The Corporation of the Town of South Bruce Peninsula

By-Law Number 13-2016

Being a By-Law to Authorize the Mayor and Clerk to Sign an Agreement for the Provision of Services for the Enforcement of the Source Water Protection Plan

Whereas Section 8 of the Municipal Act, 2001, c.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, c.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 Section 48(1) of the Clean Water Act, 2006; as amended, provides that the council of a municipality and a board of health, planning board or source protection authority may enter into an agreement for the enforcement of the provisions of the Plan by the board of health, planning board or source protection authority in the municipality with respect to activities identified in the agreement, and for charging the municipality the whole or part of the cost;

And whereas the Town of South Bruce Peninsula is desirous of entering into an agreement with the Grey Sauble Conservation Authority for the provision of services as they relate to the Source Water Protection Plan and Part IV of the Clean Water Act, 2006.

Now therefore the Council of the Corporation of the Town of South Bruce Peninsula enacts as follows:

1. That the Mayor and Clerk are authorized to sign an agreement with Grey Sauble Conservation Authority for the provision of services as they relate to the Source Water Protection Plan and Part IV of the Clean Water Act, 2006.

2. That the agreement shall be attached hereto and form part of this by-law.

Read a first and second time this 16th day of February, 2016.

Mayor

Clerk

Read a third time and finally passed this 16th day of February, 2016.

Mayor

Clerk
Source Protection Plan – Part IV Enforcement Transfer Agreement

This Agreement made effective the 16th day of February, 2016.

Between:

The Town of South Bruce Peninsula

(hereinafter called “the Municipality”)

-and-

Grey Sauble Conservation Authority

(hereinafter called “the Authority”)

Preamble:

Whereas this Agreement is being entered into pursuant to the Clean Water Act, 2006 (hereinafter called the “Act”) for the purpose of appointing the Authority as agent of the Municipality with respect to the enforcement and jurisdictional rights under Part IV of the Act as part of the implementation of the Saugeen, Grey Sauble, Northern Bruce Peninsula Source Protection Plan (hereinafter called the “Source Protection Plan”);

And whereas the Authority is a Source Protection Authority for purposes of the Act and of this Agreement;

And whereas the Municipality is located within the Saugeen, Grey Sauble, Northern Bruce Peninsula Source Protection Region as set out in Ontario Regulation 284/07.

In conclusion of the mutual covenants herein contained, the parties hereby agree as follows:

Article One
Definitions

Section 1.1: Definition
Unless otherwise expressly provided in this Agreement, the words, phrases and expressions in this Agreement shall have the meaning attributed to them as follows:
Article Two
General

Section 2.1: Part IV Requirements under the Act
The Act provides that a municipality is responsible for Part IV Enforcement of Source Protection Plans. The Act further provides that a municipality may enter into an agreement for the enforcement of Part IV by a board of health, a planning board, or a Source Protection Authority.

Under this Agreement, the Municipality hereby appoints the Grey Sauble Conservation Authority as agent of the Municipality to carry out enforcement under Part IV of the Act.

Section 2.2: Application
The Grey Sauble Conservation Authority hereby accepts the appointment and agrees to act as agent of the Municipality for the duties and enforcement responsibilities of Part IV of the Act for those lands that are situated within the Saugeen, Grey Sauble, Northern Bruce Peninsula Source Protection Region.

Section 2.3: Duties
The Authority shall faithfully carry out the duties hereunder on a fee for service basis in accordance with the Act, the Source Protection Plan (as amended from time to time), this Agreement, and any other applicable legislation.

Article Three
Responsibilities

Section 3.1: Responsibilities of the Authority
The Authority is responsible for all the powers and duties of an enforcement body under Part IV of the Act. The duties and powers include but are not limited to those listed below:

a) Appoint such Risk Management Officials and Risk Management Inspectors as are necessary for the enforcement of Part IV of the Act.

b) Provide mapping to the Municipality and establish protocols in consultation with the Municipality to ensure Part IV requirements are incorporated into the review of applications under the Planning Act and Building Code Act.
c) Review applications under the Planning Act and Building Code Act as deemed necessary under the protocols referred to in 3.1(b) and issue notices with respect to Restricted Land Use policies prior to those applications proceeding.

d) Negotiate or, if negotiations fail, establish risk management plans with persons (business owners, landowner, tenants, and others) engaged or proposing to engage in an activity and at a location, subject to the Act.

e) Review and accept risk assessments under the Act.

f) Conduct inspections and use powers of entry on properties where reasonable and obtain inspection warrants from a court where required.

g) Issue notices and orders, prosecute any offences under Part IV of the Act and exercise any other powers set out under Part IV of the Act to ensure compliance with the policies in the Source Protection Plan.

h) Maintain records in accordance with the Act and make records available to the public when required to do so and to the Municipality upon request.

i) Prepare documentation and make provisions for staff to attend Environmental Review Tribunal Hearings, as required.

j) Report annually on activities as required under the Act and provide a copy of the annual report to the Municipality.

