

THE CORPORATION OF THE TOWNSHIP OF SOUTH DUNDAS

BY-LAW NO. 2012-88

A BY-LAW to extend an Agreement with South Nation River Conservation Authority for sewage system management services.

WHEREAS the *Municipal Act*, 2001, S.O. 2001, Chapter 25, Section 5(3), as amended, provides that the powers of the municipality shall be exercised by by-law.

AND WHEREAS the Council of the Township of South Dundas desires to extend an Agreement with South Nation River Conservation Authority for the purpose of enforcing provisions pursuant to the *Building Code Act*, 1992 S.O. 1992 c.23 as amended and the Building Code O. Reg. 350/06 (“the Building Code”) as it relates to sewage systems.

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

1. That an Agreement be executed with South Nation River Conservation Authority in accordance with Schedule “A” attached to this by-law for a period of five (5) years.
2. That the Mayor and Clerk are hereby authorized to execute all documents as may be required to effectively carry out this Agreement.

READ and passed in open Council, signed and sealed this 20th day of November, 2012.

MAYOR

CLERK

Schedule "A" to By-Law No. 2012-88

SEWAGE SYSTEM MANAGEMENT AGREEMENT

This Agreement dated November 1, 2012.

BETWEEN:

SOUTH NATION RIVER CONSERVATION AUTHORITY

(A Conservation Authority under the *Conservation Authorities Act, R.S.O. 1990 c. C-27*)
(the "Conservation Authority")

-AND-

THE TOWNSHIP OF SOUTH DUNDAS

(A Municipal corporation under the *Municipal Act, 2001, S.O. 2001 c. 25*)
(the "Municipality")

RECITALS:

1. Pursuant to the *Building Code Act, 1992 S.O. 1992 c.23 as amended* (the "Act"), a Municipality may enter into Agreement with a Conservation Authority having jurisdiction in the Municipality to enforce provisions of the Act and the Building Code O. Reg. 350/06 ("the Building Code"), related to sewage systems.
2. This Agreement is entered into pursuant to the Act, delegating to the Conservation Authority certain responsibilities under the Act and Building Code, as amended from time to time, for Sewage Systems as defined herein.

IN CONSIDERATION of the mutual covenants herein contained, the Parties agree as follows:

ARTICLE ONE

General

Section 1.01 Applications:

This Agreement applies to all Properties in the Municipality serviced by Sewage Systems ("the Service Area").

Section 1.02 Duties:

The Conservation Authority shall carry out its duties in accordance with the Act and the Building Code in force from time to time, this Agreement, and any other legislation contemplated hereunder.

ARTICLE TWO

Definitions

Section 2.01

In this Agreement:

- (i) "Act" means the Building Code Act, S.O. 1992, c.23 (BCA) including amendments thereto.
- (ii) "Building Code" means regulations made under Section 34 of the BCA.
- (iii) "Conservation Authority" means South Nation River Conservation Authority.
- (iv) "Permit" means written permission or written authorization to perform work regulated under the provisions of the Building Code and Act.
- (v) "Sewage System" means:
 - (a) a chemical toilet, an incinerating toilet, a re-circulating toilet, a self-contained portable toilet and all forms of privy including a portable privy, an earth pit privy, a pail privy, a privy vault and a composting toilet system.
 - (b) a grey water system,
 - (c) a cesspool,
 - (d) a leaching bed system, or
 - (e) a system that requires or uses a holding tank for the retention of hauled sewage at the site where it is produced before its collection by a hauled sewage system, where these,
 - (f) have a design capacity of 10 000 litres per day or less,
 - (g) have, in total, a design capacity of 10 000 litres per day or less, where more than one of these are located on a lot or parcel of land, and
 - (h) are located wholly within the boundaries of the lot or parcel of land on which is located the building or buildings they serve

- (vi) “Sewage System Inspector” means an employee of South Nation Conservation designated for the purpose of implementing Part VIII of the Ontario Building Code.

