

To: York Region Rapid Transit Corporation Board of Directors

From: Mary-Frances Turner, President

Subject: Architectural Services Agreement, Vaughan
Metropolitan Centre Bus Terminal

Ref: YORK-#5426370

Recommendations

It is recommended that:

1. The Board endorse the terms of an agreement between Diamond Schmitt Architects Incorporated (“DSAI”) and Penguin-Calloway (Vaughan) Inc. (“SmartCentres”) for the provision of architectural services related to the design and construction of the Vaughan Metropolitan Centre Bus Terminal.
2. The Board endorse the direction that the agreement between DSAI and SmartCentres be assigned by SmartCentres to York Region Rapid Transit Corporation.

Purpose

The purpose of this report is to:

- Confirm the Board’s endorsement to authorize the terms of an architect’s agreement entered into between DSAI and SmartCentres, and to authorize the assignment of that agreement from SmartCentres to York Region Rapid Transit Corporation (“YRRTC”).

Background

The Region acquired certain lands in order to construct and operate part of the Toronto-York Spadina Subway Extension and the Vaughan Metropolitan Centre Bus Terminal

- In 2011, the Region expropriated lands from SmartCentres in order to facilitate the construction and operation of a portion of the Toronto-York Spadina Subway Extension (the “TYSSE”).
- In 2012, the Region entered into a Transfer Agreement which was based on previous Minutes of Settlement and Principles of Understanding. In the Transfer Agreement SmartCentres agreed, amongst other things, to transfer additional lands to the Region to facilitate the construction of the TYSSE, the Vaughan Metropolitan Centre Bus Terminal and a below grade pedestrian tunnel between the subway and the bus terminal.

The Transfer Agreement provides that SmartCentres will enter into an Architect’s Agreement with DSAI for the design of the bus terminal

- The Transfer Agreement obligates SmartCentres, with input from the Region, to lead and oversee the engineering and design of the bus terminal and to enter into an architect’s agreement with DSAI in a form that is acceptable to the Region. As part of the real estate arrangements for the bus terminal, SmartCentres requested that DSAI continue to provide its services to design the bus terminal.

SmartCentres was sensitive to the exposure and visibility that the bus terminal would have to the surrounding lands, and required the added assurances that the design integrity and quality of the building would be carried forward by DSAI in whom it had faith and who were instrumental in the development of the master plan vision.

- SmartCentres paid the costs for DSAI to develop the bus terminal concept. The Region is responsible for paying all the costs incurred since June 20, 2012 to design and construct the bus terminal, including the costs of architectural services provided by DSAI. Additionally, the Region is required to pay SmartCentres a 5% management fee on the amounts invoiced by DSAI until such times as the Architect’s Agreement is assigned to the Region, or if the Region directs, to YRRTC.
- The initial schematic design for the bus terminal was completed in November, 2012.

The agreement with DSAI will be assigned

- The Transfer Agreement requires SmartCentres to assign the agreement with DSAI to the Region or, if the Region directs, to YRRTC upon the completion of the design and engineering drawings and tender documents and prior to the tender and award of the contract to construct the bus terminal.

Analysis

The terms of the Architect's Agreement were agreed to in the Transfer Agreement

- The Transfer Agreement incorporated a term sheet setting out the terms to be included in the agreement with DSAI. YRRTC, SmartCentres and DSAI have negotiated the terms to be included in the agreement with DSAI. The agreement which has been negotiated, is consistent with the term sheet in the Transfer Agreement.
- The agreement contains the following terms:
 1. SmartCentres is the client and will assign its interests to the Region, or if the Region directs, to YRRTC. DSAI has agreed to the assignment.
 2. DSAI will prepare the schematic design documents and construction drawings for the design and construction of the bus terminal, including the architectural, structural, mechanical and electrical systems. DSAI also will report on the progress and quality of the construction work once construction of the bus terminal begins.
 3. The fees to be paid to DSAI are 9.85% of the costs to construct the bus terminal and are estimated to be \$1.8 million, excluding HST and includes in addition to the prime consultant team, specialist sub-consultants retained and coordinated by DSAI. The estimated construction cost of the bus terminal is \$18.6 million, excluding HST.

The DSAI fees have been reduced to take into consideration the sunk costs for conceptual design incurred by SmartCentres, for which recoveries are not being sought from the Region and for the services provided by YRRTC's Owner's Engineer during the construction administration of the project.

4. Construction costs will be estimated by a cost consultant retained by DSAI and verified by YRRTC's Owner's Engineer at each identified stage in the design process and fees adjusted on a percentage basis for subsequent stages of the work going forward up to the tendering of the construction

contract. After the tender of the construction contract, fees will be based on actual construction costs. Fees will not be retroactively adjusted.

