

## 13

### APPROVAL TO EXECUTE THE MEMORANDUM OF UNDERSTANDING FOR CAPITAL FUNDING OF HOSPITALS

*(Regional Council at its meeting on October 22, 2009, approved this report subject to subsections 5.2, 5.3 and 6.4 of the Hospital Capital Funding Memorandum of Understanding being amended as follows:*

- 5.2** *In the event that the Development Charges Act is amended during the term of this MOU to provide for eligibility for hospital funding, the York Hospitals agree that the terms of this MOU may be subject to review by Regional Council to determine whether the amount of Hospital Funds provided in this MOU could be adjusted.*
- 5.3** *The York Region Hospitals agree to support and shall also compel their respective foundations to support the Region's request that hospital capital funding be eligible for contribution from development charges.*
- 6.4** *Despite the early termination of this MOU under subsection 6.3, any of the York Region Hospitals shall continue to be entitled to receive Hospital Funds approved by the Region, provided a Funding Approval Letter has been received by the Region in respect of the Project.)*

The Finance and Administration Committee recommends the adoption of the recommendation contained in the following report dated October 1, 2009, from the Chief Administrative Officer, subject to:

clauses 5.2 and 5.3 of the Memorandum of Understanding being referred to the Chief Administrative Officer for further discussions with the hospitals and a report to Council's meeting of October 22, 2009 with any amendments to these clauses.

#### 1. RECOMMENDATION

It is recommended that:

1. Council authorize the Regional Chairman and the Chief Administrative Officer to execute the Hospital Capital Funding MOU (*see Attachment 1*) with York Region's hospitals and the Vaughan Health Campus of Care, subject to the prior review of the Regional Solicitor.

## 2. PURPOSE

On June 25, 2009 Regional Council directed the Chief Administrative Officer to consult with York Region hospitals and the Vaughan Health Campus of Care to finalize the terms of the Hospital Capital Funding MOU. Consultations have been ongoing throughout the summer, and a final MOU based on Council's direction has been prepared for execution.

## 3. BACKGROUND

### **Hospitals prepared a summary of capital cost requirements from 2009 to 2026 estimated at \$2.235B of which \$486.3M would come from the 'Regional Share'**

In May 2008, the hospitals and their foundations worked collaboratively to project their capital needs over an 18 year period from 2009 to 2026 and identified a total funding requirement of \$2.235 billion. This estimate includes construction of the Vaughan Campus of Care and expansion of the Southlake Regional Health Centre, Markham Stouffville Hospital and York Central Hospital.

The Province funds up to 90% of the "bricks and mortar" for hospital construction. Once equipment and furnishings are accounted for, the Provincial share is reduced to approximately 65%. Thirty-five percent remains to be funded from "community sources". Approximately 2/3 of this amount was proposed, by the hospitals, to be funded through a Regional contribution representing \$486.3M of the proposed hospital need.

A pre-existing (since 2001) funding arrangement with the hospitals expired in 2009 with a final payment of \$4M. In the proposed 2009 base Operating Budget, \$7.3 million was included for hospital capital funding. This amount was consistent with 2008 and prior years' funding. On January 23, 2009 Regional Council reduced capital asset replacement contributions by \$4.7 million and transferred that amount over to the Hospital Reserve Fund to bring this year's contribution to \$12 million.

A Council Workshop was held on January 29, 2009 to discuss the Region's future funding of York Region hospitals. Presentations were heard from York Region's Chief Administrative Officer as well as representatives from Southlake Regional Health Centre, Markham Stouffville Hospital, York Central Hospital and the Vaughan Health Campus of Care.

### **Council directed staff to explore a new funding model and commitment**

On February 19, 2009 Regional Council adopted a motion to continue funding capital

costs of hospitals guided by certain principles (*see Attachment #2*). These principles are captured in the attached Hospital MOU.

#### 4. ANALYSIS AND OPTIONS

York Region's Chief Administrative Officer and regional staff representatives met with the hospitals and the Vaughan Health Campus of Care on July 13 and August 26, 2009 to negotiate the terms of this agreement. Based on Council direction and discussions at these meetings, the final MOU includes the following measures:

- \$12M will be set aside annually by York Region for distribution among the York Region hospitals to fund eligible capital construction through 2031. *Attachment #3* reflects the total obligation and apportioning to hospitals as mutually agreed upon in constant (2009) dollars. *Attachment #4* reflects those same contributions assuming indexing to match assessment growth as set out in Places to Grow, the Provincial Growth Plan.
- Provision of funding is subject to each hospital showing bona fide efforts to progressive improvements in EMS Offload delays; reducing the annual average delays, which currently range from 60 – 90 minutes, to 30 minutes by 2014. In the event EMS Offload delay targets are not achieved, and bona fide efforts are not satisfactorily proven, York Region can reduce funding in the amount of the additional operating costs incurred by York Region EMS. To this end, York Region EMS and Emergency Room Management from each of the hospitals have committed to working collaboratively to achieve the EMS Offload Delay targets set out in the MOU.
- The Region reserves the right to review the MOU from time to time to determine whether to continue to set aside hospital funds taking into account the funding available to the hospitals from other sources and the Region's annual budget commitments. The Region may terminate the MOU with one-year's written notice, maintaining only the obligations made to approved construction projects.
- The hospitals are committed to support the Region's requests that hospital capital funding be restored as an eligible cost for recovery through Development Charges.
- Should the *Development Charges Act* be amended to allow hospitals to be eligible for funding, the MOU will be reviewed by Regional Council to determine whether funding of hospitals may be increased.

