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FEDERAL FLOW CONTRIBUTION AGREEMENT
RAPID TRANSIT PROJECTS

The Finance and Administration Committee recommends the adoption of the recommendations contained in the following report dated September 16, 2010, from the Commissioner of Finance.

1. RECOMMENDATIONS

It is recommended that:

1. The Region enter into an agreement with Her Majesty the Queen in Right of Canada, as represented by the Minister of Transport, for the provision of funding for Viva Phase 2, Stage 1 Bus Rapid Transit project in the amount of $85,000,000.

2. A By-law be presented to Regional Council to authorize the execution of the contribution agreement.

2. PURPOSE

The purpose of this report is to advise Council of the terms of a federal contribution agreement for Viva Phase 2 rapid transit projects and to recommend execution of the agreement.

3. BACKGROUND

Certain Projects for Viva Phase 2 are to be funded to a Total of $255 Million

In 2007, the federal government announced $85 Million in FLOW funding for rapid transit in York Region. The funding program required that the Region contribute an equal share. The Province of Ontario agreed to contribute an additional $85 Million, for a total of $255 Million.

Originally, it was anticipated that all three parties would be part of a funding agreement. Through discussions with staff at all three levels of government, it was agreed that the federal government and the Region would enter into a bilateral agreement for $170 million, with each party contributing $85 million. The Provincial share would be administered through the same arrangements as the MoveOntario2020 $1.4 billion funding envelope. As well, the $85 million provincial contribution would fully fund a segment of the project.

The project elements and respective capital budgets are:

- Operations and Maintenance Facility – Preliminary Engineering and Design/Build - $99.5 million.
- Cornell Terminal – Design/Build - $26.3 million.
- Supply of 43 articulated BRT vehicles - $44.2 million.

In Fall 2009, YRRTC submitted a business case to Transport Canada to fund 50% of the $170 million budget. On October 16, 2009, the Minister of Transport approved the project. Eligible expenditures as of that date may be claimed towards project expenses for reimbursement.

On June 22, 2010, the Project received Treasury Board Approval.

4. ANALYSIS AND OPTIONS

A Contribution Agreement (the "Agreement") is required to establish the terms and conditions whereby the federal government will reimburse the Region for a part of the eligible costs for the project

The agreement defines the dates within which eligible expenditures will be valid for reimbursement:

- Project approval date: October 16, 2009.
- Time limit for claims: no later than the earlier of three months after the substantial completion date of the final project component and February 28, 2015.
- Program end date: March 31, 2015.

The project is being administered under the requirements of the Canada Strategic Infrastructure Fund.

The projects to be included in this funding envelop are the design and construction of the Operations, Maintenance and Storage Facility in Richmond Hill; final design and construction of Cornell Terminal; and 43 articulated bus rapid transit vehicles. The first twelve buses will be delivered in 2010.

The Agreement sets out the costs that will be eligible for funding as well as those that are ineligible. Eligible costs under the agreement include:

- Capital costs relating to the construction, multi-modal facilities, custom facilities, connectors to inter-modal facilities, ITS and any other infrastructure projects.
- Costs related to signage, lighting, highway markings and utility adjustments.

- Costs of leasing equipment directly related to the construction of the Project.
- Costs of joint communications activities – press releases, press conferences, translation, etc.) and road signage recognition set out in the Communications Protocol.
- Costs of aboriginal consultations.
- Costs of developing and implementing innovative techniques for carrying out the Project.
- Audit and evaluation costs.
- Other costs that are considered to be direct and necessary for the successful implementation of the Project and have been approved in writing prior to expenditure.
- The federal government will also direct up to 15% of its contribution towards planning, design and evaluation costs, including environmental planning, surveying, engineering, architectural supervision, testing and management consulting services.

