

MEMORANDUM OF UNDERSTANDING

Between

HER MAJESTY THE QUEEN in Right of Ontario,
as represented by the Minister of the Environment

and

ONTARIO CLEAN WATER AGENCY as represented by the Chair

1. PURPOSE

1.1 The purpose of this MOU is to:

- a) Confirm the accountability relationships between the Ministry and the Agency and their respective representatives;
- b) Clarify the roles and responsibilities of the Minister, the Chair, the Deputy Minister, the CEO and the Board; and,
- c) Set out the expectations for the operational, administrative, financial, auditing and reporting arrangements between the Agency and the Ministry.

1.2 This MOU should be read together with the Act and Other Applicable Law as well as the Agency's by-laws as approved pursuant to subsection 6(2) of the Act.

1.3 This MOU does not affect, modify or limit the powers of the Agency as set out in the Act, and Other Applicable Law, or interfere with the responsibilities of any of its parties as established by law. In case of a conflict between the MOU and any act or regulation, the act or regulation prevails.

2. DEFINITIONS

2.1 In this MOU the following words and phrases have the following meanings:

"Act" means the *Capital Investment Plan Act, 1993* as amended from time to time and any successor legislation;

"Agency" means the corporation (without share capital) known as the Ontario Clean Water Agency established by the Act;

“Annual Report” means the report that the Agency is required to make to the Minister, annually, as per section 14 of the Act and the Directive;

“Archives Act” means the *Archives and Recordkeeping Act, 2006* as amended from time to time and any successor legislation;

“AODA” means the *Accessibility for Ontarians with Disabilities Act, 2005* and the regulations made thereunder all as amended from time to time and any successor legislation;

“BCA” means the Ontario *Business Corporations Act* as amended from time to time and any successor legislation;

“Business Plan” means the annual business plan prepared by the Agency in accordance with this MOU and the Directive;

“Board” means the Board of Directors of the Agency;

“CEO” means the Chief Executive Officer of the Agency;

“Chair” means the Chair of the Board of the Agency;

“Deputy Minister” means the Deputy Minister of the Environment;

“Directive” means the *Agency Establishment & Accountability Directive* dated January 2010 as amended from time to time and any successor document;

“FIPPA” means the Ontario *Freedom of Information and Protection of Privacy Act* as amended from time to time and any successor legislation;

“Fiscal year” means the Agency’s fiscal year which is from January 1 to December 31 as established by Order in Council 128/94 approved and ordered January 19, 1994;

“Government” means the Government of Ontario;

“LGIC” means the Lieutenant Governor in Council;

“Minister” means the Minister of the Environment;

“Ministry” means the Ontario Ministry of the Environment;

“MOF” means the Ontario Ministry of Finance;

“MOU” means this Memorandum of Understanding together with Annex I (TB/MBC Directives and Policies Applicable to the Ontario Clean Water Agency), Annex II (Summary of Agency Reporting Requirements) as well as any other Annexes attached to it and includes any amendments that may be made from time to time;

“ODA” means the *Ontarians with Disabilities Act, 2001* as amended from time to time and any successor legislation;

“Other Applicable Law” means the *Expropriations Act, Financial Administration Act, Municipal Water and Sewage Transfer Act, 1997, OWRA, the PSOA, the SDWA, and any other Provincial statute or regulation that grants a power to, or imposes an obligation on, the Agency;*

“OWRA” means the *Ontario Water Resources Act;*

“Person” includes any individual, municipality, First Nation, partnerships, corporate body or other organization or government;

“PSOA” means the *Public Service of Ontario Act, 2006* as amended from time to time and any successor legislation;

“SDWA” means the *Safe Drinking Water Act, 2002;*

“TB/MBC” means Treasury Board/Management Board of Cabinet.

3. AGENCY CLASSIFICATION, CORPORATE STATUS, AND CROWN AGENT STATUS

- 3.1 The Agency was established as a corporation without share capital in 1993 by the Act.
- 3.2 The Agency is classified as an Operational Enterprise Agency in accordance with the Directive.
- 3.3 Subject to section 24 of the Act, subsections 110(11) and 113(16) of the SDWA and any Other Applicable Law, the Agency is an agent of the Crown within the meaning of the *Crown Agency Act*.
- 3.4 The Agency is prescribed as a public body and a commission public body pursuant to Ontario Regulation 146/10 under the PSOA.
- 3.5 Ontario Regulation 336/07 under the Archives Act designates the Agency as a public body for the purposes of the Archives Act.

- 3.6 The Agency is designated as an institution for the purposes of the FIPPA, pursuant to Ontario Regulation 460. The Chair is designated as the head of the institution.
- 3.7 The Agency is categorized as a “designated public sector organization” pursuant to Ontario Regulation 429/07 made under the *Accessibility for Ontarians with Disabilities Act, 2005*.
- 3.8 Pursuant to Ontario Regulation 440/09 under the *Public Sector Expenses Review Act, 2009* the Agency is prescribed as a public entity for the purposes of the *Public Sector Expenses Review Act, 2009*.
- 3.9 The Agency is defined as a public body pursuant to Ontario Regulation 334 under the *Environmental Assessment Act*.

4. MANDATE AND POWERS

- 4.1 The objects of the Agency are as set out in the Act.
- 4.2 The powers of the Agency are as set out in the Act and Other Applicable Law (most notably the OWRA and the SDWA).
- 4.3 In performing its roles and responsibilities as an agent of the Crown and as set out in the MOU, the Agency will be guided by:
- (i) the Act and Other Applicable Law;
 - (ii) the TB/MBC and MOF directives set out in Annex I and any other TB/MBC and MOF directives that may be applicable to the Agency pursuant to its classification as an Operational Enterprise Agency unless the Agency is explicitly exempted by TB/MBC and the exemption is communicated in writing to the Chair by the Ministry.
- 4.4 Without limiting or expanding the objects, powers or capacities of the Agency as set out in the Act and Other Applicable Law, the Agency has full authority to exercise the following powers, with respect to any Person, to fulfill its mandate:
- (a) operate, manage, oversee, maintain, administer and repair water and sewage works and the various assets associated with those works;
 - (b) acquire, design, construct and repair water works and sewage works and provide water service and sewage service;

