

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 05-183A

**BEING A BY-LAW TO THE EXECUTION OF AN AGREEMENT
BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH
AND HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS
REPRESENTED BY THE MINISTER OF MUNICIPAL AFFAIRS AND
HOUSING**

THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL
THEREOF HEREBY ENACTS AS FOLLOWS:

1. That the Mayor and Clerk be hereby authorized to execute an agreement between the Corporation of the City of Peterborough and Her Majesty the Queen in Right of Ontario as represented by the Minister of Municipal Affairs and Housing, in the form attached hereby as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first and second time this 12th day of September, 2005

By-law read a third time and finally passed this 12th day of September, 2005

(Sgd.) Sylvia Sutherland, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

SCHEDULE "A"
GRANT AGREEMENT
ONTARIO DISASTER RELIEF ASSISTANCE PROGRAM

This Agreement made in triplicate as of _____ day of _____, 2005.

BETWEEN:

**Her Majesty the Queen in Right of Ontario as
represented
by the Minister of Municipal Affairs and Housing;**

referred to in this Agreement as the "Minister"

AND:

The Corporation of the City of Peterborough;

referred to in this Agreement as the "City"

WHEREAS the Government of Ontario intends to provide certain financial assistance to municipalities and individuals suffering losses from the July 15, 2004 heavy rains and flooding in the Peterborough area (herein called the "flooding");

AND WHEREAS the City has created the Peterborough Area Flood Relief Committee (hereinafter call the "committee");

AND WHEREAS the committee is prepared to coordinate disaster relief efforts related to the flooding, including fundraising and management of private claims and their payout;

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 individuals, farms, small businesses and non-profit organizations who have incurred losses from the flooding;

AND WHEREAS the City is prepared to provide administrative services to the committee;

AND WHEREAS the Minister is prepared to provide grant funds to the City to be held in trust for the committee for the payment of claims for losses suffered in the flooding and for the expenses of the committee in carrying out its work;

AND 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 Ministry wishes to assist the City of Peterborough for the City's emergency extraordinary costs and the eligible costs of repairing damage to the public infrastructure from flooding.

THEREFORE the Minister and the City agree as follows:

1 Definitions

(1) In this Agreement,

“committee” means the Peterborough Area Flood Relief Committee;
 “eligible costs” means costs defined in Schedule “A”;

“grant funds” means the funds granted to the committee by the Minister under this Agreement;

“flooding” means the July 15, 2004 flooding in the City of Peterborough and in the County of Peterborough ;

“Ontario Disaster Relief Assistance Program”(“ODRAP”) means the program of Ontario Government financial assistance coordinated by the Ministry of Municipal Affairs and Housing to provide financial assistance to individuals and businesses who incur losses in the flooding;

Part 1 Private Assistance

2 Grant

- 2.1 The Minister agrees to pay to the City in trust for the benefit of the committee, a grant amount that will not exceed six million five hundred and seventy thousand dollars (\$6,570,000.00).

3 Trust Funds

- 3.1 The City agrees to hold any trust amounts given to the City by the Minister, for the benefit of the committee and shall not disburse any of the trust amounts without the express consent of the committee and the Minister.
- 3.2 The Minister may require the City to remit to the Minister any undisbursed part of the trust funds or the funds returned to the City from the claimants and the City agrees to send the requested trust amount to the Minister within five days of the request.

4 Extreme Financial Hardship Claims

- 4.1 The Minister agrees to pay the entire cost of the extreme financial hardship claims made under ODRAP.

5 Fundraising

- 5.1 The City agrees to use its best efforts to have the committee diligently raise the public donation funds for the committee and to have the committee ensure that all donated funds to the committee are deposited with the City.
- 5.2 The City agrees to provide the Minister with a list of all donors to the committee, including those who donated to the Red Cross Society.
- 5.3 The City agrees to provide the Minister with a report listing the administration costs related to the donation campaign by the committee.

