



Memorandum

TO: Krista Power, City Clerk **FILE:**

FROM: Jana Roy, Capital Asset Accountant/Financial Analyst
Corporate Services & Long-Term Care – Financial Services

DATE: 10/25/2023 (mm/dd/yyyy)

SUBJECT: By-law 339-2023 – A By-law to Authorize the Borrowing Upon Serial Debentures

MEETING & DATE: City Council - 11/27/2023 (mm/dd/yyyy)

By-law Description: A By-law to authorize the borrowing upon serial debentures in the aggregate principal amount of \$201,574.60 towards the cost of certain capital works described in Schedule “A” to this by-law.

Authorization: Report R 1/2020 (Corporate Services and Long-Term Care – Financial Services) – Committee of the Whole – January 14, 2020.

By-law Explanation: The purpose of the by-law is to authorize borrowing towards the cost of certain capital works of The Corporation of the City of Thunder Bay.

Schedules and Attachments:

SCHEDULE A - CAPITAL WORKS TO BE FINANCED

SCHEDULE B - DEBENTURE DOCUMENTS

SCHEDULE C - LOAN AMORTIZATION SCHEDULE

Amended/Repealed By-law Number(s):



THE CORPORATION OF THE CITY OF THUNDER BAY
BY-LAW NUMBER 339-2023

A By-law to authorize the borrowing upon serial debentures in the aggregate principal amount of \$201,574.60 towards the cost of certain capital works described in Schedule “A” to this by-law.

Recitals

1. Subsection 401 (1) of 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.
2. Subsection 408 (2.1) of the Act provides that a municipality may issue a debenture or other financial instrument for long-term borrowing only to provide financing for a capital work.
3. The Council of The Corporation of the City of Thunder Bay (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” (individually a “Capital Work”, collectively the “Capital Works”), and authorizing the entering into of a Financing Agreement dated effective as of the 17th day of March, 2021 for the provision of temporary and long-term borrowing from Ontario Infrastructure and Lands Corporation (“OILC”) in respect of the Capital Works (the “Financing Agreement”) and the Municipality desires to issue debentures for the Capital Works in the principal amounts specified in column (5) of Schedule “A”.
4. Before authorizing the Capital Works and before authorizing any additional cost amount and any additional debenture authority in respect thereof, the Council of the Municipality had its Treasurer calculate an updated limit in respect of its most recent annual debt and financial obligation limit received from the Ministry of Municipal Affairs and Housing in accordance with the applicable regulation and, prior to the Council of the Municipality authorizing each Capital Work, each such additional cost amount and each such additional debenture authority, the Treasurer determined that the estimated annual amount payable in respect of each Capital Work, each such additional cost amount and each such additional debenture authority, would not cause the Municipality to exceed the updated limit and that the approval of each Capital Work, each such additional cost amount and each such additional debenture authority by the Ontario Land Tribunal’s predecessor pursuant to such regulation was not required.
5. The Municipality has submitted an application to OILC for long-term borrowing through the issue of debentures to OILC in respect of the Capital Works (the “Application”) and the Application has been approved.

6. To provide long-term financing for the Capital Works and to repay certain temporary advances in respect of the Capital Works made by OILC pursuant to the Financing Agreement, it is now deemed to be expedient to borrow money by the issue of serial debentures in the aggregate principal amount of \$201,574.60 dated December 15, 2023 and maturing on December 15, 2033 and payable in semi-annual instalments of combined equal principal and diminishing interest amounts on the 15th day of June and on the 15th day of December in each of the years 2024 to 2033, both inclusive, on the terms hereinafter set forth.

ACCORDINGLY, THE COUNCIL OF THE CORPORATION OF THE CITY OF THUNDER BAY ENACTS AS FOLLOWS:

1. For the Capital Works, the borrowing upon the credit of the Municipality at large of the aggregate principal amount of \$201,574.60 and the issue of serial debentures therefor to be repaid in semi-annual instalments of combined principal and interest as hereinafter set forth, are hereby authorized.

2. The Mayor or the Acting Mayor and the Treasurer of the Municipality are hereby authorized to cause any number of serial debentures to be issued for such amounts of money as may be required for the Capital Works in definitive form, not exceeding in total the said aggregate principal amount of \$201,574.60 (the "Debentures"). The Debentures shall bear the Municipality's municipal seal and the signatures of the Mayor or the Acting Mayor and the Treasurer of the Municipality, all in accordance with the provisions of the Act. The Debentures are sufficiently signed if they bear the required signatures and each person signing has the authority to do so on the date he or she signs.

