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## Report of the Chief Administrative Officer

### **York Region Rapid Transit – Corporate Governance and Mandate Review**

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#### 1. Recommendations:

- 1) Council receive the Final Governance Report for York Region Rapid Transit Corporation (Attachment 1), and the Final Mandate Report for York Region Rapid Transit Corporation (Attachment 2), both authored by consultant Dr. Richard Leblanc and dated September 15, 2023
- 2) Council provide direction to Regional staff on next steps, which may include continuation of York Region Rapid Transit Corporation with updated governance and mandate provisions, as recommended by Dr. Leblanc and discussed in this report
- 3) If Council's direction is YRRTC continue as a separate corporation:
  - a) the Regional Clerk and Regional Solicitor be directed to further review recommended governance enhancements, and
  - b) YRRTC management be directed to further review business and administrative improvementsoutlined in this report, and report back to the YRRTC Board and Regional Council on the next steps to implement Dr. Leblanc's recommendations.

#### 2. Purpose

On January 12, 2023, Council endorsed a mandate review and governance assessment of York Region Rapid Transit Corporation (YRRTC) as described in the report of the former Chief Administrative Officer entitled, [Review of York Region's Corporations](#).

This report provides Council with a summary of the review process and the consultant, Dr. Leblanc's, findings and recommendations for YRRTC mandate and governance updates, enhancements and best practices. The report also seeks direction on implementing the consultant's recommendation to continue YRRTC.

The governance assessment portion of the consultant review was intended to assess YRRTC's governance approach and structure to provide best practices advice to Council as the Shareholder. The mandate assessment portion of the review was intended to confirm the purpose of YRRTC's work and recommend any mandate changes, expansions, or reductions. Dr. Leblanc's Final Governance and Final Mandate reports (the "Governance and Mandate Reports") recommend continuation of YRRTC as a stand-alone corporation beyond September 9, 2024, the date it is presently set to expire. These reports may be found at Attachments 1 and 2, respectively.

## **Key Points:**

- As the sole shareholder of the wholly owned YRRTC, the Regional Municipality of York has authority to appoint directors, amend or repeal Articles of Incorporation and any Shareholder Direction and to continue operation or dissolve YRRTC
- York Region's Rapid Transit Agreement with YRRTC is set to expire in September, 2024, making a mandate and governance review timely
- If Council directs continuation of the corporation pursuant to Dr. Leblanc's recommendation staff will:
  - revise the York Region Rapid Transit Agreement to incorporate mandate and government improvements
  - update YRRTC's Articles of Incorporation to reflect the confirmed mandate and key responsibilities going forward as recommended by Dr. Leblanc and outlined in this report
  - bring forward draft revised Articles of Incorporation and Shareholder Direction to a future YRRTC Board meeting for review and endorsement, and
  - provide a presentation to a future YRRTC General Shareholder's Meeting for review and approval by York Region as the Shareholder

## **3. Background**

### **York Region Rapid Transit Corporation was established in 2003, and its mandate clarified in 2009**

YRRTC is a share capital corporation under the Ontario *Business Corporations Act* (OBCA). It was incorporated by the Region on July 2, 2003 as a municipal services corporation pursuant the Ontario *Municipal Act, 2001* and its regulations as applied to municipal services corporations at the time. YRRTC is governed by a Council-appointed Board of Directors comprised of elected officials from York Region. Currently there is no private sector or other public sector representation on YRRTC's Board of Directors.

YRRTC was established in 2003 with the primary objective of seeking and securing funding to build out a rapid transit service on two major corridors – Yonge Street and Highway 7. At the time, both the Federal and Provincial governments encouraged public-private partnerships as part of their criteria for funding infrastructure. YRRTC was originally envisioned as the channel through which a public-private partnership might design, build, and potentially operate a rapid transit network.

The private-public partnership delivery approach was never realized; however, key objectives were accomplished, together with the Region, including:

- Implementation of the initial curbside Viva rapid transit network under the Quick Start program
- 34 km of dedicated bus rapid transit (BRT), and planning for another 130 km
- Coordinating York Region input to complete the Toronto-York Spadina Subway Extension
- 3 bus terminals
- An operations, maintenance, and storage facility for Viva fleet
- Environmental Assessment and conceptual design for the Yonge North Subway Extension

In 2009 Council clarified the mandate of YRRTC to deliver the Region’s rapid transit projects in Metrolinx’s Regional Transportation Plan (“The Big Move”) in a more effective and accountable manner. By way of an agreement between York Region and YRRTC dated September 10, 2009 (the “Rapid Transit Agreement”), the Region empowered the YRRTC Board with a mandate to conduct “strategic planning, oversight and delivery of the Rapid Transit System, including obtaining environmental assessment approvals, planning and preliminary engineering work, design, capital delivery and funding or financing for the Rapid Transit System.”

