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TORONTO-YORK SUBWAY EXTENSION

The Finance and Administration Committee recommends:

1. **receipt of the presentation from Ed Hankins, Director, Policy, Risk & Treasury; and**
2. **the adoption of the recommendation contained in the following report, March 31, 2006, from the Commissioner of Finance:**

1. RECOMMENDATIONS

1. It is recommended that this report be received for information.

2. PURPOSE

The purpose of this report is to advise Council of the recent Provincial announcement regarding the Spadina-York subway extension project.

3. BACKGROUND

As part of the 2006 Ontario Budget, introduced on March 23, the Minister of Finance announced that the Province will cost-share an extension of University-Spadina subway line to York University and from there into York Region, terminating at the Vaughan Corporate Centre.

The total cost of the project was estimated to be approximately $2 billion, of which $670 million would be funded by the Province. The provincial contribution to the project will hinge on a tri-government funding agreement being reached between the municipal, provincial, and federal levels of government in which each would assume an equal share of the project's capital cost.

Following the Budget announcement, regional staff had the opportunity to receive a preliminary briefing by the Province on the proposed project, as well as on the creation of a trust fund that has been established for the benefit of the City of Toronto and the Region of York.

3.1 Move Ontario Trust

In order to commit their funds within their current 2005-2006 fiscal year, the Province created the Move Ontario Trust Fund to hold and manage its $670 million contribution to the project. The Province has prepared a Declaration of Trust document (the

"Declaration") that must be executed by the Initial Trustees, as presented in the table below. The Declaration provides generally for the following:

(a) the establishment of a trust for the purposes of funding the construction of an inter-regional heavy rail public transit project within Toronto and York (the "Trust");
(b) the designation of the City of Toronto and Regional Municipality of York as the beneficiaries of the Trust;
(c) the establishment of a panel of three trustees (nominated by Ontario, Toronto and York respectively) who will administer the Trust and make decisions respecting the investment of the funds, choice of project and the allocation and distribution of the funding over the course of the project.

Table 1
Highlights from the Declaration of Trust

Purpose	The Move Ontario Trust was announced March 23, 2006 as part of the 2006 Ontario Budget. The Trust formally came into being through a Trust Declaration, signed March 24, 2006. The Declaration sets out the purpose of the Trust as, "to fund distributions, ..., in respect of capital investments in a new heavy rail inter-regional public transit infrastructure expansion project".
Role of Trustees	The Trust is governed by three trustees. Initially the province has appointed all three trustees by way of the Trust Declaration, one permanent trustee for the province itself and two initial independent trustees to serve until the Toronto Trustee and the York Trustee have been nominated by their municipal councils. Until the permanent Municipal Trustees are appointed the trustees cannot make substantive decisions on selection of the project or allocation of trust assets to the selected project or disbursements.
Timelines/Key Dates	The methodology for the distribution of the trust assets, i.e., the capital funds that amount to $670 million in provincial funding that endow the trust, must be determined by the trustees for distribution to Toronto and York on or before September 30, 2006 by simple majority vote of the trustees. If not, the trust assets revert to the "eligible municipalities" of Durham, Peel, Halton, and Hamilton to be used for transit purposes. In addition, the first construction contract for the project must be entered into by the earlier of, (i) one year after receiving final provincial environmental approvals, or (ii) April 1, 2008, or the trust assets will revert to the eligible municipalities. Similarly, if more than one year elapses between bona fide requests for project funding, then the trust assets revert to the eligible municipalities.

Interest/Investment Income	Before they are distributed, the trust assets will earn interest/investment income. One of the reasons for the appointment of three trustees is to enable the prudent financial administration of the assets from the first day of the Trust. The Trust is constrained, similarly to municipalities, to investments in low-risk instruments. Interest/investment income will be paid or made payable to Toronto and York annually on December 31 and must be paid out within 180 days of the end of the calendar year. Income tax will not be payable if all taxable Trust income is paid out to the beneficiaries each year. The annual interest/investment income will be paid out to Toronto and York in the same proportion as the allocation of trust assets determined by the trustees.
Disbursements	The trustees will receive requests from Toronto and York for disbursements of trust assets toward project expenses. The trustees will determine the arrangements and disbursement policies governing the administration of these requests. The trustees are always subject to their over-riding duty to exercise "that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances".
Dissolution of Trust and Amendments	Unless the trust assets are exhausted earlier, or have reverted to eligible municipalities, the Trust has a life span of 10 years and will dissolve on March 24, 2016. The Trust Declaration can be amended by unanimous agreement of the trustees.

4. ANALYSIS AND OPTIONS

4.1 Funding/Cost Issues Requiring Further Clarification

Staff are currently identifying those issues that will require further clarification and/or investigation in order to accurately assess the overall cost to the Region associated with the proposed Spadina-York subway extension. Some of the issues that will be the subject of future meetings with the City of Toronto and the Province include:

(1) *Federal Participation* - The federal government's one third participation in the funding arrangement must be still confirmed;
(2) *Capital Cost Sharing* - While the total cost of the project is currently estimated to cost approximately $2.0 billion, this amount must be updated once the final project definition has been completed. In addition, an allocation of capital costs between the City and York must be agreed upon;
(3) *Operating Costs* – The incremental operating costs for each section of the proposed extension must be identified. Furthermore, it is anticipated that the new subway extension may not break even when it is first put into service. Therefore, unless additional funding is secured from the Province for the

purpose of assisting with the initial operating costs of the project, a partial subsidy may be required from York.

