

Clause No. 29 in Report No. 12 of the Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on June 26, 2014.

29

AMENDMENT TO METROLINX MASTER AGREEMENT FOR INFRASTRUCTURE ONTARIO VIVANEXT RAPID TRANSIT PROJECTS

Committee of the Whole recommends adoption of the recommendations contained in the following report dated June 9, 2014 from the Chief Administrative Officer:

1. RECOMMENDATIONS

It is recommended that:

1. Council authorize an amendment to the Metrolinx Master Agreement to include the vivaNext rapidway H2 and H3.4 projects along Highway 7 in the City of Vaughan, the Town of Richmond Hill and the City of Markham, to be procured under the Infrastructure Ontario Alternative Financing and Procurement model, including ancillary and related documents thereto.
2. If Infrastructure Ontario requires that the Region and York Region Rapid Transit Corporation enter into a separate agreement in relation to the third party beneficiary rights afforded to the Region and York Region Rapid Transit Corporation under the Project Agreement for these rapidway projects, Council authorize such agreement.
3. If the Master Agreement amendments or separate agreement referred to in recommendations 1 and 2 respectively do not protect in substance the Region's third party beneficiary rights under the Project Agreement as contemplated in this report, staff report back to Council to secure the necessary authority.

2. PURPOSE

The purpose of this report is to obtain Council approval for an agreement to amend the Metrolinx Master Agreement among Metrolinx, York Region Rapid Transit Corporation ("YRRTC") and the Region to include the vivaNext rapidway H2 and H3.4 design-build-finance projects that will be procured under the Infrastructure Ontario Alternative

Financing and Procurement (AFP) model and delivered by YRRTC as project manager of the vivaNext rapidway projects.

3. BACKGROUND

Master Agreement among Metrolinx, YRRTC and the Region funds the vivaNext Program

The Region was authorized by Regional Council to enter into the Master Agreement dated October 1, 2009 with Metrolinx and YRRTC to establish the funding and delivery framework for vivaNext rapid transit projects. (See Report of the Chief Administrative Officer, Clause No. 8 in Report No. 2 of the Finance and Administration Committee, adopted, without amendment, by Regional Council, on February 7, 2011). The Master Agreement establishes the fundamental roles and responsibilities of the parties in the implementation of the \$1.4 B (escalated to \$1.755 B) Metrolinx funded portion of the vivaNext program, of which the H2 and H3.4 projects are a part.

To date, the vivaNext projects covered by the Master Agreement and that are currently being implemented include the following:

- D1: Davis Drive from Yonge Street to Highway 404
- H3: Highway 7 from Richmond Hill Centre to Warden Avenue
- H2 (Vaughan Metropolitan Centre): Highway 7 at Vaughan Metropolitan Centre
- Yonge Street Project comprised of three discrete segments on Yonge Street: (Y2.1 – Yonge Street from Highway 7 to Major Mackenzie Drive) (Y2.2 – Yonge Street from Levedale Road to 19th Avenue/Gamble Road) (Y3.2 – Yonge Street from south of Savage Road/Sawmill Valley Drive to north of the Davis Drive intersection)

The Master Agreement contemplates that an individual Project Charter will be developed for each project which will set out a more detailed implementation strategy, including funding arrangements. The Master Agreement will expire concurrently with the expiry of the last Project Charter.

The Master Agreement provides that, as owner of the project assets, Metrolinx retains ultimate approval authority for the scope of the projects and control over the project assets. This is subject to the Region's continuing ownership and jurisdiction over the rapidway and road allowance. The Region will also retain ownership of the bus fleet.

The Master Agreement establishes YRRTC as the program manager for the vivaNext projects

YRRTC is appointed program manager and is responsible for overall delivery of each project and ensuring compliance with schedules and budget requirements as set out in the

Project Charters. YRRTC will be accountable for planning, design, engineering and construction and ensuring integration of design with Regional facilities. YRRTC will also manage day to day contract administration and supervision of contractors and consultants.

The Master Agreement sets out the governance structure and provides for tiered decision-making

The Master Agreement provides for appointment of a Program Executive Group which will be tasked with high level decision making during project implementation. The membership of this group are comprised of senior management executives from each of Metrolinx (Bruce McCuaig, President and CEO), the Region (Bill Fisch, Chair and CEO), and YRRTC (Mary-Frances Turner, President). The mandate of the Program Executive Group is to make recommendations to the respective governing bodies on any jurisdictional or budgetary disputes that may arise during project implementation. The group is to function by consensus and to offer recommendations on matters including the terms and conditions of Project Charters, proposed amendments to the Master Agreement, and resolution of potential disputes.

