



**Mike Mayes, Director  
Financial Services/Treasurer**

TOWN OF NEWMARKET  
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April 1, 2015

## **CORPORATE SERVICES REPORT - FINANCIAL SERVICES-2015-24**

**TO:** Mayor Tony Van Bynen and Members of Council  
Committee of the Whole

**SUBJECT:** Ice Storm Assistance Program Grant Agreement

**ORIGIN:** Director, Financial Services/Treasurer

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### **RECOMMENDATIONS:**

**THAT Corporate Services Report - Financial Services – 2015-24 dated April 1, 2015 regarding the Ice Storm Assistance Program Grant Agreement be received and the following recommendations be adopted:**

- 1. THAT the Mayor and Clerk be authorized to execute the Ice Storm Assistance Program Grant Agreement on behalf of the Town of Newmarket;**
- 2. AND THAT any funds received be applied to the Winter Control Reserve.**

### **COMMENTS**

#### **Purpose**

The purpose of this report is to execute an agreement with the Ministry of Municipal Affairs and Housing to receive grant funds under the Ontario Ice Storm Assistance Program.

#### **Budget Impact**

An interim payment of \$43,548.63 will be made upon execution of the agreement. The remainder of the claim (\$80,876.02) is pending final approval of the claim. The amounts received, potentially \$124,424.65, will be applied to the Winter Control Reserve from which these additional expenses were funded.

#### **Summary**

The Town has made a claim for the December 2013 Ice Storm. The process and criteria for making claims are quite demanding. There are still some outstanding issues to resolve and it is possible we may not receive our full claim.

This has been a good experience for learning how to deal with potential future emergency claims such as the Ontario Disaster Relief Assistance Program (ODRAP).

## **Background**

In December of 2013, the GTA was hit with a significant winter event which has been referred to as the Ice Storm. Although it was not severe enough for an emergency to be declared, there were significant response and recovery costs incurred. GTA Municipalities estimate that the total ice storm cost will be \$250 million.

The original estimate for Newmarket's share of the ice storm costs was \$400,000. The strict criteria used for the Ice Storm Assistance Program have reduced the actual claim to \$124,424.65. A 483 page claim was submitted on December 31, 2014. There are some outstanding issues to resolve which may result in a reduction of the grant that we will receive.

As an interim measure, the province has offered to make an installment payment for 35% of the claim.

To proceed further, the Mayor and Clerk must execute the attached Ice Storm Assistance Program Grant Agreement on behalf of the Town of Newmarket

## **Analysis and Options**

At the end of 2013, the Winter Control was \$126,000 over budget due to the Ice Storm. Funds were drawn from the Winter Control Reserve to offset this. Any grant received should be used to replace these reserve funds.

## **BUDGET IMPACT**


An interim payment of \$43,548.63 will be made upon execution of the agreement. The remainder of the claim (\$80,876.02) is pending final approval of the claim. The amounts received, potentially \$124,424.65, will be applied to the Winter Control Reserve from which these additional expenses were funded.

## **CONTACT**

For more information on this report, contact: Mike Mayes at 905-953-5300, ext. 2102 or via e-mail at [mmayes@newmarket.ca](mailto:mmayes@newmarket.ca)

  
Mike Mayes, CPA, CGA  
Director, Financial Services/Treasurer

MM/nh  
Attachment:

  
Anita Moore, AMCT  
Commissioner, Corporate Services

- a) Interim Payment Agreement (6 pgs.)

**ICE STORM ASSISTANCE PROGRAM**  
**GRANT AGREEMENT**

THIS AGREEMENT ("Agreement") made in triplicate as of the       day of       , 2015.

**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:**

**CORPORATION OF THE TOWN OF NEWMARKET**

(referred to as the "**Claimant**")

**WHEREAS** the Claimant experienced costs as a result of the ice storm which occurred in December 2013;

**AND WHEREAS** the Province created an Ice Storm Assistance Program (the Program), which is administered by the Ministry and provides assistance to Claimants for Eligible Costs;

**AND WHEREAS** the Claimant submitted an expression of interest, which was accepted by the Ministry for assistance and submitted a claim to cover the Claimant's Eligible Costs incurred as a result of the ice storm.

**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 Claimant and all schedules and attachments to this Agreement and any instrument amending this Agreement;
- (b)    "Claimant" means a municipality or conservation authority that submitted an expression of interest to the Program, was accepted by the Ministry and submitted a claim;
- (c)    "Conflict of Interest" includes, but is not limited to, any circumstance where in relation to the performance of its obligations under this Agreement, the Claimant'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;
- (d) "Eligible Costs" means the eligible costs described in the Ministry's Ice Storm Assistance Program Guidelines dated September, 2014; and
- (e) "Grant Fund(s) (ing)" means funds that may be or are provided to the Claimant, as the context may require, by the Ministry pursuant to this Agreement.

## **2.0 GRANT FUNDING**

- 2.1 The Ministry shall pay to the Claimant Grant Funding of up to \$124,424.65 (One Hundred Twenty-Four Thousand, Four Hundred Twenty-Four Dollars and Sixty-Five Cents).

## **3.0 GRANT PAYMENTS**

- 3.1 When both the Ministry and the Claimant have executed the Agreement, the Ministry will pay the Claimant an interim Grant Funding payment of \$43,548.63 (Forty-Three Thousand, Five Hundred Forty-Eight Dollars and Sixty-Three Cents).
- 3.2 Subject to subsection 3.1, the Ministry will determine the amount of the Claimant's final Grant Funding based on the Ministry's complete review of the Claimant's claim against Program criteria. The Ministry will make a final Grant Funding payment to the Claimant based on the Ministry's determination of the Claimant's Eligible Costs minus the amount of the interim Grant Funding payment made to the Claimant.
- 3.3 If the Ministry determines that the interim Grant Funding payment is more than the amount of assistance that the Claimant is eligible for under the Program, the Claimant agrees to pay the Ministry the amount of the Grant Funding overpayment within 30 days of receiving a Notice to pay from the Ministry in accordance with Article 9 of the Agreement.

