

The Corporation of the Municipality of Brockton



By-Law 2021-046

Being a By-Law to Enter into a Transfer Payment Agreement in Order to Participate in the Fire Safety Grant Program

Whereas the *Municipal Act, 2001, S.O. 2001, c. 25, Section 5(1)*, as amended, provides that the powers of a municipal corporation are to be exercised by its council;

And Whereas the *Municipal Act, 2001, S.O. 2001, c. 25, Section 5(3)*, as amended, provides that a municipal power, including a municipality's capacity rights, powers and privileges under section 9; shall be exercised by By-Law;

And Whereas the Municipality of Brockton wishes to enter into a Transfer Payment Agreement with Her Majesty the Queen in right of Ontario as represented by the Office of the Fire Marshal in order to participate in the Fire Safety Grant Program;

Now Therefore the Council of the Corporation of the Municipality of Brockton **Enacts as Follows:**

- 1.0 That the Council of the Corporation of the Municipality of Brockton hereby authorizes entering into a transfer payment agreement with Her Majesty the Queen in right of Ontario as represented by the Office of the Fire Marshal in order to participate in the Fire Safety Grant Program as contained in the attached Schedule "A" to this By-Law.
- 2.0 That the Mayor and Clerk are hereby authorized to sign the extension of the agreement with Majesty the Queen in right of Ontario as represented by the Office of the Fire Marshal.
- 3.0 That this By-Law shall come into effect upon final passage.
- 4.0 This By-Law may be cited as the "Fire Safety Grant Transfer Payment Agreement By-Law".

Read, Enacted, Signed and Sealed this 13th day of April, 2021.

Mayor – Chris Peabody

Clerk – Fiona Hamilton

FIRE SAFETY GRANT TRANSFER PAYMENT AGREEMENT

THE AGREEMENT, effective as of the 13th day of April, 2021 (the “**Effective Date**”)

B E T W E E N :

**Her Majesty the Queen in right of Ontario
as represented by the Office of the Fire Marshal**

(the “**Province**”)

- and -

Municipality of Brockton

(the “**Recipient**”)

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Province and the Recipient agree as follows:

1.0 ENTIRE AGREEMENT

1.1 The agreement, together with:

Schedule “A” - General Terms and Conditions
Schedule “B” - Project Specific Information and Additional Provisions
Schedule “C” - Project
Schedule “D” - Budget
Schedule “E” - Reports, and
any amending agreement entered into as provided for in section 3.1,

constitutes the entire agreement between the Parties with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations and agreements.

2.0 CONFLICT OR INCONSISTENCY

2.1 In the event of a conflict or inconsistency between the Additional Provisions and Schedule “A”, the Additional Provisions will prevail.

3.0 AMENDING THE AGREEMENT

3.1 The Agreement may only be amended by a written agreement duly executed by the Parties.

4.0 ACKNOWLEDGEMENT

4.1 The Recipient acknowledges that:

- (a) the Funds are:
 - (i) to assist the Recipient to carry out the Project and not to provide goods or services to the Province;
 - (ii) funding for the purposes of the Public Sector Salary Disclosure Act, 1996 (Ontario);
- (b) the Province is not responsible for carrying out the Project; and
- (c) the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

The Parties have executed the Agreement on the dates set out below.

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO as represented by the Office of the Fire
Marshal**

Click or tap here to enter text.

Date

Signature: _____

Name: Douglas Browne

Title: Deputy Fire Marshal

Municipality of Brockton

April 13, 2021

Date

Signature: _____

Name: Chris Peabody

Title: Mayor

I have authority to bind the Recipient.

SCHEDULE “A”
GENERAL TERMS AND CONDITIONS

A1.0 DEFINITIONS

A1.1 Definitions. In the Agreement, the following terms will have the following meanings:

“Additional Provisions” means the terms and conditions set out in Schedule “B”.

“Agreement” means this agreement entered into between the Province and the Recipient, all of the schedules listed in section 1.1, and any amending agreement entered into pursuant to section 3.1.

“Budget” means the budget attached to the Agreement as Schedule “D”.

“Effective Date” means the date set out at the top of the Agreement.

“Event of Default” has the meaning ascribed to it in section A12.1.

