

THE CORPORATION OF THE MUNICIPALITY OF PORT HOPE

BY-LAW NO. 73/2023

Being a By-law to authorize execution of a Memorandum of Understanding (MOU) between the Ganaraska Region Conservation Authority and the Corporation of the Municipality of Port Hope for Services and Programs pursuant to the Conservation Authority Act, RSO 1990, c.27 and Ontario Regulation 687/21

WHEREAS the Municipal Act, 2001, Section 9 provides in part that a Municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority;

AND WHEREAS Council has considered Staff Report WE-24-23 regarding Ganaraska Region Conservation Authority MOU dated November 21, 2023;

AND WHEREAS Conservation authorities are mandated to provide services to protect residents from flooding and natural hazards, and to effectively and safely enable development in Port Hope with these services classified as Category 1 under new provincial regulations;

AND WHEREAS under the new regulation, Category 2 and 3 programs and services must be administered through an agreement between a conservation authority and municipality to apportion operating costs to the Municipality to fund other services and programs under Categories 2 and 3, that the Ganaraska Conservation wishes to provide to further the purpose of the Act;

AND WHEREAS the intent of the regulation is to provide greater transparency on services and costs for municipalities by requiring all mutually agreed upon Category 2 and 3 services to be administered under an agreement and reviewed on an annual basis;

AND WHEREAS the Municipality recognizes the need for, and the benefits of, entering into an MOU for the delivery of the other programs and services by Ganaraska Conservation;

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF PORT HOPE ENACTS AS FOLLOWS:

1. THAT the Mayor and Clerk are hereby authorized to execute on behalf of the Corporation of the Municipality of Port Hope a Memorandum of Understanding between the Ganaraska Region Conservation Authority and the Corporation of the Municipality of Port Hope with the terms and conditions as set out in Appendix "A" attached hereto comprising part of this By-law.
2. THAT this By-law shall come into force the day it is finally passed.

READ a FIRST, SECOND and THIRD time and finally passed in Open Council this 5th day of December, 2023.

Olena Hankivsky, Mayor

Shrishma Davé, Acting Clerk



**GANARASKA REGION
CONSERVATION AUTHORITY**

**MEMORANDUM OF UNDERSTANDING
FOR PROGRAMS & SERVICES**

*Clean Water, Healthy Land
For Healthy Communities*

**MEMORANDUM OF UNDERSTANDING FOR PROGRAMS AND SERVICES
("MOU")**

THIS MOU dated this day of , 2023.

BETWEEN:

Ganaraska Region Conservation Authority
(hereinafter called the "Ganaraska Conservation")

– and –

Municipality Of Port Hope
(hereinafter called the "Participating Municipality")

Hereinafter referred to as the "Parties" when referenced collectively.

WHEREAS Ganaraska Conservation is a conservation authority established under the *Conservation Authorities Act*, RSO 1990, c C.27 and is governed by its members appointed by Participating Municipalities in accordance with the *Act*;

AND WHEREAS the Participating Municipality is a municipality, located wholly or partly within the area under the jurisdiction of Ganaraska Conservation, and is designated as a Participating Municipality under the *Act*;

AND WHEREAS in carrying out its mandate under the *Conservation Authorities Act*, Ganaraska Conservation is required to provide mandatory programs and services (Category 1) set out under *Ontario Regulation 686/21*;

AND WHEREAS in carrying out its mandate under the *Act*, Ganaraska Conservation provides non-mandatory programs and services (Category 2) at the request of or on behalf of its Participating Municipalities within its jurisdiction;

AND WHEREAS in carrying out its mandate under the *Act*, Ganaraska Conservation provides non-mandatory programs and services (Category 3) that Ganaraska Conservation provides to manage and conserve the watershed;

AND WHEREAS under the *Act*, Category 1 programs and services are to be funded through the annual budget and apportionment process in accordance with the *Act*;

AND WHEREAS under the applicable regulations, Category 1 operating expenses and capital costs may be included in the apportionment and provided without a MOU;

AND WHEREAS pursuant to the *Conservation Authorities Act*, RSO 1990, c C.27 and Ontario Regulation 687/21, Ganaraska Conservation is required to enter into a MOU with the Participating Municipality in order for Ganaraska Conservation to apportion operating costs to the Participating Municipality to fund other services and programs, Categories 2 and 3, that Ganaraska Conservation wishes to provide to further the purpose of the *Act*;

AND WHEREAS pursuant to the *Conservation Authorities Act*, RSO 1990, c C.27 and Ontario Regulation 687/21, Ganaraska Conservation may establish a fee to be charged by Ganaraska Conservation for other programs and services;

AND WHEREAS the Parties recognize the need for, and the benefits of, entering into an MOU for the delivery of the other programs and services by Ganaraska Conservation;

AND WHEREAS the Parties continue to work together to identify opportunities for further collaboration to the benefit of both Parties while ensuring efficiency and accountability;

NOW THEREFORE, in consideration of the mutual covenants, conditions, considerations and payments herein contained, the parties hereto agree as follows:

