THE REGIONAL MUNICIPALITY OF YORK

BILL NO. 109

BY-LAW NO. A-0372-2005-107

A by-law to authorize the submission of an application to the Ontario Strategic Infrastructure Financing Authority (“OSIFA”) for financing certain capital works of the Corporation of the Township of King; and to authorize long term borrowing for such works through the issue of debentures to OSIFA

WHEREAS the *Municipal Act*, *2001* (Ontario), as amended, (the “Act”) provides that a municipal power shall be exercised by by-law unless the municipality is specifically authorized to do otherwise;

AND WHEREAS the Council of The Corporation of the Township of King (the “Lower-tier Municipality”), a lower-tier municipality that forms part of The Regional Municipality of York (the “Upper-tier Municipality”) for municipal purposes has requested the Upper-tier Municipality to provide money for the purposes described in column (2) of Schedule “A” (individually an “Ongoing Lower-tier Project”, collectively the “Ongoing Lower-tier Projects”) attached hereto and forming part of this By-law (Schedule “A”) in the amount of the respective estimated expenditure set out in column (3) of Schedule “A”;

AND WHEREAS before the Council of the Lower-tier Municipality approved each Ongoing Lower-tier Project, in accordance with section 4 of Ontario Regulation 403/02, the Council of the Lower-tier Municipality had its Treasurer update its most recent annual debt and financial obligation limit received from the Ministry of Municipal Affairs and Housing (as so updated, the “Prior Updated Lower-tier Limit”), and, on the basis of the authorized expenditure for each Ongoing Lower-tier Project as set out in column (3) of Schedule “A” (referred to hereinafter as the “Authorized Expenditure” for each such Ongoing Lower-tier Project) the Treasurer calculated the estimated annual amount payable in respect of each Ongoing Lower-tier Project and determined that the estimated annual amount payable in respect of each Ongoing Lower-tier Project does not exceed the Prior Updated Lower-tier Limit, and accordingly the approval of the Ontario Municipal Board under the *Ontario Municipal Board Act* (Ontario), as amended, was not required before any such Ongoing Lower-tier Project was authorized by Council;

AND WHEREAS subsection 405(1) of the Act provides that a municipality may authorize temporary borrowing to meet expenditures made in connection with a work to be financed in whole or in part by the issue of debentures if,

(a) the municipality is an upper-tier municipality, a lower-tier municipality in a county or a single-tier municipality and it has approved the issue of debentures for the work;

(b) the municipality is a lower-tier municipality in a regional municipality and it has approved the work and the upper-tier municipality has approved the issue of debentures for the work; or

(c) the municipality has approved the issue of debentures for another municipality or a school board under section 404;

AND WHEREAS subsection 405(4) of the Act provides that a municipality may delegate the power set out in subsection 405(1) to the head of council, to the treasurer, or to both of them;

AND WHEREAS subsection 403(1) of the Act provides that a by-law of an upper-tier municipality authorizing the issuing of debentures for the purposes or joint purposes of one or more of its lower-tier municipalities may require those lower-tier municipalities to make payments in each year to the upper-tier municipality in the amounts and on the dates specified in the by-law.

AND WHEREAS subsection 401(1) of 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 subsection 401(3) of the Act 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 a municipality shall authorize long term borrowing by the issue of debentures or through another municipality under section 403 or 404 of the Act and subsection 403(7) of the Act provides that all debentures issued under a by-law passed by an upper-tier municipality under section 403 are direct, joint and several obligations of the upper-tier municipality and its lower-tier municipalities;

AND WHEREAS OSIFA has invited Ontario municipalities desirous of obtaining temporary and long term debt financing in order to meet capital expenditures incurred after December 31, 2003 in connection with eligible capital projects to make application to OSIFA for such financing by completing and submitting an application in the form provided by OSIFA;

AND WHEREAS the Lower-tier Municipality requested the Upper-tier Municipality to issue debentures for the Ongoing Lower-tier Projects and in this connection the Upper-tier Municipality and the Lower-tier Municipality submitted an Application (hereinafter the “Application”) to OSIFA to request financing in order to meet capital expenditures incurred after December 31, 2003 in connection with the Ongoing Lower-tier Projects (the “Project Expenditures”) by way of long term borrowing pursuant to section 403 of the Act through the issue of debentures to OSIFA and by way of temporary borrowing pursuant to section 405 of the Act;

AND WHEREAS OSIFA has accepted and has approved such Application;

NOW THEREFORE the Council of The Regional Municipality of York enacts as follows:

1. That the Upper-tier Municipality hereby approves the issue of debentures for the Ongoing Lower-tier Projects in the maximum aggregate principal amount of $26,000,000 and the Council of the Upper-tier Municipality hereby confirms, ratifies and approves the completion by the Treasurer of the Application and the submission by such authorized official of the Application by the Upper-tier Municipality, duly executed by such authorized official, to OSIFA for the financing of the Ongoing Lower-tier Projects through the issue of debentures in such maximum aggregate principal amount substantially in the form of Schedule "B" attached hereto and forming part of this By-law with such changes thereon as such authorized official approved.

