



**STAFF REPORT
ACTION REQUIRED**

**York University Busway
Temporary Construction Licence and Ten Year
Easement Over a Portion of the Hydro Corridor, North of
Finch Avenue Between Keele and Dufferin Streets**

Date:	June 18, 2007
To:	Government Management Committee
From:	Bruce Bowes, P. Eng., Chief Corporate Officer
Wards:	8 – York West
Reference Number:	P:\2007\Internal Services\F&re\Gm07063F&re – (AFS 5410)

SUMMARY

The purpose of the joint City/TTC York University Busway Project (the “Project”) is to construct a dedicated roadway for bus transit service in order to provide improved bus operating speeds and reliability between Downsview Station and York University pending completion of the proposed Spadina Subway Extension. The design of the Project is now at 60% completion and has been reviewed by all interested stakeholders.

The most significant property requirement within the Project is a 13.6 acre portion of the Hydro corridor, north of Finch Avenue between Keele and Dufferin Streets. The property is owned by the Province of Ontario, as represented by Ontario Realty Corporation (“ORC”), and is used by Hydro One Networks Inc. (“Hydro”) for purposes of a hydro distribution system. Council authorized staff to enter into negotiations with ORC and Hydro to acquire a ten (10) year easement for the operation and maintenance of the bus-only road, as well as a temporary construction licence for a period of up to two (2) years.

Negotiations between staff from the City, TTC, ORC and Hydro have been on-going since December 2006. Although an agreement has not yet been reached on the cost and certain terms of the acquisition of the Hydro corridor lands, in order to meet Project construction timelines, it is necessary to seek City Council approval of the proposed terms and conditions of the proposed 10-year easement agreement and the proposed

construction licence, which are to be funded through the TTC's 2007-2011 Capital Program Budget.

RECOMMENDATIONS

The Chief Corporate Officer recommends that:

1. City Council grant authority to enter into a ten (10) year easement agreement with ORC, at a cost of \$3,900,000.00 + GST, on behalf of the Province and Hydro, substantially on the terms and conditions set out in Appendix "A", with a right to renew said agreement for two further terms of five (5) years each at a rate to be determined.
2. City Council grant authority to enter into temporary construction licence, at a cost of \$185,000.00 + applicable realty taxes and GST, for a period not to exceed two (2) years, with ORC, on behalf of the Province and Hydro, substantially on the terms and conditions set out in Appendix "A".
3. As an alternative and subject to funding being made available from within the TTC's Approved 5-Year Capital Plan, City Council consider acquiring a permanent easement from ORC, on behalf of the Province and Hydro, to a maximum of cost of \$5,850,000.00 + GST, for the purposes of the York University Busway and the future Spadina Subway Extension.
4. The Chief Corporate Officer be authorized to administer and manage the licence and easement agreement including the provision of any consents, approvals, notices and notices of termination provided that the Chief Corporate Officer may, at any time, refer consideration of such matters (including their content) to City Council for its determination and direction.
5. The City Solicitor be authorized to complete the licence and easement transactions, deliver any notices (including termination), and amend the commencement and other dates to such earlier or later date(s), on such terms and conditions, as she may, from time to time, determine.
6. The appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Financial Impact

ORC and Hydro have requested payment in the amount of \$3,900,000.00, plus GST, for the grant of a 10-year easement for the operation of the bus-only road within the Finch Hydro corridor. The cost of the temporary construction licence, for a period not to

exceed two years, is estimated to be approximately \$185,000.00, plus applicable realty taxes and GST. Funding for the 10 year easement and temporary construction licence is available in the TTC's 5-Year Approved Capital Plan, Project 3.3 (Yard and Roads) under the Bus Rapid Transit – Spadina Subway to York University – W.O. 7879 (as set out on pages 637 to 643 of the Expansion Category). City and TTC staff continue to negotiate with ORC and Hydro to attempt to reduce these the costs.

It is now recognized that the hydro corridor bus-only road will continue to be required once the proposed Spadina Subway Extension begins operations in 10-15 years. Staff are considering options to extend the use of the bus-only road. The easement agreement may be extended for two further terms of five years or the City may acquire a permanent easement from ORC, on behalf of the Province and Hydro. The costs of the extension have not yet been determined. The costs to acquire a permanent easement are estimated to be \$5.85 million. In either case, funds will be accommodated within the TTC's 2008-2012 5-Year Capital Plan.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

City Council, at its meeting held on May 23, 24 and 25, 2006, adopted Clause 12 of Report No. 3 of the Administration Committee titled "Memorandum of Agreement and Easement Agreement – Construction and Operation of York University Bus Only Roadway", authorizing the City to enter into the MOU and a temporary easement with York University and the TTC for the construction and operation of a bus-only road on York University Campus. At that time, Council also considered additional material from the Chief Planner and Executive Director of City Planning, suggesting that the bus-only road on the Finch Hydro corridor, between Keele and Dufferin Streets, should continue to be used for bus services after the proposed Spadina Subway Extension from Downsview Station to Highway 7 in the York Region begins operation in approximately 10-15 years' time.

In June 2006, the York University Busway Project received Ontario and Canadian Environmental Assessment approvals and the TTC Commission directed staff to implement the Project within 18 months. Design consultants were retained to undertake the design component.

At its meeting on September 25, 26 and 27, 2006, City Council adopted Clause 33 of Report No. 6 of the Administration Committee titled "Acquiring Land Necessary for the York University Busway", which authorized staff to enter into negotiations for the acquisition, whether by purchase or lease for a period of ten (10) years, of the necessary property interests. Phase 1A of the Project, being the bus-only road to be constructed on the Finch Hydro corridor between Keele and Dufferin Streets, is considered essential to the Project in terms of the both construction and bus operations.