The Rapid Transit System included subways, BRT, transit priority corridors, facilities, etc. The Rapid Transit Agreement included a number of other responsibilities, rights and powers granted to YRRTC to implement the Rapid Transit System. This Rapid Transit Agreement (which is, in effect, a Shareholder Direction) supersedes the original 2003 Shareholder Direction and, after 15 years, is set to expire on September 9, 2024.

## **York Region’s Role as the sole shareholder of YRRTC**

As noted, the Regional Municipality of York is the sole shareholder of its wholly owned corporation, YRRTC. Accordingly, the Region through Council acting in its capacity as Shareholder has wide-ranging authority. This authority includes the power to appoint directors, amend or repeal the Articles of Incorporation for YRRTC or dissolve the corporation.

When YRRTC was established in 2003, it was among the first municipal services corporations in Ontario. At that time, both the Provincial and Federal governments encouraged the delivery of rapid transit projects through public-private partnerships. YRRTC was incorporated to provide

an accountable framework to advance rapid transit priorities for the Region under such a partnership and/or any future delivery models. Incorporation provides intellectual property protection for the organization against unauthorized use of the name or brand.

Shareholder Directions are authorized under section 108 of the OBCA to restrict the powers of the directors to manage or supervise the management of the business and affairs of the corporation, except as may be expressly permitted. In essence, a Shareholder Direction allows shareholders to impose an additional set of “ground rules”, over and above the basic legislation outlining the shareholder’s expectations of the corporation. A Shareholder Direction is beneficial as it details the accountability of a corporation to the shareholders and provides clarity to the corporation as to the activities permissible and what outcomes and actions should be prioritized.

## 4. Analysis

### **The governance and mandate review engaged the YRRTC Board and York Region and YRRTC staff**

The former CAO retained external consultant Dr. Richard Leblanc (the “consultant”) to undertake the review described in this report. Dr. Leblanc is President of Boardexpert.com Inc. and is an independent advisor with expertise in corporate governance. Dr. Leblanc has advised and assessed over 150 boards of directors, including public sector boards in highly regulated industries. Dr. Leblanc is also a Fellow Certified Management Consultant (Canada), Academic Fellow (CMC-Global), Barrister & Solicitor (Ontario), Solicitor (United Kingdom) and Professor of Governance, Law & Ethics (York University).

Led by the former Chief Administrative Officer, the review of YRRTC’s corporate governance and mandate engaged over 40 key stakeholders and included:

- review of 140 documents (65 related to mandate and 75 related to governance), including: Annual Reports; Business Plans and Budgets; Bylaws, policies and guidelines; constating and legal documents; related legislation; Articles of Incorporation; current Rapid Transit Agreement; various risk, compliance and audit documents
- review of mandates for comparable public sector organizations
- York Region and YRRTC management responses to 75 questions posed by the consultant
- interviews with the Regional Chairman and CEO, the Chair and Vice-Chair of YRRTC Board of Directors, YRRTC Officers, YRRTC and York Region senior management
- Presentation of consultant’s preliminary findings and draft recommendations to YRRTC Board for discussion, consideration, and feedback

At its meeting on September 7, 2023, the YRRTC Board had an opportunity to consider and discuss the consultant’s preliminary findings and draft recommendations. The YRRTC Board passed a resolution endorsing the consultant’s mandate and governance findings and recommendations.

**The consultant recommended updating YRRTC’s current mandate and proposed governance enhancements and best practices**

The consultant’s Governance and Mandate reports made recommendations related to improving governance best practices, mandate updates and other administrative best practices. These recommendations are outlined in the tables below with references to further details in the attached consultant reports.