“Expiry Date” means the expiry date set out in Schedule “B”.

“Funding Year” means:

- (a) in the case of the first Funding Year, the period commencing on March 31, 2021 and ending on August 31, 2021; and

“Funds” means the money the Province provides to the Recipient pursuant to the Agreement.

“Indemnified Parties” means Her Majesty the Queen in right of Ontario, Her ministers, agents, appointees and employees.

“Maximum Funds” means the maximum Funds set out in Schedule “B”.

“Notice” means any communication given or required to be given pursuant to the Agreement.

“Notice Period” means the period of time within which the Recipient is required to remedy an Event of Default, and includes any such period or periods of time by which the Province extends that time.

“Parties” means the Province and the Recipient.

“Party” means either the Province or the Recipient.

“Project” means the undertaking described in Schedule “C”.

“Reports” means the reports described in Schedule “E”.

A2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

A2.1 General. The Recipient represents, warrants and covenants that:

- (a) it is, and will continue to be a validly existing legal entity with full power to fulfill its obligations under the Agreement;
- (b) it has the full power and authority to enter into the Agreement and has taken all necessary actions to authorize the execution of the Agreement;
- (c) it has, and will continue to have the experience and expertise necessary to carry out the Project;
- (d) it is in compliance with, and will continue to comply with all federal and provincial laws and regulations, all municipal by-laws, and any other orders, rules and by-laws related to any aspect of the Project, the Funds or both; and
- (e) unless otherwise provided for in the Agreement, any information the Recipient provided to the Province in support of its request for funds (including information relating to any eligibility requirements) was true and complete at the time the Recipient provided it and will continue to be true and complete.

A2.2 Governance. The Recipient represents, warrants and covenants that it has, will maintain, in writing, and will follow:

- (a) a code of conduct and ethical responsibilities for all persons at all levels of the Recipient’s organization;
- (b) procedures to enable the Recipient’s ongoing effective functioning;
- (c) decision-making mechanisms for the Recipient;
- (d) procedures to enable the Recipient to manage Funds prudently and effectively;
- (e) procedures to enable the Recipient to complete the Project successfully; and
- (f) procedures to enable the preparation and submission of all Reports required pursuant to Article A6.0.

A3.0 TERM OF THE AGREEMENT

A3.1 Term. The term of the Agreement will commence on March 31, 2021 and will expire on the Expiry Date.

A4.0 FUNDS AND CARRYING OUT THE PROJECT

A4.1 Funds Provided. The Province will:

- (a) provide the Recipient up to the Maximum Funds allocated as part of this grant exercise;
- (b) provide the Funds to the Recipient in accordance with the payment plan set out in Schedule “D”; and
- (c) deposit the Funds into an account designated by the Recipient provided that the account:
 - (i) resides at a Canadian financial institution; and
 - (ii) is in the name of the Recipient.

A4.2 Use of Funds and Carry Out the Project. The Recipient will do all of the following:

- (a) carry out the Project in accordance with the Agreement;
- (b) use the Funds only for the purpose of carrying out the Project;
- (c) spend the Funds only in accordance with the Budget;
- (d) not use the Funds to cover any cost that has or will be funded or reimbursed by one or more of any third party, ministry, agency or organization of the Government of Ontario.

A5.0 CONFLICT OF INTEREST

A5.1 No Conflict of Interest. The Recipient will carry out the Project and use the Funds without a conflict of interest. The Recipient will disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest; and comply with any terms and conditions that the Province may prescribe as a result of the disclosure.

A6.0 REPORTING, ACCOUNTING AND REVIEW

A6.1 Preparation and Submission. The Recipient will submit to the Province at the address referred to in section A15.1, all Reports in accordance with the timelines and content requirements provided for in Schedule “E”, or in a form as specified by the Province from time to time.

A6.2 **Record Maintenance.** The Recipient will keep, maintain and make available to the Province, its authorized representatives or an independent auditor identified by the Province for inspection and copying:

- (a) all financial records (including invoices) relating to the Funds or otherwise to the Project in a manner consistent with generally accepted accounting principles; and
- (b) all non-financial documents and records relating to the Funds or otherwise to the Project.

