

TRANSFER OF REVIEW AGREEMENT

B E T W E E N:

HER MAJESTY THE QUEEN in right of Ontario
as represented by the Minister of the Environment and Climate Change

(hereinafter referred to as the “**Crown**”)

- and -

City of Kawartha Lakes

(hereinafter referred to as the “**Municipality**”)

Date: 2018/03/12

Agreement Number: TOR-KAW-Le01-2018-5

Crown Representative:

Name: Christina Labarge, P.Eng.
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Municipal Representative:

Name: Juan Rojas, P.Eng., PMP
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DEFINITIONS

In this document,

“combined sewer” means a sewer that is intended to function simultaneously as a storm sewer and a sanitary sewer;

“discharge”, when used as a verb, includes add, deposit, emit or leak and, when used as a noun, includes addition, deposit, emission or leak;

“Environmental Compliance Approval” means an approval issued under Part II.1 of the *Environmental Protection Act*;

“combined sewer system” means a wastewater collection system which conveys sanitary wastewaters (domestic, commercial and industrial wastewaters) and stormwater runoff through a single- pipe system to a Sewage Treatment Plant or treatment works. Combined sewer systems which have been partially separated and in which roof leaders or foundation drains contribute stormwater inflow to the sewer system conveying sanitary flows are still defined as combined sewer systems;

“combined sewer overflow” is a discharge to the environment from a combined sewer system that usually occurs as a result of a precipitation event when the capacity of the combined sewer is exceeded. It consists of a mixture of sanitary wastewater and stormwater runoff and often contains high levels of floatables, pathogenic microorganisms, suspended solids, oxygen-demanding organic compounds, nutrients, oil and grease, toxic contaminants and other pollutants;

“Duty to Consult” pertains to the Crown’s legal obligation to consult with Indigenous peoples where it contemplates decisions or actions that may adversely impact asserted or established Indigenous or treaty rights;

“industrial land” means land used for the production, processing, repair, maintenance or storage of goods or materials, or the processing, storage, transfer or disposal of waste, but does not include land used primarily for the purpose of buying or selling,

- a. goods or materials other than fuel, or
- b. services other than vehicle repair services;

“Ministry” means the Ministry of the Environment and Climate Change;

“Municipality” includes a local board, as defined in the Municipal Affairs Act, and a board, commission or other local authority exercising any power with respect to municipal affairs or purposes, including school purposes, in an unorganized township or unsurveyed territory;

“municipal representative” means, an officer, employee or agent of the Municipality or a representative with the authority to bind the Municipality;

“natural environment” has the same meaning as in the *Environmental Protection Act*;

“owner” means a Municipality or person having authority to construct, maintain, operate, repair, improve or extend water works or sewage works;

“person” includes a Municipality;

“Professional Engineer” has the same meaning as in the *Professional Engineers Act*;

“sanitary sewer” means a sewer for the collection and transmission of residential, commercial, institutional or industrial sewage, or any combination thereof;

“sewage” includes drainage, storm water, commercial wastes and industrial wastes and such other matter or substance as is specified by the regulations;

“sewage works” means any works for the collection, transmission, treatment and disposal of sewage or any part of such works, but does not include plumbing to which the Building Code Act, 1992 applies;

“sewer” means any system of pipes, drains and appurtenances used for the collection or transmission of sewage, but does not include plumbing to which the Building Code Act, 1992 applies or a pumping facility;

“storm sewer” means a sewer for the collection and transmission of storm water drainage;

“stormwater” means rainwater runoff, water runoff from roofs, snowmelt and surface runoff; and

“stormwater management facility” means a facility for the treatment, retention, infiltration or control of storm water.

TERMS AND CONDITIONS

1. Agreement to Participate

The Municipality has agreed to participate in the Transfer of Review (TOR) program. The Municipality must ensure that all applications and their supporting documentation for an Environmental Compliance Approval (ECA) meet all applicable Terms and Conditions in this Agreement and any Schedules attached to this Agreement prior to submitting them to the Ministry for approval.

The Municipality can review and submit applications for their own municipal works projects. The Municipality may also submit applications for sewage works on behalf of other parties whose projects are entirely located within the municipal boundary of the Municipality and there is an agreement with the Municipality pursuant to the Planning Act which provides that ownership of the system may be transferred to the Municipality and the works require an Environmental Compliance Approval (ECA). It is the sole responsibility of the Municipality to ensure that any application submitted on behalf of another party meets all applicable requirements of the program.

The Ministry's legislated responsibilities including approval decisions as well as, compliance and enforcement actions remain unchanged under this program.

