



BY-LAW

NO. 2023 –

Being a By-law to Authorize a Cost Sharing Agreement with Ontario Peninsula Farms Ltd. and 13428290 Canada Inc for the Sharing of Costs for the Reconstruction of Mount Forest Avenue

Whereas Section 8 (1) and 9 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provide that the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues and has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act; and

Whereas Council of The Corporation of the Municipality of Kincardine deems it advisable to enter into a Cost Sharing Agreement with Ontario Peninsula Farms Ltd. and 13428290 Canada Inc. for the reconstruction of Mount Forest Avenue; now therefore be it

Resolved that the Council of The Corporation of the Municipality of Kincardine **Enacts** as follows:

1. That The Corporation of the Municipality of Kincardine enter into an Agreement with Ontario Peninsula Farms Ltd. and 13428290 Canada Inc. for the reconstruction of Mount Forest Avenue in accordance with the terms and conditions outlined in the Agreement attached hereto as Schedule 'A' and forming part of this By-law.
2. That the Mayor and Clerk be authorized to sign and execute, on behalf of The Corporation of the Municipality of Kincardine, the Agreement with Ontario Peninsula Farms Ltd. and 13428290 Canada Inc.
3. That this By-law shall come into full force and effect upon its final passage.
4. That this By-law be cited as "Mount Forest Avenue Cost Sharing Agreement (2023) By-law".

Read a First and Second Time this 13th day of December, 2023.

Read a Third Time and Finally Passed this 13th day of December, 2023.

Mayor

Clerk

COST SHARING AGREEMENT

THIS AGREEMENT made in triplicate this _____ day of _____ 2023

BETWEEN

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE
hereinafter called "Kincardine "

OF THE FIRST PART

-and-

Ontario Peninsula Farms Ltd.
hereinafter called "OPF Land Owner"

OF THE SECOND PART

-and-

13428290 Canada Inc
hereinafter called "7 Mount Forest Ave Land Owner"

OF THE THIRD PART

WHEREAS the OPF Land is the property as described as Schedule A.

AND WHERE AS 7 Mount Forest Ave is the property as described in Schedule B

AND WHEREAS all parties agree it is prudent to reconstruct Mount Forest Ave and install new municipal services.

AND WHEREAS all parties have agreed to enter into this agreement with respect to the provision of services and financial arrangements.

NOW, THEREFORE THE PARTIES AGREE TO ENTER INTO A COST SHARING AGREEMENT AS FOLLOWS:

1. Description of Works

The Works are described in Schedule C. Should there be amendments in the scope of work that impact the project financially, Kincardine will consult with both Land Owners prior to proceeding. Should the changes impact the project finances for either Land Owner negatively, written approval to proceed with the change will be required in a timely manner acting reasonably.

2. Current Cost estimate

The current cost estimate is described in Schedule D.

3. Allocation of Costs

The allocation of final costs to each party will be based on Final Construction costs as verified by the Municipal Engineer, with the allocation as per Schedule E.

4. Payment

Kincardine will notify the OPF Land Owner and the 7 Mount Forest Land Owner of the Tender closing date at least 5 business days prior to the Tender for the Works being advertised.

Within 10 business days after Kincardine Council has recommended that the contract be awarded to the successful bidder, a security for their share of 100% of the successful tender amount, allocated as per Schedule E, shall be paid in full to Kincardine by the OPF Land Owner and the 7 Mount Forest Land Owner. Within 5 business days of both deposits being received by Kincardine, Kincardine shall execute the contract with the successful bidder.

The security shall be in the form of Cash or a Letter of Credit. All letters of credit shall be for a minimum guaranteed period of one (1) year or such longer time as the Municipality may decide. All letters of credit referred to in this Section shall contain the following clause:

“It is a condition of the Letter of Credit that it shall be deemed to be automatically extended without amendment from year to year from the present or any future expiration date thereof, unless at least thirty (30) days prior to the present or any future expiration date, we notify you in writing by registered mail that we elect not to consider this Letter of Credit to be renewable for any additional period.”

