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WEIRFOULDS RETAINER

The Rapid Transit Public/Private Partnership Steering Committee recommends the adoption of the recommendations contained in the following report June 8, 2006, from the Vice President, York Region Rapid Transit Corporation:

1. RECOMMENDATIONS

It is recommended that

1. Council authorize continuation of the existing retainer with WeirFoulds LLP for legal services, as required, by the York Region Rapid Transit Corporation (YRRTC) for a period of up to 3 years, commencing January 1, 2006.
2. Council authorize that the current purchase order be increased in the amount of \$1,050,000 for legal services in accordance with the approved 2006 budget for the YRRTC.

2. PURPOSE

The purpose of this report is to seek Council approval to refresh the retainer for WeirFoulds LLP to provide the necessary external legal support for the next phase of York Region's rapid transit project for a period of three years. It also provides the estimated cost for WeirFoulds services during 2006.

3. BACKGROUND

WeirFoulds has served the Region well as external counsel for Rapid Transit matters since 2002

The legal firm of WeirFoulds was retained in April of 2002, through a competitive Request for Proposals process, to provide legal advice on all matters pertaining to the administration of the York Region Rapid Transit Project. Over the past four years, WeirFoulds has provided advice that has been integral to the implementation of Viva Phase One, including but not limited to:

- Selection of the Region's private sector partner.
- Stage One Agreement between the Region and York Consortium 2002 (YC2002).
- Incorporation of York Region Rapid Transit Corporation.
- *Quick Start* Funding Agreements with the Federal and Provincial governments.
- Design-Build Agreement with Kiewit EllisDon.
- Agreement with Van Hool of Belgium for the purchase of vehicles.

- Memorandum of Understanding between York Region and GO Transit.
- Master Agreement and Go-Forward agreement among the Region, YRRTC and YC2002.
- Numerous legal opinions on a wide variety of matters affecting the project

WeirFoulds has extensive knowledge about the legal framework affecting YRRTC

As legal counsel over the past four years, WeirFoulds has provided a wide range of legal services to meet the requirements of the Region and YRRTC on all aspects of the rapid transit project in consultation with the Region's internal legal corporate counsel. Their insight into the project has evolved from extensive involvement with the project, and could only be replicated by another firm over an extended period of time. Given the excellent services they have provided the Region and YRRTC it is recommended that their retainer continue beyond the initial three year period provided for in the purchasing bylaw.

The current Viva Phase 2 initiative is moving forward rapidly and requires continued external legal support, including but not limited to:

- Finalizing the Master Agreement and Go-Forward Agreement with YC2002.
- Commenting on further funding arrangements with the Provincial government and possibly Federal government.
- Negotiations and legal agreements to cover preliminary engineering.
- Real estate services for property acquisitions, including expropriations, on behalf of York Region.

Current PO budget is exhausted and authorized purchasing bylaw limits have been reached

Total legal expenses billed by WeirFoulds between June 25, 2003 and December 31, 2005 were \$1,861,877. The total purchase order amount has now been exhausted and Council authorization for a new purchase order is required.

WeirFoulds continues to provide very competitive rates for a wide range of legal services

WeirFoulds proposes that its lawyers continue to provide support to the YRRTC based on the hourly rates that WeirFoulds agreed to in April 2002. Although WeirFoulds was entitled under its retainer to increase these hourly rates in April 2005, WeirFoulds offered to, instead, maintain the April 2002 rates through to December 31, 2005 and continues to offer them in 2006. The hourly rates being retained by WeirFoulds are discounted by approximately 25% of their regular corporate rates.

4. ANALYSIS AND OPTIONS

Nature of rapid transit work requires the continued support of external legal counsel

Project budgeting requires that the Rapid Transit office estimate the magnitude for such legal costs annually. Over the past four years, external legal services provided by WeirFoulds LLP have been valued at nearly \$2 million, or approximately \$500,000 per year. However, this amount has not been spread evenly in each calendar year and depends on the nature of the legal work required at any given time. Assuming a similar level of support from WeirFoulds over the next three years, external legal services over this period for the rapid transit program are projected to cost in the order of \$1.5 million.

Budget of \$1.05 million has been approved for legal support during 2006

The current Phase 2 initiative is moving forward and requires continued external legal support. The approved 2006 budget \$1.05 million identified the following external legal counsel services:

- Governance-concession agreement: \$125,000.
- Federal/Provincial Agreements: \$125,000.
- Go Forward/Master Agreement: \$200,000.
- Phase 2 Work Program Agreements: \$200,000.
- Phase 2 implementation: \$200,000.
- Preliminary work for Phase 2 design and construction agreements: \$200,000.

5. FINANCIAL IMPLICATIONS

YRRTC is seeking Council authorization to extend the initial retainer of WeirFoulds LLP for a further three year period. The purchase order would be increased by an initial amount of \$1.05 million as provided for in the approved 2006 Rapid Transit Budget exclusive of disbursements or GST. Future Council budget approvals will be used as the basis for increasing the purchase order. The legal department will be closely monitoring the legal expenses identified in this report.

6. LOCAL MUNICIPAL IMPACT

There are no local municipal implications associated with this report.

7. CONCLUSION

The external legal service costs to support the activities and initiatives of the YRRTC during the next three years have been determined to be \$1.5 million and a sole source contract with WeirFoulds LLP is requested. As noted earlier in this report, WeirFoulds LLP was retained in April 2002 to act for the Region in the Rapid Transit Project, through a competitive RFP process. WeirFoulds has estimated the cost for work during 2006 to be \$1.05 million, which is covered in the 2006 Rapid Transit Budget.

This report has been reviewed by the Senior Management Group.