

SmartTrack Stations Program - Provincial Funding Update

Date: June 14, 2023

To: City Council

From: Interim Deputy City Manager, Infrastructure and Development Services

Wards: All

REASON FOR CONFIDENTIAL INFORMATION

The attachment to this report contains commercial information, supplied in confidence to the City of Toronto, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization and involves the security of the property belonging to the City of Toronto.

SUMMARY

The SmartTrack Stations Program (the "Program") represents a significant investment to improve transportation choices within Toronto by leveraging existing transit infrastructure to serve more people. Combined with Metrolinx's GO Expansion Program, SmartTrack will transform heavy rail infrastructure in Toronto from a regional commuter service into an urban rapid transit network.

On March 29, 2023, through EX3.9 SmartTrack Stations Program - Update, City Council directed the City Manager to negotiate with the Province of Ontario for the Province to commit to paying all amounts above the original SmartTrack Program Budget of \$1.463 billion (the "Original Program Budget"), which as of the date of the report were estimated at \$234 million. Following City Council's direction, City staff began negotiations with the Province of Ontario in earnest to cover the cost increases to deliver the existing Council-approved Program scope.

Through these negotiations, the City has been able to secure a funding contribution of up to \$226 million (YOES\$) from the Province of Ontario (the "Provincial Funding"), conditional upon the City agreeing to the terms and conditions outlined in Attachment 1 – Provincial Funding Term Sheet. There is an \$8 million funding difference between the

City's estimate of \$234 million and the Provincial Funding. This \$8 million was originally attributed by City staff to bring the Program contingency up to 10%. The Province through its agency Metrolinx, has advised that it considers the existing Program contingency of roughly 9% to be sufficient to enable the delivery of the Program and as such, has not approved the contribution of those funds.

As a result, the proposed revised Program Budget is now up to \$1.689 billion (the "Revised Program Budget"), which is inclusive of \$878 million from the City, \$585 million from the Government of Canada, and up to \$226 million from the Province of Ontario.

It is important to note, that the City's contribution to the Program will not change as a result of this report. However, the Province's funding proposal notes that the Original Program Budget must be exhausted prior to the use of Provincial Funding, and also confirms that the City's and Province's contribution to the Program are capped. Should the costs of the Program exceed the Revised Program Budget, the City and the Province would discuss potential mitigation strategies, including potential scope adjustments, while maintaining the approved five stations within the Program.

The purpose of this report is to seek City Council approval to secure the Provincial Funding based on the terms and conditions outlined within this report and in Attachment 1 and to proceed with the Program through an amendment to the Revised Ontario-Toronto Agreement in Principle (the "Revised AIP")¹. All other terms within the Revised AIP that are not amended would remain in full force and effect.

A decision on the future of the Program is required now as the Province and Metrolinx continue to incur costs on the Program, and the bid price for the Bloor-Lansdowne Station continues to increase by a fixed percentage on a monthly basis as outlined in Table 3 of Confidential Attachment 1.

RECOMMENDATIONS

The Interim Deputy City Manager, Infrastructure and Development Services recommends that:

1. City Council approve acceptance of provincial funding up to \$226 million toward the costs of the SmartTrack Stations Program (the "Provincial Funding") on the terms and conditions set out in the Provincial Funding Term Sheet attached as Attachment 1 to this report (the "Provincial Funding Term Sheet").
2. City Council authorize the City Manager, in consultation with the City Solicitor, and any other relevant City Officials to negotiate, enter into and execute a further amendment to the revised Ontario-Toronto Agreement in Principle (the "Revised AIP") with the Province of Ontario necessary for the implementation of the SmartTrack Stations Program (the "Amending Agreement"), in accordance with

¹ <https://www.toronto.ca/wp-content/uploads/2021/08/9672-revised-ontario-toronto-agreement-in-principle-2021.pdf>

the Provincial Funding Term Sheet and on such other terms and conditions satisfactory to the City Manager and in a form satisfactory to the City Solicitor.