*Attachment #5* summarizes the principles approved by Council on February 19, 2009 and references how each one is addressed in the final MOU.

## Relationship to Vision 2026

Investing in York Region hospitals meets several goals outlined in Vision 2026, including 'Responding to the Needs of Our Residents' and providing 'Infrastructure for a Growing Region'. However, the need for hospital infrastructure must be balanced with placing realistic tax pressures on residents.

## 5. FINANCIAL IMPLICATIONS

Finalization of the Hospital Capital Funding MOU will provide funding of \$12M per year from now until 2031. This funding is committed only upon the corresponding Provincial approval of a capital construction project or projects that provide additional hospital capacity in York Region. The hospitals proposed how the percentage share of funding should be distributed amongst themselves, however, they have the ability to adjust their proportionate shares based on Provincial approvals as long as they all agree, and provide written notice to the Region.

**Table 3\***  
 Capital Contributions to Hospitals  
 (in 2009 dollars)  
 \$ Millions

York Region Hospital	% Share	2009 – 2031 Total
Vaughan	45%	\$122.40
Markham Stouffville	27.1%	\$73.71
Southlake	14.3%	\$38.90
York Central	13.6%	\$36.99
	<b>100%</b>	<b>\$272.00</b>

\* Detailed in *Attachment #3*

**Table 4\*\***  
 Capital Contributions to Hospitals  
 (estimated 2.0% assessment increase)  
 \$ Millions

York Region Hospital	% Share	2009 – 2031 Total
Vaughan	45%	\$153.96
Markham Stouffville	27.1%	\$92.72.
Southlake	14.3%	\$48.93
York Central	13.6%	\$46.53
	<b>100%</b>	<b>\$342.14</b>

\*\* Detailed in *Attachment #4*

**6. LOCAL MUNICIPAL IMPACT**

Residents in all of our local municipalities rely primarily on hospitals situated within York Region. In addition to engaging in local fund raising campaigns, several local municipalities are currently contributing to the portions of capital costs required for expansions that are not funded by the Province. The local municipal Chief Administrative Officers participated in earlier discussions with the hospital representatives to frame the principles on which the MOU is based.

**7. CONCLUSION**

On June 25, 2009 Council authorized the Chief Administrative Officer to negotiate the terms of the Hospital Capital Funding MOU with the York Region hospitals and the Vaughan Health Campus of Care. This report seeks authority for the Regional Chairman and the Chief Administrative Officer to execute the MOU.

For more information on this report, please contact Bruce Macgregor, Chief Administrative Officer at Ext. 1200.

The Senior Management Group has reviewed this report.

*(The five attachments referred to in this clause are attached to this report).*

**THIS MEMORANDUM OF UNDERSTANDING made this    day of                   , 2009**

**B E T W E E N:**

**THE REGIONAL MUNICIPALITY OF YORK**

**(the “Region”)**

**- and -**

**MARKHAM STOUFFVILLE HOSPITAL CORPORATION**

**- and -**

**SOUTHLAKE REGIONAL HEALTH CENTRE**

**- and -**

**VAUGHAN HEALTH CAMPUS OF CARE**

**- and -**

**YORK CENTRAL HOSPITAL ASSOCIATION**

**(collectively, the “York Region Hospitals”)**

**RECITALS**

- A. An estimated \$2.235 billion, as estimated in 2009, is required by the York Region Hospitals to fund capital construction projects scheduled from 2009 to 2026. These projects include the creation and construction of the Vaughan Campus of Care and the expansion of Markham Stouffville Hospital, Southlake Regional Health Centre and York Central Hospital.
- B. The Province of Ontario has indicated it will commit to provide funding to approved projects in accordance with current Provincial health capital cost sharing policies. Such policies are dependent upon community contributions in addition to those provided through the Provincial government and can represent 25-35% of the project costs.
- C. Additional funds are being sought from community sources, including municipalities, fundraising campaigns and private financing.

- D. The York Region Hospitals have appealed to Regional Council to contribute funds as part of the community funding and Regional Council has agreed to contribute funding on the terms set out in this Memorandum of Understanding.
- E. Section 107 of the *Municipal Act, 2001* provides that Regional Council may make grants on such terms as it considers appropriate for any purpose that Regional Council considers to be in the interests of the municipality.

## 1. DEFINITIONS

- 1.1 “Eligible Costs” means all those costs, fees and expenditures either directly incurred by the York Region Hospitals or, in the case of an alternative financing project, incurred on behalf of the York Region Hospitals, and directly related to the completion of Projects approved by the Region for funding, but shall not include:
  - (a) operating costs;
  - (b) financing costs;
  - (c) costs which are not eligible for provincial cost sharing, including costs associated with parking lots and garages but not including furniture, fixtures and equipment;  
or
  - (d) costs associated with fund raising.
- 1.2 “Functional Program Approval” means the approval by the Ministry of a proposal submitted with respect to a Project.
- 1.3 “Funding Approval Letter” means the approval by the Ministry to proceed with construction of a Project.
- 1.4 “Memorandum of Understanding” (“MOU”) means this memorandum of understanding and all schedules and appendices, as amended from time to time.
- 1.5 “Ministry” means the Ministry of Health and Long Term Care.
- 1.6 “Project” means a project which has been approved for funding by the Province and for which funding is requested under this MOU, the details of which are set out in Schedule “A”.
- 1.7 “York Region Hospitals” means the legally constituted public hospitals and the planned public hospital within the boundaries of York Region, comprising:
  - (a) Markham Stouffville Hospital Corporation;
  - (b) Southlake Regional Health Centre;

- (c) Vaughan Health Campus of Care or Vaughan Health Care Services Corporation;  
and
- (d) York Central Hospital Association.

