

To: **York Region Rapid Transit Corporation Board of Directors**

From: **Mary-Frances Turner, President**

Subject: **Authority to Execute the Amendment to Metrolinx Master Agreement for Infrastructure Ontario Highway 7 (H2) Rapid Transit Project**

Ref: **YORK#6003318**

Recommendations

It is recommended that:

1. The Board authorize an amendment to the Master Agreement with Metrolinx to include the vivaNext H2 bus rapid transit project along Highway 7 in the City of Vaughan and the Town of Richmond Hill, to be procured under the Infrastructure Ontario Alternative Financing and Procurement model.

Purpose

- The purpose of this report is to seek Board authority for the Corporation to enter into an agreement (the “**Amending Agreement**”) to amend the Master Agreement among Metrolinx, The Regional Municipality of York (the “**Region**”) and the Corporation to include the vivaNext H2 bus rapid transit design-build-finance project (the “**H2 Project**”) that will be procured under Infrastructure Ontario’s Alternative Financing and Procurement model (“**AFP Model**”)
- The Amending Agreement will set out the rights and obligations of the parties for the H2 Project that will be procured by Infrastructure Ontario and delivered by the Corporation as project manager

- The Report of the Chief Administrative Officer seeking Regional Council authorization to amend the Master Agreement was presented to the Finance and Administration Committee on April 16, 2015 (Attachment 1)

Background

The Metrolinx Master Agreement among Metrolinx, the Region and the Corporation established the original funding and delivery framework for the vivaNext bus rapid transit projects and set out the parties' respective roles and responsibilities relating to design, construction and implementation

- The Metrolinx Master Agreement dated October 1, 2009 (the “**Master Agreement**”) governs the relationship between Metrolinx, the Region and the Corporation for the funding, construction, operation and maintenance of the VivaNext bus rapid transit projects
- The Corporation received Board authority to enter into the Master Agreement at the September 10, 2009 Board of Directors’ Meeting subject to the form of agreement being satisfactory to the Chair of the Board and the Corporation’s Solicitor
- The business framework respecting the Master Agreement was presented at the February 3, 2011 Board of Directors’ Meeting. Metrolinx, as owner of the project assets, will retain ultimate authority for the scope of the rapid transit projects and control of the project assets, subject to the Region’s continuing ownership and jurisdiction over the rapidway and road allowance, and the Corporation will oversee project delivery as program manager
- The Corporation as program manager is responsible for the overall delivery of bus rapid transit projects and is accountable for planning, design, engineering and construction. The Corporation manages day to day contract administration and supervision of contractors and consultants, and ensures compliance with schedules and budget requirements. A more detailed discussion of the governance structure is in Report of the Chief Administrative Officer, Clause No. 8 in Report No. 2 of the Finance and Administration Committee, which was adopted, without amendment, by Regional Council Meeting on February 17, 2011
- In the H2 Project design-build-finance agreement (the “**Project Agreement**”), the Corporation is identified as the Metrolinx Representative, responsible for the administration and management of the contract. This is consistent with the role set out in the Master Agreement for the Corporation

- Unlike other vivaNext bus rapid transit projects, the H2 Project is procured under Infrastructure Ontario's AFP Model with Infrastructure Ontario (IO) acting in an advisory role. IO will continue in an advisory role following contract award

The H2 Project consists of the design and construction of bus rapidways along two segments of the Highway 7 Viva east-west rapidway corridors in the City of Vaughan and the Town of Richmond Hill

- H2-West starts from west of Bruce Street to Interchange Way/ Edgeley Boulevard in the City of Vaughan (approximately 4.6 km in length)
- H2-East starts at the intersection of Highway 7 and Centre Street and extends easterly on Centre Street to the intersection of Bathurst Street, then northerly on Bathurst Street to the connecting road to Highway 7, following the connecting road to Highway 7, and easterly on Highway 7 to Yonge Street, located in the City of Vaughan and Town of Richmond Hill (approximately 9.3 km in length)
- 85 properties were identified as having land requirements necessary to facilitate construction of portions of the H2 Project, the majority of which will be acquired through expropriation as approved by Regional Council in early 2015. Possession of the lands is anticipated by early Fall 2015

The H3.4 Segment is no longer part of this procurement

- In December 2014, the H3.4 segment (Enterprise Drive from Birchmount Road to east of Kennedy road) was removed from the H2 Project. The H3.4 segment will be procured and implemented as a separate project at a later date. YRRTC staff will report further on the implementation of H3.4
- The Amending Agreement will apply to the H2 Project and not the H3.4 segment

