

## **[Proposed] Terms of Reference of the Direct Investment Committee of the Toronto Atmospheric Fund (“TAF”)**

### **1. Endowment Administration**

Governance and accountabilities for the Toronto Atmospheric Fund (“TAF”) endowments are set out in the TAF Act; the TAF/City of Toronto Relationship Framework (RF); and TAF’s Statement of Investment Objectives and Principles (“the SIOP”); the latter two may be amended from time to time by City Council. City Council, through the TAF Act, has the sole power to amend or terminate the Toronto Fund; the Ontario Government has the sole power to amend or terminate the Ontario Fund; and the Federation of Canadian Municipalities has the sole power to amend or terminate the Canada Fund.

### **2. Board of Directors**

The Board of Directors of the TAF (“Board”) may delegate its responsibilities with respect to the investment of TAF’s endowments to agents and advisors who will act as fiduciaries. In particular, the Board may also establish a Direct Investment Committee to guide and oversee the making of Direct Investments as defined below. The duties of the Board in this regard are as follows:

- a. Appoint members of the Direct Investment Committee.
- b. Consider and if relevant approve the Direct Investment Committee’s recommendations regarding Direct Investments, including any terms and conditions.
- c. Review the exercise of delegated authority under a Delegation Resolution.

### **3. Definitions**

For the purposes of this document:

**“Direct Investments”** has the meaning given to that term in the SIOP. Direct Investments also includes Alternative Investments classified as third party managed private market investments in private (pooled) equity funds or venture capital funds as defined in the SIOP.

**“Delegation Resolution”** refers to a resolution of the Board (whenever passed) delegating to the Direct Investment Committee (or confirming past delegation thereto of) the Board’s authority to approve TAF’s making of such one or more Direct Investments as are defined in such a resolution, and setting out any terms and/or conditions upon which such Direct Investment may be made which may include, but are not limited to, the following matters:

- a) amount of investment by TAF and/or others;
- b) rate of return expected for TAF;
- c) rate of return expected for the total investment;
- d) investment currency and/or rate of exchange;

- 
- e) co-investment terms such as the number of co-investors, amount of co-investment, and/or calculated value of mobilized capital;
  - f) amount of potential GHG emissions reduction;
  - g) investee reporting requirements and/or timeframes;
  - h) completion of due diligence satisfactory to the Direct Investment Committee;
  - i) confirmation by TAF's solicitor **that** the investment documentation is aligned with the Committee and/or Board memoranda.

The terms and conditions set out in the Delegation Resolution may specify acceptable parameters for the decision-making of the Direct Investment Committee including, but not limited to, a range, minimum, maximum, and/or target, or establish what constitutes a satisfactory assessment under a referenced framework.

**“Energy Project” has the meaning given to that term in the Second Amended and Restated Operating Agreement, dated June 1, 2018, between TAF and Efficiency Capital Incorporated. For greater certainty, each Energy Savings Performance Agreement (ESPA) project and each Energy Upgrade Agreement (EUA) project is an Energy Project.**

~~For greater certainty, the Board's prior resolution permitting the Direct Investment Committee to approve investments within the class described in Schedule A hereto is considered a Delegation Resolution.~~

#### **4. Direct Investment Committee**

The Direct Investment Committee is responsible for:

- a. Supervision of TAF's Direct Investments;
- b. Making a recommendation to the Board regarding the making of Direct Investments including recommending such terms and/or conditions as may be relevant in keeping with prudent investing;
- c. Overseeing implementation of such terms and/or conditions of Direct Investment as are established by Board resolution before and after monies are advanced;
- d. Approving and implementing any Direct Investment pursuant to the terms of a Delegation Resolution and, in doing so, its determinations will then be taken as the determination of the Board on those matters. In making such determinations as to whether the terms and/or conditions of a Delegation Resolution have been met, the Direct Investment Committee may act upon the information provided to it by TAF. Matters regarding which the Direct Investment Committee does not or cannot make any required assessment or determination in whole or in part shall be referred back to the Board.
- e. Receiving and reviewing information about the performance of each Direct Investment made by TAF;
- f. Developing Benchmarks for the Direct Investments Asset Class, as described in the SIOP, to the satisfaction of the City of Toronto CFO;

- 
- g. Monitoring the performance of Direct investments against relevant benchmarks and compliance with the investment policy; and conveying, via staff and TAF's third-party investment advisor, this information to the Investment Committee to facilitate their monitoring of the performance and compliance of the full portfolio; and
  - h. Performing such other functions as the Board may assign to it from time to time.

