

**SOURCE PROTECTION PLAN PART IV ENFORCEMENT TRANSFER AGREEMENT**

THIS AGREEMENT made in Triplicate this 14 day of January, 2021.

BETWEEN:

**THE CORPORATION OF TAY VALLEY TOWNSHIP**  
(hereinafter called "the Municipality")

OF THE FIRST PART

- and -

**MISSISSIPPI VALLEY CONSERVATION AUTHORITY and  
RIDEAU VALLEY CONSERVATION AUTHORITY**  
(hereinafter called "the Authorities")

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 Authorities as agents of the Municipality with respect to the enforcement and jurisdictional rights under Part IV of the Act as part of implementation of the Mississippi-Rideau Source Protection Plan;

**AND WHEREAS**, the Authorities are Source Protection Authorities for purposes of the Act;

**AND WHEREAS**, the Municipality is located within the Mississippi Rideau Source Protection Region as set out in Ontario Regulation 284/07.

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

## ARTICLE ONE

### GENERAL

#### **Section 1.01: Source Protection Authorities**

Under section 4 of the *Act*, the respective Boards of Directors of the Mississippi Valley Conservation Authority (MVCA) and the Rideau Valley Conservation Authority (RVCA) serve as the Source Protection Authorities for the Mississippi Valley Source Protection Area and the Rideau Valley Source Protection Area respectively. Ontario Regulation 284/07 under the *Act* designates the participating municipalities for MVCA and RVCA when they act as the Source Protection Authorities under the *Act*.

#### **Section 1.02: 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.

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

#### **Section 1.03: Application**

This Agreement shall be applicable to all lands located in the Municipality that are subject to Part IV of the *Act*.

**The Authorities hereby accept the appointment and agree to act as agents of the Municipality for the duties and enforcement responsibilities of Part IV of the Act on all lands located in the Municipality.**

#### **Section 1.04: Duties**

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

## ARTICLE TWO

### DEFINITIONS

#### **Section 2.01: 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:
  - a) "Act" means the Ontario *Clean Water Act, 2006*, as amended;
  - b) "Agreement" means this document;
  - c) "parties" means the Authorities and the Municipality;
  - d) "the Regulation" means *Clean Water Act Regulation 287/07*
  - e) "Risk Management Inspector" means a Risk Management Inspector appointed under Part IV of the *Act*;
  - f) "Risk Management Official" means the Risk Management Official appointed under Part IV of the *Act*;
  - g) "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*;
  - h) "Source Protection Plan" means a drinking water source protection plan prepared under the *Act*.

**ARTICLE THREE**  
**RESPONSIBILITIES**

**Section 3.01: Responsibilities of the Authorities**

The Authorities are 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 in this Section.

The Authorities shall:

- (i) Appoint such Risk Management Officials and Risk Management Inspectors as are necessary for the enforcement of Part IV of the *Act*.
- (ii) Provide mapping to the Municipality and establish application screening 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 Mississippi-Rideau Source Protection Plan.
- (viii) 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.
- (ix) Exercise its jurisdiction in accordance with and follow the communication protocol established in Schedule "A"

**Section 3.02: Responsibilities of the Municipality**

The Municipality shall generally cooperate with and assist the Authorities with the protection of drinking water. The Municipality shall adhere to the agreed upon protocols referred to in Section 3.01 (ii) (including circulating certain applications to or referring applicants 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 the Regulation.

**Section 3.03: Information and Data Sharing**

To facilitate implementation of this Agreement:

- (i) The Municipalities shall provide information and data in the form and at the times required by the Authorities to carry out their powers and duties under Part IV of the *Act*.
- (ii) The Authorities shall provide records related to their powers and duties under Part IV of the *Act* to the Municipality, upon request. In the event of termination of this Agreement, records will be transferred to the Municipality.