(4) *Revenue Sharing* -A revenue sharing allocation needs to be agreed upon for tickets and other matters.

4.2 Use of Tax Increment Financing

The Minister also announced that the Province will examine additional revenue enhancement/financial tools to assist Toronto and York Region in funding their share of the cost of this expansion. As part of this commitment, the Budget highlighted the Province's intent to introduce legislation to enable tax increment financing ("TIF") on a pilot basis for this initiative.

There are a number of issues relating to the use of the TIF tool that also require further clarification:

(1) *Project Financing Option* – Regarding the ability of the municipalities affected to use TIF for project ("off-book") financing;
(2) *Capital and Operating Costs* – Regarding the ability of the municipalities affected to use TIF for the purposes of financing both the capital and operating costs of the project; and
(3) *Governance Structure (TIF Authority)* – Regarding the governance structure that will be designated to manage the TIF portion of the project's funding.

In addition, the Region and the City of Toronto will have to accurately quantify the incremental property tax revenue within the proposed corridor and around the proposed stations that will be available to commit to a TIF over the next 20 years or so.

4.3 Development Charges

Development Charges ("DCs") were identified as significant source of funding for the proposed project. However, a number of shortfalls of the *Development Charges Act* need to be addressed by the Province for growth municipalities such as York Region to effectively use development charges to fund services such as regional transit that have had historically a lower level of capital investment. The following issues need to be addressed:

(1) The current provisions penalize all municipalities with the mandatory 10 per cent municipal contribution;
(2) The current provisions short change high-growth municipalities through the use of the 10-year historical level service standards as the basis for the calculation of cost-recovery through DCs. For maturing growth municipalities, such as York, transit and EMS services have only recently been introduced and therefore growth will only be partially funded from DC revenue; and

(3) The current provisions do not afford appropriate support for transit capital developments by failing to classify transit in the same category as roads.

4.4 Impact on Credit Rating

Standard & Poor's, one of the Region credit rating agencies, has noted in a news release from March 27 that the capital grants announced by the Province as part of the 2006 Budget will go a long way in accelerating the capital plans of the municipalities affected. However it also highlighted that these municipalities may be required to issue additional debt. The amount of issuing additional debt needed for the Spadina – York subway extension is however uncertain at this time. Regional staff will explore the implications of issuing additional debt on the Region's credit rating as well as the use of alternative funding and/or financing tools such as the use of project ("off book") financing by way of a TIF.

4.5 Council to Nominate a Municipal Trustee for Move Ontario Trust Fund

Under the terms of the above mentioned Declaration of Trust, the Province intended to appoint an Ontario Trustee and two independent Trustees (collectively the "Initial Trustees"). Given that the provincial representative was to be the Deputy Minister of Finance, the provincial decision was to appoint Toronto's Deputy City Manager and Chief Financial Officer and the Commissioner of Finance and Treasurer for York Region. It should be noted that the responsibility of the Initial Trustees is solely to take receipt of the Trust funds and make initial decisions respecting the interim investment of the funds and administrative issues, such as retaining professional expertise, to assist in carrying out the Trust responsibilities.

The Initial Trustees cannot make decisions respecting the choice of project or the allocation of funding as those decisions may, under the terms of the Declaration, be made only when two permanent trustees have been appointed as nominated by the Toronto and York Councils (the "Municipal Trustees"). These Municipal Trustees will replace the two Initial Trustees. As such, it is required that Council nominate the Region of York's Trustee. This will be the subject of a future report to Committee and Council.

5. FINANCIAL IMPLICATIONS

The funding of this project may have significant implications for the Region. The costs associated with this project have not been included in the 2006 10-year Capital Budget, nor have they been factored into the current development charges by-law. In the development plan for the project, the costs to York Region are anticipated to be incurred in the latter part of the development. The future revenues, operating and capital costs, and the cost sharing allocation have yet to be determined.

Staff will perform a thorough study of the issues and financial implications related to the project, and will examine the potential to utilize alternative funding tools such as TIF and joint-development opportunities with the private sector.

6. LOCAL MUNICIPAL IMPACT

The funding of this project may have significant implications for the City of Vaughan. Further study will be required to assess the local municipal financial implications.

7. CONCLUSION

It is recommended that further analysis be completed on the full costs and impacts of the proposed subway extension into York Region. It is essential to the success of the project that all fiscal implications of this joint venture with the City of Toronto and the Province are thoroughly explored and evaluated, in order to effectively mitigate any potential negative impacts on the taxpayers of the Region and to ensure the overall success in securing the required funding for the project.

The Senior Management Group has reviewed this report.

(The attachment referred to in this clause was included in the agenda for the April 6, 2006 Committee meeting.)