
Report To: Board of Directors

Subject: Agreement of Services with Municipalities as required under the Conservation Authorities Act Phase 1 Regulation

Report No: FA-28-23

Date: June 16, 2023

Recommendation:

1. **THAT** Report No. FA-28-23 RE: Agreements of Services with Municipalities as required under the Conservation Authorities Act Phase 1 Regulation **BE RECEIVED**.
2. **THAT** staff **BE DIRECTED** to circulate the draft Agreement of Services, as appended, for discussion with NPCA's partner municipalities as part of the 2024 Budget process, related to Category 2 and 3 Programs and Services.
3. **THAT** this report **BE CIRCULATED** to NPCA's partner (funding) municipalities, lower-tier municipalities, Ministry of Natural Resources and Forestry (MNRF) and Ministry of Environment Conservation and Parks (MECP).
5. **THAT** the final Agreements of Services **BE PRESENTED** to the NPCA Board of Directors for final approval.
6. **AND FURTHER THAT** the final executed Agreements of Services **BE POSTED** online as required by the Conservation Authorities Act.

Purpose:

The purpose of this report is to update the Board of Directors on ongoing municipal consultations and seek direction on Memorandums of Understandings and Service Level Agreements (i.e. Agreements of Services) with Partner Municipalities as required under the *Conservation Authorities Act* Phase 1 Regulation to be delivered by January 1, 2024, as per the Act Transition requirements.

Background:

The Phase 1 Regulations requires Conservation Authorities (CAs) to prepare an Inventory of Programs and Services and circulate the Inventory to all participating (funding) municipalities, as well as other lower-tier municipalities with whom the CA intends to enter into an Agreement of Services. The Inventory was required to be submitted to the Ministry of Environment, Conservation and Parks (MECP) and municipalities by February 28, 2022 and changes to the Inventory are allowed after that date in response to municipal feedback.

On February 18, 2022 the Board approved NPCA's Inventory of Programs and Services (FA -03-22) recommending:

"THAT Report No. FA-03-22 RE: Conservation Authorities Act – Update on Inventory of Programs/Services **BE RECEIVED** for information.

THAT the Inventory of Programs and Services **BE SUBMITTED** to the Ministry of Environment Conservation and Parks (MECP) as required under Ontario Regulation 687/21 and **CIRCULATED** to participating municipalities;

THAT the Inventory of Programs and Services **BE SHARED** with NPCA jurisdiction municipalities, as appropriate, throughout 2022-2023 to inform discussions related to NPCA services;

AND FURTHER THAT the Final Programs and Services Inventory **BE SUBMITTED** to MECP at the end of the Conservation Authorities Act Transition period along with a copy of Municipal Agreements."

Ontario Regulation 687/21: Transition Plans and Agreements for Programs and Services (as amended) requires CAs to execute Agreements for Services with participating (funding) municipalities by January 1, 2024. Agreements are only required for Programs and Services under Category 2 and 3 below:

Category 2: Municipal programs and services provided at the municipality's request. These programs can be funded through government and other agency grants and/or municipal funding under a MOU or agreement with the municipality.

Category 3: Other programs and services that an Authority (Board) determines are advisable. These programs can be funded through self-generated revenue, user fees, government and other agency grants, donations, etc. Any use of municipal funding will require an agreement and would be subject to cost apportioning.

Discussion

Discussions are ongoing with NPCA's municipal partners since February 2022. The Inventory of Programs and Services has also been updated based on input from Niagara Region. The Inventory has provided the basis for discussions with participating (funding) municipalities for the provision of municipally requested programs and services.

The attached Draft 1 "NPCA Agreement for Services" template has been coordinated with neighboring CA's and Conservation Ontario and will be updated, as required, by municipal review during the Budget process.

The deadline for execution of agreements with participating (funding) municipalities for Category 2 and Category 3 programs and services, remains January 1, 2024. Should an extension be required, the written request for extension must be submitted to the Minister on or before October 1, 2023.

NPCA staff continue to carry out discussions and Agreement of Services development with participating (funding) municipalities in accordance with the timelines set out in NPCA's Transition Plan and as part of the 2024 Budget process.

