

Eglinton Crosstown Light Rail Transit: Train Operating & Funding Term Sheet

Date: June 29, 2022
To: Executive Committee
From: City Manager
Wards: All

SUMMARY

The Eglinton Crosstown Light Rail Transit (ECLRT) is a 19-kilometre light rail transit line that will run along Eglinton Avenue between Mount Dennis Station and Kennedy Station, with 25 stations and stops that will link to over 50 bus routes, three existing subway stations and various GO Transit lines. Metrolinx has ownership of the ECLRT and is funding and delivering the project, as established by the 2012 LRT Master Agreement.¹ The City will fund operations and day-to-day maintenance (i.e., non-lifecycle maintenance) and the TTC will operate the ECLRT. At this time, Metrolinx anticipates that the ECLRT will reach substantial construction completion by late 2022.

A clear understanding and agreement between the City, TTC and Metrolinx on funding obligations, approvals, dispute resolutions and decision-making processes is critical to the successful implementation and operation of the ECLRT. This report recommends terms negotiated by City and TTC staff with Metrolinx that will govern the funding, operations and maintenance of the ECLRT. The proposed terms expand on the 2021 Revised Agreement in Principle², by outlining the details of the City's funding obligations, the TTC's operating performance and maintenance requirements, revenue and payment processes, renewal and dispute terms, and liabilities and remedies for non-fulfillment of obligations. The terms for operating and maintenance of the ECLRT will be established in a Train Operating and Funding Agreement.

This report seeks City Council authority to execute an ECLRT Train Operating and Funding Agreement with the TTC and Metrolinx based on the key terms identified in this report and set out in Attachment 1.

RECOMMENDATIONS

The City Manager recommends that:

¹ <https://www.toronto.ca/legdocs/mmis/2012/cc/bgrd/backgroundfile-53862.pdf>

² <https://www.toronto.ca/wp-content/uploads/2021/08/9672-revised-ontario-toronto-agreement-in-principle-2021.pdf>

1. City Council authorize the City Manager, and any other relevant City officials, in consultation with the Chief Executive Officer, Toronto Transit Commission, to finalize negotiations, enter into and execute an Eglinton Crosstown Light Rail Transit - Train Operating and Funding Agreement with Metrolinx and the TTC, based on the Term Sheet set out in Attachment 1, and any such necessary ancillary or related agreements, amendments and renewals (including with any other relevant parties), all substantially in accordance with the Term Sheet and on such other terms and conditions satisfactory to the City Manager and the Chief Financial Officer and Treasurer and any other relevant officials, and in a form satisfactory to the City Solicitor.
2. City Council forward this report to the Toronto Transit Commission Board.

FINANCIAL IMPACT

The Eglinton Crosstown Light Rail Transit (ECLRT) - Train Operating and Funding Agreement (the Agreement) will be the main agreement between the City, TTC and Metrolinx that will govern the ECLRT once the line is in service. The Agreement will establish the roles and responsibilities of the City, TTC and Metrolinx, including the City's obligations for funding ECLRT operations and the TTC's responsibilities for operations. If approved, the terms in Attachment 1 will be used to develop the Agreement. The City and Metrolinx have engaged in negotiations that have resulted in the terms in Attachment 1, which contains terms that have been agreed to between the parties.

Through the recommendations in this report, and in accordance with the terms in Attachment 1, the City will negotiate and enter into a 30-year ECLRT Agreement for the TTC to provide operations and the City to fund the operations, including non-lifecycle maintenance, structured as an initial 10-year term with two automatic successive 10-year renewals. Prior to the end of the final renewal term, the City, TTC and Metrolinx will start negotiations for an extended or new Agreement.

Over the term of the Agreement, the City will fund the operations and non-lifecycle maintenance costs for the ECLRT, including any net operating subsidy, and will recover farebox and non-farebox revenue to defray these costs. Metrolinx will fund all lifecycle maintenance costs. The City will have an ongoing obligation to fund ECLRT operations and non-lifecycle maintenance for the duration of the Agreement, with annual budgets to be established as part of the TTC's operating budget through the budget process each year.