3. The Debentures shall be in fully registered form as one or more certificates in the aggregate principal amount of \$201,574.60, in the name of OILC, or as OILC may otherwise direct, substantially in the form attached as Schedule "B" hereto and forming part of this By-law with provision for payment of principal and interest (other than in respect of the final payment of principal and outstanding interest on maturity upon presentation and surrender) by pre-authorized debit in respect of such principal and interest to the credit of such registered holder on such terms as to which the registered holder and the Municipality may agree.

4. 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 any amounts that the Municipality fails to pay OILC on account of any unpaid indebtedness of the Municipality to OILC under the Debentures and to pay such amounts to OILC from the Consolidated Revenue Fund.

5. The Debentures shall all be dated the 15th day of December, 2023, and as to both principal and interest shall be expressed and be payable in lawful money of Canada. The Debentures shall bear interest at the rate of 4.73% per annum and mature during a period of 10 years from the date thereof payable semi-annually in arrears as described in this section. The Debentures shall be paid in full by December 15, 2033 and be payable in semi-annual instalments of combined equal principal and diminishing interest amounts on the 15th day of June and on the 15th day of December in each of the years 2024 to 2033, both inclusive, as set forth in Schedule "C" attached hereto and forming part of this By-law ("Schedule "C").

6. Payments in respect of principal of and interest on the Debentures shall be made only on a day, other than Saturday or Sunday, on which banking institutions in Toronto, Ontario, Canada and the Municipality are not authorized or obligated by law or executive order to be closed (a "Business Day") and if any date for payment is not a Business Day, payment shall be made on the next following Business Day.

7. Interest shall be payable to the date of maturity of the Debentures and on default shall be payable on any overdue amounts both before and after default and judgment at a rate per annum equal to the greater of the rate specified on the Schedule as attached to and forming part of the Debentures for such amounts plus 200 basis points or Prime Rate (as defined below) plus 200 basis points, calculated on a daily basis from the date such amounts become overdue for so long as such amounts remain overdue and the Municipality shall pay to the registered holders any and all costs incurred by the registered holders as a result of the overdue payment. Any amounts payable by the Municipality as interest on overdue principal or interest and all costs incurred by the registered holders as a result of the overdue payment in respect of the Debentures shall be paid out of current revenue. Whenever it is necessary to compute any amount of interest in respect of the Debentures for a period of less than one full year, other than with respect to regular semi-annual interest payments, such interest shall be calculated on the basis of the actual number of days in the period and a year of 365 days or 366 days as appropriate.

"Prime Rate" means, on any day, the annual rate of interest which is the arithmetic mean of the prime rates announced from time to time by the following five major Canadian Schedule I banks, as of the issue date of the Debentures: Royal Bank of Canada; Canadian Imperial Bank of Commerce; The Bank of Nova Scotia; Bank of Montreal; and The Toronto-Dominion Bank (the "Reference Banks") as their reference rates in effect on such day for Canadian dollar commercial loans made in Canada. If fewer than five of the Reference Banks quote a prime rate on such days, the "Prime Rate" shall be the arithmetic mean of the rates quoted by those Reference Banks.

8. In each year in which a payment of semi-annual instalments of combined equal principal and diminishing interest amounts becomes due in respect of the Capital Works, there shall be raised as part of the Municipality's general levy the amounts of principal and interest payable by the Municipality in each year as set out in Schedule "C" 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.

9. The Debentures may contain any provision for their registration thereof authorized by any statute relating to municipal debentures in force at the time of the issue thereof.

10. The Municipality shall maintain a registry in respect of the Debentures in which shall be recorded the names and the addresses of the registered holders and particulars of the Debentures held by them respectively and in which particulars of the cancellations, exchanges, substitutions and transfers of Debentures, may be recorded and the Municipality is authorized to use electronic, magnetic or other media for records of or related to the Debentures or for copies of them.

11. The Municipality shall not be bound to see to the execution of any trust affecting the ownership of any Debenture or be affected by notice of any equity that may be subsisting in respect thereof. The Municipality shall deem and treat registered holders of the Debentures as the absolute owners thereof for all purposes whatsoever notwithstanding any notice to the contrary and all payments to or to the order of registered holders shall be valid and effectual to discharge the liability of the Municipality on the Debentures to the extent of the amount or amounts so paid. When a Debenture is registered in more than one name, the principal of and interest from time to time payable on such Debenture shall be paid to or to the order of all the joint registered holders thereof, failing written instructions to the contrary from all such joint registered holders, and such payment shall constitute a valid discharge to the Municipality. In the case of the death of one or more joint registered holders, despite the foregoing provisions of this section, the principal of and interest on any Debentures registered in their names may be paid to the survivor or survivors of such holders and such payment shall constitute a valid discharge to the Municipality.

