



STAFF REPORT ACTION REQUIRED

Spadina Subway Extension- Update

Date:	April 16, 2007
To:	Executive Committee
From:	City Manager, Deputy City Manager and Chief Financial Officer, Interim Chief General Manager, Toronto Transit Commission
Wards:	All
Reference Number:	P:\2007\Internal Services\SP\ec07004Sp – tn (AFS #3091)

SUMMARY

This report provides a status update to the Spadina Subway Extension Project from existing Downsview Station in Toronto, to the Vaughan Corporate Centre at Highway 7 in York Region (“the Project”), including information pertaining to a recently-announced Federal funding commitment of \$697 million.

Furthermore, this report recommends a project delivery structure for implementing the Project, along with operational and maintenance principles to be contained in a Memorandum of Understanding (MOU) between the City, the Toronto Transit Commission (TTC), and the Regional Municipality of York (“York Region”).

RECOMMENDATIONS

The City Manager, Deputy City Manager and Chief Financial Officer, and Interim Chief General Manager of the Toronto Transit Commission recommend that:

1. Council approve a project delivery structure for the implementation of the Spadina Subway Extension Project (“the Project”) as outlined in Appendix A to this report;
2. Council authorize the City Manager, Deputy City Manager and Chief Financial Officer, City Solicitor, and Interim Chief General Manager, Toronto Transit Commission, to negotiate and execute an Operating Memorandum of Understanding relating to the Spadina Subway Extension, on behalf of the City of Toronto and Toronto Transit

Commission with the York Region, in a form satisfactory to the City Solicitor, on terms and conditions as outlined in Appendix B to this report;

3. Council authorize the City Manager, Deputy City Manager and Chief Financial Officer, and City Solicitor to approach the Province to seek amendment to the *City of Toronto Act, 2006*, prior to the commencement of subway operations in York Region in order to effect the terms of the above-noted Operating Memorandum of Understanding, for the reasons outlined in this report;
4. Council direct the Deputy City Manager and Chief Financial Officer, and City Solicitor to finalize for execution by the City a Project capital cost agreement on behalf of the City the capital contribution from of Toronto with the Region of York as previously directed, with amended terms and conditions in respect of the timing of receipt of a \$29.98 million one-time payment from York Region as set out in Appendix C to this report; and
5. the capital contribution from the City not exceed its share (59.96%) of the one-third funding that would be attributable to the municipal sector, and that a request be made to the Provincial and Federal Governments to provide a full two-thirds funding of actual Project capital costs.

Financial Impact

This report will have no financial impact on the 2007 operating or capital budgets. The financial impact of subway operations, once they commence, will be included in annual capital and operating budgets.

However, as current Project capital cost estimates (\$2.1 billion) are only preliminary, and will be refined once additional data is available, there is a risk of higher actual costs over current estimates. Therefore, City staff intends on pursuing enhanced funding arrangements with both the Federal and Provincial governments, whereby each would commit to funding its full one-third share of Project capital funding.

Finally, City staff intends on approaching the Province to discuss the potential for receiving operating subsidies, until such a time as the subway extension line reaches full ridership.

DECISION HISTORY

At its meeting of September 25, 26, 27, 2006, City Council adopted recommendations of Policy and Finance Committee Report No 7, Clause 35, <http://www.toronto.ca/legdocs/2006/agendas/council/cc060925/pof7rpt/cl035.pdf> which set various conditions precedent to proceeding with the extension of the Project, including the following:

“Unless waived by the parties or otherwise extended, the following are conditions for proceeding with the project:

- (a) the Federal government will commit to funding one-third of the capital cost of the Project by including the funding in the federal budget by the spring of 2007;
- (b) the Province of Ontario will enact legislation that would allow the City to avail itself of tax increment financing as a method of financing its share of Project capital costs;
- (c) the Province will amend the *Development Charges Act 1997*, in order to allow for the recovery of transit costs based on approved transit expansion plans, and not historical averages;
- (d) subway extension operating agreements between the Region and the City are negotiated, and the necessary Council approvals obtained; ...”