Section 3.2: Responsibilities of the Municipality
To facilitate implementation of this Agreement, the Municipality shall provide information and data required by the Authority to carry out its powers and duties under Part IV of the Act. In the event of termination of this Agreement, records will be transferred to the Municipality.

The Municipality shall adhere to agreed upon protocols to ensure Part IV requirements are incorporated into the review of:

a) Building permit applications; and

b) Applications under provisions of the Planning Act.

Article Four
Costs

Section 4.1: Responsibility for Cost of Service Delivery
The Municipality is responsible for the costs of the enforcement of Part IV of the Act. The Municipality shall pay the Authority as per Schedule A of this Agreement.
Section 4.2: Fees
The Municipality retains the ability under subsection 55 of the Clean Water Act to charge fees for costs associated with the enforcement of Part IV responsibilities, as appointed to the Grey Sauble Conservation Authority.

Section 4.3: Recovery of Legal Costs
The Authority, through consultation with the Municipality will recover from the Municipality costs incurred as a result of legal actions initiated by or against the Authority associated with executing its duties and powers under this Agreement and for costs associated with non-routine work including but not limited to enforcement orders, warrants, Environmental Review Tribunal Hearings and retention of third party experts. A ten percent (10%) enforcement and legal costs fund will be established to cover these costs. In the event that costs exceed the ten percent (10%) fund allocation, the Authority, through consultation with the Municipality will recover from the Municipality the remaining costs incurred.

Article Five
Officials and Inspectors

Section 5.1: Appointment
The Authority will appoint such Risk Management Officials and Risk Management Inspectors as are necessary pursuant to subsection 48(2) of the Act and shall issue a certificate of appointment as per subsection 48(3) of the Act.

Section 5.2: Qualifications
The Risk Management Officials and Risk Management Inspectors will be qualified as prescribed by the Regulation.

Article Six
Liabilities and Insurance

Section 6.1: Insurance
The Authority shall provide and maintain Commercial/Comprehensive General Liability insurance subject to limits of not less than Two Million Dollars ($2,000,000.00) inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof. The Authority shall provide and maintain Errors and Omissions insurance subject to limits of not less than an annual aggregate of Two Million Dollars ($2,000,000.00). Such insurance shall provide coverage for all errors and omissions made by the Authority, its officers, directors and employees in regard to the obligations of the Authority under this Agreement.

Section 6.2: Workplace Safety and Insurance Board (WSIB)
The Authority will provide upon request, verification of WSIB coverage.

Section 6.3: Indemnification
The Authority agrees to save harmless and indemnify the Municipality, and its employees, agents, assigns, directors and officers (collectively, the 'Indemnified Parties') from and against any claims, costs, fees, losses, damages or expenses of every nature and kind
whatsoever, including but not limited to governmental inquiries, administrative or judicial proceedings, which the Indemnified Parties might suffer, have imposed on, or incur in connection with or arising out of the Authority failing to perform its duties or responsibilities under this Agreement.

The Municipality agrees to save harmless and indemnify the Authority, and its employees, agents, assigns, directors and officers (collectively, the ‘Indemnified Parties’) from and against any claims, costs, fees, losses, damages or expenses of every nature and kind whatsoever, including but not limited to governmental inquiries, administrative or judicial proceedings, which the Indemnified Parties might suffer, have imposed on, or incur in connection with or arising out of: this Agreement; any enforcement duties or responsibilities; or otherwise in connection with the Act or any regulations thereunder.

Section 6.4: Smoking Policy
The Authority, as well as their employees, must at all times abide by the Town’s No Smoking Policy, Policy D.6.1, as well as any and all provincial and federal no smoking regulations, when performing the work under the Agreement.

Article Seven
Term, Renewal, Termination and Amendment of Agreement

Section 7.1: Initial Term
This Agreement shall continue in force for the period of 5 years, commencing on the 16th day of February, 2016 and ending the 15th day of February, 2021.

Section 7.2: Renewal
This Agreement will automatically continue following the expiry of the terms set out in Section 7.1 until it is:

a) Superseded or replaced by a subsequent agreement; or

b) Terminated in its entirety by either party by giving ninety (90) days written notice.

Section 7.3: Termination
The Agreement may be terminated by either party with a minimum of one hundred and eighty (180) days written notice.

Section 7.4: Amendment
This Agreement may be amended by mutual agreement from time to time to reflect changes in programs, funding and personnel in both parties, or changes in provincial policy or legislation.

