Meeting of the Board of Directors
on September 16, 2010

To:	York Region Rapid Transit Corporation Board of Directors
From:	Mary-Frances Turner, President
Subject:	**Federal FLOW Contribution Agreement Update – Viva Phase 2, Stage 1 Bus Rapid Transit Project**

Recommendation

It is recommended that:

1. The York Region Rapid Transit Corporation (YRRTC) Board of Directors receive this report for information.

Purpose

- To provide an update and overview of the York Region – Canada Contribution Agreement for the:
  - Design and Construction of the Operations, Maintenance and Storage Facility
  - Construction of the Cornell Terminal
  - 43 60 foot Articulated Rapid Transit Buses
- This report provides an overview of the Agreement provisions, as they relate to the Region's obligations as well as cost eligibility.

Background

In 2007, the Federal Government announced $85 million in FLOW funding

- $85 million in FLOW funding was to be matched by an equal $85 million contribution from York Region. The Province of Ontario agreed to add an additional $85 million for a total of $255 million.

Shift from tri-party agreement to bilateral agreement with Province's share to be administered under the $1.4 billion funding (MoveOntario 2020)

- Originally, it was anticipated that all three parties would be part of the agreement. Through discussions with staff at all three levels of government, it was agreed that the Federal government and York Region would enter into a bilateral agreement for $170 million, with each party contributing $85 million.

- Administration of the $85 million Provincial share would be done through the same arrangements as the MoveOntario 2020 $1.4 billion funding envelope and would fully fund a segment of the project.

In fall 2009, YRRTC submitted a business case to Transport Canada to fund 50% of a $170 million budget

- The project elements and respective capital budgets were:
  - 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

- On October 16, 2009, the Minister of Transportation 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.

Analysis

A Contribution Agreement ("Agreement") is required to establish the terms and conditions whereby Canada will reimburse York Region a portion of the Eligible Costs for the project

- 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.

- A report is going to Finance and Administration Committee on September 16, 2010, with recommendations for authorization to execute the Agreement.

The comprehensive Agreement is broken down into a number of sections

- Establishes obligations of the parties, how they will interact, and all reporting and audit requirements.

- Addresses asset disposal if such occurs prior to the end of their useful life.

- Includes an indemnification clause whereby the Region will indemnify Canada, except to the extent where Canada is found to be negligent.

- A number of schedules define specific project elements in more detail:
  - Schedule A – Eligible and Ineligible Costs
  - Schedule B – The Project – Project description, Canada's contribution and breakdown of Expenditures from 2009 to 2015
  - Schedule C – Audit Framework
  - Schedule D – Reporting and Evaluation Framework
  - Schedule E – Communications Protocol
  - Schedule F – Solemn Declaration of Substantial Completion
  - Schedule G – Aboriginal Consultations

- This report provides an overview of the Agreement provisions, as they relate to the Region's obligations, as well as cost eligibility.

Reporting, Auditing and Evaluation Frameworks must be followed as defined under the Agreement

- 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.

- Audit plan must be submitted to Canada no later than November 30th of each year.

- Annual progress report must be provided to Canada no later than July 31st of each year.

- General compliance audit report to provide assurances that the Region has complied with specific sections of the Agreement.

- Canada 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

- Retrospective analysis may be requested for up to five years after project completion.

- Expected to provide data that indicates that the objectives of the program have been accomplished, including:
  - employment during construction
  - reductions in greenhouse gas emissions
  - reduced travel times, increases in ridership, etc.

Project oversight will be through a Management Committee

- Four member management committee consisting of Federal and Regional Co-Chairs, and one additional member from each organization.

- All decisions and recommendations must be unanimous and documented.

- Region's representatives that meet federal requirements of being directly involved in project implementation and in managing the claims shall be:
  - David Clark, Chief Architect
  - Susan Tuckey, Chief Finance and Strategy Officer

- The Management Committee's mandate is as follows:
  - Review contract award procedures and ensure the principles are respected
  - Monitor project progress
  - Review claims, review and approve reports and cashflow
  - Amend the cashflow and allocation of project expenditures
  - Establish sub-committees, as required
  - Ensure implementation of Agreement provisions and schedules

Communications

- Eligible costs relate to joint communications activities; ie. press releases, press conferences, translation, etc., and road signage recognition as set out in the Communications Protocol.

By-Law or Resolution is required

- Prior to funding, the Region must provide a certified copy of the By-Law or Resolution authorizing the entering into the Agreement and execution of all documents.

- Provided that the recommendations presented to Finance and Administration Committee on September 16, 2010 are adopted, approval through Regional Council is anticipated on September 23, 2010.

Eligible costs are defined in the agreement

- YRRTC will be responsible for managing all project expenditures and will recover 50% of all eligible project expenditures from the Federal Government.

Conclusion

- A contribution agreement between York Region and Canada is necessary to allow for the reimbursement of costs incurred for the procurement of buses, and implementation of the Cornell Terminal and Operations, Maintenance and Storage Facility.

- This report identifies the key components of the Agreement and the requirements of York Region to comply with the requirements of the Agreement.

- Provided that the recommendations presented to Finance and Administration Committee on September 16, 2010 are adopted, approval to execute the Agreement is anticipated on September 23, 2010.

For more information on this report, please contact Susan Tuckey, Chief Finance and Strategy Officer and Treasurer, York Region Rapid Transit Corporation at 905-886-6767, Ext. 1015.

Mary-Frances Turner
President

September 7, 2010

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