Meeting of the Board of Directors
on February 3, 2011

To: York Region Rapid Transit Corporation Board of Directors
From: Mary-Frances Turner, President

Subject: **Status Update on Master Agreement**

Recommendation

It is recommended that:

1. This report be received for information.

Purpose

- The purpose of this report is to update the Board on the status of the negotiations with Metrolinx to finalize the Master Agreement that will set out the business framework among York Region Rapid Transit Corporation (YRRTC), the Region and Metrolinx in the delivery of the certain rapid transit projects described below.

Background

VivaNext Rapid Transit Design Build Projects that will be delivered within the framework of the Master Agreement are known as the "Green bundle"

- The Master Agreement pertains to the following segments of the vivaNext rapid transit system:
  - Highway 7 rapidway from Richmond Hill Centre to Warden Avenue (H3.1 and H3.2);
  - Davis Drive rapidway from Yonge Street to Highway 404 in the Town of Newmarket (D1);
  - Vaughan Metropolitan Centre (VMC) rapidway along Highway 7 from just east of Highway 400 to just west of the CN MacMillan Yard bridge (H2 VMC);

- The rapidway along the Yonge/Highway 7 Connector Road from the Richmond Hill Centre station entrance to Yonge Street and the rapidway along Yonge Street from the Yonge/Highway 7 Connector Road to Major Mackenzie Drive, in the Town of Richmond Hill (Y2.1);
- The rapidway along Yonge Street from south of Mulock Drive to Davis Drive in the Town of Newmarket (Y3.2).

- These projects are among the rapid transit design build projects that comprise the projects known as the “Green bundle”, and are shown on the following York Rapid Transit System map (Figure 1).

Figure 1

Highway 7 (H3) design build project and the Davis Drive (D1) Early Works design build project are both underway

- The Highway 7 (H3) design build project and the Davis Drive (D1) Early Works design build project are both under construction.

- For the Green bundle of projects, the design-builder has been procured utilizing a cost confidence process that is set out in the VivaNext Procurement Agreement, among YRRTC, the Region, and the private sector partner, known as York Consortium 2002. Provided that the parties reconcile to an agreed guaranteed maximum price (GMP) for a project pursuant to the cost confidence process, the design-builder for the project is Kiewit-EllisDon, a Partnership, being a partnership between Peter Kiewit Sons Co. and EllisDon Corporation, who are members of York Consortium 2002.

- For the H3 and D1 Early Works projects, Kiewit-EllisDon, a Partnership, is the design-builder, as York Consortium 2002 was successful under the cost confidence process for each project.

- YRRTC, the Region and York Consortium 2002 are underway with the cost confidence process for the Davis Drive Full Works design build project. The Independent Cost Estimator and York Consortium 2002 must deliver their Estimated GMP and Proposed GMP on April 14, 2011, under the current cost confidence process schedule.

Cash flow for these design build projects is being provided under a 2009 Memorandum of Agreement with Metrolinx

- In October 2009, the Region, YRRTC and Metrolinx entered into an interim funding agreement, the Memorandum of Agreement, under which Metrolinx has cash flowed monies to the Region to enable work under the abovementioned two design build contracts to commence and to enable Property Services to continue to acquire property for the rapid transit network.

Memorandum of Agreement will be superseded by new Master Agreement with Metrolinx

- The Memorandum of Agreement expires on March 31, 2011 and will be superseded by the Master Agreement to be dated and effective April 1, 2011.

- The Master Agreement is the framework agreement that establishes the roles and responsibilities of YRRTC, the Region and Metrolinx in respect of the delivery of the Green bundle of rapid transit projects.

Board approval to enter into the Master Agreement was obtained in the September 10, 2009 Board meeting

- On June 10, 2010, YRRTC staff provided the Rapid Transit Board with a high level overview of the terms and provisions of the Master Agreement, based upon the information that was known at that time.

- Previously at the September 10, 2009 Board meeting, the Board authorized the Chair and the President to enter into the Master Agreement provided that it was in a form satisfactory to the Chair and the Corporation's Solicitor.

Analysis

Since June 2010, YRRTC and Regional staff have been working with Metrolinx to finalize the Master Agreement and the schedules to it

- The Master Agreement contains a number of schedules that set forth the administrative protocols and principles that will govern the relationship of the parties on a go-forward basis.

- The key schedules to the Master Agreement are:
  - Procurement Protocol
  - Real Estate Protocol
  - Operating Principles
  - Communications Protocol
  - Capital Cost Eligibility Criteria
  - Administrative Protocol
  - Project Charter

The Procurement Protocol will govern the requirements for awarding contracts to third parties

- The Master Agreement contains a procurement protocol for the procurement of goods and services for the green bundle of rapid transit projects.

- To be eligible for funding, all procurement of goods and services must comply with the Metrolinx Procurement Policy and the Province of Ontario's Procurement Directive.

- The only exception to the rules contained in the procurement protocol is when the design builder for the project is procured using the cost confidence process, as mentioned in the background to this report.

The Real Estate Protocol establishes procedures respecting the acquisition of lands for the vivaNext rapid transit projects

- The real estate protocol delineates the respective roles of the parties for the acquisition of land required for vivaNext projects and sets out the appropriate procedures.

- Title to all lands required for the projects will be taken in the Region's name. The Region will in turn convey a permanent easement to Metrolinx for the rapidway along the centre of the Region's right-of-way to permit Metrolinx to reflect its investment in infrastructure in its financial statements in compliance with the *Metrolinx Act, 2006*.

