

DRAFT AMENDING AGREEMENT
FOR DISCUSSION PURPOSES ONLY

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July 29, 2004

DRAFT WORDING FOR AMENDMENT TO YRTP AGREEMENT

[MTO note to draft: Date changes are for discussion purposes only. MTO is currently addressing the issue of date changes, and will advise when a decision is made.]

AMENDMENT AGREEMENT RELATED TO THE PROVINCIAL TRANSIT EXPANSION FUNDING AGREEMENT (the "Amending Agreement")

THIS AMENDING AGREEMENT made in triplicate this ____ day of _____, 2004.

B E T W E E N:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO,
represented by the Minister of Transportation for the Province of Ontario

referred to herein as the "Ministry"

A N D:

THE REGIONAL MUNICIPALITY OF YORK,

referred to herein as the "Recipient"

WHEREAS the Ministry and the Recipient entered into the Funding Agreement related to Provincial Transit Expansion Funding (the "Agreement"), made on the 24th day of February, 2004, whereby the Ministry agreed to provide financial contribution to the Recipient to support the expansion of inter-regional transit Infrastructure within Ontario;

AND WHEREAS the Ministry and the Recipient wish to amend the Agreement to describe the Recipient's responsibilities involved in the collection of data required to determine and report on performance indicators related to performance measures and performance targets to be met by the Recipient;

AND WHEREAS the Recipient has requested a change to the End of Financial Assistance Date;

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Amending Agreement and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Ministry and the Recipient covenant and agree as follows:

1. ***Amendment to Agreement.*** The Agreement is amended after the consideration part as follows:
 - 1.1 After the reference to "Schedule "G" - Form of Legal Opinion; and", "and" shall be deleted, so that this paragraph shall read as follows:

Schedule "G" – Form of Legal Opinion;
 - 1.2 After the reference to "Attachment 1 – Visual Identity Signage"; "and Schedule "I" – "Performance Measurement" shall be added, so that this paragraph shall read as follows:

Attachment 1 – Visual Identity Signage; and

Schedule "I" – Performance Measurement
2. ***Amendment to Schedule "A".*** Schedule "A" (General Terms and Conditions) of the Agreement is amended as follows:
 - 2.1 In the definition of "**End of Financial Assistance Date**" in section 1, "2005" shall be deleted and replaced with "2007", so that this definition as amended shall read as follows:

"End of Financial Assistance Date" means March 31, 2007.
 - 2.2 In the definition of "**Expiration Date**" in section 1, "2007" shall be deleted and replaced with "2009", so that this definition as amended shall read as follows:

"Expiration Date" means March 31, 2009.
 - 2.3 In the definition of "**Final Report Date**" in section 1, "2006" shall be deleted and replaced with "2008", so that this definition as amended shall read as follows:

"Final Report Date" means March 31, 2008.
 - 2.4 In the definition of "**Total Project Costs**" in section 1, "2005" shall be deleted and replaced with "2007", so that this definition as amended shall read as follows:

"Total Project Costs" means the total of the Eligible Costs and Ineligible Costs incurred from April 1, 2002 to March 31, 2007, up to one hundred and sixty-four million and four hundred thousand dollars (\$164,400,000.00) ...

- 2.5 In the definition of “**Total Sub-project Costs**” in section 1, “2005” shall be deleted and replaced with “2007”, so that this definition as amended shall read as follows:

“**Total Sub-project Costs**” means the aggregate of the costs of the components for each Sub-project incurred between April, 2002 to March 31, 2007, including the costs that are reimbursed by the Financial Assistance as set out in the tables under section 5 of each of the Sub-project Attachments to Schedule “B” (Description of the Project).

- 2.6 In paragraph 9(d), “2005” shall be deleted and replaced with “2007”, so that paragraph 9(d) as amended shall read as follows:

(d) have been incurred after April 1, 2002 and no later than March 31, 2007, except where otherwise expressly approved by the Ministry in writing; and

- 2.7 In section 27, “2005” shall be deleted and replaced with “2007”, so that section 27 as amended shall read as follows:

Recipient fully responsible. The Recipient shall be fully responsible for the undertaking, implementation and completion of the Project and shall retain any and all Consultants reasonably required to undertake a project of the size, scope and complexity of the Project and ensure that the Project is completed on or before March 31, 2007 unless otherwise agreed to by the Ministry in writing...

- 2.8 In section 44, the words “and in Schedule “I” (Performance Measurement)” shall be inserted following the words “of this Schedule “A” (General Terms and Conditions)”, so that section 44 as amended shall read as follows:

44. **Subsequent report.** Within thirty (30) months and no earlier than twelve (12) months from the Project becoming Substantially Performed, the Recipient shall provide to the Ministry a report indicating how the Project’s objectives identified in paragraph 41(h) of this Schedule “A” (General Terms and Conditions) and in Schedule “I” (Performance Measurement) have been met.

