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AUTHORITY TO SIGN DESIGN BUILD AGREEMENTS FOR METROLINX FUNDED RAPID TRANSIT PROJECTS

The Finance and Administration Committee recommends the adoption of the recommendation contained in the following report dated April 24, 2012, from the Chief Administrative Officer.

1. RECOMMENDATION

It is recommended that:

1. Council authorize the York Region Rapid Transit Corporation to execute, on behalf of the Region, design build agreements related to rapid transit projects funded by Metrolinx, subject to compliance with the conditions set out in this report.

2. PURPOSE

This report recommends that the York Region Rapid Transit Corporation (“YRRTC”) be authorized to execute two design build agreements with respect to rapid transit projects on Highway 7 and Yonge Street, on behalf of the Region. These projects are scheduled for award within the next few months and are funded by Metrolinx.

3. BACKGROUND

An agreement was entered into between the Region and YRRTC in 2009 to confer certain rights on YRRTC with respect to planning and delivery of the rapid transit system

In June 2009, Council authorized vesting certain powers in YRRTC to enable the corporation to implement the Region’s rapid transit projects with a higher degree of accountability. The corporation’s mandate included strategic planning, managing the procurement process and providing oversight of project work. An agreement was entered into between the Region and YRRTC to reflect the respective roles of the parties. Concurrently, the YRRTC Board was given fuller powers to manage the business of YRRTC rather than reporting through a Regional committee. The Region retained certain powers including approving the business plan and budget and operational responsibility.

YRRTC’s powers include the right to enter into contracts in its own name, provided that the contract relates to a transaction that has been included in the business plan and budget approved by Council. As a practical matter, however, many contracts also require the

Region to be a signatory, resulting in dual reports for approval to Council and to the YRRTC Board. Staff have considered mechanisms to eliminate this duplication and the inherent delays in dual reporting.

4. ANALYSIS AND OPTIONS

In many cases the Region is required to be a party to design build agreements executed by YRRTC

Under the Rapid Transit agreement, YRRTC has been empowered to award and execute project agreements on its own account, subject to certain conditions. In many cases, however, the Region is still required to be a signatory. There are two principal reasons for this requirement:

1. The Region holds title to all lands acquired for the rapid transit projects. Generally, the design builder will therefore require the Region to be a party to the construction contract to ensure the landowner is consenting to the work and also will require certain covenants from the Region as owner.
2. YRRTC does not have substantial financial assets in its own right. Accordingly, third parties will generally require the Region to be a party to the design build agreements to support the financial obligations, including payment of the contract price and provision of performance security.

To date, the Region has been a party to three design build agreements for projects funded by Metrolinx

The Region has to date executed three design build agreements for projects awarded to York Consortium 2002, and funded by Metrolinx, namely:

- Davis Drive (D1) Early Works
- Highway 7 (H3) from Bayview Avenue to Enterprise Drive
- Davis Drive (D1) Yonge Street to Highway 404

In each case, a report was submitted to Council for authority to sign the contract.

The form of these agreements was approved in the VivaNext Procurement Agreement signed by Metrolinx, the Region, YRRTC and the consortium.

There are two remaining projects to be awarded under the VivaNext Procurement Agreement

Two projects are outstanding under the VivaNext Procurement agreement, namely:

- Highway 7 (H2) Vaughan Metropolitan Centre
- Yonge Street (Y2.1) Richmond Hill Centre to Major Mackenzie Drive

The cost confidence process for Highway 7 is underway, with final submissions due on June 5, 2012. The cost confidence process for Yonge Street (Y2.1) is scheduled to begin in Fall 2012. In the normal course, authority would be required from Council to execute these agreements.

It is recommended that YRRTC be authorized to execute the remaining design build agreements on behalf of the Region subject to certain conditions

Staff have considered options to eliminate dual reporting to the YRRTC Board and Council for the remaining projects. It is recommended that YRRTC be authorized to execute the remaining two agreements on the Region's behalf following award. The exercise of this authority should be subject to two conditions: (a) that the agreement is substantially in a form that the Region has previously approved, and (b) that the contract amount does not exceed the amount approved in the Operating Plan and Budget approved by Council. It is anticipated that both these conditions will be met.

The balance of the Metrolinx funded rapid transit projects may be delivered in conjunction with Infrastructure Ontario under their form of Project agreement

The balance of the rapid transit projects (the "Phase 2 projects") may be delivered in conjunction with Infrastructure Ontario's alternate financing delivery model. In such case, it is anticipated that the successful proponent would be required to enter into the form of project agreement utilized by Infrastructure Ontario.

The decision whether Infrastructure Ontario will be delivering the balance of the funded projects will depend upon the outcome of a value for money analysis being carried out by the Province. It is premature to recommend a signing authority in respect of project agreements for the Phase 2 projects until the delivery method has been established. Staff will report in due course on the outcome of this analysis.

Link to Key Council-approved Plans

The recommendations in this report address the following Vision 2051 goals:

- Goal 2 – Liveable Cities and Complete Communities, and,
- Goal 6 – Interconnected Systems for Mobility

5. FINANCIAL IMPLICATIONS

There are no additional financial implications associated with this report.

The design build agreements referenced in this report are being funded under the Provincial MoveOntario 2020 \$1.4 billion funding program.

6. LOCAL MUNICIPAL IMPACT

There are no local municipal impacts associated with this report.

7. CONCLUSION

Council has vested certain powers in YRRTC with respect to the implementation of rapid transit projects. YRRTC has the authority to execute contracts in its own right, however, third parties typically require the Region also to be a signatory. It is recommended that YRRTC be authorized to execute the two remaining agreements on behalf of the Region to streamline reporting on these projects. Staff will report further on the implementation of future segments.

For more information on this report, please contact Janis Ingram, Senior Counsel, YRRTC at Ext. 1045.

The Senior Management Group has reviewed this report.