The Corporation of the Town of South Bruce Peninsula

By-Law Number 82-2016

A By-Law to Authorize the Mayor and Clerk to Sign
an Agreement with Harold Sutherland Construction
Ltd. for Upgrades to King’s Crescent

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 Town of South Bruce Peninsula owns, maintains, and is the authority having jurisdiction over the travelled road known has King’s Crescent;

And whereas Harold Sutherland Construction Ltd. desires to have access and egress to 407 King’s Crescent, Lot 4, Concession 7 EBR, Town of South Bruce Peninsula, formerly the Township of Albemarle, by way of King’s Crescent;

And whereas the Town deems it expedient to enter into an Agreement with Harold Sutherland Construction Ltd. for upgrades to King’s Crescent within the Town of South Bruce Peninsula.

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

1. That the Mayor and Clerk are hereby authorized to sign an Agreement with Harold Sutherland Construction Ltd. for upgrades to King’s Crescent.

2. That the Agreement referred to herein shall be attached hereto and form part of this by-law.

Read a first and second time this 20th day of September, 2016.

[Signatures]
Mayor
Clerk
Read a third time and finally passed this 20\textsuperscript{th} day of September, 2016.

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\text{Mayor}
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\text{Clerk}
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Road Agreement

Between

Harold Sutherland Construction Ltd.
hereafter referred to as the “Developer”

And

The Corporation of the Town of South Bruce Peninsula,
hereafter referred to as the “Town”

Whereas the Developer is the quarry operator of the lands described as 407 King’s Crescent (Roll # 41-02-590-005-00200, Lot 4, Concession 7 EBR), Town of South Bruce Peninsula, formerly the Township of Albemarle;

And whereas the Town owns a road allowance known as King’s Crescent, located between Lot 5 and Lot 6, Concession 7 EBR and Concession 8 EBR, former Township of Albemarle;

And whereas the Developer has approached the Town to obtain permission to widen, re-align and rebuild the travelled portion of the road known as King’s Crescent in order to handle increased traffic from heavy trucks. The portion of road to be rebuilt is from the more northerly entrance of King’s Crescent from Bruce Road 9, west to the entrance at 407 King’s Crescent.

Now therefore, this agreement witnesseth that in consideration of the sum of one dollar ($1.00) paid by the Developer to the Town, the receipt of which is hereby acknowledged, the Developer and the Town covenant and agrees as follows:

1. The Developer agrees to rebuild a segment of King’s Crescent in order to handle increased traffic from heavy trucks. The extent of construction is shown on Figure 1.

2. The Developer agrees that all road construction will be performed by the Developer at the sole cost and expense of the Developer.

3. The Developer agrees to comply with any and all provisions of the Town engineering standards as communicated to the Developer by the Town.

4. The Developer shall dig four (4) test holes in locations shown on the attached Figure 2. All four (4) locations are to be in sections of fill areas. It is unclear at this time what the road base consists of; once that has been determined a plan of construction can be put in place.
5. The Developer shall place a minimum of ten (10) inches of 4 inch crushed quarry material with a 5 inch covering of Granular “A”. If some Granular “B” exists in the test holes, then a value will be credited to the base by the Town to the Developer once that has been proven. If no Granular “B” is present and the road is currently constructed entirely of Granular “A”, the Developer shall remove that material and it can only be reused if the Town accepts its quality, or alternately it can utilized in the road widening.

6. The Developer shall widen the road to a minimum width of seven (7) meters wide with a one (1) meter shoulder. The alignment for the first 175 meters from Bruce Road 9 can remain, and the widening take place on both sides. Beyond the first 175 meters, the widening will be on the north side to bring the road centerline closer to the middle of the road allowance. This will require the rock outcrop to be removed or the road grade raised to cover it.

7. The Developer shall provide tree removal on the north side of the existing road both in the area of Test Hole 2 and from Test Hole 3 to the entrance to the quarry at 407 King’s Crescent. This will be to permit widening and clearance for motor vehicles.