3. **New Schedule “B” (Description of the Project).** “Schedule “B” (Description of the Project) of the Agreement shall be replaced with the revised Schedule “B” (Description of the Project), attached as Schedule “A” to this Amending Agreement.

4. ***New Schedule "I" (Description of the Project).*** Schedule "I" (Performance Measurement), attached as Schedule "B" to this Amending Agreement, shall be added to the Agreement.
5. ***Other terms and conditions of the Agreement.*** All other terms and conditions of the Agreement shall remain the same, be binding upon the Ministry and the Recipient and time shall remain of the essence.

IN WITNESS WHEREOF, the Ministry and the Recipient have respectively executed and delivered this Amending Agreement as of the date set out above.

**HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF ONTARIO**, represented
by the Minister of Transportation for the
Province of Ontario

By: _____

Name: Mr. Harinder S. Takhar

Title: Minister

Authorized Signing Officer

THE REGIONAL MUNICIPALITY OF YORK

By: _____

Name: Mr. Bill Fisch

Title: Regional Chair

By: _____

Name: Mr. Denis Kelly

Title: Regional Clerk

I/we have the authority to bind the Recipient

[MTO note to draft: A new Schedule “B” to the Agreement needs to be provided by the Recipient to address the issue of date changes.]

SCHEDULE “A”

**SCHEDULE “B”
DESCRIPTION OF THE PROJECT**

SCHEDULE “B”

**SCHEDULE “I”
PERFORMANCE MEASUREMENT**

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1. **Definitions.** For the purposes of this Schedule “I”, the Ministry and the Recipient agree to the following definitions:

“**Performance Measure**” means an attribute of the Project, described in Table I.3.1 of section 3 to this Schedule “I” (Performance Measurement), that must be measured to determine whether a corresponding Performance Target (as defined in this Schedule “I” (Performance Measurement) is met.

“**Performance Indicator**” means the quantification or qualification, described in Table I.3.1 of section 3 to this Schedule “I” (Performance Measurement), as applicable, of a Performance Measure.

“**Performance Target**” means the specific quantitative or qualitative goal, described in Table I.3.1 of section 3 to this Schedule “I” (Performance Measurement), against which a Performance Indicator will be compared and which may be adjusted by the Minister from time to time to take into account unforeseen circumstances.

- 3 **Performance Indicators.** As part of the information to be provided under the reporting requirements identified in section 44 (Subsequent report) of Schedule “A” (General Terms and Conditions), the Recipient shall collect the data required under Table I.3.1 of section 3 to this Schedule “I” (Performance Measurement) to determine and report on the Performance Indicator for each of the Performance Measures.

3. **Performance Measurement Components.** The following table describes the performance measures, performance indicators and performance targets referred to in other sections of this Schedule “I” (Performance Measurement):

Table I.3.1: Performance Measurement Components

Performance Measure	Performance Indicator	Performance Target
Ridership	What is the net increase in transit ridership resulting from the Project?	25% net increase in transit ridership in “Quick Start” rapid

		transit corridors 24 months after service commencement in each respective corridor.
Average travel times	What is the net reduction in average travel times resulting from the Project?	12% to 17% net reduction in peak period average travel times at service commencement in the Yonge St. corridor, 10% to 15% in the Highway 7 corridor, and 10% in the Markham and Vaughan Connector corridors, compared to previous local bus times.

4. **Performance measurement plan.** The Recipient shall submit to the Ministry for approval a performance measurement plan describing the data the Recipient shall collect and the frequency of such collection to determine and report on the Performance Indicator for each of the Performance Measures.
5. **Sufficiency of data under the plan.** The performance measurement plan provided by the Recipient under Section 3 of this Schedule "I" (Performance Measurement) shall provide sufficient data and other information regarding the Performance Indicator for each Performance Measure to allow the Recipient and the Ministry to determine if the corresponding Performance Target has been met.
6. **Additional information.** From time to time, at the request of the Ministry, the Recipient shall provide any other information respecting the Performance Measures, Performance Indicators and Performance Targets as the Ministry may require.
7. **Deduction or set-off from financial assistance.** If the Performance Targets are not achieved, in the opinion of the Ministry, the Ministry may, at its sole discretion and in accordance with Ministry policies, deduct or set off 0 to 5% of the Financial Assistance from any other project(s) of the Recipient under the Program or any other provincial program's (either current or future), and such amount of financial assistance shall be deemed to be a debt to the Crown under the *Financial Administration Act*, R.S.O. 1990, c. F.12, as amended.