



**CORPORATION OF THE TOWN OF INGERSOLL
BY-LAW NO. 10-4556**

**A by-law to authorize the execution of an Agreement with
Her Majesty The Queen in right of Ontario as represented by the
Minister of Natural Resources**

WHEREAS the Corporation of the Town of Ingersoll is desirous to enter into an agreement with Her Majesty The Queen, in right of Ontario as represented by the Minister of Natural Resources.

AND WHEREAS subsections 9(1) and 10(1) of the *Endangered Species Act, 2007* prohibit certain activities with respect to a species that is listed on the SARO List as an extirpated, endangered or threatened species;

AND WHEREAS section 23 of Ontario Regulation 242/08 provides that clause 9(1)(a) and subsection 10(1) of the Act do not apply to a person who is constructing, improving, maintaining or repairing Drainage Works if the person complies with an agreement entered into between the person and the Minister;

AND WHEREAS the Municipality is constructing, improving, maintaining or repairing Drainage Works to which section 23 of the Regulation applies;

AND WHEREAS the Minister is of the opinion that the Agreement requires the Municipality to take reasonable steps to minimize adverse effects on the Species specified herein;

NOW THEREFORE the Council of The Corporation of the Town of Ingersoll enacts as follows:

- (1) That the Mayor and the Clerk are hereby authorized to execute an agreement with Her Majesty The Queen in right of Ontario as represented by the Minister of Natural Resources and to affix the seal of The Corporation of the Town of Ingersoll hereto.
- (2) That a copy of the said agreement shall be annexed to and form part of this by-law.

READ a first and second time in Open Council this 17th day of May 2010.

READ a third time and passed in Open Council this 17th day of May 2010.

THE CORPORATION OF THE TOWN OF INGERSOLL

Paul Holbrough, Mayor

Elaine Clark, Clerk

**AGREEMENT UNDER S.23 OF O.REG. 242/08 MADE UNDER THE
ENDANGERED SPECIES ACT, 2007**

FILE #: _____

THIS AGREEMENT made in duplicate as of June 29, 2010

BETWEEN:

HER MAJESTY THE QUEEN in right of Ontario as represented
by the Minister of Natural Resources

(the "Minister")

AND:

**THE CORPORATION OF THE MUNICIPALITY
OF Town of Ingersoll**

(the "Municipality")

WHEREAS subsections 9(1) and 10(1) of the *Endangered Species Act, 2007* prohibit certain activities with respect to a species that is listed on the SARO List as an extirpated, endangered or threatened species;

AND WHEREAS section 23 of Ontario Regulation 242/08 provides that clause 9(1)(a) and subsection 10(1) of the Act do not apply to a person who is constructing, improving, maintaining or repairing Drainage Works if the person complies with an agreement entered into between the person and the Minister;

AND WHEREAS the Municipality is constructing, improving, maintaining or repairing Drainage Works to which section 23 of the Regulation applies;

AND WHEREAS the Minister is of the opinion that the Agreement requires the Municipality to take reasonable steps to minimize adverse effects on the Species specified herein;

AND WHEREAS the Minister is of the opinion that if the Agreement is complied with, the construction, improvement, maintenance or repair of the Drainage Works will not jeopardize the survival or recovery of the Species specified herein in Ontario;

AND WHEREAS the Minister is of the opinion that the Agreement does not conflict with any obligation of the Minister to ensure the implementation of any action under subsection 11(9) of the Act that is in existence on the Effective Date;

NOW THEREFORE the Minister and the Municipality agree as follows:

ARTICLE 1 DEFINITIONS and GENERAL PROVISIONS

1.1 Singular and Plural. In the Agreement, words in the singular include the plural and vice-versa.

1.2 Headings. The headings in the Agreement are for convenience of reference only and do not form part of the Agreement and in no manner modify, interpret or construe the Agreement.

1.3 Definitions. In the Agreement the following words shall have the following meanings:

"**ESA 2007**" or "**Act**" means the *Endangered Species Act, 2007*;

"**SARO List**" means Ontario Regulation 230/08 (Species at Risk in Ontario List) made under the ESA, 2007;

"**Activities**" means those activities described in section 4.4a);

"**Agreement**" means this agreement entered into between the Minister and the Municipality, all schedules and attachments to it and any instrument amending it;

"**Designated Representative**" means the individual appointed by a Party to act on that Party's behalf as identified in section 3.1;

"**Drainage Works**" means "drainage works" as defined in the *Drainage Act*;

"**Effective Date**" means the date set out at the beginning of the Agreement;

"**improvement**" means "improvement" as defined in the *Drainage Act*;

"**maintenance**" means "maintenance" as defined in the *Drainage Act*;

"**Mitigation Plan**" means the plan identified in section 5.1 and described in Schedule C;

"**Notice**" means any notice or communication required or given under the Agreement;

"**Party**" means either the Minister or the Municipality, as applicable, and "**Parties**" means both of them;

"**Regulation**" means Ontario Regulation 242/08 (General) made under the ESA, 2007;

"**repair**" means "repair" as defined in the *Drainage Act*;

"**Report**" means "report" as defined in the *Drainage Act*; and

"**Species**" means those species listed in Schedule B.