The Program Executive group is supported by a Senior Staff Working Group comprised of senior staff members from Metrolinx and YRRTC. The role of the working group is to develop terms of the Project Charters, assist in resolving issues that arise during project implementation, monitor financial status and risk issues, co-ordinate communications and other functions assigned through the various protocols. Matters that cannot be resolved by the group will be referred to the Program Executive Group.

The detailed terms of the Master Agreement are set out in a series of schedules and protocols

The schedules to the Master Agreement contain processes and protocols for delivery of the vivaNext projects. These schedules include key protocols respecting procurement, real estate acquisition, administrative and financial reporting requirements, project communications and operating principles. The specifics of each of these key protocols are set forth in detail in the aforementioned February 7, 2011 report of the Chief Administrative Officer and are not repeated in this report.

The Master Agreement currently does not apply to Infrastructure Ontario Alternative Financing and Procurement (AFP) Projects

The Master Agreement provided that an agreement, separate from the Master Agreement, would be required where the project is designated by the Province of Ontario as an AFP project. Therefore the Master Agreement must be amended to incorporate the H2 and H3.4 Projects as projects that will be subject to the applicable terms and provisions contained in the Master Agreement.

4. ANALYSIS AND OPTIONS

The H2 and H3.4 vivaNext projects have been designated by the Province of Ontario as an Alternative Financing and Procurement Project

In mid-2012, Metrolinx determined that the procurement of the then remaining vivaNext projects would be divided into two groups. The design-builder for the Yonge Street Project, referred to above, would be competitively procured by YRRTC. The H2 and H3.4 Projects, would be competitively procured by Infrastructure Ontario as a design-build-finance AFP project.

The H2 vivaNext project consists of segments along Highway 7 in the City of Vaughan and Town of Richmond Hill, west of Yonge Street. It consists of full rapidways on:

- Bathurst Street from Highway 407 to Centre Street
- Centre Street from Bathurst Street to Dufferin Street
- Highway 7 from Edgeley Boulevard to east of Pine Valley Drive

It also includes the following partial rapidways (one direction dedicated rapidway, one direction mixed traffic):

- Highway 7 from Yonge Street to Bathurst Street
- Bathurst Street crossing Highway 407
- Centre Street approaching Highway 7

The H3.4 vivaNext project is located in the City of Markham. It includes:

- Full rapidway connecting existing rapidway at Birchmount Road to Enterprise Drive/Sciberras Road intersection
- Mixed traffic operations between Enterprise Drive/Sciberras Road and YMCA Boulevard into GO Unionville Station
- Partial rapidway along YMCA Boulevard from Rivis Road to Kennedy Road

The H2 and H3.4 projects, are depicted on the map attached as Attachment 1 to this report, and are hereinafter collectively referred to in this report as the "IO Project".

Infrastructure Ontario will lead the transaction phase of the IO Project and YRRTC will provide technical input

Infrastructure Ontario is leading the transaction phase for the IO Project. This includes the development of the procurement documents to secure a design-build-finance consortium ("Project Co."), the development of the Project Agreement to be entered into with Project Co., and the development of the project specifications. YRRTC and its owner's engineer, MMM Group, will provide technical input to the development of these

documents. Infrastructure Ontario and Metrolinx have executed a separate Master Agreement between themselves dated November 28, 2012 that sets out the principles and guidelines for the efficient delivery of AFP projects. Neither YRRTC nor the Region is a party to this separate Master Agreement between Infrastructure Ontario and Metrolinx.

Infrastructure Ontario and Metrolinx will be the signatories to the Project Agreement

Unlike the legal arrangements for the other vivaNext Metrolinx funded projects, the Region will not be a signatory to the Project Agreement with Project Co. Instead, Infrastructure Ontario, as agent for and on behalf of Her Majesty the Queen in Right of Ontario, as represented by the Minister of Infrastructure, and Metrolinx, will together execute the Project Agreement.