Furthermore, this report authorized senior staff to negotiate and execute a capital cost allocation agreement in relation to the Project on behalf of the City with York Region, and set out various agreement terms and conditions, including a one-time payment by York Region to the City of \$29.98 million in recognition of investments previously made by the City in the subway system.

ISSUE BACKGROUND

This report provides an update on negotiations with York Region respecting the various conditions precedent as outlined above, and recommends a project delivery structure for implementation of the Project, along with operational and maintenance principles to be incorporated into an operating MOU with York Region.

COMMENTS

Federal Funding commitment:

As part of the Federal Government’s FLOW initiative, on March 6, 2007, Prime Minister Stephen Harper pledged \$697-million towards eligible project costs to extend the subway to York University and onwards into York Region. Receipt of the funds are conditional upon completion of a due diligence review, the negotiation of a contribution agreement, and adherence to conditions to be put forth by the Federal Ministers of Finance, and of Transport, Infrastructure and Communities.

Other Funding

City staff intends on pursuing enhanced funding arrangements with both the Federal and Provincial governments, whereby each order of government would commit to funding its full one-third share of Project capital funding. It is important to note that current estimates of Project capital costs (\$2.1 billion) are only preliminary, and do not include the effect of inflationary pressures, giving rise to the risk of higher actual costs over current estimates.

Additionally, City staff intends on approaching the Province to discuss the potential for receiving operating subsidies until such a time as the subway extension line reaches full ridership.

Tax Increment Financing (TIF)

TIF is a method of financing capital costs associated with specific infrastructure, where the construction of that infrastructure is anticipated to give rise to an increase in both local property values and additional local development, such that incremental tax revenues are anticipated and would be applied towards the cost of financing.

On December 20, 2006, the Province passed the *Tax Increment Financing Act, 2006* (as Schedule Z.7 to the *Budget Measures Act, 2006, (No. 2)*) (“the TIF Act”), http://www.e-laws.gov.on.ca/DBLaws/Source/Statutes/English/2006/S06033_e.htm , thereby allowing the City to undertake TIF for the purposes of Project capital costs, and to apply to the Province to receive a grant equivalent to incremental educational revenues to be applied towards the cost of financing.

City staff is currently in discussions with the Ministry of Finance with respect to TIF regulations, and funding agreements between the Province and the City as required under the legislation. The Deputy City Manager and Chief Financial Officer will report back to Committee and Council with more detail once the Province enacts the related regulations.

Development Charges Act (DC Act)

In December 2006, the Province amended the *Development Charges Act, 1997* (“the DC Act”), specifically for the purposes of the Project, with the amendments to come into force once proclaimed by the Lieutenant Governor.

Under the amended DC Act, the Project will not be subject to historical service-level averages, nor to pre-existing statutory requirements for a 10% reduction of capital costs, thereby enabling the City to recover a more appropriate share of growth-related Project capital costs through development charges.

City staff are currently in discussions with the Ministry of Municipal Affairs and Housing with respect to related regulations.

Project Delivery Structure:

Given the shared financial and operational interests in the Project, City/TTC staff and York Region staff have negotiated a recommended project delivery structure pertaining to Project implementation, a diagram of which is set out in Appendix A to this report.

To summarize the recommended project delivery structure:

- the TTC would be responsible for Project Management, a logical choice given the TTC’s more than 50 years of history as builder, owner, and operator of the City’s subway system. Tasks to be undertaken by the Project Manager include setting

standards, strategies for project delivery and cost control, contracting and administration, and value engineering;

- “Technical Coordinating Committee”, the composition of which would include TTC and York Region Transit (YRT) staff members, would work closely with the Project Manager to coordinate property acquisition activities, and to integrate surface and subsurface transit facilities in both the City and York Region. Furthermore, this committee would monitor the progress of the overall Project, and support the Oversight Task Force (more information follows) in its efforts to resolve disputes that may arise over technical issues (with the exception of passenger pick-up and drop-off and regional bus terminal facilities, which are to be owned by York Region); and
- an “Oversight Task Force” (“OTF”) would perform an oversight function in order to ensure Project delivery in accordance with Council directions, and would therefore be disbanded upon Project completion.