6 Minimum Grant Ratio

- 6.1 The Minister agrees that the amount of grant funds paid to the committee under this part will be up to a maximum of two (2) times the total of the amount of funds received by the committee from parties other than the Minister including the interest or other earnings accrued on those funds, but the grant shall not exceed \$ 6,570,000.00 dollars.
- 6.2 The Minister's obligation to provide grant funds shall not be operative to the extent that funds raised by the committee from parties other than the Minister are available for claims payment. The parties agree that there shall be ongoing adjustment of the amounts paid by the Minister in accordance with this principle.

7 Financial Reports

- 7.1 The City shall submit to the Minister interim financial reports when requested by the Minister on the proposed expenditure of grant funds and the performance of the City's obligations under this Agreement when required by the Minister.
- 7.2 The City shall submit a final report to the Minister on the use of the Part 1 eligible funds as soon as reasonably possible after the completion of the obligations of the City under Part 1 of this Agreement.
- 7.3 The final report shall,
- (a) summarize the expenditures for eligible costs made by the City on behalf of the committee;
 - (b) summarize all payments made by the City on behalf of the committee and;
 - (c) be audited by the City's auditor.

Part 2 - ODRAP Public Infrastructure and Emergency Response Assistance

8 Grant

- 8.1 Under this Part of the Agreement, the Minister agrees to pay to the City a grant of a maximum total amount of \$27,600,000.00 for the City's public infrastructure and emergency response costs related to the flooding.
- 8.2 The Ministry agrees to make an interim grant to the City of \$ 13,250,000.00 made up of \$4,750,000.00 for operating costs, incurred by the City and \$8,500,000.00 for capital costs incurred by the City as a result of the flooding.
- 8.3 The City agrees to provide the Minister with detailed estimates of the capital costs of projects to be funded out of the grant funds.
- 8.4 The City may apply to the Minister for an increased grant under this Part and the Minister may at his sole discretion, add additional amounts to the grant funds to the City.

9 Use of the Grant Funds

- 9.1 The City acknowledges that the total amount of any grant received in this Part of the Agreement is to be used to repair the public infrastructure damaged in the flooding and to pay extraordinary emergency costs incurred by the City.
- 9.2 The City further agrees that any grant received from the Minister under the Agreement is subject to the following condition: upon signing this Agreement and prior to any grant being paid to the City, the City shall provide to the Minister a by-law authorizing the signature of this Agreement and naming the signing officer.

10 Administrative Services

- 10.1 The City agrees to supply the committee with services including secretarial and administrative services, the hiring of a project manager, the preparation of assistance cheques for the committee and the adjusting and verification of the private damage claims made under ODRAP.

11 Payment of Administrative Costs

- 11.1 The City is authorized to pay out of the Part 2 grant funds the administrative expenses listed in Schedule "A".
- 11.2 The City may request payment only for the expenses incurred by the City as a direct result of the performance of the City's obligations under this Agreement.

12 Rates

- 12.1 The rates for the reimbursement of administrative expenses shall be reasonable rates for such expenses and copies of the relevant documentation shall be provided to the Minister by the City.

13 Financial Reports

- 13.1 When requested by the Ministry, the City shall submit a financial report, detailing the expenditure of the Part 2 grant received under the Agreement.
- 13.2 The final report submitted by the City shall;
- (a) be signed by the City Treasurer and include the Treasurer's representation as to compliance by the City with the Agreement;
 - (b) be supported by a resolution of Council; and
 - (c) include a financial audit conducted by the City's auditor.

14 Repayment

- 14.1 The Ministry may require the City to repay to the Ministry any amount of grant received by the City if used by the City in contravention of the Agreement.
- 14.2 If the City fails to repay any amount owing to the Ministry under the Agreement, including interest, the City acknowledges and agrees that the Ministry or the Minister of Finance may deduct any unpaid amount from any money payable to the City by the Province of Ontario to collect the unpaid amounts.

- 14.3 The provisions of this article will survive the performance or termination of the Agreement.