The 2022 Operating Budget approved by the TTC Board on December 20, 2021 and City Council on February 17, 2022 includes \$29.6 million in 2022 net funding relating to operating, non-lifecycle maintenance and mobilization costs associated with the ECLRT. This includes \$30.4 million in gross expenditures partially offset by \$0.8 million in anticipated incremental revenue. These amounts were based on an assumed revenue service commencement date of October 9, 2022. The 2023 Outlook anticipates a further incremental net operating subsidy of \$33 million, totalling an expected \$62.6

million full year net cost in 2023³ based on Service Level 1 scheduling as set out in the Project Agreement between Metrolinx and ProjectCo. Cost estimates will be refined with requirements based on the final Agreement and will be incorporated into the 2023 Operating Budget request to be considered by the TTC Board and City Council.

The City's funding obligations will be limited to the cost areas outlined in this report and the terms in Attachment 1. The City's responsibility for non-life cycle maintenance payments will be limited to the amounts that will be outlined in the Agreement, unless otherwise agreed upon through a variation process to be outlined in the Agreement. As described in the report and Attachment 1, the Agreement will also establish the processes for reimbursement to the City and TTC for failures or delays attributed to Metrolinx or ProjectCo.

City staff, working closely with the TTC, will negotiate with Metrolinx based on the terms and conditions of payment for the operating costs outlined in this report and Attachment 1. Any substantial additional funding obligations identified through the refinement of the terms during the Agreement drafting process, beyond the cost obligations listed in this report and in the terms in Attachment 1, will be subject to further approval by City Council.

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

DECISION HISTORY

On November 8, 2016, City Council approved proposed terms for operations and maintenance of the Eglinton Crosstown LRT (ECLRT) as part of EX19.1 - *Transit Network Plan Update and Financial Strategy*. The terms outlined that the City is responsible for the operating and regular (i.e., all non-lifecycle) maintenance costs for all provincially owned LRTs within the City of Toronto, and that the City/TTC will retain LRT farebox revenue and non-farebox revenue, in order to recover all or a portion of the costs of operating the LRTs and TTC services.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX19.1>

On October 30, 2012, City Council approved terms of a LRT Master Agreement (the "Master Agreement") which specified the terms and conditions for the construction and operation of the ECLRT and other transit lines. The Master Agreement outlined that operations will be delivered by the TTC, on behalf of Metrolinx, over an initial 10-year operating agreement, which could be extended by mutual agreement.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.CC27.6>

COMMENTS

Background

³ [2022 TTC Conventional and Wheel-Trans Operating Budget](#)

Eglinton Crosstown LRT

The Eglinton Crosstown LRT (ECLRT) is a light rail transit line that will run along Eglinton Avenue between Mount Dennis Station and Kennedy Station (Figure 1). The ECLRT is currently anticipated to reach substantial construction completion by late 2022. It will provide fast, reliable and convenient transit by carrying passengers in a below grade tunnel segment and a dedicated right-of-way separated from regular traffic. The 19-kilometre corridor will have 25 stations and stops that will link to over 50 bus routes, three existing subway stations and three GO stations. The ECLRT is expected to carry 5,500 passengers per hour in the peak period per direction by 2031.

The ECLRT is nearing construction completion, which is expected to occur in late 2022. While the track installation was completed in November 2021 and the rail vehicles are now being tested on the line, work to complete the construction of the stations continues. Work is also underway to install the train signals and communications systems that enable safe train movements. Additional information on the progress of ECLRT construction is available on Metrolinx's website⁴.