Article Eight
Miscellaneous

Section 8.1: Preamble
The preamble hereto shall be deemed to form an integral part hereof.
Section 8.2: Instrument in Writing
This Agreement shall not be changed, modified, terminated or discharged in whole or in part except by instrument in writing signed by the parties hereto, or their respective successors or permitted assigns, or otherwise as provided herein.

Section 8.3: Assignment
This Agreement shall not be assignable by either party.

Section 8.4: Force Majeure
Any delay or failure of either party to perform its obligations under this Agreement shall be excused and this Agreement is suspended if, and to the extent that, a delay or failure is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, fires, floods, wind storms, riots, labour problems (including lock-outs, strikes and slow-downs) or court injunction or order.

Section 8.5: Notices
Any notice, report or other communication required or permitted to be given hereunder shall be in writing unless some other method of giving such notice, report or other communication is expressly accepted by the party to whom it is given and shall be given by being delivered by or mailed to the following addresses of the parties respectively:

a) To the Authority:
   General Manager / Chief Administrative Officer
   Grey Sauble Conservation Authority
   237897 Inglis Falls Road, RR4
   Owen Sound, ON N4K 5N6

b) To the Municipality:
   Attention: Municipal Clerk
   Town of South Bruce Peninsula
   PO Box 310
   315 George Street
   Wiarton, ON N0H 2T0

Any notice, report or other written communication, if delivered, shall be deemed to have been given or made on the date on which it was delivered to any employee of such party, or if mailed, postage prepared, shall be deemed to have been given or made on the third business day following the day on which it was mailed. Either party may at any time give notice in writing to the other party of the change of its address for the purpose of this Agreement.

Section 8.6: Headings
The Section headings hereof have been inserted for the convenience of reference only and shall not be construed to affect the meaning, construction or effect of this Agreement.

Section 8.7: Governing Law
The provisions of this Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario as at the time in effect.

In witness whereof the parties hereto have executed this Agreement as of the day and year written.

Grey Sauble Conservation Authority

__________________________  ______________________
Chair  Date

__________________________  ______________________
General Manager/ CAO  Date

We have the authority to bind the Conservation Authority

Town of South Bruce Peninsula

Name:  Position:  Title:  Date

Name:  Position:  Title:  Date

I/We have authority to bind the Municipality
### Schedule A
Costs/Fees***

<table>
<thead>
<tr>
<th>Total Estimated Costs* (first 5 years)</th>
<th>Year 1 2016</th>
<th>Year 2 2017</th>
<th>Year 3** 2018</th>
<th>Year 4** 2019</th>
<th>Year 5** 2020</th>
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<td>$235,246</td>
<td>$47,069</td>
<td>$47,069</td>
<td>$47,069**</td>
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<td>Office Expenses</td>
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<td>$1000</td>
<td>To be negotiated</td>
<td>To be negotiated</td>
<td>To be negotiated</td>
</tr>
</tbody>
</table>


* Costs include program administration, wages, benefits, travel, and operating costs

** Costs for the delivery of risk management services will be reviewed in year three and adjusted based on the number of risk management plans required and timeframe to complete Part IV responsibilities

***Should amendment to the Source Water Protection Plan as it relates to the Town of South Bruce Peninsula be made, both parties to this agreement hereby agree that they will consent to a review of the cost/fee arrangement outlined in this Schedule A. Costs/Fees may be adjusted based upon mutual consent and agreement of both parties.
The contractor shall provide and maintain the necessary first aid items and equipment as required under the First Aid Regulations of the Worker's Compensation Act and Occupational Health and Safety Act as applicable to the scope of work. This shall include but not be limited to the provision of an adequately maintained first aid kit which shall be present at the project or job site.

The contractor shall ensure that all employees are provided with and instructed in the use of safety equipment as required by the Occupational Health and Safety Act and by other regulations. Normal safety precautions should be observed while around and operating equipment.

The contractor, by executing the contract, unequivocally acknowledges that he/she is the constructor within the meaning of the Occupational Health and Safety Act and amendments thereto.

The Contractor shall ensure that all work areas are secured in a safe manner so as to eliminate any injury or harm to workers or persons. The Contractor shall abide by all Occupational Health and Safety regulations and shall ensure proper safety attire and equipment is inspected and being used at all times. The Contractor shall not leave equipment or materials in such locations which would cause harm to any person, animal or thing.

Where any injury, accident or incident occurs on or about the work area, the Contractor shall immediately notify the Town of South Bruce Peninsula and shall provide such documentation and follow up information as required by the Town.

The contractor hereby acknowledges by signing this form that he/she is aware of and shall view the Town of South Bruce Peninsula Health and Safety Policy Document. The Contractor hereby acknowledges that the Town, when requested, shall be permitted to view the Health and Safety Policies of the Contractor and any firm or sub-contractor associated with the works.

Name of Contractor / Firm (print)

Signature of Contractor Date