## ARTICLE FOUR

### COSTS

#### **Section 4.01: Responsibility for Cost of Service Delivery**

The Municipality is responsible for the costs of the enforcement of Part IV of the Act where costs are not recovered through user fees.

#### **Section 4.02: Fee Schedule**

The Authorities will pass a resolution / policy pursuant to section 55 of the Act to establish the user fee schedule. The fees will be for the purpose of cost recovery and, in accordance with sub-section 55 (2) of the Act, the fees will not exceed the anticipated reasonable costs of the enforcement of Part IV of the Act. The Authorities will review, and if necessary amend, the fees annually in consultation with the Municipality and with approval from the Authorities' Boards of Directors. Notification and consultation will occur in accordance with the Authorities' board approved guidelines for cost recovery as amended from time to time.

#### **Section 4.03: Collection of Fees**

The Authorities will collect and retain all user fees payable by any person for work performed by the Authorities under this Agreement.

#### **Section 4.04: Recovery of Extraordinary Costs**

The Authorities will recover from the Municipality extraordinary costs incurred as a result of legal actions initiated against the Authorities 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 and Environmental Review Tribunal Hearings. The Authorities will consult with the Municipality prior to any expenditure for an extraordinary cost.

## ARTICLE FIVE

### OFFICIALS AND INSPECTORS

#### **Section 5.01: Appointment**

The Authorities 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 to the Risk Management Officials and Risk Management Inspectors as per subsection 48 (3) of the *Act*.

#### **Section 5.02: Qualifications**

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

## ARTICLE SIX

### LIABILITIES AND INSURANCE

#### **Section 6.01: Insurance**

The Authorities 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 Authorities 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 Authorities, their officers, directors and employees in regard to the obligations of the Authorities 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 Authorities and shall name the Municipality as an additional insured there under. Evidence of insurance satisfactory to the Municipality shall be provided to the Municipality prior to the commencement of work. The Authorities shall annually provide the 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 Authorities will provide upon request, verification of WSIB coverage.



## ARTICLE SEVEN

### TERM, RENEWAL, TERMINATION AND AMENDMENT OF AGREEMENT

#### **Section 7.01: Term**

This Agreement shall continue in force indefinitely, commencing on the 8<sup>th</sup> of December, 2020.

#### **Section 7.02: Termination**

The Agreement may be terminated 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.

## 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:

- (a) To the Authorities:

*Names and addresses*

*Attention: General Manager / Secretary-Treasurer*

- (b) To the Municipality:

*Name and address*

*Attention: Municipal Clerk / 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 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**


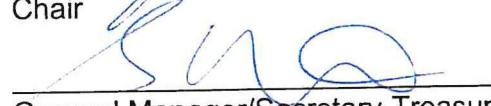
The provisions of this Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario as at the time in effect.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first written above.


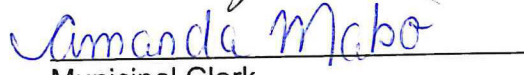
**MISSISSIPPI VALLEY CONSERVATION AUTHORITY**

 24 Feb 2021  
Chair Date  
 Mar 10  
General Manager Date

**RIDEAU VALLEY CONSERVATION AUTHORITY**

 2021-02-08  
Chair Date  
 Jan 14, 2021  
General Manager/Secretary-Treasurer Date

**THE CORPORATION OF TAY VALLEY TOWNSHIP**

 December 15, 2021  
Reeve Date  
 December 15, 2021  
Municipal Clerk Date

## **SCHEDULE "A"**

Background for Part IV Enforcement Agreement between  
Municipalities and Conservation Authorities &  
Communications Protocol

## 1.0 Background

Under the *Clean Water Act* a municipality may transfer its enforcement authority to another body such as a "Source Protection Authority" (which is a Conservation Authority serving in its legislated role under the *Clean Water Act*). The Conservation Authority (in its capacity as a Source Protection Authority) perform the duties and enforcement responsibilities of Part IV of the *Clean Water Act* on behalf of the Municipality on all lands located in the Municipality.