In 2012, the City, TTC, and Metrolinx executed an LRT Master Agreement (Master Agreement)⁵ which defined the terms and conditions for the construction and operation of the LRT Program (i.e. Finch West LRT, Sheppard East LRT, and ECLRT). The Master Agreement outlined that the TTC would operate these LRTs over an initial 10-year operating period on behalf of Metrolinx, while Metrolinx would own the transit assets which would be maintained by Metrolinx's agent (e.g. Crosslinx Transit Solutions for the ECLRT).



Figure 1. Map of Eglinton Crosstown LRT

⁴ <https://www.metrolinx.com/en/greaterregion/projects/crosstown.aspx>

⁵ https://www.metrolinx.com/en/projectsandprograms/transitexpansionprojects/Master_Agreement_Nov_28_2012.pdf

Business and Community Supports

Metrolinx continues to reaffirm its previous commitments to support businesses along the ECLRT route. In March 2020, the Province pledged an additional \$3 million to fund marketing and promotion of businesses impacted by the ECLRT, including designated funding for:

- Individual businesses;
- Business Improvement Area (BIA) marketing initiatives such as advertising, printing, festivals and special events;
- the City's Black Business and Professionals Council Advisory Body for businesses impacted along Eglinton Avenue;
- Experience Eglinton corridor-wide quarterly paid advertising initiatives, including signage, radio, digital and social ads; and
- Discounted parking to help attract patrons for impacted businesses.

Metrolinx is also supporting expansion of the City's existing business support programs, through the BIAs using committed funds of \$1 million.

Metrolinx has established Community Liaison Committees to provide the community with direct access to Metrolinx and its construction partners to facilitate the discussion and mitigation of construction impacts. Metrolinx and the City have worked together to provide enhanced street cleaning and litter collection and regular window washing services for businesses along the corridor to help keep storefronts clean.

Future Extensions

Planning for future east and west extensions of the ECLRT is currently underway. The Eglinton Crosstown West Extension (ECWE) is part of the Province's Subway Program and is a westerly extension of the ECLRT, extending 9.2 kilometers from Mount Dennis Station to Renforth Station, on the Mississauga Transitway.

The City and the TTC are in the early stages of planning and designing the Eglinton East LRT (EELRT), which is the easterly extension of the ECLRT. The EELRT is currently planned as a 15 kilometre LRT extending from Kennedy Station through the University of Toronto Scarborough Campus to Malvern Town Centre. City and TTC staff are continuing to work with Metrolinx to plan for the interface between the EELRT, the ECLRT, and the Scarborough Subway Extension.

Summary of Operating and Funding Terms

The ECLRT - Train Operating and Funding Agreement (the Agreement) will establish roles and responsibilities for the TTC's operation of the ECLRT, the City's funding of operations including day-to-day maintenance costs, and Metrolinx's oversight of the project as the asset owner. City staff in consultation with TTC staff, have negotiated a Term Sheet with Metrolinx, included as Attachment 1, which outlines the high-level terms and principles that will form the foundation of the detailed Agreement. City staff have negotiated provisions in Attachment 1 which establish limits to the City's financial obligations and enable City influence and decision-making over matters to meet transit service delivery demands across the network. City and TTC staff have also weighed

implications for future transit projects, recognizing that the Agreement may establish precedents for other transit projects to be delivered by the Province and operated by the TTC, including other LRT lines and the Province's Subway Program. As noted above, the City and TTC staff will negotiate the Agreement with Metrolinx, which will build on and remain consistent with the terms in Attachment 1.

This report provides an overview and assessment of the terms outlined in Attachment 1. The terms provide details on the following principles and roles and responsibilities, which are in accordance with the 2021 Revised Agreement-in-Principle (AIP) executed between the Province and the City (see Attachment 1 for the full list of terms):