2. That the Regional Chair and the Treasurer are hereby authorized to negotiate and enter into, execute and deliver a financing agreement (a "Financing Agreement") with OSIFA that provides for long term borrowing from OSIFA in respect of the Ongoing Lower-tier Projects on such terms and conditions as such authorized officials may approve, such execution and delivery to be conclusive evidence of such approval.

3. That subject to the terms and conditions of the Financing Agreement and such other terms and conditions as OSIFA may otherwise require, the Regional Chair and the Treasurer are hereby authorized to enter into long term borrowing in respect of the Ongoing Lower-tier Projects and to issue debentures to OSIFA on the terms and conditions provided in the Financing Agreement and on such other terms and conditions as such authorized officials may agree (the "Debentures"); provided that the principal amount of such Debentures in respect of an Ongoing Lower-tier Project does not exceed the Authorized Expenditure for such Ongoing Lower-tier Project and does not exceed the loan amount set out in column (4) of Schedule "A" in respect of such Ongoing Lower-tier Project.

4. That in accordance with the provisions of section 18 of the *Ontario Strategic Infrastructure Financing Authority Act, 2002* (Ontario), as amended, as security for the payment by the Upper-tier Municipality of any indebtedness of the Upper-tier

Municipality to OSIFA incurred under any Debentures, the Upper-tier Municipality is hereby authorized to agree in writing with OSIFA that the Minister of Finance is entitled to deduct from any money appropriated by the Legislative Assembly of Ontario for payment to the Upper-tier Municipality or from money appropriated by the Assembly for payment to the Upper-tier Municipality in respect of specified matters, amounts not exceeding the amounts that the Upper-tier Municipality fails to pay to OSIFA on account of the outstanding indebtedness evidenced by any Debentures issued by the Upper-tier Municipality to OSIFA, and to pay such amounts to OSIFA.

5. That for the purposes of meeting the obligations of the Upper-tier Municipality in respect of any Debentures to the extent that such amounts relate to Project Expenditures, the Upper-tier Municipality shall, in accordance with the Act, provide for raising in each year as part of the general upper-tier levy, the amounts of principal and interest payable in each year under any outstanding Debenture, 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. Without limiting the generality of the foregoing, the Lower-tier Municipality shall pay the aforesaid amounts to the Upper-tier Municipality one (1) business day before the date payment is due as such amounts are, under the Act, a debt of the Lower-tier Municipality to the Upper-tier Municipality and such amounts shall, when combined with any amount payable by the Upper-tier Municipality in the year for the repayment of the debt for which the Debentures will be issued, be sufficient to meet the total amount of principal and interest payable in each year by the Upper-tier Municipality in respect of the Debentures, all in accordance with the provisions of the Act. Furthermore, if the Lower-tier Municipality fails to make any payment or portion of it as provided in the by-law pursuant to which the Debentures are issued (the “Debenture By-law”), the Lower-tier Municipality shall, if the Act permits, pay interest to the Upper-tier Municipality on the amount in default at the rate of 15% per annum, from the date that the payment is due until it is made. In addition, if the Act provides that such is the case, there shall be raised pursuant to the

Debenture By-law, in each year of the currency of the Debentures, as part of the general upper-tier levy, the amounts required to be paid to the Upper-tier Municipality in any previous year by the Lower-tier Municipality to the extent that the amounts have not been paid to the Upper-tier Municipality in accordance with the Debenture By-law.

6. That the Regional Chair and the Treasurer are hereby authorized to enter into, execute and deliver the Financing Agreement and to cause Debentures to be issued, the Regional Clerk and the Treasurer are severally hereby authorized to generally do all things and execute all other documents and papers in the name of the Upper-tier Municipality in order to perform the obligations of the Upper-tier Municipality under the Financing Agreement and to carry out the issue of the Debentures, and the Treasurer is authorized to affix the Upper-tier Municipality's municipal seal to any such documents and papers.

7. That the proceeds realized in respect of the Debentures, after providing for the expenses related to their issue, if any, shall be apportioned and applied for the respective Ongoing Lower-tier Projects and for no other purpose except as permitted by the Act.

8. That this By-law takes effect on the day of passing.

9. That Schedules "A" and "B" shall form part of this by-law.

ENACTED AND PASSED this 15th day of December, 2005.

Denis Kelly Regional Clerk	Bill Fisch Regional Chair