

MEMORANDUM OF UNDERSTANDING

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Memorandum of Understanding

Between

MINISTER OF TRANSPORTATION

and

CHAIR on behalf of Metrolinx

September 2020

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The parties to this memorandum of understanding agree to the following:

## 1. Purpose

- a. The purpose of this MOU is to:
  - establish the accountability relationships between the Minister of Transportation and the Chair of Metrolinx on behalf of the Agency;
  - clarify the roles and responsibilities of the Minister, Deputy Minister, Agency Chair, Agency Chief Executive Officer (CEO), and the Agency's Board of Directors; and clarify the
  - operational, administrative, financial, staffing, auditing, and reporting arrangements between Metrolinx and the Ministry of Transportation.
- b. This MOU should be read together with the Metrolinx Act, 2006, and all other applicable Government directives and legislation. This MOU does not affect, modify, or limit the powers of the Agency as set out under the Metrolinx Act, 2006, or interfere with the responsibilities of any of its parties as established by law. In case of a conflict between this MOU and any act or regulation, the act or regulation prevails.
- c. This MOU replaces the MOU between the parties approved by Management Board of Cabinet (MBC) on September 17, 2009.

## 2. Definitions

In this MOU:

- a. "AAD" means the Treasury Board/Management Board of Cabinet Agencies and Appointments Directive;
- b. "Act" means the Metrolinx Act, 2006 that governs the Agency;
- c. "Agency" means Metrolinx;
- d. "Annual report" means the annual report referred to in article 10 of this MOU;
- e. "Board" means the Board of Directors of Metrolinx;
- f. "Business plan" means the annual business plan referred to in article 10 of this MOU;
- g. "By-laws" means the by-laws adopted by the Board;
- h. "CEO" means the Chief Executive Officer of the Agency;
- i. "Chair" means the Chair of Metrolinx;
- j. "Communications Protocol" means the framework to be agreed to between Metrolinx and the Ministry regarding their mutual roles and responsibilities relating to ongoing external and internal communications;
- k. "Deputy Minister" means the Deputy Minister of Transportation;
- l. "Director" means a person appointed by the Lieutenant Governor in Council as a member of the Board;

- m. “Fiscal year” means the period from April 1 to March 31;
- n. “Government” means the Government of Ontario;
- o. “MBC” means the Management Board of Cabinet;
- p. “Metrolinx” means the corporation established by the Metrolinx Act, 2006;
- q. “Minister” means the Minister of Transportation or such other person who may be designated from time to time as the responsible Minister in relation to this MOU in accordance with the Executive Council Act, R.S.O. 1990, c.E.25, as amended;
- r. “Ministry” means the Ministry of Transportation or any successor to the Ministry;
- s. “MOU” means this Memorandum of Understanding signed by the Minister and the Chair;
- t. “PSOA” means the Public Service of Ontario Act, 2006, S.O. 2006, c. 35, Sched. A, as amended;
- u. “Regional transit system” means the regional transit system as defined in section 1 of the Act;
- v. “Regional transportation area” means regional transportation area as defined in section 1 of the Act;
- w. “RTP” means the transportation plan for the regional transportation area as defined in section 1 of the Act;
- x. “TB/MBC” means the Treasury Board/Management Board of Cabinet;
- y. “TBS” means the Treasury Board Secretariat; and
- z. “Vice-Chair” means the Vice-Chair of Metrolinx.

### 3. Agency’s Legal Authority and Mandate

- a. The legal authority of the Agency is set out in the Metrolinx Act, 2006.
- b. The Agency’s mandate is set out in section 5 of the Act, which states that the Agency’s objects are to:
  - provide leadership in the co-ordination, planning, financing, development and implementation of an integrated transit network in the regional transportation area;
  - act as the central procurement Agency for the procurement of local transit system vehicles, equipment, technologies and facilities and related supplies and services on behalf of Ontario municipalities;
  - be responsible for the operation of the regional transit system and the provision of other transit services; and
  - provide other advice and services in accordance with section 8.2 of the Act.

### 4. Agency Type and Public Body Status

- a. The Agency is designated as a Board-Governed Agency under the AAD.

- b. The Agency is prescribed as a public body in accordance with Ontario Regulation 146/10 under the PSOA. It is not organizationally part of the Ministry, but it is considered to be within Government.

## 5. Corporate Status and Crown Agency Status

- a. The Agency is a Crown Agency within the meaning of the Crown Agency Act.
- b. The Agency has the capacity, rights, powers, and privileges of a natural person for carrying out its objects, subject to the limitations placed upon it under the Act, other applicable legislation, and limitations imposed by TB/MBC.
- c. Except as provided in subsections 37(2) and (3) of the Act, the Business Corporations Act, the Corporations Act and the Corporations Information Act do not apply to the Agency.

