

**BY-LAW NUMBER 17-116**

**OF**

**THE CORPORATION OF THE TOWNSHIP OF CLEARVIEW**

**A By-law to authorize the entering into an agreement between the Nottawasaga Valley Conservation Authority and The Corporation of the Township of Clearview for the purposes of appointing the Nottawasaga Valley Conservation Authority as agents of the municipality to carry out enforcement under Part IV of the Clean Water Act, 2006.**

**WHEREAS** the Clean Water Act, 2006 authorizes the municipality to appoint agents with respect to the enforcement and jurisdictional rights under Part IV of the Act as part of the implementation of the South Georgian Bay Lake Simcoe Source Protection Plan;

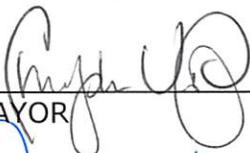
**AND WHEREAS** the Nottawasaga Valley Conservation Authority is a Source Protection Authority for the purposes of the Source Water Protection Act, 2006;

**AND WHEREAS** the municipality is located within the South Georgian Bay Lake Simcoe Source Protection Region as set out in Ontario Regulation 284/07;

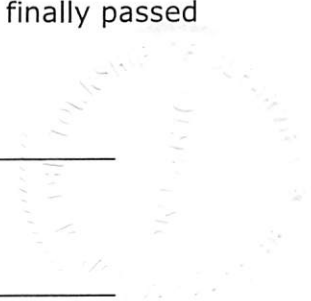
**NOW THEREFORE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF CLEARVIEW HEREBY ENACTS AS FOLLOWS:**

1. The Mayor and Clerk are hereby authorized and directed to execute a Source Protection Plan Part IV Enforcement Transfer Agreement with Nottawasaga Valley Conservation Authority, in the form attached hereto as Schedule "A" and Schedule "A" forms part of this By-law.
2. This By-law shall come into force and take effect on the date of its passing.

By-law Number 17-116 read a first, second and third time and finally passed this 11<sup>th</sup> day of December, 2017.

  
MAYOR

  
DIRECTOR OF LEGISLATIVE SERVICES/CLERK



**SCHEDULE "A" to By-law 2017-116**

**SOURCE PROTECTION PLAN PART IV ENFORCEMENT TRANSFER AGREEMENT**

THIS AGREEMENT made effective the 11<sup>th</sup> day of December, 2017.

BETWEEN:

**THE CORPORATION OF THE TOWNSHIP OF CLEARVIEW,**  
(hereinafter called "the Municipality")

OF THE FIRST PART

- and -

**NOTTAWASAGA VALLEY CONSERVATION AUTHORITY**

(hereinafter called "the Authority")

OF THE SECOND PART

**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 agents of the Municipality with respect to the enforcement and jurisdictional rights under Part IV of the *Act* as part of implementation of the South Georgian Bay Lake Simcoe 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 South Georgian Bay Lake Simcoe Source Protection Region as set out in Ontario Regulation 284/07.

**IN CONSIDERATION** of the mutual covenants herein contained, the parties hereby agree as follows:

**ARTICLE ONE**

**GENERAL**

**Section 1.01: Source Protection Authority**

Under section 4 of the *Act*, the Nottawasaga Valley Conservation Authority (NVCA) serves as the Source Protection Authority for the Nottawasaga Valley Source Protection Area. Ontario Regulation 284/07 under the *Act* designates the

participating municipalities for the NVCA when they act as the Source Protection Authority under the *Act*.

### **Section 1.02: Part IV Requirements under the Act**

The *Act*, provides that municipalities are 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.

The Municipality hereby appoints the NVCA as the agents of the Municipality to carry out enforcement under Part IV of the *Act* within the Municipality.

### **Section 1.03: Application**

This Agreement shall be applicable to all lands located in the Municipality that are subject to Part IV of the *Act*.

The Authority hereby accepts the appointment and agrees to act as Agents of the Municipality for the duties and enforcement responsibilities of Part IV of the *Act* for the lands located within the Municipality.

### **Section 1.04: Duties**

The Authority shall faithfully carry out their duties hereunder on a fee for service basis in accordance with the *Act*, the South Georgian Bay Lake Simcoe Source Protection Plan (as amended from time to time), this Agreement, and any other applicable legislation.