3. Subject to entering into the Amending Agreement, City Council authorize the City Manager to negotiate and execute any agreements necessary with the Province and/or any other relevant provincial agency including a Master Agreement for the implementation of the SmartTrack Stations Program, based on the terms set out in the Revised AIP as amended by the Amending Agreement and on such other terms and conditions satisfactory to the City Manager and in a form satisfactory to the City Solicitor.
4. City Council authorize the public release of Confidential Attachment 1 following completion of the SmartTrack Stations Program as it contains commercial information, supplied in confidence to the City, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization and involves the security of the property belonging to the City of Toronto.

FINANCIAL IMPACT

The City has secured a funding contribution of up to \$226 million from the Province of Ontario, conditional upon the City agreeing to the terms and conditions outlined in this report. The Provincial Funding differs from the City's initial \$234 million funding request by \$8 million due to a variance in the contingency amount. The \$8 million was originally attributed by City staff to bring the Program contingency up to 10%. The Province has advised that it considers the existing Program contingency of roughly 9% to be sufficient to enable the delivery of the Program and as such, has not approved the contribution of those funds. The \$8 million difference will not be funded by the City.

Should the receipt of the Provincial Funding be approved, the SmartTrack Stations Program budget will be revised to \$1.689 billion. However, the City's total project cost and cash flows for the project are unchanged from the amounts previously approved by Council given the additional Program Budget will be funded solely by a provincial contribution. The City-funded portion of the Program Costs will be paid by way of a cash contribution to Metrolinx, who is accountable for the delivery of the SmartTrack Stations Program.

See below for a table outlining the currently approved cash flows in the City Budget of \$1.463 billion. The remainder of the \$1.689 billion Program Budget will be funded directly by the Provincial contribution of up to \$226 million.

<i>Description \$Millions</i>	2023	2024	2025	2026	2027	2028	Total
Approved City Budget*	320.0		627.8		357.2	158.0	1,463.0
Provincial Contribution	226.0						226.0
Combined City Budget & Provincial Contribution							1,689.0

**The City Budget includes a further \$9.4 million in City staff costs from 2023 to 2025.*

Funding Sources	\$Millions
Federal Contribution	585.0
City Contribution	
City Building Fund – Recoverable Debt	296.0
SmartTrack Tax Increment Financing – Recoverable Debt	292.0
Development Charges	290.0
Sub-Total City Contribution	878.0
Total Program Costs – City Budget	1,463.0
Provincial Contribution	226.0
Total SmartTrack Stations Program Budget	1,689.0

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

DECISION HISTORY

In November 2016, City Council adopted with amendments EX19.1 Transit Network Plan Update and Financial Strategy and endorsed a Summary Term Sheet that established principles for cost-sharing on a number of transit expansion initiatives, including the SmartTrack Stations Program.

Link: [Agenda Item History - 2016.EX19.1 \(toronto.ca\)](#)

In April 2018, City Council adopted with amendments EX33.1 Implementation of the SmartTrack Stations Program and the Metrolinx Regional Express Rail Program and approved a contribution of up to \$1.463 billion to Metrolinx for the SmartTrack Stations Program subject to the terms and conditions described in Attachment 1 of the report.

The approved funding and financing strategy includes \$585 million in federal funding under Investing in Canada Infrastructure Program – Public Transit Stream.

Link: [Agenda Item History - 2018.EX33.1 \(toronto.ca\)](#)

In October 2019, City Council adopted with amendments EX9.1 Toronto-Ontario Transit Update and authorized the City Manager to negotiate, enter into and execute a Preliminary Agreement with the Province and/or any other relevant provincial agency, in accordance with the terms set out in the term sheet in Attachment 6 to the report.

Link: [Agenda Item History - 2019.EX9.1 \(toronto.ca\)](#)

In February 2021, City Council adopted EX20.02 Advancing the SmartTrack Stations Program and approved the recommended terms negotiated with the Province of Ontario, outlined in Attachment 1 to the report, to allow the SmartTrack Stations Program to proceed with construction. These terms provide that the Program, which will be delivered by the Province and/or its agencies (Metrolinx and Infrastructure Ontario), will consist of five stations at: Finch-Kennedy, East Harbour, King-Liberty, St. Clair-Old Weston and Bloor-Lansdowne. The City capital contribution to the Program remained at \$1.463 billion, which included \$585 million in funding from the Government of Canada.

