

THE CORPORATION OF THE TOWNSHIP OF SOUTH STORMONT

BY-LAW NO. 2014-038

BEING a by-law to enter into an enforcement transfer agreement with the Raisin Region Conservation Authority.

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WHEREAS the *Municipal Act, 2001*, c. 25 s. 5 (1) provides that the powers of a municipal corporation are to be exercised by its council;

AND WHEREAS the *Municipal Act, 2001*, c. 25 s. 5 (3) provides that the powers of every council are to be exercised by by-law;

AND WHEREAS Council of the Township of South Stormont desires to enter into an agreement with the Raisin Region Conservation Authority for the enforcement of Part IV of the *Clean Water Act, S.O. 2006 c 22*, as amended, for the Regulation of Drinking Water Threats.

NOW THEREFORE Council of the Corporation of the Township of South Stormont enacts as follows:

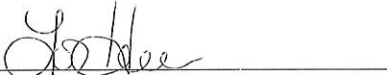
1. That the Township of South Stormont enter into an Enforcement Transfer Agreement with the Raisin Region Conservation Authority, under its authority as Raisin Region Source Protection Authority.
2. The Mayor and Chief Administrative Officer of the municipality are hereby authorized and directed on behalf of the Township of South Stormont to execute the Agreement attached hereto as Schedule "A" and forming part of this by-law.
3. Any other by-laws inconsistent with this by-law are hereby repealed.

READ AND PASSED in open Council, signed and sealed this 23<sup>rd</sup> day of April, 2014.

Mayor



Clerk



**SOURCE PROTECTION PART IV ENFORCEMENT TRANSFER AGREEMENT**

**THE AGREEMENT effective upon signing (the “Effective Date”).**

**BETWEEN:**

The Corporation of the Township of South Stormont  
(a Municipal Corporation under the *Municipal Act*, S.O. 2001 c.25)

(the “Municipality”)

- and -

The Raisin Region Conservation Authority  
(under its authority as Raisin Region Source Protection Authority)  
(a Conservation Authority under the *Conservation Authorities Act*, R. S. O. 1990 c. C-27)  
(the “Conservation Authority”, as a Source Protection Authority under the *Clean Water Act*, S.O.  
2006, c 22)

(the “Conservation Authority”)

**RECITALS:**

Under Part 4 (IV) of the *Clean Water Act*, S.O. 2006 c 22 as amended (the “Act”), the Conservation Authority (RRCA) serves as the Source Protection Authority for the Raisin Region Source Protection Area. Ontario Regulation 284/07, under the Act, designates the participating municipalities for the SNRCA when it acts as a Source Protection Authority.

Under s. 48. (1) of the Act, a municipality may enter into an agreement with a Source Protection Authority to enforce Part IV of the Act for the Regulation of Drinking Water Threats.

Under the Township of South Stormont Council Resolution # 160/2013, Council appointed the Raisin Region Conservation Authority as Risk Management Official and Risk Management Inspector for the Municipality pursuant to Part IV of the *Clean Water Act*, S.O. 2006.

This Agreement, entered into under the Act, delegates enforcement responsibilities of the Source Protection Plan, as amended from time to time, to the Conservation Authority, on the terms and conditions defined herein.

This Agreement is separate and complimentary to the existing Memorandum of Agreement between the Municipality and the Conservation Authority for technical review of Planning Act applications.

**CONSIDERATION:**

In consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Parties agree as follows:

**General – 1.0**

1.1 Application: This Agreement applies to all lands located in the Municipality that are subject to Part IV of the *Act* (“the Service Area”), and the Authority is responsible for enforcement of Part IV of the *Act*.

1.2 Duties: The Conservation Authority will carry out its duties in accordance with the *Act*, the Source Protection Plan in force from time to time, this Agreement, and other legislation contemplated hereunder, on a cost recovery basis.

**Definitions – 2.0**

In this Agreement:

- a. “Act” means the *Clean Water Act*, S.O. 2006, c.22 (CWA) including amendments thereto, unless expressly stated otherwise.
- b. “Agreement” means this document.
- c. “Conservation Authority” means the Raisin Region Conservation Authority.
- d. “existing activities” means an activity that took place before the Source Protection Plan’s effective date.
- e. “future sources” means a means a Municipal drinking water system that is added to the Assessment Report in the future.
- f. “Risk Management Inspector (RMI)” means a risk management inspector appointed under Part IV of the Act.
- g. “Risk Management Official (RMO)” means the risk management official appointed under Part IV of the Act.
- h. “Risk Management Plan” means a plan to reduce risks prepared in accordance with the regulations and the rules.

