



Report of the Regional Solicitor and General Counsel Interim Extension of Rapid Transit Agreement

1. Recommendations

1. The Rapid Transit Agreement (the Agreement) between York Region Rapid Transit Corporation (YRRTC) and The Regional Municipality of York (the Region), dated September 10, 2009, be extended for an additional six months or until new governance documents between YRRTC and the Region are in effect, whichever is earlier.
2. The Region enter into an Extension Agreement with YRRTC in a form substantially similar to Appendix A.
3. The Regional Clerk and the Regional Chair be authorized to execute the Extension Agreement on behalf of the Region.

2. Purpose

This report seeks Council approval to extend the existing Rapid Transit Agreement between YRRTC and the Region for an additional period of six months or less, until new governance documents, as recommended by Dr. Richard Leblanc, are in effect. Approval is sought for execution of an Extension Agreement to this effect in a form substantially as set out in Appendix A to this Report.

Key Points:

- On November 23, 2023, staff presented two reports to Regional Council produced by Dr. Richard Leblanc, who was retained to conduct a mandate review and governance assessment of YRRTC. Regional Council directed staff to implement the recommendations in the two reports and report back on next steps.

- Regional staff anticipate reporting back on the new governance and mandate documents which would implement Dr. LeBlanc’s recommendations at the YRRTC Board and Regional Council meetings scheduled for September and October 2024, respectively. In the interim, YRRTC’s current mandate is contained in the Rapid Transit Agreement, which will expire on September 10, 2024. As such, a brief extension of the Agreement between YRRTC and the Region is advisable.
- The proposed Extension Agreement (Appendix A) extends and preserves all terms of the original Agreement for an additional six months or until new governance and mandate documents are in effect, whichever is earlier. The actual extension is anticipated to be much shorter than six months as new governance and mandate documents are anticipated to be in effect shortly after the September Board and October Council meetings.
- This Report recommends that Council direct the Agreement be extended and the proposed Extension Agreement be executed by the Regional Chair and Regional Clerk on behalf of the Region.

3. Background

YRRTC was incorporated as a Municipal Services Corporation in 2003; in 2004 and 2009, YRRTC’s mandate was expanded to include Rapid Transit planning and delivery

In July 2003, YRRTC was incorporated as a Municipal Services Corporation under the *Ontario Business Corporations Act* and O. Reg. 599/06 of the *Municipal Act, 2001*. Regional Council passed a Unanimous Shareholder Direction to retain the majority of power over the corporation.

In February 2004, Regional Council issued an interim mandate authorizing YRRTC to oversee the initial rapid transit project, prepare business cases to pursue additional funding for future phases from senior levels of government, and submit annual budgets for the Region’s approval.

In April 2009, the Province announced \$1.4 billion in funding for the vivaNext rapid transit project. At its meeting on June 25, 2009, Council approved an expanded mandate for YRRTC to deliver rapid transit projects and the parties executed the Agreement, dated September 10, 2009, with a 15-year term. The Agreement replaced the original shareholder direction and the current Board replaced the Rapid Transit Public/Private Partnership Steering Committee.

Staff were directed by Council in early 2023 to undertake a mandate review and governance assessment of YRRTC prior to the expiry of the Agreement

With the term of the Agreement set to expire on September 10, 2024, and with the first phase of rapid transit delivered, on January 26, 2023 Council directed staff to undertake a fulsome review of YRRTC as a corporation. The purpose of the review was to ensure YRRTC’s mandate remains current and to identify areas where its governance could be strengthened.

Dr. Leblanc was retained to conduct the review and concluded that YRRTC should continue as a separate corporation, but provided recommendations for improved governance

The Region retained Dr. Richard Leblanc to conduct the review directed by Council. At the conclusion of his review, Dr. Leblanc presented two separate reports entitled Final Governance Report for YRRTC and Final Mandate Report for YRRTC. He concluded that YRRTC should continue as a separate corporation and provided recommendations to strengthen and improve governance, including preparing new governance documents.

In November 2023, Council directed staff to implement Dr. Leblanc's recommendations and report back on next steps

On November 23, 2023, staff presented Dr. Leblanc's reports to Council and were directed by Council to implement his recommendations and report back on next steps.

Preparing new governance and mandate documents that implement Dr. Leblanc's recommendations is a substantial undertaking that will require Legal Services in-house and specialized external lawyers to undertake considerable consultation with Regional and YRRTC staff and the YRRTC Board. Regional staff anticipate reporting back to the Board and Council and presenting new governance and mandate documents at the YRRTC Board meeting in September and subsequently, the Council meeting scheduled in October 2024.

4. Analysis

Agreement expires on September 10, 2024, just prior to Board and Council meetings in September/October and, as such, must be extended on an interim basis to allow completion of the new governance and mandate documents

The existing Agreement is a constating governance document and will expire on September 10, 2024, in advance of the Board and Council meetings in the fall. As such, a brief extension of the Agreement between YRRTC and the Region is advisable. This will ensure seamless continuance of YRRTC's mandate and ongoing work.