## 6. Guiding Principles

The parties agree to the following principles:

- a. The Minister recognizes that the Agency exercises powers and performs duties in accordance with its legal mandate under the Act.
- b. The Minister recognizes that the Agency supports the Ministry in the development of the policies and programs of the Government, as well as in the implementation of those policies and delivery of programs.
- c. The Board acknowledges that it is accountable to the Minister, through the Chair. Accountability is a fundamental principle to be observed in the management, administration, and operations of the Agency.
- d. The Agency will conduct itself according to the management principles of the Government. These principles include ethical behaviour; prudent, effective and lawful use of public resources; fairness; high quality service to the public; and, openness and transparency to the extent allowed under the law.
- e. The Minister and the Board, through the Chair, are committed to a strong Agency that is empowered to fulfill its mandate efficiently and effectively. They share the goal of establishing and maintaining a co-operative relationship that facilitates the efficient administration of the Agency and fulfillment of its responsibilities.
- f. The Agency and the Ministry will work together in a mutually respectful manner and agree to avoid duplication of services wherever possible.

## 7. Accountability Relationships and Responsibilities

### 7.1 MINISTER

The Minister is accountable to Cabinet and the Legislative Assembly for the Agency's fulfilment of its mandate, performance and compliance with applicable Government policies and directives, and for reporting to the Legislative Assembly on the Agency's affairs.

The Minister is also accountable for reporting and responding to TB/MBC on the Agency's performance and compliance with Government's applicable directives and operational policies.

The Minister's responsibilities include:

Mandate and Strategic Direction

- a. Providing the Government's strategic direction to the Agency for transit in the regional transportation area and for other transit work that the Agency undertakes throughout the province, and informing the Board, through the Chair, of the Government's priorities and policy directions for the Agency.
- b. Approving and providing direction on the development, scope, consultation, and/or amendment of the RTP.
- c. Ensuring that the Ministry works with the Agency to achieve the Agency's mandate.
- d. Outlining the high-level expectations, key commitments and performance priorities for the Agency at the beginning of the annual business planning cycle through the Agency mandate letter.
- e. Proactively informing the Chair of the Government's priorities and broad policy directions for the Agency.
- f. Recommending to TB/MBC the powers to be given to, or revoked from, the Agency when a change to the Agency's mandate is being proposed.
- g. Recommending to the Lieutenant Governor in Council a provincial representative as set out in section 9.1(1) of the Act.
- h. Making recommendations to Cabinet and the Lieutenant Governor in Council for appointments and reappointments to the Agency, pursuant to the process for Agency appointments established by the Act and/or by MBC through the AAD.

Oversight and Delivery

- i. Recommending to TB/MBC any provincial funding to be allocated to the Agency.
- j. Reporting and responding to the Legislative Assembly on the affairs of the Agency.
- k. Reporting and responding to TB/MBC on the Agency's performance and compliance with applicable Government directives and policies.
- l. Approving the Agency's annual report and business plan, and tabling the annual report in the Legislative Assembly
- m. Determining at any time the need for a review or audit of the Agency, directing the Chair to undertake reviews of the Agency on a periodic basis, and recommending to TB/MBC any change(s) to the governance or administration of the Agency resulting from any such review or audit.
- n. When appropriate or necessary, taking action or directing that the Agency take corrective action with respect to the Agency's administration or operations.

## Communication

- o. Meeting with the Chair to discuss issues relating to the fulfilment of the Agency's mandate, including the development of appropriate measures and mechanisms related to the performance of the Agency.
- p. Consulting, as appropriate, with the Chair (and others) on significant new directions or when the Government is considering regulatory or legislative changes for the Agency.

## 7.2 CHAIR

The Chair, on behalf of the Board, is accountable to the Minister for the Agency's fulfilment of its mandate, performance, and compliance with applicable Government directives and policies, and for carrying out the roles and responsibilities assigned to the Chair under the Act, this MOU, and applicable Government directives.

The Chair, on behalf of the Board, is also accountable for reporting to the Minister, as requested, on the Agency's activities, and for ensuring timely communications with the Minister regarding any issue that affects, or can reasonably be expected to affect, the Minister's responsibilities for the Agency.

### The Chair's responsibilities include:

#### Mandate and Strategic Direction

- a. Providing leadership to the Agency by working with the Board to set the goals, objectives and strategic directions within its mandate.
- b. Assessing the CEO's performance in consultation with the Board.
- c. Convening and chairing Board meetings, including the management of the Board's agenda, in accordance with the Act.
- d. Ensuring the provincial representative is accommodated as set out in section 9.1 of the Act.
- e. Keeping the Minister informed of upcoming appointment vacancies and providing recommendations for appointments or re-appointments.

#### Oversight and Delivery

- f. Providing leadership to the Board in ensuring that the work of the Agency complies with applicable Government and Ministry plans, policies and directives, including directives issued by the Minister under section 31 of the Act and by the Lieutenant Governor in Council under subsection 6(3)(a) of the Act.
- g. Providing leadership to the Board in ensuring that it carries out its responsibilities for decisions regarding the Agency, including the prompt and efficient implementation of directives issued by the Minister under section 31 of the Act.
- h. Reporting back to the Minister on the implementation of directives issued by the Minister under section 31 of the Act.

