

AMENDMENT NO. 2

THIS AMENDMENT NO. 2 made in duplicate as of April 5, 2012,

B E T W E E N

**HER MAJESTY THE QUEEN in Right of Ontario
as represented by the Minister of the Environment
("Minister")**

- and -

**WASTE DIVERSION ONTARIO,
a corporation without share capital
incorporated under the *Waste Diversion Act, 2002*
("Waste Diversion Ontario")**

WHEREAS the parties entered into an agreement dated as of the 2nd day of June 2003 (the "Operating Agreement");

AND WHEREAS the parties entered into Amendment No. 1 to the Operating Agreement on or about April 17, 2008 to provide for an alternative structure of members of the board of directors and observers;

AND WHEREAS subsection 4 (4) of the *Waste Diversion Act, 2002*, provides that an alternative structure of members of the board of directors and observers may be provided for in the Operating Agreement;

AND WHEREAS the parties wish to provide for a further alternative structure of members of the board of directors with a diversity of experience and backgrounds;

NOW THEREFORE in consideration of the contractual relationship between Waste Diversion Ontario and the Minister referred to above and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both parties, Waste Diversion Ontario and the Minister hereby acknowledge, agree and undertake as follows:

1. Unless otherwise specified in this Amendment No. 2, capitalized words and phrases have their prescribed meaning as set out in the Operating Agreement.
2. The Operating Agreement as amended by Amendment No. 1 is further amended as follows:
 - (a) The definition of "Appointing Authority" in clause 2.01 (b.1) is deleted and replaced with the following:

- (b.1) **"Appointing Authority"** means the Minister of the Environment or the board of directors of Waste Diversion Ontario, as the case may be.
- (b) The following definition is added as clause 2.01 (j.1):
- (j.1) **"Industry Stewardship Organization"** means a corporation or other entity operating a plan approved under section 34 of the Act.
- (c) The numbering of the definition of "Secretary" set out at clause 2.01 (j.1) is changed from (j.1) to (j.2).
- (d) The second sentence in subsection 6.01 is deleted.
- (e) Subsection 6.02 is deleted and replaced with the following:
- 6.02 The parties agree to the alternative structure of members of the Board of Directors of Waste Diversion Ontario provided in Revised Schedule G to this Agreement.
- (f) Schedule "G" titled "Alternative Structure of Members of the Board of Directors and Observers" is deleted in its entirety and replaced with Revised Schedule "G" as set out in the attached Appendix 1.
3. This Amendment No. 2 shall be in force from April 5, 2012 and shall have the same expiry or termination date as the Operating Agreement.
4. All other terms and conditions of the Operating Agreement shall remain in full force and effect, unchanged and unmodified except in accordance with this Amendment No. 2.
5. This Amendment No. 2 shall enure to the benefit of and be binding upon Waste Diversion Ontario and the Minister, and each of their permitted successors and assigns, respectively.

IN WITNESS WHEREOF the parties have executed this Amendment No. 2 as of the date first set out above.

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

per: _____

Jim Bradley
Minister of the Environment

WASTE DIVERSION ONTARIO

per: _____

Jo-Anne St. Godard
Interim Vice Chair

I have authority to bind Waste
Diversion Ontario.

APPENDIX 1 to Amendment No. 2

REVISED SCHEDULE G

**to the Operating Agreement between the Minister of the Environment
and Waste Diversion Ontario**

**ALTERNATIVE STRUCTURE OF MEMBERS OF THE
BOARD OF DIRECTORS**

Part I - Members of board of directors

Number of members, qualifications, terms

1. The board of directors shall be composed of the following members:
 - (a) five members appointed by the Minister of the Environment; and
 - (b) six members appointed by the board of directors of Waste Diversion Ontario.
2. When appointing members to the board of directors under clause 1 (b), the board shall select members from a list of qualified nominees prepared by a nominating subcommittee of the board of directors.
3. When appointing members to the board of directors under section 1 the appointment shall be in writing and shall be for a term that is at least two years and not more than three years.
4. Despite sections 3 and 9, a person employed under Part II of the *Public Service of Ontario Act, 2006*, may be appointed under clause 1 (a) as a member of the board of directors for a term exceeding 3 years and may be a member of the board of directors for a total of nine years or more.
5. When appointing members to the board of directors under section 1, an Appointing Authority shall endeavour to select persons who will,
 - (a) assist Waste Diversion Ontario in effectively carrying out its objects; and
 - (b) collectively form a board of directors that possesses skills and competencies in the following areas:
 - (1) The reduction, reuse and recycling of waste.
 - (2) Environmental protection.

- (3) Economics.
- (4) Financial management.
- (5) Business management.
- (6) Law, including commercial law, competition law, or environmental law.
- (7) Corporate governance and management.
- (8) Public policy and public administration.
- (9) Public education and engagement.
- (10) Strategic thinking.
- (11) Consumer advocacy.

6. The appointment of a member under clause 1 (a) is effective upon the earlier of the giving of written notice of the appointment to the Secretary or the day on which the member attends a meeting of the board of directors.