The proposed Extension Agreement (Appendix A) extends and preserves all terms of the original Agreement for an additional six months or until new governance and mandate documents are in effect, whichever is earlier. It is anticipated that the actual extension will be much shorter than six months, but out of an abundance of caution and to avoid having to report back to the Board and Council seeking a further extension, the Regional Solicitor is making this recommendation.

A Council resolution is required to authorize execution of the Extension Agreement on behalf of the Region

This Report recommends Council direct the Agreement be extended and the proposed Extension Agreement be executed by the Regional Chair and the Regional Clerk on behalf of the Region. A similar recommendation was made to the YRRTC Board to approve entering into the Extension Agreement on behalf of YRRTC on May 16. The Board approval will go to the Shareholder meeting in June for endorsement.

The Extension Agreement will permit the time necessary to properly prepare the new governance and mandate documents while ensuring the Agreement remains in effect and YRRTC can continue to carry out its current mandate in the interim.

5. Financial Considerations and Local Impact

All financial implications associated with the governance and mandate review and implementation of new constating documents have been addressed in the respective Regional and YRRTC 2024-2026 budgets. All impacts to Local interests align with Regional Plans, including Vision 2051 and 2023 to 2027 Strategic Plan, and the 2051 Rapid Transit Network identified within the 2022 York Region Transportation Master Plan.

6. Conclusion and Next Steps

An interim Extension Agreement between the Region and YRRTC permits continuation of YRRTC's existing mandate while the new governance work occurs.

Staff will report to the YRRTC Board in September 2024, with a report to Council to follow in October 2024. If supported by the YRRTC Board, the new governance and mandate documents, including Articles of Incorporation requiring public consultation, will be presented to Committee of the Whole and Council in October 2024. A Special Shareholder meeting in the Fall of 2024 would also be required to adopt the new governance documents.

For more information on this report, please contact Dan Kuzmyk at 1-877-464-9675 ext. 71401.
Accessible formats or communication supports are available upon request.

Recommended by:



Dan Kuzmyk
Regional Solicitor and General Counsel



Erin Mahoney
Chief Administrative Officer

May 29, 2024
#16144711

Appendix A – Draft form of Extension Agreement

EXTENSION AGREEMENT

THIS EXTENSION AGREEMENT (the “**Extension Agreement**”) dated _____, 2024

BETWEEN:

THE REGIONAL MUNICIPALITY OF YORK

(“**Region**”)

and

YORK REGION RAPID TRANSIT CORPORATION

(“**YRRTC**”)

RECITALS

- A. The Region and YRRTC entered into an Agreement (the “**Agreement**”) on September 10, 2009 (the “**Effective Date**”) to set out the responsibilities, duties and obligations of YRRTC in respect of the Rapid Transit System, as defined in said Agreement.
- B. In 2023, the Region engaged in a mandate review and governance assessment of YRRTC to determine improvements and ensure that YRRTC’s mandate is kept current. That review and assessment resulted in recommendations which Council directed be implemented. The recommendations included updated mandate provisions and the development and adoption of new corporate governance documents (the “**Governance Documents**”).
- C. Pursuant to Section 1.1 of the Agreement, the Agreement Termination Date is the fifteenth (15th) anniversary of the Effective Date, unless the Agreement is extended by mutual written agreement of the parties, being September 10, 2024.
- D. It is the intention of the parties that the Governance Documents, once enacted by the Region, will replace and supercede the Agreement. Until the Governance Documents are enacted, the parties intend that Agreement continue to be in effect to ensure the continuance of YRRTC and a smooth transition.
- E. The parties therefore wish to extend the Agreement on the terms contained herein until the Governance Documents are in force. This Extension Agreement is written evidence thereof.
- F. Unless otherwise defined, the capitalized terms used herein shall have the same meanings as in the Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and the sum of one dollar (\$1.00) and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

1. The Term of the Agreement is hereby extended by a further six months or until such earlier time as a Shareholder direction is enacted by the Region as sole shareholder of YRRTC.
2. Upon the enactment of the Shareholder direction by the Region, the Agreement will immediately terminate on that date.
3. In the event of a conflict between the terms of the Agreement and the terms of this Extension Agreement, the terms of this Extension Agreement shall prevail. Except as expressly provided in this Extension Agreement, all other terms, conditions and provisos of the Agreement as amended pursuant to this Extension Agreement shall remain the same and unchanged and time shall continue to be of the essence.
4. This Extension Agreement may be executed in any number of counterparts, each of which is deemed to be an original but all of which taken together constitute the original Extension Agreement, and will be effective when one or more counterparts have been signed by each of the parties to the Agreement and delivered to each of the parties.
5. The parties may sign this Extension Agreement by means of electronic signature, as provided for under the *Electronic Commerce Act, 2000*.

[Remainder of page is intentionally blank]

IN WITNESS WHEREOF the Region and the YRRTC have executed this Extension Agreement as of the day and year first above written.

Authorized by:

THE REGIONAL MUNICIPALITY OF YORK

By:

Wayne Emmerson
Regional Chair

By:

Christopher Raynor
Regional Clerk

We have the authority to bind the Region

YORK REGION RAPID TRANSIT CORPORATION

By:

Wayne Emmerson
Chief Executive Officer

By:

Paul Jankowski
President

We have the authority to bind the corporation