- i. Reporting to the Minister as requested on the Agency's activities within agreed upon timelines, including an annual letter confirming the Agency's compliance with all applicable legislation, directives, and accounting and financial policies.
- j. Ensuring that requests for Minister or Government approval have all appropriate internal agency approvals, such as the Board and the CEO, in accordance with any relevant supporting documentation on approval processes, and adhere to requirements specified by the Minister, prior to submitting requests to the Minister for consideration.
- k. Ensuring that the Agency operates within its approved budget allocation in fulfilling its mandate, and that public funds are used for the purpose intended with integrity and honesty.
- l. Providing the Minister of Transportation, the Minister of Finance and President of Treasury Board with a copy of every Auditor General of Ontario and Treasury Board audit report, and a copy of the Agency's response to each report and to any recommendation in the report.
- m. Providing the Minister of Transportation with a copy of every internal audit plan and Board reports from audits initiated through the Agency's internal audit plan, including the Agency's response to recommendations or an update on status of recommendations.
- n. Fulfilling the role of Ethics Executive for public servants who are Government appointees to the Agency by promoting ethical conduct and ensuring that all members of the Agency are familiar with the ethical requirements of the PSOA, and the regulations and the directives made under that Act, including in respect of political activity.
- o. Ensuring compliance with legislative and TB/MBC policy obligations.
- p. Ensuring appropriate management systems are in place (financial, information technology, human resources) for the effective administration of the Agency.

#### Communications

- q. Ensuring timely and consistent communications with the Minister regarding any issues or events that may concern or can reasonably be expected to concern the Minister in the exercise of their responsibilities relating to the Agency.
- r. Ensuring timely and consistent consultation with the Minister in advance regarding any activity which may have an impact on the Government and Ministry's policies, directives or procedures, or on the Agency's mandate, powers, or responsibilities as set out in the Act.
- s. Acting as the lead spokesperson as appropriate, in partnership with the CEO and in compliance with the Communications Protocol, on all Agency matters, including representing the Board at meetings with the Minister and Deputy Minister.
- t. Ensuring Agency compliance with the Communications Protocol.

### 7.3 BOARD OF DIRECTORS

The Board is accountable, through the Chair, to the Minister for the oversight and governance of the Agency; setting goals, objectives and strategic direction for the Agency within its mandate; and for

carrying out the roles and responsibilities assigned to it by the Act, this MOU, and applicable TB/MBC, PSOA and other Government directives.

The Board's responsibilities include

Mandate and Strategic Direction

- a. Establishing the goals, objectives, and strategic directions for the Agency within its mandate.
- b. Governing the affairs of the Agency within its mandate as set out in the Act, its approved business plan as described in section 10 of this MOU, and applicable Government directives.

Oversight and Delivery

- c. Ensuring that the work of the Agency complies with the Government and Ministry plans, policies and directives, including directives issued by the Minister under section 31 of the Act and by the Lieutenant Governor in Council under subsection 6(3)(a) of the Act.
- d. Ensuring, through the Chair and CEO, as applicable, the timely communication of the Minister's or Government's direction, including directives issued by the Minister under section 31 of the Act, to relevant Agency staff and its prompt and efficient implementation.
- e. Ensuring that the Agency operates within its approved budget allocation.
- f. Where applicable, ensuring that conflict of interest rules that the Agency is required to follow are in place for the members of the Board and employees of the Agency.
- g. Directing corrective action on the functioning or operations of the Agency, if needed.
- h. Providing advice and services to the Government, through the Chair, on such matters related to transportation as the Minister directs, as set out in section 8.2 of the Act.
- i. Establishing performance measures, targets and management systems for monitoring and assessing the Agency's performance.
- j. Ensuring the Agency has corresponding human resource policies in place consistent with the spirit and intent of the TB/MBC Human Resources Management directives and policies, to the extent possible based on the Agency's mandate, activities and other relevant factors.
- k. Setting policies to ensure that the Agency uses public funds with integrity and honesty, and with due regard to economy and efficiency, and that the Agency operates within its approved funding.
- l. Establishing such Board committees or oversight mechanisms as may be required to advise the Board on effective management, governance or accountability procedures for the Agency.
- m. Performing an annual assessment of the effectiveness of the Board as a whole and on individual members including the Chair and Vice-Chair.

Communications

- n. Consulting, as appropriate and in compliance with the Communications Protocol, with stakeholders on the Agency's goals, objectives and strategic directions.

#### 7.4 DEPUTY MINISTER

The Deputy Minister is accountable to the Secretary of the Cabinet and the Minister for the performance of the Ministry in carrying out the roles and responsibilities assigned by the Minister, the Act, this MOU, and applicable TB/MBC, PSOA and Government directives.

The Deputy Minister is also accountable for attesting to TB/MBC on the Agency's compliance with applicable TB/MBC directives.

#### The Deputy Minister's responsibilities include:

##### Mandate and Strategic Direction

- a. Advising and assisting the Minister regarding the Minister's responsibilities for the Agency, including informing the Minister of policy direction, policies and priorities of relevance to the Agency's mandate, as well as advising on the requirements of applicable Government directives.
- b. Recommending to the Minister, as may be necessary, the evaluation or review, including a risk-based review, of the Agency or any of its programs, or changes to the management framework or operations of the Agency.
- c. Advising the Minister on documents submitted by the Agency to the Minister for review and/or approval.