A7.0 COMMUNICATIONS REQUIREMENTS

A7.1 **Acknowledge Support.** Unless otherwise directed by the Province, the Recipient will acknowledge the support of the Province for the Project in a form and manner as directed by the Province.

A7.2 **Publication.** The Recipient will indicate, in any of its Project-related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

A8.0 INDEMNITY

A8.1 **Indemnification.** The Recipient will indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, by whomever made, sustained, incurred, brought or prosecuted, in any way arising out of or in connection with the Project or otherwise in connection with the Agreement, unless solely caused by the negligence or wilful misconduct of the Indemnified Parties.

A9.0 INSURANCE

A9.1 **Recipient's Insurance.** The Recipient represents, warrants and covenants that it has, and will maintain, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person carrying out a project similar to the Project would maintain, including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than the amount provided for in Schedule "B" per occurrence. The insurance policy will include the following:

- (a) the Indemnified Parties as additional insureds with respect to liability

arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement;

- (b) a cross-liability clause;
- (c) contractual liability coverage; and
- (d) a 30 day written notice of cancellation.

A9.2 Proof of Insurance. If requested, the Recipient will provide the Province with certificates of insurance, or other proof as may be requested by the Province, that confirms the insurance coverage as provided for in section A9.1.

A10.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

A10.1 Events of Default. Each of the following events will constitute an Event of Default:

- (a) in the opinion of the Province, the Recipient breaches any representation, warranty, covenant or other material term of the Agreement, including failing to do any of the following in accordance with the terms and conditions of the Agreement:
 - (i) carry out the Project;
 - (ii) use or spend Funds; or
 - (iii) provide, in accordance with section A6.1, Reports or such other reports as may have been requested by the Province;
- (b) the Recipient's operations, its financial condition, or its organizational structure, changes such that it no longer meets one or more of the eligibility requirements of the program under which the Province provides the Funds;
- (c) the Recipient makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or a creditor makes an application for an order adjudging the Recipient bankrupt, or applies for the appointment of a receiver; or
- (d) the Recipient ceases to operate.

A10.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

- (a) initiate any action the Province considers necessary in order to facilitate the successful continuation or completion of the Project;

- (b) provide the Recipient with an opportunity to remedy the Event of Default;
- (c) suspend the payment of Funds for such period as the Province determines appropriate;
- (d) reduce the amount of the Funds;
- (e) cancel further instalments of Funds;
- (f) demand from the Recipient the payment of any Funds remaining in the possession or under the control of the Recipient;
- (g) demand from the Recipient the payment of an amount equal to any Funds the Recipient used, but did not use in accordance with the Agreement;
- (h) demand from the Recipient the payment of an amount equal to any Funds the Province provided to the Recipient; and
- (i) terminate the Agreement at any time, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

A10.3 When Termination Effective. Termination under this Article will take effect as provided for in the Notice.

A11.0 FUNDS AT THE END OF A FUNDING YEAR

A11.1 Funds at the End of a Funding Year. Without limiting any rights of the Province under Article A12.0, if the Recipient has not spent all of the Funds allocated for the Funding Year as provided for in the Budget, the Province may take one or both of the following actions:

- (a) demand from the Recipient the payment of the unspent Funds; and
- (b) adjust the amount of any further instalments of Funds accordingly.

A12.0 FUNDS UPON EXPIRY

A12.1 Funds Upon Expiry. The Recipient will, upon expiry of the Agreement, pay to the Province any Funds remaining in its possession or under its control.

A13.0 NOTICE

A13.1 Notice in Writing and Addressed. Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery or fax, and will be addressed to the Province and the Recipient respectively as provided for in Schedule “B”, or as either Party later designates to the other by Notice.

A13.2 **Notice Given.** Notice will be deemed to have been given:

- (a) in the case of postage-prepaid mail, five business days after the Notice is mailed; or
- (b) in the case of email, personal delivery or fax, one business day after the Notice is delivered.

A14.0 CONSENT BY PROVINCE AND COMPLIANCE BY RECIPIENT

A14.1 **Consent.** When the Province provides its consent pursuant to the Agreement, it may impose any terms and conditions on such consent and the Recipient will comply with such terms and conditions.

