MEMORANDUM OF UNDERSTANDING

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
AS REPRESENTED BY
THE MINISTER OF TRANSPORTATION**

AND

METROLINX

1.0 Definitions

Terms defined in the Act, have the same meaning in this MOU. In addition, the following terms have the following meanings:

"*Act*" means the *Metrolinx Act, 2006;*

"Annual Report" means the report set out in section 33 of the *Act*;

"Board" means the Board of Directors of Metrolinx;

"Business Plan" means the plan set out in section 32 of the *Act*;

"By-laws" means the By-laws adopted by the Board;

"Chief Executive Officer" means the individual appointed by the Lieutenant Governor in Council as the chief executive officer of Metrolinx;

"Chair" means the Director who is designated by the Lieutenant Governor in Council as chair of the Board;

"Communications Protocol" means the agreed to framework between Metrolinx and the Ministry regarding their mutual roles and responsibilities relating to ongoing external and internal communications.

"Deputy Minister" means the Deputy Minister of Transportation;

"Director" means a person appointed by the Lieutenant Governor in Council as a member of the Board;

"Effective Date" means the date on which this MOU takes effect, which is the date, this MOU is executed by the Minister;

"GO Transit Service Area" means the area prescribed by the Minister in which the GO Transit system is principally operated, as per section 1 of the *Act*;

"Government" means the Government of Ontario;

"Greater Golden Horseshoe" means the Greater Golden Horseshoe growth plan area as set out in O. Reg. 416/05 under the *Places to Grow Act, 2005, S.O. 2005, c 13;*

"Metrolinx" means the corporation established by the *Act*;

"Minister" means the member of the Executive Council to whom the administration of the *Act* is assigned, presently the Minister of Transportation;

"Ministry" means the Ministry of Transportation;

"MOU" means this Memorandum of Understanding;

"Regional Transit System" means the GO Transit system and the passenger transportation system prescribed by the Minister, as per section 1 of the *Act*;

"Regional Transportation Area" means all the area within the boundaries of the City of Hamilton, the City of Toronto, and the Regions of Halton, Peel, York and Durham, and any additional area prescribed by the Minister, as per section 1 of the *Act*;

"TB/MBC" means Treasury Board and Management Board of Cabinet;

"Transportation Plan" means the transportation plan for the Regional Transportation Area, as per section 1 of the *Act*.

2.0 Purpose and Principles

2.1 Purpose of the MOU

The purpose of this MOU is to clarify the relationship between the Minister and Metrolinx. The MOU is intended to supplement and clarify, not modify the obligations and responsibilities of the parties under law. In the event of a conflict, the parties' responsibilities under applicable law shall prevail.

The Minister and Metrolinx shall act according to the responsibilities set out for each in this MOU. In addition, Metrolinx is subject to, and shall comply with the policies, guidelines and directives identified in Section 1 of Schedule A to this MOU and the Legislation identified in Section 2 of Schedule A. The Ministry will provide written notice to Metrolinx of any updates or changes to the legislation, policies, guidelines or directives, or new applicable directives or legislation.

2.2 General Principles

Metrolinx shall conduct itself according to the following principles: ethical behaviour, accountability, excellence in management, responsible and appropriate use of public resources, value for money, public funds being spent with due regard to economy and efficiency, high-quality service provided with integrity and honesty, fair and equitable access, openness and transparency in accordance with applicable legislation and government directives.

2.3 Ministry's Role

Within the context of this MOU, the Ministry's role is to provide strategic leadership, planning and central oversight as steward of the transportation system in Ontario. The Minister, considering the advice of the Ministry, establishes strategic directions and Government priorities, and develops legislation, regulations, standards, policies and directives. The Ministry also monitors, evaluates and reports on the performance of the transportation system and the transportation of Ontarians, and establishes funding models and funding levels for the transportation system.

2.4 Metrolinx's Mandate

As per section 5 of the *Act*, the objects of Metrolinx are to provide leadership in the co-ordination, planning, financing, development and implementation of an integrated, multi-modal transportation network in the Regional Transportation Area; act as the central procurement agency on behalf of Ontario municipalities with respect to their local transit systems; be responsible for the operation of the Regional Transit System and the provision of other transit services.

