

To: York Region Rapid Transit Corporation Board of Directors
From: Mary-Frances Turner, President
Subject: **Davis Drive Memorandum of Understanding with the Town of Newmarket respecting the D1 and Y3.2 segments of the vivaNext Rapid Transit Project**

Recommendations

It is recommended that:

1. The Corporation enter into a Memorandum of Understanding (MOU) with the Town of Newmarket that will establish a framework of cost sharing principles to govern cost apportionment between YRRTC and the Town of certain works associated with the preliminary engineering, detail design and construction of the vivaNext rapid transit project to be constructed along Davis Drive from Yonge Street to Highway 404 (the "D1 segment") and along Yonge Street from Mulock Drive to Davis Drive (the "Y3.2 segment").
2. The Corporation's authority to enter into the MOU be conditional upon the Corporation having obtained the approval of Metrolinx to the terms and provisions contained in the MOU.
3. The Chair and the President be authorized to execute the MOU on behalf of the Corporation, subject to the prior review of the Corporation's solicitor.
4. YRRTC staff be authorized and directed to negotiate an agreement with the Town of Newmarket that will apply these cost sharing principles to the various project elements that the parties agree to cost-share and that will prescribe the manner in which each element is to be cost-shared.
5. YRRTC staff to report back to the Board prior to the construction phase of the project on the terms and provisions of such agreement in order to obtain the Board's approval to enter into that agreement.

Purpose

The purpose of this report is to authorize the Corporation to enter into an MOU with the Town of Newmarket that will establish a framework of cost sharing principles to govern cost apportionment between the parties regarding certain works associated with the D1 segment and Y3.2 segment of the vivaNext rapid transit project.

Background

VivaNext Rapid Transit Projects in Newmarket consist of two segments: D1 (on Davis Drive from Yonge Street to Highway 404) and Y3.2 (on Yonge Street from Savage Road to Davis Drive)

- The implementation schedule, as approved by Metrolinx, for the D1 and Y3.2 rapid transit projects is as follows:
 - D1 from 2011 – 2014
 - Y3.2 from 2014 – 2017

In April 2010 the YRRTC Board approved an early works construction package for the D1 segment

- On April 8, 2010, the YRRTC Board of Directors approved the award of an early works construction package on Davis Drive (D1 segment).
- Metrolinx confirmed recently that these works can be funded under the Quick Wins funding envelope.
- The early works package will include the construction of the south side of the new Keith Bridge, the construction of seven retaining walls and other associated work such as clearing, drainage modifications, parking lot reconfiguration and access improvements. The following work is underway:
 - Geotechnical investigation for early works on retaining walls on the D1 segment is underway and will be finished by the end of August 2010
 - Detail design will commence by the end of August. Preliminary design of the retaining walls is well underway
 - Federal Environmental Assessment approval has been secured and York Consortium 2002 is working on securing any other permits and approvals required to start construction

Parties have commenced cost confidence process for the Davis Drive early works package and construction is expected to commence this fall 2010

- The cost confidence process with York Consortium 2002 to arrive at a guaranteed maximum price for the early works construction package was commenced on July 12, 2010.
- According to the agreed upon schedule, York Consortium must submit its proposed guaranteed maximum price on or before October 14, 2010.
- If York Consortium 2002 is awarded this work package, the parties will enter into a design build contract based upon the form of contract negotiated with Metrolinx comprising Schedule “E” to the vivaNext Procurement Agreement and construction of the early works is expected to commence in November 2010.

Completion of the early works construction package will enable key activities to be completed in 2010 in anticipation of the main design build contract in 2011

- The cost confidence process with York Consortium 2002 to arrive at a guaranteed maximum price for the balance of the construction work on the D1 rapid transit project will be underway in October 2010 or shortly thereafter.
- It is expected that if York Consortium 2002 is awarded the work for the main design build contract for the D1 and rapid transit project, construction will commence in the spring 2011.

Analysis

As a consequence of these vivaNext rapid transit projects in Newmarket, the Town of Newmarket has had to advance its capital works program on Davis Drive to accommodate the construction schedule

- Owing to the complexity of this work and both YRRTC and the Town's desire to avoid disruption to the new rapidways and streets in the years after their implementation, YRRTC and the Town have worked together to identify public works that can be undertaken proactively in conjunction with the D1 and Y3.2 rapid transit projects.
- The D1 rapid transit project has necessitated that the Town advance its underground utilities works program sooner than was originally scheduled under its capital works program.

