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MASTER AGREEMENT BETWEEN YORK REGION RAPID TRANSIT CORPORATION (“YRRTC”), METROLINX, AND THE REGIONAL MUNICIPALITY OF YORK

The Finance and Administration Committee recommends the adoption of the recommendation contained in the following report dated January 25, 2011, from the Chief Administrative Officer.

1. RECOMMENDATION

It is recommended that:

1. The Region enter into a Master Agreement with York Region Rapid Transit Corporation (“YRRTC”) and Metrolinx governing the respective rights and responsibilities of the parties for implementation of certain vivaNext rapid transit projects.

2. PURPOSE

The purpose of this report is to authorize the Region to enter into a Master Agreement, incorporating the necessary protocols, with YRRTC and Metrolinx to govern the relationship between the parties for the funding, construction, operation and maintenance of the vivaNext projects. This Master Agreement will supersede the Memorandum of Agreement which expires on March 31, 2011.

3. BACKGROUND

The Region entered into a Memorandum of Agreement in October 2009 to fund cash flow expenditures for ongoing vivaNext projects

At its meeting on September 24, 2009, Regional Council authorized the Region to enter into a Memorandum of Agreement (“MOA”) with Metrolinx and YRRTC to govern the management of certain projects pending negotiation of more detailed terms and protocols. The MOA established the framework for funding, land acquisition and general procurement for the D1 (Davis Drive from Yonge Street to Highway 404) and H3 (Highway 7 from Richmond Hill Centre to Warden Avenue) segments of vivaNext. The MOA was intended as an interim document and expires on March 31, 2011. Staff from the Region, YRRTC and Metrolinx have been engaged in discussions on the terms of the Master Agreement and its protocols and recommend approval of the final terms and execution of the Master Agreement.

4. ANALYSIS AND OPTIONS

The Master Agreement is a framework agreement that sets out the respective roles and responsibilities of the parties in implementing vivaNext projects

The Master Agreement establishes the fundamental roles and responsibilities of the parties in implementing the “green bundle” of vivaNext projects. The “green bundle” now comprises the construction of rapidways and stations at the following locations:

- D1: Davis Drive from Yonge Street to Highway 404
- H3: Highway 7 from Richmond Hill Centre to Warden Avenue
- H2: Vaughan Metropolitan Centre
- Y2: Yonge Street from Richmond Hill Centre to Major Mackenzie Drive
- Y3.2: Yonge Street from Mulock Drive to Davis Drive

The agreement contemplates that an individual Project Charter will be developed for each project which will set out a more detailed implementation strategy, including funding arrangements. The Master Agreement will expire concurrently with the expiry of the last Project Charter.

The Master Agreement provides that, as owner of the project assets, Metrolinx retains ultimate approval authority for the scope of the projects and control over the project assets. This is subject to the Region’s continuing ownership and jurisdiction over the rapidway and road allowance, as more fully discussed below. The Region will also retain ownership of the bus fleet.

YRRTC is appointed Program Manager and is responsible for overall delivery of each project and ensuring compliance with schedules and budget requirements as set out in the Project Charters. YRRTC will be accountable for planning, design, engineering and construction and ensuring integration of design with Regional facilities. YRRTC will also manage day to day contract administration and supervision of contractors and consultants.

The Master Agreement sets out the governance structure and provides for tiered decision-making

The agreement provides for appointment of a Program Executive Group which will be tasked with high level decision making during project implementation. The membership of this group will be comprised of executives from each of Metrolinx (Bruce McCuaig, President and CEO), the Region (Bill Fisch, Chair and CEO), YRRTC (Mary-Frances Turner, President), and potentially Infrastructure Ontario (tbd). The mandate of the

Program Executive Group is to make recommendations to the respective governing bodies on any jurisdictional or budgetary disputes that may arise during project implementation. The group is to function by consensus and to offer recommendations on matters including the terms and conditions of Project Charters, proposed amendments to the Master Agreement, and resolution of potential disputes.

The Program Executive group is to be supported by a Senior Staff Working Group comprised of a senior staff member appointed by each of Metrolinx, YRRTC and potentially Infrastructure Ontario. Other representatives may be designated to participate in meetings to provide input on specific issues. The role of the working group is to develop terms of the Project Charters, assist in resolving issues that arise during project implementation, monitor financial status and risk issues, co-ordinate communications and other functions assigned through the various protocols. Matters that cannot be resolved by the group will be referred to the Program Executive Group.