- i. “significant drinking water threat” means a drinking water threat that, according to a risk assessment, poses or has the potential to pose a significant risk under the Clean Water Act, 2006.
- j. “Source Protection Authority” means a conservation authority or other person or body that, under ss. 4 (2) or s. 5 of the Act, is required to exercise and perform the powers and duties of a drinking water source protection authority under the Act.
- k. “Source Protection Plan” means a drinking water source protection plan prepared under the Act for the Raisin-South Nation Region.
- l. “Vulnerable Area” means,
  - 1. a surface water intake protection zone, or
  - 2. a wellhead protection area;
 as identified in the South Nation or Raisin Region Assessment Reports.

**Roles and Responsibilities – 3.0**

**3.1 General Responsibilities:** The Conservation Authority shall be responsible for tasks associated with implementing Part IV of the Act. These tasks include: negotiating site-specific risk management plans; prohibiting activities; reviewing development proposals for activities of interest; reviewing risk assessments and related administrative, communications, and reporting tasks; and all other tasks required to effectively enforce Part IV of the Act (see Appendix A for types of services provided). The Conservation Authority will appoint a Risk Management Official and Inspectors as necessary to enforce Part IV of the *Act*.

The Conservation Authority will implement education and outreach programs as detailed in the Source Protection Plan.

**3.2 Responsibilities of the Municipality:** The Municipality will, where required by the Source Protection Plan, circulate to the Risk Management Official the following items for review and response for relevant properties within the areas designated for s. 59 Restricted Land Use in the Source Protection Plan:

- a. building permit applications and preliminary inquiries;
- b. municipal by-laws related to significant threat activities;
- c. planning proposals and applications (requests to amend official plans, zoning by-law amendments for both permanent and temporary use, site plan control applications, minor variances, plan of subdivision approvals, consent applications);
- d. other inquiries and applications relating to changes in land use activities; and
- e. other inquires appropriate to protect existing and future sources of drinking water.

**3.3 Performance of Duties:** While dialogue between the Conservation Authority's Risk Management Official / Risk Management Inspector and the Chief Administrative Officer or other staff of the municipality is encouraged, the Conservation Authority will, acting reasonably,

and in accordance with its Personnel Policy and the law, have discretion to determine the manner in which to perform the Services.

#### **Fees - 4.0**

**Fees covered by Source Protection Municipal Implementation Fund:** Where the Municipality receives funds from the Province under the Source Protection Municipal Implementation Fund and the Municipality provides these funds to the Conservation Authority the funds will be used to cover all eligible costs of Plan implementation activities.

The Conservation Authority will provide to the Municipality, in advance of the various reporting milestone dates, completed reports in a format acceptable to the Municipality and the Province.

During the period where Provincial funds are available, the Conservation Authority will assess and establish a fee structure for use when Provincial funding is no longer available. This fee structure will be reviewed and approved by the Conservation Authority Board of Directors.

When Provincial funding is not available, fees will be collected as follows:

4.1 **Collection of Fees – Existing Activities:** The Conservation Authority will collect and retain all fees for existing activities from the Municipality on a monthly basis for work performed by the Conservation Authority hereunder as compensation for its services provided hereunder. The Municipality will pay the invoice in full within 30 days of the invoice date.

4.2 **Collection of Fees – Future Activities:** The Conservation Authority will collect and retain all fees for future activities from the Applicant for work performed by the Conservation Authority hereunder as compensation for its services provided hereunder.

4.2 **Cost Recovery:** The Conservation Authority will ensure all costs are structured on a cost-recovery basis as described in the Act (c. 22, s. 55 (2)).

4.3 **Recovery of Tribunal and Legal Costs:** The Authority will recover any incurred costs from the applicable Municipality for any legal actions initiated against the Authority associated with executing the work under this Agreement, and for cost associated with attending the Environmental Review Tribunal in accordance with the Act (s. 70 to 77) provided that the Conservation Authority exercised reasonable care, skill, and diligence in the performance or rendering of any work for service required to be performed or rendered by the Conservation Authority, its agents, officials, employees, or sub-consultants or any of them.

#### **Inspectors and Officials - 5.0**

**Qualifications:** Inspectors and Officials will be qualified in accordance with the provisions of the Act and as prescribed by the regulations 2006, c. 22, s. 53 (1) and (2).