Link: [Agenda Item History - 2021.EX20.2 \(toronto.ca\)](#)

On March 29, 2023, City Council adopted EX3.9 SmartTrack Stations Program Update and directed the City Manager to request the Province to commit to paying all amounts above the original SmartTrack Program Budget of \$1.463 billion which are required to deliver the Program due to increased costs, which is estimated at \$234 million.

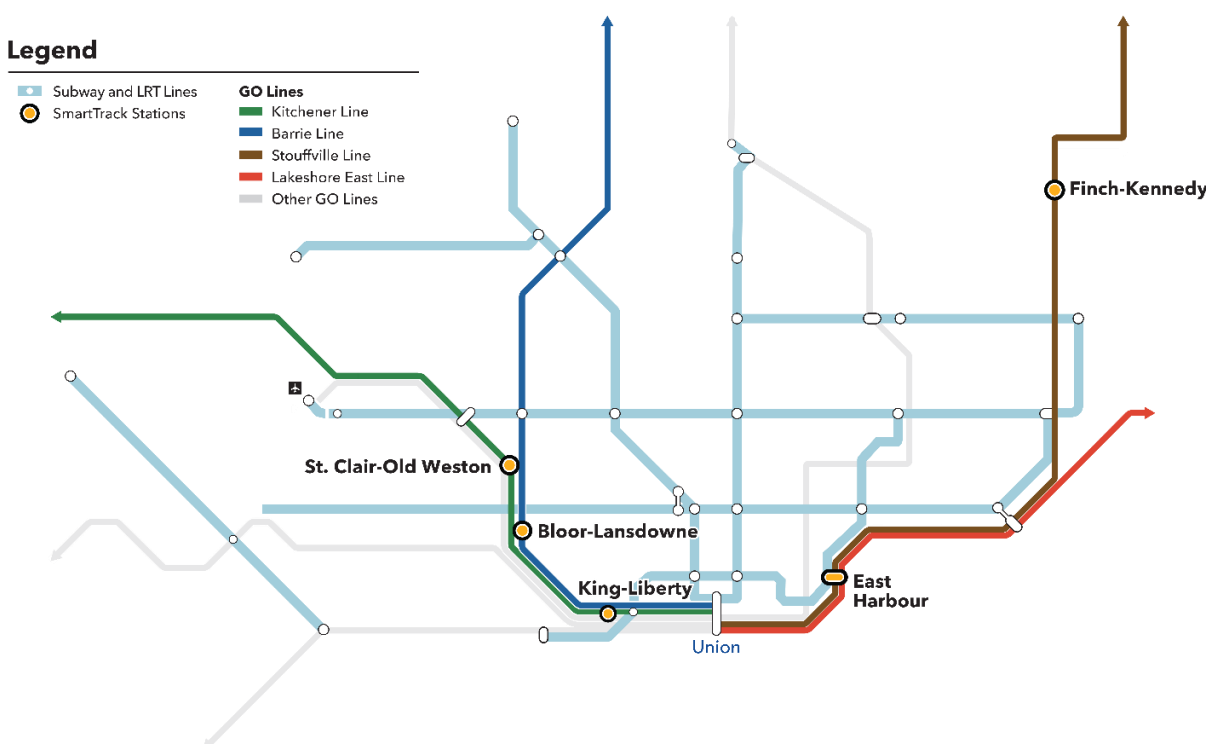
Link: [Agenda Item History - 2023.EX3.9 \(toronto.ca\)](#)

COMMENTS

SmartTrack Stations Program - Background

The SmartTrack Stations Program (the “Program”) is an investment to improve transportation choices within Toronto through the use of existing transit infrastructure to serve more people. Combined with Metrolinx's GO Expansion Program, SmartTrack will accelerate the transformation of heavy rail infrastructure in Toronto from a regional commuter service into an urban rapid transit network, thereby bringing transit faster to communities across the city. The scope of the Program consists of five stations: Finch-Kennedy, East Harbour, King-Liberty, St. Clair-Old Weston, and Bloor-Lansdowne (see Figure 1).