Chair

7. The chair of the board of directors shall be designated by the board of directors from the members appointed under clause 1 (a).

Disqualifications

8. No more than two members appointed to the board of directors under clause 1 (a) shall be employed under Part II of the *Public Service of Ontario Act, 2006*.
9. A person shall not be appointed to the board of directors under section 1 if the person has been or would be upon the termination of their current term of appointment, a member of the board of directors for a total of nine years or more.
10. Subject to section 11, a member appointed under section 1 shall not be:
- A. An employee of Waste Diversion Ontario.
 - B. A director, officer or employee of a steward designated under the Act or an association representing stewards.
 - C. A director, officer or employee of an Industry Funding Organization or an Industry Stewardship Organization.
 - D. A director, officer or employee of a corporation or other entity, excluding a person employed under Part II of the *Public Service of Ontario Act, 2006*, if another director,

officer or employee of that corporation or entity is also a director of Waste Diversion Ontario, an Industry Funding Organization or an Industry Stewardship Organization.

- E. A member of council or an officer or employee of a municipality or the City of Toronto or of an association representing municipalities, members of municipal councils or officers or employees of municipalities.
 - F. An officer or employee of a local board as defined in the *Municipal Act, 2001* or the *City of Toronto Act, 2006*.
 - G. A director, officer or employee of corporation or other entity established by a municipality.
 - H. A director, officer or employee of a local services board established under the *Northern Services Boards Act*.
 - I. A director, officer or employee of a corporation or other entity that provided services to or received funding from Waste Diversion Ontario, an Industry Funding Organization or an Industry Stewardship Organization, with a value equal to or greater than five thousand dollars in the current calendar year or in either one of the preceding two calendar years.
 - J. A director, officer or employee of a corporation or other entity who on behalf of a steward remitted fees or other valuable consideration to an Industry Funding Organization or an Industry Stewardship Organization in the current calendar year or in either one of the preceding two calendar years.
11. Despite section 10, a member appointed under section 1 may be a board member, officer or employee of a charity, college, hospital, or university.
12. For the purposes of section 11,
- (a) "charity" means any organization defined as a "registered charity" by subsection 248 (1) of the *Income Tax Act* (Canada) and that holds a registration number issued by the Department of National Revenue;
 - (b) "college" means a board of governors of a college of applied arts and technology established in accordance with section 3 of the *Ontario Colleges of Applied Arts and Technology Act, 2002*;
 - (c) "hospital" has the same meaning as "board" in section 1 of the *Public Hospitals Act*; and

- (d) “university” means a degree granting institution authorized under section 3 of the *Post-secondary Education Choice and Excellence Act, 2000*.

Vacancy, resignations, dismissal, absence

13. A member immediately ceases to hold office when the member:
- (a) becomes deceased;
 - (b) resigns;
 - (c) is removed in accordance with sections 14 or 18; or,
 - (d) subject to section 11, becomes a person described under section 10.
14. The board of directors may by ordinary resolution at a special meeting, and with notice to the affected member, remove from office a member appointed under clause 1 (b).
15. A member of the board of directors in receipt of a notice mentioned in section 14 is entitled to provide Waste Diversion Ontario a statement outlining the member’s position with respect to any proposal to remove the member at a meeting called for the purposes of that section, and where a statement is provided, Waste Diversion Ontario shall forthwith provide all members of the board of directors a copy of the statement in advance of the meeting.
16. The board of directors may appoint a member to the board of directors to fill a vacancy resulting from the application of section 13, if the member’s predecessor was appointed by the board.
17. A member of the board of directors appointed under section 16 holds office for the remainder of the unexpired term of the member’s predecessor.
18. A member of the board of directors appointed under clause 1 (a) may be removed by the Minister at any time and without cause.
19. No person shall act for a member of the board of directors in that member’s absence.

Part II - Transition

Board members continued, removed

20. The members of the board of directors who hold office immediately before the day set out in section 3 of Amendment No. 2 to the Operating Agreement shall continue to hold office in accordance with their appointments.
21. Subsection 13 (d) does not apply to a member of the board of directors continued under section 20.
22. A member of the board of directors appointed by the Minister who is continued under section 20 ceases to hold office on the earliest of,
 - (a) the resignation of the member;
 - (b) the expiry of the member's term of appointment; or
 - (c) the removal of the member under section 18.
23. A member of the board of directors not appointed by the Minister who is continued under section 20 ceases to hold office on the earliest of,
 - (a) the resignation of the member;
 - (b) the removal of the member under section 14;
 - (c) the last instant of a meeting of the board where a resolution is passed confirming that the first six members to be appointed under clause 1 (b) have been appointed; or
 - (d) April 18, 2012.
24. An appointment of a member under clause 1 (b) is not effective until the earlier of:
 - (a) the last instant of a meeting of the board where a resolution is passed confirming that the first six members to be appointed under clause 1 (b) have been appointed; or
 - (b) April 18, 2012.