8. As there is a rise in the road in the location of Test Hole 3 that limits visibility for east bound traffic, the Developer shall raise the centerline elevation for about 100 meters in length. This will help with sight lines for cars in both directions.

9. The Developer has requested to close the road to traffic within the construction zone while the work is occurring. The Developer shall be responsible for all aspects of the road closure including the supply of required road closure and detour signs to protect the work zone in conformance with the MTO Traffic Control Manual for Roadway Work Operations. The Developer shall provide a copy of their map of detours and road closures to the Town for approval. The Developer shall be responsible for notifying the area residents, school bus company, police service, fire department, and EMS of the road closure, and notifying the Town of any complaints or opposition to the closure.

10. The Developer has presented the work plan to the Saugeen Ojibway Nation for their review. A copy of the request and their response shall be submitted to the Town for our records.

11. The Developer shall present the proposed work program to the Ministry of Natural Resources and Forestry for their review. A copy of the request and their response shall be submitted to the Town for our records.

12. The Developer agrees that any road work must be built within the confines of the Municipal Road Allowance. The Developer will be responsible to obtain a survey, if required.

13. The Town agrees that the surface of the road will remain in a granular state.
providing positive drainage away from the road allowance.

14. Maintenance of the road re-alignment upon completion and acceptance by the Town will continue as the remainder of King's Crescent.

15. The Developer, his agents and all persons employed by him, or under his control including contractors and subcontractors, shall use due care to ensure that no person or property suffers injury or loss (including death) and no rights (including inventions, industrial property and patent rights) are infringed, as a result of or by reason of the prosecution of the works or operations of any set out above under this agreement or existence, location or condition of any vehicle, machinery, plant or materials used therein or due to the failure, neglect or omission of any of the persons set out above to do or perform any or all of the acts or things agreed to be done or performed under this agreement, and the Developer shall be solely responsible for all damages by whomsoever claimable in respect of any such loss, injury or infringement of rights. The Developer shall assume the defence of, indemnify and save the Town, its agents, officers, and employees harmless from all claims, demand loss, damages, actions, suits or other proceedings (and any costs, expenses, thereby incurred by the Town) by whomsoever made, brought or persecuted in any manner based upon, occasioned by, or attributed to any such loss, injury or infringement.

16. The Developer or his agent shall at all times pay or cause to be paid, any assessment or compensation required to be paid pursuant to the Worker's Compensation Act, and upon failure to do so, the Town may pay such assessment or compensation to the Worker's Compensation Board, and shall deduct or collect such expenses from any monies held by the Town under this agreement.

17. All monies payable to the Town by the Developer under any stipulation herein, or to the Worker's Compensation Board, as provided hereunder, may be recovered from the Developer or his surety in any court of competent jurisdiction, as a debt due to the Town of South Bruce Peninsula and the Town shall have full power to estimate such sum even though the amount of such sum to be so retained may be ascertained.

18. The Developer or his agent agrees at the time of entering into any contract with the Town of South Bruce Peninsula to provide a current and valid WSIB clearance certificate or independent operator status confirmation.

19. The Developer agrees that the WSIB clearance certificate or independent operator status confirmation shall remain valid and current throughout the construction project.

20. The Developer as a party hereto and his surety or himself, his executors, administrators, successors and assigns and any and all other parties in any way concerned, fully indemnify the Town all its officers, servants and employees for
any and all liability or expenses by way of legal costs or otherwise in respect of any claim which may be made for a lien or charge at law or in equity or to any claim or liability under the Mechanics' Lien Act or to any attachment or debt, garnishee process or otherwise.

21. Should any overseer or worker employed on or about the work or in connection therewith give any just cause for complaint, of which the Town shall be the sole judge, the Town shall notify the Developer in writing, stating the reasons therefore, and the Developer or his agent shall dismiss such persons forthwith from the work, and that person shall not again be employed by the Developer or his agent on any Town work without the consent in writing of the Town.