1. Ganaraska Conservation agrees to provide the Participating Municipality with the programs and services outlined in the Inventory of Programs and Services, Categories 2 and 3, attached hereto as Schedule "A". Schedule "A" will be reviewed on an annual basis.
2. The general levy, which is applied to Category 1, will be calculated annually using the current general levy subject to an annual increase as agreed to during budget deliberations. The appointment to the Participating Municipality shall be based on Current Value Assessment (CVA) data as provided by the Ministry. The general levy will be forwarded to the Participating Municipality annually under separate cover.
3. The Participating Municipality agrees to the following adjustment in the general levy associated with Category 1 in accordance with the following formula:
 - The Participating Municipality agrees Ganaraska Conservation may reallocate a maximum of three percent (3%) of the apportioned value the Participating Municipality is required to pay Ganaraska Conservation for general operating expenses and Category 1 expenses as defined in Ontario Regulation 402/22 under the *Conservation Authorities Act*, R.S.O. 1990, c. C.27.
4. The cost structure for the programs and services provided in Schedule A shall be based on the actual costs to Ganaraska Conservation of providing the programs and services.

5. The Participating Municipality agrees that Ganaraska Conservation may establish and charge a user fee for the programs and services outlined in Schedule "A".
6. The Participating Municipality will continue to support the current Inventory of Programs and Services in Schedule "A" throughout the term of this MOU.
7. This MOU will be posted on Ganaraska Conservation's website to comply with the requirements under the *Conservation Authorities Act* R.S.O. 1990, c. C.27.

Term of MOU

8. The MOU will be for a term of a minimum five (5) years commencing on the date of the signature by the last of the parties and shall, subject to the renewal provisions of this MOU, end on December 31, 2028.
9. Unless this MOU has been terminated early in accordance with the terms or conditions of this MOU, the MOU shall be automatically renewed for a five (5) year term from December 31, 2028, on the same terms and conditions contained herein.
10. The MOU shall be reviewed by the parties at least six (6) months before the end of each five (5) year term, for the purpose of determining whether the MOU is to be renewed by the parties.
11. Either party may terminate all or any part of Schedule A of this MOU at any time upon delivering six (6) months written notice of termination prior to the following budget year.
12. Any notice to be given pursuant to this MOU shall be delivered in writing to the parties at the following addresses:

Ganaraska Region Conservation Authority
2216 County Road 28, Port Hope, ON L1A 3V8

Municipality of Port Hope
56 Queen Street, Port Hope, ON L1A 3Z9
13. The MOU will terminate six (6) months after the date on which written notice of early termination is delivered to the parties.

Force Majeure

14. Neither Party shall be in default with respect to the performance or non-performance of the terms of this MOU 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, acts, laws, or regulations of government authority or other cause beyond the reasonable control of such Party and not caused by the act or omission of such Party, and the performance of such term or terms shall be extended for a period equivalent to the period of such delay. This provision does not relieve the Participating Municipality of its obligation pay fees and costs when due.

Dispute Resolution

15. Ganaraska Conservation and the Participating Municipality shall negotiate in good faith in an attempt to settle any dispute between the parties in connection with this MOU in a timely manner.

Should Ganaraska Conservation and the Participating Municipality be unable to settle the dispute through negotiation, both parties acting reasonably and in good faith, then the determination of such dispute shall be resolved by arbitration, pursuant to the *Arbitration Act* (Ontario).

A party desiring arbitration shall give written notice of arbitration to the other party containing a concise description of the matter referred to arbitration (“Notice of Arbitration”).

Within ten (10) business days after a party delivers a Notice of Arbitration, the parties shall jointly appoint a single arbitrator (the “Arbitrator”). If the parties fail to appoint an Arbitrator within such time, the Arbitrator shall be designated by a judge of the Ontario Superior Court of Justice upon application by either party.

The decision of such Arbitrator shall be final and binding as between the parties and shall not be subject to appeal.

Whenever a dispute is in respect of a matter within the expertise of an architect, engineer, land surveyor or other professional consultant who, in the opinion of both Ganaraska Conservation and the Participating Municipality, is qualified to make a determination in respect of such dispute, Ganaraska Conservation and the Participating Municipality may jointly stipulate at any time prior to the selection or appointment of the Arbitrator hereunder, that the Arbitrator shall be an independent consultant with such expertise as may be determined jointly by Ganaraska Conservation and the Participating Municipality.

The costs of the Arbitrator shall be split equally between Ganaraska Conservation and Participating Municipality.

SIGNED AND DELIVERED THIS ____ DAY OF _____ 2023.

GANARASKA REGION CONSERVATION AUTHORITY

Per: _____
Chair

Per: _____
CAO/Secretary-Treasurer

I/we have the authority to bind the Corporation

SIGNED AND DELIVERED THIS ____ DAY OF _____ 2023.

MUNICIPALITY OF PORT HOPE

Per: _____
Mayor

Per: _____
Clerk

I/we have the authority to bind the Corporation

Schedule "A"
Based on 2024 Proposed Preliminary Budget
Subject to Change Upon Approval of the Municipality's Budget

Municipality of Port Hope

Category 2

Storm Sewer Asset Management	\$25,000.00
Watershed Monitoring	\$15,000.00
Climate Change Strategy	\$10,000.00

Category 3

Clean Water Healthy Lands Financial Assistance	\$ 20,000.00
Maximum 3% Category 1 Transfer	
3% of Proposed 2024 General Levy of \$205,927.31	\$ 6,178.00