The Town of Newmarket has retained R.V. Anderson Associates to facilitate and coordinate the Town's input and approvals to ensure the timely resolution of project issues

- To ensure the timely coordination of decision-making regarding, and the securing of necessary approvals for the projects, the Town of Newmarket retained R.V. Anderson Associates to act as the primary liaison between the Town and York Region Rapid Transit Corporation (YRRTC). R.V. Anderson attends the Bus Rapid Transit Design and Construction meetings on a regular basis to provide input into the decision-making process on behalf of the Town, to stay abreast of the status of each project, and to facilitate securing of Town approvals for each project.
- During the preliminary engineering, detail design and construction phases of each project, it is anticipated that input will be provided by the Town of Newmarket from a number of disciplines including:
 - Community Services – Engineering, Public Works Services, Capital Projects and Asset Management Services.
 - Legal and Development Services – Building & By-laws, Planning, Legal Services.

The responsibilities of the Town's Representative will be set out in the proposed MOU between the Town and YRRTC

- The primary responsibilities of the Town's representative will be set out in the proposed MOU between the Town and YRRTC. These will include but not be limited to:
 - Facilitating the Town's input on urban design treatments and heritage elements
 - Coordinating site plan reviews and detailed design reviews
 - Coordinating utility relocation strategy and design with Newmarket Hydro and other local utilities
 - Coordinating permissions to enter on properties along the corridor and other property-related issues such as access, easements and encroachment agreements
 - Coordinating building permit applications
 - Coordinating communications with stakeholders in consultation with YRRTC's Community Liaison Coordinator
 - Facilitating Town approvals.

The parties wish to establish a framework of cost sharing principles in the proposed MOU

- Over the past few months, YRRTC staff and the Town have been engaged in dialogue concerning a framework of cost sharing principles that will help them determine a cost-sharing methodology of the project elements that are to be cost-shared.
- As the detail design of the project proceeds, the parties will better understand the elements that are to be cost-shared between them. The parties would then seek authorization from their respective Board or Council to enter into an agreement which would prescribe the cost-shared elements and the manner in which each element would be cost-shared.

The cost sharing principles between YRRTC and the Town will ensure consistency of approach for cost sharing activities

- The parties have agreed to the following general cost sharing principles:

Principle 1: If, as a direct result of the project, the Town's existing infrastructure will be impacted (eg. abandoned, altered, disconnected, relocated, replaced, repaired or rehabilitated) this will be a project expense.

Principle 2: If it is not the direct result of the project but rather the Town requires that its existing infrastructure be abandoned, altered, disconnected, relocated, replaced, repaired, or rehabilitated, the Town will be responsible for the cost of same.

Principle 3: If, as a direct result of the project, the Town's existing infrastructure will be impacted and the Town wishes to upgrade, replace or rehabilitate, or enhance it above the Metrolinx approved standard in the project's approved scope of work, the Town will be responsible for the incremental cost of same.

- Examples of items whose cost would be considered a project cost include: construction of sidewalks, sanitary sewer relocations, and roadway lighting. However, if the Town requested that any such item be constructed to a standard higher than the Metrolinx approved standard in the scope of work, in accordance with Principle 3 above, the Town would pay for the incremental cost.
- Cost apportionment would be based on the tendered value of the works, plus a percentage mark-up to cover design and other indirect costs.

Metrolinx agrees that the retainer of R.V. Anderson Associates by the Town of Newmarket is an eligible project cost

- Metrolinx has agreed that the retainer of R.V. Anderson Associates is an eligible project cost. This retainer was essential to ensure that implementation of the D1 and Y3.2 projects stays on schedule.

The proposed MOU does not pertain to land acquisitions for the projects nor to either party's responsibility respecting maintenance of the infrastructure

- Any land transactions between the parties respecting the projects and the manner in which the parties will share the responsibilities of maintenance of the infrastructure will form the subject matter of separate legal agreements between the Town and the Region. To the extent possible, it is anticipated that a principle will be developed to recognize that maintenance of the rapidways and boulevards will aim for both a transit and pedestrian-friendly outcome.

Conclusion

YRRTC and the Town of Newmarket wish to enter into an MOU that sets out guiding principles that will establish a cost-sharing framework for project work in the D1 and Y3.2 vivaNext rapid transit projects. This report seeks authorization to enter into this MOU.

For more information on this report, please contact Janis Vanderburgh, Senior Counsel, York Region Rapid Transit Corporation at 905-886-6767, Ext. 1045.

Mary-Frances Turner
President

September 7, 2010