## **ARTICLE TWO**

### **DEFINITIONS**

#### **Section 2.01: Definitions**

Unless otherwise expressly provided in this Agreement, the words, phrases and expressions in this Agreement shall have the meanings attributed to them as follows:

1. In this Agreement:
  - a) "*Act*" means the Ontario *Clean Water Act, 2006*, as amended;
  - b) "Agreement" means this document;
  - c) "parties" means the Authority and the Municipality;
  - d) "the Regulation" means *Clean Water Act Regulation 287/07*
  - e) "Risk Management Inspector" means a Risk Management Inspector appointed under Part IV of the *Act*;
  - f) "Risk Management Official" means the Risk Management Official appointed under Part IV of the *Act*;

- g) "Source Protection Authority" means a Conservation Authority or other person or body that, under subsection 4 (2) or section 5 of the *Act*, is required to exercise and perform the powers and duties of a drinking water Source Protection Authority under the *Act*;
- h) "Source Protection Plan" means a drinking water source protection plan prepared under the *Act*.

### **ARTICLE THREE**

### **RESPONSIBILITIES**

#### **Section 3.01: 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 in this Section.

The Authority shall:

- (i) Appoint such Risk Management Officials and Risk Management Inspectors as are necessary for the enforcement of Part IV of the *Act*.
- (ii) 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*.
- (iii) Review applications under the *Planning Act* and *Building Code Act* as deemed necessary under the protocols referred to in (ii) and issue notices with respect to Restricted Land Use policies prior to those applications proceeding.
- (iv) Negotiate or, if negotiations fail, establish risk management plans with persons (business owners, landowners, tenants, and others) engaged or proposing to engage in an activity and at a location subject to the *Act*.
- (v) Review and accept risk assessments under the *Act*.
- (vi) Conduct inspections and use powers of entry on properties where reasonable and obtain inspection warrants from a court where required.
- (vii) Issue orders and notices, 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 Part IV policies in the South Georgian Bay Lake Simcoe Source Protection Plan.

- (viii) 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.
- (ix) Prepare documentation and make provisions for staff to attend Environmental Review Tribunal Hearings.
- (x) Report annually on activities as required under the *Act* and provide a copy of the annual report to the Municipality.

### **Section 3.02: Responsibilities of the Municipality**

The Municipality shall adhere to agreed upon protocols (including circulating certain applications to the Risk Management Official) to ensure Part IV requirements are incorporated into the review of:

- (i) building permit applications;
- (ii) applications under provisions of the Planning Act that are prescribed in section 62 of the Regulation; and
- (iii) generally cooperate with and assist the Authority with the protection of safe drinking water.

### **Section 3.03: Information and Data Sharing**

To facilitate implementation of this Agreement:

- (i) The Municipalities shall provide information and data required by the Authority to carry out their powers and duties under Part IV of the *Act*.
- (ii) The Authority shall provide records related to their powers and duties under Part IV of the *Act* to the Municipality, upon request. In the event of termination of this Agreement, records will be transferred to the Municipality.

## **ARTICLE FOUR**

### **COSTS**

#### **Section 4.01: Responsibility for Cost of Service Delivery**

The Municipality is responsible for the costs of the enforcement of Part IV of the *Act* where costs are not recovered through user fees.

#### **Section 4.02: Fee Schedule**

The Authority will pass a resolution/ policy pursuant to Section 55 of the *Act* to establish a user fee schedule where funding is not otherwise available to cover costs for Part IV enforcement. The fees will be for the purpose of cost recovery and, in accordance with sub-section 55 (2) of the *Act*, the fees will not exceed the

anticipated reasonable costs of the enforcement of Part IV of the *Act*. The Authority will review, and if necessary amend, the fees annually in consultation with the Municipality and with approval from the Authorities' Boards of Directors. Notification and consultation will occur in accordance with the Authority board approved guidelines for cost recovery as amended from time to time.

**Section 4.03: Collection of Fees**

The Authority will collect and retain all user fees payable by any person for work performed by the Authority under this Agreement.

**Section 4.04: Recovery of Extraordinary Costs**

The Authorities, in consultation with the Municipality and prior to any expenditure for an extraordinary cost, will recover from the Municipality extraordinary costs incurred as a result of legal actions initiated 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 and Environmental Review Tribunal Hearings.