Procurement timelines and key milestone dates for the H2 Project are established

RFP Release	September 2014
RFP Close and Submission	April 2015
Metrolinx Board Approval	June 2015
Identification of Preferred Proponent	July 2015
Contract Award	September 2015
Project Completion	November 2020

Analysis

The Master Agreement specifically excluded from its application a project delivered under the Alternative Financing and Procurement (AFP) model

- In 2012, the Province of Ontario designated the H2 Project as an AFP project to be delivered by Infrastructure Ontario as a design-build-finance project
- The delivery and funding framework in the Master Agreement currently does not apply to a project that is designated by the Province of Ontario as a project to be delivered under an AFP Model
- Amendments are necessary to address the H2 Project which is procured under Infrastructure Ontario's AFP Model and delivered through a Project Agreement signed by Metrolinx and the successful proponent
- Amending the Master Agreement will involve amendments to certain schedules to the Master Agreement which set out processes and protocols for project delivery respecting procurement, communication, real estate acquisition, financial reporting and operating principles

As the Region is not a signatory to the Project Agreement, the Amending Agreement also addresses certain protections for the Region and the Corporation in its role as project manager

- Unlike the legal arrangements for the other vivaNext bus rapid transit projects, the Region will not be a signatory to the Project Agreement
- The amendments to the Master Agreement will have the legal effect of binding Metrolinx to protect certain rights that the Region and the Corporation acting as project manager would have had the Region signed the Project Agreement
- Certain rights that Metrolinx will protect for the Region and the Corporation include but are not limited to the following:
 - Having the beneficiary rights to the Design-Builder's indemnities, releases and insurance claims
 - Protection from environmental issues arising from construction
 - The project's scope and municipal work to retain the design and aesthetic requirements consistent with other vivaNext projects

- The application of labour, products and performance warranties and ability to rely on them upon project completion
- The application of the indemnity of the owner

These rights would be held in trust by Metrolinx for the benefit of the Region and the Corporation in its role as project manager

- By way of a trust declaration contained in the Project Agreement, Metrolinx has agreed to hold in trust for the Region and the Corporation acting as project manager certain legal rights the Region would have had it signed the Project Agreement, and to enforce performance of these rights on behalf of the Region and the Corporation
- Metrolinx's declaration of trust is also expressed in the Amending Agreement
- Metrolinx agrees to notify and consult with the Corporation prior to any amendments to the Project Agreement that would affect the Corporation's rights

Finance

- The base capital costs of the H2 Project are covered within the overall \$1.755B Metrolinx funding of the vivaNext bus rapid transit projects. These base costs include:
 - Property
 - Utility Relocations
 - Construction
 - Project Management
- The financing costs and the Infrastructure Ontario fees related to the AFP procurement model are funded through a separate budget at Metrolinx

Conclusion

- The Amending Agreement that amends the Master Agreement among Metrolinx, the Region and the Corporation will establish the governance and delivery of the H2 Project to be procured as a design-build-finance project using Infrastructure Ontario's Alternative Financing and Procurement model
- Staff are satisfied that Metrolinx's declaration of trust and the amendments to the Master Agreement together sufficiently address and protect the Corporation's substantive interests under the Project Agreement

For more information on this report, please contact Paul May, Chief Engineer, York Region Rapid Transit Corporation at 905-886-6767, Ext. 71030.

Mary-Frances Turner
President

April 16, 2015

Attachment (1)

The Regional Municipality of York

Committee of the Whole
Finance and Administration
April 16, 2015

Report of the
Chief Administrative Officer

Amendment to Metrolinx Master Agreement for Infrastructure
Ontario - Highway 7 (H2) Rapid Transit Project

1. Recommendations

It is recommended that:

1. Council authorize an amendment to the Master Agreement with Metrolinx to include the vivaNext H2 rapid transit project along Highway 7 in the City of Vaughan and the Town of Richmond Hill, to be procured under the Infrastructure Ontario Alternative Financing and Procurement model.

2. Purpose

This report seeks authorization to enter into an agreement (the “**Amending Agreement**”) to amend the Master Agreement among Metrolinx, The Regional Municipality of York (the “**Region**”) and York Region Rapid Transit Corporation (the “**Rapid Transit Corporation**”). The Amending Agreement will set out the rights and obligations of the parties for the vivaNext H2 rapidway design-build-finance project that will be procured by Infrastructure Ontario and delivered by the Rapid Transit Corporation, as project manager of the vivaNext rapidway projects.