2.5 Agency Classification and Applicability of Government Directives

Metrolinx is an operational enterprise agency of the Crown and is accountable to the Crown through the Minister in exercising its mandate. Metrolinx is subject to the financial, human resources and administrative policies, guidelines and directives established by TB/MBC and the Ministry of Finance that apply to Operational Enterprise agencies. In particular, Metrolinx is required to follow those directives listed in Schedule A, Part 1 of this MOU.

As required by the TB/MBC Agency Establishment and Accountability Directive, as an operational enterprise agency, Metrolinx is required to make decisions that are consistent with the principles of those Directives not specified in Schedule A Part 1. The Ministry agrees to share those Directives with Metrolinx.

2.6 Mutual Support

The Minister and Metrolinx shall respect each others responsibilities in the transformation and management of transportation in Ontario and shall ensure that in fulfilling their respective responsibilities, they will do so in a manner that supports and enables the other party.

SCHEDULE A

List of Applicable TB/MBC and Ministry of Finance Directives and Legislation

1. Metrolinx shall comply with the following Directives, as well as the associated policies and guidelines of the listed Directives:

- Accounting and Financial Reporting Directive (MOF)
- Advertising Content Directive
- Agency Establishment and Accountability Directive
- Business Planning and Allocations Directive
- Cash Management Directive (MOF)
- Certificate of Assurance Directive (MOF)
- Delegation of Authority Key Directive (MOF)
- Disclosure of Wrongdoing Directive for Employees/Appointees of Public Bodies
- Emergency Management and Security Directive
- Enhancing Privacy: Computer Matching of Personal Information Directive and Guideline
- Expenditure Management Directive
- Financial Signing Authorities Operating Directive (MOF)
- Freedom of Information & Privacy Directive
- Government Appointees Directive
- Indemnification Directive (MOF)
- Internal Audit Directive
- Internal Controls Management Directive (MOF)
- Procurement Directive, July 2009 – those sections that are mandatory for Other Included Entities, as defined in that Directive
- Procurement Directive on Advertising, Public and Media Relations and Creative Communications Services
- Risk Management Policy (MOF)
- Seeking Accounting Advice (MOF)
- Travel, Meal and Hospitality Expenses Directive
- Visual Identity Directive

and such other written directions the Minister may address to the Chair:

(a) Where the Minister delegates the power to issue a direction to another person, the directions to the Chair shall clearly reference such delegation.

(b) The applicable content of the listed Directives, Policies and Guidelines is that content in effect on the effective date of this MOU, and any amendments thereto that are communicated in writing to the Chair by the Deputy Minister and/or Minister.

2. Metrolinx shall comply with all provincial and applicable federal legislation and related applicable regulations including applicable provisions of the following:

(a) *Accessibility for Ontarians with Disabilities Act, 2005*

(b) *Archives and Recordkeeping Act, 2006*

(c) *Crown Employees Collective Bargaining Act, 1993*

(d) *Emergency Management and Civil Protection Act*

(e) *Financial Administration Act*

(f) *Freedom of Information and Protection of Privacy Act*

(g) *French Language Services Act*

(h) *Ministry of Treasury and Economics Act*

(i) *Ombudsman Act*

(j) *Ontarians with Disabilities Act, 2001*

(k) *Public Service of Ontario Act, 2006*

(l) *Public Sector Salary Disclosure Act, 1996*

Procurement Directive on Advertising, Public and Media Relations, and Creative Communications Services

Management Board of Cabinet
July 2009

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PURPOSE:

To ensure that ministries and agencies acquire advertising, public and media relations, and creative communications services in a manner that is fair, open, and accessible to qualified vendors and that services are acquired in a manner that provides the people of Ontario with the best value for their money.