The Conservation Authority's Board of Directors will appoint a Risk Management Official and Risk Management Inspectors as are necessary as per s. 48 (1) and (2) of the Act.

## **Administration – 6.0**

### **6.1 Records:** The RMO shall:

- a. Maintain adequate records of all documents and materials used to perform duties required by this Agreement and in accordance with s.54(1) of the Act for the period of time required by s.11 of Ontario Regulation 287/07;
- b. Transfer all records to the municipality in the event that the Municipality re-assumes Part IV enforcement authority.
- c. Make records available to the public as per s.54(3) of the Act and if any person makes a request under the Municipal Freedom of Information and Protection of Privacy Act and related Regulations, as amended from time to time, or through other channels;
- d. Prepare and submit the annual progress report to the Source Protection Authority that is required by s.81 of the Act;
- e. Prepare and submit an annual progress report to the Municipality;
- f. Prepare forms and provide clerical services as necessary for the administration of this Agreement; and
- g. Provide mapping and establish protocols in consultation with municipal staff to efficiently apply s.59 of the Act.
- h. Circulate copies of relevant completed Risk Management Plans to the Municipality.

## **Insurance - 7.0**

7.1 **Insurance:** For the term of this Agreement, the Conservation Authority will, at the program's expense, maintain appropriate liability insurance. Proof of insurance is available upon request.

7.2 **Insured:** The Conservation Authority will carry a minimum liability insurance of \$5,000,000, will be responsible for all deductibles connected with any insurance claim filed and the Municipality will be additionally named insured under this policy.

## **Term and Termination of Agreement- 8.0**

8.1 **Term:** This Agreement will continue in force commencing upon signing for a term of (2) two years.

8.2 **Deemed Renewal:** This Agreement will automatically continue following the expiry of the term set out above 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.

8.3 **Early Termination:** This Agreement may be terminated by either party by giving (6) six months written notice.

8.4 **Termination for Default:** The Municipality may terminate this Agreement at any time prior to the end of the term set out in s. 8.1 if:

- a. the Conservation Authority has failed to comply with the Act or the Code in fulfilling its obligations under this Agreement; or

- b. the Conservation Authority is not carrying out its duties or obligations under this Agreement; and the Conservation Authority fails to remedy the problem in a manner satisfactory to the Municipality, acting reasonably, within 120 days of being notified by the Municipality in writing of any such problem.

8.5 Arbitration: If a dispute arises between the parties relating to any matter in this Agreement, the parties agree to resolve the dispute in compliance with the following procedures:

- a. To meet within a period of fifteen (15) days from the date a notice of dispute is filed by either party. Each party to be in attendance may be represented by legal counsel, to participate in good faith in negotiating a resolution of the dispute.
- b. To negotiate in good faith, personally and/or through counsel, for a period of thirty (30) days after the meeting.
- c. If, within the thirty (30) day period after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, to submit the dispute to arbitration.
- d. The parties will meet and appoint a single arbitrator. If they are unable to agree on a single arbitrator within fifteen (15) days, then upon written notice by any party to the other the matter will be settled by arbitration in accordance with the *Arbitrations Act, 1991*, of Ontario by delivery of a notice of arbitration to the other party.

#### **Miscellaneous - 9.0**

9.1 Preamble: The preamble hereto will be deemed to form an integral part hereof.

9.2 Amendments: This Agreement will 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.

9.3 Assignment: This Agreement will not be assignable by either party hereto without the written consent of the other party being first obtained.

9.4 Force Majeure: Any delay or failure of either party to perform its obligations under this Agreement will be excused and this Agreement is suspended if, and to the extent, that the delay or failure is caused by an event 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 lockouts, strikes and slow-downs) or court injunction or order.

9.5 By-Laws: Any by-laws, forms, applications, etc. related to significant threat activities will be provided by the Municipality to the Conservation Authority upon request at no charge.

9.6 Notices: Any notice, report or other communication required or permitted to be given hereunder will 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 by being delivered to an officer of such party during normal working hours or mailed to the following addresses of the parties respectively:

- a. To the Conservation Authority  
Raisin Region Conservation  
18045 County Road 2

Cornwall, ON, K6H 5T2  
Attention: General Manager / Secretary-Treasurer

b. To the Municipality:

The Township of South Stormont  
2 Mille Roches Road  
Long Sault, ON K0C 1P0  
Attention: Chief Administrative Officer

Any notice, report or other written communication, if delivered, will 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 prepaid, will be deemed to have been given or made on the third business day following the day on which it was mailed (unless at the time of mailing or within forty-eight hours thereof there will be a strike, interruption or lock-out in the Canadian postal service in which case service will be by way of delivery only). 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 Section.