It is anticipated that in July 2007, TTC staff will issue a Request for Proposal to three pre-qualified proponents for the completion of Project design and construction and, subject to Commission approval, award the contract on August 29, 2007. However, prior to awarding the contract, the licence and easement agreements between the City and ORC to occupy the Finch Hydro corridor must be executed.

ISSUE BACKGROUND

Since December 2006, negotiations between the City, TTC, ORC and Hydro have been ongoing in order to secure the property requirements for the construction and operation of the bus-only road within the Finch Hydro corridor. While there is agreement with respect to most terms and conditions of the licence and easement agreements, as are set out in Appendix “A”, ORC and Hydro prefer to use a standardized form of agreement and consider certain terms contained therein non-negotiable. Those that are of concern are described below.

Financial Consideration:

The current position of ORC and Hydro regarding costs is the construction licence comprised of approximately 3 acres within the Finch Hydro corridor for a period of up to 2 years and is approximately \$185,000.00 (plus realty taxes and GST) and the ten (10) year easement comprised of approximately 13.6 acres is a one time payment of \$3,900,000.00 (plus GST). ORC and Hydro have stated that lands adjoining the Finch Hydro corridor have a high market value. In order to reduce the TTC property acquisition cost for the 10-year easement, ORC and Hydro have appraised the Finch Hydro corridor lands on the basis of an averaged North York industrial land value and then applied a 50% rate to calculate the easement interest. ORC and Hydro have agreed to consider providing rights of renewal of the easement agreement, at rates to be determined and based upon then current appraised values.

The City and TTC have raised concerns with ORC and Hydro on the application of a 50% rate given the shared use by the City, TTC and Hydro. The proposed bus-only road does not impact on nor interrupt the delivery of electricity. A further City/TTC concern is that the rate applied against the Finch Hydro corridor lands may set a precedent for all future transit initiatives that would use hydro corridors for public transportation.

Staff of City Planning and TTC Service Planning suggest that once the proposed Spadina Subway Extension from Downsview Station to Highway 7 in York Region is in operation, the use of bus-only road through the Hydro corridor should continue. In response, ORC and Hydro have advised that, at this time, the cost of a permanent easement would be \$5.85 million plus GST. If staff were to pursue a permanent easement on the Hydro corridor, the additional \$1.95 million would be absorbed within the TTC's 2008-2012 Capital Program. The other option would be to exercise the right to renew the easement for two further five year terms, however, the cost of each renewal

would be determined at that time based upon then current appraisals and calculated in the same manner and would be absorbed within the TTC's 5-Year Capital Plan.

Terms and Conditions of the Agreements:

The City, ORC and Hydro have agreed to most terms and conditions in the construction license and the ten-year easement, as set out in Appendix "A", and certain other terms are still subject to negotiation. Because the hydro-electric transmission system is considered a paramount use, ORC and Hydro view certain terms of its agreement as non-negotiable. In the ordinary course, Hydro retains a right to terminate any interest granted and require the removal or relocation of the facility. The City is attempting to negotiate a compromise of this term. The City's proposal is that if the request to relocate or remove is made during the initial 10 year easement term, ORC/Hydro shall pay the full cost of relocation; if during the consecutive renewal term of 10-15 years, the City and ORC/Hydro shall each pay 50%; and, if the request is made after a term of 15 years, the City shall pay the full cost. ORC/Hydro have advised that this apportionment of costs would need Provincial ministerial approval and that could delay the execution of the agreement for up to three months. Given the need to have the two agreements executed prior to end of August, 2007, so that the contract for design and construction can be awarded and work commenced, the City may have to withdraw this condition. This would mean, however, that the investment in both the easement interest and the bus way construction would be at risk. ORC and Hydro have acknowledged that currently there are no projects in the 10 year Hydro Capital Budget that would necessitate the removal of the bus-only road, but there are no assurances in this regard.

Certain other terms do not conform with the City's usual standards, such as the right of re-entry and the release and indemnity to be provided to ORC and Hydro, which are more extensive than that provided in the ordinary course. The relocation and termination clause is, however, the more problematic. The above compromise has been utilized by the City before with respect to water mains located through Hydro lands.

Staff from the City, TTC, ORC and Hydro continue to meet in an effort to arrive at a mutually agreeable contractual framework and to ensure that the overall property acquisition costs can be accommodated within the overall TTC budget, while still protecting the City's interests to the extent possible.

COMMENTS

The most important section of the York University Busway Project is within the Finch Hydro corridor. In order to meet the TTC Project's design and construction timelines, it is necessary to secure the property requirements from ORC and Hydro by the end of August 2007, so that the design and construction contract can be awarded. Although, negotiations with the ORC and Hydro will continue in order to attempt to reach a consensus on terms and compensation, it is recommended that authority be granted to enter into a ten (10) year easement and a two (2) year construction licence, substantially

on the terms and conditions set out in Appendix “A”, and at a cost not to exceed \$3,900,000.00 (plus GST) and \$185,000.00 (plus applicable realty taxes and GST) respectively.

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SIGNATURE

Bruce Bowes, P. Eng.
Chief Corporate Officer

ATTACHMENTS

Appendix “A” - Terms and Conditions of the Agreements
Appendix “B” - Site Map – York University Busway Project
Appendix “C” – Site Map – Spadina Subway Extension Project