2. Commencement

This Agreement comes into force on the day that the agreement is signed by the Municipality. Once signed by the Municipality this agreement revokes any existing Transfer of Review Program Agreement that was in place prior to this Agreement. The Municipality must return the original copy of the signed agreement to the following address:

Supervisor
Application Review Unit
Client Services and Permissions Branch
Ministry of the Environment and Climate Change
135 St. Clair Ave. W.
Toronto, ON, M4V 1P5

3. Fees Required

In accordance with section 9 the Minister's Requirement for Fees made under s.179.1 of the Environmental Protection Act (EPA) the Municipality has the authority to collect the fee in respect of an application. Consideration under this agreement is the fee collected by the Municipality.

4. Sewage Works Subject to the Agreement

The Municipality may submit ECA applications for the works identified in Schedule A of this Agreement under the TOR program.

The Ministry and the Municipality may mutually agree to add works to Schedule A of the Agreement. The Ministry may also amend Schedule A with written notice to the Municipality.

5. Pre-submission Consultation Requirements

Where the Municipality is uncertain regarding the works that form part of the Transfer of Review Agreement in Schedule A, the Municipality shall require the applicant to engage in pre-submission consultation with the local Ministry District Office¹.

6. Consultation with other Agencies and other Approvals

Where Conservation Authority clearance or Niagara Escarpment Planning and Development Act permit is required, the approval, permit, or clearance letter must be obtained before the application is accepted for review.

Note: even if formal approval from the local Conservation Authority is not required, it is strongly recommended that applicants consult with the local Conservation Authority, particularly on stormwater related applications to determine if they have any concerns with the project, or if subject to any additional requirements such as the Lake Simcoe Phosphorous Offsetting Program. If the project does not occur within the boundary of a Conservation Authority, consultation with the local Ministry of Natural Resources and Forestry (MNRF) office is recommended.

7. Indigenous Consultation, Environmental Assessment, Environmental Bill of Rights Requirements

The Municipality must ensure that all applications satisfy any applicable requirements under the Environmental Assessment Act (EAA). The EAA and the associated regulations can be found at <https://www.ontario.ca/laws>.

The Municipality must include a summary of consultation (including Indigenous consultation if any²) on the application or the proposed development per Schedule B.

8. Complete Applications

Schedule B attached to this Agreement lists the minimum documentation applicants must submit to the Municipality for review. It is the responsibility of the Municipality to ensure applications for ECAs are complete and include the documents in Schedule B where applicable.

Schedule B also lists the minimum documents and forms that the Municipality must prepare and submit to the Ministry as part of the TOR program.

9. Incomplete Applications

Incomplete applications are those applications that do not have one of the items listed in Schedule B required to be prepared and submitted by either the applicant or Municipality where applicable.

The issuance of the Approval is contingent on the application being deemed complete. **Incomplete applications submitted to the Ministry will be returned to the Municipality without prior notice.**

¹ This document advises proponents, in certain sections, to contact the local Ministry District Office. They may be advised by the local District Office to contact the local Ministry Safe Drinking Water Branch (SDWB) office instead of or in addition to the District Office.

² Pre-consulting with the local Ministry District Office on the need Indigenous consultation is recommended to ascertain whether this consultation is required.

10. Submission of Applications

The Municipality must ensure that applicants for an ECA submit two (2) copies of all required completed application forms and supporting documentation listed in Schedule B to the Municipality.

In addition, the applicant must submit one (1) copy of the completed application forms and supporting documentation to the local Ministry District Office, addressed to the attention of the District Manager.

The local Ministry District Office normally has two (2) weeks in which to provide comments about the application to the participating Municipality or to indicate when comments will be forthcoming. The Municipality and the applicant are required to address and resolve any comments received from the local Ministry District Office. As a result of comments provided by the local District Office, changes to the project design and to the Environmental Compliance Approval application information may be required. If no comments have been received from the local Ministry District Office after two (2) weeks from receipt of the application it is generally assumed there are no concerns and concurrence has been given. The Municipality should note whether any feedback was provided within the two week period.

The Municipality keeps one (1) copy of the applicant's submitted information and, after completing their program responsibilities, submits one (1) copy along with any documentation and forms the Municipality is required to prepare (listed in Schedule B) to the Ministry.

11. Municipal Review of Applications

The Municipality is responsible for conducting the technical review and evaluation of the applicant's information. The Municipality may allow Lake Simcoe Region Conservation Authority (LSRCA) to act as a third party reviewer under this agreement. It is the responsibility of the Municipality to ensure that all applications reviewed by the LSRCA and their supporting documentation for an Environmental Compliance Approval (ECA) meet all applicable Terms and Conditions in this Agreement and any Schedules attached to this Agreement prior to submitting them to the Ministry for approval.

The technical review and evaluation must be done by one or more Professional Engineers with experience in the design and operation of sanitary and storm water works.

Only Professional Engineers employed by the Municipality or the Lake Simcoe Region Conservation Authority in the following services are allowed to conduct the technical review and evaluation of applications to be submitted under the TOR program:

- **Engineering and Corporate Assets Department**
- **Planning and Development, Lake Simcoe Region Conservation Authority**

The engineers that conducted the technical review and evaluation must be members in good standing with Professional Engineers Ontario (PEO) and must include their licence number with the application submission (as part of the Letter of Recommendation).

