

# The Corporation of the Township of Whitewater Region

By-law Number 19-05-1171

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## **A by-law to authorize the entering into a Subordination Agreement with Ottawa River Power Corporation**

**Whereas**, Section 5 of the *Municipal Act, 2001 S.O. 2001, c.25* as amended states that the powers of a municipality shall be exercised by its Council and generally through by-law; and


**Whereas**, Section 9 of the *Municipal Act, 2001 S.O. 2001, c.25* as amended states that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority;

**Whereas**, Council deems it expedient and necessary to enter into a Subordination Agreement;

### **Now therefore Council of the Corporation of the Township of Whitewater Region enacts as follows:**

1. That the Subordination Agreement with The Ottawa River Power is hereby authorized.
2. That the Mayor and Clerk are authorized and directed to execute all documents on behalf of the Corporation of the Township of Whitewater Region and to affix thereto the seal.
3. That the Agreement attached hereto as Schedule "A" forms part of this by-law.
4. That this by-law shall come into force and take effect upon being passed by Council.

**Read a first, second and third time and finally passed this 8th day of May, 2019.**

  
\_\_\_\_\_  
**Michael Moore, Mayor**

  
\_\_\_\_\_  
**Carmen Miller, Clerk**

**SUBORDINATION AND POSTPONEMENT AGREEMENT**

THIS AGREEMENT made as of the 8 day of May, 2019

**BETWEEN:**

**ONTARIO INFRASTRUCTURE AND LANDS CORPORATION**  
(hereinafter referred to as "Infrastructure Ontario")

- and -

**THE CORPORATION OF THE CITY OF PEMBROKE**  
(hereinafter referred to as the "City of Pembroke")

- and -

**THE CORPORATION OF THE TOWNSHIP OF KILLALOE, HAGARTY  
AND RICHARDS**  
(hereinafter referred to as the "Township of Killaloe, Hagarty and Richards")

- and -

**THE CORPORATION OF THE MUNICIPALITY OF MISSISSIPPI  
MILLS**  
(hereinafter referred to as the "Municipality of Mississippi Mills")

- and -

**THE CORPORATION OF THE TOWNSHIP OF WHITEWATER  
REGION**  
(hereinafter referred to as the "Township of Whitewater Region")

(the City of Pembroke, the Township of Killaloe, Hagarty and Richards, the  
Municipality of Mississippi Mills, and the Township of Whitewater Region are  
hereinafter referred to individually as a "Creditor", and collectively, as the  
"Creditors")

- and -

**OTTAWA RIVER POWER CORPORATION**  
(hereinafter referred to as the "Debtor")

**RECITALS**

**WHEREAS** the Debtor is and may hereafter become indebted to the City of Pembroke (the “**Pembroke Indebtedness**”) and in connection therewith has granted to the City of Pembroke an unsecured promissory note in the amount of \$4,364,000.00 (which promissory note and any other security in favour of the City of Pembroke now or hereafter created and as it exists from time to time is hereinafter collectively referred to as the “**Pembroke Security**”);

**AND WHEREAS** the Debtor is and may hereafter become indebted to the Township of Killaloe, Hagarty and Richards (the “**KHR Indebtedness**”) and in connection therewith has granted to the Township of Killaloe, Hagarty and Richards an unsecured promissory note in the amount of \$172,000.00 (which promissory note and any other security in favour of the Township of Killaloe, Hagarty and Richards now or hereafter created and as it exists from time to time is hereinafter collectively referred to as the “**KHR Security**”);

**AND WHEREAS** the Debtor is and may hereafter become indebted to the Municipality of Mississippi Mills (the “**Mississippi Mills Indebtedness**”) and in connection therewith has granted to the Municipality of Mississippi Mills an unsecured promissory note in the amount of \$902,490.00 (which promissory note and any other security in favour of the Municipality of Mississippi Mills now or hereafter created and as it exists from time to time is hereinafter collectively referred to as the “**Mississippi Mills Security**”);

**AND WHEREAS** the Debtor was indebted to The Corporation of the Village of Beachburg (the “**Village of Beachburg**”) prior to January 1, 2001, and as a result of municipal restructuring under the *Municipal Act, 2001* (Ontario), the Village of Beachburg was amalgamated into the Township of Whitewater Region effective as of January 1, 2001 (the “**Amalgamation**”), and the Debtor upon the Amalgamation became indebted to the Township of Whitewater Region.

**AND WHEREAS** pursuant to the Amalgamation, the Debtor is now and may hereafter become indebted to the Township of Whitewater Region (the “**Whitewater Region Indebtedness**”) and in connection therewith has granted to the Township of Whitewater Region an unsecured promissory note in the amount of \$147,000.00 (which promissory note and any other security in favour of the Township of Whitewater Region now or hereafter created and as it exists from time to time is hereinafter collectively referred to as the “**Whitewater Region Security**”);

**AND WHEREAS** the Pembroke Indebtedness, the KHR Indebtedness, the Mississippi Mills Indebtedness, and the Whitewater Region Indebtedness shall be collectively referred to as the “**Creditor Indebtedness**”.

**AND WHEREAS** the Pembroke Security, the KHR Security, the Mississippi Mills Security, and the Whitewater Region Security shall be collectively referred to as the “**Creditor Security**”.

