

**To:** Board of Directors  
**From:** Jack J. Collins  
*Vice President, Project Implementation*  
Mary E. Martin  
*General Counsel*  
**Date:** February 18, 2011  
**Re:** York Viva Next Master Agreement

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***EXECUTIVE SUMMARY***

A joint Metrolinx, York Region Rapid Transit Corporation (YRRTC) and Regional Municipality of York team has completed negotiations of a Master Agreement that will guide the funding, implementation, ownership and operation of a \$1.4 billion provincial investment in a bus rapidway Program in York Region. The Master Agreement establishes Parties' roles, relationships, mutual expectations and accountability mechanisms relating to the Program. The overall budget, schedule and cash flow is consistent with the "5 in 10 Plan" approved by the Board of Directors in May 2010. It is recommended that the Metrolinx Board authorize the Chief Executive Officer to execute the York Viva Master Agreement.

***RECOMMENDATION***

**RESOLVED:**

1. *THAT* the Metrolinx CEO is authorized to finalize and enter into a Master Agreement with York Region Rapid Transit Corporation and the Regional Municipality of York for the implementation of the VivaNext Rapidway Program over the next 10 years as further described in a report from the Vice President of Project Implementation and General Counsel dated February 18, 2011.

2. *THAT* the previous 2009 Memorandum of Agreement and extensions authorized by the CEO and expiring on March 31, 2011 will be superseded by this Master Agreement.
3. *THAT* Metrolinx authorize an initial total expenditure of \$790 million over the first five provincial fiscal years (to FY 2014/15) of the VivaNext Rapidway Program inclusive of obligations made under the 2009 Memorandum of Agreement and authorized extensions.

## ***BACKGROUND***

Metrolinx staff has been working with YRRTC and Region of York staff in developing a VivaNext Rapidway Program funding and implementation plan since 2009. In October 2009, the Region, YRRTC and Metrolinx entered into an interim funding agreement, the Memorandum of Agreement (MOA), under which Metrolinx is funding the implementation of two of the four design-build projects currently in construction. The 2009 Memorandum of Agreement expires on March 31, 2011. All the parties have agreed the Memorandum of Agreement will be superseded by a new tri-party Master Agreement. The Master Agreement is intended to be the framework agreement establishing the roles and responsibilities of YRRTC, the Region and Metrolinx in respect of the delivery of the green bundle of rapid transit projects.

The VivaNext projects now being implemented are the Highway 7 (H3) design-build project between Yonge Street and Warden Avenue, and the Davis Drive (D1) Early Works design-build project between Yonge Street and the Southlake Regional Health Centre. Both of these projects are now in the initial stages of construction. They are among the rapid transit design-build projects that comprise the projects known as the “green bundle”. The other projects in this bundle are Yonge Street (Y2) from Richmond Hill Centre to Major Mackenzie Drive, Highway 7 in the vicinity of the Vaughan Metropolitan Centre, and Yonge Street from Mulock Drive to Davis Drive. A location sketch is appended to this report (*see Attachment 1*).

## ***DISCUSSION***

The purpose of the Master Agreement is to guide the development, implementation, operations and maintenance of the VivaNext Rapidway Program. Key principles in the agreement include:

- established roles and responsibilities of YRRTC, the Region and Metrolinx for delivery of projects,
- Metrolinx ownership of the project assets and ultimate approval authority for construction, operations and maintenance,

- YRRTC is appointed Program Manager and accountable for overall delivery of program scope, cost, schedule and managing performance of contractors/consultants,
- York Region will operate and maintain project assets and retain regulatory control over the right of way as defined in the Operating Principles and Access Agreement,
- Development of individual Project Charters for each segment that set out more detailed schedules, cash flows and funding requirements.

The Master Agreement also establishes a governance structure for the Program with the following responsibilities:

- Program Executive Group:
  - recommendations to Metrolinx/YRRTC/Region on jurisdictional issues, disputes, proposed amendments to Master Agreement and project charters.
  - advisory group, operating by consensus.
- Senior Staff Working Group:
  - supports Program Executive Group.
  - develops project charters, resolves issues during implementation,
  - co-ordinates communications, monitors financial status.

The Master Agreement includes schedules and protocols contain the detailed provisions for project implementation. The purpose of each schedule is:

- Schedule A-Authorized Expenditures:
  - annual cash flow requirements by project segment over the next 5 provincial fiscal years
- Schedule A-1-Procurement Protocol:
  - describes the procedures to be followed for procurement and award of contracts,
  - issuance of all RFPs and RFTs is subject to approval by Metrolinx,
  - provides guidance on structuring documents and developing evaluation criteria,
  - YRRTC is responsible for administering the procurement process,

- award of contracts is subject to the approval of Metrolinx.
- Resulting Contracts entered into by Metrolinx or by YRRTC on Metrolinx's behalf.
  
- Schedule B-Real Estate Protocol:
  - Region will take title to all lands purchased for the project,
  - Region will convey a perpetual easement to Metrolinx for the rapidway along the centre of the road allowance,
  - Metrolinx will in turn grant access rights to Region for regulatory and maintenance purposes,
  - prescribes detailed procedures for land acquisition and establishes approval thresholds for making commitments to third parties,
  - recognizes the Region's right to expropriate if necessary.
  - the form of easement to be granted to Metrolinx is set out as an appendix to the schedule.
  
- Schedule C-Description of Projects
  
- Schedule D-Administrative Protocol:
  - will continue the current model of cash flow to projects,
  - will establish Insurance requirements and responsibilities,
  - will set out the process for change orders and funding approvals.
  
- Schedule E-List of Previously Executed Third Party Agreements
  
- Schedule F-Excluded Assets This schedule makes it clear that the ownership and control requirement does not relate to all assets. For example, assets which Metrolinx hasn't funded such as the buses are not subject to Metrolinx control.
  
- Schedule G-Communications Protocol
  
- Schedule H-Capital Cost Eligibility Criteria:
  - sets out Provincial criteria for what is considered an eligible cost
  
- Schedule I-Amended Cost Confidence Process:
  - Sets out procedures for satisfying Metrolinx and YRRTC that we achieve value for money in Guaranteed Maximum Price quotations.

- Schedule J-Operating Principles:
  - Region will retain regulatory control over the right of way in accordance with access and operating agreements,
  - Region will be responsible for routine operations and maintenance,
  - Metrolinx will be accountable for longer term asset preservation and replacement, and the rapidway components of the Centralized Traffic Control System that provides signal priority for VivaNext buses.
  
- Schedule K-Project Charter Template:
  - Template for a detailed scope, cost and schedule for each Project Segment
  
- Schedule L-Access Agreement Principles:
  - establishes terms for access by VivaNext to the Metrolinx rapidway,
  - minimum service levels and potential penalties if not maintained.

Metrolinx staff anticipates some further edits may be required to the Master Agreement and Schedules before final execution by the Metrolinx CEO and other parties. The changes are anticipated to be minor and would not change the staff recommendation.

YRRTC obtained approval from its Board to enter into the Master Agreement in September 2009, provided it was in a form satisfactory to their Chair and the corporation's solicitor. York Region is in the process of obtaining its approvals to enter into the Master Agreement. A preliminary report from York Region's CAO was approved at the Finance and Administration Committee on February 3, 2011. Regional Council will consider the report at its meeting on February 27, 2011.

ATTACHMENT 1: VivaNext Rapidway Map

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Respectfully submitted,

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**ATTACHMENT 1-VivaNext Rapidway Program**

