THE CORPORATION OF THE TOWN OF SOUTH BRUCE PENINSULA

BY-LAW NUMBER 88-2012

Being a By-Law to Authorize the Mayor and Clerk to
Sign a Memorandum of Understanding with the Wiarton
and District Chamber of Commerce

WHEREAS Section 8 of the Municipal Act, 2001, Chapter 25, as amended, provides that Section 8 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 WHEREAS Section 9 of the Municipal Act, 2001, Chapter 25, as amended, provides that a municipality 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 the Wiarton and District Chamber of Commerce operates events in Wiarton and have approached the Town of South Bruce Peninsula for monetary and in-kind support;

AND WHEREAS the Town of South Bruce Peninsula deems it expedient to provide funds and outline the provision terms in a Memorandum of Understanding.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF SOUTH BRUCE PENINSULA ENACTS AS FOLLOWS:

1) THAT the Mayor and Clerk are hereby authorized to sign the Memorandum of Understanding with the Wiarton and District Chamber of Commerce.

2) THAT the Memorandum of Understanding as referred to herein shall be attached hereto and form part of this by-law.

READ a FIRST and SECOND time this 19th day of June, 2012.

[Signatures]

READ a THIRD time and FINALLY PASSED this 3rd day of July, 2012.

[Signatures]
MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding made this 19th day of June, 2012

BETWEEN

THE WIARTON AND DISTRICT CHAMBER OF COMMERCE
(hereinafter referred to as the “Chamber” of the first part)

and

THE CORPORATION OF THE TOWN OF SOUTH BRUCE PENINSULA
(hereinafter referred to as the “Town” of the second part)

WHEREAS the Chamber has approached the Town with a request for monetary and in-kind assistance from the Town;

AND WHEREAS the Town deems it expedient and in the best interest of its inhabitants to make provisions to the Chamber and to outline the terms and conditions of said provisions in this Memorandum of Understanding to have the Chamber operate specific events.

NOW THEREFORE in consideration of the covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Responsibility of the Chamber

1.1 It is hereby agreed that the Wiarton and District Chamber of Commerce shall be responsible for the events known as the Canada Day Celebration and the Wiarton Willie Festival.

1.2 Responsibility for the Wiarton Willie Festival shall include but not be limited to Prediction Morning and other similar events as have been undertaken in the past with respect to this annual festival.

1.3 Responsibility for the Canada Day Celebration shall include but not be limited to a fireworks celebration and other events.

1.4 The Chamber shall be solely responsible for obtaining all permits, licenses, and any other permission as shall be required for the events.

1.5 The Chamber shall ensure strict compliance with all laws, by-laws, statutes, acts, regulations and policies.

1.6 The Chamber shall complete and submit all required documentation of the Town’s Special Event application.

Memorandum of Understanding, Wiarton Chamber of Commerce 2012/13
Page 1 of 7
1.7 All Wiarton Willie marks (text, graphic or otherwise) are owned by the Town, the Chamber has no right or authority to alter Wiarton Willie marks. The Chamber shall maintain the integrity of the marks at all times they are in use. The Town reserves the right to withdraw permission of use of the marks by the Chamber.

1.8 The Chamber shall hold an insurance policy in a coverage amount of not less than two million dollars ($2,000,000) for each event and shall name the Town to be an additional insured on said insurance policy. A copy of the policy shall be furnished to the Town thirty (30) days prior to each event. The Chamber shall not make any change to or cancellation of the required insurance coverage without first providing notice to the Town.

1.9 The Chamber shall be responsible for all expenses related to the events. Expenses could include but are not limited to promotion, entertainment (and associated costs), advertising, ticket sales, grant applications, set up and take down of equipment, rental and purchase of equipment (including snow fence, picnic tables, banquet tables, chairs, tents, heaters and signs), administrative costs, security, fireworks, trailers, food, refrigeration, garbage and recycling management (collection and disposal) and washrooms.

1.10 Where the Chamber proposes to implement major changes which are not in keeping with past events, including cancellation of any event, the Chamber shall in a written format, give notice to the Town of such changes. Said notice shall be delivered to the Town not less than sixty (60) days prior to the event. The Town shall provide written approval or disapproval of the proposed changes within thirty (30) days of receipt of the written request.

1.11 Hydro usage will be metered and billed to the Chamber.

2. Responsibility of the Town

2.1 The Mayor or designate will be responsible for hearing and announcing Wiarton Willie's annual prediction.

2.2 The Town will provide the portable washroom trailer for the Wiarton Willie Festival if available. The Chamber will be responsible for rental fees, hook-up, pump outs and cleaning expenses of the washrooms for the duration of the festival.

2.3 Barricades will be provided for approved road closures. The Chamber must pick up the barricades on or before the business day prior to the event. Barricades must be returned to the Town in the same condition as when they were picked up, to the agreed upon location. The Town will not provide employees to drop off, set up, man, take down or transport the barricades.
3. Use of Facilities and other Products and Supplies

3.1 Rental contracts must be completed and executed by the Town and the Chamber for each facility required. The Chamber shall book the facilities required to run the events by contacting the Recreation Programmer for the Town.

3.2 The Town will not waive the rental fee for any facility and as such, the Chamber will be invoiced in accordance with Town policies and such rentals will be subject to the requisite rental fee.

3.3 The Chamber shall ensure that the event site(s) shall be returned to the Town in the same condition as found prior to the event.

4. Monetary Consideration

4.1 During the term of this Memorandum of Understanding, the Town will give to the Chamber, an amount of money not to exceed fifty thousand dollars ($50,000) in Canadian Funds to operate the events as specified in clause 1.1 of this agreement.