ARTICLE THREE

Services of the Conservation Authority

Section 3.01 Services:

The Conservation Authority shall provide the following services in the Service Area (the “Services”):

- (i) Inspection of Properties, not serviced by municipal sewage services, which are planned to be divided by severance, to ensure that each lot will be suitable for the installation of a Sewage System.
- (ii) Inspection of Properties prior to the issuance of a Permit for the construction, installation, establishment, enlargement, extension or alteration of a Sewage System.
- (iii) Following the issuance of a Permit, inspection, and repeat inspection when necessary, of Sewage System installations to ascertain compliance with the permit and other requirements under the Act or Building Code.
- (iv) Inspection of Properties to determine the acceptability of applications for minor variances or lot line adjustments, concerning existing and proposed Sewage Systems and review of official plans and zoning by-laws and amendments to ensure compliance with provisions of the Act and Building Code relating to Sewage Systems.
- (v) Issue permits under the Act and the Building Code relating to Sewage Systems (a “Permit”).
- (vi) Receive and process applications and requests related to activities listed in paragraphs (i) through (v) of this section.
- (vii) Provide reports and comments on minor variances and severances directly to the appropriate planning authority related to septic systems.
- (viii) Review planning documents including, but not limited to, subdivision proposals, draft official plans, and proposed amendments, to ensure compliance with provisions of the Act and Building Code relating to Sewage Systems.

- (ix) Maintain adequate records of all documents and other materials used in performing the duties required under this Agreement.
- (x) Consult with various groups regarding compliance with provisions of the Act and Building Code relating to Sewage Systems.
- (xi) Respond to inquiries made by any person 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.
- (xii) Investigate complaints and malfunctioning Sewage Systems, undertake compliance counseling and preparation of reports for abatement action as it relates to existing and proposed Sewage Systems.
- (xiii) Issue orders under the Act relating to Sewage Systems.
- (xiv) Prepare documentation necessary for prosecutions including prosecuting violations relating to Sewage Systems under the Building Code. Perform all duties related to prosecutions relating to Sewage Systems pursuant to the *Provincial Offences Act*, R.S.O. 1990, c.P.33 and the Building Code.
- (xv) All forms and clerical services necessary for the administration of this Agreement.
- (xvi) Any other matters related to the administration or enforcement of the Act or Building Code relating to Sewage Systems.
- (xvii) Provide promptly to the municipality, as may be required from time to time, copies of documents used by the Conservation Authority staff in the performance of their duties under this Agreement
- (xviii) Maintain an appropriate number adequately trained staff to carry out the services in a timely fashion

Section 3.02 Performance of Duties:

Although dialogue is encouraged between the Conservation Authority's Inspector and the Senior Administration Officer or Chief Building Official of the municipality, the Conservation Authority shall, acting reasonably, and in accordance with our Code of Conduct (*Appendix A*), and the law, have discretion in determining the manner in which to perform the Services.

ARTICLE FOUR

Fees

Section 4.01 Collection of Fees:

The Conservation Authority shall collect and retain all fees, as set out in *Appendix B*, payable by any person for work performed by the Conservation Authority hereunder as compensation for its services provided hereunder and all persons required to pay any such fee shall pay the fee to the Conservation Authority.

Section 4.02 Amendment of Fee Schedule:

The Conservation Authority will amend the fees as set out in *Appendix B* by applying a cost of living of 2% every year starting January 1st 2013.

ARTICLE FIVE

Inspectors

Section 5.01 Qualifications:

Inspectors shall be qualified in accordance with the provisions of the Building Code and shall be appointed by the Conservation Authority's Board of Directors as per section 6.2 (3) (4) of the Building Code Act.