## **2. TERM**

- 2.1 This MOU shall come into effect on [insert effective date] and terminate on or before December 31, 2031. (the "Termination Date").
- 2.2 This MOU may be terminated prior to the Termination Date in accordance with Section 6 of this MOU.

## **3. CONTRIBUTION PAYMENTS**

### **Amount of Contribution**

- 3.1 The Region agrees to provide a financial contribution to the York Region Hospitals to fund a portion of Eligible Costs, on the terms set out in this MOU.
- 3.2 The Region shall set aside in the year 2009 the amount of EIGHT MILLION DOLLARS (\$8,000,000.00) and annually thereafter the amount of TWELVE MILLION DOLLARS (\$12,000,000.00) (the "Hospital Funds") to be distributed among the York Region Hospitals as provided herein.
- 3.3 The amount set aside in each year by the Region shall be adjusted annually and such adjustments shall be proportionately equal to the percentage increase or decrease in assessment growth in the Region from new or expanded properties in the immediately preceding year.
- 3.4 The Hospital Funds shall be deposited in an interest-bearing reserve fund and all interest shall accrue to the Hospital Funds and shall reduce the amount otherwise to be contributed by the Region.
- 3.5 As between the York Region Hospitals, each party's proportionate entitlement (the "Proportionate Share") to the Hospital Funds shall be as follows:
  - (a) Markham Stouffville Hospital Corporation: 27.1 %;
  - (b) Southlake Regional Health Centre: 14.3%;
  - (c) Vaughan Health Campus of Care: 45.0%; and
  - (d) York Central Hospital Association: 13.6%.
- 3.6 In the event that the York Region Hospitals adjust their Proportionate Shares, they shall notify the Region in writing and this MOU shall be deemed to be amended accordingly.

- 3.7 The amount of the Hospital Funds deposited in each year shall be allocated among the York Region Hospitals according to their Proportionate Share set out in subsection 3.5 (the “Annual Allocation”). For greater clarity, each of the York Region Hospitals shall be granted an Annual Allocation in each year in accordance with the schedule of deposits set out in Schedule “B”.
- 3.8 The amount of each party’s Annual Allocation that remains to be distributed at the end of each calendar year shall accrue to the credit of that party and shall be available for distribution to fund Eligible Costs of that party in successive years, subject to compliance with the conditions set out in this MOU.
- 3.9 Each of the York Region Hospitals shall be entitled to make application to the Region for an amount equal to their respective total Annual Allocations outstanding in the reserve fund from time to time.
- 3.10 Subject to the approval of all parties to this MOU, in order to accommodate the scheduling of Projects, any one of the York Region Hospitals may apply from time to time for distribution of the Annual Allocation to which another party may otherwise be entitled, provided that each party’s Proportionate Share of the Hospital Funds during the term of this MOU shall not exceed the percentages set out in subsection 3.5, unless otherwise agreed pursuant to subsection 3.6.
- 3.11 Upon termination or expiry of this MOU, the entitlement of the York Region Hospitals to their Proportionate Share of the Hospital Funds shall cease and no party shall have a claim with respect to any Annual Allocation remaining on deposit in the reserve fund, or with respect to any Annual Allocation which has been redistributed in accordance with subsection 3.10.

**Eligible Costs**

- 3.12 Each of the York Region Hospitals may apply to the Region for Hospital Funds following approval of a Project by the Ministry.
- 3.13 For the purpose of this MOU, a Project shall be deemed to be approved by the Ministry upon receipt of the Functional Program Approval letter from the Ministry.
- 3.14 Each of the York Region Hospitals shall submit to the Region from time to time a detailed description of the Project for which Hospital Funds are requested, together with a description of Eligible Costs for that Project.
- 3.15 The Region shall review the submission and advise the York Region Hospital of the amount of the costs that have been approved in principle as Eligible Costs. The Region reserves the right to determine Eligible Costs with respect to each Project, taking into account:
- (a) the criteria established by the Province of Ontario for funding the Project; and
  - (b) the nature of those elements of the Project which remain unfunded by other sources.

- 3.16 The Hospital Funds shall be applied only to cover Eligible Costs directly incurred by the York Region Hospitals, or any one of them, and directly related to the carrying out by the York Region Hospitals of their undertakings in accordance with the Projects identified and more fully described in Schedule “A”. Schedule “A” of this MOU shall be deemed to be amended from time to time, but no more frequently than once annually, to include approved Projects and Eligible Costs submitted by the York Region Hospitals.
- 3.17 The Region’s contribution to Eligible Costs shall not exceed the lesser of:
- (a) the amount approved by Regional Council for Hospital Funds; or
  - (b) one third of the amount contributed to the Project by the Province of Ontario.
- 3.18 The York Region Hospitals agree that certain costs shall not be eligible for funding and shall not be considered in the calculation of the total Eligible Costs of the Project. These include:
- (a) costs incurred prior to the execution of this MOU, except for those costs set out in Schedule “C” attached; **[need to identify eligible projects]**
  - (b) financing charges and interest payments on loans; and
  - (c) provincial sales tax and the Goods and Services Tax for which the applicant or a third party is eligible for a tax rebate and all other costs eligible for rebates.
- 3.19 The provision of funding by the Region to any one party shall be subject to that party demonstrating that it has made bona fide efforts to achieve the following EMS Offload delays in the immediately preceding year, as determined by reference to the Province of Ontario “Ambulance Dispatch Download Access System” program:
- |               |            |
|---------------|------------|
| 2010:         | 70 minutes |
| 2011:         | 60 minutes |
| 2012:         | 50 minutes |
| 2013:         | 40 minutes |
| 2014 to 2031: | 30 minutes |

In the event the EMS Offload delay targets are not achieved, the Hospital Funds to be advanced by the Region to that party may, in the sole discretion of the Region, be reduced by the amount of additional operating costs incurred by the Region to provide EMS Services sufficient to meet the targets set out above. The parties shall appoint representatives to a joint committee which shall meet at least quarterly to develop strategies to improve EMS Offload delays.