The detailed terms of the Master Agreement are set out in a series of schedules and protocols

The Master Agreement sets out the overall scope of the parties' responsibilities and accountability for delivery of the vivaNext projects. More detailed provisions governing project implementation are developed in a series of protocols which are appended as schedules to the agreement. The key protocols are the following:

- Procurement Protocol
- Real Estate Protocol
- Operating Protocol

Additional schedules will address other administrative matters, including the process for approving change orders, the cost confidence process, and a template for developing project charters. A Communications Protocol is also currently being developed.

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

In September 2009, the Region and YRRTC entered into a vivaNext Procurement Agreement with York Consortium 2002 ("YC2002") which provided for the conditions under which design and preliminary engineering work for vivaNext projects may be awarded to YC2002. This included compliance with an amended cost confidence process to evaluate proposals submitted by YC2002 with respect to any future segments.

The Master Agreement honours the obligations set out in that agreement. For those projects which are not subject to the amended cost confidence process, or for procurement that falls outside that process, the Master Agreement and related protocol prescribes the procedures to be followed for procurement and financial control.

Metrolinx will be responsible for approving the issuance of all Requests for Proposals (“RFPs”) and Requests for Tenders (“RFTs”) for the procurement of all goods and services related to project implementation, including construction, equipment and vehicles. All procurement must strictly comply with the Metrolinx Procurement Policy and the Province of Ontario’s Procurement Directive.

YRRTC is required to submit a monthly schedule of proposed procurement to Metrolinx, setting out requirements for the next 12 months for preliminary approval. The Protocol prescribes the procurement method to be employed depending on the type of goods and services and the price threshold. There are also guidelines to govern the structure of procurement documents, including the requirement to apply the maximum justifiable weighting to pricing as part of the evaluation criteria. Within these guidelines, YRRTC’s role will be to administer the procurement process, including preparing the documentation and specifications, receiving inquiries, issuing addenda and reviewing submissions. Metrolinx will have the right to participate fully in the selection of the contractor and negotiation of the terms of the project agreement, if the procurement is deemed sufficiently material.

The award of all contracts is subject to approval by Metrolinx. Following award, YRRTC and/or the Region will be in a position to execute the project agreement directly with the contractor. An Administrative Protocol is currently being developed. This will provide for continued cash flows from Metrolinx to ensure that projects proceed on schedule.

The Real Estate Protocol sets out the process for land acquisitions and provides for the Region to convey to Metrolinx an easement in the rapid transit right of way

The Procurement Protocol governs the award of contracts for goods and services but does not apply to land acquisitions. A separate 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 vivaNext 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 road allowance to permit Metrolinx to reflect its investment in infrastructure in its financial statements in compliance with the *Metrolinx Act, 2006*. YRRTC and Regional staff have engaged in extensive discussions with Metrolinx to reconcile this legislative requirement with the Region’s equally compelling need to retain jurisdiction and regulatory control over the right of way. The resolution of many of these issues is now reflected in the operating principles outlined below. In return for conveyance of the easement, Metrolinx will grant to the Region access rights to the rapidway in order to fulfil its operating and maintenance obligations. The form of easement and access agreement will be appended to the Real Estate Protocol.

Metrolinx will be involved in all stages of the land acquisition process. YRRTC is to submit an initial outline of property requirements to Metrolinx for review. Copies of

appraisal reports are likewise to be submitted prior to the Region making binding commitments to third parties. Metrolinx will authorize the Region to conclude agreements with third parties within a stipulated limit without further approval, which limits will be set by Metrolinx's chief financial officer. The Region will also be permitted to commence expropriation proceedings to secure land, if necessary, without specific approval from Metrolinx.

Subject to compliance with the protocol, Metrolinx will fund all costs to acquire the lands, including purchase price, legal and surveying costs, compensation payable to owners and tenants under the *Expropriations Act* and staffing and administrative costs.

