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Subject: Memorandum of Understanding with Toronto and Region Conservation Authority for Provision of Municipally-requested Services

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Report Number: Planning, Bld & Growth Mgt-2023-424

Recommendations:

1. THAT the report titled “Memorandum of Understanding with Toronto and Region Conservation Authority for Provision of Municipally-requested Services” be received;
2. THAT Council authorize staff to execute a Memorandum of Understanding (MOU) with Toronto and Region Conservation Authority (TRCA) for the delivery of municipally requested services; and
3. THAT staff be authorized to enter in any such procurement agreements as may be necessary for the delivery of municipally requested services.

Overview:

- The City of Brampton has a history of collaboration with the TRCA, which includes river valley and channel restoration, community stewardship events, the protection of flood infrastructure, remediation of erosion hazards including repair/replacement of municipal infrastructure, flood protection, environmental assessments, sustainable neighbourhood programs, and other critical services and projects. For many years, TRCA has undertaken a variety of projects on behalf of the City. TRCA also owns significant lands in Brampton.
- Recent legislative changes made amendments to the Conservation Authorities Act that resulted in a clear distinction between mandatory services related to natural hazards management and other non-mandatory municipally requested services that conservation authorities have provided in the past to municipalities.

- **As a result of these amendments to the Conservation Authorities Act, municipalities are required to execute Memorandums of Understanding with conservation authorities to allow for the provision of, and to govern the funding of, any non-mandatory service that may be requested by a municipality.**
- **There is value to the City in having TRCA provide services on behalf of the City on projects that utilize existing TRCA programs and areas of expertise such as naturalization and restoration projects, watercourse stabilization, watershed and environmental monitoring. TRCA is able to provide cost-effective management of natural environment projects using their highly specialized expertise and ability to expedite required approvals, facilitate community involvement, meet tight timelines, and to monitor the long-term performance of environmental infrastructure to satisfy federal and provincial environmental standards.**
- **A Memorandum of Understanding between the City of Brampton and TRCA is necessary to formalize the relationship between the City and TRCA, as well as programs and services that may be procured from TRCA.**

Background:

Collaboration with TRCA

The City of Brampton has a long history of collaboration with TRCA, which includes river valley and channel restoration, community stewardship events, the protection of flood infrastructure, remediation of erosion hazards including repair/replacement of municipal infrastructure, flood protection, environmental assessments, sustainable neighbourhood programs, and other critical services and projects. For many years, TRCA has undertaken a variety of projects on behalf of the City which are of common interest to both organizations.

A selection of projects undertaken in partnership with, or with the support of, TRCA include:

- Riverwalk, including both Downtown Brampton Flood Protection Project and Riverwalk Urban Design Master Plan
- Brampton Uptown Transit Oriented Community Hub
- Bramalea Sustainable Neighbourhood Action Plan
- Maintenance and repair of flood infrastructure, such as Claireville Dam
- Watercourse stabilization and erosion mitigation and management
- Peel Climate Change Partnership and the development of a Regional Zero Emissions Vehicle Strategy
- Trail design, construction and maintenance, including the Claireville North Multi-Use Trail Project

- Restoration projects on both TRCA and City lands, such as Jefferson, Jordan & Jayfield Parks
- Partners in Project Green support for businesses
- Delivery of Community Stewardship events, Peel Ecoschools, and Community Learning Programs
- Community gardening initiatives at McVean Incubator Farm

Funding for initiatives and projects that advance shared objectives is provided by Region of Peel (municipal levy component of CA funding, or directly from Region budget), by City of Brampton or by TRCA depending on the interests and mandates of the organizations.

Various City departments and divisions have worked with, and continue to work with TRCA in accordance with their respective business areas. There is value to the City in having TRCA provide services on behalf of the City on projects that eliminate or reduce risk to life and property in a prompt, cost-effective and environmentally responsible manner. TRCA is able to provide cost-effective management of natural environment projects using their highly specialized expertise and ability to expedite required approvals, facilitate community involvement, meet tight timelines, and satisfy federal and provincial environmental standards.

Legislative Changes

Since 2017, the *Conservation Authorities Act* (CA Act) has been amended several times to provide further clarity and transparency surrounding the programs and services that conservation authorities (CAs) provide, agreements for the provision of municipally-requested services, and the governance and operations of CAs. These amendments were undertaken through the *Building Better Communities and Conserving Watersheds Act, 2017* (Bill 139), the *More Homes, More Choice Act, 2019* (Bill 108), and the *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020* (Bill 229), and *Build More Homes Faster Act, 2022* (Bill 23). These amendments resulted in a clear distinction between mandatory services related to natural hazards risk management and other non-mandatory services that CAs in the past have provided to municipalities.