**Table 1**

**Summary of Consultant’s Governance Best Practice Recommendations**

<b>Item</b>	<b>Consultant Recommendation</b>	<b>Proposed Action:</b>
Develop Position Descriptions	Attachment 1 Governance Report: Recommendation #2, pages 8 and 9	Regional and YRRTC management to further review and report back, as required
Recruitment of Independent Directors	Attachment 1 Governance Report: Recommendation #3, pages 9, 10 and 11	Regional and YRRTC management to further review and report back on implementation options
Develop an Enterprise Management Risk Framework	Attachment 1 Governance Report: Recommendation #4, page 11	Regional and YRRTC management to further review and report back on implementation options
In Private Sessions	Attachment 1 Governance Report: Recommendation #5, pages 12 and 13	Regional and YRRTC management to further review and report back on implementation options
Director Orientation and Education	Attachment 1 Governance Report: Recommendation #6, pages 13 and 14	Regional and YRRTC management to further review and report back on implementation options

Tailored Conflict of Interest Policy	Attachment 1 Governance Report: Recommendation #7, pages 14 and 15	Regional and YRRTC management to further review and report back
Annual Strategy and Governance Session	Attachment 1 Governance Report: Recommendation #8, pages 15 and 16	Regional and YRRTC management to further review and report back on implementation options
Adopt a formal Whistle-Blowing Policy and Program	Attachment 1 Governance Report: Recommendation #9, page 16	Regional and YRRTC management to further review and report back
Board Self-Assessment	Attachment 1 Governance Report: Recommendation #10, pages 16 and 17	YRRTC Board in conjunction with YRRTC management to assess and determine implementation options

**Table 2**

**Summary of Consultant’s Mandate Update Recommendations**

<b>Item</b>	<b>Consultant Recommendation</b>	<b>Proposed Action:</b>
Revise Rapid Transit Agreement	Attachment 1 Governance Report: Recommendation #1, page 7 (see note 1)	Regional Council to review and approve (as Shareholder)
Update Articles of Incorporation (as required)	Attachment 2 Mandate Report: Recommendation #5, pages 6 and 7	Regional Council to review and approve (as Shareholder)
Review Mandate every 10 Years	Attachment 2 Mandate Report: Recommendation #2, page 6	Regional Council to approve (as Shareholder)

Note 1: Further details are outlined in Attachment 2 Mandate Report for York Region Rapid Transit Corporation on pages 8,9 and 10 regarding Clarified Mandate of Rapid Transit System, Rapid Transit Projects and Related Infrastructure.

**Table 3**

**Summary of Consultant’s Administrative Best Practice Recommendations**

Item	Consultant Recommendation	To be considered by:
Annual Report Enhancements	Attachment 2 Mandate Report: Recommendation #3, page 6	YRRTC management to further review and consider implementation options
Increase Visibility of YRRTC Mandate	Attachment 2 Mandate Report: Recommendation #4, page 6	YRRTC management to further review and consider implementation options

If Council, as Shareholder, directs continuation of YRRTC beyond the September 2024 “sunset”, in the course of further review and future implementation of the recommendations in the consultant reports, staff may refine the consultant’s suggested improvements, where necessary, to better integrate with existing practices, operational processes, and activities of YRRTC.

**If Council directs YRRTC to continue as a stand-alone corporation beyond 2024, the consultant has listed 17 key responsibilities going forward**

At the direction of Council acting in its capacity as the Shareholder, and subject to financial, legal, budgetary, operating plan and funding requirements, the consultant has recommended that YRRTC Management, with oversight by the YRRTC Board, be focused on the key responsibilities listed below going forward. Greater details and additional context can be found on pages 7 to 10 in the consultant’s Mandate Report for York Region Rapid Transit Corporation (Attachment 2).

- Plan, design and construct York Region’s Rapid Transit System, Rapid Transit Projects, and related infrastructure
- Coordinate Rapid Transit infrastructure being planned and implemented by others within and adjacent to York Region, such as the Yonge North Subway Extension, Queen Street/Highway 7 West BRT, further TTC expansion projects, Steeles Avenue BRT and other rapid transit projects that are materially relevant
- Provide the foregoing in a cost-effective, safe, reliable, efficient manner that provides value for money and uses public funds with respect, honesty and integrity
- Identify, pursue, prepare submissions, negotiate, and arrange funding and funding opportunities with governments, government agencies and other funding partners
- Undertake, implement, and obtain, as the case may be, environmental and engineering assessment, design, mitigation, reviews and approval