### 1.1 Part IV Policies

The Mississippi-Rideau Source Protection Plan must address "significant drinking water threat" activities as defined under the *Clean Water Act*. Among other types of policies, the Source Protection Plan contains policies that:

- **prohibit** some drinking water threat activities under Part IV, Section 57 of the *Clean Water Act* (note that no existing activities are prohibited);
- **manage** certain other drinking water threat activities through Risk Management Plans under Part IV, Section 58 of the *Clean Water Act*; and
- **require a notice** from a Risk Management Official under Part IV, Section 59 of the *Clean Water Act* (before Planning or Building applications may proceed within certain vulnerable drinking water areas).

These sections of the Act appear in Part IV: *Regulation of Drinking Water Threats*. Under Part IV, any single, upper or lower tier municipality that has the authority to pass by-laws under the *Municipal Act* for the production, treatment and storage of water is the enforcement authority. This means that the municipality is the enforcement authority for these policies on lands within its municipal boundaries even if it does not have or operate the drinking water system.

The Conservation Authority provides the Part IV enforcement service at minimal cost to municipalities. The liability and risk associated with delivery of the program is assumed by the Conservation Authority and assured by employing competent, qualified staff with extensive experience with resource protection and a thorough understanding of the *Clean Water Act* and the Mississippi-Rideau Source Protection Plan and maintaining adequate liability insurance coverage. The Conservation Authority is committed to providing this service in a responsive, knowledgeable and courteous manner.

## 2.0 Details

### 2.1 Part IV Enforcement Responsibilities

The Part IV Enforcement Authority is responsible for appointing appropriately trained Risk Management Official(s) / Inspector(s), setting up, and maintaining all logistical and procedural aspects (such as administrative and communication materials, fee schedule, inspection procedures and information management system). The Risk Management Official and Inspector implement the policies which involves issuing notices, negotiating Risk Management Plans, reviewing Risk Assessments and exercising various powers under the *Clean Water Act* to deal with non-compliance / enforcement issues. There are also prescribed requirements for record keeping, an annual report to the MOECC and the possibility of Environmental Review Tribunal proceedings.

Table 1 summarizes these responsibilities.

### 2.2 Tasks and Cost Recovery

Continue to provide the service which will involve the following tasks:

1. Complete Risk Management Plans and review of Risk Assessments for existing drinking water threats.
2. Review planning and building applications and issue clearance notices on an as needed basis.
3. Negotiate Risk Management Plans and review Risk Assessments for new proposed drinking water threat activities on an as needed basis.
4. Conduct compliance and tribunal related activities on an as needed basis.
5. Prepare and submit annual reporting to the MOECC.

#### Ongoing Cost Recovery – MUNICIPALITY TO PAY ANY EXTRAORDINARY COSTS

Addressing new (future) proposed drinking water threats – user fees

Extraordinary costs – municipalities to cover the cost of occasional, non-routine enforcement related work such as issuing warrants and attending tribunal hearings (Conservation Authority will consult with the municipality prior to these expenditures)

Annual reporting – Conservation Authority (as part of overall source protection reporting, for policies not related to Part IV)