- 3.20 Despite subsection 3.15, the provision of funding by the Region under this MOU shall be subject to approval of the Project by the Ministry as evidenced by the issuance of a

Funding Approval Letter authorizing commencement of construction and subject to provision of funding by the Province for the Project.

#### **4. METHOD OF PAYMENT**

- 4.1 Where a York Region Hospital has incurred an Eligible Cost, that hospital (the “Claimant”) shall remit to the Region annually, no later than September 30 following the incurring of the Eligible Costs, a claim for payment supported by the original or certified copy of all invoices received on account of Eligible Costs incurred, together with such other documentation as the Region may require, for review and acceptance by the Region, together with a statement of account from the Claimant certifying that the costs, fees and expenses claimed are Eligible Costs.
- 4.2 Upon acceptance by the Region that the invoices are on account of Eligible Costs incurred, the Region shall pay to the Claimant the amount of such invoices, in accordance with the schedule of payments, no later than December 31 of the year in which the claim for payment was made.
- 4.3 The final claim for payment shall be submitted to the Region no later than three (3) months following the completion date of the Project.
- 4.4 The final claim for payment shall be accompanied by:
- (a) a certificate from the Claimant’s chief financial officer or equivalent senior financial position confirming compliance with all terms and conditions of this MOU, supported by a certified statement of disposition of the Hospital Funds paid hereunder;
  - (b) a Project report after completion of the Project, describing the Project and reporting on how the Functional Program was completed.
- 4.5 It is expressly understood and agreed by the parties hereto that eligibility for payment of the Eligible Costs is conditional on the Claimant meeting all of the terms and conditions of this MOU.

#### **5. DEVELOPMENT CHARGES LEGISLATION**

- 5.1 The parties acknowledge that Regional Council has lobbied and continues to lobby the Province to include capital costs for hospital purposes in the costs eligible for contributions from development charges under the *Development Charges Act*.
- 5.2 In the event that the *Development Charges Act* is amended during the term of this MOU to provide for eligibility for hospital funding, the York Region Hospitals agree that the terms of this MOU shall be subject to review by Regional Council to determine whether the amount of Hospital Funds provided in this MOU should be increased, taking into account the amount of funding anticipated to be provided through development charges.

5.3 The York Region Hospitals agree to support the Region's request that hospital capital funding be eligible for contribution from development charges.

## **6. TERMINATION**

6.1 The Region reserves the right to review this MOU from time to time to determine whether to continue to set aside Hospital Funds, taking into account the funding available to the York Region Hospitals from other sources and the Region's annual budget commitments to other programs.

6.2 The Region reserves the right to review this MOU in the event the Ministry implements any amendments to its funding program that may affect the entitlement to or administration of Hospital Funds.

6.3 The Region may terminate this MOU upon one (1) year's written notice in the event the Region elects to terminate this MOU prior to the Termination Date.

6.4 Despite the early termination of this MOU under subsection 6.3, any of the York Region Hospitals shall continue to be entitled to receive Hospital Funds approved by the Region, provided a Funding Approval Letter has been received in respect of the Project.

6.5 Subject to subsection 6.4, in the event the Region terminates this MOU in accordance with subsection 6.3, the entitlement of the York Region Hospitals to the Hospital Funds shall cease and none of them shall have any further claim to the Hospital Funds, notwithstanding that any one of them has not received its Proportionate Share of the Hospital Funds distributed to the date of termination.

## **7. DEFAULT**

7.1 If during the term of this MOU the York Region Hospitals or any one of them is in default of any provision of this MOU, and such default continues for a period of thirty (30) days after notice by the Region to the defaulting party specifying the nature of the default and requiring the default to be remedied, an event of default shall be deemed to have occurred and the Region may thereupon:

- (a) terminate any obligation of the Region under this MOU with respect to the defaulting party; and
- (b) direct the defaulting York Region Hospital to repay forthwith all or part of the Hospital Funds received.

