

# The Corporation of the Municipality of Brockton



## By-Law 2020-140

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Being a By-Law to Authorize the Signing of an Agreement With Grey Sauble Conservation Authority for the Purpose of Enforcement and Jurisdictional Rights Under Part IV of the Act as Part of the Implementation of the Saugeen, Grey Sauble, Northern Bruce Peninsula Source Protection Plan.

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**Whereas** the Grey Sauble Conservation Authority is a Source Protection Authority for purposes of the Act and of this Agreement;

**And Whereas** the Municipality of Brockton is located within the Saugeen, Grey Sauble, Northern Bruce Peninsula Source Protection Region as set out in Ontario Regulation 284/07;

**And Whereas** the Municipality of Brockton entered into an Enforcement Transfer Agreement with the Grey Sauble Conservation Authority pursuant to the *Clean Water Act, 2006, S.O. 2006, c. 22* for the purpose of appointing the Authority as agent of the Municipality with respect to the enforcement and jurisdictional rights under Part IV of the Act as part of the implementation of the Saugeen, Grey Sauble, Northern Bruce Peninsula Source Protection Plan on January 25, 2016 as per By-Law 2016-007 which is set to expire January 24, 2021;

**And Whereas** the Municipality of Brockton deems it expedient to enter into a new Enforcement Transfer Agreement with the Grey Sauble Conservation Authority pursuant to the *Clean Water Act, 2006, S.O. 2006, c. 22* for the purpose of appointing the Authority as agent of the Municipality with respect to the enforcement and jurisdictional rights under Part IV of the Act as part of the implementation of the Saugeen, Grey Sauble, Northern Bruce Peninsula Source Protection Plan;

**Now Therefore** the Council of the Corporation of the Municipality of Brockton enacts as follows;

- 1.0 That The Corporation of the Municipality of Brockton Council hereby enter into an agreement with Grey Sauble Conservation Authority which is attached as "Schedule A" and forms part of this By-Law;
- 2.0 The execution by the Mayor and Clerk of said agreement dated December 8, 2020 between the Corporation of the Municipality of Brockton and Grey Sauble Conservation Authority is hereby authorized, ratified, and confirmed.
- 3.0 This By-Law shall come into full force and effect upon final passage.
- 4.0 This By-Law may be cited as the "Grey Sauble Conservation Authority Source Protection Plan Enforcement Transfer Agreement By-Law".

**Read, Enacted, Signed and Sealed this 8th day of December, 2020.**

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Mayor – Chris Peabody

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Clerk – Fiona Hamilton

## **Source Protection Plan – Part IV Enforcement Transfer Agreement**

This AGREEMENT made effective the \_\_\_\_\_ day of \_\_\_\_\_ 2021.

BETWEEN:

### **THE MUNICIPALITY OF BROCKTON**

(hereinafter called “the Municipality”)

-and-

### **GREY SAUBLE CONSERVATION AUTHORITY**

(hereinafter called “the Authority”)

#### **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 agent of the Municipality with respect to the enforcement and jurisdictional rights under Part IV of the *Act* as part of the implementation of the Saugeen, Grey Sauble, Northern Bruce Peninsula Source Protection Plan (hereinafter called the “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 Saugeen, Grey Sauble, Northern Bruce Peninsula Source Protection Region as set out in Ontario Regulation 284/07.

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

### **ARTICLE ONE DEFINITIONS**

#### **Section 1.1: Definition**

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

- a) “*Act*” means the Ontario *Clean Water Act, 2006*, as amended;
- b) “Agreement” means this document;
- c) “the Regulation” means *Clean Water Act Regulation 287/07*;
- d) “Risk Management Official” means the Risk Management Official appointed under Part IV of the *Act*;
- e) “Risk Management Inspector” means a Risk Management Inspector appointed under Part IV of the *Act*;
- f) “Source Protection Plan” means a drinking water source protection plan prepared under the *Act*.

## **ARTICLE TWO GENERAL**

### **Section 2.1: Part IV Requirements under the Act**

The *Act*, provides that a municipality is 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.

Under this Agreement, the Municipality hereby appoints the Grey Sauble Conservation Authority as agent of the Municipality to carry out enforcement under Part IV of the *Act*.

### **Section 2.2: Application**

The Grey Sauble Conservation Authority hereby accepts the appointment and agrees to act as agent of the Municipality for the duties and enforcement responsibilities of Part IV of the *Act* for those lands that are situated within the Saugeen, Grey Sauble, Northern Bruce Peninsula Source Protection Region.

### **Section 2.3: Duties**

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

## **ARTICLE THREE RESPONSIBILITIES**

### **Section 3.1: 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 below:

- a) Appoint such Risk Management Officials and Risk Management Inspectors as are necessary for the enforcement of Part IV of the *Act*.
- b) 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*.

- c) Review applications under the *Planning Act* and *Building Code Act* as deemed necessary under the protocols referred to in 3.1(b) and issue notices with respect to Restricted Land Use policies prior to those applications proceeding.
- d) Negotiate or, if negotiations fail, establish risk management plans with persons (business owners, landowner, tenants, and others) engaged or proposing to engage in an activity and at a location, subject to the *Act*.
- e) Review and accept risk assessments under the *Act*.
- f) Conduct inspections and use powers of entry on properties where reasonable and obtain inspection warrants from a court where required.
- g) Issue notices and orders, 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 policies in the Source Protection Plan.
- h) 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.
- i) Prepare documentation and make provisions for staff to attend Environmental Review Tribunal Hearings, as required.
- j) Report annually on activities as required under the *Act* and provide a copy of the annual report to the Municipality.