Lower-tier municipalities in Niagara Region, which are not levied for CA services, can enter into Agreements of Services on a fee-for-service basis when a local municipality wishes to procure NPCA to deliver services that are not procured through the Regional municipality. It is important to note that the NPCA can no longer provide natural heritage review services under prescribed legislation such as the *Planning Act*.

Over the past few years, NPCA has initiated meetings with lower-tier municipalities to understand the needs of each municipality, as well as helping partner municipalities understand the information and expertise available through NPCA services. Agreements with lower-tier municipalities will be negotiated and executed on a longer time frame as the need for these services emerge.

All Agreements for Services will be brought back to the Board of Directors for final approval and will be posted on the NPCA website for full transparency.

Financial Implications:

There is no immediate financial impact due to carrying out the recommendations above. However, it should be noted that significant amount of staff time is being invested in completing *Conservation Authorities Act* transition requirements.

Related Reports and Appendices:

Appendix 1 – Draft NPCA Agreement of Services

Links To Policy/Strategic Plan:

NPCA is required to execute Agreements of Services for Category 2 and 3 services with Partner Municipalities under the updated *Conservation Authorities Act*.

Strategic Plan Strategy: Financial Sustainability and Partner of Choice

Goal 4. 1 Strengthen Government relations towards collective outcomes and impact.

Goal 6.1 Ensure responsible, sustainable, and sound fiscal practices.

Submitted by:

Original Signed by:

Chandra Sharma, MCIP, RPP
Chief Administrative Officer/Secretary-Treasurer



AGREEMENT FOR SERVICES

THIS AGREEMENT dated this ____ day of _____, 2023.

BETWEEN:

NIAGARA PENINSULA CONSERVATION AUTHORITY
(hereinafter called the "NPCA")

OF THE FIRST PART

– and –

_____,
(Hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the NPCA is a Conservation Authority established under the Conservation Authorities Act ("Act") and is governed by its members appointed by participating municipalities in accordance with the Act;

AND WHEREAS the Participating Municipality is located wholly or in part within the area under the jurisdiction of NPCA;

AND WHEREAS the Municipality is a lower tier Municipality in the Region of Niagara located wholly or in part within the area under the jurisdiction of NPCA;

AND WHEREAS, pursuant to the Act, Conservation Authorities are permitted to provide non-mandatory programs and services under a memorandum of understanding or such other agreement as may be entered into with a Participating Municipality;

AND WHEREAS the Participating Municipality is requesting the NPCA to deliver non-mandatory programs and services within NPCA's area of expertise and jurisdiction, that fall within the Services Areas attached hereto as Schedule "A";

AND WHEREAS the NPCA proposes and is prepared to provide certain non-mandatory services to the Municipality, attached hereto as Schedule "A";

AND WHEREAS the Council of the Participating Municipality has authorized the Participating Municipality to enter into this Agreement for Services with the NPCA for the delivery of programs and;

AND WHEREAS under the *Act*, certain programs and services may be provided at the request of participating municipalities, outside of the budget and apportionment process, through individual procurement agreements, which agreement are not affected or precluded by means of this Agreement for Services;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement for Services, including the exchange of promises it contains, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Scope and Use

1. The NPCA agrees to provide to the Participating Municipality the non-mandatory services attached hereto as Schedule "A".
2. Notwithstanding the foregoing, the Participating Municipality acknowledges and agrees that all programs and services identified in Schedule "A" also be included in a Watershed-based resource management strategy that the NPCA is required to develop and implement under the *Act*.