ARTICLE SIX

Liability and Insurance

Section 6.01 Liability of the Conservation Authority:

South Nation Conversation (SNC) shall at their own expense within 10 days of notification of acceptance and prior to the commencement of work, obtain and maintain until the termination of the contract or otherwise stated, provide the Township with evidence of:

Commercial General Liability Insurance issued on an occurrence basis for an amount of not less than \$5,000,000 per occurrence / \$5,000,000 annual aggregate for any negligent acts or omissions by SNC relating to its obligations under this Agreement. Such insurance shall include, but is not limited to bodily injury and property damage including loss of use; personal injury; contractual liability; premises, property & operations; non-owned automobile; broad form property damage; broad form completed operations; owners & contractors protective; occurrence property damage; products; employees as Additional Insured(s); contingent employers liability; tenants legal liability; cross liability and severability of interest clause

Errors & Omissions Insurance for a limit of not less than \$1,000,000 on a claims made basis. Such coverage shall contain an extended reporting period of 24 months or be maintained for a period of two years subsequent to conclusion of services provided under this Agreement.

The Township of South Dundas shall be added as Additional Insured to the above noted policies with respect to the operations of the SNC. This insurance shall be non-contributing with and apply as primary and not as excess of any insurance available to the Township. SNC shall indemnify and hold the Township of South Dundas harmless from and against any liability, loss, claims, demands, costs and expenses, including reasonable legal fees, occasioned wholly or in part by any negligence or acts or omissions whether wilful or otherwise by SNC, their agents, officers, employees or other persons for whom the SNC is legally responsible.

Automobile Liability Insurance with respect to owned or leased vehicles used directly or indirectly in the performance of the services covering liability for bodily injury, death and damage to property with a limit of not less than \$5,000,000. inclusive for each and every loss.

The Policies shown above shall not be cancelled unless the Insurer notifies the Township in writing at least thirty (30) days prior to the effective date of the cancellation. The insurance policy will be in a form and with a company which are, in all respects, acceptable to the Township.

Section 6.02 Insurance:

For the term of this Agreement, the Conservation Authority will, at the program's expense, maintain liability insurance contracts of the nature, in the amounts and containing the terms and conditions, set out in *Appendix C*.

Section 6.03 Insured:

The Conservation Authority shall carry a minimum liability insurance of \$5,000,000 and the Municipality shall be additional named insured under this policy.

ARTICLE SEVEN

Term and Termination of Agreement

Section 7.01 Term:

This Agreement shall continue in force commencing November 1, 2012 for a term of 5 years.

Section 7.02 Deemed Renewal:

This Agreement shall 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.

Section 7.03 Early Termination:

Subject to Section 7.03, this Agreement may not be terminated prior to the end of the term set out in Section 7.01 hereto unless such termination is agreed to in writing by both parties hereto.

Section 7.04 Termination for Default:

The Municipality may terminate this Agreement at any time prior to the end of the term set out in Section 7.01 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 pursuant to 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.

Section 7.05 Arbitration:

If a dispute arises between the parties relating to any matter in this Agreement, the parties agree to resolve the dispute in strict 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 represented by legal counsel, to participate in good faith in negotiating a resolution of the dispute.
- (b) To negotiate in good faith, personally and 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.
- (e) The parties shall 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 shall be settled by arbitration in accordance with the *Arbitrations Act*, 1991, of Ontario by delivery of a notice of arbitration to the other party.

ARTICLE EIGHT

Miscellaneous

Section 8.01 Preamble:

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

Section 8.02 Amendments:

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 hereto without the written consent of the other party being first obtained.

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 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 lock-outs, strikes and slow-downs) or court injunction or order.

Section 8.05 By-Laws:

Any by-laws passed under Section 7 of the Building Code Act and all forms, applications, etc. related to sewage systems shall be provided to the Municipality by the Conservation Authority upon request at no charge.

Section 8.06 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 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

South Nation Conservation
38 Victoria Street
PO Box 29
Finch ON K0C 1K0

Attention: General Manager/Secretary Treasurer

b) To the Municipality:

Township of South Dundas
4296 County Road 31/Bank Street
PO Box 160
Williamsburg ON K0C 2H0

Attention: 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 Section.

Section 8.07 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 8.08 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 set out below.