These amendments also allow for conservation authorities to enter into agreements with municipalities within their jurisdictions in respect to non-mandatory municipally-requested programs and services that the authority will provide on behalf of the municipality. These initiatives are in addition to the mandatory programs and services that conservation authorities will continue to provide to their municipalities, which are required by regulation. Specifically, the following wording was added to the Act as part of the 2018 amendments:

Programs and services

21.1 (1) The following are the programs and services that an authority is required or permitted to provide within its area of jurisdiction:

1. Mandatory programs and services that are required by regulation.
2. Municipal programs and services that the authority agrees to provide on behalf of municipalities situated in whole or in part within its area of jurisdiction under a memorandum of understanding referred to in subsection (3).
3. Such other programs and services as the authority may determine are advisable to further its objects. 2017, c. 23, Sched. 4, s. 20 (1).

Mandatory Programs and Services

(2) Programs and services referred to in paragraph 1 of subsection (1) shall be provided in accordance with such standards and requirements as may be set out in the regulations. 2017, c. 23, Sched. 4, s. 20 (1).

Memorandum of Understanding with Municipalities

(3) An authority may enter into a memorandum of understanding with a municipality situated in whole or in part within its area of jurisdiction in respect of programs and services that the authority will provide on behalf of the municipality. 2017, c. 23, Sched. 4, s. 20 (1).

Transition Period

Finalized CA Act Phase 1 regulations were released by the Ministry of Environment, Conservation and Parks (MECP) on October 1, 2021. The Phase 1 regulations include requirements for CAs such as the development of a Transition Plan and draft inventory of programs and services. TRCA has completed both the Transition Plan and the draft inventory, which were circulated to MECP and participating and partner municipalities in accordance with the deadlines set out in the regulations.

Finalized Phase 2 regulations were released April 20, 2022, which set out requirements associated with the process for CA budgets, the apportionment to participating municipalities, including the Region of Peel, the methodology for the determination of the apportionment amounts owed to CAs from participating municipalities, and the public sharing of governance-related information, including the requirement to post high-level parent MOUs with municipalities to a CA's website.

As required by the transition regulations, municipalities are required to have an MOU in place by January 1, 2024 where the municipality expects to request non-mandatory programs and services from a conservation authority.

Bill 23 Amendments to Conservation Authorities Act

In addition to the changes introduced in Bill 139 (2017), Bill 108 (2019) and Bill 229 (2020), on

October 25, 2022 the Province introduced Bill 23, *More Homes Built Faster Act, 2022* (Bill 23) to support More Homes Built Faster: Ontario's Housing Supply Action Plan: 2022-2023. On January 1, 2023, amendments through Bill 23 to Subsections 21.1.1 (1.1) and 21.1.2 (1.1) of the Conservation Authorities Act came into effect. These sections provide that conservation authorities may not provide a municipal or other program or service related to "reviewing and commending on a proposal, application or other matter made under a prescribed Act". The corresponding regulation, O. Reg. 596/22: Prescribed Acts – Subsections 21.1.1. (1.1) and 21.1.2 (1.1) of the Act became effective January 1, 2023 and lists the prescribed acts as follows:

- The Aggregate Resources Act
- The Condominium Act, 1998
- The Drainage Act
- The Endangered Species Act, 2007
- The Environmental Assessment Act
- The Environmental Protection Act
- The Niagara Escarpment Planning and Development Act
- The Ontario Heritage Act
- The Ontario Water Resources Act
- The Planning Act

As a result of Bill 23, Conservation Authorities are restricted from providing non-mandatory review and comments (e.g., natural heritage conformity) for applications and proposals made under the prescribed Acts, and such plan review services cannot be included in any MOU's for provision of municipally-requested services O. Reg. 596/22 does not affect TRCA's mandatory programs and services (e.g., natural hazards, wetlands, source protection and regulatory) per O. Reg. 686/21.

It is important to note that the recent legislative changes through Bill 23 do not affect other TRCA programs and services, including the wide variety of programs and services offered that further the conservation, restoration, development, and management of natural resources in watersheds. Furthermore, it does not affect this request before Council to enter into an MOU for municipally requested TRCA programs and services, except in relation to the restriction for review and comment for non-mandatory matters.

Current Situation:

As of January 1st, 2024 conservation authorities will not be allowed to provide any non-mandatory services to a municipality without an MOU in place.