- (c) project manage the design and construction of water and sewage works;
- (d) provide consulting advice and services with respect to the operation, oversight, compliance, management, maintenance, administration, and repair of water and sewage works and the various assets associated with those works, including without limitation educational and skills development services;
- (e) enter into exclusive and/or non-exclusive agreements, partnerships, joint ventures, distributorships (provided that for distributorships the Agency does so pursuant to subsection 24(1) of the Act) and other business arrangements for the treatment and management of water, wastewater and stormwater including for the purpose of financing and promoting the development, testing, demonstration and commercialization of related technologies and services;
- (f) provide services as described in this section 4.4, outside of Ontario (provided that for these extra-provincial agreements the Agency does so pursuant to subsection 24(1) of the Act);
- (g) study or cause to be studied and investigate or cause to be investigated, the need for water and sewage works, the method of delivery of and the service of such works, and any related technical, engineering or scientific matters;
- (h) disseminate information and provide advice on engineering or scientific research and technology relating to water service, sewage service, and water conservation and use;
- (i) subject to the Act, provide financing to assist with the provision of water and sewage works and other related services and to construct, reconstruct, extend, provide, operate, repair and maintain water or sewage works;
- (j) receive financial assistance through grants, including grants from the federal government;
- (k) subject to the Act and Other Applicable Law, borrow money against the Agency's own assets or through guarantees by the Province for purposes consistent with the Agency's objects;
- (l) except as limited by the Act and Other Applicable Law most notably the Expropriations Act and the OWRA, acquire and dispose of any asset of the Agency, including real estate or water or sewage works or any part thereof, in a manner consistent with the Agency's mandate;

- (m) subject to the Act and Other Applicable Law, borrow or invest funds for purposes consistent with the Agency's objects;
- (n) provide emergency services related to water and sewage works and other related services at the direction of the Ministry under the *Safe Drinking Water Act, 2002*, the *Ontario Water Resources Act* or pursuant to a Ministry request or to the Province of Ontario pursuant to the *Emergency Management and Civil Protection Act* or by agreement with any other Person;
- (o) charge for the services provided by the Agency, including without limitation the services described above, in accordance with agreements entered into between the Agency and the Person(s) to whom the Agency's services are being provided; and,
- (p) perform such functions and discharge such duties and exercise such powers as are imposed or conferred on the Agency under any other act or regulation.

5. GUIDING PRINCIPLES

The parties agree to the following principles:

5.1 Policy Direction and Implementation

- 5.1.1 The Minister represents the interests of the people of Ontario and may set out public interest expectations for the Agency's operations by issuing directives, nominating individuals for appointment to the Board and through this MOU.
- 5.1.2 The parties to this MOU recognize that the Agency's business and operations are to be consistent with the Minister's directives, the LGIC's policies and Ministry program plans as communicated to the Agency.

5.2 Operational Independence of the Agency

- 5.2.1 The Minister recognizes that the Agency is a separate statutory entity that in carrying out its objects has the rights, powers and privileges of a natural person, subject to the limitations of the Act, other applicable legislation, the applicable TB/MBC and MOF directives and this MOU.
- 5.2.2 The Agency operates independently from the Ministry in its day to day operations and the Board oversees and provides strategic direction to the Agency.
- 5.2.3 The Board, through the Chair, acknowledges it is accountable to the Minister in exercising the objects and mandate of the Agency. The Board, through the Chair,

acknowledges it is responsible for ensuring that the Agency's strategic, business and operational plans, policies and activities are consistent with the LGIC's policies, the Minister's directives and TB/MBC and MOF directives and guidelines. The Board, through the Chair, acknowledges that accountability is a fundamental principle to be observed in the management, administration and operations of the Agency.

5.3 Management Principles

- 5.3.1 As an agency of the Government, the Agency conducts itself according to the management principles of the Government. These principles include ethical behavior; prudent; efficient, and lawful use of public resources; fairness; high quality service to the public; and openness and transparency to the extent required under law.
- 5.3.2 The Deputy Minister will ensure that the administrative and organizational support and services provided by the Ministry to the Agency are of the same quality and standard as provided to the Ministry's own line divisions and branches.
- 5.3.3 The Agency and the Ministry agree to avoid duplication of services wherever possible.
- 5.3.4 The Minister recognizes that the Agency operates as a business in a competitive environment and provides essential services, paid for by its clients pursuant to agreements entered into with the Agency. Therefore, subject to the limitations of the Act, other applicable legislation, the applicable TB/MBC and MOF directives, the PSOA, all Ontario Public Service human resources directives and all applicable collective agreements, and this MOU, the Minister acknowledges and agrees that the Agency should have the ability to conduct its business in a flexible and efficient manner to allow it to be responsive to the needs of its clients and the demands of the market within which it operates and to:
- (a) make timely decisions concerning control of its resources, including any human, physical and financial resources;
 - (b) manage its resources and make decisions with respect to those resources in accordance with reasonable commercial practices and in the context of the limitations enumerated above as well as the agreements the Agency makes with its clients; and,
 - (c) operate so as to ensure that the Agency remains an effective, financially sustainable corporation.

5.3.5 The Agency recognizes that it plays an important role in providing safe and reliable water and wastewater treatment services to many Ontarians, and to the Ministry and the Government in the event of a water or wastewater related emergency. The Agency shall ensure that these public accountabilities remain paramount in any decisions made by the Agency with respect to the operation of its business and are appropriately balanced against the Agency's financial objectives. The Agency further agrees to remain responsive to any Ministry and Government priorities communicated to the Agency by the Ministry.

6. APPLICABLE GOVERNMENT DIRECTIVES AND POLICIES

6.1 The Agency is required to comply with the TB/MBC and MOF directives set out in Annex I.

6.2 When the Agency develops its own operating policies and procedures they must be consistent with the Act, Other Applicable Law, Minister directives, LGIC policies, and the Directive as well as any other applicable directives and guidelines.

7. CONFLICT OF INTEREST

7.1 The Chair is responsible for ensuring that public servants who are government appointees of the Agency and who work in the Agency are informed of the conflict of interest rules, including the rules on political activities that govern the Agency.

7.2 The CEO is responsible for ensuring that for public servants, other than government appointees, of the Agency and who work in the Agency are informed of the conflict of interest rules, including the rules on political activities that govern the Agency.

