



AGREEMENT FOR SERVICES

THIS AGREEMENT dated this ____ day of _____, 2024.

BETWEEN:

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

OF THE FIRST PART

– and –

The Town of NIAGARA-ON-THE-LAKE,
(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 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 Municipality;

AND WHEREAS the NPCA and the Municipality has mutually agreed to establish shared services that are within the service areas attached hereto as Schedule "A" and Schedule "B":

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

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 collaborate on shared services to the Municipality selected as per municipal needs. Non-mandatory services attached hereto as Schedule "A".
2. Notwithstanding the foregoing, the Municipality acknowledges and agrees that all programs and services identified in Schedule "A" may also be included in a Watershed-based Resource Management Strategy that the NPCA is required to develop and implement under the *Act*, or any amendments thereto.

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 Municipality.
5. The NPCA and the Municipality, upon mutual agreement, 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 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. The Parties will endeavour to resolve the matter through negotiations without use of formal mediation or adjudication. If needed, the Parties

will seek mediation to be conducted by a mutually agreed-upon mediator at such time as may be mutually agreed upon by the NPCA and the Municipality, and 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 Municipality. The cost of any mediation and/or arbitration shall be borne in equal shares by the NPCA and Municipality.

8. The NPCA will not add to or delete from the services or programs funded through the Municipality without first consulting with the Municipality and entering into a written agreement to this Agreement for Services with the Municipality.
9. The 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 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 'C'.
12. The resolution of Council of the Municipality to execute this Agreement for Services shall be attached hereto as Schedule 'D'.

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 programs and services subject to this Agreement for Services, be reviewed by the parties on an as need basis and will be based on applicable legislation.
15. NPCA will charge a user fee in the delivery of any programs and services listed in Schedule 'A', or as requested by the Municipality through collaborative projects as appropriate, to cover 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 the NPCA and the Municipality.

16. The responsibilities and financial obligations of the NPCA and Municipality for the shared operations and maintenance of the Virgil Dam Conservation Area are specified in Schedule 'B'.
17. Should the municipality request a service listed in "Schedule A", quarterly invoices will be sent by the NPCA to the Municipality for the delivery of programs and services in accordance with this Agreement.

Notice

18. 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:

The Town of Niagara-on-the-Lake
1593 Four Mile Creek Road
Virgil, ON
L0S 1T0

Attention: Marnie Cluckie, CAO

Email: marnie.cluckie@notl.com

(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

19. 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 Municipality of its obligation to pay fees and costs when due.

Governing Law

20. 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

21. Nothing herein contained shall make or be construed to make the 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 Municipality or the NPCA or between the 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 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 Municipality shall be interpreted to include its boards, agencies, commissions, and subsidiary operations.

Invalidity of any Provision

22. 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

23. 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

24. 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

25. 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

26. 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 Municipality and the NPCA have signed this Agreement for Services on the following page.

[Signature page follows]

SIGNED, SEALED AND DELIVERED THIS ____ DAY OF _____, 2024.

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 _____, 2024.

TOWN OF NIAGARA ON THE LAKE

Per: _____
Chief Administrative Officer/Secretary

Per: _____

I/we have the authority to bind the Corporation

NPCA Agreement of Services - Schedule "A"

NPCA Service Areas for Category 2 Services (non-Mandatory Fee-for-Service or costs-shared through fundraising)

Flood and Erosion Management

- a) Flood & erosion hazard mitigation projects on public lands across watershed rivers and streams (beyond NPCA owned lands)

Shoreline Hazard Management & Resilience

- a) Shoreline studies for public lands including environmental assessments
- b) Shoreline flood and erosions capital projects on public lands (beyond NPCA owned lands)

Planning Studies

- a) Class or Conservation Authority Environmental Assessment for restoration, trails or flood and erosion mitigation projects
- b) Review and advice on OP updates and comprehensive Zoning By-Law reviews related to watershed-based resource management and natural hazards (other than natural heritage)
- c) Support cross-disciplinary integration and inform municipal watershed planning and water, wastewater, and stormwater master planning

Watershed and Sub-watershed Planning

- a) Data, technical analysis and modeling to inform sub-watershed and quaternary planning for growth areas and restoration initiatives
- b) Review and input to sub-watershed studies or other regional scale studies (e.g., comprehensive EIS, master plans)
- c) Watershed and landscape scale integrated science and reporting to foster cross-municipal resource management