Table 1

**Part IV Enforcement Responsibilities**

Responsibility	Clean Water Act Pt. IV Reference	Associated Tasks	Explanation
General program needs	Sections 47 and 55	<ul style="list-style-type: none"> <li>• Monitor staffing needs, select and send staff for MOECC training</li> <li>• Appoint Risk Management Officials (RMO) and Inspectors (RMI) and issue certificates as needed</li> <li>• Fee schedule under Section 55</li> <li>• Prepare administrative material (forms, inspection checklists, standard notices, etc.)</li> <li>• Maintain application screening protocol with municipal Planning / Building departments</li> </ul>	<p>Maintaining a regulatory program requires some decision making, effort, and ongoing maintenance.</p>
Review applications and issue notices	Sections 57 and 59	<ul style="list-style-type: none"> <li>• RMO reviews planning or building applications sent to him/her by municipal staff</li> <li>• RMO issues a notice under Section 59 if the application may proceed</li> <li>• RMO does not issue a Section 59 notice if the proposal involves an activity that is prohibited under Section 57</li> </ul>	<p>The Section 59 policy helps municipalities avoid inadvertently approving an application without complying with source protection policies first. The policy allows for municipal staff to "screen out" simple applications that clearly do not involve a drinking water threat activity. An application screening procedure is agreed on with municipal staff and can be modified at any time.</p>
Risk Management Plans	Section 58	<ul style="list-style-type: none"> <li>• RMO / RMI negotiates Risk Management Plans</li> </ul>	<p>A Risk Management Plan is a document that outlines the actions required to address an activity that has the potential to contaminate drinking water. It is a customized, site-specific plan developed in consultation with the person engaging in the activity.</p>
Risk Assessments	Section 60	<ul style="list-style-type: none"> <li>• RMO reviews and, if appropriate, accepts Risk Assessments</li> </ul>	<p>A person whose activities are affected by Part IV policies has the option to prepare and submit a Risk Assessment concluding that the activity is not a significant drinking water threat.</p>
Compliance activities Tribunal	Sections 61-80	<ul style="list-style-type: none"> <li>• RMO / RMI may exercise various powers and follow various procedures related to compliance with Part IV policies</li> <li>• RMO will notify the affected person of their right of appeal to the Environmental Review Tribunal</li> <li>• RMO/RMI will prepare documentation and attend Environmental Review Tribunal hearings</li> </ul>	<p>The RMO and RMI have various powers and options related to compliance.</p> <p>Affected people have Environmental Review Tribunal rights.</p>
Record keeping Reporting	Sections 53, 54, 81	<ul style="list-style-type: none"> <li>• RMO maintains records and files annual reports to the MOECC.</li> </ul>	<p>There are Part IV record keeping and reporting requirements in the <i>Clean Water Act</i></p>



### **2.3 Implications for Municipal Staff / Application Screening Procedure**

Municipal staff have an important role in the implementation of Part IV policies, specifically to ensure that applications under the *Planning Act* or *Building Code Act* within certain vulnerable drinking water areas do not proceed without first ensuring that source protection requirements are met (including a Section 59 notice from the Risk Management Official in some cases).

The wording of the Section 59 policy allows for municipal staff to use their discretion to **screen out** applications that clearly do not involve a drinking water threat activity so that in many cases a referral to the Risk Management Official for a Section 59 notice will not be needed. Alternatively, the municipality may choose to refer all planning and building applications in the vulnerable drinking water areas to the Risk Management Official as a standard practice.

The agreed upon screening procedure should reflect the needs, wishes and comfort level of the municipal staff and can be flexible to ensure that applications are dealt with efficiently, effectively and fairly.

### **2.4 Anticipated Workload**

Over time, there may be some additional work created by re-negotiating Risk Management Plans due to change of property ownership. This is because Risk Management Plans are not transferable between owners; they must be negotiated between the Risk Management Official and the person engaging in the drinking water threat activity. Some additional work may also be created as a result of verification activities.

The number of future proposed drinking water threat activities subject to Part IV policies is anticipated to be low. This is because the areas with the highest vulnerability scores where the majority of the Part IV policies apply are small and/or are in areas where land use changes are infrequent and/or development pressure is low.

### **2.5 Customer Service**

The Conservation Authority will endeavor to make the process of complying with Part IV policies straight-forward, non-threatening and fair. Specifically, affected people are provided with:

- Communication material that simply and clearly outlines their rights and responsibilities under the *Clean Water Act*
- A clear explanation of the process and options including information on various risk mitigation measures, project alternatives and funding programs (if any)
- Advice and discussion opportunity provided on-site as required
- Prompt, courteous and knowledgeable service
- No permit fee for Risk Management Plans for existing activities

The Conservation Authority will provide over the counter, drop-in service for people affected by Part IV policies. Communication material and forms will be made available

at the Conservation Authority office, on the source water protection website as well as from the Risk Management Inspector during site visits.