7.3 The Agency follows Ontario Regulation 381/07 under the PSOA on conflict of interest rules for members of the Board and public servants who are government appointees and public servants other than government appointees of the Agency.

7.4 In accordance with the Act, the Chair shall inform all members of the Board of their obligation to comply with the conflict of interest provisions set out in section 132 of the BCA and will receive any written disclosures of conflict of interest from the officers and directors of the Agency as required under section 132 of the BCA. The Chair shall also inform the Board of TB/MBC's requirements with respect to conflict of interest situations.

7.5 The Board shall develop a comprehensive protocol for Board members for identifying, declaring and addressing conflicts of interest with equivalent principles as set out in the TB/MBC Conflict of Interest and Post-Service Directive for Public

Servants and Public Officials.

8. DURATION OF MOU AND PROCESS FOR REVIEW AND AMENDMENT

- 8.1 The Memorandum of Understanding between the Ministry and the Agency dated August 8, 2007, the date of the signature of the Minister, is hereby terminated with effect from the effective date of this MOU.
- 8.2 This MOU is effective on the date of the signature of the Minister and will continue in effect for not more than five years from the effective date.
- 8.3 Notwithstanding subsection 8.2, this MOU shall remain in effect until a subsequent MOU has been executed by the parties.
- 8.4 A full review of this MOU will be conducted not more than five years following the date it came into effect or as soon as practicable in the event of a significant change to the Agency's objectives, mandate, powers or governance structure as a result of an amendment to or change in the constituting instrument.
- 8.5 If a new Minister or Chair takes office before this MOU expires, the Minister and Chair will affirm in writing that the MOU will continue in force without a review, or alternatively, they may agree to revise the MOU.
- 8.6 This MOU may be amended from time to time with the agreement of the Minister and the Board. Either the Minister or the Chair, representing the Board, may propose amendments to this MOU. All proposed amendments must be approved by the Minister, the Board and TB/MBC before a revised MOU reflecting the amendments can be executed. If amendments to the MOU are proposed when a new Minister or Chair is appointed, the same approvals process will be followed as is required for approval of the MOU.
- 8.7 An original copy of this MOU will be filed with the Legal Services Branch of the Ministry.
- 8.8 The Agency is subject to periodic review initiated at the discretion and direction of the Minister or by TB/MBC as per the authority granted them by the Act and the Directive. The Minister will consult the Chair, representing the Board, as appropriate during any such review. The Board members and staff of the Agency shall cooperate with any periodic review directed by the Minister or TB/MBC and shall provide all information and documentation as requested without delay.

9. ACCOUNTABILITY FRAMEWORK

9.1 Minister

The Minister is accountable to the Legislative Assembly for the performance of the Agency in the fulfillment of its mandate and in compliance with the applicable TB/MBC and MOF directives. The Minister is also accountable to Cabinet for the performance of the Agency and its compliance with the applicable TB/MBC and MOF directives.

9.2 Board

The Board is accountable to the Minister for setting the strategic direction and overseeing the Agency's management and business and for ensuring that the Agency achieves the goals, objectives and strategies as set out in the Agency's approved Business Plan.

9.3 Chair

The Chair, on behalf of the Board, is accountable for reporting to the Minister on the performance of the Agency or on any other matter required by the Minister from time to time and for providing ongoing leadership and direction to the Board.

9.4 Vice-chair of the Board

The Vice-chair(s) shall take on the responsibilities of the Chair in those situations where the Chair is absent or unable to act.

9.5 Deputy Minister

The Deputy Minister is accountable to the Minister for the performance of the Ministry in respect of this MOU and for carrying out the roles and responsibilities assigned to him or her by the Minister and by applicable TB/MBC and MOF directives in respect of the Agency.

9.6 CEO

The CEO is accountable to the Board for the day-to-day management of the Agency's operations and for the performance of the Agency in accordance with its strategies, objectives and goals as set out in the approved Business Plan. The CEO is also responsible to the Board for ensuring that Agency management and staff act in accordance with requirements of law, this MOU, the applicable

TB/MBC and MOF directives and guidelines, LGIC policies, any Agency by-laws and policies, and any other directives of the Minister or the Board.

10. The Minister's Roles and Responsibilities

The Minister:

10.1 Accountability

10.1.1 is accountable to the Legislative Assembly for the performance of the Agency in the fulfillment of its objects and mandate and compliance with the Act and applicable TB/MBC and MOF directives and guidelines as well as LGIC policies, and Minister directives;

10.1.2 is responsible for reporting and responding to the Cabinet and Legislative Assembly on the affairs of the Agency;

10.1.3 is responsible for representing the Agency in the Cabinet and its committees, the Legislative Assembly and before committees of the Legislature;

10.1.4 will receive and review the Agency's Annual Report and submit it to the Lieutenant Governor in Council and then table the report before the Legislative Assembly pursuant to section 14 of the Act;

10.1.5 will facilitate sending all applicable Agency by-laws to the Ministry of Finance for the approval of the Minister of Finance pursuant to section 6(3) of the Act.

10.1.6 is responsible for attesting, reporting and responding to TB/MBC on the Agency's performance and compliance with the Governments applicable directives and policies.

10.1.7 will submit an annual attestation to the Secretary, MBC indicating Agency compliance with the mandatory requirements of the Directive.

10.2 Appointments

10.2.1 will seek recommendations from the Chair for nominees to the Agency's Board as well as to the positions of CEO and Vice-Chair(s);

10.2.2 will work with the Public Appointments Secretariat and the Chair to recommend to the Lieutenant Governor in Council, potential candidates for positions on the Board, including the position of CEO;

10.2.3 will work with the Public Appointments Secretariat to recommend to the Lieutenant Governor in Council candidates for the positions of Chair and Vice-Chair(s);

10.3 Policy Direction/Implementation

10.3.1 will inform the Board, through the Chair, of the Government's priorities and broad policy directions for the Agency, and when appropriate or necessary, will take action or direct that corrective action be taken in respect of the fulfillment of the Agency's mandate or operation;

10.3.2 will consult, as appropriate, with the Chair (and others) on significant new directions for the Agency and/or when the Government is considering regulatory or legislative changes for the Agency;

10.4 Business Planning/General Management

10.4.1 will review and approve the Agency's Business Plan;

10.4.2 will review in-year changes to the Business Plan submitted by the Board through the Chair;

10.4.3 will review, and if appropriate approve and recommend to TB/MBC, the establishment of subsidiaries that may be recommended by the Agency's Board;

10.4.4 may, where appropriate, delegate to any of the Ministry's staff any of the responsibilities assigned to the Minister in this MOU.

