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WEIRFOULDS RETAINER

The Rapid Transit Public/Private Partnership Steering Committee recommends:

- 1. Receipt of the presentation by Susan Tuckey, Chief Financial Officer, York Region Rapid Transit Corporation; and**
- 2. Adoption of the recommendations contained in the following report dated June 4, 2009, 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 on a cost-plus basis, as required, by the York Region Rapid Transit Corporation for the period ending December 31, 2009.
2. Staff be authorized to increase the purchase order with WeirFoulds LLP by \$320,000 to cover all 2009 expenditures and to extend the date to March 31, 2010.

2. PURPOSE

The purpose of this report is to seek Council approval to increase the amount and extend the date of the current purchase order with WeirFoulds LLP to provide the necessary external legal support for vivaNext to year end 2009.

3. BACKGROUND

WeirFoulds was retained in 2002, as legal counsel to the Rapid Transit Project

Through a competitive procurement process, the firm of WeirFoulds was retained as legal counsel to assist the Region in the development and implementation of the Rapid Transit Project, as adopted in Report 4, Clause 1 of the Rapid Transit Public/Private Steering Committee on March 18, 2002.

WeirFoulds has particular strength in its municipal law section, acting on infrastructure projects for municipalities across Ontario, including redevelopment of the downtown core of the cities of Sarnia, London, Guelph, and Kitchener, among others.

WeirFoulds LLP retainer with the Region for the York Region Rapid Transit Corporation has expired

On June 22, 2006, Regional Council approved the continuance of the existing retainer with WeirFoulds LLP for legal services, as required, by the York Region Rapid Transit Corporation for a period of up to 3 years, commencing January 1, 2006.

Since that time, the purchase order has been increased annually, by the amount of the budget approved by Regional Council, with a current remaining balance of \$146,482, exclusive of the 2009 approved budget amount.

The services provided to YRRTC by WeirFoulds continue to be required for specialized work relating to governance, private/public relationships, agreements with senior levels of government, and property matters.

4. ANALYSIS AND OPTIONS

York Region Rapid Transit Corporation continues to require external legal support for the Corporation

The vivaNext initiative is moving forward rapidly and requires continued external legal support, including but not limited to:

- Commenting on further funding and working arrangements with the Provincial government and possibly the Federal government and drafting related agreements.
- Negotiations and legal agreements to cover preliminary engineering, notices to proceed, and design/build contracts.
- Real estate services for property acquisitions, including expropriations, on behalf of York Region.
- York Region Rapid Transit Corporation corporate governance.
- Assisting on the operating agreement between YRRTC and York Region Transit.
- Working on a proposed business relationship between YRRTC/York Region and York University Development Corporation.

The estimated value of work to complete these activities is \$320,000.

Knowledge transfer to internal legal resources is occurring, particularly as it relates to work programme awards and contract administration

Where possible and practical, legal services are being performed internally by Legal Services resources. The addition of a senior solicitor in June 2009 to the York Region Rapid Transit Corporation will help manage the increasing workload to develop agreements and contracts that relate to work programmes and construction. Eventually, this position, working closely with outside legal counsel, will be responsible for contribution and performance agreements between York Region/YRRTC and the funding partners.

5. FINANCIAL IMPLICATIONS

Professional Services in the amount of \$473,000 were budgeted in 2009

A total of \$473,000 was budgeted in 2009 for professional services through the 2009 operating budget.

The York Region Rapid Transit Corporation consumed \$399,998 in legal services with WeirFoulds in 2006. Since then, the annual expenditures have dropped. In 2007, the total expenditure was \$344,824 and in 2008, it was \$239,253. As we enter into performance agreements with Metrolinx in 2009 for the delivery of vivaNext, and finalize design/build contracts for the next stages of work, the need for external legal counsel is expected to approximate \$320,000 for 2009.

Staff recommend the extension of the purchase order to March 31, 2010 to allow for payment of year-end invoices received post December 31, 2009.

6. LOCAL MUNICIPAL IMPACT

There are no local municipal impacts associated with this report.

7. CONCLUSION

WeirFoulds was retained through a competitive process in 2002 to provide legal services to the York Region Rapid Transit Corporation (YRRTC). In 2006, their retainer was extended to January 1, 2009, under the same rate structure as originally proposed in 2002.

The services provided by WeirFoulds continue to be required to complement and augment the legal services provided in-house.

The Senior Management Group has reviewed this report.