A15.0 INDEPENDENT PARTIES

A15.1 **Parties Independent.** The Recipient is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

A16.0 ASSIGNMENT OF AGREEMENT OR FUNDS

A16.1 **No Assignment.** The Recipient will not, without the prior written consent of the Province, assign any of its rights, or obligations under the Agreement. All rights and obligations contained in the Agreement will extend to and be binding on the Parties' permitted assigns.

A17.0 GOVERNING LAW

A17.1 **Governing Law.** The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

A18.0 FAILURE TO COMPLY WITH OTHER AGREEMENTS

A18.1 **Other Agreements.** If the Recipient:

- (a) has failed to comply with any term, condition or obligation under any other agreement with Her Majesty the Queen in right of Ontario or one of Her agencies (a "**Failure**");
- (b) has been provided with notice of such Failure in accordance with the

requirements of such other agreement;

(c) has, if applicable, failed to rectify such Failure in accordance with the requirements of such other agreement; and

(d) such Failure is continuing,

the Province may suspend the payment of Funds for such period as the Province determines appropriate.

A19.0 SURVIVAL

A19.1 **Survival.** All Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE “B”

PROJECT SPECIFIC INFORMATION AND ADDITIONAL PROVISIONS

Maximum Funds	\$6,900.00
Expiry Date	August 1, 2021
Insurance	\$ 2,000,000
Contact information for the purposes of Notice to the Province	Position: Address: Fax: Email:
Contact information for the purposes of Notice to the Recipient	Position: Chris Wells, Director of Fire and Emergency Services Address: 100 Scott Street, P.O. Box 68, Walkerton, ON N0G 2V0 Fax: 519-881-1877 Email: cwells@brockton.ca
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	Position: Trish Serratore, Chief Financial Officer Address: 100 Scott Street, P.O. Box 68, Walkerton, ON N0G 2V0 Fax: 519-881-2991 Email: tserratore@brockton.ca

Additional Provisions:

(None)

SCHEDULE “C”

PROJECT

The Municipal Fire Protection Grant has been established to provide critical support to municipalities in 2020-21 to offset costs and potential barriers for issues stemming from the COVID-19 pandemic. Such issues include access to training, and equipment or other critical upgrades that are needed at the local level to support virtual inspections.

Ontario’s fire departments vary in size and capacity and they all serve different communities that each present different levels of risk. There is a significant cost to ensure that every department has skilled first responders who are adequately trained and equipped to meet the needs of their community.

Funding could represent the difference in allowing fire departments to train more staff, purchase much needed equipment to allow them to adapt and respond to COVID-19 related risks in their communities in a way that ensures both community and personnel safety.

The use of the one-time 2020-21 Municipal Fire Protection Grant will focus on the needs of municipal fire departments to ensure community safety with a focus on issues that have presented due to the COVID-19 pandemic, including:

- Training to offset the pressures in training as a result of the COVID-19 pandemic.
- Specialty training to respond to the dynamics of the COVID-19 pandemic and the need to ensure fire safety in their communities such as virtual inspections.
- Small improvements to fire department infrastructure, such as accessing high speed internet to support training and virtual inspections.

The fire service has expressed concerns with training and fire code compliance since the start of the pandemic. Some of these concerns include critical inspections being delayed or impacted given the apprehension with entering premises. Similarly, training has been impacted given that fire services have been responding to challenges associated with the pandemic (staffing shortages, increased calls for service, etc.). Many departments continued training online as the Office of the Fire Marshal enhanced its online course availability at the start of the pandemic. This emergency COVID relief funding provides support for increased access to training, support for fire code compliance inspections through virtual inspections, and equipment or other critical upgrades that are needed at the local level to support community risks during the pandemic and the switch to virtual training and inspections.

<insert a copy of the letter of intent from the municipality to outline proposed use of funds>

SCHEDULE “D”

BUDGET

Funding will be provided to the <insert municipality name> upon execution of this Agreement. The funds will need to be spent by the municipality by August 1, 2021.

SCHEDULE “E”

REPORTS

As a condition of the Municipal Fire Protection Grant, a report back to the Office of the Fire Marshal must be received by September 1, 2021 to outline how the grant was utilized at the department level.