10.4.5 The Ministry shall work with the Agency to seek approval from the Ontario Government to indemnify and hold harmless the directors of the Agency.

11. **Roles and Responsibilities of the Deputy Minister**

The Deputy Minister:

11.1 Accountability

11.1.1 is accountable to the Minister for the performance of the Ministry in providing administrative and organizational support to the Agency and for carrying out the roles and responsibilities assigned to the Deputy Minister by the Minister, applicable TB/MBC and MOF directives and this MOU;

11.1.2 will fulfill any responsibilities of the Minister, with respect to the Agency, which may be delegated to the Deputy Minister by the Minister;

11.1.3 will submit an annual attestation to the Secretary, MBC, indicating Agency

compliance with the mandatory requirements of the Directive.

11.1.4 ensures that the Ministry is providing to the Agency the administrative and organizational support as set out in this MOU, including:

- providing the Agency with a single point of contact within the Ministry for ongoing monitoring, reporting and liaison between the Ministry and the Agency,
- interpreting Government directives, policies, guidelines, the Act and applicable legislation, and
- undertaking the preparation of all Cabinet, TB/MBC and any other submissions (with supporting documentation) required to obtain any Government approvals necessary for the Agency.

11.2 Policy Direction/Implementation

11.2.1 undertakes, on the Minister's behalf, to inform and to discuss the policies of the LGIC as well as the directives of the Minister that apply to the Agency;

11.3 Business Planning/General Management

11.3.1 will establish a framework for Ministerial approval of the Agency's strategic business and financial activities, Annual Reports and any other reports;

11.3.2 will maintain open lines of communication with the Chair and CEO to discuss any matters related to the Agency; and,

11.3.3 will review, with the Chair, the performance of the CEO.

12. **Roles and Responsibilities of the Board**

The Board:

12.1 Accountability

12.1.1 through the Chair, is accountable to the Minister for setting the goals, objectives and strategic directions for the Agency in accordance with the Act, this MOU, the approved Business Plan, applicable TB/MBC and MOF directives and guidelines, LGIC policies, Minister directives any other agreement with the Ministry and directions from the Minister;

12.1.2 directs the affairs of the Agency within its authority as defined by the Act, this MOU and the approved Business Plan, and monitors the performance of the Agency;

12.1.3 ensures an effective performance measurement system is in place to measure and track the Agency's performance and report back to the Ministry as required;

12.1.4 ensures that the Agency is operated in accordance with the approved Business Plan;

12.1.5 carries out the financial responsibilities (see Part 18, Financial Arrangements and Part 17, Audit Arrangements) and reporting requirements (see Part 16, Reporting Requirements) as assigned to the Board;

12.2 Policy Direction/Implementation

12.2.1 through the Chair, may recommend appropriate amendments to the Act and the MOU to the Minister;

12.2.2 through the Chair, seeks clarification on any policy direction from the LGIC or directive from the Minister;

12.3 Business Planning/General Management

12.3.1 directs the preparation of, and reviews and approves, the Agency's Annual Report and Business Plan, in-year updates to the Business Plan and any other financial forecasts or reports required by the Minister and through the Chair, recommends them to the Minister;

12.3.2 is accountable for the management of the affairs and business of the Agency including ensuring that the Agency has policies, procedures and administrative systems in accordance with this MOU and the Act, LGIC policies, Minister directives and ensures that they comply with the TB/MBC and MOF directives, policies and guidelines outlined in Annex I as well as any other TB/MBC and MOF directives, policies and guidelines that may be applicable to the Agency pursuant to its classification as an Operational Enterprise Agency ;

12.3.3 ensures appropriate systems are in place for the Agency's day-to-day operations with regard to the standards set out in section 27;

12.3.4 makes recommendations to the Minister through the Chair with respect to possible candidates for the position of CEO;

12.3.5 provides advice as necessary to the Minister concerning the affairs of the Agency and seeks policy direction from the Government as appropriate;

12.3.6 directs the preparation of, and reviews and approves, an appropriate risk management framework and plan in accordance with the Directive;

- 12.3.7 is responsible for ensuring that the Agency complies with its records responsibilities (see Part 28, Creation, Collection, Maintenance and Disposition of Records);
- 12.3.8 will co-operate with the Ministry and the Government concerning any periodic review of the Agency and will facilitate the preparation and submission of any information or reports that may be requested by the Minister or TB/MBC in relation to that periodic review;
- 12.3.9 shall ensure, through the Chair, that all members of the Agency cooperate with auditors conducting an audit of the business and affairs of the Agency and will provide all requested information;
- 12.3.10 will co-operate with the Ministry and the Government concerning preparation and submission of any information or reports that may be requested by the Minister or TB/MBC in relation to the establishment of subsidiaries, and to Agency business outside of Ontario.

13. Roles and Responsibilities of the Chair

The Chair:

13.1 Accountability

- 13.1.1 on behalf of the Board, is accountable to the Minister for the operation of the Agency in accordance with the Act, this MOU, LGIC policies, Minister directives, the approved Business Plan, the Directive and all other applicable TB/MBC and MOF directives, policies and guidelines, any other agreement /protocol with the Ministry;
- 13.1.2 provides strategic leadership for the Agency through overall direction on existing priorities and opportunities to enhance the Agency's delivery of its objects as set out in the Act;
- 13.1.3 undertakes that public funds are used with integrity and honesty;
- 13.1.4 ensures that the Agency has a Code of Business Conduct that emphasizes the importance of acting ethically and with integrity and ensures that the Agency operates in the fulfillment of its objects and mandate;
- 13.1.5 is accountable to the Minister for advising the other Board members on the requirements of the Directive;

13.2 Policy Direction/Implementation

13.2.1 provides leadership and direction to the Board and to the CEO, particularly with respect to the translation of Government policy and strategic objectives into operational plans and activities;

13.2.2 will keep the Minister informed of issues or events involving the Agency that may concern the Ministry or the Government;

13.3 Business Planning/General Management

13.3.1 will make recommendations to the Minister for nominees to the Agency's Board as well as to the positions of CEO and Vice-Chair(s);