**THE SOUTH NATION RIVER CONSERVATION
AUTHORITY**

Chairman Date

General Manager/
Secretary Treasurer Date

THE TOWNSHIP OF SOUTH DUNDAS

Mayor Date

Clerk Date

APPENDIX A SNC CODE OF CONDUCT

Purpose of this Code of Conduct

Authority to establish a Code of Conduct as per 7.1(1) of the Building Code Act, 1992 as amended for the Sewage System Inspector and the designated inspectors.

- a) To promote appropriate standards of behavior and enforcement actions by the Sewage System Inspector and designated inspectors in the exercise of a power or the performance of a duty under the Building Code Act or the building code.
- b) To prevent practices which may constitute an abuse of power, including unethical or illegal practices, by the Sewage System Inspector and designated inspectors in the exercise of a power or the performance of a duty under the Building Code Act or the building code.
- c) To promote appropriate standards of honesty and integrity in the exercise of a power or the performance of a duty under the Building Code Act or the building code by the Sewage System Inspector and the designated inspectors.
- d) Duty to Carry Identification as indicated in Section 15.23 of the Building Code Act and employment standards
- e) Inspection of Building Site as indicated in Section 12 (1) of the Building Code Act

Enforcement Guidelines

The Sewage System Inspector and designated inspectors appointed with South Nation Conservation shall comply with this code of conduct. The appointed Sewage System Inspector or the designated inspectors who fails to act in accordance with the provisions of this code may be subject to disciplinary action appropriate to the seriousness of the breach. All allegations concerning a breach of this code shall be made in writing.

Any person who has reason to believe that this code of conduct has been breached may bring the matter to the attention of the Sewage System Inspector. Where the allegation concerns the actions of the Sewage System Inspector, the matter may be brought to the attention of the senior staff person to whom the Sewage System Inspector reports.

The Sewage System Inspector or senior staff person who receives information, in writing, concerning a significant breach of this code shall investigate the matter, and where appropriate shall commence disciplinary action in accordance with the employment standards of the place of work. All communications received by a Sewage System Inspector or senior staff person concerning a breach of this code shall be held in confidence. The Sewage System Inspector or senior staff person shall advise the Board of Directors in writing about the particulars of the alleged breach, its investigation and the final disposition of the matter upon its conclusion.

Disciplinary Action

Disciplinary action arising from violation of the Code is the responsibility of South Nation Conservation, and will be based on the severity and frequency of the violation in accordance with employment laws and standards, and relevant collective agreements.

Code of Conduct

In exercising powers and performing duties under the Building Code Act and the building code, the Sewage System Inspector and designated inspectors shall:

- 1) Exercise powers in accordance with the provisions of the Building Code Act, the building code and other applicable law that governs the authorization, construction, occupancy and safety of buildings and designated structures, and the actions, duties and qualifications of the Sewage System Inspector and designated inspectors;
- 2) Act to identify and enforce compliance where significant contravention of the Act or regulations are known to exist;
- 3) Apply all relevant building laws, regulations and standards in a consistent and fair manner, where a personal interest may create a conflict;
- 4) Not accept any personal benefit which may create a conflict with their duties; or perform duties where a personal interest may create a conflict;
- 5) Obtain the counsel of persons with expertise where the Sewage System Inspector or designated inspectors does not possess sufficient knowledge to make an informed judgment; and
- 6) Act honestly, reasonably and professionally in the discharge of their duties

Public Notice

This code of conduct shall be brought to the attention of the public in the following manner:

- Posting on Conservation Authorities website
- Public viewing attend the South Nation Conservation office and request a copy

**Appendix B
SNC Fee Schedule**

**2012-2013 – FEE SCHEDULE
PART VIII PROGRAM**

New Construction / Replacement

Class 2 (Grey water) & Class 3 (Cesspool)	\$325
Repeat Inspections	\$160
Class 4 & 5 (< 4000 l/d)	\$650
Repeat Class 4 & 5 (<4000 l/d) Inspections	\$160
Class 4 & 5 (≥ 4000 l/d & ≤ 10000 l/d)	\$950
Repeat Class 4 & 5 (≥ 4000 l/d ≤ 10000l/d) Inspections	\$200
Permit fee surcharge of 25% for all installation undertaken without a permit having	

first been obtained

Treatment Unit Alterations (No changes to disposal field)

