THE CORPORATION OF THE MUNICIPALITY
OF NORTHERN BRUCE PENINSULA

BY-LAW 1999-33

BEING A BY-LAW TO AUTHORIZE AN AGREEMENT WITH THE MINISTRY OF ENVIRONMENT FOR FUNDING UNDER THE PROVINCIAL WATER PROTECTION FUND.

WHEREAS the Corporation of the Municipality of Northern Bruce Peninsula wishes to undertake and Environmental Study Report for the municipal water system in the community of Lion’s Head;

AND WHEREAS the Ministry of Environment has agreed to provide funding under the Provincial Water Protection Fund to assist with the cost of said study;

NOW THEREFORE the Council of the Corporation of the Municipality of Northern Bruce Peninsula enacts as follows:

1. That we enter into an agreement with Her Majesty the Queen in Right of Ontario as presented by the Minister of Environment relating to funding under the Provincial Water Protection Fund.

2. That the Mayor and Clerk-Administrator be and are hereby authorized to execute said agreement on behalf of the Corporation.

3. That a copy of said agreement be attached hereto and form a part of this by-law as Schedule “A”.

4. That this by-law shall come into force and take effect upon the final passing thereof.

READ A FIRST AND SECOND TIME THIS 14TH DAY OF JUNE, 1999.

READ A THIRD TIME, FINALLY PASSED, SIGNED AND SEALED THIS 14TH DAY OF JUNE, 1999.

MAYOR

CLERK-ADMINISTRATOR
DATE: ____________________

MINISTRY FILE REFERENCE: Water Works Study Project No. 87-1523-01

PROVINCIAL WATER PROTECTION FUND

AGREEMENT FOR:

WATER ENVIRONMENTAL STUDY REPORT

BETWEEN:

THE MUNICIPALITY OF NORTHERN BRUCE PENINSULA

referred to herein as the “Recipient”

AND:

HER MAJESTY, THE QUEEN IN RIGHT OF ONTARIO,

AS REPRESENTED BY THE MINISTER OF THE ENVIRONMENT

referred to herein as the “Ministry”

This Agreement defines the terms and conditions of a financial contribution to assist with a study to develop cost-effective solutions that address health and environment problems in a pro-active manner or reduce and defer capital investment pressures as follows:

Environmental Study Report on the water works in the Community of Lion’s Head in accordance with the Environmental Assessment Act and incorporating water efficiency or optimization component as appropriate.

Details of the study (upon consideration of the Recipient’s application for funding assistance under the Provincial Water Protection Fund) are more particularly described in Schedule A (herein referred to as the “Study”). The amount of assistance is based on the cost of the Study, population and relevant factors, as deemed by the Ministry. The details of the Eligible Costs, Payment Schedules, Description of Study, Maximum Financial Assistance and Projected Cash Flows for the Study are outlined in Attachments A and B, and Schedules A and B to this Agreement.
In consideration of the mutual covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties covenant and agree as follows:

SECTION 1.0 TERM OF AGREEMENT

1.1 Subject to any extension or termination of this Agreement pursuant to the provisions contained herein, this Agreement shall be in effect from the date of execution by the parties below, up to and including March 31, 2005.

1.2 Notwithstanding Section 1.1 above, the Ministry shall not be obligated to provide financial assistance under this Agreement after March 31, 2001.

SECTION 2.0 STUDY AWARD AND COMPLETION

2.1 The Recipient shall be fully responsible for completing the Study including retaining an independent consultant or project manager satisfactory to the Ministry to carry out the Study. The Recipient shall make any other arrangements as necessary to properly carry out the Study. Where an Environmental Study Report is required, the Recipient shall ensure that:

2.1.1 an Environmental Assessment is conducted in accordance with the Municipal Engineers Association Class Environmental Assessment process, and that the Study conforms in all material ways to the Environmental Assessment Act; and

2.1.2 an Environmental Study Report is prepared where required by the Municipal Engineers Association Class Environmental Assessment process for municipal water and sewage projects, and that Phase 4 of the Environmental Assessment process is completed where required.

2.2 The Recipient agrees to adhere to the established cash flows in Schedule B as amended from time to time and agreed to by the Ministry.

2.3 Except as otherwise approved by the Ministry, all portions of the Study including project management, engineering and professional consulting, technical services, leasing contracts for specialized equipment will be eligible for funding assistance if an objective competitive process, as deemed by the Ministry, was used to acquire such services. Upon request, the Recipient shall provide sufficient documentation, in the opinion of the Ministry, to establish that this requirement has been met. Where technical or other services are provided by a project manager, this requirement will be met if an objective competitive process was used to acquire the services of the project manager. Requests for Proposal
(and Invitations to Tender where applicable) must be advertised in one or more of the following: a daily newspaper accessible to vendors in Ontario; the Daily Commercial News; an electronic bulletin board, such as, Electronic Tender Network or the MERX.