13.3.2 will, on behalf of the Board, review with the Deputy Minister, at least annually, the CEO's performance plan and targets as well as the results achieved by the CEO;

13.3.3 will ensure that a system is in place for the creation, collection, maintenance and disposal of records;

13.3.4 on behalf of the Board provides to the Minister: the Agency's Business Plan and in-year changes to the Business Plan; Annual Report; financial reports; and, any other information or report requested by the Minister, in accordance with submission dates specified in the applicable TB/MBC and MOF directives, and this MOU or as otherwise specified by the Minister;

13.3.5 will ensure that the Business Plan includes a risk assessment and risk management plan to assist the Ministry in developing its risk assessment and risk management plan information in accordance with the requirements of the AEAD Directive, to assess risks, develop and maintain necessary records and report to TB/MBC;

13.3.6 is responsible for ensuring that the Agency's Business Plan includes clear performance measures and that the Agency reports on the achievements of the objectives set out in the Business Plan.

13.3.7 will ensure the effective functioning of the Agency's Board, including ensuring that the Board members receive timely, clear and accurate information in order to operate efficiently at Board meetings;

13.3.8 will ensure the orientation of new Board members and ongoing education of all Board members to enable the Board to fulfill its role effectively;

13.3.9 will ensure that the Board, the CEO and the Agency co-operate with the Ministry and the Government concerning any periodic review of the Agency and with the

preparation and submission of any information or reports that may be requested by the Minister or TB/MBC in relation to that periodic review;

13.3.10 is responsible under the PSOA to act as the ethics executive for public servants who are government appointees and who work in the Agency for all that falls under the ethical framework (oaths of office, disclosure of wrongdoing, conflict of interest and political activity). In this role, the Chair is required to inform the Minister when a disclosure of wrongdoing (as defined in subsection 108(1) of the PSOA) is received, of the outcome of the disclosure (i.e., no wrongdoing found, referral to another forum, corrective action taken) and to provide any other information as requested by the Minister;

13.3.11 will maintain open lines of communication with the Deputy Minister and CEO to discuss any matters related to the Agency; and,

13.3.12 through the Chair shall ensure that all members of the Board and employees of the Agency will comply and cooperate with auditors conducting an audit of the business and affairs of the Agency and will provide all requested information.

14. Roles and Responsibilities of the CEO

The CEO is accountable to the Board, for:

14.1 Accountability

14.1.1 the management of the Agency's operations and staff, and ensuring a collaborative, supportive and effective work environment for Agency staff;

14.1.2 any agreement entered into with third parties and the management of third parties as per the agreement with the Agency;

14.1.3 ensuring that there is a performance review process in place for staff;

14.1.4 managing the day-to-day activities of the Agency in accordance with all applicable legislation including but not limited to the Act and Other Applicable Law, TB/MBC and MOF directives and guidelines, LGIC policies, Minister directives, collective agreements, accepted employment, business and financial practices, policies developed by the Board, the approved Business Plan, any other agreement/protocol with the Ministry; the Agency's by-laws and this MOU;

14.1.5 advising the Chair on how the Agency meets the Directive as well as any other TB/MBC and MOF directives and policies, and Agency by-laws and policies;

- 14.1.4 ensuring that Agency policies and procedures remain effective and ensuring that public funds are used with honesty and integrity;
- 14.1.5 ensuring that the Agency has an appropriate risk management framework and risk management plan in place as directed;
- 14.1.6 carrying out in-year monitoring of the Agency's operations performance and its program or service delivery objectives and reporting to the Board on such performance;
- 14.1.7 co-operating with the Ministry and the Government during any periodic review of the Agency as directed by the Minister or TB/MBC, and ensuring that any information or reports that may be requested by the Minister or TB/MBC are prepared and submitted as required and ensuring that any identified corrective action is undertaken.

14.2 Policy Direction/Implementation

- 14.2.1 implementing business and operational decisions, under the direction of the Chair, that are consistent with the LGIC's policies, the Minister's directives and the Ministry's policy and program plans as communicated to the Agency and reflect strategic planning goals and reporting to the Board on performance results in a way that shows progress on meeting those goals and the Agency's objects and mandate;
- 14.2.2 working cooperatively with provincial ministries and agencies to identify opportunities to enter into mutually beneficial alliances;

14.3 Business Planning/General Management

- 14.3.1 preparing the Annual Report, Business Plan, financial reports, audit responses and other reports as directed by the Board for the Board's approval;
- 14.3.2 carrying out reporting responsibilities (see Part 16, Reporting Requirements);
- 14.3.3 carrying out staff related responsibilities (see Part 23, Staffing, Remuneration and Appointments);
- 14.3.4 working under the direction of the Board, through the Chair, bring forward recommendations to better position the Agency in delivering its objects and mandate, implement policy and operational decisions and report the Agency's performance results to the Board;

- 14.3.5 safeguarding and controlling the assets of the Agency, including intellectual property, and ensuring a record management system is in place;
- 14.3.6 maintaining open lines of communication with the Deputy Minister to discuss any matters relating to the Agency;
- 14.3.7 implementing a risk management framework and plan, including risk identification, assessment and mitigation strategies for the Agency;
- 14.3.8 advise the Deputy Minister of potential business opportunities that would result in the Agency performing work/providing services outside of the Province of Ontario;
- 14.3.9 is responsible under the PSOA to act as the ethics executive for public servants other than government appointees and who work in the Agency for all that falls under the ethical framework (oaths of office, disclosure of wrongdoing, conflict of interest and political activity). In this role, the CEO is required to inform the Minister when a disclosure pursuant to the PSOA is received, of the outcome of the disclosure (i.e., no wrongdoing (as defined in subsection 108(1) of the PSOA) found, referral to another forum, corrective action taken) and to provide any other information as requested by the Deputy Minister.