The membership of the OTF would total 6, 3 from each of the City/TTC and York Region, and have 2 co-chairs (one from each municipal entity). The City’s members would include the City Manager, Chief Planner and Executive Director, and Chief General Manager of the TTC, while York Region’s members would include York Region/YRT senior staff, and may include an independent expert.

The OTF would receive regular progress reporting from the Project Manager, and reporting from the independent auditor. Furthermore, the OTF would retain an “Owner’s Engineer” to perform an independent review of Project delivery options, value engineering, and value for money, and would receive related reporting.

The OTF would function as liaison to Councils/Committees of both the City and York, would issue progress reports on a periodic basis, and would recommend Project budgets for approvals and major Project scope changes, if required.

Finally, the OTF would resolve disputes that might arise over technical issues as identified by the Technical Coordinating Committee, and would be responsible for ratifying the recommended Project delivery strategy. In the event that it does not ratify the delivery strategy, this issue would move to resolution by the City’s Mayor and York Chair.

Operating Memorandum of Understanding (MOU)

City and TTC staff have negotiated a set of principles with York Region and YRT staff relating to the operation and maintenance of the subway extension, as set out in Appendix B to this report. Pending Council approval, these principles would form the basis for an Operating MOU between the City, TTC, and York Region. The Operating MOU will be superseded by a more detailed interim operating agreement within 12 months of MOU

execution, and a final operating agreement, at least 18 months prior to operation of the subway extension.

The Operating MOU principles are based on TTC ownership (which may include long-term leases) of:

- the entire subway extension infrastructure, including the portion in York Region;
- all property to be acquired for subway purposes in York Region; and
- all commuter parking lots attached to the subway stations.

York Region staff have agreed to recommend this ownership structure to their Council on the condition that the TTC/City would assume full responsibility for operating and maintenance costs, and future capital maintenance costs, and assume the risk of revenue realization. Therefore, while York Region will continue to participate in funding the capital cost of building the subway extension, recommended principles for a subway extension Operating MOU, as set out in Appendix B to this report, include all subway revenues accruing to the TTC, and the TTC/City assuming full responsibility for funding operating, maintenance, and future capital maintenance costs.

It is important to note that, at present, under the *City of Toronto Act, 2006* (Section 397. (1)), the TTC may enter into an agreement with a municipality situated within 40 kilometres of the City to operate a local passenger transportation service, provided that the outside “municipality will pay any operating deficit”, and conversely, that “the TTC will credit any operating surplus to the municipality”. Therefore, it will be necessary to seek amendments to the *City of Toronto Act, 2006* (from the Province) prior to the commencement of subway operations in York Region in order to legally give effect to the terms of this arrangement.

It is estimated that operating costs associated with operating the subway line in York region are approximately \$9 million per annum, and that it should be possible to achieve a cost recovery of up to 80% from fares and other revenues. As previously discussed it will be important to receive operating subsidies in support of the line from the Province until such a time as full ridership is achieved.

Timing of Up-front Capital Payment

Capital Cost Allocation agreement principles as previously adopted by Council included a one-time payment of \$29.98 million, to be made by York Region to the City, in recognition of investments previously made in the subway system by the City.

Council had previously directed that 50% of this payment was due after various conditions precedent were met relating to a Federal government commitment towards Project funding, the Province enacting TIF legislation and amending the DC Act, and the City entering into subway extension operating agreements with York Region. The remainder of the payment was due upon the earlier of the commencement of construction of any aspect of the Project in York Region, or 30 months from the date that the first payment was due.