**AND WHEREAS** the Debtor is or may become indebted to Infrastructure Ontario pursuant to a financing agreement between Infrastructure Ontario and the Debtor dated March 7, 2019 (the “**Infrastructure Ontario Indebtedness**”) and in connection therewith has granted or will grant to Infrastructure Ontario security in favour of Infrastructure Ontario, including without limitation a general security agreement in respect of which a financing statement has been or will be registered under the *Personal Property Security Act, 1990* (Ontario) (“**PPSA**”) as listed in Schedule “A”,

(which general security agreement and any other security in favour of Infrastructure Ontario now or hereafter created and as it exists from time to time is hereinafter collectively referred to as the "Infrastructure Ontario Security");

**AND WHEREAS** the parties hereto have agreed upon certain priorities as hereinafter described;

**AND WHEREAS** the Debtor has agreed that it will maintain and deal with its assets in accordance with the provisions hereof;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the mutual terms and conditions herein contained, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the parties hereto), the parties hereto agree as follows:

1. The Creditors hereby consents to the Infrastructure Ontario Indebtedness and postpone and subordinate the remainder of the Creditor Indebtedness in all respects to and in favour of the Infrastructure Ontario Indebtedness.
2. The Creditors hereby consent to the Infrastructure Ontario Security and postpone and subordinate the Creditor Security in all respects to and in favour of the Infrastructure Ontario Security, and acknowledge that the Infrastructure Ontario Security ranks and will continue to rank in priority to the Creditor Security in respect of all of the property and assets of the Debtor covered by the Infrastructure Ontario Security.
3. The Creditors, Infrastructure Ontario, and the Debtor hereby agree that so long as any of the Infrastructure Ontario Indebtedness remains outstanding, with the exception of interest payments on the Creditor Indebtedness which are permitted to be paid by the Debtor to the Creditors as long the Debtor is compliant with all terms of the Infrastructure Ontario Indebtedness, the Debtor shall not make any payments owing to the Creditors under the Creditor Indebtedness.
4. The priorities herein expressed will have effect regardless of (i) the respective dates or order of perfection or attachment of the Infrastructure Ontario Security or the Creditor Security, (ii) the order of crystallization of any floating charge contained in the Creditor Security, (iii) the order of registration of any security documents by Infrastructure Ontario or the Creditors, or (iv) any actual knowledge by Infrastructure Ontario, when any Infrastructure Ontario Security is executed and delivered or registered, of any existing Creditor Security or registration thereof.
5. The Debtor hereby confirms to and agrees with Infrastructure Ontario and the Creditors that so long as the Debtor remains indebted to Infrastructure Ontario and the Creditors, it will stand possessed of its assets so charged for Infrastructure Ontario and the Creditors in accordance with their respective interests and priorities as herein set forth.
6. Nothing contained in this Agreement shall in any way prejudice or diminish or otherwise affect the respective rights of Infrastructure Ontario and the Creditors against the Debtor or prejudice, diminish or otherwise affect in any manner whatsoever the respective rights of Infrastructure Ontario and the Creditors against third parties, nor shall any third party be

entitled to, or to claim the benefit of, this Agreement or of any subordination or priority provided for herein, and nothing herein shall be construed as conferring any rights upon any person not a party to this Agreement.

7. Each of Infrastructure Ontario, the Creditors and the Debtor will do, perform, execute and deliver all acts, deeds and documents as may be necessary from time to time to give full force and effect to the intent of this Agreement; provided, however, that no consent of the Debtor shall be necessary to any amendment of the terms hereof by Infrastructure Ontario and the Creditors unless the interests of the Debtor are directly affected thereby.
8. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, provided that neither Infrastructure Ontario nor the Creditors will assign or transfer any or all of the security held or to be held by it or any of its rights thereunder relating to the undertaking and assets of the Debtor unless and until the proposed assignee or transferee shall have delivered to the other parties hereto a written agreement to be bound by the provisions hereof to the same extent as the assignor.
9. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.
10. This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

**THE CORPORATION OF THE CITY  
OF PEMBROKE**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the  
Corporation

THE CORPORATION OF THE  
TOWNSHIP OF WHITEWATER  
REGION

By: Michael Moore  
Name:  
Title:

By: C. Miller  
Name:  
Title:

I/We have authority to bind the  
Corporation

**THE CORPORATION OF THE  
TOWNSHIP OF KILLALOE,  
HAGARTY AND RICHARDS**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the  
Corporation



**THE CORPORATION OF THE  
MUNICIPALITY OF MISSISSIPPI  
MILLS**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the  
Corporation

**ONTARIO INFRASTRUCTURE AND  
LANDS CORPORATION**

By: \_\_\_\_\_  
Name: George Skariah  
Title: Acting Chief Financial  
Officer

By: \_\_\_\_\_  
Name: Ron Harmon  
Title: Director, Credit Risk

I/We have authority to bind the Corporation

**OTTAWA RIVER POWER  
CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the Corporation

**SCHEDULE "A"**

1. Registration under the *Personal Property and Security Act, 1990* (Ontario) bearing the file number \_\_\_\_\_ in favour of Ontario Infrastructure and Lands Corporation.