- The City will fund operating and non-lifecycle maintenance costs.
- The TTC will operate the ECLRT and will coordinate with Metrolinx on day-to-day maintenance through their ProjectCo, Crosslinx Transit Solutions (CTS).
- Metrolinx will provide the City and TTC with transparency into maintenance obligations and activities of CTS that the City will be responsible for funding, and that will impact TTC's operation of the line. This will include receiving access to the maintenance schedule to be utilized by CTS for non-lifecycle maintenance work.
- The City will retain farebox and non-farebox revenue to defray a portion of operating costs otherwise supported through added City subsidy.
- As the asset owner and primary funder of ECLRT capital expenses, Metrolinx will retain revenues and benefits relating to development opportunities relating to ECLRT, as described in more detail below.
- The City and TTC will retain full control and decision-making over fare-setting on a network-wide basis to address transit service demands across the network.
- The City's funding obligations for operations and maintenance will be clearly defined in the Agreement, with Metrolinx providing the City transparency into the calculation of all costs.
- Metrolinx is responsible for the project schedule as the asset owner and will reimburse the City for applicable direct operating costs, such as labour and contract costs, in the event that Metrolinx provides notice of delays to the project schedule after TTC mobilization activities have commenced.

Metrolinx and the TTC are also negotiating a separate ECLRT PRESTO Agreement which will establish terms for additional fare gates, and collection and distribution of fare revenue for the ECLRT. This will align with the existing PRESTO Agreement between the TTC and Metrolinx.

The following sections describe Term Sheet provisions related to Funding, Revenues Term Length and Application, Operations, Fare Setting and Service Planning, and Dispute Resolution.

Funding

Metrolinx will pay for all lifecycle maintenance costs for the ECLRT. This will include the costs associated with closures of the ECLRT to perform lifecycle maintenance activities.

The City will be responsible for funding the cost of operations and non-lifecycle maintenance, which will include:

- Costs of staffing and operating the ECLRT and associated costs, such as providing shuttlebus services;
- Costs for non-lifecycle maintenance such as cleaning and day-to-day repairs, based on costing provided by Metrolinx that will be outlined in the Agreement;
- Costs associated with administering the Project Agreement between Metrolinx and ProjectCo, including funding portions of Metrolinx staff positions that support this work, in accordance with parameters to be established in the Agreement;
- Costs of utilities and payments-in-lieu of taxes for the ECLRT; and
- Fare gate maintenance and start-up costs.

The City's funding obligations and the TTC's operating responsibilities were developed based upon the LRT terms noted within the 2021 Revised AIP, the 2012 LRT Master Agreement, and the project requirements set out by Metrolinx in the Project Agreement between Metrolinx and their ProjectCo, CTS. The publicly available version of the Project Agreement redacts certain sections due to the commercially sensitive nature of the information within those areas. Metrolinx will provide transparency regarding the calculation of its obligations in the Project Agreement that will be assumed by the City and TTC through the Agreement. The Agreement will outline all funding and operating obligations for which the City and TTC will be responsible, consistent with the terms in Attachment 1.

In the event of closures of the ECLRT due to infrastructure failures, the City will receive reimbursement for the applicable operating costs. Reimbursement will be provided according to the deduction regime established through the Project Agreement between Metrolinx and CTS. Deductions will be applied against operations and non-lifecycle service payments amounts paid by the City/TTC to CTS through Metrolinx. These deductions are expected to recover a portion of the operating costs incurred by the City due to unplanned closures attributed to vehicle and infrastructure failures. Metrolinx, City, and TTC staff will review the deduction structure and the reimbursements regularly and will work together to assess and identify solutions to address any gaps in the recovery of those City costs that may be required. In the event of ECLRT closures that may be due to uncontrollable issues ("force majeure" events) such as natural disasters, Metrolinx, the City and the TTC will jointly determine the appropriate cost sharing arrangement.

City and Metrolinx staff have had discussions on responsibility for payment of property taxes, or more specifically Payments in Lieu of Taxes (PILT) associated with the ECLRT stations and facilities. In discussions with Metrolinx, City staff took the position that these costs represent a cost of ownership, particularly as payments of PILT is required regardless of whether or not the line is in operation. However, given the considerable capital investment being made by the Province towards transit expansion to the benefit of City services and the urgency of finalizing negotiations to execute the Agreement with Metrolinx, City staff require Council direction that PILT be considered an operating expense, as outlined in Attachment 1.

