

Memorandum of Understanding

THIS MEMORANDUM OF UNDERSTANDING made the 31st day of July, 2023.

BETWEEN:

CITY/COUNTY/TOWNSHIP OF Desconto
("the Municipality")

OF THE FIRST PART

- and -

QUINTE CONSERVATION AUTHORITY
("the QCA")

OF THE SECOND PART

Hereinafter the Municipality and the QCA shall collectively be referred to as the "Parties"

WHEREAS the QCA 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 the QCA;

AND WHEREAS the Act permits the QCA 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 QCA is prepared to provide certain non-mandatory programs and services to the Municipality;

AND WHEREAS the Municipality wishes to avail itself of those programs and services described in this Memorandum of Understanding (MOU) and to pay the amount charged by the QCA for those programs and services;

NOW THEREFORE, in consideration of the terms of this Memorandum of Understanding and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Entire Memorandum of Understanding

1.1. This MOU, together with:

Schedule "A" - Category 2 Programs and Services

Schedule "B" - Category 3 Programs and Services

constitutes the entire MOU between the Parties with respect to the subject matter contained in this MOU and supersedes all prior oral or written representations and agreements.

1.2 This MOU will be posted publicly on the QCA's website to comply with requirements under the *Conservation Authorities Act*.

2. Definitions

2.1 In this MOU:

"Category 2" means the municipal programs and services that the QCA hereby agrees to provide at the request of and on behalf of the Municipality; and

"Category 3" means the programs and services that the QCA's Board wishes to provide on behalf of the

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watershed to further the *Conservation Authorities Act* under a cost apportioning agreement amongst participating municipalities who agree to the implementation of the programs and services, as outlined in the QCA's Programs & Services Inventory.

3. Term of Memorandum of Understanding

3.1 The initial term of this MOU shall commence on the date this MOU is signed by the Parties and shall, subject to the renewal provisions of this MOU, end on December 31, 2028 ("the Initial Term").

3.2 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 ("**Renewal Term**"), on the same terms and conditions contained herein.

3.3 This MOU shall be reviewed by the Parties prior to the expiry of the Initial Term and each Renewal Term. It is the QCA's responsibility to initiate the review with Municipality at least one hundred and twenty (120) days prior to the expiry of the Initial Term or Renewal Term, as the case may be.

3.4 Subject to the provisions of Clause 9 of this MOU, the terms and conditions of this MOU may be amended at any time with the mutual written consent of both of the Parties.

4. Fees and Payment

4.1 The cost structure for the programs and services provided in Schedule A and Schedule B shall be based on the actual costs to the QCA of providing the programs and services.

4.2 An increase will be applied to the total fees for the programs and services provided in Schedule A and Schedule B effective January 1 in each calendar year and will be no less than the same percentage as the QCA's overall levy increase.

4.3 The fees apportioned to the Municipality will be calculated annually using the benefit-based apportionment method for Schedule A services and the Municipal Current Value Assessment (MCVA) apportionment method for Schedule B services. The MCVA apportionment method shall be based on the ratio that the Municipality's modified current value assessment is of all participating municipalities. The amount of the fees apportioned to the Municipality shall be provided annually at least 30 days before the meeting at which the budget is approved.

4.4 In addition to the foregoing cost structure for programs and services provided in Schedule A and Schedule B, the QCA may charge a user fee in the delivery of any programs and services listed, as appropriate.

4.5 The Municipality shall pay the QCA all fees and charges as invoiced by the QCA pursuant to this MOU within sixty (60) days of the date of the invoice.

5. Notice

Any notice in respect of this MOU 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:

MUNICIPALITY NAME
ADDRESS

Attention:
Email:

Town of Deseronto
331 Main St. P.O. Box 310
Deseronto, ON K0K 1X0.
Gail Maracle
gmaracle@deseronto.ca

(2) in the case of the QCA, to:
Quinte Conservation
2061 Old Highway # 2
Belleville, ON K8N 4Z2

Attention: Brad McNevin, Chief Administrative Officer
Email: bmcnevin@quinteconservation.ca

or to such other addresses as the Parties may from time to time notify 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.