## **8. ACCOUNTING RECORDS, FINANCIAL REPORTS AND AUDIT**

- 8.1 The York Region Hospitals' books, accounts and records referable to any Project undertaken by, or at the initiative of, the York Region Hospitals, or any Eligible Costs for which a claim is made shall at all reasonable times be open for inspection, audit and extract by the Region or its authorized representative.
- 8.2 The York Region Hospitals shall afford all facilities for such inspection, audit and extract and shall furnish the Region or its authorized representative with such information as it or they may from time to time require for any purpose related to this MOU.
- 8.3 The York Region Hospitals shall cause such books, accounts and records to be preserved and kept available to the Region or its authorized representative for a period of at least two (2) years following the last payment made pursuant to this MOU.
- 8.4 Any discrepancy between the amounts paid by the Region and the amounts payable by the Region shall be promptly adjusted by the parties.
- 8.5 Where the Region contests any amount submitted by a Claimant in a claim as payable pursuant to the terms of this MOU, the Region shall so notify the Claimant and provide an opportunity to the Claimant to confirm or verify the claim or any part thereof contested by the Region.
- 8.6 Without prejudice to any other remedy available to the Region, where the Region establishes, and by notice in writing to the York Region Hospitals declares, that an overpayment has been made under this MOU, or that a sum contributed has not been properly expended or incurred by the York Region Hospitals, or any one of them to discharge its undertakings, or has otherwise been disallowed as an Eligible Cost hereunder, the amount of such overpayment, unexpended balance or disallowed expense shall constitute a debt due to the Region by the hospital or hospitals to which the overpayment, unexpended balance or disallowed expense applies, and shall be reimbursed forthwith to the Region. Alternatively, any amount thus determined to have been overpaid by the Region or otherwise unexpended or disallowed, may be deducted from, or offset against, any amounts payable by the Region hereunder to that hospital. Any debt remaining owing and unpaid to the Region shall carry interest calculated and compounded monthly at the rate of one percent (1%) per month.

## **9. NO PARTNERSHIP, JOINT VENTURE OR AGENCY**

- 9.1 The Region and each of the York Region Hospitals expressly disclaim any intention to create a partnership, joint venture or agency. It is understood, acknowledged and agreed that nothing contained in this MOU nor any acts of the Region or the York Region Hospitals shall constitute or be deemed to constitute the Region and the York Region

9.2 The York Region Hospitals each agree to indemnify and save harmless the Region from any liability that the Region incurs by virtue of being found to be liable with the York Region Hospitals or any one of them as a partner of, joint venturer with, or principal of any of the York Region Hospitals.

## **10. COMMUNICATIONS**

10.1 The York Region Hospitals shall develop, in consultation with the Region, a communications protocol to ensure that the Region's contribution to Projects is given appropriate recognition.

10.2 Each of the York Region Hospitals shall notify the Office of the Regional Chair to advise of any media events related to any Project and shall provide for participation at such events by a designated representative or representatives of the Region.

## **11. INDEMNITY AND CONDUCT OF ACTIONS**

11.1 Each of the York Region Hospitals agrees, at all times, to indemnify and save harmless the Region, its council members, officers, servants, employees or agents from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted, in any manner based upon, occasioned by, or attributable to the execution of this MOU, or any action taken or things done or maintained by virtue hereof, or the exercise in any manner of rights arising hereunder, except claims for damage resulting from the negligence of any officers, servants, employees, or agents of the Region while acting within the scope of their duties or employment.

## **12. GENERAL PROVISIONS**

### **Entire MOU**

12.1 This MOU sets forth the entire memorandum of understanding between the parties concerning the subject matter hereof and no representation or warranty express or implied is made by the Region to the York Region Hospitals or by the York Region Hospitals to the Region except as expressly set out in this MOU.

### **Accounting Terms and Principles**

12.2 All accounting and financial terms used in this MOU shall, except where otherwise provided either expressly or by necessary implication in this MOU, be interpreted and

**Business Day**

12.3 If the day on which any act or payment is required to be done or made under this MOU is a day which is not a business day, then such act or payment shall be duly performed or made if done on the next following business day.

**Schedules**

12.4 Schedules “A”, “B” and “C” shall form part of this MOU. All capitalized words and phrases used in any of the attached Schedules shall have the same meanings as defined in this MOU, unless specifically defined in the Schedule.

**Statutes, Regulations and Rules**

12.5 Any reference in this MOU to all or any part of any statute, regulation or rule shall, unless otherwise stated, be a reference to that statute, regulation or rule or the relevant part thereof, as amended, substituted, replaced or re-enacted from time to time.

**Governing Law**

12.6 This MOU is subject to applicable law and the parties shall comply with all federal and provincial laws in relation to the Projects.

12.7 This MOU shall be interpreted in accordance with the laws in force in the Province of Ontario, subject always to any paramount or applicable federal laws.

**Construed Covenants**

12.8 All of the provisions and each agreement or obligation of this MOU, even though not expressed as a covenant, are construed as covenants and agreements as though the words importing such covenants and agreements were used.

**Notice**

12.9 All notices or other communications necessary for the purposes of this MOU shall be in writing and delivered personally or by courier, or sent by registered mail or by prepaid post or by facsimile, addressed,

(a) in the case of the Region to:

**[contact details]**

or to such other address or facsimile number or addressed to such other person as the Region may, from time to time, designate in writing to the York Region Hospitals; and

- (b) in the case of Markham Stouffville Hospital to:

**[contact details]**

or to such other address or facsimile number or addressed to such other person as Markham Stouffville Hospital may, from time to time, designate in writing to the Region.

- (c) in the case of Southlake Regional Health Centre to:

**[contact details]**

or to such other address or facsimile number or addressed to such other person as Southlake Regional Health Centre may, from time to time, designate in writing to the Region.

- (d) in the case of Vaughan Health Campus of Care to:

**[contact details]**

or to such other address or facsimile number or addressed to such other person as Vaughan Health Campus of Care may, from time to time, designate in writing to the Region.

- (e) in the case of York Central Hospital to:

**[contact details]**

or to such other address or facsimile number or addressed to such other Person as the York Central Hospital may, from time to time, designate in writing to the Region.

12.10 Any notice or other communication is considered to have been received:

- (a) in the case of facsimile, on actual receipt, and  
(b) in all other cases, on the date of delivery.

If the postal service is interrupted, or threatened to be interrupted, or is substantially delayed, any notice shall be delivered personally or by facsimile.