##### Oversight and Delivery

- d. Attesting to TB/MBC on the Agency's compliance with mandatory accountability requirements set out in the AAD and other applicable Government directives based on the annual letter of compliance from the Chair to the Minister.
- e. Ensuring that the Agency has an appropriate risk management framework and a risk management plan in place for managing risks that the Agency may encounter in meeting its program or service delivery objectives.
- f. Supporting the Minister in reviewing the performance targets, measures and results of the Agency.
- g. Monitoring the Agency on behalf of the Minister while respecting the Agency's authority, identifying needs for corrective action where warranted, and recommending to the Minister ways of resolving any issues that might arise from time to time.
- h. Reporting to TBS on the Agency and Ministry's compliance with the AAD, as required.
- i. Ensuring that the Ministry and the Agency have the capacity and systems in place for ongoing risk-based management, including appropriate oversight of the Agency.

##### Communication

- j. Facilitating regular briefings and consultations between the Chair/CEO and the Minister, and between Ministry and Agency staff as needed.
- k. Ensuring Ministry compliance with the Communications Protocol.
- l. Proactively consulting with the CEO or Chair, as needed, on matters of mutual importance including services provided by the Ministry and compliance with applicable Government and Ministry plans, policies and directives.
- m. Informing the CEO or Chair, in writing, of new Government directives and any exceptions to, or exemptions in whole or in part from applicable Government and Ministry plans, policies and directives.
- n. Maintaining an open and co-operative working relationship with the Agency with respect to all planning, financial, administrative and management matters through regular meetings with the Agency.

## 7.5 CHIEF EXECUTIVE OFFICER

The CEO is accountable to the Board for the management and administration of the Agency, the supervision of Agency staff, and carrying out the roles and responsibilities assigned by the Board, the Act, this MOU and applicable Government directives. The CEO works under the direction of the Chair to implement policy and operational decisions. The CEO reports the Agency's performance results to the Board, through the Chair.

### The CEO's responsibilities include:

#### Mandate and Strategic Direction

- a. Managing the day-to-day operational, financial, project delivery, and administrative affairs of the Agency in accordance with the Agency's mandate, applicable Government and Ministry plans, policies and directives, accepted business and financial practices, this MOU, and directives issued by the Minister per section 31 of the Act and by the Lieutenant Governor in Council under subsection 6(3)(a) of the Act.
- b. Ensuring the timely communication of the Minister's or Government's direction, including directives issued by the Minister under section 31 of the Act, to relevant business units to ensure its prompt and efficient implementation.
- c. Translating the goals, objectives and strategic directions of the Board into operational plans and activities in accordance with the Agency's approved business plan.

#### Oversight and Delivery

- d. Preparing the RTP, annual report, business plan, quarterly reports, financial reports, budgets and any other reports, plans or documents for submission to the Board, as required by the Minister, the Act and this MOU, or as directed by the Board.

- e. Advising the Chair on the requirements of and the Agency's compliance with applicable Government directives and Agency by-laws and policies, including annually attesting to the Chair on the Agency's compliance with mandatory requirements.
- f. Applying policies and procedures so that public funds are used with integrity and honesty.
- g. Providing leadership and management to Agency staff, including human and financial resources management, in accordance with the approved business plan, accepted business and financial practices and standards, the Act, and applicable Government directives.
- h. Establishing and applying a financial management framework for the Agency in accordance with applicable directives, policies, and guidelines as directed by the Minister of Finance and/or the President of Treasury Board.
- i. Ensuring that the Agency has the oversight capacity and an effective oversight framework in place for monitoring its management and operations.
- j. Keeping the Board, through the Chair, informed with respect to implementation of policy and the operations of the Agency.
- k. Ensuring that requests for Minister or Government approval have all appropriate internal approvals, such as the Chair and the Board, in accordance with any relevant supporting documentation on approval processes, and adhere to requirements specified by the Minister, prior to submitting requests to the Deputy Minister for consideration.
- l. Provide the Ministry with documents in a timely manner that require Minister's review or approval, in accordance with any relevant supporting documentation on approval processes.
- m. Carrying out in-year monitoring of the Agency's performance and reporting on results to the Board through the Chair.
- n. Fulfilling the role of Ethics Executive for public servants, other than Government appointees, who work in the Agency, by promoting ethical conduct and ensuring familiarity with the ethical requirements of the PSOA and the regulations and directives made under that Act, including in respect of conflict of interest, political activity, and the protected disclosure of wrongdoing.
- o. Attesting to the compliance of the Agency with applicable Government directives and supporting the Board in demonstrating Agency compliance.
- p. Ensuring that the Ministry is provided information in a timely manner on matters regarding the Agency, as requested, in accordance with any relevant supporting documentation on approval processes.