City of Brampton staff have identified several benefits to the City as a whole to enter into agreement with TRCA to allow the procurement of CA programs and services for programs and services of municipal interest. These include:

- Where work is taking place in unique, complex and/or sensitive areas. This can include, but not be limited to, valley lands, areas with ecological sensitivities or with species at risk;

- Where work is taking place on TRCA lands, including those under management agreement with the City or where a hazard is present on municipal lands but work must be carried out on TRCA lands. In all cases where work is carried out on TRCA lands, TRCA must be involved;
- Where the City and TRCA enter into a partnership together on a project or program. Frequently such partnerships are tied to a system of follow-up maintenance, monitoring, assessment and evaluation of practices utilized following implementation of the project. Such partnerships exceed the services and timelines of what a private contractor would undertake;
- Where it makes sense to manage both TRCA and municipal assets together in a more comprehensive manner;
- In some cases, where TRCA can contribute funds to a project that will provide for a larger net benefit upon completion;
- Where TRCA can leverage opportunities from other programming with municipal partners (e.g. Region of Peel, Infrastructure Canada) to coordinate integrated and potentially larger scale solutions than might be otherwise possible;
- Where TRCA offers highly unique or specialized existing services or programs that align with municipal needs, such as managing specialized consultants that require first-hand knowledge and experience in the area of expertise, for example, hydrotechnical and geotechnical engineering;
- Where TRCA offers existing environmental programming for various audiences and the City can partner with TRCA to have those programs offered within the City of Brampton.

It is recommended that Council approve the City entering into an MOU with TRCA to allow the provision of municipally-requested programs and services, as defined by the CA Act, to ensure projects and services of municipal importance that benefit from TRCA's expertise and shared objectives.

Proposed Memorandum of Understanding

The City, in collaboration with TRCA, has prepared a draft Memorandum of Understanding (attachment 1). Key points from the MOU are:

- Will be a 4-year term
- No automatic renewal
- Will be reviewed at regular intervals
- Does not bind the City to retain TRCA for any service or program

Corporate Implications:

Financial Implications:

The TRCA shall undertake work associated with a City-requested program or service on a cost recovery basis, and TRCA may charge a reasonable administration fee associated with project management, preparation of reports and permit applications etc. The cost of municipally-requested programs and services shall form part of the budget of the relevant City Department or Division in similar manner as if such program or service were to be procured elsewhere at time of need, and be brought to Council for approval as part of the annual budget process.

Procurement Agreement

City of Brampton's Purchasing By-law, Schedule D Non-Application states circumstances that do not require a Procurement Process, including:

9. Procurement of goods or services:

- d) by non-governmental bodies that exercise governmental authority delegated to them;

TRCA is included in Schedule D of the Purchasing By-Law, and in the past the City has prepared one-off agreements for each project or service on which the TRCA has been engaged. In an effort to streamline the process for engaging the TRCA in the future, staff are recommending that a template Procurement Agreement be developed and executed to reduce the need for individual agreements for specific projects or services.

Legal Implications

A Memorandum of Understanding between the City and TRCA is required to be in place before January 1st 2024 as per Ontario Regulation 687/21 in order for the City to retain TRCA for provision of any municipally-requested programs or services.

Other Implications:

The City's jurisdiction is also covered by Credit Valley Conservation (CVC). At this time, CVC is also in the process of developing and executing MOUs with participating member municipalities. CVC is supportive of the City moving forward with an MOU with TRCA, and the City and CVC will work to have a forthcoming MOU with CVC align closely with the MOU between the City and TRCA.

Term of Council Priorities:

The actions and initiatives described in this report supports Term of Council Priority to ensure Brampton is a Well-run City.

This report has been prepared in full consideration of the Brampton 2040 vision that the people of Brampton will “Live the Mosaic”. This report aligns with the lens of collaboration and the vision that Brampton will be a mosaic of sustainable urban places.

Conclusion:

Since 2017, the *Conservation Authorities Act* (CA Act) has been amended several times to provide further clarity and transparency surrounding the programs and services that conservation authorities (CAs) provide, agreements for the provision of municipally-requested services, and the governance and operations of CAs. These amendments resulted in a clear distinction between mandatory services related to natural hazard risk management and other non-mandatory municipally-requested services that CAs in the past have provided to municipalities. These amendments also require that CAs and municipalities enter into a Memorandum of Understanding in order for the CA to provide any non-mandatory services to municipalities. Such an MOU is required to be entered into before January 1st 2024, at which time the prohibitions on provision on non-mandatory services comes into effect.

The City of Brampton has a long history of collaboration with TRCA, which includes river valley and channel restoration, community stewardship events, the protection of flood infrastructure, remediation of erosion hazards including repair/replacement of municipal infrastructure, flood protection, environmental assessments, sustainable neighbourhood programs, and other critical services and projects. For many years, TRCA has undertaken a variety of projects on behalf of the City which are of common interest to both organizations. Continuing to leverage the expertise and resources of TRCA in municipal programs and services that advance our common interests is a logical and beneficial approach to support achieving municipal objectives.

In order to continue this relationship, it is recommended that the City enter into a Memorandum of Understanding with TRCA to govern the provision of non-mandatory municipally-requested programs and services, and appropriate procurement agreement be developed to administer the procurement of these programs and services.

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Attachments:

Draft Brampton-TRCA MOU
List of TRCA Programs and Service Areas