Watershed Monitoring

- a) Water quality monitoring to support municipal and other programs and initiatives (Stormwater quality monitoring or performance monitoring of Low Impact Development technologies)
- b) Ecological monitoring to support municipal programs (planning & growth)
- c) Subwatershed monitoring to support municipal studies, including surface water and groundwater quality, equipment set-up and maintenance, fish and other aquatic community surveys
- d) Groundwater monitoring and reporting

Ecological Restoration & Stewardship

- a) Restoration projects (cost-shared and Fee- for-service)
- b) Invasives species management
- c) Agriculture (public and private land), urban (homeowners/public lands) and corporate stewardship and restoration initiatives

- d) Technical support to landowners on restoration and forest management, Knowledge sharing workshops, hands-on training

Climate Change Resilience

- a) Emerging climate Research and practice to support municipal projects (i.e., Natural Asset Inventories)
- b) Sustainable Stormwater and Erosion/Sediment Management Technologies and Low Impact Development (implementation, training, performance monitoring and Best Management Practices)

Outdoor Education and Cultural Heritage

- a) Outdoor Education and Cultural Heritage Programs

Land Management & Land Care

- a) Land, Lease & Facility Management, Operations and Maintenance

Land Securement

- a) Strategic cost-shared acquisition of properties with lower-tier municipal partners and other agencies.

Schedule B

REGARDING

THE VIRGIL DAMS AND RESERVOIRS CONSERVATION AREA

1. BACKGROUND

1.1) The Niagara Peninsula Conservation Authority's (NPCA) Virgil Dams and Reservoirs Conservation Area, located across Four Mile Creek in the Town of Niagara-on-the-Lake (the 'Town'), were originally constructed in 1968 with the primary purpose of providing water for agricultural irrigation. This primary purpose remains unchanged to this day. The Upper Dam and Reservoir is located just south of Township Line 3 west of Creek Road, and the Lower Dam and Reservoir is located between Niagara Stone Road and Township Line 3.

1.2) The NPCA currently owns and maintains the Virgil Dams and Reservoirs Conservation Area as a passive recreational facility intended to be primarily used for hiking, fishing, and bird watching.

1.3) During the growing season, water within Four Mile Creek and the Virgil Reservoirs is supplemented by water pumped by the Town from the Ontario Power Generation's Sir Adam Beck hydro facility as dictated by the Town's Irrigation Committee.

1.4) There has never been a formal agreement between the NPCA and the Town with respect to the maintenance and operation of these Dams. Both organizations have collaborated in good faith to ensure community needs for irrigation are addressed in a timely fashion.

1.5) This Agreement does not change the continued need for collaboration related to the operational aspects of infrastructure and grounds maintenance and is focused on clarifying roles and responsibilities considering recent changes to the Conservation Authorities Act.

1.6) As such, this Agreement between the Niagara Peninsula Conservation Authority and the Town of Niagara-on-the-Lake regarding the NPCA's Virgil Dams and Reservoirs shall clearly and define the responsibilities and financial obligations of each party.

2.0) RESPONSIBILITIES AND FINANCIAL OBLIGATIONS

Responsibilities and financial obligations are outlined as follows:

2.1) The **Niagara Peninsula Conservation Authority** will:

- a. Undertake and pay for all operations and maintenance pertaining to land care on the properties (excluding the Upper and Lower Dam structures, and the Upper and Lower Reservoirs, collectively the "**Virgil Reservoirs and Dams**") which shall include grass

cutting, tree removal and maintaining all gates, fences, bollards, barriers, trails, and driveways.

- b. Assist the Town by providing technical expertise to obtain any required permits or approvals necessary to improve the condition or operation of the Virgil Reservoirs and Dams for irrigation purposes.
- c. Provide the Town with non-exclusive access to the Virgil Reservoir and Dams, such that the Town may operate the dams and draw water from the Upper and Lower Virgil Reservoirs for agricultural irrigation.
- d. Develop Virgil Conservation Area Management Plan with input from municipal staff, appropriate stakeholders, and community as per the Conservation Area Strategy required under the Conservation Authorities Act. Through the development of the Conservation Area Management Plan, NPCA will ensure that the ongoing irrigation needs of the agriculture community must continue to be accommodated.