## **4.0 CLAIMANT WARRANTIES**

- 4.1 The Claimant 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 Grant Funds are provided to the Claimant to reimburse the Claimant for its Eligible Costs.

## **6.0 REPORTING REQUIREMENTS FOR CLAIMANT AND DOCUMENT RETENTION**

- 6.1 The Claimant shall submit to the Ministry, the Claimant's 2014 audited financial statements, as soon as the statements are available.
- 6.2 The Claimant shall maintain all necessary records associated with their claim to substantiate (a) all payments to the Claimant under this Agreement and (b) all expenditures of the Claimant for its Eligible Costs reimbursed by the Grant Funds, including copies of all supporting documentation, until told by the Ministry that the maintenance of these records is no longer required. The Claimant shall permit and assist the Ministry in conducting audits of the operations of the Claimant to verify (a) and (b) above. The Ministry shall provide the Claimant with at least ten (10) business day's prior notice of its requirement for such audit.

## **7.0 CONFLICT OF INTEREST**

- 7.1 The Claimant shall:
- (a) avoid any Conflict of Interest in the performance of this Agreement; and
  - (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 Claimant arising out of or in any way related to the Agreement.
- 8.2 The Claimant 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 REPAYMENT**

- 9.1 The Ministry may require the Claimant to repay to the Ministry any amount of Grant Funds received by the Claimant if used by the Claimant in contravention of the Agreement or if the Ministry, acting reasonably, determines that the Claimant's claim for the Grant Funds was based on false or erroneous information.
- 9.2 The Ministry may demand interest on any amount owing by the Claimant at the then current rate charged by the Province of Ontario on accounts receivable.
- 9.3 If the Claimant fails to pay any amount owing to the Ministry under the Agreement, the Claimant acknowledges and agrees that the Ministry or the Minister of Finance may deduct any unpaid amount from any money payable to the Claimant 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.

- 9.4 The Claimant 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.

## **10.0 TERMINATION BY THE MINISTRY**

- 10.1 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.

## **11.0 NOTICES**

### **Means for Notice**

- 11.1 Notices shall be in writing and shall be delivered by email, mail, courier or personal delivery and shall be addressed to the Ministry and the Claimant respectively as follows or as either Party designates to the other by Notice:

To the Ministry:

Ministry of Municipal Affairs and Housing  
Ice Storm Assistance Program  
Municipal Programs and Education Branch  
16th Floor, 777 Bay Street  
Toronto, ON M5G 2E5  
Attention: Shawn Parry, Manager  
shawn.parry@ontario.ca

And to the Ministry:

icestorm.program@ontario.ca

and to the Claimant at:

Corporation of the Town of Newmarket  
395 Mulock Drive, P.O. Box 328, Station Main  
Newmarket, ON L3Y 4X7  
Attention: Andrew Brouwer, Clerk  
abrouwer@newmarket.ca

- 11.2 Notices shall be deemed to have been given (a) in the case of mail, five (5) business days after such notice is mailed (b) in the case of courier, two (2) business days, after such notice is mailed; or (c) in the case of email or personal delivery, one (1) business day after such notice is received by the other party.

## **12.0 GOVERNING LAW**

- 12.1 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.

### **13.0 ENTIRE AGREEMENT**

- 13.1 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.
- 13.2 This Agreement may only be modified by a written Agreement duly executed by the parties.

### **14.0 CLAIMANT'S POWER TO ENTER INTO AGREEMENT**

- 14.1 The Claimant 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.

### **15.0 CLAIMANT NOT A PARTNER OR AGENT**

- 15.1 Nothing in the Agreement shall have the effect of creating a partnership or agency relationship between the Ministry and the Claimant.

### **16.0 RESPONSIBILITY OF THE CLAIMANT**

- 16.1 The Claimant agrees that it is liable for the acts and omissions of its officers, employees, agents, partners, affiliates, volunteers and subcontractors. The Claimant 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.

### **17.0 AGREEMENT BINDING AND SURVIVAL**

- 17.1 The Agreement shall operate to the benefit of and be binding upon the parties and their successors, executors, administrators and their permitted assigns.
- 17.2 The provisions of Articles 4.0 (Claimant Warrants), 5.0 (Use of Grant Funding), 6.0 (Reporting Requirements for the Claimant and Document Retention), 8.0 (Limitation of Liability and Indemnity), 9.0 (Repayment), 12.0 (Governing Law), 16.0 (Responsibility of the Claimant) and 17.0 (Agreement Binding and Survival) shall survive termination or expiry of this Agreement for a period of ten (10) years from the date of expiry or termination of this Agreement.

### **18.0 CONDONATION NOT A WAIVER**

- 18.1 Any failure by the Ministry to insist in one or more instances upon strict performance by the Claimant 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 Claimant with respect to such performance shall continue in full force and effect.

**19.0 SEVERABILITY**

19.1 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.

**20.0 FORCE MAJEURE**

20.1 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 Ted McMeekin

Date of Signature: \_\_\_\_\_

**CORPORATION OF THE TOWN OF NEWMARKET**

\_\_\_\_\_  
Signature  
Name: Tony Van Bynen  
Title: Mayor  
Date of Signature: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature  
Name: Andrew Brouwer  
Title: Clerk  
Date of Signature: \_\_\_\_\_

\_\_\_\_\_  
Witness