5. DSAI will submit invoices monthly to SmartCentres for payment for work performed. SmartCentres will forward the invoices received to the Region. The Region will pay SmartCentres for fees owing for DSAI's services and SmartCentres will in turn remit these fees to DSAI. DSAI's invoices are subject to the approval of the Region, or YRRTC if and when the agreement is assigned to YRRTC. SmartCentres has no liability to DSAI for its fees at any time, either before or after the agreement is assigned. The Region will be responsible for the cost of the work performed on the project by DSAI and its sub-consultants.
6. YRRTC's Owner's Engineer (the "OE") will jointly administer the construction contract with DSAI. The OE will administer the construction contract with respect to progress payments, change orders, document control, substantial performance and hand-over. DSAI will provide site inspection, quality control, interpretation of drawings, review of shop drawings and identification of deficiencies.

A chart detailing the responsibilities of the OE and DSAI during the contract administration phases of the project is appended to the agreement.

7. When the agreement is assigned to the Region, or YRRTC as the case may be, SmartCentres will be released from all obligations under the agreement.
8. The Region, or YRRTC as the case may be, can terminate the agreement for any reason whatsoever upon seven days' written notice.

Assigning the architect's agreement to YRRTC would permit YRRTC to administer the Architect's Agreement

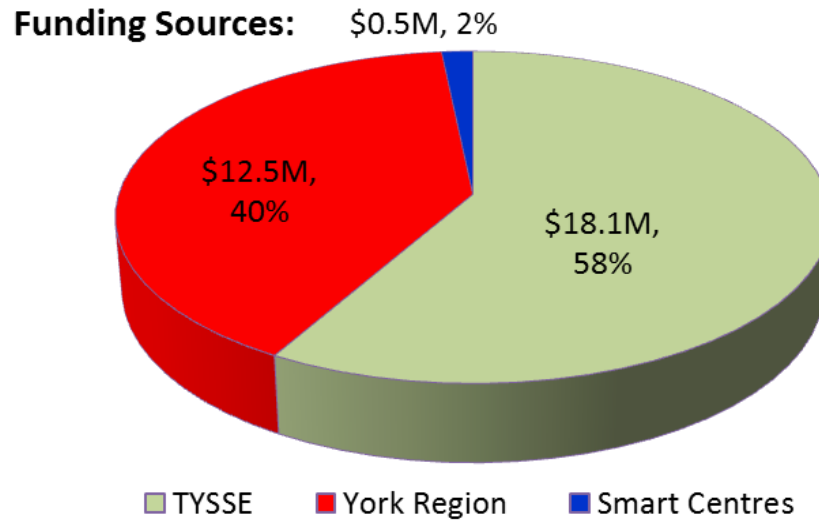
- The Transfer Agreement requires SmartCentres to assign the agreement with DSAI to the Region or, if the Region directs, to YRRTC.
- Per the Rapid Transit Agreement between YRRTC and the Region, YRRTC has the responsibility to represent the Region's interests in the design and construction of the TYSSE project. The assignment also includes the responsibility for the delivery of all Regional transit facilities identified as components of the TYSSE project. The Vaughan Metropolitan Centre bus terminal project was defined through negotiations amongst the Region, SmartCentres and TYSSE as a desirable project and endorsed by Council through the execution of the Transfer Agreement.

- The design and delivery of the bus terminal requires ongoing coordination with the City of Vaughan as well as with both SmartCentres and the TYSSE project, as the terminal sits over the tail track of the subway station, involves the delivery of Vaughan road and service infrastructure and is adjacent to SmartCentres development lands (Attachment One). Construction of the subway as well as the first phase of the SmartCentres development, will overlap with the construction of the bus terminal and extension of Millway Road adjacent to the bus terminal. Administering the bus terminal contract with DSAI represents a continuation of similar roles and responsibilities already granted to YRRTC for the delivery of the TYSSE and surface bus terminal facilities at the Black Creek, VMC and 407 stations.
- YRRTC is in the best position to continue to represent the interests of the Region in the bus terminal project as YRRTC staff has developed good working relationships with all stakeholders. In acting as the project manager for the construction of the bus terminal on behalf of the Region, YRRTC will have responsibility for the contact with DSAI. Accordingly, assigning the Architect's Agreement would allow YRRTC to oversee DSAI in an efficient and cost effective manner.
- YRRTC would oversee all aspects of the Architect's Agreement and the services performed by DSAI and its sub-consultants as well as oversee the activities of both the OE and DSAI during the administration of the construction of the project. The Region would not be a party to the agreement. Any changes to the Architect's Agreement would be negotiated and entered into by YRRTC, including any changes in the scope of work or the fees to be paid for DSAI's services. YRRTC would review and approve all invoices received from DSAI. YRRTC would be responsible for terminating the agreement, if required.