Amendments to the Master Agreement are required to protect the Region's interests in the absence of being a signatory to the Project Agreement

Staff from the Region, YRRTC and Metrolinx have been engaged in discussions on the necessary amendments to the Master Agreement to clarify each of the parties' roles and responsibilities for the IO Project. The amendments to the Master Agreement are necessary to bind Metrolinx to protect certain rights that the Region would have otherwise been granted as a signatory to the Project Agreement. The protected rights include but are not limited to the following:

- Having the beneficiary right to Project Co.'s indemnities, releases and insurance
- Protection from environmental issues arising from construction
- The Project's scope and municipal work under the Project must be protected so that the Project retains its design and aesthetic requirements consistent with the other vivaNext projects
- The application of labour, products and performance warranties
- The application of constructor obligations and indemnity of the owner

The specific sections in the Project Agreement for which the Region will be the beneficiary are to be included as a schedule to the Amending Agreement. These rights and benefits will not be amended without the prior consent of the Region and YRRTC. Metrolinx will hold the rights and benefits in trust for the Region and YRRTC. Infrastructure Ontario may require that the Region and YRRTC enter into a separate agreement with Infrastructure Ontario and Metrolinx regarding these third party beneficiary rights and the manner in which such third party beneficiary rights are enforced.

There will be other amendments to the Master Agreement of a general nature. For example, the procurement of the IO Project will be subject to the Infrastructure Ontario AFP model and will not be subject to the Procurement Protocol set forth in the Master Agreement. As well, the Region's Owner Controlled Insurance Policy that was put in

place for the other vivaNext projects will not be obtained for this Project but will be replaced by IO's standard insurance requirements. The YRRTC-Metrolinx Communications Protocol that is attached to the Master Agreement will not govern communications for the IO Project. Instead communications for the IO Project will adhere to the Infrastructure Ontario Communications Protocol under the Project Agreement.

The Amending Agreement will apply only to the IO Project. The terms and provisions in the Master Agreement will continue to apply to the other vivaNext rapidway projects.

YRRTC will be responsible for certain governance activities in the delivery of the Project

The amendments further clarify that YRRTC will be responsible for various governance activities in the delivery of the Project. For example YRRTC, in conjunction with the applicable Regional staff, will have the lead responsibility for the preparation of the project implementation plan, for ensuring that the necessary lands are available for the Project, for conducting the various staged design reviews, for change orders and scope management, for construction certification, and for management of handover and commissioning of the Project.

The Project Charter for the IO Project will reflect Metrolinx, YRRTC and York Region responsibilities

As was the case with the other vivaNext rapid transit projects that are underway, there will be a Project Charter for the IO Project, among Metrolinx, the Region and YRRTC. This Project Charter, which will be appended to the Amending Agreement, will include a governance and responsibility matrix outlining YRRTC's role in the implementation phase of the Project. Similar to the other Project Charters currently in place, there will be a tiered decision making committee structure that will include representation from Infrastructure Ontario. The role and responsibilities of YRRTC's owner's engineer will be set out in the Project Charter.

Separate from the Project Charter among Metrolinx, the Region and YRRTC, Infrastructure Ontario will enter into a Project Charter with Metrolinx

As previously indicated, Metrolinx and Infrastructure Ontario have their own Master Agreement in place pertaining to AFP projects. Appended to their Master Agreement will be a Project Charter between Metrolinx and Infrastructure Ontario respecting the IO Project. The governance provisions in this Project Charter will mirror those contained in the Project Charter among Metrolinx, the Region and YRRTC.

The procurement process to secure Project Co. is currently underway

The Request for Qualifications to pre-qualify three proponents to participate in the Request for Proposals phase closed on February 25, 2014. Three consortia were pre-qualified and have been invited to participate in the RFP phase.

Metrolinx has made the release of the Request for Proposals and Project Agreement conditional upon the execution of the Amending Agreement

The Amending Agreement and Project Charter must be executed before the release of the Request for Proposals. The Request for Proposals for the IO Project is scheduled to be released by Infrastructure Ontario to the three qualified consortia in July 2014. The Project Agreement is to be issued as part of the Request for Proposals.

Link to key Council-approved plans

The recommendation in this report addresses the following Vision 2051 goals:

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

5. FINANCIAL IMPLICATIONS

The capital costs associated with the IO Project are borne by Metrolinx under the \$1.755 billion MoveOntario Provincial funding program. Once the Project is built the Region will have responsibilities regarding operation of the rapidway under a separate operating agreement to be entered into with Metrolinx.

6. LOCAL MUNICIPAL IMPACT

The rapidways and related infrastructure under the IO Project in the Town of Richmond Hill and the Cities of Markham and Vaughan will be substantially completed by December 2019.