Term of Agreement

3. The term of this Agreement shall be for a period of five (5) years commencing on January 1, 2024 and running until December 31, 2028 (the "**Initial Term**"),
4. This Agreement shall be reviewed by the parties within six months of the end-date of the Initial Term for the purpose of determining whether or not this Agreement for Services is to be renewed by the parties, and discussing the terms of any renewal, including, but not limited to, whether any changes will be made to the non-mandatory programs and services attached hereto as Schedule "A". It shall be the NPCA's responsibility to initiate the review with the Participating Municipality.
5. The NPCA and the Participating Municipality may renew this Agreement for Services for an unlimited number of additional five (5) year terms (the "**Renewal Term(s)**"), provided that any renewed Agreement for Services must also be reviewed by the parties six months prior to the end-date of any such Renewal Term(s), as set out in paragraph 4, above.
6. This Agreement for Services may be terminated by either party prior to the end of the Initial Term or any Renewal Term(s), upon delivery of a written "Notice of Early Termination" as per the Notice clause 19, below, from the terminating party to the non-terminating party at least six months before the early termination date, which date is to be specified in the written "Notice of Early Termination".

7. The Participating Municipality and NPCA will strive to facilitate open and timely communication at all levels. The resolution of disputes that may arise between the parties to this Agreement for Services during the Initial Term and/or any Renewal Term(s) shall be subject to alternative dispute resolution for the settling of disputes outside the Court system, which shall include, first, a mediation to be conducted by a mutually agreed-upon mediator at such time as may be mutually agreed upon by the NPCA and the Participating Municipality, and, second, should mediation be unsuccessful, an arbitration to be conducted by a mutually agreed-upon arbitrator at such time and pursuant to such procedural rules as may be mutually agreed upon by the NPCA and the Participating Municipality. The cost of any mediation and/or arbitration shall be borne in equal shares by the NPCA and Participating Municipality.
8. The NPCA will not add to or delete from the services or programs funded through the levy without first consulting with the Participating Municipality and entering into a written agreement to this Agreement for Services with the Participating Municipality.
9. The Participating Municipality acknowledges and agrees that by executing this Agreement for Services, it is confirmed that the terms of this Agreement for Services have been reviewed and approved by a resolution of the Council of the Participating Municipality.
10. This Agreement for Services does not preclude the parties identifying or entering into agreements with respect to opportunities for further collaboration to the benefit of both parties, and is intended to ensure efficiency, transparency and accountability in the use of resources, including in-kind services and assistance, coordination of complementary policy and program initiatives and projects involving third parties.
11. The resolution of the NPCA Board of Directors to execute this Agreement for Services shall be attached hereto as Schedule 'B'.
12. The resolution of Council of the Participating Municipality to execute this Agreement for Services shall be attached hereto as Schedule 'C'.

Agreement for Services Available to the Public

13. As required by the *Act* and/or its regulations, this Agreement for Services shall be made available to the public, including on the NPCA website.

Fees and Payment

14. The costs associated with non-mandatory programs and services falling within Category 2 and/or 3 under the *Act* and/or its regulations shall, subject to this Agreement for Services, be reviewed by the parties on an annual basis as part of

the NPCA annual budget (operating and capital) approval process, in line with budget guidelines.

15. NPCA's final approved budget shall be appended annually hereto as Schedule 'D'.
16. The fees apportioned to the Participating Municipality will be calculated annually using the Modified Current Value Assessment (MCVA) or the benefit based method, unless otherwise noted as being attributable directly to the Participating Municipality as a special benefiting levy in Schedule 'A'.
17. NPCA may charge a user fee in the delivery of any programs and services listed in Schedule 'A', as appropriate, to assist with costs of NPCA programs or services provided under this Agreement for Services. Such user fees shall only be imposed in accordance with NPCA's Fee Policy and Fee Schedules adopted in accordance with the provisions of the *Act*, or otherwise in accordance with provisions set out in an agreement between NPCA and the Participating Municipality.
18. An 'Annual Notice to Pay' shall be sent to the Participating Municipality following NPCA budget approval and payment for annual fees shall be made by the Participating Municipality in four quarterly installments by the end of each fiscal quarter in each calendar year.

