

## **Memorandum of Understanding between the City of Toronto and the Toronto and Region Conservation Authority (TRCA)**

**Date:** November 21, 2023

**To:** Executive Committee

**From:** City Manager

**Wards:** All

### **SUMMARY**

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The purpose of this report is to inform City Council of recent amendments under the *Conservation Authorities Act* ("Act") which introduces a new framework for the delivery of programs and services by conservation authorities and to seek Council approval to enter into the Memorandum of Understanding ("MOU") with the Toronto and Region Conservation Authority ("TRCA"), as set out in Attachment 1 to this report.

Recent legislative changes to the Act have resulted in a distinction between mandatory programs and services and non-mandatory, municipally requested programs and services that conservation authorities have provided to municipalities in the past. As a result of the amendments to the Act, non-mandatory programs, services and projects provided to a municipality by a conservation authority require a memorandum of understanding or other similar agreement to be entered into between the municipality and the conservation authority by January 1, 2024, in accordance with Ontario Regulation 687/21.

The MOU between the City and TRCA as set out in Attachment 1 to this report fulfills the requirement for an MOU or other agreement to be in place for discretionary non-mandatory programs, services and projects provided by the TRCA.

### **RECOMMENDATIONS**

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The City Manager recommends that:

1. City Council authorize the City Manager to negotiate, enter into and execute the Memorandum of Understanding ("MOU") with the Toronto and Region Conservation Authority, including without limitation any future amendment, renewal, extension or

termination thereof, on substantially similar terms and conditions as set out in Attachment 1 to this report, and otherwise on such terms as may be acceptable to the City Manager, and in a form acceptable to the City Solicitor.

2. City Council direct the City Clerk to deliver a certified copy of City Council's resolution in this report to the Toronto and Region Conservation Authority, the Ministry of Natural Resources and Forestry, and the Ministry of Municipal Affairs and Housing.

## **FINANCIAL IMPACT**

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There are no financial implications from the adoption of the recommendations in this report.

The scope of this MOU pertains to non-mandatory programs, services and projects that are delivered and funded through the budget and apportionment process while others are funded by City Divisions through fee for service agreements. TRCA's non-mandatory programs, services and projects will continue to be reviewed annually through the City's budget process.

Separately from the scope of the MOU in this report, the City of Toronto is required to fund TRCA's legislated, mandatory services as approved by City Council through the City's budget process and TRCA's apportionment process.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

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On February 15, 2023, City Council approved TRCA's Operating Budget of \$11.148 million gross, \$5.603 million revenue and \$5.545 million net. City Council also approved TRCA's 2023 Capital Budget with cash flows and future year commitments totalling \$32.279 million and the 2024-2032 Capital Plan totalling \$192.828 million in project estimates.

<https://secure.toronto.ca/council/report.do?meeting=2023.CC4&type=decisions>

On June 10, 2014, City Council confirmed principles for watercourse management, including TRCA's role in receiving and responding to complaints concerning erosion hazard sites, TRCA's responsibilities for assessing, designing, constructing, and maintaining erosion control works and how costs will be shared with private property owners.

<https://secure.toronto.ca/council/agenda-item.do?item=2014.PW31.14>

On February 19, 2014, City Council authorized the Deputy City Managers, Clusters A and B to negotiate and enter into agreements with TRCA for the delivery of approved capital projects, operating programs and partner funded projects that meet certain conditions. The report also authorizes payment to TRCA based on work performed on

behalf of the City in accordance with the approved conditions, and amends Chapter 71, Financial Control, Schedule A accordingly.

<https://secure.toronto.ca/council/agenda-item.do?item=2014.GM27.6>

## COMMENTS

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### **Toronto and Region Conservation Authority (TRCA)**

Toronto and Region Conservation Authority ("TRCA") is one of Ontario's 36 conservation authorities. TRCA is an independent legal entity established in 1957 under the *Conservation Authorities Act, 1990* (the "Act") which sets out the mandate, governance, authorities and other provisions for conservation authorities ("CAs") in Ontario.

TRCA is also designated as a source protection authority under the *Ontario Clean Water Act, 2006*, which protects existing and future sources of drinking water in Ontario. TRCA's watershed authority boundary encompasses the City of Toronto, parts of the Regions of Peel, York and Durham, the Town of Mono and the Township of Adjala-Tosorontio.

### **Mandate**

TRCA works with its six upper-tier and 15 lower-tier municipalities and other partners to enhance the region's natural environment and protect land, water, and communities from the impacts of flooding, erosion and increasingly extreme weather events. TRCA maintains vital infrastructure and provides programs, services and projects that promote public health and safety, protecting people and property. TRCA's 2023-2034 Strategic Plan is structured according to four strategic pillars including Environmental Protection and Hazard Management (mitigating hazard risks to communities and protecting the natural environment), Knowledge Economy (contributing to environmental targets through knowledge advancement), Community Prosperity (building communities that drive local action and improve well being), and Service Excellence (efficient service delivery to adapt to a changing environment).

### **The TRCA Board**

The City of Toronto is the largest geographic area within the TRCA's jurisdiction and in accordance with the Act has 14 seats on the 28 member Board of Directors whose governance is shared with the participating municipalities. The City of Toronto's appointees for this term include four public members, appointed through the City's Public Appointments process, and ten City Council members. The other 14 members are appointed by the other participating municipalities. The Board appoints a Chair and Vice-Chair from among its members.

TRCA's Board of Directors sets strategic policy and supervises the management of the business and affairs of the TRCA.

## **Budget Apportionment**

All six upper-tier and single-tier member municipalities contribute to TRCA's operating and capital budgets. TRCA has the authority to impose a levy on its partner municipalities for their portion of the operating and capital costs and does so according to the budget process set out in Schedule A of the MOU. The City's proportion of the operating levy is funded by an annual contribution from Toronto Water rate budget and the City of Toronto's property taxes. TRCA's Capital Budget and Plan is funded by debt and Toronto Water rate based revenues.

