

PROVINCE OF ONTARIO-CITY OF TORONTO REALIGNMENT OF TRANSIT RESPONSIBILITIES REVIEW TERMS OF REFERENCE

CONTEXT

The Province of Ontario (the “Province”), the City of Toronto (the “City”) and the Toronto Transit Commission (TTC), collectively, the parties (the “parties”), have maintained a longstanding partnership with respect to advancing public transit initiatives.

The parties acknowledge that the TTC subway system is an important component of an integrated transit network serving Toronto – which includes TTC surface transit (i.e., streetcar and bus services) and Wheel-Trans – as well as the Greater Toronto and Hamilton Area (GTHA) – which includes transit services provided by Metrolinx and other municipalities.

BACKGROUND

The provincial government’s election platform, titled, *A Plan for the People*, included a commitment to:

- “Assume responsibility for subway infrastructure from the City, including the building and maintenance of new and existing subway lines (the “upload”); and,
- Keep responsibility for day-to-day operations, including labour relations, with the City”.

The Province committed to developing a plan to upload components of the TTC subway system, which is intended to generate the following benefits to public transit rider and residents:

- “Expedited implementation of a greater number of priority regional transit projects, made possible by the Province’s ability to accelerate procurement, permitting and approvals, and to effectively undertake capital construction;
- An enhanced ability to plan a more efficient regional transit network across the GTHA, with improved connectivity achieved, for example, through fare and service integration; and,
- A greater fiscal flexibility to invest in and deliver additional transit projects, and to address essential deferred maintenance needs, which would be effected through amortized provincial capital expenditures on owned assets”.

City Council on May 22, 2018 passed a resolution (2018.MM41.36) stating a position that “the City of Toronto should continue to own, operate and maintain the Toronto subway system and that transit within the City of Toronto should not be uploaded or otherwise transferred, in whole or in part, to the Province of Ontario”.

On August 31, 2018 the Premier of Ontario appointed a “Special Advisor to Cabinet – Transit Upload” (the “Province’s Special Advisor”) to help deliver on the Province’s commitment to assume responsibility for TTC subway infrastructure. The mandate for the Special Advisor is specified in the *Special Advisor to Cabinet – Transit Upload and Transit Upload Advisory Panel: Terms of Reference* document, which was posted to the Ministry of Transportation (MTO) website on November 28, 2018.

On November 15, 2018, the Province presented its *2018 Economic Outlook and Fiscal Review*, which affirmed the commitment to develop a plan to upload responsibility for TTC subway infrastructure.

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On November 29, 2018, the Minister of Transportation, in a letter to the Mayor of the City of Toronto:

- Requested the support of the City to engage in a discovery exercise with the Province, with the intent of reaching a joint understanding of: the fair valuation of the assets and liabilities encompassing the TTC subway system; the TTC's current backlog of deferred maintenance on subway assets; and, the costs to operate the subways, disaggregated from the bus/streetcar network.
- Consistent with the intention of accelerating key subway projects in Toronto, proposed the participation of Infrastructure Ontario, with the existing work of the City, TTC and Metrolinx, in the Relief Line project to examine opportunities to advance design and delivery.

On December 13, 2018, Toronto City Council considered the report, *CC1.6 Engagement with the Province on Toronto's Transit System*. In doing so, City Council:

- Reaffirmed its support for keeping ownership of the TTC with the City of Toronto and requested the Province to "demonstrate clearly and with evidence the goals they believe can only be achieved through a change in subway ownership";
- Indicated interest in working with the Province to get the Relief Line subway built as a priority and as quickly as possible;
- Authorized the City Manager, in consultation with the Chief Executive Officer, TTC, to negotiate with the Province a Terms of Reference ("ToR") in order to guide a discussion and information exchange process between the Province and City on the alignment of transit responsibilities. As directed by Council, the ToR would have regard to:
 - A set of mutually-agreed objectives, based upon a suite of principles, per the report CC1.6 (see Appendix A);
 - An "evaluation of potential models and other policy options, including a comprehensive assessment of the potential risks, liabilities and implications, to achieve both the Province and City objectives"; and,
 - The "inclusion of a public consultation process, which results in a meaningful exchange of concerns and/or opportunities raised in a transparent manner."
- Conditional upon a joint ToR having been developed in accordance with Council direction and to the satisfaction of the City Manager, Council authorized the City Manager in consultation with the CEO, TTC to engage with the Province based upon the joint ToR.
- Directed the City Manager to retain a third party validator for the City to determine all asset values.

Following City Council direction in December, the parties began development of a Terms of Reference to reflect the direction of both the Province and City Council.

As such, this Terms of Reference ("ToR") document, prepared without prejudice, outlines the core elements that are proposed as forming the basis of the review and engagement process to be undertaken by the parties, effective February 8, 2019.