As a result of continued negotiations with York Region, an amended payment schedule has been discussed and is recommended for Council approval, whereby the funds are to be received in 3 equal instalments, as outlined in Appendix C to this report.

CONTACTS

Joe Farag
Director, Special Projects
tel: 416-392-8108
fax: 416-397-4465
e-mail: jfarag@toronto.ca

John Sepulis
General Manager, Engineering & Construction Branch
Toronto Transit Commission
tel: 393-6530
e-mail: john.sepulis@ttc.ca

Karyn Spiegelman
Senior Financial Analyst
tel: 416-392-8894
fax: 416-397-4555
e-mail kspiegel@toronto.ca

SIGNATURES

Joseph P. Pennachetti
Deputy City Manager and
Chief Financial Officer

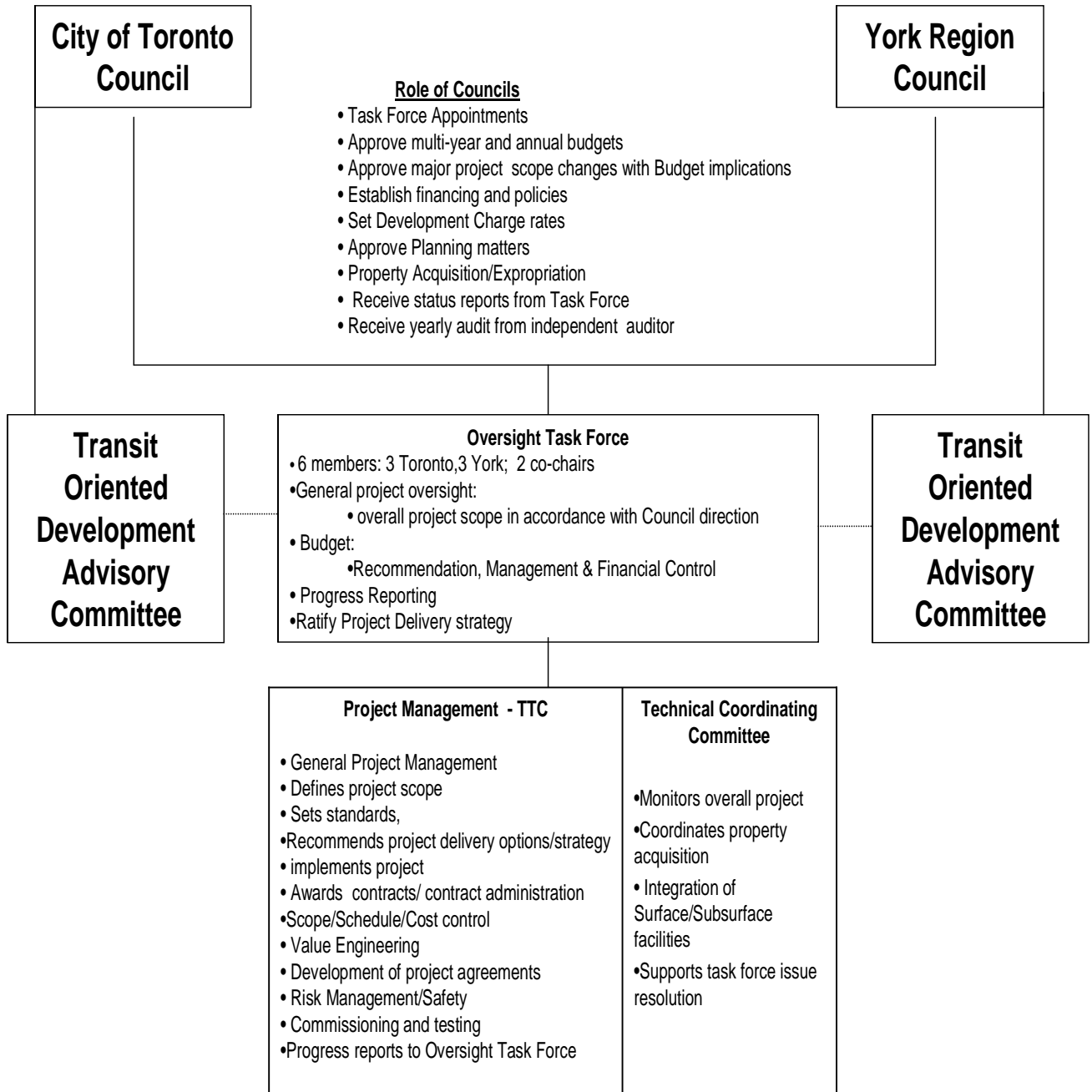
Gary Webster
Interim Chief General Manager,
Toronto Transit Commission