To avoid any potential conflict of interest situations, a Professional Engineer who has designed or certified the engineering drawings for the sewage works project must not review his/her own Environmental Compliance Approval application information under the program.

The results of the Professional Engineer's technical review and evaluation must be documented in a Letter of Recommendation that will be submitted to the Ministry. The Ministry will review the Letter of Recommendation to determine if approval should be granted.

Additional information on the municipal review of applications and the Letter of Recommendation can be found in Schedule C attached to this agreement.

12. Draft Environmental Compliance Approval

The Municipality must prepare and submit a draft Approval including the descriptions of the works to be approved and the terms and conditions of the Approval.

Schedule D contains sample templates for describing the works to be included in the Approval. The Ministry will add terms and conditions to the approval similar to those approvals whose applications are directly reviewed by the Ministry. In addition to standard terms and conditions, Municipalities may, with sufficient justification, request other conditions be added to the approval. However, the Ministry reserves the right to accept or deny such requests.

13. Application Processing Time, Approval or Refusal

The Ministry will endeavor to issue the Approval for submitted applications within 30 business days from the date they are deemed complete.

The Municipality should notify all applicants of this timeframe and that no further prioritization in the processing of TOR applications will be considered by the Ministry.

If, in the opinion of the Director, the Approval should be refused, a Refusal Notice will be issued to the applicant. The Notice will contain the reasons for the refusal and will be copied to the signatory of the Municipality's Letter of Recommendation.

An Approval or Refusal Notice issued under the TOR program is still subject to the associated appeal provisions under the Environmental Protection Act (EPA).

14. Audits

To ensure compliance with the TOR program, the Ministry will conduct audits of applications submitted under the program. This may include both random audits of applications before the Approval is issued, as well as more thorough audits of applications for which Approvals have been issued.

The audit of an application that has not been approved will consist of a full review by a Ministry Review Engineer (similar to the review conducted for direct submissions). As such, the issuance of the Approval for an application subjected to an audit may be delayed and the Ministry will not be able to meet the 30 day turn-around time.

The Ministry will contact the Municipality within two (2) business days of commencing an audit of an application for which an Approval has not yet been issued. The Ministry will discuss the nature of the audit, timing of the audit as well as any other additional requirements. The Municipality may also be required to provide additional information not included with the original application package.

In addition, the audit of applications already approved (or refused) may require additional information from the Municipality or applicant.

The results of the audit may lead the Ministry to take action including the alteration of works subject to the program, additional requirements for the Municipality's review or result in termination of the Municipality's participation in the program.

Please note that the Ministry may remove a participating Municipality from the program if it is discovered through an audit that its applicants are routinely delaying or not constructing approved works.

15. Annual Summary

On or before March 31st of each year that this agreement is in effect, the Municipality shall submit to the Ministry a summary list of the projects that the Municipality reviewed and submitted to the Ministry for the previous calendar year. The summary list shall include the name of the applicant, project name, location, list of works reviewed, date submitted and status (e.g. approved, refused, returned, in review). If possible, Ministry reference and/or approval numbers should also be included.

Summary lists are to be submitted electronically to the general mailbox of the Client Services and Permissions Branch at MOECCPermissions@ontario.ca marked to the attention of the Supervisor, Application Review Unit in the subject header of the email.

16. Amendments to or Termination of the Program

This agreement may be reviewed and amended at any time by mutual agreement of the signing parties.

The Municipality will notify the Ministry in writing of their intention to withdraw from the program. The Ministry will provide the Municipality a letter acknowledging receipt of this notice. The date specified in the acknowledgement letter will be the date of the Municipality's withdrawal from the program. Any applications that were submitted under the program by the Municipality prior to the date on the acknowledgement letter noted above will continue to be processed as a TOR application.

The Ministry may terminate the Municipality's participation in the program. The Ministry will notify the Municipality in writing of the Municipality's termination of the program. It is the sole responsibility of the Municipality to notify any parties that may be affected by the Municipality's termination in the program.

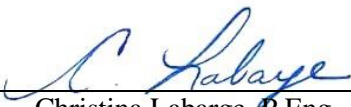
17. Signatures

I, the undersigned, of the Municipality have read and agree to the Terms and Conditions in this Agreement that the Municipality must abide by in order to submit applications for Environmental Compliance Approvals under the Ministry's Transfer of Review program.

Juan Rojas, P.Eng., PMP
Director of Engineering and Corporate Assets
City of Kawartha Lakes

Date

I, the undersigned, as a representative of the Ministry of the Environment and Climate Change agree to allow the City of Kawartha Lakes to participate in the Ministry's Transfer of Review program commencing on the date that this agreement has been signed by both the Ministry and the Municipality.


Christina Labarge, P.Eng.
Supervisor, Application Review Unit
Client Services and Permissions Branch,
MOECC

2018/03/12
Date