- Solicit, establish, monitor performance, ensure compliance, compensate, and disestablish, as required, contractual relationships with project partners, business partners and contractors
- Coordinate and implement with other nearby Regions, Regional Centres and Corridors, and Municipalities, as may be required, for corridor specific environmental assessments or preliminary design work, in a manner consistent with the Shareholder Direction
- Align and enable the activities of YRRTC to be consistent with the goals and objectives of The Regional Municipality of York
- Work with relevant municipal partners, facilitate, promote and grow transit-oriented development and joint development opportunities related to the Rapid Transit System
- Comply with, and not exceed, the letter and spirit of the Shareholder Direction and core priorities of The Regional Municipality of York
- Communicate, clearly and transparently as appropriate, with all stakeholders, including funders, partners, community and Indigenous stakeholders, federal and provincial ministries and agencies, local municipalities, the public, The Regional Municipality of York and the Board of YRRTC, including in respect of the role and responsibilities of YRRTC
- Coordinate with and promote transit-oriented development and joint development opportunities related to the Rapid Transit System
- Take all reasonable steps to enhance clarity in communicating the role and responsibilities of YRRTC, vis-à-vis that of The Regional Municipality of York, to enhance clarity with external stakeholders
- Report and be accountable to The Regional Municipality of York and the YRRTC Board
- Coordinate and seek funding such that the Region's Bus Rapid Transit Network construction is achieved, consistent with the Regional Transportation Master Plan
- Collaborate and coordinate with Public Works transportation/transit staff, in York Region's/YRRTC's role to represent Regional needs as a part funder, and stakeholder, of the Yonge North Subway Extension project that Metrolinx is delivering
- Engage in similar collaboration with local municipal public works and transportation teams and other funding and delivery partners, including, as required, the Government of Canada; the Government of Ontario; the Region; Transit Oriented Communities (e.g., Bridge, High-Tech and Royal Orchard stations) in designing, constructing, and otherwise fulfilling York Region/YRRTC's role in delivering Rapid Transit System, projects, and related infrastructure

The above key responsibilities may form the basis for an updated Shareholder Direction document with YRRTC to supersede the current York Region Rapid Transit Agreement.

## **5. Financial Considerations**

Financial impacts to execute the mandate and governance updates, recommended by the consultant, would be contingent on advice from external legal counsel specialized in corporate law to clarify responsibilities and update internal agreements. An update to YRRTC's Articles of



Incorporation, to be consistent with an updated Shareholder Direction, would also have associated external legal fees to assist in executing. The scope of this external legal support would likely be relatively modest and within the approved YRRTC budget.

Compensation for any future Independent Directors of the YRRTC Board will also need to be determined through subsequent research of compensation best practices. This analysis would be part of any future work to assess implementation options, but it is not expected costs associated with compensating independent directors would have significant budgetary implications.

## **6. Local Impact**

Effective planning and delivery of rapid transit services by the most efficient means supports current York Region residents and businesses and future growth anticipated as outlined in the Provincial Growth Plan, Regional and local Official Plans.

## **7. Conclusion and Next Steps**

It is good practice to review and improve corporate mandates and board governance for the Regional Municipality of York's wholly owned corporations.

If the consultant's recommendations are accepted by Council and Council so directs, the next steps in the Governance and Mandate Review of YRRTC would be for Regional and YRRTC staff to revise the current York Region Rapid Transit Agreement to incorporate mandate updates and governance improvements with the new rapid transit agreement being renamed a Shareholder Direction. Regional and YRRTC staff may also need to make necessary updates to YRRTC's current Articles of Incorporation to remain consistent with an updated Shareholder Direction.

Document changes will be brought forward to a future YRRTC Board meeting for review, and subsequently to a future YRRTC General Shareholders Meeting for review and approval by York Region as the shareholder.

Consultant recommendations for governance and administrative best practices (summarized in Tables 2 and 3 of this report) will be reviewed further by the Regional Clerk, Regional Solicitor and YRRTC management staff, with next steps for implementation of these recommendations brought to the YRRTC Board and Regional Council for endorsement, as required.

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For more information on this report, please contact Erin Mahoney, Chief Administrative Officer at 1-877-464-9675 ext. 71200 Accessible formats or communication supports are available upon request.

A handwritten signature in black ink, appearing to read 'E. Mahoney', with a long, sweeping horizontal stroke extending to the right.

Approved for Submission: **Erin Mahoney**  
Chief Administrative Officer

November 2, 2023

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Attachment 1 – Governance Report for York Region Rapid Transit Corporation

Attachment 2 – Mandate Report for York Region Rapid Transit Corporation