## 2.6 Information Management

The Conservation Authority will maintain records containing information on the review of Planning and Building applications, inspections, approvals, violations and enforcement activities. This information will be made available to the public (when required by legislation to do so) and to the municipality upon request.

If desired by the municipality, links could be created over time between the Part IV enforcement files and the municipality's permit / approvals record system. The Conservation Authority will endeavor to meet the municipality's specific needs in terms of data attributes and formats.

## 3.0 Communications Protocol

### 3.1 Direct Notification

- a) The Authorities shall provide notice and communications to the Municipality regarding the administration and enforcement of Part IV of the Act for the following matters, in the following form and within the following timelines:

	<b>Class/Type of Matter</b>	<b>Form</b>	<b>Timeline</b>
i	<u>RISK MANAGEMENT PLAN TO BE DEVELOPED/AMENDED</u> – existing or future activity requires a risk management plan and one is to be developed and/or amended	Email	Within 10 days of requirement for a Risk Management Plan/Amendment being identified <b>and</b> 10 days preceding its approval
ii	<u>EXISTING ACTIVITY: Notice that a Risk Management Plan is in place</u> (or is not needed due to a Risk Assessment that has been accepted by the Risk Management Official or a Prescribed Instrument that already regulates the activity)	Email	10 days from date Risk Management Plan is completed or deemed unnecessary
iii	<u>FUTURE ACTIVITY: Section 59 notice:</u> (a) Planning or building application may proceed – Notice will indicate if: a. Activity is not prohibited and does not require a Risk Management Plan; or b. Activity requires a Risk Management Plan and the Plan is in place (b) Notification that Section 59 notice cannot be issued – planning or building application cannot proceed (because activity is prohibited)	Email	When issued

- b) The content of notices shall be in compliance with the *Clean Water Act* and regulations and mutually agreed upon by the Authorities and the Municipality.
- c) Notices shall be provided in the form indicated, unless otherwise requested by the Municipality.

### 3.2 Third Party Municipal Notification

- a) The Authorities shall provide a copy of the notification related to the items above, within the same timeline, to third party municipalities as follows:

Notice related to:	Located Within:	A copy will be provided to:
Drummond North Elmsley	Perth IPZ	Town of Perth
	Smiths Falls IPZ	Town of Smiths Falls
Montague	Smiths Falls IPZ	Town of Smiths Falls
	Merrickville-Wolford WHPA	Village of Merrickville-Wolford
Tay Valley	Perth IPZ	Town of Perth
Rideau Lakes	Smiths Falls IPZ	Town of Smiths Falls
	Westport WHPA	Village of Westport
Beckwith	Carleton Place IPZ	Town of Carleton Place
Mississippi Mills	Carleton Place IPZ	Town of Carleton Place
Smiths Falls	Merrickville-Wolford WHPA	Village of Merrickville-Wolford

### 3.3 Enforcement Consultation

- a) Before the following enforcement actions are undertaken by the Authorities, the Authorities shall contact the designated Municipal staff person, by telephone to explain the purpose, process and possible cost of the action.
- b) Applicable enforcement actions:
  - i) Order under section 58 establishing or amending a Risk Management Plan
  - ii) Orders under Section 61 (to provide a report on activity), 63 (enforcement order), 67 (order to pay) or 80 (order to permit access)
  - iii) Notice requiring hearing by Tribunal (served by a person who has received an order listed in i) or ii) above)
  - iv) Prosecution for an offence under Part IV

### 3.4 Municipal Contacts

- a) A list of contacts shall be maintained for each Municipality to provide notification as indicated above, with the Municipality being responsible to ensure updates and/or changes to the contact information is provided to the Authorities without delay.