Figure 1. SmartTrack Stations Program



Existing City Capital Contribution and Approved Federal Funding

In February 2021, City Council committed to contributing up to \$1.195 billion for Base Station Infrastructure and up to \$268 million for City-Initiated Station Requirements. The resulting total of up to \$1.463 billion was the original budget for the Program, inclusive of all financing costs as well as \$585 million in federal funding (the “Original Program Budget”). Federal approval for the Program under the Public Transit stream of the Investing in Canada Infrastructure Program (ICIP) was officially confirmed in April 2022.

Likewise, the City’s funding and financing strategy approved by City Council in 2018 was re-affirmed in 2021, with the necessary capital funding for the Program to be raised through federal funds, development charges, tax increment financing and the City Building Fund. City and Metrolinx staff are managing the Original Program Budget in accordance with the SmartTrack Revised Agreement in Principle (the “Revised AIP”)², executed on August 13, 2021.

To date, the City has made significant financial investments to advance the delivery of the Program. For example, contracts to advance the design of the Finch-Kennedy, St. Clair-Old Weston, East Harbour, and King-Liberty stations have been awarded. As such the City, through Metrolinx, continues to incur costs on the Program each month. Costs incurred per station as of April 2023 are identified in Table 2 of Confidential Attachment 1.

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

Cost Increases

As previously summarized in EX3.9, the costs to deliver the existing Council approved five station scope had increased by an estimated \$234 million at the date of that report.

Metrolinx cited several unforeseen factors that caused the costs of the Program to significantly increase stemming from market economic challenges and market saturation for large and complex capital projects, amongst other factors. Furthermore, Metrolinx advised that several current conditions led to higher costs in comparison to what was known in 2020 when the Original Program Budget was established, including:

- Uncertainty in supply chain and market conditions including past effects on commodity prices and risk of availability;
- Significant concerns about the uncertainty of cost inflation, resulting in the project owner retaining the risk of future cost increases and needing to protect against future cost pressures beyond current projections;
- An increase of projects in the rail sector, as well as other construction sectors, leading to labour shortages and less market participation/competition, including opportunities with other clients in the market that have lower risk scenarios or require less time to deliver; and
- Maturation of schedules in contracts specific to work in a rail corridor with cost implications. These have been added to improve safety and to reduce/avoid impacts to service disruption.

As a result of the above factors, City staff using updated cost estimates from Metrolinx for each station, determined that an additional \$234 million would be required to deliver the Program. The estimated \$234 million increase takes into consideration the following:

- Cost increases per station based on value-engineered cost estimates from Metrolinx's contractors, excluding East Harbour, which has yet to proceed through the value-engineering exercise;
- Owner and contractor retained risk contingency;
- Maintaining Program contingency at approximately 10%; and,
- City staff resource costs.

Further details were outlined in Table 1 of Confidential Attachment 1 in EX3.9.

Rationale for Provincial Contribution

On March 29, 2023, City Council directed the City Manager to request the Province to commit to paying all amounts above the Original Program Budget which are required to deliver the Program due to increased costs. Since the Program will also benefit the Province through increased ridership on the GO system, and the Province will own and maintain the SmartTrack Stations, there's a strong rationale for the Province to contribute towards the increase in the Program's costs.

Summary of the Provincial Funding Terms and Conditions

Term 1: Provincial Funding

City staff began negotiations with the Province in earnest post-Council direction in March 2023. Through these negotiations, the City has secured up to \$226 million in provincial funding for the Program (the “Provincial Funding”). This Provincial Funding is conditional upon City Council approval of the terms and conditions negotiated between the City and the Province as outlined below and further detailed in Attachment 1 – Provincial Funding Term Sheet.

There is an \$8 million funding difference between the City's estimate of \$234 million to deliver the Program and the Provincial Funding. This \$8 million was originally attributed by City staff to bring the Program contingency up to 10%. The Province has advised that it considers the existing Program contingency of roughly 9% to be sufficient to enable the delivery of the Program and as such, has not approved the contribution of those funds.

