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APPOINTMENT OF THE YORK TRUSTEE FOR THE MOVE ONTARIO TRUST (TORONTO YORK SPADINA SUBWAY EXTENSION)

The Finance and Administration Committee recommends the adoption of the recommendation contained in the following report, May 15, 2006, from the Chief Administrative Officer:

1. RECOMMENDATION

It is recommended that:

1. Mr. Lloyd Russell, Commissioner of Finance and Treasurer, be appointed as the Regional Municipality of York's Municipal Trustee for the Move Ontario Trust.

2. PURPOSE

This report recommends the appointment of a permanent trustee for the Move Ontario Trust ("the Trust").

3. BACKGROUND

As part of the Ontario Budget on March 23, 2006, the Province announced the creation of the Move Ontario Trust to manage the $670 million of provincial funds that it had committed toward the Spadina-York Region subway extension. This amount represents a one-third contribution towards the capital cost of the proposed extension and assumes that there will be matching federal and municipal contributions, the latter coming from the City of Toronto and the Region of York.

The Trust was created by way of a Declaration of Trust on March 24, 2006 in order for the Province to flow its share of the project funding prior to its fiscal year-end. The City of Toronto and York Region have been designated as the beneficiaries of the Trust.

The Declaration of Trust provides that the Trust would be managed by three trustees − a permanent Ontario Trustee and two Initial Independent Trustees. The Province designated Mr. Colin Anderson, Deputy Minister of Finance, as the Ontario Trustee and Mr. Joseph Pennachetti, Deputy City Manager and Chief Financial Officer for the City of Toronto and Mr. Lloyd Russell, Commissioner of Finance and Treasurer for the Region of York as the Initial Independent Trustees.

The two municipal governments must now each nominate a permanent trustee (the "Municipal Trustee") to replace the Initial Independent Trustees. The Municipal Trustees must be in place before the provincial funds can be allocated or a construction contract entered into.

There are two key events that must take place before the named beneficiaries of Trust can receive all or substantially all of the initial contribution of the Province:

1. Funds equal to the contribution of the Province must be allocated between the City of Toronto and the Region of York on or before September 30, 2006; and
2. The first construction contract must be entered into by the earlier of (i) 365 days following the date of final approval of the environmental assessment for the project or (ii) April 1, 2008.

If either of these milestones are not been met, or if Toronto and York Region decide not to proceed with the project, a termination event will occur and the trust funds will revert to the Region's of Durham, Peel, Halton and the City of Hamilton according to a formula based on population as set out in the Declaration of Trust, to be used for transit purposes.

3.2.1 Role of the Trustees

Decisions regarding the management, scope and cost allocation of the project will be the responsibility of the municipal councils. The Trustees assume a stewardship role for the investment and disbursement of Trust funds. They are accountable to the Province, each municipality and the contractors with respect to the funds held by the Trust. The Trustee must be thoroughly informed on the fine details of the project yet sufficiently removed to render, and be seen to render, objective decisions with respect to investment activities and the disbursement of funds.

The Trustees must also distribute annually all taxable income and net realized capital gains earned by the trust, so that the Trust will not have any tax liability under Part I of the *Tax Act* in any taxation year. The distribution of taxable income to the beneficiaries will be in the same proportion as the allocation of the trust assets.

As the Commissioner of Finance and Treasurer, Mr. Lloyd Russell would have the knowledge and qualifications necessary to assume the Municipal Trustee role for the Region of York.

4. FINANCIAL IMPLICATIONS

Municipal Trustees must be appointed in order for the Trust to allocate the $670 million of provincial funding between the Region of York and the City of Toronto. If the Trustees do not allocate the funds of trust according to the provisions stated in the Declaration of Trust, unallocated funds will be distributed to other eligible municipalities according to a formula set out in the agreement. Interest income from the Trust will be allocated annually to each benefiting municipality according to the sharing formula agreed upon.

5. LOCAL MUNICIPAL IMPACT

There is no local municipal impact.

6. CONCLUSION

The nomination of a permanent municipal trustee from York Region, the York Trustee, is required in order to facilitate the timely allocation of funds under the terms of the trust agreement.

This report recommends that Mr. Lloyd Russell, Commissioner of Finance and Treasurer for York Region be appointed as the York Trustee for the Move Ontario Trust.

The Senior Management Group has reviewed this report.