After construction has been completed to the satisfaction of the Municipal Engineer, the actual final cost of the project shall be determined by the Municipal Engineer with the allocation to the OPF Land Owner and the 7 Mount Forest Ave Land Owner as per Schedule E. Within 60 days of written notification by Kincardine, The OPF Land Owner and the 7 Mount Forest Ave Land Owner shall pay the actual cost of the Works less the

security provided. Should the actual cost be less than the security provided, Kincardine will return the portion of the security that exceeds actual costs within 30 days of the determination.

5. Ownership of Infrastructure

The Municipality of Kincardine will retain ownership of all works that occur on municipal land.

6. Sewer Capacity Allocation

The Land Owners will each receive dedicated capacity to the upgraded infrastructure along Mt. Forest Ave. with 7 Mount Forest Ave Land Owner being dedicated 9.4 L/S and OPF Land Owner being dedicated 215.2 L/S. The Land Owners understand that the sanitary sewers downstream of Mount Forest Ave, which includes newer sections of sewer, would need to be replaced to accommodate these flows.

The allocation for the sewer capacity that is constructed as part of this agreement in no way infers that an allocation for wastewater treatment plant capacity has been made for the lands referred to in Schedule A. Furthermore, the allocation for the sewer capacity that is constructed as part of this agreement in no way infers that an allocation for sanitary sewer capacity beyond the project limits is made.

WITNESS the land and the seal of the Owner/Agents.

OPF Land Owner

Signed this ____ day of _____, 2023

(Owner/Agent)

7 Mount Forest Ave Land Owner

Signed this ____ day of _____, 2023

(Owner/Agent)

The Corporation of the Municipality of Kincardine

Signed this ____ day of _____, 2023

Kenneth Craig, Mayor

Jennifer Lawrie, Clerk

Schedule "A" OF AGREEMENT

Note: It is understood and agreed that this Schedule forms part of the Agreement.

DESCRIPTION OF OPF LAND

KINCARDINE CON A PT LOTS 16 TO 20 PLAN 10 PARK LOTS 13 TO 16 RP 3R7390 PART 1 AND PT
PART 2

Schedule "B" OF AGREEMENT

Note: It is understood and agreed that this Schedule forms part of the Agreement.

DESCRIPTION OF 7 MOUNT FOREST LAND

PLAN 10 PT PARK LOT 10 RP 3R8783 PART 1 PCL 10-1

Schedule “C” OF AGREEMENT

Note: It is understood and agreed that this Schedule forms part of the Agreement.

DESCRIPTION OF WORKS

In Part 1, Mount Forest Avenue will be fully reconstructed from Queen Street to Sta 1+098 (Approx. 100m +/- east of Queen Street). The existing asphalt, curb, sidewalk, and storm sewers will be removed. The existing 150mm watermain will remain in place. Mount Forest Avenue will be re-graded to meet design standards and provide the Municipal Standard cross section including 8.5m wide asphalt surface, curb and gutter on both sides, and a 1.5m sidewalk on the south side of the road. In this portion, the Family Health Team way will be reconstructed and realigned to intersect with Mount Forest Avenue at a 90-degree angle. Family Health Team Way will have a 7.0m wide asphalt surface with curb and gutter up to the point matching the existing road surface.

Underground infrastructure will also be placed in part 1 including a new 450mm sanitary sewer from Queen Street to the part 1 limit. Existing sanitary services will be replaced and connected into the new system. A new storm sewer system will also be installed along Mount Forest Avenue in part 1. It is a system ranging from 300mm to 525mm diameter pipe that will outlet into an existing culvert north of Mount Forest Avenue on Queen Street. A new watermain tee will be installed across from the #7 Mount Forest Avenue entrance to complete servicing for the development.

Part 2 will continue east from the part 1 limit consisting of 22m of roadwork terminating and Sta 1+120 and 32m of servicing terminating at Sta 1+130.

Schedule “D” OF AGREEMENT

Note: It is understood and agreed that this Schedule forms part of the Agreement.

Current Cost Estimate

Schedule “E” OF AGREEMENT

Note: It is understood and agreed that this Schedule forms part of the Agreement.

Allocation of Costs