**ARTICLE FIVE**

**OFFICIALS AND INSPECTORS**

**Section 5.01: 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 to the Risk Management Officials and Risk Management Inspectors as per subsection 48 (3) of the *Act*.

**Section 5.02: Qualifications**

The Risk Management Officials and Risk Management Inspectors will be qualified as prescribed by the Regulation.

**ARTICLE SIX**

**LIABILITIES AND INSURANCE**

**Section 6.01: 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 Authorities, their officers, directors and employees in regard to the obligations of the Authority under this Agreement. Such insurance shall be kept in force for the two years following termination of this Agreement.

Such insurance shall be in the name of the Authority and shall name the Municipality as an additional insured there under. Evidence of insurance satisfactory to the Municipality shall be provided to the Municipality prior to the commencement of work. The Authority shall annually provide the Municipality with Certificate(s) of Insurance confirming that the said insurance policies are in good standing.

**Section 6.02: Workplace Safety and Insurance Board (WSIB)**

The Authority will provide upon request, verification of WSIB coverage.

**Section 6.03 Save Harmless and Indemnify**

The Municipality agrees to save harmless and indemnify the Authorities, and their employees, agents, directors and officers (collectively, the 'indemnified parties') from and against any losses, damages or expenses of every nature and kind whatsoever which the indemnified parties, or any of them, might suffer 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.

**ARTICLE SEVEN**

**TERM, RENEWAL, TERMINATION AND AMENDMENT OF AGREEMENT**

**Section 7.01: Initial Term**

This Agreement shall continue in force for a period of 3 years, commencing on the 1st day of January, 2018 and ending the 31st day of December, 2020.

**Section 7.02: Deemed Renewal**

This Agreement will automatically continue following the expiry of the term set out in Section 7.01 until it is:

- a. Superseded or replaced by a subsequent agreement; or
- b. Terminated in its entirety by either party by giving 90 days written notice.

**Section 7.03: Termination**

The Agreement may be terminated by either party with a minimum of 180 days written notice.

**Section 7.04: 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.

## **ARTICLE EIGHT**

### **MISCELLANEOUS**

#### **Section 8.01: Preamble**

The preamble hereto shall be deemed to form an integral part hereof.

#### **Section 8.02: 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 8.03: Assignment**

This Agreement shall not be assignable by either party.

#### **Section 8.04: 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 8.05: 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 or mailed to the following addresses of the parties respectively:

- (a) To the Authorities:

*Nottawasaga Valley Conservation Authority  
John Hix Conservation Area  
8195 Line 8, Utopia, Ontario L0M 1T0  
Attention: General Manager / Secretary-Treasurer*

- (b) To the Municipality:

*The Corporation of the Township of Clearview  
Box 200 217 Gideon Street  
Stayner, Ontario L0M 1S0  
Attention: Municipal Clerk / Chief Administrative Officer*

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 prepaid, shall 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 shall be a strike, interruption or lock-out in the Canadian postal service in which case service shall 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 Agreement.

**Section 8.06: Headings**

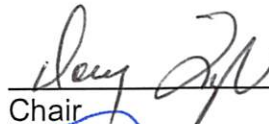

The Section headings hereof have been inserted for the convenience of reference only and shall not be construed to affect the meaning, construction or effect of this Agreement.

**Section 8.07: 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 first written above.

**NOTTAWASAGA VALLEY CONSERVATION  
AUTHORITY**

 Chair	<u>Jan 24, 2018</u> Date
 CAO/Secretary-Treasurer	<u>Jan 8, 2018</u> Date

**THE CORPORATION OF THE TOWNSHIP  
OF CLEARVIEW**

 Mayor	<u>December 15, 2017</u> Date
 Municipal Clerk	<u>December 11, 2017</u> Date

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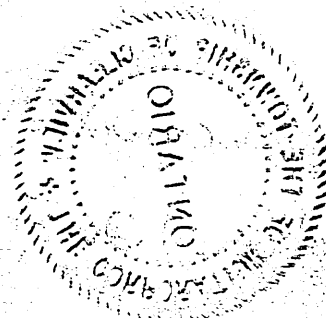
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