## **5. Composition of the Direct Investment Committee**

- a. The Direct Investment Committee shall be composed of not fewer than five (5) and not more than nine (9) members.
- b. Members of the Direct Investment Committee shall be appointed by the Board on the recommendation of the Investment Committee.
- c. The Chair of the Direct Investment Committee must be a member of the Board.
- d. Membership of the Committee shall include at least one other member of the Board and the balance shall be qualified investment professionals as determined by the Board
- e. The CEO of the Toronto Atmospheric Fund will be an ex officio, non-voting Member of the Direct Investment Committee.
- f. Members of the Direct Investment Committee are appointed for a four-year term and may be reappointed by the TAF Board for a maximum of two additional four-year terms.

## **6. Conduct of the Direct Investment Committee**

- a. The Direct Investment Committee meets at least quarterly. Meetings are convened by the Chair, and a minimum of three days' notice must be provided (unless waived by all Members). Distribution of meeting materials by e-mail is permitted.
- b. The open meeting requirements and exceptions under Section 190 of the City of Toronto Act, 2006 apply.
- c. The quorum for the meeting is a majority of the appointed members of the Committee. Decisions are carried by a simple majority vote. Tied motions fail.
- d. The Chair of the Direct Investment Committee shall meet at least twice per year with the Chair of the Investment Committee to ensure coordinated management of the full portfolio.
- e. At the discretion of the Chair, individuals with relevant expertise may be invited to participate in specific meetings, subject to their agreement with the same confidentiality and code of conduct as a Member.
- f. Members of the Direct Investment Committee may be reimbursed by TAF for reasonable out-of-pocket expenses, such as travel costs, but are not otherwise entitled to any remuneration in connection with TAF-related activities.

## **7. Code of Conduct**

- 
- a. Conflict of Interest: Members of the Direct Investment Committee will familiarize themselves with the Municipal Conflict of Interest Act and undertake to comply with its requirements.
  - b. Confidentiality: Members shall not reveal or make known to any person any information disclosed to the member through his or her involvement in the Direct Investment Committee.
    - i. A Member shall not reveal or make known to any person any part of a discussion that took place during the Committee's proceedings, results or decisions made during those proceedings. TAF will make public results of decisions without identifying the investee and will only name the investee with the prior written permission of the investee following the official approval process.
    - ii. A Member shall keep confidential any information except as is required for the purposes of assessment or determination of any matter relating to Direct Investment Committee deliberations; and
    - iii. A Member shall not distribute any of the material provided to Direct Investment Committee members that is not available to the public.
  - c. Professional ethics and conduct: Firms and advisors providing services to the Fund are expected to comply with standards equivalent to CFA, CPA, CBA, Canadian Securities Institute or other standards for ethics and professional conduct.

## **SCHEDULE A:**

~~1. Energy Savings Performance Agreements (ESPAs) undertaken by TAF or Efficiency Capital Inc., including under the Board approved Warehouse or Subordinated Debt lines.~~

### **8. Delegation Resolutions for Continuing Credit Facilities**

- a. Each of the Board's previous resolutions delegating authority to the Direct Investment Committee and, formerly, the Investment Committee, to approve investments by way of a warehouse facility or subordinated debt facility ("Credit Facilities") in relation to Energy Projects under the terms of umbrella agreements among or between TAF and Efficiency Capital Incorporated (or its or their predecessors, successors, or related entities) shall be considered a Delegation Resolution.
- b. If a Delegation Resolution delegates authority to the Direct Investment Committee in respect of a present or future legal framework for Credit Facilities but does not specify some or all of the terms and conditions for the exercise of such authority, then the Direct Investment Committee may exercise such authority in relation to those terms and conditions in a manner determined by it, in its opinion, to be consistent with the terms of the Credit Facilities agreements and the best interests of TAF.