All purchases in excess of $100,000, except for professional engineering services, are required to follow the "Agreement on the Opening of Public Procurement for Ontario and Quebec".

2.4 The Recipient agrees to enter into an agreement with a consultant in connection with the Study within 3 months of signing this Agreement. Where this does not occur, the Ministry may withhold payment or terminate its obligations under this Agreement in accordance with Section 7.1 of this Agreement.

2.5 The results of the Study shall be submitted to the Ministry by December 31, 2000, or such longer period as is specified in writing by the Ministry, in a format acceptable to the Ministry. Upon request, the Recipient shall provide such information and permit such inspection of existing water and sewage works by the Ministry as necessary to confirm the results of the Study.

2.6 The Recipient and, through the Recipient, its consultant represents and warrants that it has investigated and satisfied itself that, to the best of its knowledge, any materials or documents produced under this Agreement or any part thereof do not infringe any patent or copyright or any other intellectual property rights including trade secrets.

2.7 The Recipient and, through the Recipient, its consultant hereby grants the Ministry a non-exclusive and unlimited licence to use, in whole or in part, any materials or documents produced under this Agreement or any part thereof in the original or, notwithstanding any moral rights, modified form and to copy and distribute at no cost such materials or documents, without payment to the Recipient.

2.8 The Recipient and, through the Recipient, its consultant represents and warrants that it has the authority to grant the licence referred to in Section 2.7 above.

2.9 The Recipient shall ensure that its consultant provides the Ministry with the representations and warranties referred to in Sections 2.6 and 2.8, in writing, and grants a licence, in writing, to the Ministry with the terms and conditions referred to in Section 2.7 above.

2.10 The Recipient shall submit the final claims with the required documentation for approval, cost reviews, audits and settlement within 3 months of completion of
take this into account. In addition, the Ministry may require repayment for some
or all of the financial assistance of the Study in an amount to be determined by
the Ministry and within the period specified by the Ministry.

3.6 In the event of new information, errors, omissions or other circumstances
affecting the determination of the amount of financial assistance under this
Agreement, the Ministry may, in its sole discretion, adjust the amount of financial
assistance for the Study or any other project(s) of the Recipient under the
Provincial Water Protection Fund, or any other provincial program(s) (either
current or future), to take this into account. In addition, the Ministry may require
repayment for some or all of the financial assistance of the Study in an amount
to be determined by the Ministry and within the period specified by the Ministry.

3.7 The Recipient acknowledges and agrees that financial assistance under this
Agreement shall not be construed as a guarantee or assurance that financial
assistance will be provided in relation to the construction and implementation of
related works.

3.8 Sections 3.4, 3.5 and 3.6 shall survive the expiration or early termination of this
Agreement.

SECTION 4.0 PAYMENT PROCEDURES

4.1 Payments will be made in accordance with Attachment B and relevant terms of
this Agreement. Payment of financial assistance is contingent on receipt and
approval by the Ministry of invoices and a detailed statement of costs for the
eligible expenses under this Agreement, including Attachment A. Payment of
financial assistance on any invoice is subject to the approval of the Ministry.

4.2 The Recipient shall submit the detailed statement of costs claimed and
 corresponding invoices together with updated Projected Cash Flows as set out in
Schedule B, signed by the Chief Financial Officer or other authorized official of
the Recipient, on a quarterly basis in a form satisfactory to the Ministry. The
costs claimed must be reasonable and supported by documentation acceptable
to the Ministry.

4.3 The Recipient shall provide such information and in such form in relation to
payment of financial assistance as is specified from time to time by the Ministry.
As a condition precedent to payment of financial assistance, invoices and proper
documentation as specified in this Agreement must be submitted for the approval
of the Ministry.

4.4 The Ministry may, in its sole discretion, withhold payment where the Recipient is
in default of compliance with any provisions of this Agreement or any applicable
environmental legislation.
SECTION 6.0 INFORMATION REQUIREMENTS

6.1 The Recipient, and through the Recipient, its consultant performing work under this Agreement shall maintain and keep all records and documentation relating to the Study for 5 years after completion of the cost reviews, audits and settlement by the Ministry referred to in Section 2.10 of this Agreement and, upon request, submit all records and documentation relating to the Study including, but not limited to, background information and data used in the development of the Study, invoices, proposals (tenders where applicable), correspondence, memoranda, agreements/contracts and amendments thereto. All accounting records and documentation shall be maintained in accordance with generally accepted accounting practices and principles.