The Operating Principles establish roles and accountability for the maintenance and operations of the rapidway and the project assets

- Metrolinx will have responsibility for all undertakings affecting the capital value of the project assets, including pavement preservation, station refurbishment, infrastructure upgrades, and asset replacement.

- The Region will be responsible for all routine maintenance matters, including seasonal activities, tree planting, pavement markings and maintenance of fare collection equipment.

- It is contemplated that a Rapidway Management Committee be established for the purpose of coordinating operations and maintenance activities. The committee would be an advisory committee with equal representation from Metrolinx and Region staff.

The Administrative Protocol will identify financial thresholds that will require Metrolinx approvals

- At the time of drafting of this Report, YRRTC had not yet received a draft of the Administrative Protocol. Based only upon discussions with Metrolinx staff, it is anticipated that the Administrative Protocol will contain financial thresholds starting at $250,000 which will require pre-approval from Metrolinx prior to an expenditure. These approvals will also contemplate the approvals required for change orders.

Other key schedules to the Master Agreement delineate respective roles and responsibilities

- The Master Agreement contains schedules pertaining to communications and eligible costs criteria.

- A schedule to the Master Agreement will comprise a template "project charter" which will be developed for each project to delineate implementation strategy, project budget and project schedule.

Tiered decision-making committee structure to administer the Master Agreement and the delivery of the rapid transit projects covered under it

- The Master Agreement establishes a Program Executive Group comprised of Bruce McCuaig, Bill Fisch and Mary-Frances Turner and a Senior Staff Working Group comprised of senior staff from Metrolinx and YRRTC.

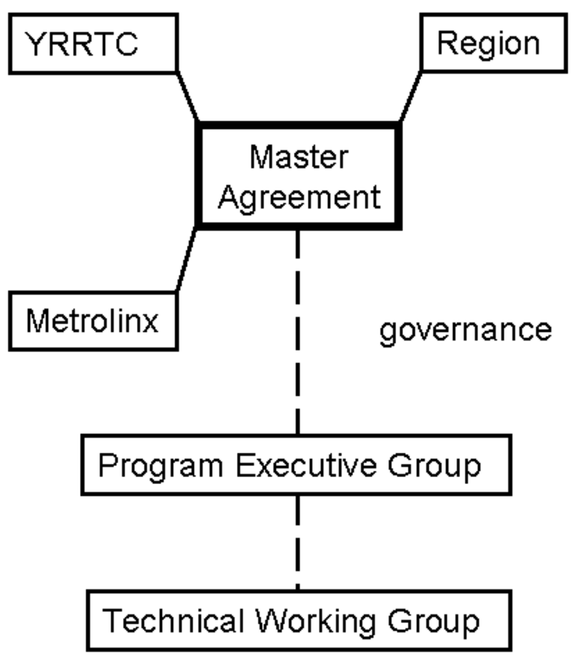
- The primary role of the Program Executive Group is to consider recommendations submitted to it by the Senior Staff Working Group or YRRTC and as appropriate make recommendations to Metrolinx, YRRTC, and/or the Region in order to resolve jurisdictional or budgetary disputes that might arise throughout program implementation.

- A representative of Infrastructure Ontario may be invited to sit on each of these groups.

- The Program Executive Group will endeavour to develop consensus on issues and recommendations.

- The business framework respecting the Master Agreement is depicted in Figure 2 below.

Figure 2



Companion reports securing authority for Region to enter into Master Agreement will be brought to Regional Council in February 2011

- The Commissioner of Transportation Services has prepared a report specifically addressing the proposed principles which will govern the roles and responsibilities of Metrolinx and the Region respecting the operation and maintenance of the rapid transit system. That report has been submitted to the February 2, 2011 Transportation Services Committee for its receipt only and with the proviso that any comments of the Committee be forwarded to the Finance and Administration Committee.

- The Report of the Chief Administrative Officer has been submitted to the February 3, 2011 Finance and Administration Committee. This report will set out the substantive terms and provisions of the Master Agreement, aside from the operating principles.

- Regional Council's authorization for the Region to enter into Master Agreement will be requested at Regional Council's meeting on February 27, 2011.

Metrolinx Board approval is scheduled for February 18, 2011

- Metrolinx has advised YRRTC staff that it will seek approval from the Metrolinx Board to enter into the Master Agreement at its Board meeting scheduled for February 18, 2011.

Financial

Program budget for the green bundle of rapid transit projects is provided by Provincial MoveOntario 2020 funding program and not through Regional Council

- The funding for the rapid transit projects under the Master Agreement is sourced solely by the 2009 Provincial MoveOntario 2020 funding program in which $1.4 Billion was allocated to the Region's rapid transit projects. The funding is separate from YRRTC's budget which the Region approves and therefore, the manner in which the funding is utilized is directed by the Provincial requirements and will be set forth in the Master Agreement.

- Metrolinx will be cash flowing YRRTC in advance per each project. The cash flow for a project will be set forth in the specific Project Charter.

Conclusion

- The Master Agreement among YRRTC, the Region and Metrolinx will set out the administrative framework among the parties to deliver the green bundle of rapid transit projects in York Region for the period from 2011 to 2015. This report, along with the two companion reports that will be presented to Regional Council at its meeting scheduled for February 27, 2011, provides an overview of the substantive terms and provisions contained in the Master Agreement.

For more information on this report, please contact Janis Vanderburgh, Senior Counsel, York Region Rapid Transit Corporation at 905-886-6767, Ext. 1045.

Mary-Frances Turner
President

January 25, 2011

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