#### Communications

- q. Ensuring Agency compliance with the Communications Protocol.
- r. Proactively keeping the Ministry and the Chair advised on issues or events in a timely manner that may concern the Minister, the Deputy Minister and the Chair in the exercise of their responsibilities.
- s. Consulting with the Deputy Minister as needed, on matters of mutual importance, including services provided by the Ministry, and on applicable Government and Ministry plans, policies and directives.

- t. Acting as the lead spokesperson, as appropriate and in compliance with the Communications Protocol, and in partnership with the Chair, on all Agency matters and delegating this role in whole or in part to senior staff members as necessary or appropriate.

## 8. Ethical Framework

Members of the Board appointed by the Lieutenant Governor in Council are subject to the conflict of interest provisions of the AAD and the conflict of interest provisions of the Act, the PSOA and its regulations.

Board members shall not use any information gained as a result of their appointment to or membership on the Board for personal gain or benefit. A member who has reasonable grounds to believe that they have a conflict of interest in a matter before the Board, or a committee of the Board, shall disclose the nature of the conflict to the Chair at the first opportunity and shall refrain from further participation in the consideration of the matter. The Chair shall cause to be recorded in the minutes of the meeting of the Board any declared conflicts of interest.

The Chair, as the Ethics Executive for the Directors and CEO, is responsible for ensuring that the Directors and CEO are informed of the ethical rules to which they are subject, including the rules on conflict of interest, political activity and protected disclosure of wrongdoing that apply to the Agency.

## 9. Reporting Requirements

The Chair, on behalf of the Board, is responsible for:

- a. Ensuring that the Minister is provided annually with the Agency's business plan covering a minimum of three years, which includes a financial budget and a risk assessment and management plan, for approval by the Minister. The business plan shall be in accordance with the requirements set out in the AAD and the Act.
- b. Ensuring that the Agency's annual report is prepared and submitted to the Minister within 120 calendar days of the Agency's fiscal year end. The annual report, and approval and tabling in the Legislative Assembly, shall be in accordance with the requirements set out in the AAD and the Act.
- c. Ensuring that the reports and documents, as specified by the Minister as ongoing reporting requirements, are prepared and presented to the Ministry in accordance with Ministry content and timeline requirements.
- d. Providing the Minister with such information on any aspect of Agency business and affairs or on any matter respecting transportation or transit as the Minister may at any time request, as set out in section 33.2 of the Act.
- e. Providing the Minister with all materials for all public session Board meetings for review at least 12 business days in advance of the meeting dates, as well as any committee meetings as requested,

## 10. Public Posting Requirements

The Chair, on behalf of the Board, is responsible for:

- a. Ensuring that the MOU, Agency mandate letter, business plan, final and audited financial statements, and annual report are posted in an accessible format, in both official languages, on the Agency and/or Ministry website within the timelines established in the AAD, Act, or as directed by the Minister.
- b. Ensuring that posted governance documents do not disclose: personal information, sensitive employment and labour relations information, solicitor-client privileged information, Cabinet confidential information, or trade secrets, information that would prejudice the financial or commercial interests of the Agency in the marketplace, and information that would otherwise pose a risk to the security of the facilities and/or operations of the Agency.
- c. Ensuring that expense information for appointees and senior executives are posted on the Agency or Ministry website, in accordance with the requirements of the MBC Travel, Meal and Hospitality Expenses Directive.

## 11. Communications and Issues Management

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 their responsibilities for reporting and responding to the Legislative Assembly on the affairs of the Agency. The parties also recognize that it is essential for the Chair, on behalf of the Board, to be kept informed of the Government initiatives and broad policy directions that may affect the Agency's mandate and functions.

The Minister and the Chair, on behalf of the Board, therefore, agree that:

- a. The Chair will ensure that the Minister is advised, in a timely manner, of all planned events or issues, including contentious matters that concern or can be reasonably expected to concern the Minister in the exercise of their responsibilities.
- b. The Minister will consult with the Chair in a timely manner, as appropriate, on broad Government policy initiatives or legislation being considered by the Government that may impact on the Agency's mandate or functions, or which otherwise will have a significant impact on the Agency.
- c. The Minister and the Chair will ensure that the other party is consulted on public communication strategies and publications. They will keep each other informed of the results of stakeholder and other public consultations and discussions.
- d. The Minister and the Chair will meet at least quarterly, or as requested by either party, to discuss issues relating to the fulfillment of the Agency's mandate, management and operations.
- e. The Deputy Minister and the CEO will meet at least monthly, or as requested by either party, to discuss issues relating to the delivery of the Board's mandate and the efficient operation of the Agency. The Deputy Minister and the CEO shall provide timely information and advice to each other concerning significant matters affecting the Agency's management or operations.

- f. The Agency and Ministry will comply with the Communications Protocol, which sets out a clear framework for the Ministry and the Agency regarding their responsibilities relating to issues management, engagement and consultation, media responses, and news releases.
- g. The Agency shall recognize the financial support of the Government, through the Ministry, in all its financial, educational, and promotional materials, in accordance with guidelines established by the Ministry and be in compliance with TB/MBC's Visual Identify Directive. For greater certainty, the Agency has TB/MBC approval to use its Unique Identifier and logo for GO Transit/Metrolinx.