City staff have assessed potential implications for PILT revenue over the term of the Agreement:

- PILT revenue for the ECLRT is estimated at \$1.4 million annually, totalling \$42 million over 30 years, using 2022\$ and current property tax rates.
- Preliminary estimates of PILT revenue across all planned transit expansion stations beyond just the ECLRT total \$4.18 million annually or \$125.4 million over 30 years using 2022\$ and current property tax rates.

Non-lifecycle Maintenance Costs

The City will be responsible for payment for non-life cycle maintenance activities performed by CTS for the ECLRT. Non-life cycle maintenance refers to the day-to-day maintenance required to meet service standards, including custodial, preventative, and corrective activities. The maintenance payment due, includes a fixed annual payment and a variable payment that will be determined based on kilometres travelled to reflect variability in maintenance requirements based on service levels.

The Agreement will establish a process by which Metrolinx will annually forecast non-lifecycle maintenance costs for review by the City and TTC. After this review process is complete, the annual maintenance payment will be approved and established as part of the TTC's operating budget through the budget process each year. The projected annual maintenance payment may be subject to variations based on service level changes and adjustments to maintenance requirements. Any changes to the City and TTC's financial obligations, either in the form of unforeseen obligations or resulting from service level or maintenance requirement adjustments, will be negotiated by the parties through a variation process to be established in the Agreement.

Farebox and Non-farebox Revenue

The City will retain the farebox and non-farebox revenue generated by the ECLRT in order to defray the costs of operating the ECLRT, as stipulated in the 2021 Revised AIP. As the asset owner, Metrolinx will make available to the City and TTC, all applicable components of the ECLRT for the purposes of generating non-farebox revenue during the term of the Agreement. This will be subject to a streamlined approval process that will allow Metrolinx to review non-farebox revenue activities as required for due diligence, for example to confirm that ECLRT infrastructure will be unaffected by any potential non-fare revenue ventures.

Metrolinx will retain revenues associated with disposition or development of property owned by Metrolinx relating to ECLRT, including revenues from Transit-Oriented Communities (TOC) and station naming rights. This is based on the principle that the Province, as the asset owner and primary funder of the ECLRT infrastructure, should receive revenue from the associated TOC.

Station Entrance Connections

Metrolinx intends to allow adjacent developers to create direct connections between their development and ECLRT stations, where viable and appropriate. Metrolinx will negotiate fees to be paid by developers in exchange for enabling the direct connections to the ECLRT. Metrolinx will retain all revenue associated with station connection fees.

Station entrance connections may result in added costs to the system in the form of incremental operating and maintenance costs and Metrolinx will be responsible for funding the incremental costs associated with the entrance connection.

Operations

The TTC will operate the ECLRT and will coordinate with Metrolinx on day-to-day maintenance (i.e. non-life cycle) through CTS. The TTC will be integrating the ECLRT into the overall TTC network, and performing the functions of vehicle and station operation, control center operation, safety and security, customer service, and fare enforcement. The ECLRT will be operated through TTC's Transit Control Centre to ensure that there is a seamless customer interface between ECLRT and the other modes of transit. Attachment 1 contains a full list of the operating functions that the TTC will be performing.

Term Length and Application

The initial term of the Agreement will be 10 years and there will be two successive renewal terms. Each additional 10-year term will renew automatically unless one or more of the parties chooses to terminate due to major default of the other party. Events constituting a major default could include scenarios where a party is no longer able to pay debts and obligations or perform their obligations under the Agreement. The terms regarding renewal will ensure termination is used only as a last resort.

