

Memorandum of Understanding

THIS MEMORANDUM OF UNDERSTANDING made the 5th day of July, 2023.

BETWEEN:

MUNICIPALITY OF Marmora and Lake
("the Municipality")

OF THE FIRST PART

- and -

CROWE VALLEY CONSERVATION AUTHORITY
("the CVCA")

OF THE SECOND PART

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

WHEREAS the CVCA 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 CVCA;

AND WHEREAS the Act permits CVCA 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 CVCA 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 CVCA 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 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 CVCA's website to comply with requirements under the *Conservation Authorities Act*.

2. Definitions

2.1 In this MOU:

"Category 3" means the programs and services that CVCA's Board wishes to provide on behalf of the 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 CVCA'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 CVCA'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 shall be based on the actual costs to the CVCA of providing the programs and services.

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

4.3 The fee apportioned to the Municipality will be calculated annually using the Municipal Current Value Assessment (MCVA) apportionment method for Schedule A 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, the CVCA may charge a user fee in the delivery of any programs and services listed, as appropriate.

4.5 The Municipality shall pay the CVCA the charge as invoiced by the CVCA 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 *Municipality of Marmora and Lake*
ADDRESS *12 Burstall St.*

Marmora, Ont

Attention: *Tonia Bennett KOK 2MO*

Email: *tbennett@marmoraandlake.ca*

(2) in the case of the CVCA, to:

Crowe Valley Conservation Authority
70 Hughes Lane
Marmora, Ontario
K0K 2M0

Attention: Tim Pidduck, General Manager/Secretary-Treasurer
Email: tim.pidduck@crowevalley.com

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 CVCA shall not hold itself out as an agent or employee of the Municipality.

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

7.3 CVCA 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 CVCA 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 CVCA 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, CVCA 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 CVCA 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 enure to the benefit of and be binding upon Parties hereto and their respective successors and assigns.

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

MUNICIPALITY:



Name Tonia Bennett
Position CAO/Clerk

Name
Position

I / We have authority to bind the Municipality.

CROWE VALLEY CONSERVATION AUTHORITY



Tim Pidduck
General Manager/Secretary-Treasurer



Jim Martin
Chair

I / We have authority to bind the CVCA.

Schedule A – Category 3 Programs and Services

1) Surface Water Quality Monitoring Program

Benthic monitoring at 10 Ontario Benthos Biomonitoring Network (OBBN) sites across the watersheds. Costs include staff, equipment and calibration, sampling, analysis, and reporting. The information is used for watershed report cards and watershed project prioritization.