### **Amendment**

12.11 This MOU may be amended only by a written agreement signed by the parties, except as expressly provided in this MOU.

**Waiver**

12.12 The failure by any party to insist in any one instance upon the strict performance by the other party of its obligations hereunder shall not constitute a waiver or relinquishment of any such obligations as to any other instances, and the same shall continue in full force and effect.

**Severability**

12.13 If, for any reason, any provision of this MOU, other than any provision which is of fundamental importance to the arrangement between the parties, is to any extent held or rendered invalid or unenforceable, then the particular provision shall be deemed to be independent of and severed from the remainder of this MOU and all the other provisions of this MOU shall nevertheless continue in full force and effect.

**Assignment, Successors and Assigns**

12.14 The York Region Hospitals shall not transfer or assign their rights or obligations under this MOU to any Person without:

- (a) the prior written consent of the Region; and
- (b) an agreement executed by the proposed assignee whereby the proposed assignee agrees directly with the Region to be bound by all of the terms, covenants and conditions contained in this MOU as if such proposed assignee had executed this MOU, subject to the Region approving the agreement as to form and content.

12.15 If any of the York Region Hospitals change their name or status under the prevailing provincial statutes and regulations, the successor public hospital or provincially regulated health care provider organization shall continue to be eligible for the funding in accordance with the terms of this MOU.

12.16 Notwithstanding any other provision of this MOU and notwithstanding any assignment, the York Region Hospitals shall be and remain jointly and severally liable for all obligations to the Region under this MOU.

12.17 No rights shall enure to the benefit of any transferee or assignee of the York Region Hospitals unless the transfer or assignment is consented to by the Region in accordance with this MOU.

12.18 This MOU shall be binding upon and shall enure to the benefit of the Region and its successors and assigns and the York Region Hospitals and its permitted assigns.

12.19 Nothing expressed or implied in this MOU is intended to or shall be construed to confer on or to give any person, other than the parties and their respective successors and permitted assigns, any rights or remedies under or by reason of this MOU.

**Survival**

12.20 The rights and obligations of the parties contained in Sections 8 and 11 shall survive the expiration or earlier termination of this MOU.

**IN WITNESS WHEREOF** the Region and the York Region Hospitals have executed this MOU as evidenced by the signatures of their duly authorized representatives as of the day and year herein above first written.

) **THE REGIONAL MUNICIPALITY OF**  
) **YORK**  
)  
)  
) \_\_\_\_\_  
) Name: Bill Fisch  
) Title: Regional Chair  
)  
)  
) \_\_\_\_\_  
) Name: Bruce Macgregor  
) Title: Chief Administrative Officer  
)  
) I/We have authority to bind the  
) Corporation  
  
) **MARKHAM STOUFFVILLE HOSPITAL**  
) **CORPORATION**  
)  
) \_\_\_\_\_  
) Name:  
) Title:  
)  
) I/We have authority to bind the  
) Corporation  
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) **SOUTHLAKE REGIONAL HEALTH**  
) **CENTRE**

)  
)

) \_\_\_\_\_  
) Name:

) Title:

)

) I/We have authority to bind the  
) Corporation

)

)

) **VAUGHAN HEALTH CAMPUS OF CARE**

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) \_\_\_\_\_

) Name:

) Title:

)

) I/We have authority to bind the  
) Corporation

)

)

) **YORK CENTRAL HOSPITAL**  
) **ASSOCIATION**

)

) \_\_\_\_\_

) Name:

) Title:

)

) I/We have authority to bind the  
) Corporation

)

**Schedule "A"**

(to be attached)

**Schedule “B”**

Schedule of Deposits (\*subject to annual adjustment in accordance with subsection 3.3 of MOU)

<b>Regional Contribution</b>	<b>2009 \$8 million</b>	<b>2010 \$12 million</b>	<b>2011 \$12 million</b>	<b>2012 12 million</b>		<b>2031 TOTAL \$260 million</b>
Vaughan (45%)	\$3.6 million	\$5.4 million	\$5.4 million	\$5.4 million	...	\$117 million
Southlake (14.3%)	\$1.144 million	\$1.716 million	\$1.716 million	\$1.716 million	...	\$37.18 million
Markham- Stouffville (27.1%)	\$2.168 million	\$3.252 million	\$3.232 million	\$3.252 million	...	\$70.46 million
York Central (13.6%)	\$1.088 million	\$1.632 million	\$1.632 million	\$1.632 million	...	\$35.36 million
					Total:	\$260 million

Report No. 2 of the Finance and Administration Committee  
Regional Council Meeting of February 19, 2009

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**2****HOSPITAL CAPITAL FUNDING IN THE 2009 OPERATING BUDGET**

*(Regional Council at its meeting on February 19, 2009 was adopted as follows:*

*"and that the balance of required funding be re-allocated from within the overall non-program budgets to stay within the 2.5% overall increase.")*

The Finance and Administration Committee recommends:

1. receipt of the communication from Alice Sheridan, resident of the Town of Newmarket; and
2. adoption of the following:

**WHEREAS** York Region Council firmly believes that the funding of hospital capital projects should be the sole responsibility of the Province of Ontario;

**AND WHEREAS** the Provincial funding model for the construction of hospitals and/or healthcare centres will provide funding for approximately 65% of the costs of new capacity;

**AND WHEREAS** an additional "community contribution" is required to fully fund hospital expansions that are needed to serve growing demands in our communities;