## **Legislative Changes under the Act**

Amendments to the Act have instituted a new framework for the delivery of mandatory and non-mandatory programs and services by conservation authorities (CAs). Ontario Regulation 687/21 requires CAs to enter into agreements with municipalities for non-mandatory services by January 1, 2024 and to post the agreements publicly. Under the new framework, programs, services and projects are classified into three categories:

- Category 1 (mandatory programs, services and projects every CA is required to provide under the Act);
- Category 2 (non-mandatory programs, services and projects a municipality requests a CA to provide on their behalf); and
- Category 3 (non-mandatory programs, services and projects a CA determines are advisable to deliver to further the purposes of the Act).

The following are classified as Category 1 mandatory programs, services and projects in accordance with Ontario Regulation 686/21:

- Programs, services, and projects that help manage the following natural hazards: dynamic beaches, erosion, flooding, hazardous lands, hazardous sites, and low water or drought conditions. CAs are required to identify the hazard areas, undertake risk assessments, manage the risks and promote public awareness.
- Programs, services, and projects related to the conservation and management of lands owned or controlled by the CA including any interests in land registered on title. This includes developing a conservation area strategy and land inventory before December 31, 2024.
- Programs, services, and projects related to the CA's duties, functions and responsibilities as a source protection authority under the *Clean Water Act*, 2006.
- Programs, services, and projects related to the CA's duties, functions and responsibilities under an act prescribed by the regulations. These include the implementation and enhancement of the provincial groundwater monitoring program and the provincial stream monitoring program. It also includes the development and implementation of a watershed-based resource management strategy.

Category 2 programs, services and projects are non-mandatory programs, services and projects that a CA provides at the request of a municipality. All Category 2 programs, services and projects require an MOU or other similar agreement to be entered into between the municipality and the conservation authority. The MOU must be publicly published by the TRCA on its website.

Category 3 programs, services and projects are those that a CA determines are advisable to further the purposes of the Act. If a conservation authority determines that it would like to provide a Category 3 program, service or project with municipal financing through the levy, it must enter into a cost apportioning agreement with the municipality in accordance with Ontario Regulation 687/21. TRCA has advised that this is not a business practice they currently intend to take part in for any of their partner municipalities as they do not provide any Category 3 programs, services and projects to municipalities with financing through the levy.

### **City of Toronto MOU for Category 2 Programs, Services and Projects**

The TRCA delivers many Category 2 programs, services and projects for the City. To enable the continued delivery of these Category 2 programs, services and projects, a MOU (Attachment 1) was developed.

The proposed MOU addresses TRCA's obligations under the Act and is an enabling document that will ensure the funding and continued delivery of a range of non-mandatory programs, services and projects in compliance with legislation. The MOU will be in effect for an initial four-year term with an automatic renewal for subsequent four-year terms unless the City or TRCA provides notice to terminate the MOU. Schedule B of the MOU maps out the 2023, mandatory and non-mandatory programs, services and projects approved by Council for TRCA. These items are funded through the annual budget and apportionment process shown in Schedule A. Through the annual budget and apportionment process, the City will confirm the relevance and value of non-mandatory services.

In addition to the budget and apportionment process, City Divisions may enter into service level agreements and procurement agreements directly with TRCA for the provision of non-mandatory programs, services and projects. The funding is approved through the City Divisions' own Council approved budgets, outside of the apportionment process. This ability of City Divisions to enter into agreements with the TRCA is confirmed in the MOU and is a practice that will continue under the new framework.

City Divisions have existing agreements with the TRCA that will remain valid, even once the MOU is executed. These agreements, including service level agreements and procurement agreements will continue and will not be affected by the MOU.

## **Engagement on the MOU**

The City Manager's office worked with key participating divisions, including Legal Services, Financial Planning, Toronto Water, Parks, Forestry and Recreation, Transportation Services, City Planning and Environment and Climate, to build and review the MOU. This process included a comprehensive due diligence process to gather information on service level and procurement agreements that City Divisions have with the TRCA as these agreements are outside the apportionment process. This information, along with TRCA's annual budget submission, provides the City with a comprehensive understanding of the programs, services and projects the TRCA provides to the City.

City staff also met with other participating municipalities, including the Regional Municipalities of York, Peel and Durham to discuss the legislative changes and the inventory and categorization of mandatory and non-mandatory programs, services, and projects. All of TRCA's participating municipalities have to enter into their own MOU with TRCA for Category 2 programs, services and projects.

Throughout the engagement process, City staff worked collaboratively with TRCA staff to discuss the legislative changes, gather information on the programs, services, and projects, and finalize this report and the attached MOU that is supported by City staff and TRCA.

## **Implementation Points**

The Council approved MOU will be provided to the Minister of Natural Resources and Forestry, Ministry of Municipal Affairs and Housing, Toronto and Region Conservation Authority Board and staff, and will be shared with City Divisions.

## **Conclusion**

The MOU will ensure the TRCA is compliant with new legislation and regulations under the Act prior to the provincial deadline of January 1, 2024. It will formalize corporate oversight of City funding for TRCA's non-mandatory programs, services and projects under the budget and apportionment process and continue to enable service level and procurement agreements between TRCA and City Divisions. This MOU will also clarify the terms and conditions under which the City engages and collaborates with the TRCA for non-mandatory programs, services and projects.

## **CONTACT**

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## **SIGNATURE**

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Paul Johnson  
City Manager

## **ATTACHMENTS**

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Attachment 1: MOU between the City of Toronto and Toronto and Region Conservation Authority