6.2 Upon request, the Recipient shall submit the information referred to in Section 6.1 in a form satisfactory to the Ministry and the Recipient shall follow such administrative procedures as are specified from time to time by the Ministry.

6.3 If, in the opinion of the Ministry, any of the information requirements of Section 6.1 and 6.2 of this Agreement are not met, the Ministry may, in its sole discretion, require the information as a condition precedent to any payment in relation to the Study or any other project(s) of the Recipient under the Provincial Water Protection Fund, or any other provincial program(s) (either current or future). In addition, the Ministry may require repayment for some or all of the financial assistance for the Study in an amount to be determined by the Ministry and within the period specified by the Ministry.

6.4 Sections 6.1, 6.2 and 6.3 shall survive the expiration or early termination of this Agreement.

SECTION 7.0 EARLY TERMINATION

7.1 If, in the opinion of the Ministry, the Recipient fails to proceed diligently with the Study or abandons the Study in whole or in part, or the Recipient is otherwise in default in carrying out any of the terms, conditions or obligations of this Agreement, the Ministry may, by giving notice in writing to the Recipient, withhold payment or terminate this Agreement.

7.2 In the event that this Agreement is terminated pursuant to Section 7.1 above, the Ministry may, in its sole discretion, refrain from making any payment in relation to monies due or accruing due. The Ministry may, in its sole discretion, pay to the Recipient a portion of the financial assistance for costs incurred by the Recipient in connection with the Agreement up to and including the date of any such termination. In addition, the Ministry may require repayment for some or all of the financial assistance in an amount to be determined by the Ministry and within
SECTION 9.0 OTHER

9.1 Any report or publication relating to this Agreement or the Study shall be at the Recipient’s own expense and shall reflect the financial participation of the Ministry in the Study, unless otherwise agreed to by the Ministry.

9.2 In the performance and observance of the terms and conditions of this Agreement, time is of the essence and no extension or variation of this Agreement shall operate as a waiver of this provision.

9.3 This Agreement, including:

- ATTACHMENT A - Eligible Costs
- ATTACHMENT B - Payment Schedules
- SCHEDULE A - Description of Study
- SCHEDULE B - Maximum Financial Assistance and Projected Cash Flows

constitutes the entire Agreement between the parties. There are no prior or collateral agreements or representations.

9.4 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

9.5 The validity or enforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions hereof and such invalid or unenforceable provisions shall be deemed to be severable.

9.6 The failure by the Ministry to insist in one or more instances on performance by the Recipient of any of the terms or conditions of this Agreement shall not be construed as a waiver of the Ministry’s right to require further performance of any such terms or conditions, and the obligations of the Recipient with respect to such performance shall continue in full force and effect.

9.7 The headings are not to be considered part of this Agreement and are included solely for convenience and not intended to be full or accurate descriptions of the content of the paragraphs.

9.8 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada.
or commitment in the name of or on behalf of the Ministry and the Recipient acknowledges that it is not by the terms of this Agreement or otherwise, granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the Ministry or to bind the Ministry in any manner whatsoever other than as specifically provided in this Agreement.

9.16 The Ministry acknowledges that, in connection with carrying out the terms of this Agreement, the Recipient may engage one or more employees, agents, consultants or project managers. The Ministry acknowledges and agrees that the Recipient shall have the sole authority and responsibility for such employees, agents, consultants or project managers including their hiring and termination. The Recipient acknowledges and agrees that the Recipient shall be responsible for all acts and actions of the Recipient’s employees, agents, consultants and project managers and that all such acts and actions shall be treated as actions of the Recipient for the purposes of this Agreement.

In witness whereof, the Recipient and the Ministry have respectively executed and delivered the Agreement on the dates set out below.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF THE ENVIRONMENT

Name: 
Title: 
Date:

THE MUNICIPALITY OF NORTHERN BRUCE PENINSULA

Name: 
Title: 
Date: June 14/99

Chief Clerk, Clerk, Administrator

2. Engineering, Professional and Technical Services

a) Eligible costs include reasonable costs of the Recipient, as deemed by the Ministry, for project management, engineering and professional specialists, consulting, technical services for the Study as described in Schedule A and purchased in accordance with Section 2.3 of the Agreement.

b) Except as otherwise approved by the Ministry, all portions of the Study including project management, engineering and professional consulting, technical services, leasing contracts for specialized equipment will be eligible for funding assistance if an objective competitive process, as deemed by the Ministry, was used to acquire such services. Upon request, the Recipient shall provide sufficient documentation, in the opinion of the Ministry, to establish that this requirement has been met. Where technical or other services are provided by a project manager, this requirement will be met if an objective competitive process was used to acquire the services of the project manager. Requests for Proposal (and Invitations to Tender where applicable) must be advertised in one or more of the following: a daily newspaper accessible to vendors in Ontario; the Daily Commercial News; an electronic bulletin board, such as, Electronic Tender Network or the MERX.