If the Agreement expires or is terminated, the City and TTC will have no continuing funding nor operating obligations for the ECLRT as of the date of the expiration or termination. The proposed terms include provisions to ensure that any termination will result in minimal disruption to operations and maintenance, and that ECLRT will continue to operate at regular service levels. If an extension to the ECLRT is completed, as planned for the ECWE and the EELRT, the parties may agree to incorporate the operation and funding of the extension(s) into the Agreement. Staff will report back to City Council to seek approval for terms related to any City funding and TTC operating obligations of any future extension of the ECLRT.

The TTC has developed a plan for mobilization of its resources for the ECLRT opening based on a planning date of October 9, 2022 that Metrolinx has communicated. City and TTC staff have negotiated terms that would require Metrolinx to provide immediate notice to the City of any official delays to the project schedule. Metrolinx will also reimburse the City for all applicable direct operational costs arising from delays attributable to Metrolinx or its ProjectCo that cannot be mitigated, including labour costs and non-labour costs such as fare gate maintenance, contract penalties, and start-up costs.

Fare Setting and Service Planning

Under the proposed terms, the City and TTC will have discretion to set fare policy system-wide while providing assurance to Metrolinx, as the asset owner, that the TTC will not utilize a fare structure on the ECLRT that differs from the rest of the TTC network.

Service levels for the ECLRT will be based on the pre-determined service levels in the Project Agreement between Metrolinx and CTS. The TTC will continue to conduct an annual service plan review to determine service requirements, which will include the ECLRT to observe the entire TTC network.

In the event service level changes are requested by Metrolinx or the City and/or the TTC which are not attributed to changes in ridership demand, the party requesting the change will be responsible for the incremental costs, including operations, non-lifecycle maintenance and lifecycle maintenance costs. Discussions between the City, TTC and Metrolinx are on-going about opening the ECLRT at a higher service level than originally planned and the potential cost implications.

Dispute Resolution

The terms in Attachment 1 and the forthcoming Agreement, will establish a clear understanding between the City, TTC and Metrolinx on funding obligations, approvals, and decision-making processes in order to avoid potential disputes when the ECLRT is in service. The Agreement will include a dispute resolution process whereby disputes will be addressed through tiered negotiation between increasingly senior representatives of the City, TTC and Metrolinx and referred to the existing Ontario-Toronto Transit Coordination Partnership governance framework as required. If disputed matters cannot be resolved using tiered escalation and the existing governance framework, the parties may proceed to negotiation with the assistance of an independent mediator. Each party will continue to perform their responsibilities during any dispute and will accelerate dispute resolution timelines as required.

Next Steps

Subject to City Council's approval of the recommendations in this report, City staff will negotiate and execute the Agreement with Metrolinx and TTC based on the terms in Attachment 1 of this report.

Finch West LRT Extension

The Finch West Light Rail Transit (FWLRT) is an 11-kilometre light rail transit line along Finch Avenue West between Keele Street and Humber College Boulevard. Construction of the FWLRT is expected to be complete in late 2023. City, TTC, and Metrolinx staff will work to develop terms for operating and funding Agreement for the FWLRT, based upon the ECLRT TOFA prior to construction completion.

In May 2021, City Council under MM32.24⁶ directed staff to assess and report back on the feasibility of expanding the FWLRT south to connect to the Kitchener GO Line. City staff are examining the feasibility and benefits of expanding the FWLRT south as part of ongoing assessment of the next phase of City transit expansion priorities and will report back in Q2 2023. At this time, Metrolinx is focused on delivering the provincial Subway Program and construction completion of its LRT projects, including the FWLRT. As the

⁶ <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.MM32.24>

FWLRT is a Metrolinx project, any extension of the line would need to be coordinated with Metrolinx. The Province has not yet indicated support for any extensions to the FWLRT.

CONTACT

Tracey Cook, Deputy City Manager, Infrastructure and Development Services,
tracey.cook@toronto.ca, 416-338-7200

SIGNATURE

Chris Murray
City Manager

ATTACHMENTS

Attachment 1 – Eglinton Crosstown LRT Operating and Funding Term Sheet