



Drinking Water Source Protection Program Agreement for the Enforcement of Part IV and Implementation of Policies Related to Education and Outreach

This Agreement made effective the _day of _____, 2020.

Between:

The Township of Douro-Dummer

(hereinafter called “the Municipality”)

of the First Part

- and -

Otonabee Region 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 an agent of the Municipality with respect to the enforcement and jurisdictional rights under Part IV of the Act and Policy G-5, Education and Outreach as part of implementation of the Trent Source Protection Plan.

And Whereas the Authority is a Source Protection Authority for the purposes of the Act and of this Agreement;

And Whereas the Municipality is located within the Otonabee-Peterborough Source Protection Area, in the Trent Conservation Coalition Source Protection Region as set out in Ontario Regulation 284/07;

And Whereas the Authority has significant expertise in Drinking Water Source Protection given it’s experience acting as the Otonabee-Peterborough Source Protection Authority (O-P SPA) for municipalities in the Otonabee-Peterborough Source Protection Area, and as a member of the Trent Conservation Coalition (TCC) Source Protection Region;

And Whereas a cooperative arrangement will be established between the Municipality and the Authority, whereby the Authority will assist the Municipality in meeting legislated municipal

responsibilities under the *Act* and Trent Source Protection Plan (SPP) including education and outreach requirements included in the SPP and the enforcement of Part IV under the *Act*.

In Consideration of the mutual covenants herein contained, the parties hereby agree as follows:

Article One

Definitions

Section 1.01: 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:

- (i) “*Act*” means the *Ontario Clean Water Act, 2006*, as amended;
- (ii) “*Agreement*” means this document;
- (iii) “*Board of Health*” refers to the Board of Directors of Peterborough Public Health;
- (iv) “*Conservation Authority*” means the Otonabee Region Conservation Authority;
- (v) “*Education and Outreach*” relates to activities required by Policy G-5 of the Trent Source Protection Plan;
- (vi) “*Parties*” means the Authority and the Municipality;
- (vii) “*Planning board*” means a planning board established under section 9 or 10 of the *Planning Act*;
- (viii) “*Program Service Fees*” means the agreed upon costs for delivery of services identified in Section 4.01 of this Agreement.
- (ix) “*The Regulation*” means *Clean Water Act Regulation 287/07*;
- (x) “*Risk Management Inspector*” means a Risk Management Inspector appointed under Part IV of the *Act*;
- (xi) “*Risk Management Official*” means the Risk Management Official appointed under Part IV of the *Act*;
- (xii) “*Risk Management Plan*” means a plan for reducing a risk prepared in accordance with the regulations and the rules;

- (xiii) “Significant drinking water threat” means a drinking water threat that, according to a risk assessment, poses or has the potential to pose a significant risk under the *Clean Water Act, 2006*;
- (xiv) “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*;
- (xv) “Source Protection Plan” means a drinking water source protection plan prepared under the *Act*;
- (xvi) “Vulnerable Area” means:
 - i. A surface water intake protection zone;
 - ii. A wellhead protection area;
 - iii. Significant groundwater recharge area; or
 - iv. Highly vulnerable aquifer.

Article Two

General

Section 2.01: Source Protection Authorities

Under Section 4 of the *Act*, the Otonabee Region Conservation Authority (ORCA) serves as the Source Protection Authority for the Otonabee-Peterborough Source Protection Area. Ontario Regulation 284/07 under the *Act* designates the participating municipalities for ORCA when they act as the Source Protection Authority under the *Act*.

Section 2.02: 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.

Section 2.03: Appointment of Agent

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

Section 2.04: Acceptance of Appointment

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

Section 2.05: Application

The activities related to the duties and enforcement of Part IV under the *Act* in this Agreement shall be applicable to all lands located in the Municipality that are subject to Part IV of the *Act*.

Section 2.06: Duties

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

Article Three

Responsibilities and Services

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, powers and services **include but are not limited to** those listed in this Section.