APPLICATION AND SCOPE:

This directive applies to:

- all ministries and clusters;
- all advisory, adjudicative, regulatory agencies;
- any other agency, as classified under the *Agency Establishment and Accountability Directive*, that is required by a Memorandum of Understanding established prior to July 2009 to comply with the MBC *Procurement Directive* or its predecessors

This directive applies to the acquisition of:

- all advertising services, defined as services provided to a ministry or agency for a fee, and related to advertising appearing in any media, including the press, radio, television, outdoor, transit, and the Internet;
- communications consulting services defined as services provided to a ministry or agency for a fee, and related to and including the provision of communications strategies, planning and advice; stakeholder engagement and management, issues management, public consultation, public relations and media relations programs;
- creative communication services, defined as services provided to a ministry or agency for a fee, and related to creative services including direct marketing and information programs, graphic design, editorial services, visual arts, and new media.

This directive applies in conjunction with the Management Board of Cabinet *Procurement Directive,* the *Visual Identity Directive*, the *Advertising Content Directive*, and the *Managing, Distributing, and Pricing Government Information (Intellectual Property)*.

When applying this Directive, consideration must be given to Ontario's inter-provincial trade agreements requirements for the procurement of goods and services (including advertising).

This directive does not apply to market studies and polling. Procurement requirements for these services are covered in the Management Board of Cabinet *Procurement Directive.*

PRINCIPLES:

Transparency

Transparency through open competition governs the acquisition of advertising, public and media relations, and creative communications services.

Value for Money

Ministries and agencies select the tender for services that represents the best results for the lowest possible cost.

Access

Subject to the provisions of this directive, access for suppliers competing for advertising, public and media relations, and creative communication services is open, fair, consistent, and geographically neutral within Canada.

Accountability

Ministries and agencies practise due diligence through the procurement process and monitor contracts to ensure satisfactory completion on schedule and within budget.

MANDATORY REQUIREMENTS:

1. Advertising Review Board – mandatory central common service:

1.1. The Advertising Review Board (ARB) is designated as a Mandatory Central Common Service for the procurement of advertising, public and media relations, and creative communication services.

1.2. The ARB will:

- establish all mandatory, corporate Vendor of Record arrangements for advertising, public and media relations, and creative communication services through an open, competitive process;
- conduct all competitive and non-competitive procurements -- including second-stage selection from Vendor of Record arrangements -- with an estimated contract value[1] of $100,000 or more;
- conduct, when requested by a ministry or agency, competitive and non-competitive procurements -- including second-stage selection from Vendor of Record arrangements -- with an estimated contract value of less than $100,000;

[1] For purposes of this directive, "value" means the fees paid to the agency for its creative work and coordination as well as the costs of production, including third-party costs. Notwithstanding this definition, the ARB's selection of vendors for a second-stage competitive selection process from the approved vendor of record list shall be based only on the fees to be paid to the agency.

- function as the government's primary contact with the advertising, public and media relations, and creative communications firms; and
- provide ministries and agencies with assistance and advice on the acquisition of advertising, public and media relations, and creative communications services.

1.3. The ARB must comply with the principles and mandatory requirements of this directive and the Management Board of Cabinet *Procurement Directive*, except when the *Procurement Directive on Advertising, Public and Media Relations, and Creative Communications Services* is more specific for the services it covers, when establishing Vendor of Record arrangements, as well as conducting competitive and non-competitive procurements.

2. Competitive acquisition of services:

General:

2.1. Ministries and agencies must use an appropriate competitive process with a view to obtaining the best value for funds to be expended, according to the following thresholds (see Sections 2.10 to 2.18).

2.2. Ministries and agencies must acquire all advertising space and time in media through the government's media buying Agency of Record[2]. The only exception is for recruitment advertising where the contracted recruitment Agency of Record must be used.

2.3. Ministries and agencies may group two or more related projects that require the use of advertising and creative communications services into a single project for procurement purposes, but only with the agreement of the Advertising Review Board. When ministries or agencies choose to use this approach, the ministry or agency must document and provide to the ARB the rationale for its decision. The ARB's decision to approve this approach must be based on receiving good value for money value of money and ensuring competition. Having approved a grouping, the ARB must acquire the advertising, public and media relations, or creative communications services through a competitive process based on the estimated cost and in accordance with the procurement processes required in this directive.