PART 3 GENERAL TERMS

15 Records

- 15.1 The City shall maintain proper financial records and books of account respecting its expenditures under both Parts 1 and 2 of this Agreement. The records shall be kept for a minimum period of seven (7) years following the completion of the expenditures or termination of this Agreement; provided, however, that if the City delivers such records in its possession to the Minister at any time within such seven year period, it shall be relieved of any further responsibility for keeping or making available the records delivered to the Minister thereafter. Subject to applicable freedom of information legislation, after such delivery, the City, and any of its members, directors, officers, agents or advisors, shall have access to such records on not less than ten (10) days written notice to the Minister, and shall have the right to examine and make copies of such records.
- 15.2 The records identified in article 15.1 shall be made available to the Minister, Her Majesty the Queen in Right of Canada, the Provincial Auditor, or their authorized representatives for inspection and audit upon request. Whenever required by the Minister, the City shall submit to the Minister in the form requested a written report itemizing in detail all expenditures made by the City for the purposes of this Agreement.

16 Repayment

- 16.1 The City shall repay to the Minister any amount of the grant funds received by the City and used by the City in contravention of this Agreement, including the use of grant funds in a manner not authorized by section 3.
- 16.2 If the City fails to repay any amount owing to the Minister under this Agreement, the Committee acknowledges and agrees that the Minister or the Minister of Finance may deduct any unpaid amount from any money payable to the City by the Province of Ontario, or may exercise any other remedies available to the Minister or the Minister of Finance to collect the unpaid amounts.

17 Conflict of Interest

- 17.1 The City, any party engaged by the City and any of the City's respective advisors, members, partners, directors, officers, employees, agents, and volunteers shall not engage in any activity or provide any services to the Minister where such activity or the provision of such services, creates a conflict of interest (actually or potentially in the sole opinion of the Minister) with the provision of the Responsibilities. The City acknowledges and agrees that it shall be a conflict of interest for it to use confidential information of the Minister relevant to the Responsibilities where the Minister has not specifically authorized such use.
- 17.2 The City shall disclose to the Minister without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest.
- 17.3 A breach of article 17.1 or 17.2 by the City shall entitle the Minister, in addition to any other remedies that the Minister has in the Agreement, in law or in equity, to terminate this Agreement.

18 Confidentiality

18.1 The City and any party engaged by the City to provide any of the Responsibilities, and their respective advisors, members, partners, directors, officers, employees, agents and volunteers shall, both during and following the term of this Agreement keep confidential to themselves and the Minister any reports or other written and recorded material and all confidential or personal information acquired pursuant to this Agreement or any other agreement or activity entered into or undertaken in relation to this Agreement, and shall not disclose, either directly or indirectly, any such material or information without first obtaining the written permission of the Minister.

19 Insurance

19.1 The City shall obtain broadscope comprehensive general liability insurance coverage in a form acceptable to the Minister and having limits of not less than \$5 million per occurrence exclusive of defence costs and interest to protect the City, employees from and against all claims, howsoever arising, from the operations of or responsibilities discharged by the City pursuant to this Agreement, and without restricting the generality of the foregoing, claims for bodily injury, personal injury, death or property damage. Such insurance coverage shall be maintained by the City throughout the term of this Agreement or until the Minister authorizes the City, in writing, to cancel such insurance, whichever shall first occur. In addition, such policy of insurance shall contain a cross-liability clause.

20 Indemnity

20.1 In this section, "claims" means all claims, demands, losses, costs, damages, actions, suits or other proceedings by whomsoever made, sustained, brought or prosecuted that is in any way attributable to anything done or omitted to be done by the City, any party engaged by the City to provide any of the Responsibilities or any of their respective advisors, members, partners, directors, officers, employees, agents or volunteers in connection with the services performed, purportedly performed or required to be performed by the City under this Agreement.

20.2 The City agrees that it shall indemnify and save harmless the Minister, its officers, employees and agents from and against all claims, except for claims arising from a material breach of this Agreement by the Minister.