**AND WHEREAS** the hospitals servicing our communities have appealed to York Region Council to contribute up to 2/3 of the required "community contribution" for the purpose of advancing the Provincial priority for hospital expansions in our communities;

**AND WHEREAS** successive Regional budgets since 2001 have included a \$7.3M provision to share in the costs of needed hospital expansions;

**AND WHEREAS** there is a specific Council obligation remaining from prior commitments to hospital funding of approximately \$4M in 2009;

**NOW THEREFORE BE IT RESOLVED THAT:**

1. The existing budgeted contribution to hospital financing be increased from \$7,312,000 to \$12,000,000 and this amount be partially offset by reducing the 2009 increase in the contribution to the asset replacements reserve from \$7,100,000 to \$3,549,000 and

**that any of these funds not required to meet the existing specific Council obligations to hospitals be contributed to a new hospital financing reserve fund;**

**AND BE IT FURTHER RESOLVED THAT:**

- 2. Staff be directed to report to Council by June 2009 with further details of funding and the principles of an MOU with the participating three hospitals and Vaughan Health Campus of Care including the following elements:**
  - i. A multi-year commitment extending to 2031**
  - ii. Participating only in those projects approved and funded by the Province**
  - iii. Proportion of funding limited to lesser of:**
    - Council's approved portion of overall expansion costs**
    - OR**
    - 1/3 of Provincial contribution OR**
    - Approved Regional Contribution**
  - iv. Any borrowing against the projected cash flows be undertaken by the hospitals and any associated financing costs will be ineligible**
  - v. Any interest earned towards the Hospital Financing Reserve Fund be attributed towards the Region's maximum contribution and flow funds as funds are available**
  - vi. Improved EMS off-load delays be incorporated as an incentive for funding**
  - vii. Annual contributions be increased at the actual rate of assessment growth in the previous year**
  - viii. Hospital Boards and Foundations must also support, at the appropriate time, Council's subsequent request that the Province reinstate eligibility for hospital capital funding in the Development Charges Act**
  - ix. The Region's funding commitment be subject to review in 2011 for the purpose of considering a further increment with additional funding from development charges**
  - x. Clarification of when payments are made**
  - xi. The MOU contain a process for review in the event that new federal or provincial capital funding becomes available to hospitals at any time during the term of the MOU**
- 3. Staff be directed to prepare any by-laws necessary to execute this Motion.**

**Proposed Capital Contributions to Hospitals (in 2009 dollars)  
(\$millions)**

	<b>% Share</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
<b>Vaughan</b>	45.0%	\$3.600	\$5.400	\$5.400	\$5.400	\$5.400	\$5.400	\$5.400	\$5.400	\$5.400	\$5.400	\$5.400	\$5.400
<b>Markham-Stouffville</b>	27.1%	\$2.168	\$3.252	\$3.252	\$3.252	\$3.252	\$3.252	\$3.252	\$3.252	\$3.252	\$3.252	\$3.252	\$3.252
<b>Southlake</b>	14.3%	\$1.144	\$1.716	\$1.716	\$1.716	\$1.716	\$1.716	\$1.716	\$1.716	\$1.716	\$1.716	\$1.716	\$1.716
<b>York Central</b>	13.6%	\$1.088	\$1.632	\$1.632	\$1.632	\$1.632	\$1.632	\$1.632	\$1.632	\$1.632	\$1.632	\$1.632	\$1.632
	100%	\$8.000	\$12.000	\$12.000	\$12.000	\$12.000	\$12.000	\$12.000	\$12.000	\$12.000	\$12.000	\$12.000	\$12.000

	<b>% Share</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>2029</b>	<b>2030</b>	<b>2031</b>	<b>TOTAL</b>
<b>Vaughan</b>	45.0%	\$5.400	\$5.400	\$5.400	\$5.400	\$5.400	\$5.400	\$5.400	\$5.400	\$5.400	\$5.400	\$5.400	<b>\$122.40</b>
<b>Markham-Stouffville</b>	27.1%	\$3.252	\$3.252	\$3.252	\$3.252	\$3.252	\$3.252	\$3.252	\$3.252	\$3.252	\$3.252	\$3.252	<b>\$73.71</b>
<b>Southlake</b>	14.3%	\$1.716	\$1.716	\$1.716	\$1.716	\$1.716	\$1.716	\$1.716	\$1.716	\$1.716	\$1.716	\$1.716	<b>\$38.90</b>
<b>York Central</b>	13.6%	\$1.632	\$1.632	\$1.632	\$1.632	\$1.632	\$1.632	\$1.632	\$1.632	\$1.632	\$1.632	\$1.632	<b>\$36.99</b>
	100%	\$12.000	\$12.000	\$12.000	\$12.000	\$12.000	\$12.000	\$12.000	\$12.000	\$12.000	\$12.000	\$12.000	<b>\$272.00</b>

**Proposed Capital Contributions to Hospitals**  
 (with assessment increase of approximately 2.0% as projected in Provincial Growth Plan)  
 (\$millions)

	% Share	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Vaughan	45.0%	\$3.600	\$5.508	\$5.618	\$5.731	\$5.845	\$5.962	\$6.081	\$6.203	\$6.327	\$6.453	\$6.583	\$6.714
Markham - Stouffville	27.1%	\$2.168	\$3.317	\$3.383	\$3.451	\$3.520	\$3.590	\$3.662	\$3.736	\$3.810	\$3.886	\$3.964	\$4.043
Southlake	14.3%	\$1.144	\$1.750	\$1.785	\$1.821	\$1.857	\$1.895	\$1.932	\$1.971	\$2.011	\$2.051	\$2.092	\$2.134
York Central	13.6%	\$1.088	\$1.665	\$1.698	\$1.732	\$1.767	\$1.802	\$1.838	\$1.875	\$1.912	\$1.950	\$1.989	\$2.029
	100%	\$8.000	\$12.240	\$12.485	\$12.734	\$12.989	\$13.249	\$13.514	\$13.784	\$14.060	\$14.341	\$14.628	\$14.920