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PROBLEM STATEMENT

The parties jointly recognize the need to pursue alternative approaches to the planning, funding, decision-making and delivery of transit in Toronto, and spanning the broader region as is the provincial interest. This approach would enable, to the maximum extent possible:

- The accelerated implementation of priority expansion projects;
- The integration of transit services across modes and agencies (e.g. TTC, Metrolinx, other 905 transit agencies);
- The modernization and enhancement of the existing subway system, while ensuring the system is maintained in a state of good repair;
- The continuity of safe, reliable service to all residents whom depend on it for mobility; and
- A long-term sustainable, predictable, funding model for the existing transit system and future transit needs.

OBJECTIVES & PRINCIPLES

Consistent with the direction received by the Province and City, the following objectives and principles (presented in no particular order) will guide the evidence-based review and engagement process in order to assess the potential realignment of transit responsibilities:

- Good Governance: A governance framework that: ensures transparency and accountability to the people of Toronto and the GTHA; reflects the importance of transit users within the region; and, is responsive to the needs of the communities that rely upon the transit network.
- Safety & Reliability: A safe and secure transit network, while ensuring the accessibility and connectivity of transit services in Toronto.
- Efficient & Integrated System: Greater efficiency – supported through key policy initiatives – in the planning, implementation and operation of transit, thereby enabling an integrated transit network that complements the City's planning objectives, and provides seamless connections between transit services.
- Effective Decision-Making to Enable Delivery: A more effective and clearer decision-making structure for transit projects and service delivery, which is evidence-based, and also allows for the advancement of priority expansion initiatives currently underway.
- Financial Sustainability: A long-term funding model that: provides stable, consistent funding for effective system planning and management; is fiscally prudent with due regard for the taxpayers of Toronto and Ontario; and, fairly divides financial obligations between the orders of government.

OVERVIEW OF REVIEW & ENGAGEMENT PROCESS

The parties agree to undertake the following activities:

Stage 1 –Evaluation of Potential Options/Models

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- The parties will identify a finite number of options to be assessed, in order to evaluate the best approach to address the objectives and principles as defined in this ToR. The options will include:
 - The proposed "upload" model, in which the Province would assume ownership of, and responsibility for, subway infrastructure from the City, including the building and maintenance of new and existing subway lines, while the responsibility for day-to-day operations, including labour relations, remains with the City.
 - Other options that consider the potential transfer of asset ownership from the City to the Province (e.g., the Province assumes ownership of, and responsibility for, new transit expansion projects only, etc.).
 - Options that do not consider the transfer of assets, but include a realignment of responsibilities (e.g., the Province assumes responsibility for the delivery of new transit expansion projects, etc.).
- The Province recognizes that the City/TTC are undertaking multiple initiatives aimed at improving performance against shared objectives and commits to better understanding these in order to inform options.
- The options to be defined will include (non-exhaustive) the following:
 - The scope and distribution between the parties of the assets under consideration;
 - The scope and distribution between the parties of the liabilities under consideration;
 - Functional roles and responsibilities (e.g., with respect to planning, delivery, operations, maintenance, etc.); and,
 - Funding responsibilities (e.g., state of good repair costs, operating costs, maintenance costs, capital costs, etc.).
- The parties agree that the options will be evaluated based upon the following dimensions (non-exhaustive):
 - Achievement of objectives;
 - Financial and operational implications;
 - Risks and impacts;
 - Feasibility/implementation;
 - Governance implications; and,
 - Other considerations (i.e. City's Guiding Principles).
- In order to support the technical definition/details and the evaluation of the options the parties commit to an ongoing reciprocal sharing of data, information and documentation (see Appendix B).
- In addition, to facilitate the timely evaluation of options, the parties will draw upon previous analyses and studies conducted by the parties.
- The parties acknowledge that meaningful public consultation is a required input to effective decision-making. To that end, during the process, the parties will conduct consultation with the public, including other key stakeholders.
- The parties shall identify the options/end states to be carried forward into Stage 2 of the process, and report to respective governing bodies on the results of Stage 1 analysis.

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Stage 2 – Design of End State

- Informed by Stage 1, the parties will further refine the potential realignment of responsibilities under the options/end states, including:
 - Specific responsibilities of the parties as to inform the future governance, decision-making and funding frameworks; and,
 - Specific design characteristics of the end state, which would enable the parties to optimally fulfill their respective responsibilities and roles/functions.
- Consideration will also be given to additional measures required to mitigate risks identified through the evaluation undertaken in Stage 1.
- Upon completion of this stage of the process, the parties will discuss next steps, subject to provincial and municipal report-backs and subsequent decision-making.

RULES OF ENGAGEMENT

The applicable principles and provisions of the Agreement on Cooperation and Consultation between the City of Toronto and the Province of Ontario (TOCCA), dated May 12, 2016, will guide the review and engagement process.

