECT COSTS OF THE MUNICIPALITY

Attached to and forming part of the Agreement between the Ministry and the Municipality.

A.1 ELIGIBLE CAPITAL PROJECT COSTS

A.1.1 Eligible Capital Project Costs are all costs that are directly, properly and reasonably incurred in relation to the following projects by the Municipality.

Eligible Capital Project Costs include the repair or restoration to the pre-disaster condition of the Municipality's uninsured infrastructure, including:

- (a) roads;
- (b) culverts;
- (c) pipes;
- (d) ditches; and
- (e) other municipal facilities or infrastructure not listed, with the written approval of the Ministry.

A.1.2 For greater certainty, Eligible Capital Project Costs include, but are not limited to:

- (a) construction costs to repair or restore damaged infrastructure to the pre-disaster condition; and
- (b) costs incurred for professionals, technical personnel, consultants and contractors specifically engaged to undertake
 - (i) surveying, design, engineering, or construction; and
 - (ii) technical and environmental studies and associated consultation and project management required to comply with the *Environmental Assessment Act*, *Environmental Protection Act* and the *Ontario Water Resources Act*.

A.2 INELIGIBLE COSTS

A.2.1. Despite Article A.1, the following are not Eligible Capital Project Costs:

- (a) any costs of the Municipality for an Eligible Capital Project for which the Municipality receives grant funding or reimbursement from the federal government, the provincial government outside of this agreement, or any other person;
- (b) the Municipality's regular salary and equipment costs;

- (c) any costs of the Municipality for an Eligible Capital Project that are eligible for rebate, including a tax rebate, from any person;
- (d) legal fees; and
- (e) costs incurred by the Municipality before April 19, 2019.

**SCHEDULE “B”
ELIGIBLE EXTRAORDINARY OPERATING COSTS OF THE MUNICIPALITY**

Attached to and forming part of the Agreement between the Ministry and the Municipality.

B.1 ELIGIBLE EXTRAORDINARY OPERATING COSTS

B.1.1 The following costs, that are directly, properly and reasonably incurred by the Municipality, may be submitted by the Municipality to the Minister as an Eligible Extraordinary Operating Cost for the Grant Financing:

- (a) the Municipality's extraordinary incremental salary, food, accommodation and equipment costs directly incurred in responding to the 2019 spring flood event;
- (b) costs of emergency response and cleanup directly incurred in responding to the 2019 spring flood event; and
- (c) such other costs approved by the Ministry.

B.2 INELIGIBLE COSTS

B.2.1 The following costs are not Eligible Extraordinary Operating Costs:

- (a) the Municipality's regular salary and equipment costs;
- (b) lost revenues of the Municipality;
- (c) borrowing costs of the Municipality; and
- (d) the Municipality's losses covered by insurance and insurance deductibles.