### **Section 3.2: Responsibilities of the Municipality**

To facilitate implementation of this Agreement, the Municipality shall provide information and data required by the Authority to carry out its powers and duties under Part IV of the *Act*. In the event of termination of this Agreement, records will be transferred to the Municipality.

The Municipality shall adhere to agreed upon protocols to ensure Part IV requirements are incorporated into the review of:

- a) Building permit applications; and
- b) Applications under provisions of the *Planning Act*.

## **ARTICLE FOUR COSTS**

### **Section 4.1: Responsibility for Cost of Service Delivery**

The Municipality is responsible for the costs of the enforcement of Part IV of the *Act*. The Municipality shall pay the Authority as per Schedule A of this Agreement.

#### **Section 4.2: Fees**

The Municipality retains the ability under subsection 55 of the *Clean Water Act* to charge fees for costs associated with the enforcement of Part IV responsibilities, as appointed to the Grey Sauble Conservation Authority.

#### **Section 4.3: Recovery of Legal Costs**

The Authority, through consultation with the Municipality will recover from the Municipality costs incurred as a result of legal actions initiated by or 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, Environmental Review Tribunal Hearings and retention of third party experts. A ten percent (10%) enforcement and legal costs fund will be established to cover these costs. In the event that costs exceed the ten percent (10%) fund allocation, the Authority, through consultation with the Municipality will recover from the Municipality the remaining costs incurred.

### **ARTICLE FIVE OFFICIALS AND INSPECTORS**

#### **Section 5.1: 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 as per subsection 48(3) of the *Act*.

#### **Section 5.2: Qualifications**

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

### **ARTICLE SIX LIABILITIES AND INSURANCE**

#### **Section 6.1: 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 Authority, its officers, directors and employees in regard to the obligations of the Authority under this Agreement.

#### **Section 6.2: Workplace Safety and Insurance Board (WSIB)**

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

#### **Section 6.3: Indemnification**

The Authority agrees to save harmless and indemnify the Municipality, and its employees, agents, assigns, directors and officers (collectively, the 'Indemnified Parties') from and against any claims, costs, fees, losses, damages or expenses of every nature and kind

whatsoever, including but not limited to governmental inquiries, administrative or judicial proceedings, which the Indemnified Parties might suffer, have imposed on, or incur in connection with or arising out of the Authority failing to perform its duties or responsibilities under this Agreement.

The Municipality agrees to save harmless and indemnify the Authority, and its employees, agents, assigns, directors and officers (collectively, the 'Indemnified Parties') from and against any claims, costs, fees, losses, damages or expenses of every nature and kind whatsoever, including but not limited to governmental inquiries, administrative or judicial proceedings, which the Indemnified Parties might suffer, have imposed on, 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 7.1: Initial Term**

This Agreement shall continue in force for the period of 5 years, commencing on the \_\_\_\_\_ day of \_\_\_\_\_ and ending the \_\_\_\_\_ day of \_\_\_\_\_.

#### **Section 7.2: Renewal**

This Agreement will automatically continue following the expiry of the terms set out in Section 7.1 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 7.3: Termination**

The Agreement may be terminated by either party with a minimum of one hundred and eighty (180) days written notice.

#### **Section 7.4: 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 or legislation.

## **ARTICLE EIGHT**

### **MISCELLANEOUS**

#### **Section 8.1: Preamble**

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

#### **Section 8.2: 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 8.3: Assignment**

This Agreement shall not be assignable by either party.

**Section 8.4: 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 8.5: 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 by or mailed to the following addresses of the parties respectively:

- a) To the Authority:  
General Manager / Chief Administrative Officer  
Grey Sauble Conservation Authority  
237897 Inglis Falls Road, RR4  
Owen Sound, ON N4K 5N6
- b) To the Municipality:  
Attention: Municipal Clerk / Chief Administrative Officer  
Municipality of Brockton  
Box 68  
100 Scott St.  
Walkerton, ON N0G 2V0

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 prepared, shall be deemed to have been given or made on the third business day following the day on which it was mailed. 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 8.6: 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 8.7: 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 written.

**GREY SAUBLE CONSERVATION AUTHORITY**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
General Manager/ CAO

\_\_\_\_\_  
Date

We have the authority to bind the Conservation Authority

**MUNICIPALITY OF BROCKTON**

\_\_\_\_\_  
Name:      Position:      Title:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name:      Position:      Title:

\_\_\_\_\_  
Date

I/We have authority to bind the Municipality



## Schedule A

<b>Total Estimated Costs* (5 years)</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3**</b>	<b>Year 4**</b>	<b>Year 5**</b>
\$32,500	\$6,500	\$6,500	\$6,500**	\$6,500**	\$6,500**
<b>Payment Due</b>	February 15, 2021	February 15, 2022	February 15, 2023	February 15, 2024	February 15, 2025

\* Costs include program administration, wages, benefits, travel, and operating costs

\*\* Costs for the delivery of risk management services will be reviewed in year three and adjusted based on the number of risk management plans