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TORONTO - YORK SPADINA SUBWAY EXTENSION FEDERAL CONTRIBUTION AGREEMENT

The Rapid Transit Public/Private Partnership Steering Committee recommends the following:

1. **The presentation by Ed Hankins, Director, Finance Department, be received; and**

2. **The recommendation contained in the following report, May 23, 2008, from the Commissioner of Finance, be adopted:**

1. RECOMMENDATION

It is recommended that Council authorize the Regional Chair and Regional Clerk to execute the Federal Contribution Agreement related to the Toronto-York Spadina Subway Extension (the "Project").

2. PURPOSE

The report provides an overview of the Federal Contribution Agreement relating to the Federal flow of funding to the Spadina subway project.

3. BACKGROUND

The contribution agreement is a pre-condition to receiving Federal funding for the project

On March 6, 2007 the federal government announced an amount of up to $697 million through the Building Canada Fund (the "BCF") would be made available as its contribution for the funding of the Spadina subway extension to the Vaughan Corporate Centre. This represented one-third of the original $2.1 billion cost estimate (2006 dollars) for the project.

Subsequent to its funding pledge of up to $697 million, the federal government provided an up-front payment of $75 million which was deposited into the Move Ontario Trust (the "Trust").

In order to receive the balance of the federal funding commitment of $622 million, York Region and the City of Toronto are required to enter into a Contribution Agreement with the federal government. A prerequisite to the signing of the Contribution Agreement is that the Province must have entered into a separate Framework Agreement with the federal government with respect to the Building Canada Fund.

The purpose of the Contribution Agreement is to establish the terms and conditions under which the federal government would reimburse the York Region and the City for a portion of Project capital costs. The principles of the Contribution Agreement are set out in Council Attachment no. 1 to this report.

It is important to note that certain categories of costs are considered to be ineligible for federal reimbursement, including land acquisition costs, financing charges and costs incurred prior to the signing of the Contribution Agreement. Eligible costs incurred are recoverable only after invoices are paid.

4. ANALYSIS AND OPTIONS

A collaborative approach has been used in securing federal money

In February 2008, staff of York Region, the City of Toronto, TTC, and the Province (together, "the Applicants") collaborated on, and submitted a BCF application report to the federal government for the purposes of the Project being considered by Treasury Board for funding approval. The application incorporated input that was received from federal staff during the drafting stages. We are advised that federal staff will be bringing the report before Treasury Board in early June 2008, and that the requisite federal approvals will be received shortly thereafter.

In addition, as a prerequisite to receiving funding, the Project is required to receive Federal Environmental Assessment (EA) approvals under Canadian Environmental Assessment Act (CEAA). To that end, City/TTC/York Region staff submitted the requisite reports to Transport Canada (the "Federal Responsible Authority" for this EA), following which approvals were received in March 2008.

The Province deposited an additional $200 million with the Trust to ensure the project would be fully funded

The Federal BCF application gave rise to an immediate requirement for the municipalities to demonstrate that the Project is fully funded, giving consideration to a maximum total federal contribution of $697 million. However, the federal commitment was based on an original total Project capital cost estimate of $2.1 billion (expressed in 2006 dollars). As a result of inflationary impacts, the capital cost is now estimated at $2.6 billion (nominal dollars).

In order to demonstrate that the Project is fully funded, while ensuring that the funding provided by the municipal partners will not exceed one-third of Project capital costs, in accordance with previous Council direction:

- the Province deposited an additional $200 million into the Trust, increasing its contribution from $670 million to $870 million;
- it will be necessary to apply all of the investment income generated by the funds held in the Trust after December 31, 2007 towards Project capital costs. This is also a requirement under the proposed federal Contribution Agreement (see Attachment 1), as outlined in more detail below; and
- in order to enhance the Trust's potential for generating investment income, federal staff have agreed to contribute funds in a higher than one-third proportion (i.e. of total annual funding) during the early project years as compared to the later years.

Further Public-Private Partnerships (P3) analysis is required as a condition of federal funding

A requirement of the BCF application was that it included a review of potential P3 options for Project delivery, giving consideration to federal interim guidelines as provided to the Applicants by federal staff. In order to address this requirement, the Applicants retained an outside consultant (Price Waterhouse Coopers) to perform a preliminary P3 screen.

Applicable P3 options would allow the TTC to continue as Project Manager and to be the owner and operator of the subway extension subsequent to its completion. As a result, the possible P3 options identified by the consultants included those relating to the design, build, and potential financing of the infrastructure, and excluded those involving any potential outsourcing of operations or maintenance.

Although an important exercise, this analysis is considered to be preliminary, given that the TTC has yet to undertake the detailed Project engineering and design phase, which will commence only once project staffing is in place. The Contribution Agreement acknowledges that the P3 screening undertaken was preliminary, and requires that the TTC/City/York Region continue to consider the potential P3 options and deliver a final P3 screen for specific Project components to the federal government. The TTC will undertake this exercise using a value engineering approach and present it to the Executive Task Force (the senior staff committee providing project oversight and currently chaired by York Region's CAO)

5. FINANCIAL IMPLICATIONS

The current cost estimate for the Project is $2.6 billion of which two-thirds funding is expected to come from the province and the federal government.

The federal government has already contributed $75 million out of its commitment of $697 million. The execution of the Contribution Agreement will allow the balance of the federal contribution to flow to the project. York Region and City of Toronto staff have unsuccessfully argued for upfront payment of the funds to the Trust following completion of the agreement. Staff will continue to work with all parties on ways to minimize delays that have traditionally been met with the typical “pay after you spend” federal philosophy.

The province has contributed $870 million plus interest earned in the Trust (total estimated to be $1.059 billion) for this Project.

Council has previously approved a cost sharing arrangement with the City of Toronto equal to 40.04% of the municipal one-third share now estimated to be approximately $878 million. The cost to York Region is currently estimated to be approximately $351 million plus an upfront “buy-in” cost of $30 million paid to the City for the use of existing assets.

6. LOCAL MUNICIPAL IMPACT

The completion of the project will have significant implications for the City of Vaughan. Dialogue between staff and the City of Vaughan will continue with respect to all aspects of the project.

7. CONCLUSION

A signed Contribution Agreement is a pre-condition of receiving federal funding for the project. Staff are satisfied that the agreement as presently drafted protects York Region interests and will enable the flow of federal funds to the project. It is recommended that the Regional Chair and Regional Clerk be authorized to execute this agreement in accordance with the principles contained in Council Attachment No. 1.

For more information on this report, please contact Ed Hankins, Director, Policy, Risk and Treasury at Ext. 1644.

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