## 12. Administrative Arrangements

### 12.1 APPLICABLE GOVERNMENT DIRECTIVES

- a. The Chair, on behalf of the Board, is responsible for ensuring that the Agency operates in accordance with all applicable TB/MBC, PSOA, and Government directives, as well as applicable Ministry financial and administrative policies and procedures. The Appendix to this MOU provides a list of applicable Government directives.
- b. The Ministry will inform the Agency of amendments or additions to Government directives that apply to the Agency; however, the Agency is responsible for complying with all applicable Government directives.
- c. In addition to the Agency complying with the MBC Realty Directive, the Ministry will ensure that the Agency is provided with any updates to this policy.

### 12.2 ADMINISTRATIVE AND ORGANIZATIONAL SUPPORT SERVICES

- a. Subject to statutory requirements and applicable Government directives, the Agency may establish its own administrative, financial, procurement, human resources and operational policies and guidelines, exercising sound business acumen and operational flexibility.
- b. As an agent of the Crown, the Agency shall conduct itself according to the management principles of the Government. These principles include ethical behaviour, accountability, excellence in management, prudent use of public funds, and fairness in the marketplace.

### 12.3 AGREEMENTS WITH THIRD PARTIES

As set out in section 16 of the Act, the Agency has the power to enter into commercial arrangements with persons or entities for a purpose consistent with the Agency's mandate.

### 12.4 LEGAL SERVICES

The Agency shall employ or retain, as appropriate, its own legal counsel.

### 12.5 CREATION, COLLECTION, MAINTENANCE AND DISPOSITION OF RECORDS

- a. The CEO is responsible for ensuring that a system is in place for the creation, collection, maintenance and disposal of records.

- b. The Board, through the Chair, is responsible for ensuring that the Agency complies with all Government legislation, directives and policies related to information and records management.
- c. The CEO, the Chair and the Board shall protect the legal, fiscal and other interests of the Agency by implementing reasonable measures to ensure the ongoing viability, integrity, preservation and security of all official records created, commissioned or acquired by the Agency. This includes, but is not limited to, all electronic records, such as emails, information posted on the Agency's website(s), database data sets, and all records stored on personal computers, shared drives, and cloud-based computing services.
- d. The Chair, on behalf of the Board, is responsible for ensuring measures are implemented requiring the Agency's employees to create full, accurate and reliable records that document and support significant business transactions, decisions, events, policies and programs.
- e. The Board, through the Chair, is responsible for ensuring Agency compliance with the Archives and Recordkeeping Act, 2006.

## 12.6 INTELLECTUAL PROPERTY

- a. The CEO is responsible for ensuring that the legal, financial and other interests of the Government related to intellectual property are protected in any contract that the Agency may enter into with a third party that involves the creation of intellectual property.

## 12.7 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

- a. The Chair and the Minister acknowledge that the Agency is bound to follow the requirements set out in the Freedom of Information and Protection of Privacy Act (FIPPA) in relation to the collection, retention, security, use, distribution and disposal of records.
- b. The CEO is the institution head for the purposes of the FIPPA.

## 12.8 SERVICE STANDARDS

- a. The Agency shall establish customer service and quality standards that are consistent with the appropriate standards of the Government, the Ministry, and the Ontario Public Service, including compliance with the Accessibility for Ontarians with Disabilities Act, 2005 and with the French Language Services Act.
- b. The Chair will ensure that the Agency delivers its services at a quality standard that reflects the principles and requirements of the OPS Service Directive.
- c. The Agency's business plan will include performance measures and targets for customer service and the Agency's response to complaints.

# 13. Financial Arrangements

## 13.1 GENERAL

- a. All financial procedures for the Agency shall be in accordance with applicable TB/MBC and

Ministry of Finance directives and guidelines, Ministry corporate financial and administrative policies and procedures, and other Government guidelines, directives and policies, as set out in the Appendix of this MOU.

- b. When ordered to do so by the Minister of Finance or the President of the Treasury Board, per Section 16.4 of the Financial Administration Act, the Agency shall pay into the Consolidated Revenue Fund any money that the Minister of Finance and/or the President of the Treasury Board determines is surplus to its current needs.
- c. Per Section 28 of the Financial Administration Act, the Agency shall not enter into any financial arrangement or financial 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 or the President of the Treasury Board, as applicable. By policy, Ministry of Finance and TBS require that Agency approval requests be made on its behalf by the Minister or Deputy Minister, as applicable.
- d. The Agency's approved operating and capital allocations may be adjusted in a given year if in-year fiscal constraints are ordered by Cabinet or the Minister. The Agency will be provided with notice of changes to its allocation as soon as is reasonably possible. Where the Agency must reallocate resources as a result of its operating and/or capital allocations being adjusted, the Agency shall inform and discuss the changes with the Ministry before making such changes.