2.4. Ministries and agencies must have regard to the accessibility of persons with disabilities. Where applicable, accessibility must be taken into account when preparing procurement documents for services. The documents should specify the desired accessibility standard to be met and provide for the evaluation of proposals in respect of those standards.

[2] The media-buying Agency of Record will co-ordinate and execute acquisition of all print, broadcast, outdoor, Internet, and transit media purchases made on behalf of the Ontario government.

2.5. A contract with a vendor for services must include a provision that, when third-party production services are to be acquired by the vendor, the vendor must carry out a competitive selection process. Further, the contract must provide that all third-party production bids obtained by the vendor through a competitive process must be submitted to the ministry or agency for approval.

2.6. For contracts over $25,000, ministries and agencies must only enter into contracts with vendors whose Ontario tax obligations are in good standing.

2.7. A competitive process must be used for all communication consulting services, irrespective of the value of the contract.

2.8. Using the mandatory corporate Vendor of Record arrangement is considered a competitive procurement.

2.9. Ministry or agencies must use an open and competitive procurement process where the advertising, public and media relations, or creative communications services it requires is not covered by a mandatory, corporate Vendor of Record arrangement.

Services totalling less than $25,000:

2.10. Services must be acquired through the mandatory, corporate Vendor of Record (VOR) arrangement.

2.11. The ministry or agency must select at least one vendor, and may invite more than one vendor, from the VOR arrangement to submit bid(s) or proposal(s).

2.12. Competition, approval and reporting requirements must not be avoided by awarding the same vendor multiple contracts, each less than $25,000 but totalling more than $25,000. Each contract must be unique; the terms of reference for each new contract must change substantively.

Services totalling from $25,000 to less than $100,000:

2.13. Services must be acquired through the mandatory, corporate Vendor of Record (VOR) arrangement.

2.14. The ministry or agency must initiate a second-stage selection process from among the approved vendors on the ARB's Vendor of Record list by either:

- requesting ARB to provide at least 3 vendors from the list in order for the ministry or agency to invite them to provide quotations and participate in the selection process, or
- submitting a request to the ARB that the ARB carry out the competitive selection on behalf of the ministry or agency.

When ARB carries out the competition selection, there must be a minimum of three vendors participating in the competition.

2.15. Where a ministry or agency conducts its own second-stage selection process, it must select the vendor with the highest ranked proposal from among those proposals submitted by vendors deemed capable of completing the work to the satisfaction of the ministry or agency.

2.16. Where a ministry or agency requests ARB to undertake the second stage, the ministry or agency's request must include full details of the requirements, including the terms of reference for the planned work, as well as the estimated cost of the work and time lines.

Services totalling from $100,000 or more:

2.17. A ministry or agency must submit a request to the ARB requesting the ARB to undertake a second-stage competitive selection from among vendors on the ARB's Vendor of Record list. The request must include full details of the requirements, including the terms of reference for the planned assignment, the estimated cost of the assignment, and time lines.

2.18. The ARB will conduct the second-stage competitive selection or open competition procurement and recommend to the ministry or agency, for approval by its Deputy Head[3], the award of the contract to the vendor with the highest ranked proposal from among those proposals submitted to the ARB by vendors deemed capable of completing the assignment to the satisfaction of the ministry or agency. At least three vendors must participate in the competition.

3. Approvals

3.1. All approvals (including those for the acquisition of services, vendor selection, and contract authorization) required under this directive must be requested and given in writing.

3.2. A ministry or agency must obtain all the necessary prior approvals and authorizations, according to its financial delegation of authority structure, before any request for qualifications or proposals is released to potential vendors.

3.3. Where a contract's ceiling price is less than $100,000, the ministry or agency must obtain prior approval for procuring a vendor according to its financial delegation of authority structure.

3.4. A ministry or agency must obtain prior approval from its Deputy Head and the ARB when a contract's ceiling price is $100,000 or more, but less than $1,000,000.

3.5. A ministry or agency must obtain prior approval from its Deputy Head, the ARB, and Management Board of Cabinet when a contract's ceiling price is $1,000,000 or more.

[3] "Deputy Head" means the Deputy Minister of a ministry or the Chair of an agency.