6. Force Majeure

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 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 should not relieve the Municipality of its obligation to pay fees and costs when due.

7.0 General

7.1 The QCA shall not hold itself out as an employee of the Municipality.

7.2 The QCA may subcontract all or any portion of the programs or services in its sole discretion, provided that any such subcontracted program(s) or service(s) conforms to the terms of this MOU. Nothing contained in this MOU will create a contractual relationship between any subcontractor or its directors, officers, employees, agents, partners, affiliates or volunteers and the Municipality. No subcontract will relieve the QCA from any obligation under this MOU or impose any liability on the Municipality unless otherwise agreed to in writing.

7.3 The QCA will maintain confidentiality of any information provided by the Municipality and identified as confidential and will limit disclosure of such information to only those individuals who require access to the information in order to complete the program or service, or as required to be disclosed by law.

7.4 Notwithstanding the foregoing, the Municipality acknowledges and agrees that all programs and services identified in Schedule "A" shall also be included in a Watershed-based Resource Management Strategy that the QCA is required to develop and implement under the *Conservation Authorities Act*.

8. Dispute Resolution

If requested in writing by either Party, the Parties shall attempt to resolve any dispute between them arising out of or in connection with this Agreement by entering into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the Parties. If a dispute cannot be settled within a period of ninety (90) calendar days with the mediator, the dispute shall be referred to and finally resolved by arbitration. The arbitrator shall be appointed by the agreement of the Parties.

No person shall be appointed to act as mediator or arbitrator who is in any way interested, financially or otherwise, in the conduct of the work on the Project or in the business or other affairs of either of the Parties.

The award of the arbitrator, including an award for costs if applicable, shall be final and binding upon the Parties.

The provisions of the Arbitration Act, R.S.O., 1991, Chapter 17, as amended shall apply.

9. Early Termination

This MOU shall terminate automatically upon either Party providing the other Party with prior written notice of their intention to terminate this MOU given no less than one-hundred and eighty (180) days and no more than three hundred (300) days prior to the end of such calendar year. Upon such written notice of intention to terminate this MOU being given in any calendar year during the Initial Term or Extension Term, the date that is the last date of such calendar year or such date as may be otherwise agreed to by all Parties in writing, shall be the "Termination Date". In the event this MOU is terminated, any operating expenses and costs incurred by the QCA for providing services to the Municipality shall be paid by the Municipality up to and including the Termination Date.

10. Termination

Upon a termination notice being given, the QCA shall be entitled to operational and capital costs reasonably incurred up to the date of the termination notice and all ongoing fixed costs incurred in reliance on the funding commitment of the Municipality. The Municipality shall pay the QCA within thirty (30) days of termination.

11. Insurance

Both Parties agree to obtain and maintain in full force at all times, Certificates of Insurance for commercial general liability at a minimum level of five million dollars (\$5,000,000) and shall add the other Party as a named insured.

12. Execution

This MOU may be executed in counterparts in writing or by electronic signature and delivered by mail, facsimile or other electronic means, including in Portable Document Format (PDF), no one copy of which need be executed by all of the Parties, and all such counterparts together shall constitute one MOU and shall be a valid and binding agreement among the Parties hereto as of the date first above written.

13. Severability

If any term or provision of this MOU shall to any extent be held to be invalid or unenforceable, the remainder of this MOU shall not be affected thereby, and each term and provision of this MOU shall be separately valid and enforceable to the fullest extent permitted by law.

14. Successors

This MOU shall ensure to the benefit of and be binding upon Parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the Municipality and the QCA have signed this Memorandum of Understanding.

MUNICIPALITY:



Name Dan Johnston
Position Mayor



Name Gail Maracle
Position Clerk.

I / We have authority to bind the Municipality.

QUINTE CONSERVATION AUTHORITY



Brad McNevin
Chief Administrative Officer/Secretary-Treasurer



Chris Malette
Chair

I / We have authority to bind QC.