## 13.2 FUNDING

- a. The Agency will be funded through transfer payments from the Ministry in accordance with approved funding through the TB/MBC approval process.
- b. The Lieutenant Governor in Council may by order authorize the Minister of Finance to make loans to the Agency or any of its subsidiary corporations on terms and conditions determined by the Minister of Finance, as set out in subsection 30(2) of the Act.
- c. The Lieutenant Governor in Council may by order authorize the Minister of Finance to purchase securities of the Agency's subsidiary corporations at times and on terms and conditions determined by the Minister of Finance, as set out in subsection 30(3) of the Act.
- d. Subsection 42(2) of the Act authorizes the Lieutenant Governor in Council to make regulations to authorize the Agency to establish and impose fees and charges and to utilize other mechanisms for revenue generation.
- e. The Agency's capital and operating funding is approved by TB/MBC through the government's multi-year budget planning process. Any approvals for additional operating or capital funding during a fiscal year must be obtained by the Minister through the appropriate TB/MBC approval process. Ministry and Agency staff shall jointly prepare the required documentation related to seeking that approval.
- f. The Ministry will inform the Agency of the funding allocation for Metrolinx approved by TB/MBC as soon as reasonably possible. The Agency shall restrict access to approved funding allocation to those employees and appointees who have sworn or affirmed an oath of office as set out in the PSOA.
- g. The Board, through the Chair, shall inform the Minister at least on a quarterly basis of the anticipated spending of the operating and capital allocations, and in the event that the Agency does not anticipate

spending the full operating or capital allocations, shall provide a preliminary indication to the Minister as early as possible and, at a minimum, three months prior to the end of the fiscal year.

- h. The Agency will comply with applicable Government expenditure management direction, including limits on discretionary spending, hiring and travel restrictions, and deferral of planned expenditures.
- i. The Agency will submit, in a manner agreed to by the Ministry, requests for funding on an as needed basis. Requests for funding should not exceed amounts required for the following month. The Ministry will endeavour to arrange for the transfer of funds on a timely basis.
- j. The Agency shall maintain a bank account in its own name and manage its financial activities, including leasing, investment and management of cash in accordance with the Ontario Financing Authority's policy directions.
- k. The CEO will prepare estimates of the Agency's expenditures for inclusion in the Ministry's multi-year budget planning process for presentation to the Legislative Assembly. The Chair will deliver these estimates to the Minister in sufficient time to be analyzed and approved by the Minister.
- l. The estimates provided by the Chair may be altered as required. The parties acknowledge that TB/MBC has final decision-making authority.

### 13.3 FINANCIAL REPORTS

- a. The Chair, on behalf of the Board, will provide to the Minister audited annual financial statements as well as post them publicly, and will include them as part of the Agency's annual report. The statements will be provided in a format that is in accordance with the province's stated accounting policies issued by the Office of the Provincial Controller Division.
- b. The Agency will submit its salary information to the Minister of Finance and/or the President of the Treasury Board, through the Ministry, in accordance with the Public Sector Salary Disclosure Act, 1996.
- c. Per article 9 of this MOU, the Agency will provide required financial and administrative reporting in accordance with Ministry established content and timeline requirements.

### 13.4 TAXATION STATUS: HARMONIZED SALES TAX (HST)

- a. The Agency is responsible for paying HST where applicable, in accordance with the federal Excise Tax Act.
- b. The Agency has been determined to be a municipality for the purposes of Part IX of the federal Excise Tax Act and is therefore eligible for a 100% rebate of the federal portion of the HST, and a 78% rebate of the provincial portion of the HST.
- c. The Agency is responsible for providing the Ministry of Finance or the Canada Revenue Agency, upon request, with any information necessary to determine the amount of an HST rebate.
- d. The Agency is responsible for complying with its obligations as a supplier under the federal Excise Tax Act to collect and remit HST in respect of any taxable supplies made by it.

## 14. Audit and Review Arrangements

### 14.1 AUDITS

- a. The Agency is subject to periodic review and value-for-money audit by the Auditor General of Ontario under the Auditor General Act or by the Ontario Internal Audit Division of TBS.
- b. The Minister may direct that the Agency be audited at any time.
- c. The Agency will promptly provide a copy of:
  - Every report from an audit initiated by the Auditor General of Ontario or by Ontario Internal Audit Division to the Minister and the Minister of Finance/President of Treasury Board, including a copy of its response to the audit report and any recommendations therein. The Agency will advise the Minister annually on any outstanding audit recommendations.
  - The Agency's internal audit plan and Board reports from audits initiated through the Agency's internal audit plan to the Minister, including any actions taken in response to the Agency's internal audit recommendations or an update on the status of recommendations.
- d. The Chair, on behalf of the Board, may request an external audit of the financial transactions or management controls of the Agency, at the Agency's expense.
- e. The accounts of the Agency shall be audited annually by an auditor (or auditors) appointed by the Board. Audited financial statements will be included in the Agency's annual report.