4.2 A holdback in an amount not to exceed five percent (5%) of the total funds will be held by the Town.

4.3 The funds, minus the holdback, will be disbursed on a monthly basis after submission of receipts and an expense report showing actuals to budget and all expenses have occurred in accordance with this agreement. Funds are available to be disbursed to an upset limit of $16,500 in 2012 and $33,500 in 2013.

4.4 In the circumstance that the event(s) are cancelled or if funds have not been spent according to this agreement, the holdback will not be disbursed to the Chamber and funds disbursed to that date may be at risk of being recovered by the Town.

5. Reporting

5.1 The Chamber will provide to the Town a final report at the completion of all events. The report shall clearly outline details of the event, objectives met, benefits to the community and a financial breakdown, including budget to actual comparisons. This report shall be received by the Town no later than thirty (30) days following the completion of events.

5.2 Where reports are not received by the deadline the Chamber will forfeit the release of the holdback.

5.3 The Town and Chamber will agree to discuss the report no later than thirty (30) days after the receipt of the report.

6.1 It is hereby agreed that the holdback amount for the portion of funds issued in 2012 shall be eight hundred and twenty five dollars ($825).

6.2 The release of the holdback for the portion of funds issued in 2012 shall be subject to an inspection of the event site(s) by the Chamber and the Facilities Manager of the Town.

6.3 The Chamber shall contact the Facilities Manager no later than forty eight (48) hours following the event to conduct the site visit. Deficiencies shall be noted by both parties.

6.4 If deficiencies remain unsatisfied and/or mutual agreement by both parties cannot be achieved within ninety (90) days of the event, the Chamber shall forfeit the holdback amount to the Town in any amount which shall be deemed sufficient to remedy the deficiency.

6.5 Until such time as all deficiencies are addressed and mutually agreed upon by both parties to be satisfied, the holdback shall be maintained by the Town.

6.6 Where the holdback amount is of a value which is insufficient to satisfy the deficiency, the Town shall invoice the Chamber for any monetary shortfall in accordance with the terms of this agreement.

6.7 Where all deficiencies have been remedied, the Manager of Financial Services shall release the holdback amount to the Chamber in accordance with the terms of this agreement.

7. Release of Holdback 2013

7.1 It is hereby agreed that the holdback amount for the portion of funds issued in 2013 shall be one thousand, six hundred and seventy five dollars ($1,675).

7.2 The release of the holdback for the portion of funds issued in 2013 shall be subject to an inspection of the event site(s) by the Chamber and the Town.

7.3 The Chamber shall contact the Town no later than forty eight (48) hours following the event to conduct the site visit. Deficiencies shall be noted by both parties.

7.4 The release of the holdback for the portion of funds issued in 2013 shall also be subject to the receipt of receipts and a report from the Chamber, served on the Town, which shall clearly outline the details of the event. This report shall be received by the Town no later than thirty (30) days following the event.

7.5 The Town and Chamber will agree to discuss the report no later than thirty (30) days after the receipt of the report.
7.6 Until such time as all deficiencies are addressed and mutually agreed upon by both parties to be satisfied, the holdback shall be maintained by the Town.

7.7 If deficiencies remain unsatisfied and/or mutual agreement by both parties cannot be achieved within ninety (90) days of the report, the Chamber shall forfeit the holdback amount to the Town in any amount which shall be deemed sufficient to remedy the deficiency.

7.8 Where the holdback amount is of a value which is insufficient to satisfy the deficiency, the Town shall invoice the Chamber for any monetary shortfall.

7.9 Where all deficiencies have been remedied, the Manager of Financial Services shall release the holdback amount to the Chamber in accordance with the terms of this agreement.

8. Term

8.1 This Memorandum of Understanding shall remain in force and effect for one (1) year and shall have an effective date of June 19, 2012 and shall have a termination date of June 18, 2013.

8.2 It shall be understood that the Town wishes and expects that the Chamber will endeavor to run and provide events which are self sustaining.

8.3 This Memorandum of Understanding does not in any way bind the Town to any future monetary or in-kind gifts or grants nor does it commit the Town to provide in future years the level of grant funds provided herein.

8.4 Notwithstanding the provisions contained herein, future requests by the Chamber for money or in-kind grants or donations must be communicated to the Town in accordance with the Town Grants and Donation Program.

8.5 Cancellation of this Memorandum of Understanding with cause shall be deemed to be immediate. Sufficient evidence of cause shall be required and may be called into question by a court of law. Misrepresentation of assets, liabilities, misuse of Town property, blatant disregard for public and private safety, acts contrary to law and gross negligence shall constitute reasons for termination with cause.

8.6 The Chamber and the Town agree that all covenants and conditions contained in this Memorandum of Understanding shall be severable, and that should any covenant or condition be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Memorandum of Understanding shall remain valid and not terminate thereby.

9. Notices
9.1 Any notice required or permitted to be given pursuant to this Memorandum of Understanding shall be in writing and delivered to the following persons at the indicated addresses:

Clerk
Town of South Bruce Peninsula
315 George Street
PO Box 310
Wiarton ON N0H 2T0

The Wiarton and District Chamber of Commerce
President
Wiarton and District Chamber of Commerce
PO Box 68
Wiarton ON N0H 2T0

9.2 Either party may at any time, designate by written notice to the other party in accordance with the provisions of this Memorandum of Understanding a change in the above address or addresses, but such change shall be binding upon the party to whom it is sent only from and after the date of receipt by such party.

IN WITNESS WHEREOF the parties have caused this Memorandum of Understanding to be executed by their duly authorized representatives.

WIARTON AND DISTRICT CHAMBER OF COMMERCE

I/we have the power to bind the corporation.

THE CORPORATION OF THE TOWN OF SOUTH BRUCE PENINSULA

[Signatures]
I/we have the power to bind the corporation.