1.4 Schedules. The following schedules form part of the Agreement:

- a) Schedule A (Drainage Works);
- b) Schedule B (Species to which the Agreement applies); and

c) Schedule C (Mitigation Plan).

ARTICLE 2 TERM OF THE AGREEMENT

2.1 Term. The Agreement shall come into effect on the Effective Date and shall expire on **June 30, 2040** unless terminated earlier pursuant to ARTICLE 10 (Termination).

ARTICLE 3 DESIGNATED REPRESENTATIVE

3.1 Designated Representative. For the purposes of the Agreement, for the Minister, the Designated Representative and address are:

Ontario Ministry of Natural Resources
ATTN: Mitch Wilson
Aylmer District Manager
615 John Street North, Aylmer, ON N5H 2S8
Email: mitch.wilson@ontario.ca
Tel: 519-773-4710
Fax: 519-773-9014

and, for the Municipality, the Designated Representative and address are:

Town of Ingersoll
ATTN:
Clerk, Town of Ingersoll
130 Oxford St. Ingersoll, ON N5C 2V5
Email: clerks@ingersoll.ca
Tel: 519-485-0120
Fax: 519-485-3543

3.2 Different Designated Representative. Either Party, through its Designated Representative, may designate a different representative or provide a revised address, from time to time, by providing Notice in writing to the other Party.

ARTICLE 4 APPLICATION OF AGREEMENT

4.1 Authority. The Agreement is entered into under the authority of section 23 of Ontario Regulation 242/08 and only applies to the species and the activities that are specified herein.

4.2 Application to Species. The Agreement applies to the species listed in Schedule B, which are all listed on the SARO List as extirpated, endangered or threatened.

4.3 Authorization Provided. Subject to all the conditions and limitations set out in the Agreement, while the Agreement is in force and the Municipality is in compliance with the Agreement:

- a) clause 9(1)(a) and subsection 10(1) of the ESA 2007 do not apply to the Municipality in respect of the Species; and
- b) subclauses 9(1)(b)(i) and (ii) of the ESA 2007 do not apply to the Municipality's possession or transportation of the Species.

4.4 Application to Activities. The authorization provided in section 4.3 applies only to the Municipality:

- a) with respect to its undertaking of:
 - a. maintenance of a ditch constructed under the *Ditches and Watercourses Act*, chapter 109 of the Revised Statutes of Ontario, 1960, in accordance with subsection 3(18) of the *Drainage Act*;
 - b. maintenance and repairs of existing drains as authorized by section 74 of the *Drainage Act*;
 - c. improvement of existing drains as authorized by section 77 or 78 of the *Drainage Act*; or
 - d. emergency work carried out in accordance with section 124 of the *Drainage Act*;

(hereinafter referred to as the **Drainage Activities**) which will be undertaken in respect of the Drainage Works which are more fully described in Schedule A; and

- b) as is necessary to fulfill the conditions of the Agreement, including the conditions set out in Schedule C (Mitigation Plan).

4.5 Protection and Safety. Nothing in the Agreement requires the Municipality to conduct an activity in a manner that would reasonably be expected to cause damage to infrastructure or create risk to the safety of the public, its employees or contractors.

4.6 Failure to Comply. Failure to comply with the Agreement may result in a contravention of the ESA 2007.

ARTICLE 5 MITIGATION PLAN

5.1 Mitigation Plan. The Mitigation Plan:

- a) establishes the reasonable steps that the Municipality shall take to minimize the adverse effects of the Activities on the Species;
- b) provides for monitoring of the effects of the Activities on the Species; and
- c) establishes reporting requirements.