The Authority shall:

- (i) Appoint such Risk Management Official(s) and Risk Management Inspector(s) 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 and exercise any other powers set out under Part IV of the *Act* to ensure compliance with the Part IV policies in the Trent Source Protection Plan;

- (viii) Maintain records in accordance with the *Act* and make records available to the public when required to do so in accordance with the Municipal Freedom of Information and Protection of Privacy Act;
- (ix) Maintain records in accordance with the *Act* and make records available to the municipality upon request, and enter into Data Sharing Agreements as required;
- (x) Prepare documentation and make provisions for staff to attend Environmental Review Tribunal Hearings;
- (xi) Report annually on activities as required under the *Act* and provide a copy of the annual report to the Municipality;
- (xii) The Authority will also assist the Municipality with implementation of policies in the Trent Source Protection Plan related to Education and Outreach including the following activities: compilation of materials, development of material, where not otherwise available, distribution of materials to applicable parties (landowners, tenants etc.), use of various media for promotion, and provision of source water protection messaging at events, reporting; and,
- (xiii) Acting reasonably, determine the manner in which to perform their responsibilities and services identified under this Agreement.

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; and,
- (ii) Applications under provisions of the Planning Act that are prescribed in Section 62 of Ontario Regulation 287/07.

The Municipality shall also:

- (iii) Collaborate with the Authority and municipalities in the Otonabee-Peterborough Source Protection Area to access eligible funding;
- (iv) provide information in a timely manner to assist the Authority in carrying out its roles and responsibilities as set out in this Agreement;
- (v) attend meetings/workshops to allow for information transfer, training and discussion on implementation approaches; and,
- (vi) 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 Municipality 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;
- (iii) In the event of termination of this Agreement, records will be transferred to the Municipality;
- (iv) All information and data acquired or generated for the duration of this Agreement shall be jointly owned by the Authority and the Municipality. In the event of termination of the Agreement copies of all information and data that has been acquired or generated will be transferred to the Municipality at no cost upon request; and,
- (v) Records shall be retained for a period of at least 15 years as required by Section 11 of Ontario Regulation 287/07.

Section 3.04: Joint Decision Making Committee

The Authority will continue to coordinate the activities of the Joint Decision Making Committee to provide guidance for the operation of the Risk Management Office.

Section 3.05: Performance of Duties

Based on the development of processes and procedures, the Authority shall act reasonably, to perform their responsibilities and services identified under this Agreement. The Municipality agrees that, they shall cooperate with the Authority in its performance of its responsibilities and services, and will take reasonable steps as required to assist the Authority.

Article Four

Costs

Section 4.01: Program Service Fees

The ongoing Program Service Fees for the enforcement of Part IV of the *Act* and the implementation and compliance with relevant policies in the Trent Source Protection Plan, including Policy G-5 Education and Outreach have been mutually agreed upon and are included below for the period from January 1, 2021 to December 31, 2024.

| | |
|--|-----------------|
| Annual Costs for Operation of Risk Management Office including Risk Management Official, Risk Management Inspector and Education and Outreach Activities. | \$ 8,000 |
|--|-----------------|

Section 4.02: Recovery of Extraordinary Costs

The Authority shall consult with the Municipality prior to the commencement of any enforcement proceedings that would result in the expenditure for extraordinary costs not otherwise covered by the responsibilities and services provided by the Authority under Section 3.01 of this Agreement. Where it is agreed that enforcement proceedings are to be commenced, extraordinary costs incurred with respect to these proceedings shall be recovered from the Municipality. Such extraordinary costs may include, but are not limited to technical experts, enforcement orders, and legal costs related to Environmental Review Tribunal Hearings.

Section 4.03: Invoicing and Payment

The Authority shall invoice the Municipality semi-annually and the Municipality shall pay the invoice in full within 30 days of the invoice date.

Section 4.04: Review of Program Service Fees

The Program Service Fees have been established for the period from January 1, 2021 to December 31, 2024 and are included in Section 4.01 of this Agreement. The Parties agree that the future Program Service Fees may be adjusted to account for increased costs due to cost of living increases, salary increases, overhead or changes to the program and will be negotiated with municipalities prior to December 31, 2024.