Building upon this foundation for collaboration, the parties further commit to the following:

- **Principles-Based Discussion:** The parties agree to an ongoing dialogue matched to the objectives and principles articulated in this ToR.
- **Partnership:** The parties shall, at all times, engage in good faith, without prejudice, and in a manner consistent with the authorities and mandates conferred by their respective orders of government. Outputs of this process are expected to inform final provincial and municipal decision-making.
- **Reciprocal Exchange of Information:** The parties will share – in a timely and transparent manner – all relevant and requested data, information and documentation, in order to support the broader consultation, within reasonable timeframes.
- **Transparency & Communications:** The parties shall mutually determine the requirements for public disclosure of information in the interest of ensuring transparency. In addition, the parties will plan and implement joint communications activities marking milestones associated with the ongoing process.
- **Confidentiality:** All persons designated by the parties to partake in the review and engagement process shall be deemed to be bound by the confidentiality obligations contained in TOCCA. Moreover, the public release of information shall be subject to the provisions of the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*, where applicable.

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COMPOSITION & STRUCTURE

Collaboration amongst the parties will be structured in accordance with the following framework:

Steering Committee

The Steering Committee will enforce the mutually-consented principles, and will carry out the scope of work as outlined in this ToR document. The Steering Committee membership includes the following:

Ontario

- Province's Special Advisor
- Deputy Minister, MTO
- Assistant Deputy Minister, MTO
- Executive Director, MTO

Toronto

- Special Advisor
- Executive Director, Corporate Finance
- Representative
- Representative

The Steering Committee will convene bi-weekly, and may meet more frequently, as required. Furthermore, the parties agree that:

- Meetings will alternate between Queen's Park and City Hall locations;
- The agenda will be jointly agreed upon no later than three (3) business days before a meeting;
- Meeting organization, agenda setting and minute taking will alternate between MTO secretariat staff and City/TTC secretariat staff, depending upon the meeting location;
- An agenda forecast will be established and maintained; and,
- Meeting participation is limited to Steering Committee membership, unless there is agreement by all parties to include additional participants.

The Steering Committee may establish, as necessary, Technical Working Groups to carry out the review contemplated in this ToR.

- The Technical Working Groups will include representatives of each party, and may include additional representatives from Metrolinx and/or Infrastructure Ontario, as deemed appropriate by the Steering Committee; and,
- The purpose, membership and mandate of each Technical Working Group will be outlined as an addendum to this ToR document.

Secretariat Support

A dedicated team of MTO and City/TTC staff will be made available to the Steering Committee to undertake the following (non-exhaustive):

- General secretariat duties;
- Agenda setting and agenda forecast management;
- Issues management; and,
- Meeting organization and minute-taking.

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Executed by the parties on the dates written below.

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO**

Signature: _____

Name: Michael Lindsay _____

Title: Special Advisor to Cabinet – Transit Upload _____

Date of Signature: _____

Signature: _____

Name: Shelley Tapp _____

Title: Deputy Minister of Transportation _____

Date of Signature: _____

CITY OF TORONTO

Signature: _____

Name: Chris Murray _____

Title: City Manager _____

Date of Signature: _____

Signature: _____

Name: Richard Leary _____

Title: Chief Executive Officer, TTC _____

Date of Signature: _____

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APPENDIX A – CITY OF TORONTO'S GUIDING PRINCIPLES (CC1.6)

Good Governance	<ul style="list-style-type: none">• Accountability• Responsiveness to Community• Transparency
Policy & Operations	<ul style="list-style-type: none">• Safety and Security of the System• Preserving Mobility Options and a Seamless Journey• Ensure Accessible Local Service• Alignment of Infrastructure Investments with the City's Planning Objectives• Advance priority expansion projects underway
Funding	<ul style="list-style-type: none">• Financial Sustainability of the transit system and the implications for the City as a whole• Fair Allocation of Financial Obligations

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APPENDIX B – DISCOVERY EXERCISE/INFORMATION SHARING

In order to carry out the scope of work, the parties commit to the reciprocal sharing of data, information and documentation.

As an early action under the broader process, the Province will submit a data/documentation request to the City/TTC within five (5) business days of the execution of this ToR. In response, the City/TTC will make best efforts to make available information within fifteen (15) business days of receipt of the request.

Moreover, to support the discovery exercise, the parties agree:

- To generate a shared inventory of records that will be accessible by all parties;
- To determine the scope and inventory of the data, information and documentation to be shared between the parties;
- To make available – as assigned and in a timely and transparent manner – the data, information and/or documentation identified as part of the exercise;
- That the Province, through MTO, will manage and administer a virtual data room that will serve as a web-based repository/portal to facilitate the sharing of data, information and documentation; and,
- To work collaboratively to enable a common baseline/foundation of fact, which includes an objective accounting and technical assessment of the TTC subway network in order to establish a mutual understanding of:
 - the fair valuation of the assets and liabilities encompassing the TTC subway system;
 - the TTC's current backlog of deferred maintenance on subway assets; and,
 - the costs to operate the subways, disaggregated from the bus/streetcar network.

In addition, the parties recognize that the following undertakings are key components of discovery:

- The TTC's review of deferred maintenance on its subway system;
- MTO's procurement – in consultation with the City/TTC – of an independent third party to undertake an open book financial and technical valuation of TTC subway assets, the condition/state of repair of these assets, and the associated liabilities; and,
- The City's valuation of TTC assets as directed by City Council.