15. CONSULTATION AND COMMUNICATIONS

- 15.1 The parties to this MOU recognize that the timely exchange of information on the operations and administration of the Agency is essential for the Minister to meet his or her responsibilities for reporting and responding to the Legislative Assembly on the affairs of the Agency.
- 15.2 In order to mutually support the roles and responsibilities of each other, as established by the Act, the Directive, this MOU and any other agreements/protocols with the Ministry, the parties agree to establish a schedule of meetings to discuss issues pertaining to the Agency.
- 15.3 The Chair shall keep the Minister and Deputy Minister advised of issues or events that concern or can be reasonably expected to concern the Ministry generally or the Minister in the exercise of his or her responsibilities.
- 15.4 The Ministry shall consult with the Agency as appropriate on, as far as the Ministry is aware, initiatives as well as any proposal to amend the Act or any other act or regulation which regulates the Agency and which could have significant impact on the objects or operations of the Agency.
- 15.5 The Agency, through the Chair, may recommend appropriate amendments to

the Act to the Minister.

16. REPORTING REQUIREMENTS

The Board, through the Chair, shall ensure that the following documents are submitted to the Minister within the timeframes indicated.

16.1 The Business Plan

16.1.1 Prior to the beginning of the Fiscal year the Chair shall submit to the Minister, for approval, a Business Plan prepared in accordance with the Directive and any additional requirements identified by the Minister.

16.1.2 Where a significant change in business activities of the Agency is foreseen such as, amalgamation, privatization or wind-up, or significant workforce reductions, the CEO shall submit to the Board a revised Business Plan for the approval of the Board, and the Board shall submit the revised Business Plan to the Minister for approval.

16.2 The Annual Report

16.2.1 The Minister of Finance has directed that the Board through the Chair shall submit its Annual Report to the Minister and to the Minister of Finance 90 days after the end of the Fiscal year until otherwise directed by the Minister of Finance.

16.2.2 The Annual Report shall be prepared in accordance with the Directive and the Act. The audited financial statements for the Agency which are included as part of the Annual Report are to be prepared in accordance with generally accepted accounting principles which include:

- balance sheet
- statement of income and retained earning
- statement of cash flows
- notes to financial statements, and
- an explanation to the satisfaction of the Minister with respect to any major variances from the approved financial plan.

16.3 Quarterly Financial Reporting

The Agency shall submit quarterly financial statements which includes expenditure budget-variance reporting to the Minister on a quarterly basis, once the reports have been approved by the Board.

16.4 Other Reports

Other reports that the Ministry may require on an on-going basis from the Agency include:

- (a) information relating to Agency matters or its subsidiaries which have, or are likely to have, an impact on the Government's policies or the strategies and programs of the Ministry and/or other ministries;
- (b) information relating to the Agency or any of its officers and directors or subsidiaries that is, or is likely to be of public / media interest;
- (c) information necessary to enable the Minister to answer questions in the Legislative Assembly relating to the Agency and/or any of its subsidiaries and to keep the Legislature informed of significant events related to the Agency and/or any of its subsidiaries;
- (d) information related to the Agency's subsidiaries on any aspect of their affairs and,
- (e) information on the Agency's activities and achievements related to the Agency's objects within a period of time as specified by the Ministry.

17. AUDIT ARRANGEMENTS

- 17.1 The Board shall establish an Audit Committee composed of not less than three directors of the Agency. The majority of the members of the Audit committee will not be officers or employees of the Agency.
- 17.2 The Audit Committee shall review and advise the Board with respect to the audited and unaudited financial statements of the Agency; oversee any internal audits; review and advise the Board with respect to the Annual Report of the Auditor General and report on any special examinations that may be undertaken.
- 17.3 Audits of the Agency will be performed by the Auditor General of Ontario at the expense of the Agency.
- 17.4 Regardless of any internal or external audit, the Minister may at any time direct that the Agency be audited at the expense of the Ministry.
- 17.5 The Board or the Audit Committee shall appoint an internal auditor of the Agency who shall report directly to the Audit Committee or the Board on the effectiveness of the Agency's operation and internal control processes.

- 17.6 The Ontario Internal Audit Division may also carry out an internal audit, if approved to do so by the Ministry's Audit Committee or by the Corporate Audit Committee. Also, the Auditor General of Ontario may, at any time, audit any aspect of the operations of the Agency under the *Auditor General Act*.
- 17.7 The Board shall cause annual internal audits of the Agency to be conducted in respect of itself at the expense of the Agency.
- 17.8 The Agency will promptly provide a copy of every report from the Auditor General of Ontario to the Minister, the Deputy Minister, and the Minister of Finance. The Agency will also provide a copy of its response to the audit report and any recommendations therein. The agency will advise the Minister annually, at minimum, on any outstanding audit recommendations.
- 17.9 The books, records, systems and management practices of the Agency are to be kept and maintained in such a manner as shall provide reasonable evidence that the transactions of the Agency are in accordance with the Act and Other Applicable Law, TB/MBC and MOF directives and guidelines, LGIC policies, Minister directives, as well as applicable Ministry financial and administrative policies and procedures, and the by-laws of the Agency.

18. FINANCIAL ARRANGEMENTS

- 18.1 All borrowing, financing, short-term investment of funds and financial risk management activities of a corporation shall be co-ordinated and arranged by the Ontario Financing Authority, unless the Minister of Finance agrees otherwise.
- 18.2 The Chair and the Board, through the CEO, are responsible for ensuring that the Agency operates in accordance with all applicable laws, TB/MBC and MOF directives and guidelines, LGIC policies, Minister directives, as well as applicable Ministry financial and administrative policies and procedures. Annex I to this MOU provides a list of applicable TB/MBC and MOF directives and any other agreement/protocol with the Ministry.
- 18.3 Pursuant to section 28 of the *Financial Administration Act*, the Agency shall not enter into any financial arrangement or commitment, guarantee, indemnity or similar transaction that may increase, directly or indirectly, the indebtedness or contingent liabilities of the Government without the written approval of the Minister of Finance. Subject to the prior approval of the Minister, the Ministry will seek the Minister of Finance's approval on behalf of the Agency.

- 18.4 The Minister agrees to facilitate sending all applicable by-laws to the Ministry of Finance for the approval of the Minister of Finance pursuant to subsection 6(3) of the Act.
- 18.5 The Board shall ensure that the Agency establishes and maintains for itself and any subsidiary corporations:
- (a) books of account and records in relation thereto, kept in accordance with generally accepted accounting practices; and,
 - (b) appropriate financial and management controls and practices and information systems.
- 18.6 The Agency shall maintain books and records, and implement and maintain systems and management practices in such a manner as shall provide reasonable evidence that:
- (a) the assets of the Agency are safeguarded and controlled;
 - (b) any transactions of the Agency are in accordance with the Act, Other Applicable Law, applicable TB/MBC directives and guidelines, LGIC policies, Minister directives, and the by-laws of the Agency; and,
 - (c) the financial, human and physical resources of the Agency and any subsidiary corporation are managed economically and efficiently and that their operations are carried out effectively.
- 18.7 The Agency is listed in the Reciprocal Taxation Agreement dated November 1, 2006 so the Agency shall pay HST and then claim a refund.