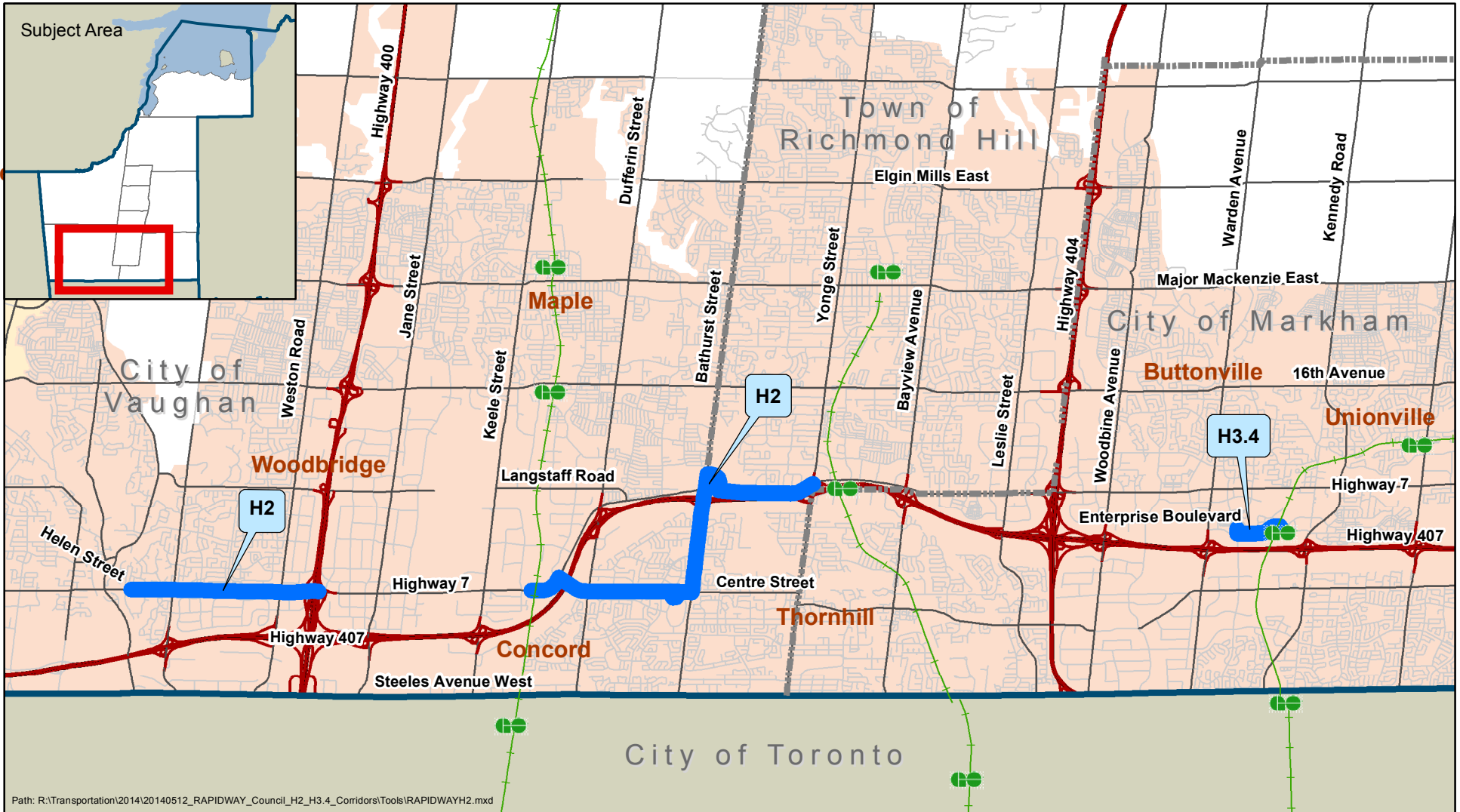
7. CONCLUSION

Amendments to the Master Agreement among Metrolinx, YRRTC and the Region, YRRTC and Metrolinx by way of an Amending Agreement will establish the governance and delivery of the H2 and H3.4 vivaNext rapidway projects 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.

Attachment (1)

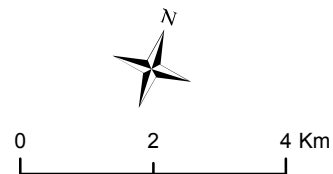


VivaNext

VivaNext H2 and H3.4 corridors map
 May 13, 2014



Produced by:
 Geographic Information Services
 Office of the Chief Administrative Officer
 © Copyright, The Regional Municipality of York, May, 2014
 * Includes © Queen's Printer for Ontario 2003-2014



Legend

- █ Rapidway Projects
- █ GO Station/Rail Line
- Municipal Boundary
- █ Freeway
- █ Provincial Highway
- █ Regional Road
- Towns and Villages
- Urban