Article Five

Risk Management Official(s) and Inspector(s)

Section 5.01: Appointment

The Authority will appoint such Risk Management Official(s) and Risk Management Inspector(s) as are necessary pursuant to subsection 48(2) of the *Act* and shall issue a certificate of appointment to the Risk Management Official(s) and Risk Management Inspector(s) as per subsection 48 (3) of the *Act*. The Risk Management Official(s) and Risk Management Inspector(s) will be employed by the Authority for all legislative purposes as provided for under Section 5.03 of this Agreement.

Section 5.02: Qualifications

The Risk Management Official(s) and Risk Management Inspector(s) will be qualified as prescribed by Ontario Regulation 287/07 (54).

Section 5.03: Compliance with Terms of Employment and Relevant Legislation

The Risk Management Official(s) and Risk Management Inspector(s) will comply with the Authority Terms of Employment which include but is not limited to training required under the *Accessibility for Ontarians with Disabilities Act*, *Occupational Safety & Health Act*, *Employment Standards Act*, *Workplace Safety Act*, Ontario Human Rights Code and other relevant legislation.

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 Five Million Dollars (\$5,000,000.00) inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof. The Authority's Commercial/Comprehensive General Liability insurance policy includes non-owned auto coverage, employers' liability, contractual liability, a cross liability and severability of interest clause. The Authority's insurer will give 30 days prior written notice to the Municipality in the event of cancellation or termination of the policy.

The Authority shall provide and maintain Errors and Omissions insurance subject to limits of not less than an annual aggregate of Five Million Dollars (\$5,000,000.00). Such insurance shall provide coverage for all errors and omissions made by the Authority, 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, but only with respect to Commercial/ Comprehensive General Liability. Evidence of insurance satisfactory to the Municipality shall be provided to the Municipality prior to the commencement of work. The Authority shall annually provide each 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: Liability of the Authority

The Authority shall indemnify and save harmless the Municipality from and against all claims, demands, losses, costs, damage, actions, suits, proceedings and expenses by whomsoever made, brought prosecuted in any manner based upon, arising out of, related to, occasioned by or attributable to any breach, violation or non-performance by the Authority of any covenant, term or provision of this Agreement, except where the Municipality has acted negligently or with willful intent.

If the Municipality shall, without fault on its part, or its employees or contractors, be made a party to any litigation commenced by or against the Authority related to, occasioned by or attributable to the enforcement duties or responsibilities or otherwise in connection with the Act or any regulations thereunder, then the Authority shall protect, indemnify and hold harmless and shall pay all costs, expenses and reasonable legal fees (on a substantial indemnity basis) incurred or paid by the Municipality in connection with such litigation.

Article Seven

Term, Renewal, Termination and Amendment of Agreement

Section 7.01: Initial Term

This Agreement shall continue in force for a period commencing on the 1st day of January 2021 and ending on the 31st day of December, 2024.

Section 7.02: Early Termination

The Agreement may be terminated without cause by either party with a minimum of 180 days written notice.

Section 7.03: 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.

Section 7.04: Renewal

This Agreement will automatically continue following the expiry of the term set out in Section 7.01 until it is superseded or replaced by a subsequent agreement. The Program Service Fees related to the renewal or subsequent agreement will be developed by the Authority in consultation with the Municipality.

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:

To the Authority:

Otonabee Region Conservation Authority
250 Milroy Drive
Peterborough, ON K9H 7M9
Attention: Dan Marinigh, CAO/Secretary-Treasurer

To the Municipality:

Township of Douro-Dummer
894 South Street
PO Box 92
Warsaw, ON
K0L 3H0
Attention: Martina Chait-Hartwig, CAO

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.

Otonabee Region Conservation Authority

| | |
|----------------------|-------|
| _____ | _____ |
| Andy Mitchell, Chair | Date |

| | |
|--|-------|
| _____ | _____ |
| Dan Marinigh, CAO/Secretary-Treasurer | Date |

Township of Douro-Dummer

| | |
|------------------------|-------|
| _____ | _____ |
| J. Murray Jones, Mayor | Date |

| | |
|----------------------------|-------|
| _____ | _____ |
| Martina Chait-Hartwig, CAO | Date |