As a result, the proposed revised Program Budget is now up to \$1.689 billion (the “Revised Program Budget”), which is inclusive of \$878 million from the City, \$585 million from the Government of Canada and up to \$226 million from the Province of Ontario. A key condition of the Provincial Funding is that the Original Program Budget must be exhausted prior to the use of Provincial Funding.

Term 2: Program Budget, Scope, and Contingency Use

The City and Province will continue to work together and make best efforts to manage the Revised Program Budget by implementing mutually agreed upon cost mitigation measures as may be required, such as value engineering, de-scoping and using station-specific and Program contingencies to keep the Program on-time and on-budget. Should the costs of the Program exceed the Revised Program Budget, the City and the Province would discuss potential mitigation strategies, including potential scope adjustments, while maintaining the approved five stations within the Program. For clarity, this report does not seek to amend nor remove any scope from the Council-approved Program.

The Province's terms also confirm that the City's and the Province's contributions to the Program are capped, and that Metrolinx will deliver the Council-approved five station scope for the Program.

Term 3: Bloor-Lansdowne Interim Letter Agreement

Metrolinx has been advancing the procurement of the Bloor-Lansdowne Station through a design-build (DB) approach. Metrolinx has established a first negotiations proponent (FNP) for the DB contract. A bid price submitted by this proponent was valid until April 5, 2023. While Metrolinx has assured the City that the FNP remains committed to the procurement process, the FNP has advised that the bid price has been increased by the amount noted in Table 3 of Confidential Attachment 1, which is valid until August 5, 2023.

As a condition of Provincial Funding, the City would be required to execute an interim agreement with Metrolinx to commit to fund the Bloor-Lansdowne Station, immediately following City Council approval of this report. Metrolinx will only award the DB contract once such an interim agreement has been executed with the City.

Once the SmartTrack Master Agreement is executed, the terms and conditions thereunder will supersede any such interim agreement and will apply to the implementation and delivery of the Bloor-Lansdowne Station and the other stations in the Program.

Term 4: Early Works for the Program

With respect to early works activities required for the construction of the Program, the Province has noted that as a condition of its funding, the City must agree to be a collaborative partner and work together in cooperation with the Province and its applicable agencies (i.e., Metrolinx) during the early works stage for the Program's construction to ensure timely delivery.

City staff note that, in accordance with its commitment in the Revised AIP, the City has been a collaborative and effective partner with the Province and Metrolinx in advancing the Program to date, including enabling Metrolinx to advance early works through access/licence agreements, expedited review of design submittals, issuance of permits and approvals in an accelerated manner, and other efforts. The City will continue to be a collaborative and effective partner to the Province and Metrolinx as the Program advances to improve transit choices within the city as well as to enhance the Province's GO Expansion Program.

Term 5: Expedited Completion of Agreements

The Province has noted that as a condition of its funding, the City will be required to support the expedited completion of corresponding agreements to the Revised AIP. These agreements are necessary for the delivery of the Program together with Additional Infrastructure (i.e., infrastructure requested by the City over and above the Program's scope, to be delivered by Metrolinx at the City's cost), as well as agreements for property acquisition and access required for the Program. These include:

1. Execution of the SmartTrack Master Agreement by August 15, 2023.
2. Execution of a Bloor-Lansdowne Station Interim Agreement immediately following approval of this report by City Council in June 2023.
3. Necessary agreements to support property acquisition and Additional Infrastructure works required to support East Harbour Transit Hub (EHTH) delivery, including those required to advance the Broadview Extension, on which the design of the EHTH is dependent, as soon as possible.
 - On Broadview Extension, City staff are working with Metrolinx to develop a property acquisition agreement so that Metrolinx can acquire the required

properties on the City's behalf. City staff are also working with Metrolinx to negotiate a design and construction agreement for the Broadview Extension with Council-approved funding.