22. If the Developer or his agent neglects or compounds with his creditors to commit any act of insolvency, or shall transfer, assign or sublet, or attempt to transfer, assign or sublet this agreement, or any part thereof without the consent of the Town or if at any time the work or any part thereof is, in the judgement of the Town, not executed or not being executed in a sound or workmanlike manner and in all respects in strict conformity with the agreement, or if such work or any part thereof is not progressing continuously and in such manner as to ensure entire satisfaction, or to comply with any reasonable order the Developer or his agent may receive from the Town, or if the Developer or his agent shall persist in any course in violation of any of the provisions of the contract, after twenty-four (24) hours written notice from the Town to the Developer, the Town shall have the full right and power, without process or action at law, to take over the whole operation, or any part or parts thereof specified in the said notice. The Developer and his agents upon receiving notice to that effect shall immediately cease said operations or the part or parts thereof specified in the said notice, peaceably and the Town may assign the same to any other person or persons with or without previously being advertised. The Town may consider any action necessary or advisable in order to secure the completion of the said agreement to its satisfaction. The Developer and his agents shall be liable for all damages and expenditures including additional costs of the work which may be incurred by reason thereof. All of the powers of the Town with respect to the determination of the sum or sums, or balance of money to be paid to or received from the said Developer, and otherwise in respect of the agreement, shall nevertheless continue in force.

23. The Developer, agents, workers, persons employed or under his control shall use due care that no person is injured and that no property is damaged during the execution of the work. As the Developer is taking on the work for his benefit, he shall bear responsibility for all claims and hold the Town harmless in any and all actions resulting from this work. The Developer shall be solely responsible for all damages to person(s) or property including theft, whether the property is owned by the Town or any of its employees. The Developer shall deal with claims of any nature immediately including insurance claims, complaints from sub-trades, etc. If a claim is settled to the satisfaction of the claimant, the Developer shall submit to the Town, a copy of the claimant's release.
24. Should the Developer or any agents give, or offer any gratuity to, or attempt to bribe any member of the Town Council, officer or servants of the Town Council, the Town shall be at liberty to cancel the agreement forthwith or to direct Town officials to take the whole or any part of the works out of the hands of the Developer under the same provisions as those specified herein. Bribery shall be considered as non-fulfilment of the contract by the Developer.

25. The Developer or his agents shall take out with an insurer licensed to carry on business in Ontario, a comprehensive policy or public liability and property damage insurance acceptable to the Town and providing insurance coverage in respect to any one person and any one accident to the limit of at least two million ($2,000,000.00) dollars, exclusive of interest and cost, against loss or damage resulting from bodily injury to or death of one or more persons and loss of or damage to property and such policy shall name the Town as an additional insured thereunder and shall protect the Town against all damage or injury including death to any person or persons and for damage to any property of the Town or any other public or private property resulting from or arising out of any act or omission on the part of the Developer or any of his agents, workmen, employee or persons under his control, including sub-contractors during the execution of this agreement. Before the commencement of any of his operations hereunder, the Developer or his agent shall produce to the Town, certified copy of the policy or a certificate thereof upon request. The insurance coverage noted above shall be maintained in force throughout the term of this agreement.

26. Violation of any of the terms of this agreement shall render this agreement null and void.

27. This agreement shall remain in effect until November 30, 2016 or acceptance in writing by the Town of the work undertaken or another date if mutually agreed upon by the parties unless declared null and void.

28. No notice of termination shall be accepted by either party unless served one party to the other in written or typed form.

29. The Developer and/or his agents shall comply with all Federal, Provincial, and Town laws, statues, regulations and by-laws. The Developer shall be solely responsible for payment of any fines levied due to violation of Federal, Provincial, and Town laws, statues, regulations and by-laws as they pertain to the performance of this contract. This shall include compliance with the Occupational Health and Safety Act and the Accessibility for Ontarians with Disabilities Act and other acts as the case may be. The Developer or his agents shall upon request of the Town provide proof of compliance with legislation.