- 5.2 Term of Mitigation Plan.** The Mitigation Plan is in effect for the term set out in Schedule C, but no Mitigation Plan may be in effect for a term longer than 10 years. The Mitigation Plan shall expire at the end of its term unless it is amended and replaced in accordance with this Article.
- 5.3 Amendments to Mitigation Plan.** Any Mitigation Plan may be amended at any time, including for the sole purpose of renewing its term, by agreement in writing by the Parties or their Designated Representatives. An amended Mitigation Plan shall indicate its term and the date it was amended.
- 5.4 Amendment - Consideration of New Scientific Information.** In making any decision to amend a Mitigation Plan, the Parties will consider the incorporation of new scientific information with respect to the Species, including information:
- a) contained in any completed recovery strategy for the Species;
 - b) contained in any statements made by the Government of Ontario under subsection 11(8) of the ESA 2007; or
 - c) obtained pursuant to any monitoring, assessment or reporting under this Agreement.
- 5.5 Required Amendment - Habitat Protection.** The Mitigation Plan shall be amended if habitat protection under section 10 of the ESA 2007 comes into effect for the Species and the Minister is of the opinion that new or revised conditions are required to address such protection.
- 5.6 Agreement Not in Force.** The Agreement is not in force without a Mitigation Plan that is in effect.

ARTICLE 6 AMENDMENTS

- 6.1 Amendments Require Written Agreement.** Except as provided in ARTICLE 5, the Agreement may only be amended by a written agreement duly executed by the Parties or their respective Designated Representatives.

ARTICLE 7 ASSIGNMENT

- 7.1 No Assignment Without Consent.** The Municipality shall not assign the Agreement or any part thereof without the written consent of the Minister, which shall not be unreasonably withheld. Such consent shall be in the sole discretion of the Minister and subject to any terms and conditions that may be imposed by the Minister.

ARTICLE 8 AUDIT

- 8.1 Audit.** The Minister or the Minister's authorized representatives may enter the lands and facilities described in Schedule A that are owned by the Municipality, or for which landowner permission has been obtained, in order to conduct an audit to assess the Municipality's compliance with the terms and conditions of the Agreement.
- 8.2 Audit by Municipality.** The Municipality shall audit the Activities undertaken on the lands described in Schedule A that are not subject to an audit under section 8.1 and in undertaking such an audit, the Municipality shall document and record such information as may be required to sufficiently establish that the Activities were undertaken in accordance with the Agreement.
- 8.3 Time of Audit.** An audit under section 8.1 shall be conducted at a time agreed to in writing by the Parties that is within 20 business days of the Municipality receiving Notice of a request for the audit, unless a later time is agreed to in writing by the Parties.
- 8.4 Audit if No Response or Agreement.** If
- a) the Municipality does not respond to a request for an audit within 10 business days of receiving Notice of such request; or
 - b) the Parties are unable to agree within 20 business days of the Municipality receiving Notice of a request on the time for the audit,
- the Minister or the Minister's representative may enter the lands and facilities described in Schedule A at any safe and reasonable time in order to conduct an audit in accordance with section 8.1.
- 8.5 Audit Activities.** In conducting an audit in accordance with this Article, the Minister or the Minister's authorized representatives, as the case may be, may:
- a) examine anything that is relevant to the Agreement; and
 - b) conduct any tests, take any measurements, take any specimens or samples, set up any equipment and make any photographic or other records that may be relevant to the audit.
- 8.6 Municipality's Co-operation.** The Municipality shall cooperate with the Minister or the Minister's authorized representative, as the case may be, in respect of any audit undertaken in accordance with this Article, including providing in a timely manner before the date of the audit any information in respect of the Agreement that is reasonably requested by the Minister or the Minister's authorized representative.
- 8.7 Minister's Authorized Representatives.** For the purpose of this Article, the Minister's authorized representatives include individuals who are enforcement officers under the ESA 2007.

ARTICLE 9 INSURANCE

9.1 Insurance. The Municipality is responsible for obtaining its own insurance and should carry all the necessary and appropriate insurance that a prudent person in the business of the Municipality would maintain, including but not limited to commercial general liability insurance. The Municipality is not covered by the Province of Ontario's insurance program and no protection will be afforded to the Municipality by the Government of Ontario for any claims that may arise out of the Agreement.

ARTICLE 10 TERMINATION

10.1 Termination by the Municipality. With the written consent of the Minister, which consent shall not be unreasonably withheld, the Municipality may terminate the Agreement for convenience and not for cause.

10.2 Termination by the Minister. The Minister may terminate the Agreement upon giving Notice to the Municipality if:

- a) the Municipality has knowingly provided false or misleading information in respect of the Agreement;
- b) the Municipality breaches any provision of the Agreement; or
- c) notwithstanding that the Municipality has complied with the requirements of the Mitigation Plan, the Minister is of the opinion that the Activities of the Municipality in respect of the Drainage Works identified in Schedule A will:
 - i. jeopardize the survival or recovery in Ontario of one or more of the Species; or
 - ii. conflict with the obligation of the Minister to ensure the implementation of any action that arises under subsection 11(9) of the Act.