3. Background

The October 1, 2009 Master Agreement established the original funding and delivery framework for the vivaNext rapid transit projects funded by Metrolinx

The Region was authorized by Council to enter into the Master Agreement dated October 1, 2009 with Metrolinx and the Rapid Transit Corporation to establish the funding and delivery framework for the vivaNext rapid transit projects funded by Metrolinx. (Report of the Chief Administrative Officer, Clause No. 8 in Report No. 2 of the Finance and Administration Committee, adopted, without amendment, by Council, on February 17, 2011). The Master Agreement codifies the parties' respective roles and responsibilities for Metrolinx's funding obligation to the vivaNext program of \$1.4 billion (escalated to \$1.755 billion).

Pursuant to the Master Agreement, the Rapid Transit Corporation, as project manager of the vivaNext rapidway projects, is currently managing the delivery of the following design-build projects and as depicted in Attachment 1 to this report:

- D1: Davis Drive from Yonge Street to Highway 404
- H3: Highway 7 from Richmond Hill Centre to Warden Avenue
- H2 (Vaughan Metropolitan Centre): Along Highway 7 from west of Edgeley Road to east of Bowes Road.
- Yonge Street Project (Y2.1, Y2.2., and Y3.2) comprised of three distinct segments on Yonge Street from Highway 7 up to north of the Davis Drive intersection

As described in greater detail in the February 2011 Council report, the schedules to the Master Agreement contain processes and protocols for delivery of the vivaNext projects. These schedules include the establishment of a project charter and key protocols respecting procurement, communications, real estate acquisition, financial reporting and operating principles.

The Master Agreement specifically excluded from its application a project delivered under the Alternative Financing and Procurement model used by Infrastructure Ontario

When the Region entered into the Master Agreement it was not yet known whether any of the vivaNext rapid transit projects funded by Metrolinx would be delivered by Infrastructure Ontario, under its Alternative Financing and Procurement (AFP) model. Thus, the delivery and funding framework in the

Amendment to Metrolinx Master Agreement for Infrastructure Ontario
Highway 7 (H2) Rapid Transit Project

Master Agreement currently does not apply to a project that is designated by the Province of Ontario as a project to be delivered under the AFP model.

In 2012, the Province of Ontario designated the H2 vivaNext rapidway project as an Alternative Financing and Procurement (AFP) project to be delivered by Infrastructure Ontario as a design-build-finance project

The H2 vivaNext project (the “**H2 Project**”) is located along two segments of Highway 7 in the City of Vaughan and Town of Richmond Hill, west of Yonge Street. The H2-West segment starts from west of Bruce Street to Interchange Way/Edgeley Boulevard (approximately 4.6 km in length). The H2-East segment starts at the intersection of Highway 7 and Centre Street and extends easterly on Centre Street to the intersection of Bathurst Street, then northerly on Bathurst Street to the connecting road to Highway 7, following the connecting road to Highway 7, and easterly on Highway 7 to Yonge Street (approximately 9.3 km in length). The H2 Project is depicted in Attachment 2 to this report.

A total of 85 properties were identified as having land requirements necessary to facilitate construction of portions of the H2 Project. The majority will be acquired through expropriation as approved by Council in January and March 2015. Possession of the lands is anticipated in the late summer/early fall 2015.

In June 2014 staff sought Regional Council’s pre-approval to negotiate and execute the Amending Agreement

In June 2014, staff obtained Council’s authorization to amend the Master Agreement to include the H2 Project. The authorization from Council was sought prior to the negotiation of the Amending Agreement because Metrolinx had made the release of the Request for Proposals and draft Project Agreement conditional upon the execution of the Amending Agreement.

When it became apparent that the negotiation of the Amending Agreement would require more time than initially thought, Metrolinx agreed to the release of the Request for Proposals (the “**RFP**”) and the RFP was issued to the three pre-qualified proponents on September 4, 2014.

Amendment to Metrolinx Master Agreement for Infrastructure Ontario Highway 7 (H2) Rapid Transit Project

Subsequently, despite resolving most issues, the parties could not agree to one fundamental condition of Council's June 2014 authorization, as discussed in Section 4 of this report. Accordingly, staff believe it is necessary to report back to Council to enter into the proposed Amending Agreement. In addition, there have been other important changes to the contractual framework between the parties and the role of Infrastructure Ontario, from that set out in the June 2014 report, which are detailed in Section 4 of this report.