The following costs will be ineligible for funding:

- Costs incurred prior to October 16, 2009 and after December 31, 2014 (except for audit and evaluation costs which may be claimed up to February 28, 2015).
- Cost of developing a proposal.
- Cost of purchasing land, associated real estate and other fees, financing charges and interest payments on loans.
  - Note: Land purchase costs for the OMSF and Cornell Terminal are funded under MoveOntario2020 QuickWins funding.
- Costs that have been shared under other federal statutes or programs.
- Legal fees.
- Compensatory costs due to construction projects.
- Services or works normally provided by the Region in the course of implementation of the project, except those specified as eligible costs.
- Employee wages and benefits, overhead costs as well as other direct or indirect operating, maintenance and administrative costs incurred by the Region, and more specifically costs relating to survey, engineering, design, architecture, supervision, management and other services delivered directly by permanent Regional employees.

The reporting, auditing and evaluation frameworks must be followed as defined under the Agreement

An annual financial audit must be submitted annually for expenditures and claims, no later than July 31st of each year, for the fiscal period April 1 to March 31.

An audit plan must be submitted no later than November 30th of each year
An annual report, reporting on progress, must be provided by the Region no later than July 31st of each year.

A general compliance audit report must also be submitted to provide assurances that the Region has complied with the Agreement.

In addition to the audits noted above, the federal government may audit all accounts, records and claims for reimbursement and may undertake reviews of the Region's administrative, financial and claim certification processes.

A retrospective analysis prepared by the Region must be submitted by February 28, 2015

The retrospective analysis is based on data collected during the implementation of the project and may be requested for up to five years after the completion of the project.

The retrospective analysis is required to provide data that indicates that the objectives of the program have been accomplished. This may include data regarding employment during construction, reductions in greenhouse gas emissions as a result of converting commuters from vehicle travel to BRT, reduced travel times and increases in ridership.

Project oversight will be through a Management Committee

A four member management committee consisting of a Federal Co-Chair, a Regional Co-Chair, as well as two additional members from each organization, will administer and monitor the Agreement.

All decisions and recommendations must be unanimous and recorded in writing
The federal government requires that the Region's representatives be individuals who are directly involved in the implementation of the projects and in managing the claims. It is suggested that David Clark, Chief Architect, and Susan Tuckey, Chief Finance and Strategy Officer from YRRTC, are the two individuals who meet this criteria and represent the Region.

The Committee's mandate is as follows:

- Review contract award procedures and ensure the principles are respected.
- Monitor the progress of the project to ensure compliance with the Agreement.
- Review claims, review and approve reports and cashflow.
- Amend the cashflow and allocation of project expenditures, as provided for in the Agreement.
- Establish sub-committees, as needed to carry out the Agreement.

The Agreement is also subject to certain qualifications

The Agreement also includes certain qualifications which are typical of federal funding agreements. The funding is subject to a sufficient appropriation in each year and funding may be reduced if appropriations are not approved. Furthermore, there are provisions for payback of funding if the Region disposes of the buses within 10 years or fixed assets within 25 years.

5. FINANCIAL IMPLICATIONS

In 2010, a Total Project Budget Authority (TPBA) of $166.2 million was approved for these projects, of which $83.1 million was identified as requiring debt financing. An analysis of the 2003 and 2007 DC By-Law reserves is underway to determine what portion of the Region's $85 million commitment might be funded through development charges.

The FLOW program requires that we incur costs and submit claims at least annually. Through this process, we receive reimbursement for up to 50% of expenditures claimed, up to a maximum of $85 million. The Region will need to short-term finance these expenditures until such time that the expenditures have been reimbursed.

6. LOCAL MUNICIPAL IMPACT

There is no direct local municipal impact associated with this report.

7. CONCLUSION

The federal government has provided an agreement for provision of FLOW funding in the amount of $85 million. It is recommended that the Region execute the agreement to secure funding for certain Phase 2 rapid transit projects.

For more information on this report, please contact Susan Tuckey, Chief Finance and Strategy Officer at ext. 1015.

The Senior Management Group has reviewed this report.