30. The Developer shall agree to sign and abide by the Town of South Bruce Peninsula Occupational Health & Safety Compliance Form for Developers, as attached to this agreement as Schedule 'A'.
31. It is hereby understood and agreed that the Developer or his agent will provide the equipment to be used in the construction of the road and that such equipment shall be suitable for these works. The equipment furnished is to be specifically designed for the use intended.

32. The Developer or his agent shall furnish and maintain all such equipment as is considered necessary for conducting the work in an acceptable manner and at a satisfactory rate of progress. All equipment, tools, and machinery used for handling materials and executing any part of the work shall be maintained in a satisfactory, safe efficient working condition. Equipment used by the Developer or his agent shall be such that no injury to the workers or property will result from its use. The Developer or his agent shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work and services performed hereunder. The Developer or his agent shall provide reasonable protection to prevent property loss or damage and/or personal injury to persons, including but not limited to employees performing such work and all other persons who may be affected thereby.

33. If at any time, in the opinion of the Town, damage is being done or is likely to be done to any fixture, equipment or any improvement thereon other than such portions as are part of the work by the Developer or his equipment or vehicles whether licensed or unlicensed, the Developer shall, on the direction of the Town and at the Developer's own expense make changes in, or substitutions for such vehicles or equipment, or shall alter such work in some manner so as to remove the cause of such damage to the satisfaction of the Town.

34. The Developer agrees to provide to the Town upon execution of the agreement, a certified cheque, money order, bank draft or surety in the amount of $10,000.00. These monies are to be held by the Town and are considered a construction deposit. Said deposit may be cashed by the Town, without notice to the Developer if the Developer or his agent is in default of this agreement and the Town must proceed as outlined herein.

35. The Town shall hold the deposit until the road construction is complete to the satisfaction of the Town. Whatever amount is remaining, if any, upon the completion of the agreement will be refunded to the Developer.

36. The Developer agrees to the best of his abilities to ensure that work is completed no later than November 30, 2016. Should there be delays or circumstances impeding progress which are outside of the Developer's control, the Town has no remedy and the Developer will work with the Town to establish a revised date providing there is no hindrance to neighbouring properties or the enjoyment of said properties. Upon the completion of the work described in this Agreement the Developer will notify the Town and upon notification, the Town shall provide within 30 days, a written confirmation that the work has been completed to the Town's satisfaction or reasons describing otherwise.
37. Every provision of this agreement by which the Developer is obligated in any way shall be deemed to include the words "at the expense of the Developer" unless the context otherwise requires, including the payment of any and all applicable taxes.

38. References herein to any statute or any provision thereof include such statute or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto.

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

40. The failure of the Town at any time to require performance by the Developer or his agents of any obligation under this agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the Town of the performance of any obligation hereunder be taken or be held to be a waiver of the performance of the same or any other obligation hereunder at any later time. The Town shall specifically retain its rights at law to enforce this agreement.

41. The parties covenant and agree with each other not to call into question or challenge, directly or indirectly, in any proceeding or action in court, or before any administrative tribunal, the party's right to enter into and enforce this agreement. The law of contract applies to this agreement and the parties are entitled to all remedies arising from it. The parties agree that adequate consideration has flowed from each party to the other and that they are not severable. This provision may be pleaded by either party in any action or proceeding as an estoppel of any denial of such right.

42. This agreement shall be interpreted under and be governed by the laws of the Province of Ontario.

In Witness whereof the parties hereto have set their hands and seals this 20th day of September, 2016.

Harold Sutherland Construction Ltd.
323545 East Linton Rd. W. RR 2
Kemble, ON N0H 1S0

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

Janice Jackson, Mayor
Angela Cathrae, Clerk

Witness

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

The Developer 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 Developer 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 Developer 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 Developer shall immediately notify the Town of South Bruce Peninsula and shall provide such documentation and follow up information as required by the Town.

The Developer 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 Developer hereby acknowledges that the Town, when requested, shall be permitted to view the Health and Safety Policies of the Developer and any firm or sub-contractor associated with the works.

Name of Developer / Firm (print)

Signature of Developer

Date