Shirley Hoy
City Manager

ATTACHMENTS

Appendix A: Project Delivery Structure
Appendix B: Operating MOU – Principles
Appendix C: Timing of One-Time Capital Payment

Appendix A Project delivery Structure



Appendix B Operating MOU- Principles

Priorities for Subway Extension

1. The primary purpose of subway system is for public transportation, regardless of whether it also may be incidental to other uses.
2. Public safety and continuous operation of subway system is a priority.
3. The subway extension is to be operated as a seamless extension of the existing TTC subway system.

Design and Construction

4. The Project will be designed, constructed and operated in accordance with TTC design standards within York Region.
5. York will be responsible for constructing, maintaining and operating surface bus facilities, and passenger pick-up and drop-off, and will consult with the TTC on design standards.

Development in York Region and Technical Review

6. York will have the right to develop or permit development of lands in and around the transit facilities in York Region.
7. For developments that are directly connected to subway infrastructure, all developers, whether in the City of Toronto or York Region, will be required to enter into Entrance Connection Agreements with the TTC, consistent with current practice.
8. For the purpose of ensuring a safe and continued operation of the subway, approval of development and planning applications in York Region that include or affect property within 60 metres of any transit facility (the “Zone of Influence”) will be made subject to the TTC’s technical review process.
9. A written protocol will be developed by the City/TTC/York relating to the TTC’s right to conduct a technical review on proposed developments within the Zone of Influence. The protocol shall also address requirements for registering restrictive covenants and other agreements on title of lands, and a standard TTC warning clause for various interferences (e.g. noise, vibration, and electromagnetic interference).

Subway Operations

10. The TTC will be responsible for the operation, maintenance, regulation and use of the subway system, including setting service levels.
11. The TTC will continue to establish fare policies for travel by subway.
12. The TTC will continue to be responsible for all subway-retail leasing.

Revenues

13. All subway Fare Revenues will accrue to the TTC/City.
14. All ancillary revenues, including in-station advertising, retail leasing, sampling, and commuter lots will accrue to the TTC/City.
15. In-vehicle advertising revenues will accrue to the TTC/City.

Costs

16. The TTC/City will be responsible for all operating and maintenance costs associated with subway operations, excluding regional Bus Terminals and passenger pick-up and drop-off facilities, which shall be maintained by York Region.
17. The TTC/City will be responsible for payment of all future capital maintenance costs associated with subway operations.

Appendix C

Timing of One-Time Capital Payment

York Region shall pay the City \$29.98 million in recognition of investments previously made in the subway system, as previously approved by Council, on the following amended terms and conditions:

1. A first payment of \$10 million shall be due at the commencement of the first major construction contract or purchase of construction equipment. In this case, “major” is defined as a minimum contract value of \$10 million.
2. A second payment of \$10 million shall be due at the time that tunnelling commences in York Region. “Tunnelling” may include the construction of a tunnel boring machine launch, or extraction shafts or the delivery of tunnel liners to York Region.
3. The final payment of \$9.98 million shall be due upon commencement of subway service operation in York Region. Interest shall accrue on this amount, from the time of the second payment, calculated at the One-Fund investment rate, to be adjusted on a semi-annual basis.