As the Region is not a signatory to the Project Agreement with the successful proponent, the amendments to the Master Agreement are required to protect the Region's interests

The Rapid Transit Corporation will, as it has in all of the other vivaNext projects, be responsible for managing the delivery of the H2 Project. Unlike these other projects however the Region will not be a signatory to the Project Agreement with the successful proponent. The amendments to the Master Agreement will have the legal effect of binding Metrolinx to protect certain rights that the Region would have had if it signed the Project Agreement.

Certain rights that Metrolinx will protect for the Region include but are not limited to the following:

- Having the beneficiary rights to Project Co.'s indemnities, releases and insurance claims;
- Protection from environmental issues arising from construction;
- The project's scope and municipal work to retain the design and aesthetic requirements consistent with the vivaNext projects;
- The application of labour, products and performance warranties and ability to rely on them upon project completion; and
- The application of the indemnity of the owner.

The H3.4 vivaNext project is no longer included in this procurement

Council's June 2014 authorization contemplated that the amendment to the Master Agreement would include the H3.4 vivaNext project in Markham (depicted in Attachment 1) along with the H2 Project. Metrolinx and the Rapid Transit Corporation have agreed to remove the H3.4 vivaNext project from this procurement to refine certain technical aspects of that project. Thus the amendment sought herein will apply only to the H2 Project.

Status of the RFP Process for the H2 Project

The following list sets out the current key milestone dates for the H2 Project:

- April 27, 2015 – RFP close date and proposal submission deadline
- July 31, 2015 – Identification of the preferred proponent
- September 17, 2015 – Execution of the Project Agreement

4. Analysis and Options

Since the original authorization in June 2014, there have been material changes to the information provided to Regional Council

Council's original authorization precluded Metrolinx from making changes to the Project Agreement that affected the Region without first obtaining the Region's consent. During the negotiations, Metrolinx maintained its ultimate authority as owner of the project assets and required that it retain its unfettered right to amend the Project Agreement. Metrolinx has since agreed to notify and consult with the Region prior to any amendments to the Project Agreement that would affect the Region's rights.

Metrolinx has agreed to protect the Region's rights through an express trust declaration in the Project Agreement

By way of a trust declaration contained in the Project Agreement Metrolinx has agreed to (1) hold in trust for the Region certain legal rights it would have had if it had signed the Project Agreement, as previously discussed in Section 3 above; and (2) enforce performance of these legal rights on the Region's behalf.

While the manner in which the Region's interests are being protected varies from the original June 2014 authorization, staff is satisfied that Metrolinx's declaration of trust will protect the Region's substantive interests under the Project Agreement.

Amendment to Metrolinx Master Agreement for Infrastructure Ontario Highway 7 (H2) Rapid Transit Project

A separate agreement between Metrolinx, the Region and Infrastructure Ontario is no longer needed to secure the Region's rights under the Project Agreement

When staff reported in June 2014, it was understood that Infrastructure Ontario and Metrolinx would sign the Project Agreement with the successful proponent. Subsequently the Province has indicated that Infrastructure Ontario will not be a signatory to the Project Agreement and that only Metrolinx will sign the Project Agreement with the successful proponent. Infrastructure Ontario's role in the H2 Project will include the procurement of the successful proponent and a continuing advisory role following contract award.

Given the extent of Infrastructure Ontario's participation in the H2 Project, the June 2014 authorization that contemplated the Region entering into a separate agreement involving Infrastructure Ontario is no longer applicable.

Link to key Council-approved plans

The vivaNext program is a key component of the Region's Transportation Master Plan to provide a sustainable transportation system. The rapid transit system will give another reliable travel choice to residents and employees in York Region. The H2 Project links to the following Vision 2051 goals:

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

5. Financial Implications

The cost of the H2 Project is covered within the overall Metrolinx \$1.755 billion funding for the vivaNext program.

6. Local Municipal Impact

The rapidways and related infrastructure under the H2 Project in the City of Vaughan and the Town of Richmond Hill is expected to be substantially completed by the end of 2020.

Amendment to Metrolinx Master Agreement for Infrastructure Ontario
Highway 7 (H2) Rapid Transit Project

7. Conclusion

The Amending Agreement that amends the Master Agreement among Metrolinx, the Region and the Rapid Transit Corporation will establish the governance and delivery framework of the H2 Project to be procured as a design-build-finance project using Infrastructure Ontario's Alternative Financing and Procurement model.