19. AGREEMENTS WITH THIRD PARTIES

- 19.1 The Agency must ensure that prior to entering into any agreement with third parties that the following formalities are undertaken:
- (a) the Agency has confirmed that correct signing authority for the Agency will be executing the third party agreement.
- 19.2 The Agency will keep the Director, Business and Fiscal Planning Branch, advised in a timely manner of any debt collection court action that it plans to initiate with respect to a debt owing to the Agency under a third party agreement .

20. PROCUREMENT ARRANGEMENTS

- 20.1 When acquiring any goods or services from third parties, the Agency shall follow all applicable TB/MBC procurement directives and guidelines and any LGIC policies, Minister directives related to procurement.

21. WORKING OUTSIDE OF ONTARIO

- 21.1 The Board will ensure that the principles of the Agency's code of business conduct are applied wherever the Agency does business.
- 21.2 The Agency and its subsidiaries will conduct business ethically and with integrity, transparency and accountability.
- 21.3 The Agency and its subsidiaries must comply with the federal *Corruption of Foreign Public Officials Act*.

22. AGENCY SUBSIDIARY CORPORATIONS

- 22.1 The Board will submit to the Minister all Board recommendations for the establishment of subsidiaries;
- 22.2 The Board will co-operate with the Ministry and the Government concerning preparation and submission of any information or reports that may be requested by the Minister or TB/MBC in relation to the establishment of subsidiaries, the approval required under section 18 of the Act, and to subsidiary business outside of Ontario.
- 22.3 Prior to a subsidiary corporation being created the Agency shall obtain the prior written agreement of the Minister for such subsidiary. In seeking the agreement of the Minister, the Agency will provide to the Minister, a detailed business case, including the objectives of the proposed subsidiary, a financial analysis, a workforce impact plan and such other information as the Minister may require.
- 22.4 Prior to a subsidiary corporation being created the Minister and the Agency shall consult with the bargaining agent(s) having representation rights under the *Labour Relations Act* and the *Crown Employees Collective Bargaining Act, 1993*.
- 22.5 The Ministry shall consult with the Agency as appropriate on, as far as the Ministry is aware, initiatives as well as any proposal to amend the Act or any other act or regulation which regulates the Agency or which could have significant impact on the objects or operations of any of the Agency's subsidiaries.

- 22.6 The Board shall ensure that annual internal audits are conducted in respect of any of the Agency's subsidiary corporations.
- 22.7 The Agency books, records, systems and management practices related to the Agency's subsidiaries are to be kept and maintained in such a manner as shall provide reasonable evidence that the transactions of the subsidiaries are in accordance with the Act and the applicable constituting regulations.

23. ADMINISTRATIVE ARRANGEMENTS

23.1 Information Sharing

- 23.1.1 The Agency will, at the request of the Ministry, supply specific data and other information within the timeframes required by the Ministry.
- 23.1.2 Notwithstanding any other section of this MOU, the Agency shall not be required to provide the Ministry or the Minister with any document that is the subject of solicitor-client privilege or litigation privilege.
- 23.1.3 The Agency understands that any personal information, as defined under FIPPA and the federal *Personal Information Protection and Electronic Documents Act* will only be collected, used, or disclosed in a manner consistent with those statutes, and only for purposes of affecting the objects of the Agency. The Agency further understands that it is required to have in place and maintain reasonable measures to ensure the security and confidentiality of personal information that it holds.
- 23.1.4 The parties acknowledge that all information provided to the Minister and the Ministry by the Agency is in the custody of the Ministry within the meaning of FIPPA.
- 23.1.5 Any data or other information and materials provided by the Agency to the Minister and the Ministry which are confidential and are to remain confidential shall be clearly marked as confidential by the Agency. In the event that the Minister receives a request under FIPPA relating to disclosure of any such confidential information, the Minister intends to provide the Agency with notice to that effect.
- 23.1.6 Notwithstanding the foregoing, the Agency acknowledges that the Ministry is bound by FIPPA and may be required by law or by order of the Information and Privacy Commissioner, a court or tribunal to disclose confidential information of the Agency provided by the Agency to the Minister. Any requests for information by the Agency to the Ministry will be reviewed to ensure compliance with FIPPA.
- 23.1.7 The Agency understands that both the Agency and the Ministry are subject to FIPPA.

24. Legal Services

24.1 The Agency shall be responsible for the provision of its own legal services.

25. STAFFING, REMUNERATION AND APPOINTMENTS

25.1 Pursuant to subsection 13.3.1 of the MOU, the Chair will endeavour to recommend to the Minister for appointment to the Board by Order in Council individuals having the appropriate skills and competencies needed to oversee and govern the Agency in accordance with the Agency's objects and strategic directions.

25.2 Board members who are Ontario Government employees will not receive additional remuneration for time served on the Board but may receive reimbursement for reasonable expenses in accordance with TB/MBC directives and guidelines.

25.3 Board members who are not Ontario Government employees will receive remuneration as determined by the Lieutenant Governor in Council for Ontario for meeting days and time required for official Board business, and will receive reimbursement for reasonable expenses in accordance with TB/MBC directives and guidelines.

25.4 Agency staff shall be public servants employed under the PSOA and eligible for all the rights and benefits under the PSOA, applicable TB/MBC and MOF directives, and relevant collective agreements. Any variance from employment under the PSOA requires the prior approval of TB/MBC and appropriate changes to the Act.

25.5 The CEO shall have full discretion and responsibility for all Agency employees in accordance with the PSOA and any of its regulations and directives and the applicable TB/MBC and MOF directives.

25.6 The CEO shall ensure that the Agency's employees are managed in accordance with all applicable laws, the applicable TB/MBC and MOF directives, this MOU, any Agency specific policies and relevant collective agreements.

25.7 The CEO shall receive disclosure of potential conflict of interest situations from the employees of the Agency and provide advice on such conflict of interest situations, pursuant to the PSOA and applicable TB/MBC directives, practices and protocols.