	% Share	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	TOTAL
Vaughan	45.0%	\$6.849	\$6.985	\$7.125	\$7.268	\$7.413	\$7.561	\$7.713	\$7.867	\$8.024	\$8.185	\$8.348	\$153.96
Markham - Stouffville	27.1%	\$4.124	\$4.207	\$4.291	\$4.377	\$4.464	\$4.554	\$4.645	\$4.738	\$4.832	\$4.929	\$5.028	\$92.72
Southlake	14.3%	\$2.176	\$2.220	\$2.264	\$2.310	\$2.356	\$2.403	\$2.451	\$2.500	\$2.550	\$2.601	\$2.653	\$48.93
York Central	13.6%	\$2.070	\$2.111	\$2.153	\$2.196	\$2.240	\$2.285	\$2.331	\$2.378	\$2.425	\$2.474	\$2.523	\$46.53
	100%	\$15.219	\$15.523	\$15.834	\$16.150	\$16.473	\$16.803	\$17.139	\$17.482	\$17.831	\$18.188	\$18.552	\$342.14

Assessment Increase                      2.00%

**SUMMARY OF PRINCIPLES – ATTACHMENT #5**

<b>February 19, 2009 Council direction</b>	<b>MOU Reference</b>
i. A multi-year funding commitment extending to 2031	A base annual amount of \$12M (2009) is set out in the MOU. The amount is subject to adjustment to reflect assessment growth (or decline). The amount is further apportioned to the 4 hospitals in the amounts mutually agreed upon.
ii. Participating only in those projects approved and funded by the Province	“Eligible Costs” is a defined term with the Region reserving the right to determine eligible costs based on Provincial funding criteria.
iii. Proportion of funding limited to lesser of: <ul style="list-style-type: none"> <li>• Council’s approved portion of overall expansion costs, OR</li> <li>• 1/3 of Provincial contribution, OR</li> <li>• Approved Regional Contribution</li> </ul>	The Region’s contribution to ‘Eligible Costs’ is not to exceed the lesser of Council’s approved amount of hospital funds OR 1/3 of the amount contributed to the project by the Province – the 1 <sup>st</sup> and 3 <sup>rd</sup> bullets were considered repetitive and have been clarified within the MOU.
iv. Any borrowing against the projected cash flows be undertaken by the hospitals and any associated financing costs will be ineligible	The MOU contains specific exclusions from “Eligible Costs”: <ul style="list-style-type: none"> <li>a) Costs incurred prior to executing the MOU</li> <li>b) Financing charges and interest payment on loans</li> <li>c) PST and GST for which the applicant or a third party is eligible for a rebate and all other costs eligible for a rebate</li> </ul>
v. Any interest earned towards the Hospital Financing Reserve Fund be attributed towards the Region’s maximum contribution and flow funds as funds are available	Included in the MOU.

<p>vi. Improved EMS off-load delays be incorporated as an incentive for funding</p>	<p>In 2007, EMS off-load delays ranged from 60 to 90 minutes (annual averages) at the 3 existing hospitals. Some improvement was achieved in 2008 however, the desirable target is 30 minutes. The MOU requires that the hospitals make bona fide efforts to reduce the annual average delay at each hospital as follows:</p> <table data-bbox="1066 462 1648 641"> <tr> <td>2010</td> <td>70 minutes</td> </tr> <tr> <td>2011</td> <td>60 minutes</td> </tr> <tr> <td>2012</td> <td>50 minutes</td> </tr> <tr> <td>2013</td> <td>40 minutes</td> </tr> <tr> <td>2014 – 2031</td> <td>30 minutes</td> </tr> </table> <p>The MOU also commits the hospitals to work collaboratively with York Region EMS to achieve the off-load delay targets.</p>	2010	70 minutes	2011	60 minutes	2012	50 minutes	2013	40 minutes	2014 – 2031	30 minutes
2010	70 minutes										
2011	60 minutes										
2012	50 minutes										
2013	40 minutes										
2014 – 2031	30 minutes										
<p>vii. Annual contributions be increased at the actual rate of assessment growth in the previous year</p>	<p>Given the lengthy potential term (to 2031), the MOU allows for assessment growth (or decline).</p>										
<p>viii. Hospital Boards and Foundations must also support, at the appropriate time, Council's subsequent request that the Province reinstate eligibility for hospital capital funding in the Development Charges Act</p>	<p>The MOU includes a specific provision obligating the hospitals to support the Region's position.</p>										
<p>ix. The Region's funding commitment be subject to review in 2011 for the purpose of considering a further increment with additional funding from development charges</p>	<p>The MOU includes the provision for amendment triggered by changes to the DC Act and a broader right to review funding obligations in light of funding from other sources and competing budgetary interests.</p>										
<p>x. Clarification of when payments are made</p>	<p>The MOU sets out an annual payment of balances available at year end. This is consistent with the practice used for similar</p>										

	purposes between 2001 and 2008.
xi. The MOU contain a process for review in the event that new federal or provincial capital funding becomes available to hospitals at any time during the term of the MOU	This broader review opportunity is included. The MOU provides for termination with one year's prior notice.