For more information on this report, please contact Janis Ingram, Senior Counsel at ext. 71045.

The Senior Management Group has reviewed this report.

Approved for Submission

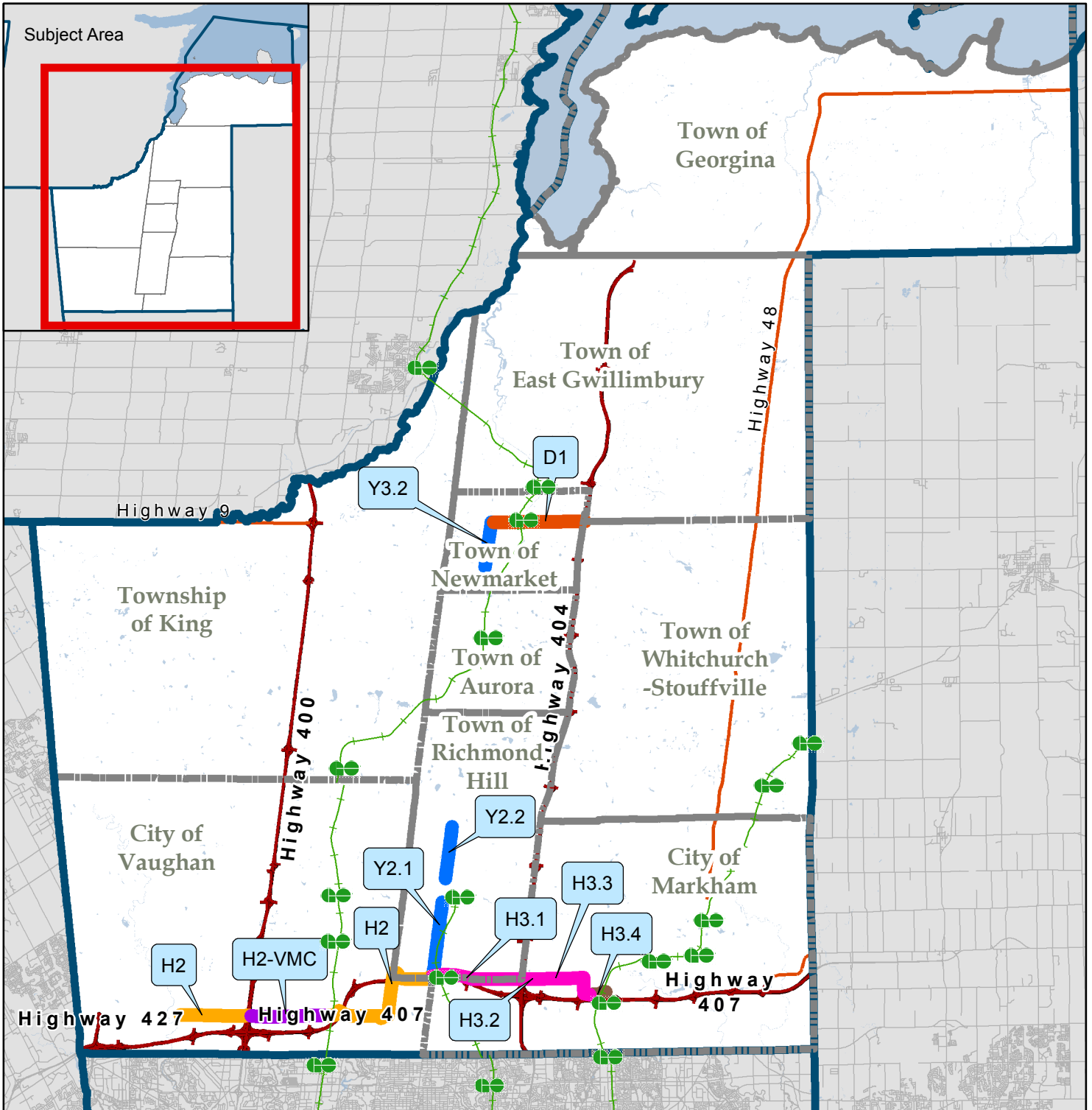
Bruce Macgregor
Chief Administrative Officer

April 2, 2015

Attachments (2)

#5899744

Accessible formats or communication supports are available upon request



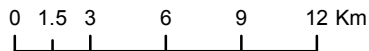
VivaNext
 Viva Next Projects (April 1, 2015)