25.8 In the event of a proposed disposition under subsection 26(3) of the Act, the Agency shall obtain the prior written agreement of the Minister for such disposition. In

seeking the agreement of the Minister, the Agency will provide to the Minister, a detailed business case, including the objectives of the proposed disposition, a financial analysis, a workforce impact plan and such other information as the Minister may require.

- 25.9 Prior to reaching an agreement under subsection 26(3) of the Act, the Minister and the Agency shall consult with the bargaining agent(s) having representation rights under the *Labour Relations Act* and the *Crown Employees Collective Bargaining Act, 1993*.

26. INTELLECTUAL PROPERTY

- 26.1 The Agency must follow TB/MBC's Managing, Distributing and Pricing Government Information (Intellectual Property) Directive, and successor directive, and any accompanying policies and guidelines.

27. SERVICE STANDARDS

- 27.1 The Agency will develop formal processes to assess the quality of service it provides to its clients and to respond to complaints about the quality of service it provides in a timely manner.

28. CREATION, COLLECTION, MAINTENANCE AND DISPOSITION OF RECORDS

- 28.1 The Board, through the Chair, is responsible for ensuring that the Agency complies with the TB/MBC Management of Recorded Information Directive and with the *Archives Act*.
- 28.2 The CEO is responsible for ensuring that a system is in place for the creation, collection, maintenance, and disposal of records.

29. INSURANCE

- 29.1 The Agency will purchase third party liability insurance coverage to protect itself against claims that might arise from anything done or omitted to be done by the Agency or its directors, officers, employees and from anything done or omitted to be done where bodily or personal injury, death or property damage, including loss of use thereof, is caused.
- 29.2 The Agency will inform the Director, Business and Fiscal Planning Branch, as to the

amount, type and cost of the Agency's insurance coverage to the Ministry.

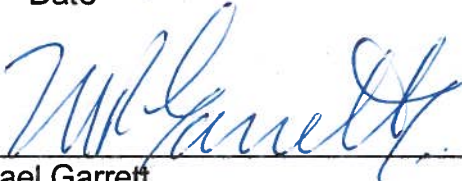
- 29.3 The Agency will cause its insurers to provide to both of the Agency and the Ministry certificates of insurance, or other proof as may be requested by the Agency or the Ministry, that confirms the insurance coverage as provided for in section 29.1 and renewal replacements on or before the expiry of any such insurance.

IN WITNESS WHEREOF, the undersigned have executed this MOU as of the date indicated.



Honourable Jim Bradley
Minister of the Environment

April 17, 2012
Date



Michael Garrett
Chair, Ontario Clean Water Agency

Jan 9, 2012
Date

ANNEX I

TREASURY BOARD/MANAGEMENT BOARD OF CABINET DIRECTIVES AND POLICIES APPLICABLE TO THE ONTARIO CLEAN WATER AGENCY

APPLICABLE TB/MBC AND MINISTRY OF FINANCE DIRECTIVES

As set out under the Directive, all Management Board of Cabinet and Public Service Commission human resources directives apply to the Agency since it has been designated as a commission public body under the *Public Service of Ontario Act, 2006*.

The Agency is required to comply with all Government directives which are applicable to an Operational Enterprise Agency. Amended, revised or successive directives continue to apply to the Agency. Where a directive applies, all associated policies, procedures and guidelines also apply.

In addition to the above, any newly established Government directive that applies to an Operational Enterprise Agency applies to the Agency, unless explicitly exempted in accordance with Government practices.

The following TB/MBC and MOF directives, policies and guidelines, as amended from time to time apply to the Agency:

Accountability Directive

Accounting for Order-in-Council Appointees Policy

Advertising Content Directive

Agency Establishment and Accountability Directive

Guide to the Risk-based Approach in the Agency Establishment and Accountability Directive

Agency Reporting Requirements Policy

Business Planning and Allocations Directive

Communications in French Directive

Credit Management Operating Policy

Data Integrity Policy

Delegation of Authority Key Directive

Disclosure of Wrongdoing Directive

English-French & French-English Translation & Proofreading Services Operating Policy

Freedom of Information & Privacy Directive
General Expenses Directive
Government Appointees Directive
Government Publications Directive
Human Resource Directives
Indemnification Directive
Internal Audit Directive
Internal Controls Management Directive (except the reference to complying with other revenue control policies)
Managing, Distributing & Pricing Government Information (Intellectual Property) Directive
Operating Procedure for Internet, Intranets and Extranets
Operating Procedure for Use of I & IT Resources
Procurement Directive
Procurement Directive on Advertising, Public and Media Relations, and Creative Communications Services
Records Schedule Requirements
Relocation Expenses Directive
Revenue Management Directive (except the reference to complying with other revenue policies)
Risk Management Policy
Transfer Payments Accountability Directive (the requirements that govern the operations of transfer payment programs and the relationship between the Agency and the transfer payment recipient organization)
Staffing Management and Control Directive
Travel, Meal & Hospitality Expenses Directive
Visual Identity Directive

Where TB/MBC Directives do not apply to the Agency, the Agency must adhere to the principles of those Directives.

ANNEX II

LIST OF STATUTES OF PARTICULAR APPLICATION APPLICABLE TO THE ONTARIO CLEAN WATER AGENCY

The Agency is subject to all or parts of the following statutes:

- *Accessibility for Ontarians with Disabilities Act, 2005*
- *Archives and Recordkeeping Act, 2006*
- *Business Corporations Act*
- *Capital Investment Plan Act, 1993*
- *Corruption of Foreign Public Officials Act (federal)*
- *Environmental Assessment Act*
- *Expropriations Act*
- *Financial Administration Act*
- *Freedom of Information and Protection of Privacy Act*
- *Municipal Act*
- *Municipal Water and Sewage Transfer Act, 1997*
- *Ontario Water Resources Act*
- *Public Sector Expenses Review Act, 2009*
- *Public Sector Compensation Restraint to Protect Public Services Act, 2010*
- *Public Sector Salary Disclosure Act, 1996*
- *Public Service of Ontario Act, 2006*
- *Public Utilities Act*
- *Safe Drinking Water Act, 2002*

and any general act that confers powers upon a municipality respecting the establishment, construction, maintenance or operation of a water works or sewage works.