Financial

- The bus terminal, with a budget of \$31.1 million, is funded by the TYSSE project, the Region and SmartCentres. The funding, as approved in the YRRTC 2014 Capital Budget, is made up of land and land-related matters, design and engineering fees, construction costs, contract change allowances, fare equipment, furniture and project management fees.
- Over 50% of the budget is funded through the TYSSE project. SmartCentres has allocated a funding component for the finishing of the segment of the pedestrian tunnel connecting the Vaughan Metropolitan Centre Bus Terminal to the tunnel connection to the subway.

- The chart below outlines the sourcing of funding for the bus terminal budget:



Conclusion

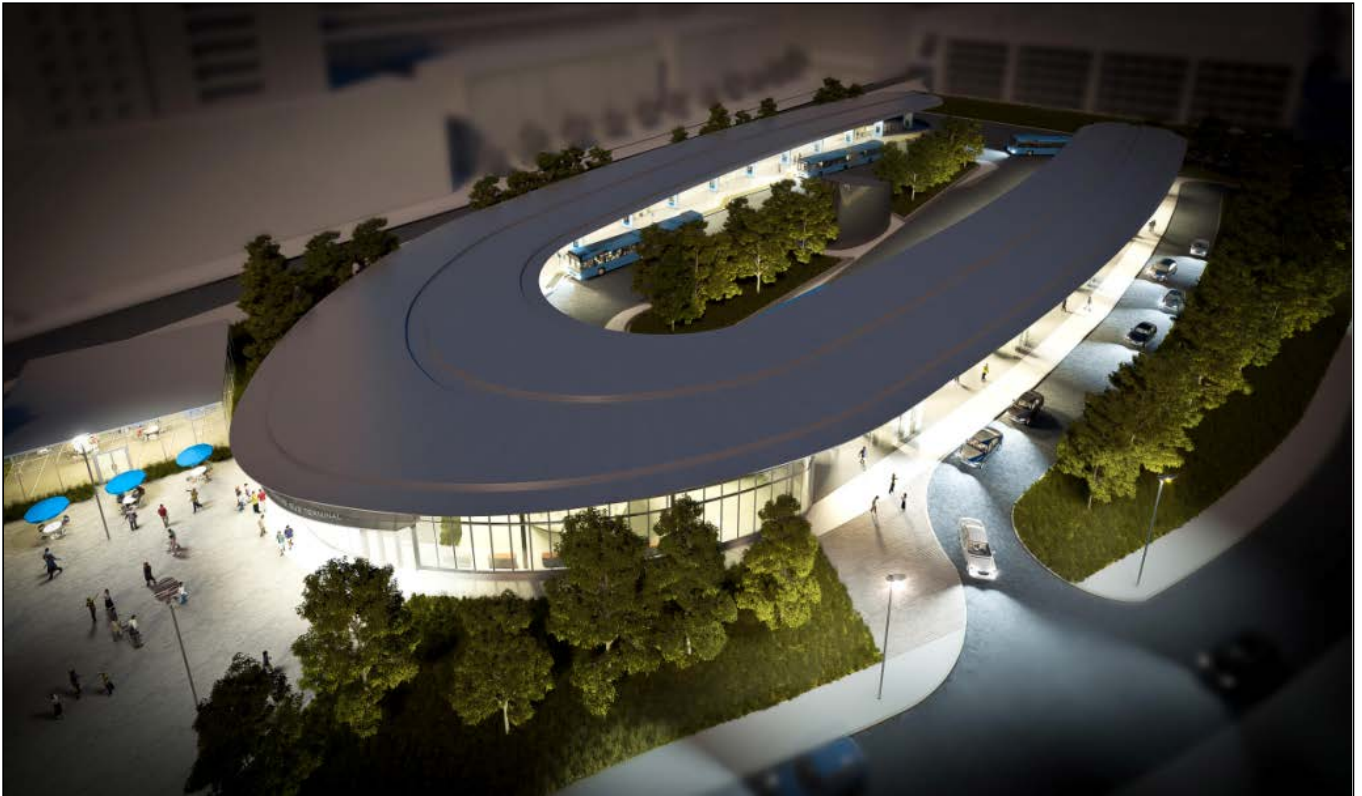
- Endorsing the terms of an agreement between SmartCentres and DSAI and the subsequent assignment of that agreement to YRRTC will permit the design of the Vaughan Metropolitan Bus Terminal to be completed and the construction of the terminal taken through to completion and opening for operations.

For more information on this report, please contact David Clark, Design Chief, Infrastructure and Development, York Region Rapid Transit Corporation at 905-886-6767, Ext. 71025.

Mary-Frances Turner
President

March 31, 2014

RT. Architectural Services Agreement, VMC Bus Terminal (Attachment One)



RT. Architectural Services Agreement, VMC Bus Terminal (Attachment One)