2.2) The **Town of Niagara-on-the-Lake** will:

- a. Undertake and pay for all operations and maintenance pertaining to the Virgil Reservoirs and Dams water control infrastructure as per past practice.
- b. Undertake and pay for all operations that are required to impound, supply, convey, and discharge irrigation water as per past practice.
- c. Undertake to provide and pay for routine inspections of the Upper and Lower Virgil Dam structures to ensure the overall structural integrity of the water control structures.
- d. Collaborate with NPCA to fundraise as required, to undertake capital works required to maintain the structural integrity of the Dams and to satisfy all applicable Provincial Dam Safety guidelines, policies, and requirements.
- e. Undertake to implement and comply with all conditions (including operating, monitoring, reporting, and renewal) of the Ministry of the Environment, Conservation, and Park's Permit to Take Water #2442-CMJSC3 (attached).

2.3) **The Niagara Peninsula Conservation Authority** and the **Town of Niagara-on-the-Lake** will:

- a. Meet quarterly to discuss the implementation of this Agreement.
- b. Collaborate to secure funding to help defray the costs of capital works required to be undertaken to maintain the overall structural integrity of the Dams and to satisfy all applicable Dam Safety guidelines, policies, and requirements.
- c. Collaborate to implement and cost-share shoreline erosion control projects that have the potential to negatively impact adjacent pedestrian trails.

- d. Collaborate to secure funding to help defray the costs of any works which would serve to improve the environmental health of the Upper and Lower Virgil Reservoirs.
- e. Collaborate on the long-term vision and management plan of Virgil Conservation Area and its implementation.

3.0 POINTS OF CONTACT

3.1 All notices and communications related to this Agreement will be addressed as follows:

3.1.1) For **Niagara Peninsula Conservation Authority** to:

Director, Conservation Areas

Niagara Peninsula Conservation Authority

250 Thorold Road West, 3rd floor,

Welland, ON, L3C 3W2

Phone: (905) 788-3135

3.1.2) For the **Town of Niagara-on-the-Lake** to:

Director of Operations

Town of Niagara-on-the-Lake

1593 Four Mile Creek Road,

Niagara-on-the-Lake, ON, L0S 1T0

Phone: (905) 468-3266

4.0 TERMS OF ACCESS AND INDEMNIFICATION

4.1) The Town shall conduct its activities in a manner that will minimize interference with the NPCA's and the public's use and enjoyment of the Virgil Reservoirs and Dams and the NPCA's adjacent property.

4.2) The Town shall obtain and, cause its agents to obtain (and provide evidence to the NPCA), prior to the access to or commencement of any activities at the Virgil Reservoirs and Dams by or on behalf of the Town a policy of commercial general liability insurance covering any and all liability with respect to or arising out of the Town Access activities. Such policy of insurance shall be kept and maintained in force during the term of this Agreement and so long thereafter as necessary to cover any claims of damages suffered by persons or property resulting from any acts or omissions of the Town, the Town's employees, agents, contractors, suppliers, consultants or other related parties with respect to the Town Access activities. Such policy of insurance shall

have liability limits of not less than Five Million Dollars (\$5,000,000) with a combined single limit per occurrence for bodily injury, personal injury and property damage liability and shall be in form and content satisfactory to the NPCA, acting reasonably. The Town and its agents shall provide the NPCA with certificates of insurance prior to entry onto the Virgil Reservoir and Dams by the Town or its agents and shall provide satisfactory evidence of such insurance coverage upon request of the NPCA at any time thereafter.

4.3) The Town shall defend, reimburse, indemnify and hold the NPCA, its officers, servants and agents, harmless from and against any and all claims, demands, suits, actions, losses, liabilities, damages, obligations, payments, costs, and expenses (including reasonable legal fees incurred in connection therewith) arising out of any injury to persons, including death, or loss or damage to property of the NPCA or others, which may be asserted against the NPCA by reason, in whole or in part, of the entry upon the Virgil Reservoirs and Dams by the Town or its agents or their respective activities at the Virgil Reservoirs and Dams or in any manner associated with the exercise of any right or privilege granted to the Town by this Agreement.

Schedule 'C'
NPCA Board of Directors Resolution to Execute this Agreement

9.3 Report No. FA-28-23 RE: Agreements of Services with Municipalities as required under the Conservation Authorities Act Phase 1 Regulation

Resolution No. FA-67-2023

Moved by Brian Grant

Seconded by Mark Tadeson

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.

Schedule 'D'

Niagara-on-the-Lake Council Resolution to Execute this Agreement