12. The Debentures will be transferable or exchangeable at the office of the Treasurer of the Municipality upon presentation for such purpose accompanied by an instrument of transfer or exchange in a form approved by the Municipality and which form is in accordance with the prevailing Canadian transfer legislation and practices, executed by the registered holder thereof or such holder's duly authorized attorney or legal personal representative, whereupon and upon registration of such transfer or exchange and cancellation of the Debenture or Debentures presented, the Mayor and the Treasurer shall issue and deliver a new Debenture or Debentures of an equal aggregate principal amount in any authorized denomination or denominations as directed by the transferor, in the case of a transfer or as directed by the registered holder in the case of an exchange.

13. The Mayor and the Treasurer shall issue and deliver new Debentures in exchange or substitution for Debentures outstanding on the registry with the same maturity and of like form which have become mutilated, defaced, lost, subject to a mysterious or unexplainable disappearance, stolen or destroyed, provided that the applicant therefor shall have: (a) paid such costs as may have been incurred in connection therewith; (b) (in the case when a Debenture is mutilated, defaced, lost, mysteriously or unexplainably missing, stolen or destroyed) furnished the Municipality with such evidence (including evidence as to the

certificate number of the Debenture in question) and an indemnity in respect thereof satisfactory to the Municipality in its discretion; and (c) surrendered to the Municipality any mutilated or defaced Debentures in respect of which new Debentures are to be issued in substitution.

14. The Debentures issued upon any registration of transfer or exchange or in substitution for any Debentures or part thereof shall carry all the rights to interest if any, accrued and unpaid which were carried by such Debentures or part thereof and shall be so dated and shall bear the same maturity date and, subject to the provisions of this By-law, shall be subject to the same terms and conditions as the Debentures in respect of which the transfer, exchange or substitution is effected.

15. The cost of all transfers and exchanges, including the printing of authorized denominations of the new Debentures, shall be borne by the Municipality. When any of the Debentures are surrendered for transfer or exchange the Treasurer of the Municipality shall: (a) in the case of an exchange, cancel and destroy the Debentures surrendered for exchange; (b) in the case of an exchange, certify the cancellation and destruction in the registry; (c) enter in the registry particulars of the new Debenture or Debentures issued in exchange; and (d) in the case of a transfer, enter in the registry particulars of the registered holder as directed by the transferor.

16. Reasonable fees in respect of the Debentures, in the normal course of business, other than reasonable fees for the substitution of a new Debenture or new Debentures for any of the Debentures that are mutilated, defaced, lost, mysteriously or unexplainably missing, stolen or destroyed and for the replacement of any of the principal and interest cheques (if any) that are mutilated, defaced, lost, mysteriously or unexplainably missing, stolen or destroyed may be imposed by the Municipality. When new Debentures are issued in substitution in these circumstances the Municipality shall: (a) treat as cancelled and destroyed the Debentures in respect of which new Debentures will be issued in substitution; (b) certify the deemed cancellation and destruction in the registry; (c) enter in the registry particulars of the new Debentures issued in substitution; and (d) make a notation of any indemnities provided.

17. Except as otherwise expressly provided herein, any notice required to be given to a registered holder of one or more of the Debentures will be sufficiently given if a copy of such notice is mailed or otherwise delivered to the registered address of such registered holder in accordance with the provisions of the Financing Agreement.

18. The Mayor or the Acting Mayor and the Treasurer are hereby authorized to cause the Debentures to be issued, one or more of the Treasurer and the City Clerk are hereby authorized to generally do all things and to execute all other documents and other papers in the name of the Municipality in order to carry out the issue of the Debentures and the Treasurer or the City Clerk, as the case may be, is authorized to affix the Municipality's municipal seal to any of such documents and papers.

19. The money received by the Municipality from the sale of the Debentures to OILC, including any premium, and any earnings derived from the investment of that money, after providing for the expenses related to their issue, if any, shall be apportioned and applied to the Capital Works and to no other purpose except as permitted by the Act.

20. Subject to the Municipality's investment policies and goals, the applicable legislation and the terms and conditions of the Debentures, the Municipality may, if not in default under the Debentures, at any time purchase any of the Debentures in the open market or by tender or by private contract at any price and on such terms and conditions (including, without limitation, the manner by which any tender offer may be communicated or accepted and the persons to whom it may be addressed) as the Municipality may in its discretion determine.

21. This By-law shall come into force and take effect on the date it is passed.

Enacted and passed this 27th day of November A.D. 2023 as witnessed by the Seal of the Municipality and the hands of its proper Officers.

Dominic Pasqualino

Acting Mayor

Krista Power

City Clerk