21 Termination

21.1 The Minister may terminate this Agreement:

- (a) without cause, on 30 days notice to the City;
- (b) for reasonable cause, if the City defaults under any term or condition of this Agreement and such default continues for more than 30 days after written notice requiring such default to be remedied shall have been given by the Minister to the committee.

21.2 Unless terminated prior thereto, this Agreement shall terminate upon completion of the Responsibilities and other duties provided for in this Agreement.

22 Agreement Binding

22.1 The Agreement shall operate to the benefit of and be binding upon the parties and their successors, executors, administrators and their permitted assigns.

23 Entire Agreement

23.1 The Agreement embodies the entire agreement between the parties with regard to the matters addressed in the Recitals to the Agreement and supersedes any prior understanding or agreement, collateral, oral or otherwise, existing between the parties at the date of execution of the Agreement.

24 Force Majeure

24.1 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.

25 Independent Contractor

25.1 The City is an independent contractor and is not and shall not hold itself out as, or in any way represent that it is an agent, officer or employee of the Minister for any purpose whatsoever.

26 Schedules

26.1 Schedule "A" forms part of this Agreement, but in the event of a conflict between this Agreement and Schedule "A" , this Agreement shall prevail.

27 Notice

27.1 Any notices, reports or communications under this Agreement shall be given in writing by personal delivery or by registered mail, posted in Canada delivered or addressed as follows:

to the Minister:

Ministry of Municipal Affairs and Housing
Municipal Programs and Education Branch
3rd Floor - 777 Bay Street
Toronto, Ontario
M5G 2E5
Attention: Diana Jardine, Director

to the City:

The Corporation of the City of Peterborough
500 George Street North,
Peterborough, Ontario
K9H 3R9
Attention: City Clerk

28 Survival

28.1 The following articles of this Agreement shall survive its expiry or termination, regardless of how such expiry or termination occurs: Articles 7, 15, 16, 17,18 and 20.

29 Severability

29.1 If any provision of this Agreement or any covenant herein contained is determined to be invalid or unenforceable, such determination shall not affect the validity of any other provision or covenant.

30 Assignment and Counterpart

30.1 The City shall not assign this Agreement or any part of it without the prior written consent of the Minister.

IN WITNESS WHEREOF the Ministry and the City have executed this Agreement.

SIGNED, SEALED AND DELIVERED)	HER MAJESTY THE QUEEN in Right of Ontario as represented by the Minister of Municipal Affairs and Housing
IN THE PRESENCE OF:)	
)	
)	
_____)	

_____)
Witness)

_____)
Date)

**THE CORPORATION OF THE
CITY OF PETERBOROUGH**

_____)
Mayor)

_____)
Witness)

_____)
City Clerk)

_____)
Date)

(seal)

SCHEDULE "A"**Eligible Costs****1. Eligible Claims**

- payment of claims eligible for payment under the ODRAP in accordance with the Agreement.

2. Eligible Administrative Expenses

Objective: The day to day operation and expenses of the City should be reasonable and kept to a minimum. Given this objective, the following items are examples of items eligible for provincial re-reimbursement:

- temporary administrative/secretarial services, required to efficiently run the committee office/space, including the salaries and travel expenses for the claim reviewers and the hiring of a project manager (Part 2 of this Agreement);
- the actual cost incurred by the City for the hiring of an adjusting firm, to adjust the private ODRAP claims (Part 1 of this Agreement);
- basic telephone rental costs;
- purchase or rental of necessary furnishings and equipment and the rental of computers, fax machines, copiers and operation costs associated with such equipment;
- costs incurred for the development of application software for administering ODRAP claims;
- stationery, printing, advertising, postage;
- general housekeeping services related to the committee office/space;
- audit fees;
- bank charges

3. Other Authorized Expenses

Expenses expressly authorized by the Ministry in writing, at the rates and subject to the conditions the Ministry authorizes.