Replacement/enlargement/relocation	\$325
Repeat Inspections	\$160
Adding Tertiary Treatment	\$325
Repeat Inspections	\$160
Tertiary Treatment Unit (Repair)	\$160

Disposal system alterations (Treatment Unit Alterations Included)

Adding Pumping/Dosing system	\$325
Repeat Inspections	\$160
Material Alteration	\$650
Repeat Inspections	\$160
Repair Pumping/Dosing system	\$160
Minor repair (ie. Level header)	\$160
Installation of Filter/Risers	\$160

Permit revisions (Certificate of Change)

Change of tertiary treatment unit type	\$160
Pipes and Stone to Chambers (equal area)	\$325
Chambers to Pipes and Stone (increase)	\$325
Pipes and Stone to Chambers (reduction)	\$325
Addition of fixtures or Living area (<u>NO</u> flow increase)	\$160
Increased design flow and/or elevation changes	\$160
Change in type of system (ie. Conventional to Tertiary)	\$325
Different location on property- Site Evaluation	\$160

Repeat Inspections	\$160
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Permit Renewal & Expiration

Owner renews permit (first six months)	\$160
Owner renews permit (second six months)	\$160

(A maximum of two six months renewals will be granted)

Permit Cancellation and Transfers

<u>Administrative Revision</u>	\$ 80
Owner transfers permit to new owner (no changes)	\$160
Owner cancels application (no inspection done)	80%
Owner cancels application (no permit issued)	50%
Owner cancels application (permit issued)	33%
Owner changes designer or contractor	\$650

Renovations / Changes of use permits - (Part 10 & 11 of the Ontario Building Code)

PHASE 1 - File Search (no report issued)	\$ 40
PHASE 2 - No site visit (report issued)	\$140
PHASE 3 - Site Visit (compliance report issued)	\$140

Land Control and Lot Creation (Planning Act)

<u>Minor Variances and zoning by-laws (site visit required)</u>	\$160
Consent Applications (per application)	\$325
Subdivision Lots (per lot)	\$200
(Maximum fee of 5,000.00\$)Condominium lots	\$200
(Maximum fee of 5,000.00\$)File Searches (images only)	\$ 40

File Searches (images and legal report) \$ 60

Administrative Fees	
Additional Copies of Permit documents (photocopies)	\$ 20
Photocopies of other documents	\$1.00 per copy

**Appendix C
Insurance Information**

SCHEDULE OF COVERAGE

Policy Section - Statutory Defence Indemnity Legal Expenses

Limit of Liability:

(a) \$25,000.00 – EACH OCCURRENCE LIMIT.

Each occurrence limit is the maximum payable in respect of all claims or legal proceedings arising out of the same original cause, event or circumstance for each Insured individual.

(b) \$100,000.00 – AGGREGATE LIMIT

The aggregate limit is the maximum amount payable during any policy period in respect of all claims or legal proceedings regardless of the number of claims or legal proceedings brought.

Deductible: NIL

Policy Section - Errors and Omissions Liability

Limit of Liability: \$1,000,000.00 each occurrence – any one conservation area
\$10,000,000.00 aggregate per POLICY PERIOD – for all
Conservation Authorities

Deductible: \$25,000.00 each LOSS excluding all expenses associated
with the investigation and defence of the loss

Policy Section - Umbrella Liability

Limit of Liability: \$9,000,000

Self Insured Retention: \$10,000

Excess of: Commercial General Liability
Errors & Omissions
Automobile Coverage's

Exclusions/Retentions: Mould
Asbestos
Terrorism
Data

Please refer to policy wording for additional exclusions.