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

9.8 Governing Law: The provisions of this Agreement will 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 set out below.

RAISIN REGION CONSERVATION AUTHORITY

Altan Blain MAY 12 / 14  
Chairman Date

Roger Hauke MAY 09<sup>th</sup> / 2014  
General Manager/  
Secretary-Treasurer Date

TOWNSHIP OF SOUTH STORMONT

Duncan McMillin April 23, 2014  
Mayor Date

Colin Apr 23 / 14  
Chief Administrative Officer Date



## APPENDIX "A"

### General Description of Services

- a) Inspect, monitor, and ensure compliance with prohibition policies under s. 57 of the *Act*.
- b) Inspect, monitor, and ensure compliance with risk management plans under s. 58 of the *Act*.
- c) Inspect Properties in Vulnerable Areas to confirm significant drinking water threats to determine the acceptability of, but not limited to, minor variances, lot line adjustments, review of official plans and zoning by-laws and amendments, site plan applications, draft plan of subdivision, consent applications, plan of condominium, building permit applications.
- d) Issue orders and notices and exercise any other powers set out under Part IV of the *Act* to ensure compliance with the Source Protection Plan.
- e) Negotiate risk management plans with persons (business owners, landowners, tenants, and others) related to existing or proposed significant drinking water threats in Vulnerable Areas.
- f) Review and accept risk assessments under s. 60 of the *Act*.
- g) Receive and process applications and requests for activities listed in paragraphs (a) through (e) of section 3.2 of the agreement.
- h) Provide reports and comments on applications directly to the Municipality related to significant drinking water threats.
- i) Maintain adequate records of all documents and materials used in performing the duties required under this Agreement, and in accordance with s. 54. (1) of the *Act*;
- j) Consult with various groups regarding compliance with provisions of the *Act* relating to significant drinking water threats.
- k) Use powers of entry on properties where reasonable, as detailed in s. 88 of the *Act*, and obtain inspection warrants from a court where required.
- l) Investigate complaints and existing significant drinking water threats, undertake compliance counseling, issue enforcement orders, and cause a thing to be done as it relates to existing and proposed significant drinking water threats.
- m) Prepare documentation necessary for the Environmental Review Tribunal Hearings as described in the *Act* (s. 70-77). Perform all duties under the *Provincial Offences Act, R.S.O. 1990, c.P.33*.
- n) All forms and clerical services necessary for the administration of this Agreement.
- o) Complete the annual report required under s. 81 of the *Act*.
- p) Any other matters related to the administration or enforcement of the *Act* or Source Protection Plan relating to the regulation of significant drinking water threats.

- q) Provide promptly to the municipalities, as may be required from time to time, copies of documents used by Conservation Authority staff in the performance of their duties under this Agreement.
- r) Respond to inquiries made by any person made under the *Municipal Freedom of Information and Protection of Privacy Act* and related Regulations, as amended from time to time, or through other legal channels;
- s) Provide education and outreach to properties within the Vulnerable Areas as described in the Source Protection Plan policies, as amended from time to time.
- t) Pass regulations/policies under s. 55 of the Act for:
  - i. prescribing classes of risk management plans and classes of risk assessments;
  - ii. establishing and governing an inspection program for the purpose of enforcing this Part;
  - iii. providing for applications under s. 58, 59 and 60 and requiring the applications to be accompanied by such plans, specifications, documents and other information as is set out in the by-law, resolution or regulation;
  - iv. requiring the payment of fees for receiving an application under s. 58, 59 or 60, for agreeing to or establishing a risk management plan under s. 56 or 58, for issuing a notice under s. 59, for accepting a risk assessment under s. 60, or for entering property or exercising any other power under s. 62, and prescribing the amounts of the fees;
  - v. requiring the payment of interest and other penalties, including payment of collection costs, when fees referred to in clause (d) are unpaid or are paid after the due date;
  - vi. providing for refunds of fees referred to in clause (d) under such circumstances as are set out in the by-law, resolution or regulation;
  - vii. prescribing forms respecting risk management plans, acceptances of risk assessments, notices under s. 59 and applications under s. 58, 59 and 60, and providing for their use;
  - viii. prescribing circumstances in which a person with qualifications prescribed by the regulations may act under clause 56 (9) (b), 58 (15) (b) or 60 (2) (b). 2006, c. 22, s. 55 (1).