All purchases in excess of $100,000, except for professional engineering services, are required to follow the "Agreement on the Opening of Public Procurement for Ontario and Quebec".

Individual service contracts for less than $25,000, if directly assigned, will be eligible for funding assistance only if sufficient justification for direct assignment, as deemed by the Ministry, has been provided by the Recipient.

c) The costs associated with the selection of a competent project manager, consulting engineer and other professional and technical consultants are eligible provided that the costs are reasonable in the opinion of the Ministry. The Recipient's in-house costs associated with this selection are not eligible.

d) The Recipient's in-house costs including labour, project management and engineering costs, administrative costs and overhead, executive costs, equipment including vehicles are not eligible. The cost of contract, part time and student labour hired especially for the Study are eligible.

e) Costs incurred prior to September 1, 1997 are not eligible.

3. Land Costs

a) The cost of land, property taxes, legal, survey, and appraisal fees are not eligible.
ATTACHMENT B

Attached to and forming part of an Agreement between Her Majesty, the Queen in Right of Ontario, as represented by the Minister of the Environment, (the “Ministry”) and The Municipality of Northern Bruce Peninsula (the “Recipient”).

Payment Schedules

Subject to the terms of this Agreement, the Ministry will make payments based on quarterly claims on the Study by the Recipient, which include the expenses incurred to date and may include a projection of the costs to be incurred for the current quarter. The Ministry will hold back an amount (normally 10%) of each advance, in its sole discretion, which will be released after completion of the Ministry’s final cost review for the Study, subject to an adjustment in accordance with the terms of this Agreement. Claims for payment must be substantiated with satisfactory documentation as deemed by the Ministry.

The financial assistance advances for the Study will be processed in accordance with the following conditions:

<table>
<thead>
<tr>
<th>Condition</th>
<th>Maximum Cumulative Payments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministry Approval of Terms of Reference and concurrence with assignment of consultant</td>
<td>Based on the financial assistance on the claims submitted (less holdback and other deductions under this Agreement)</td>
</tr>
<tr>
<td>Completion of cost review and audit</td>
<td>Release of holdback or recovery of overpayments net of adjustments</td>
</tr>
</tbody>
</table>

Note 1:

An adjustment will be processed after the implementation and completion of the Study and upon receipt and approval by the Ministry of the final claim for the Study as required, all in accordance with Section 2.10 of this Agreement. The adjustment will equal the difference between the amount of the financial assistance as defined in Sections 3.1 to 3.8 (and relevant sections of this Agreement) and the total of the payments made to date.

Note 2:

The financial assistance is made after adjusting for contributions from other Provincial, Federal, Municipal sources or private sources received or receivable.
SCHEDULE B

Attached to and forming part of an Agreement between Her Majesty, the Queen in Right of Ontario, as represented by the Minister of the Environment, (the “Ministry”) and The Municipality of Northern Bruce Peninsula (the “Recipient”).

Maximum Financial Assistance

1. The maximum amount of financial assistance for the Study under this Agreement is $117,741 and is based on a maximum eligible cost of $130,823 and a fixed percentage assistance of 90%.

Projected Cash Flows

Water Works Study Project No. 87-1523-01

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>Quarter</th>
<th>Eligible Expenditures ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>Second</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Third</td>
<td>10,000</td>
</tr>
<tr>
<td></td>
<td>Fourth</td>
<td>35,000</td>
</tr>
<tr>
<td>2000</td>
<td>First</td>
<td>30,000</td>
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<tr>
<td></td>
<td>Second</td>
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</tr>
<tr>
<td></td>
<td>Third</td>
<td>25,823</td>
</tr>
<tr>
<td>2001</td>
<td>First</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$130,823</td>
</tr>
</tbody>
</table>

Estimated date of completion of Study September 2000.

Note 1: The above cash flows are based on milestones as determined by the Recipient. The Ministry may require the Recipient to provide such milestones and projected cash flows from time to time.