

THE REGIONAL MUNICIPALITY OF YORK

REPORT NO. 2 OF THE CHIEF ADMINISTRATIVE OFFICER

**For Consideration by
The Council of The Regional Municipality of York
on September 24, 2009**

**1
RAPID TRANSIT AGREEMENTS**

1. RECOMMENDATIONS

It is recommended that:

1. The Region enter into a Memorandum of Agreement with York Region Rapid Transit Corporation (“YRRTC”) and Metrolinx with respect to certain projects to be undertaken by YRRTC, utilizing a portion of the \$1.4 billion funding provided by the Province of Ontario for the projects.
2. The Region enter into a VivaNext Procurement Agreement that amends the Going-Forward Business Arrangements Agreement made June 30, 2006 among the Region, YRRTC, DMJM + Harris Canada Inc., IBI Group, Delcan Corporation, Peter Kiewit Sons Co., Ellisdon Corporation, Siemens Canada Limited and Nord/LB Financial Services LLC (collectively, “York Consortium 2002” (YC2002”)).

2. PURPOSE

The purpose of this report is to seek Regional Council’s approval for the Region to enter into certain agreements to which York Region Rapid Transit Corporation (“YRRTC”) is a party with respect to implementing VivaNext projects. These agreements have been developed through negotiations with Metrolinx and are critical to securing funding for current and future projects.

3. BACKGROUND

YRRTC is now operating under its Board of Directors and has authorized certain agreements required by Metrolinx as a condition of funding

At its meeting on June 25, 2009, Regional Council approved a report which granted a broader mandate to YRRTC to enable it to implement the Region's rapid transit projects in Metrolinx's Regional Transportation Plan. The Region expanded YRRTC's powers to enable it to be the delivery agent for VivaNext projects and to enter into agreements directly with Metrolinx. YRRTC staff have subsequently been working closely with Metrolinx to develop terms of a Memorandum of Agreement that will establish principles to govern implementation of the projects. This Memorandum of Agreement will ultimately be superseded by a Performance Agreement which is currently being developed.

Certain terms proposed by Metrolinx will require amendments to the business arrangements with York Consortium 2002 ("YC2002") to fully implement the revised arrangements.

On September 10, 2009, the Board of Directors of YRRTC authorized entering into certain agreements to reflect the recent negotiations with Metrolinx. We have recently been advised that Metrolinx requires the Region to be a party to these agreements and Council approval is therefore required.

4. ANALYSIS AND OPTIONS

The Memorandum of Agreement among Metrolinx, YRRTC and the Region will set out the framework for proceeding with certain strategic interim projects and is a precondition for funding

The Memorandum of Agreement ("MOA") is intended to be an interim agreement that will govern the management of certain projects pending finalization of a Performance Agreement.

The MOA will apply to D1 (Davis Drive from Yonge Street to Highway 4) and H3 (Highway 7 from Richmond Hill Centre to Warden Avenue), including property acquisition. The key provisions of the MOA are as follows:

- \$82 million funding will be provided under the MOA, most of which will be required for land acquisition.
- Metrolinx reserves the right to approve the procurement methodology for all portions of the VivaNext project.

- YRRTC is required to acknowledge that the continued use of YC2002 will be subject to further assessment and may require an open procurement process or amendments to the business arrangements framework.
- Any changes in project scope will be subject to Metrolinx's prior approval.
- Metrolinx will have title to all assets which have been funded by it.
- With respect to real property, title shall be taken in the Region's name unless otherwise directed by Metrolinx. The Region will, however, hold title for the benefit of Metrolinx. Metrolinx will release its interest in consideration of conveyance of the centre median roadway.
- The Region is to be jointly and severally responsible with YRRTC for all its obligations under the MOA.

The most significant issue from the Region's perspective is Metrolinx's requirement that it own the assets which it funds. Since this requirement is enshrined in the *Metrolinx Act, 2006*, there is limited opportunity for negotiations. YRRTC and Regional staff are in further discussions with Metrolinx to determine the operational implications of this requirement, particularly with respect to highway maintenance obligations.

Amendments are required to the agreement between the Region and YC2002 to incorporate a revised procurement methodology

In 2002, the Region entered into an agreement with YC2002 as its preferred partner to implement the Rapid Transit system. YC2002 was selected following an extensive procurement process overseen by an independent fairness monitor. Metrolinx has recently retained KPMG to review this process and has confirmed that YC2002 was selected through a fully transparent and competitive process. The relationship has evolved over time and is currently reflected in two agreements:

- The Master Agreement, which establishes guiding principles to govern the relationship between the parties; and
- The Going-Forward Business Arrangements Framework Agreement which sets out in greater detail how projects are managed, including the procurement process.

YRRTC and the Region are satisfied that, through the provisions of these agreements, YC2002 is well positioned to deliver projects on a value-for-money basis. Metrolinx, however, has closely scrutinized YRRTC's procurement process and, in particular, the rights afforded to YC2002 to bid on individual projects. As a condition of YRRTC continuing its business arrangement with YC2002, Metrolinx requires amendments to the process which permits YC2002 a right of first opportunity to undertake project work. This agreement will replace the existing framework agreement with respect to the VivaNext Green projects. These include the Highway 7, Davis Drive, Green Lane and Yonge Street segments. The key provisions of the agreement are as follows:

- A new cost confidence process has been developed which requires YRRTC's owner's engineer to prepare a scope of work and cost estimates and establishes procedures to be followed, dependent on the deviation between YC2002's bid and the cost estimate.
- The acceptable range of deviation which triggers a reconciliation process has been lowered from 8.5% to 5%. There are also provisions to address discrepancies where the deviation is greater.
- Timelines are established in the cost confidence process which will facilitate an earlier issuance of a public tender or RFP.

In exercising its powers independently of the Region, it is anticipated that YRRTC will adhere in principle to the procurement process established in the Region's purchasing by-law and procedures. In due course, YRRTC staff will develop a purchasing policy for the corporation which closely mirrors the Region's. Accordingly, Regional staff fully support measures that promote greater transparency and accountability.

5. FINANCIAL IMPLICATIONS

The Region has secured a \$1.4 billion funding commitment from the Province for the VivaNext rapid transit projects. The agreement with Metrolinx is a precondition to accessing these funds and is therefore critical in order to advance land acquisition along Davis Drive and Highway 7.

6. LOCAL MUNICIPAL IMPACT

Execution of the agreements required by Metrolinx will facilitate timely completion of rapid transit projects that in the immediate future will be of direct benefit to the communities served by VivaNext.

7. CONCLUSION

At its meeting on September 10, 2009, YRRTC's Board of Directors authorized a series of agreements which have been developed in discussions with Metrolinx for implementation of VivaNext projects.

The execution of these agreements is critical to ensuring the flow of funds for current projects, including land acquisitions along Davis Drive and Highway 7. The Region is required to be a party to these agreements and accordingly, Council authority is also required.

Staff recommend execution of the agreements to ensure that these key projects proceed and will continue to report on further negotiations with Metrolinx that affect Regional infrastructure and operations.

Respectfully submitted,

**September 24, 2009
Newmarket, Ontario**

**B. Macgregor
Chief Administrative Officer**

(Report No. 2 of the Chief Administrative Officer was adopted without amendment, by the Council of The Regional Municipality of York at its meeting on September 24, 2009.)