Notice

19. Any notice in respect of this Agreement for Services shall be in writing and shall be sufficiently given or made if made in writing and either delivered in person during normal business hours of the recipient on a business day to the party for whom it is intended to the address as set out below, or sent by registered mail or by email addressed to such party as follows:

- (1) in the case of the Municipality, to:
[Participating Municipality]

[Address]

Attention: [Name]

Email: [Email address]

- (2) in the case of NPCA, to:
Niagara Peninsula Conservation Authority
250 Thorold Road West, 3rd Floor
Welland, ON - L3C 3W2

Attention: Chandra Sharma, CAO/Secretary-Treasurer

Email: csharma@npca.ca

or to such other addresses as the parties may from time to time set out in writing, and any notice so made or given shall be deemed to have been duly and properly made or given and received on the day on which it shall have been so delivered or, if mailed, then, in the absence of any interruption of postal service affecting the delivery or handling thereof, on the third business day after the date of mailing.

Force Majeure

20. Neither party shall be in default with respect to the performance or non-performance of the terms of this Agreement for Services resulting directly or indirectly from causes beyond its reasonable control (other than for financial inability) that could not reasonably have been foreseen, including, without limitation, any delay caused by war, invasion, riots, acts of terrorism or sabotage, acts of government authority (other than by the Participating Municipality), plague, epidemic, pandemic, natural disaster, strike, lock-out, inability to procure material, or other cause, and the performance of such term or terms shall be extended for a period equivalent to the period of such delay. This provision should not relieve the Participating Municipality of its obligation to pay fees and costs when due.

Governing Law

21. This Agreement for Services shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as the locus of contract.

No Agency

22. Nothing herein contained shall make or be construed to make the Participating Municipality or the NPCA a partner of one another nor shall this Agreement for Services be construed to create a partnership, joint venture, principal-agent relationship or employment relationship in any way or for any purpose whatsoever between the Participating Municipality or the NPCA or between the Participating Municipality, the NPCA and a third party. Nothing in this Agreement for Services is to be construed as authorizing one of the NPCA or the Participating Municipality to contract for or to incur any obligation on behalf of the other of them or to act as agent for the other of them. Any reference herein to the Participating Municipality shall be interpreted to include its boards, agencies, commissions, and subsidiary operations.

Invalidity of any Provision

23. If any provision of this Agreement for Services is invalid, unenforceable or unlawful, such provision shall be deemed to be deleted from this Agreement

for Services and all other provisions shall remain in full force and effect and shall be binding in all respects between the parties hereto.

Further Assurances

24. The Parties hereto agree to execute and deliver to each other such further written documents and assurances from time to time as may be reasonably necessary to give full effect to the provisions of this Agreement for Services.

Amendments

25. This Agreement for Services cannot be altered, amended, changed, modified, or abandoned, in whole or in part, except by written agreement executed by the parties, and no subsequent oral agreement shall have any validity whatsoever.

Binding Agreement

26. This Agreement for Services shall ensure to the benefit and be binding upon the parties hereto and their respective heirs, executors, representatives and successors permitted hereunder.

Execution

27. This Agreement for Services may be executed in counterparts and when each party has executed a counterpart, each of such counterparts shall be deemed to be an original and all of such counterparts, when taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF the Participating Municipality and the NPCA have signed this Agreement for Services on the following page.

[Signature page follows]

SIGNED, SEALED AND DELIVERED THIS ____ DAY OF _____, 2023.

NIAGARA PENINSULA CONSERVATION AUTHORITY

Per: _____
Chair – Robert Foster

Per: _____
Chief Administrative Officer/Secretary-Treasurer – Chandra Sharma

I/we have the authority to bind the Corporation

SIGNED, SEALED AND DELIVERED THIS ____ DAY OF _____, 2023.

NIAGARA REGION / CITY OF HAMILTON / COUNTY OF HALDIMAND

Per: _____
Mayor -

Per: _____
TBD water

I/we have the authority to bind the Corporation

Schedule 'A'
To be provided to Municipalities

DRAFT

Schedule 'B'
NPCA Board Approval Resolution
2024 Budgets and Municipal Levies

DRAFT

Schedule 'C'

**Niagara Region (City of Hamilton, Haldimand County)–
Council Approval Resolution**

NPCA 2024 Budgets and Municipal Levies

DRAFT

Schedule 'D'
NPCA 2024 Budgets and Municipal Levies

DRAFT