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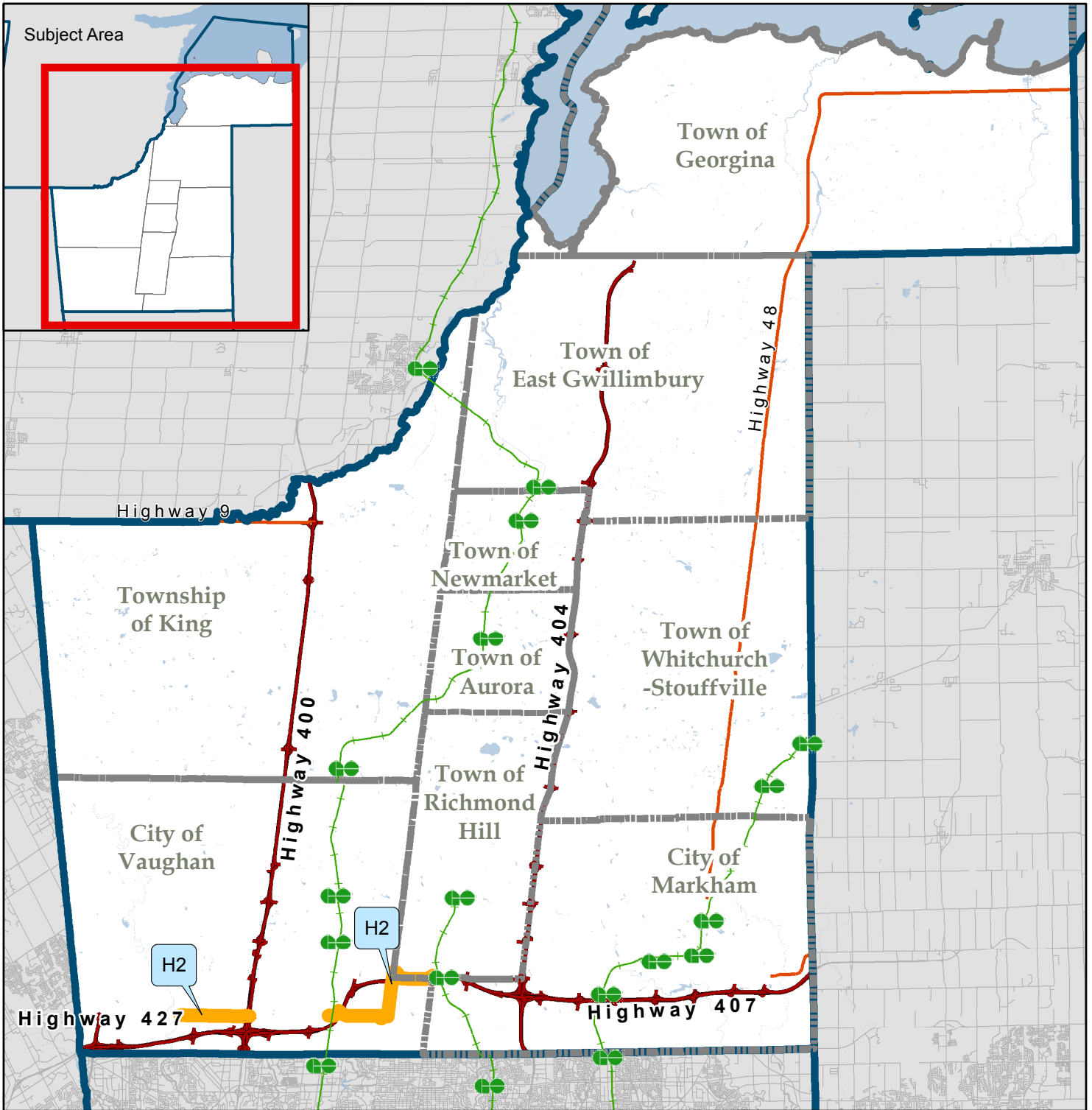
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Legend

-  Project ID
-  Rapidway (Open)
-  Rapidway (2011-2015)*
-  Rapidway (2012-2016)*
-  Rapidway (2014-2018)*
-  Rapidway (2015-2019)*
-  Rapidway (Tbd-2021)*
-  GO Station/RailLine

* Subject to change



VivaNext

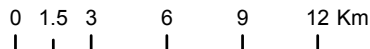
Viva Next H2 Project (April 1, 2015)



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Legend

- Project ID
- Rapidway H2 Project*
- GO Station/Rail Line
- Freeway
- Provincial Highway
- Regional Boundary
- Municipal Boundary

* Subject to change