### 14.2 OTHER REVIEWS

- a. The Agency is subject to periodic review initiated at the discretion and direction of TB/MBC or the Minister. The review may cover such matters relating to the Agency that are determined by TB/MBC or the Minister, and may include the mandate, powers, governance structure and/or operations of the Agency.
- b. In requiring a periodic review, the Minister or TB/MBC shall determine the timing and responsibility for conducting the review, the roles of the Chair, the Board, and the Minister, and how any other parties are involved.
- c. A mandate review of the Agency will be conducted at least once every six years.
- d. The Minister will consult the Chair, on behalf of the Board, as appropriate during any such review.
- e. The Chair, CEO, and Board will cooperate in any review of the Agency, including the timely provision of requested information.
- f. In the event of a review initiated at the direction of the Minister, the Minister shall submit any recommendations for change that are developed from the results of the review regarding the Agency to TB/MBC for consideration.

## 15. Staffing and Appointments

### 15.1 STAFFING REQUIREMENTS

- a. The Agency may hire such employees and appoint such officers are considered necessary for the proper conduct of its business as affairs, as set out in section 15 of the Act.
- b. The Agency is an Agency of the Crown to which the Crown Employees Collective Bargaining Act, 1993 applies and its employees are Crown employees for the purposes of that Act, as set out in section 38 of the Act.

### 15.2 APPOINTMENTS

- a. The Chair and Vice-Chair are designated by the Lieutenant Governor in Council on the recommendation of the Minister as set out in section 10 of the Act.
- b. Members of the Board are appointed by the Lieutenant Governor in Council on the recommendation of the Minister as set out in section 9 of the Act.
- c. The CEO is appointed by the Lieutenant Governor in Council on the recommendation of the Minister as set out in section 14 of the Act.
- d. The maximum number of members of the Board is 15, as set out in the section 9 of the Act.

### 15.3 REMUNERATION

- a. Remuneration for Board members and the CEO is set by the Lieutenant Governor in Council.
- b. Travel expenses of Board members must comply with the MBC Travel, Meal and Hospitality Expenses Directives. Reasonable expenses shall be reimbursed.

## 16. Risk Management, Liability Protection and Insurance

### 16.1 RISK MANAGEMENT

- a. The Chair, on behalf of the Board, is responsible for ensuring that a risk management strategy is developed for the Agency, in accordance with the OPS Enterprise Risk Management Directive and guided by the OPS Enterprise Risk Management processes and requirements.
- b. The Agency shall identify and assess risks and put in place appropriate risk management plans for managing risks that the Agency may encounter in meeting its strategic, project, operations and business continuity objectives.

### 16.2 LIABILITY PROTECTION AND INSURANCE

- a. Section 36 of the Act sets out that no action or other proceeding for damages shall be brought against a Director, officer or employee of the Agency or any of its subsidiary corporations as a result of any act done in good faith in the performance or intended performance of any duty under the Act, or in

the exercise or intended exercise of any power under the Act, or as a result of any neglect or default in the performance or exercise in good faith of such duty or power.

- b. Subsection 37(2) of the Act sets out those sections of the Business Corporations Act dealing with, among other things, the indemnification of Directors that apply to the Agency.

## 17. Effective Date, Duration and Periodic Review of the MOU

- a. This MOU becomes effective on the date it is signed by the Minister as the last party to execute it and continues in effect until it is revoked or replaced by a subsequent MOU signed by the parties.
- b.
- c. Upon a change in the Minister or Chair, both parties must affirm by letter that this MOU will continue in force without a review (and attach the signed letter to the MOU); or alternatively, they may agree to revise it and sign a new MOU within six months of the change.
- d. If either of the parties deems it expedient to amend this MOU, they may do so only in writing. Any amendment shall only be effective after approval by the parties.
- e. A review of this MOU will be conducted immediately in the event of a significant change to the Agency's mandate, powers or governance structure as a result of an amendment to the Act.
- f. This MOU will be reviewed at least once every five years to ensure it is current and consistent with Government expectations.

### Signatures

  
\_\_\_\_\_  
Agency Chair  
Metrolinx

November 27, 2020  
Date

  
\_\_\_\_\_  
Minister of Transportation

September 30, 2020  
Date

## Appendix: Applicable Government of Ontario Directives

1. The following TB/MBC and Government directives apply to the Agency:

- Accountability Directive
- Advertising Content Directive
- Agencies and Appointments Directive
- Cash Management Directive
- Communications in French Directive Disclosure of
- Wrong Doing Directive
- Enterprise Risk Management Directive
- Government Publications Directive
- Internal Audit Directive
- Major Public Infrastructure Projects Directive
- Open Data Directive
- Perquisites Directive
- Procurement Directive – those sections that are mandatory for Other Included Entities, as defined in the Procurement Directive
  - Procurement Directive on Advertising, Public and Media Relations and Creative Communications Services
- Realty Directive
- Transfer Payment Accountability Directive
- Travel, Meal and Hospitality Expenses Directive
- Visual Identity Directive

2. The Agency is responsible for complying with all directives, policies and guidelines to which it is subject, irrespective of whether it is included on the list above.

3. The Ministry will inform the Agency of amendments or additions to directives, policies and guidelines that apply to the Agency.