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

As outlined above, it is contemplated that the Region will retain jurisdiction and regulatory control over the right-of-way, including the rapidway corridor. This will include passing by-laws for traffic regulation and issuing all permits and approvals in the corridor. Metrolinx will be granted a permanent easement in the rapidway to reflect its investment interest in the project assets. The reconciliation of these competing interests in terms of responsibility for operations and maintenance is more fully articulated in the operating principles. These will be the basis of a more detailed Operating Protocol to be appended to the Master Agreement.

The operating principles are more fully discussed in a report submitted concurrently to Transportation Services Committee. In summary, the Region will be responsible for all routine maintenance matters, including seasonal activities, tree planting, pavement markings and maintenance of fare collection equipment. In addition, the easement granted to Metrolinx will not extend into the intersections. The Region will retain full ownership and control of intersections and traffic signals, provided that the provincial auditors confirm that this model will satisfy the legislative requirements.

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.

It is contemplated that a working group of operations staff be established for the purpose of co-ordinating operations and maintenance activities. The committee would be an advisory committee with equal representation from Metrolinx and Regional staff. The committee would have no independent decision making power but would make recommendations as appropriate to the governing entities.

5. FINANCIAL IMPLICATIONS

The vivaNext “green bundle” of projects is funded from the Provincial Move Ontario 2020 funding program.

6. LOCAL MUNICIPAL IMPACT

Rapid transit projects in Newmarket and Markham are already under construction. Formalizing arrangements with Metrolinx for project implementation and funding through the Master Agreement will assist in the timely delivery of rapid transit service to these communities.

7. CONCLUSION

The Memorandum of Understanding among Metrolinx, the region and YRRTC expires on March 31, 2011. Staff from the Region and YRRTC have developed the terms of a Master Agreement to govern the implementation of the vivaNext “green bundle” of projects and recommend that the agreement be executed to facilitate the successful delivery of these projects. An executive summary of the Master Agreement is attached as *Attachment 1*.

The Senior Management Group has reviewed this report.

(The attachment referred to in this clause is attached to this report.)

MASTER AGREEMENT

Executive Summary

Purpose

- establishes the respective roles and responsibilities of YRRTC, the Region and Metrolinx for delivery of “green bundle” of projects.
- Metrolinx will own the project assets and has ultimate approval authority for construction, operations and maintenance.
- YRRTC is appointed Program Manager and accountable for overall delivery of projects and managing performance of contractors/consultants.
- Region will operate and maintain project assets and retain regulatory control.
- an individual Project Charter will be developed for each segment setting out more detailed implementation and funding.

Governance Structure

- Program Executive Group:
 - makes recommendations to Metrolinx/YRRTC/Region on jurisdictional issues, disputes, proposed amendments to Master Agreement and project charters.
 - advisory group, operating by consensus.
- Senior Staff Working Group:
 - supports Program Executive Group.
 - develops project charters, resolves issues during implementation.
 - co-ordinates communications, monitors financial status.
- Metrolinx to engage an Owner’s Engineer to review and monitor value engineering processes, and support Senior Staff Working Group.
- YRRTC to engage a consulting engineer as independent cost estimator, responsible for general project management services.

SCHEDULES TO MASTER AGREEMENT

The schedules and protocols contain the detailed provisions for project implementation.

Procurement Protocol

- describes the procedures to be followed for procurement and award of contracts.
- issuance of all RFPs and RFTs is subject to approval by Metrolinx.
- provides guidance on structuring documents and developing evaluation criteria.
- YRRTC is responsible for administering the procurement process.
- award of all contracts is subject to the approval of Metrolinx.

Real Estate Protocol

- Region will take title to all lands required for the project.
- Region will convey an easement to Metrolinx for the rapidway along the centre of the road allowance.
- Metrolinx will in turn grant access rights to Region for regulatory and maintenance purposes.
- prescribes detailed procedures for land acquisition and establishes approval thresholds for making commitments to third parties.
- recognizes the Region's right to expropriate if necessary.
- the form of easement to be granted to Metrolinx is set out as an appendix to the schedule.

Administrative Protocol

- will set out the process for change orders and funding approvals.
- will continue the current model of cash flow to projects.

Operating Principles

- Region will retain regulatory control over the right of way.
- Region will be responsible for routine operations and maintenance.
- Metrolinx will be accountable for longer term asset preservation and replacement, and the Centralized Traffic Control System.

Cost Eligibility Criteria

- sets out detailed criteria for cost recovery.