4. Amendment to the St. Clair Transportation Master Plan (STMP) Letter Agreement reflecting modification of the STMP scope.
 - In August 2021, the City and Metrolinx executed a letter agreement for Metrolinx to advance the design of the STMP scope. Based on the advancement of the design, the cost estimate for the STMP has exceeded the available City budget. As a result, City staff have worked with Metrolinx to descope the widening of St. Clair Avenue and bridge replacement as part of the delivery of the St. Clair-Old Weston SmartTrack Station. These descoped elements will be deferred at this time, until sufficient funding becomes available to enable their delivery.

As the City has been doing to date, City staff will continue to work collaboratively and expeditiously with Metrolinx on the completion and execution of the above agreements to ensure timely progression of the Program.

Term 6: Additional Infrastructure

The Province has noted that as a condition of its contribution to the Program, it requires the City to be responsible for all costs attributable to Additional Infrastructure. While the Revised AIP notes that the City is responsible for the costs of Additional Infrastructure, the Province is seeking additional clarity through confirmation that the final cost of Additional Infrastructure, including property acquisition (where Metrolinx is acquiring property on the City's behalf), all financial risk and potential cost escalation associated with these works are the City's responsibility.

However, the Province has confirmed, that the City will not be responsible for any costs, loss, injury, or damage resulting from the negligent acts or omissions, wilful misconduct, or breach of contract by any one of Metrolinx, a Proponent, Project Co, or any of their contractors, subcontractors, or anyone acting on their behalf.

Term 7: East Harbour Transit-Oriented Community (TOC)

The City is advancing design work on the Environmental Assessment-approved approach and will continue to lead the advancement of necessary flood protection works north of the rail corridor. While the City and Province acknowledge the process underway within the Provincial government to assess options for flood protection north of the rail corridor, should the Provincial government determine that an alternative approach to flood protection is to be pursued, the parties will determine the most appropriate approach to project delivery, cost sharing, risk management, and overall project governance, including any contributions from landowners. In addition, as a condition of the Province's funding, it has requested that the City work with and support the Province in advancing, if pursued, any alternative flood protection solution, including \$57 million of previously committed City funding, subject to City Council approval of a future agreement.

Regarding property acquisition, Metrolinx will continue to lead all property negotiations related to the East Harbour Transit Hub, the Broadview Extension, and the flood protection north of the rail corridor. The City will continue to finalize the property acquisition agreements with Metrolinx to acquire such properties, as required.

Term 8: Supporting TOCs in General

The Province has noted that a condition to funding the Program is a commitment from the City to work collaboratively on Transit Oriented Communities (TOC) proposals. City staff note that the City is already achieving this condition in accordance with the Memorandum of Understanding (the “MOU”) on Transit Oriented Development between the Province and the City³. Under the Provincial Funding Term Sheet, the City and the Province reaffirm their commitment to work in partnership, through cooperative, solutions-focused collaboration using the tools available to them, to advance the Province’s TOC proposals along the GO Expansion, SmartTrack, Subway, and Light Rail Transit projects in the city.

Next Steps

The purpose of this report is to seek City Council approval to secure the Provincial Funding based on the terms and conditions outlined within this report and in Attachment 1 and to proceed with the Program through an amendment to the Ontario-Toronto Agreement in Principle (the “Revised AIP”). All other terms within the Revised AIP that are not amended would remain in full force and effect. Subject to City Council’s approval of this report, City staff will:

- Enter into an Amending Agreement to amend the Revised AIP to reflect City Council direction as outlined within this report.
- Execute an interim agreement with Metrolinx to award the Bloor-Lansdowne design-build contract.
- Continue to negotiate and enter into a SmartTrack Stations Program Master Agreement with Metrolinx to implement the Program, based on the terms of the amended Revised AIP, as well as all other necessary agreements to enable the advancement of the Program.

CONTACT

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³ <https://www.toronto.ca/legdocs/mmis/2020/ex/bgrd/backgroundfile-141912.pdf>

SIGNATURE

Will Johnston
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Infrastructure and Development Services

ATTACHMENTS

Attachment 1 – Provincial Funding Term Sheet
Confidential Attachment 1 – Updated Program Costs