10.3 Opportunity to Remedy Breach. If the Minister is of the opinion that it is appropriate to allow the Municipality the opportunity to remedy a breach of the Agreement, the Minister shall give the Municipality Notice of:

- a) the particulars of the breach;
- b) the period of time within which the Municipality is required to remedy the breach; and
- c) the steps that the Municipality is required to undertake to remedy the breach.

10.4 Municipality not Remediating. If the Minister has provided the Municipality with an opportunity to remedy a breach of the Agreement pursuant to section 10.3 and:

- a) the Municipality does not remedy the breach within the time period specified in the Notice;

- b) it becomes apparent to the Minister that the Municipality cannot completely remedy the breach within the time specified in the Notice or such further period of time as the Minister considers reasonable; or
- c) the Municipality is not remedying the breach in a way that is satisfactory to the Minister,

the Minister may terminate the Agreement by giving Notice of termination to the Municipality.

10.5 Request for Review. The Municipality may request that the Minister review a decision to terminate the Agreement by providing Notice to the Minister within 15 business days of receiving Notice of the decision to terminate by the Minister. If the Municipality makes a request for review, the Agreement shall continue until the Minister's decision is made under section 10.6. For greater certainty, this section does not apply to a decision to terminate made in accordance with subsection 10.6(c).

10.6 Minister's Decision Following Request. If the Municipality makes a request to review under section 10.5, the Minister shall consider the Municipality's request and may:

- a) continue the Agreement;
- b) continue the Agreement in an amended form; or
- c) terminate the Agreement by giving Notice to the Municipality, in which case section 10.5 does not apply.

10.7 Effective Date of Termination. The effective date of any termination under this Article shall be:

- a) 15 business days after the Municipality receives Notice under section 10.2 if a request for review is not made under section 10.5;
- b) 15 business days after the Municipality receives Notice under section 10.4 or subsection 10.6(c); or
- c) immediately upon the date the Municipality receives the written consent of the Minister under section 10.1.

ARTICLE 11 NOTICES

11.1 Notice. Any Notice shall be:

- a) in writing;
- b) delivered personally or by pre-paid courier, or sent by facsimile, certified or registered mail; and
- c) forwarded to the Designated Representative of the respective Party.

11.2 Notices Effective From. All Notices shall be effective:

- a) at the time the delivery is made if the Notice is delivered personally, by pre-paid courier or by facsimile; or
- b) five business days after the day the Notice was deposited in the mail if the Notice is sent by certified or registered mail,

unless the day the Notice is effective falls on a day when the Municipality or the Ministry is normally closed for business or the Notice is sent by facsimile after 5:00 p.m. on a business day, in which case the Notice shall not be effective until the next business day that the Municipality or the Ministry, as the case may be, is normally open for business.

ARTICLE 12 SEVERABILITY OF PROVISIONS

12.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision of the Agreement and any invalid or unenforceable provision shall be deemed to be severed.

ARTICLE 13 WAIVER

13.1 Waivers in Writing. A waiver of any failure to comply with any term or condition of the Agreement shall be in writing and signed by the Party providing the waiver. Any waiver must refer to a specific failure to comply and shall not have the effect of waiving any subsequent failure to comply.

13.2 Failure to Enforce not a Waiver. The failure of the Minister to insist in one or more instances upon the performance by the Municipality of any of the terms or conditions of the Agreement shall not be construed as a waiver of the right of the Minister to require future performance of any such terms or conditions and the obligations of the Municipality with respect to such future performance shall continue in full force and effect.

ARTICLE 14 ENTIRE AGREEMENT

14.1 Entire Agreement. The Agreement 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.

ARTICLE 15 GOVERNING LAW

15.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties shall be governed by and construed in accordance with the laws of the Province of Ontario,

and the federal laws of Canada applicable therein. Any litigation arising in connection with the Agreement shall be conducted in Ontario unless the Parties agree in writing otherwise.

**ARTICLE 16
COMPLIANCE WITH LAWS**

16.1 Compliance With Laws. For greater certainty, nothing in this Agreement absolves the Municipality and its employees, contractors and representatives, if any, from complying with all applicable federal, provincial and municipal laws, ordinances, statutes, rules, regulations and orders, and all by-laws of all relevant authorities.

IN WITNESS WHEREOF the Parties have executed the Agreement made as of the date first written above.

**HER MAJESTY THE QUEEN IN
RIGHT OF ONTARIO** as represented by
the Minister of Natural Resources

Witness as to execution by Minister

per: _____
Linda Jeffrey
Minister of Natural Resources

Pursuant to the authority under Section
22 of Ontario Regulation 242/08 made
under the *Endangered Species Act, 2007*,
I hereby enter into this Agreement.

TOWN OF INGERSOLL

Witness as to execution by signing officer

per: _____
Paul Holbrough
Position: Mayor

per: _____
Elaine Clark,
Clerk