

Finch West Light Rail Transit: Train Operating & Services Term Sheet

Date: January 16, 2024

To: Executive Committee

From: Executive Director, Transit Expansion

Wards: All

SUMMARY

The Finch West Light Rail Transit (FWLRT) is an 11-kilometre light rail transit line that will run along the surface of Finch Avenue West between the existing Finch West Subway Station and the new Humber College Station, with 18 stops that will link to Line 1 (Yonge-University line), Toronto Transit Commission (TTC) buses, as well as GO Transit, MiWay, Viva, and Zum transit services. The Province, through their agency Metrolinx, has ownership of the FWLRT and is funding the construction and delivery of the project, as established by the 2012 LRT Master Agreement.¹ As per the Master Agreement, the City is responsible for funding operations and day-to-day maintenance (i.e., non-lifecycle maintenance) of the FWLRT and the TTC is responsible for operating the FWLRT. The City will be reimbursed for annual operating funding over three years beginning in 2024 for the FWLRT through the Ontario-Toronto New Deal. At this time, Metrolinx anticipates that the FWLRT will achieve Substantial Completion and be ready for revenue service operation by the end of 2024.

A clear understanding and agreement between the City, TTC and Metrolinx on the operating procedures, funding obligations, approvals, dispute resolution and decision-making processes is critical to the successful implementation and operation of the FWLRT. This report recommends terms negotiated by the City and TTC with Metrolinx that expand on the terms of the 2021 Revised Agreement in Principle². The terms in this report outline the details that will govern the City's funding obligations, the TTC's operating performance and maintenance requirements, revenue and payment processes, renewal and dispute terms, and processes for resolving non-fulfillment of obligations. As such, this report seeks City Council authority for City staff to execute the FWLRT Train Operating and Services Agreement (TOSA) with the TTC and Metrolinx, based on the key terms identified in this report and set out in Attachment 1. Should City Council approve the recommendations in this report, the TOSA is expected to be executed in Q1 of 2024.

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>

RECOMMENDATIONS

The Executive Director, Transit Expansion recommends that:

1. City Council authorize the Deputy City Manager, Infrastructure Services, or their designate, in consultation with the Chief Executive Officer, Toronto Transit Commission, to finalize negotiations, enter into and execute the Finch West Light Rail Transit - Train Operating and Services Agreement with Metrolinx and the TTC, based on the Term Sheet set out in Attachment 1 of this report, 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 Deputy City Manager, Infrastructure Services, 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 Finch West Light Rail Transit (FWLRT) - Train Operating and Services Agreement (TOSA) will be the main agreement between the City, TTC, and Metrolinx that will govern the operations of the FWLRT once the line commences service. The TOSA will establish the roles and responsibilities of the City, TTC, and Metrolinx, including the City's obligations for funding FWLRT operations and the TTC's responsibilities for operating the FWLRT.

City, TTC and Metrolinx staff were engaged in negotiations that have resulted in the agreed upon terms in Attachment 1 of this report. These terms outline the details that will govern the City's funding obligations, the TTC's operating performance and maintenance requirements, revenue and payment processes, renewal and dispute terms, and processes for resolving non-fulfillment of obligations. If approved by City Council, these terms will be used to finalize and execute a 30-year FWLRT TOSA, 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 TOSA.

Over the term of the TOSA, the City will fund the operations and non-lifecycle maintenance costs for the FWLRT, 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 FWLRT operations and non-lifecycle maintenance for the duration of the TOSA, with annual budgets to be established as part of the TTC's operating budget through the budget process each year.

The City's funding obligations will be limited to the cost areas outlined in the terms provided in Attachment 1 of this report, unless otherwise agreed upon through a

financial change management process to be outlined in the TOSA. The TOSA will also establish the processes for reimbursement to the City and TTC for failures or delays attributed to Metrolinx or Project Co. Any substantial additional funding obligations identified during the TOSA 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 2024 Operating Budget approved by the TTC Board on December 20, 2023, includes approximately \$18 million for net operating, non-lifecycle maintenance and mobilization costs associated with the FWLRT. This amount is consistent with the 2024 Budget prepared by the City Manager and the City's Chief Financial Officer and Treasurer and was based on an assumed service commencement date of September 2024.

Funding for the FWLRT costs identified in the 2024 Budget will be fully reimbursed by the Province through the Ontario-Toronto New Deal which was announced in November 2023. The provincial funding for the FWLRT in 2024 is part of a 3-year (2024-2026) commitment of \$330 million total annual operating funding by the Province to support bringing the provincially-owned Finch West LRT and the Eglinton Crosstown LRT into revenue service.

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

DECISION HISTORY

On December 13, 2023, City Council approved in principle the terms of the Ontario-Toronto New Deal Working Group Term Sheet, which established a commitment from the Province to provide the City with annual operating funding over three years, beginning in 2024/25 of \$330 million, for the Finch West LRT and the Eglinton Crosstown LRT.

Link: <https://secure.toronto.ca/council/agenda-item.do?item=2023.CC13.2>

On November 8, 2016, City Council approved proposed terms for operations and maintenance of the Finch West LRT 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.

Link: <https://secure.toronto.ca/council/agenda-item.do?item=2016.EX19.1>

On October 30, 2012, City Council approved terms of an LRT Master Agreement (Master Agreement) which specified the terms and conditions for the construction and operation of the FWLRT 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.

Link: <https://secure.toronto.ca/council/agenda-item.do?item=2012.CC27.6>

COMMENTS

Background

The Finch West Light Rail Transit (FWLRT) is an 11-kilometre light rail transit line that will run along the surface of Finch Avenue West between the existing Finch West Subway Station and the new Humber College Station, with 18 stops that will link to Line 1 (Yonge-University line), Toronto Transit Commission (TTC) buses, as well as GO Transit, MiWay, Viva, and Zum transit services. See Figure 1 – Map of Finch West LRT. The FWLRT will provide fast, reliable, and convenient transit and connections between communities, while supporting growth in northwest Toronto. The FWLRT trains will operate every 5-7 minutes during peak hours and every 7-10 minutes during off-peak hours. The LRT is expected to carry 12 million passengers annually by 2031, based on pre-construction estimates. At this time, Metrolinx anticipates that the FWLRT will achieve Substantial Completion and be ready for revenue service operation by the end of 2024.

As of late 2023, installation of the FWLRT tracks and overhead catenary system is complete. All 18 vehicles intended for passenger transportation along the route have successfully undergone their final acceptance procedures. Once Substantial Completion is achieved, the next phase of work involves Metrolinx and its contractors conducting comprehensive testing and commissioning procedures to ensure the safety and reliability of all operational systems post-construction. Additional information on the progress of the FWLRT construction is available on [Metrolinx's website](#).

In 2012, the City, TTC, and Metrolinx executed an LRT Master Agreement (Master Agreement)³ which defined the terms and conditions for the construction and operation of the LRT Program (i.e., Finch West LRT, Sheppard East LRT, and the Eglinton Crosstown LRT). 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 Project Co. (i.e., Mosaic Transit Group for the FWLRT).

³ <http://www.toronto.ca/legdocs/mmis/2012/cc/bgrd/backgroundfile-53862.pdf>

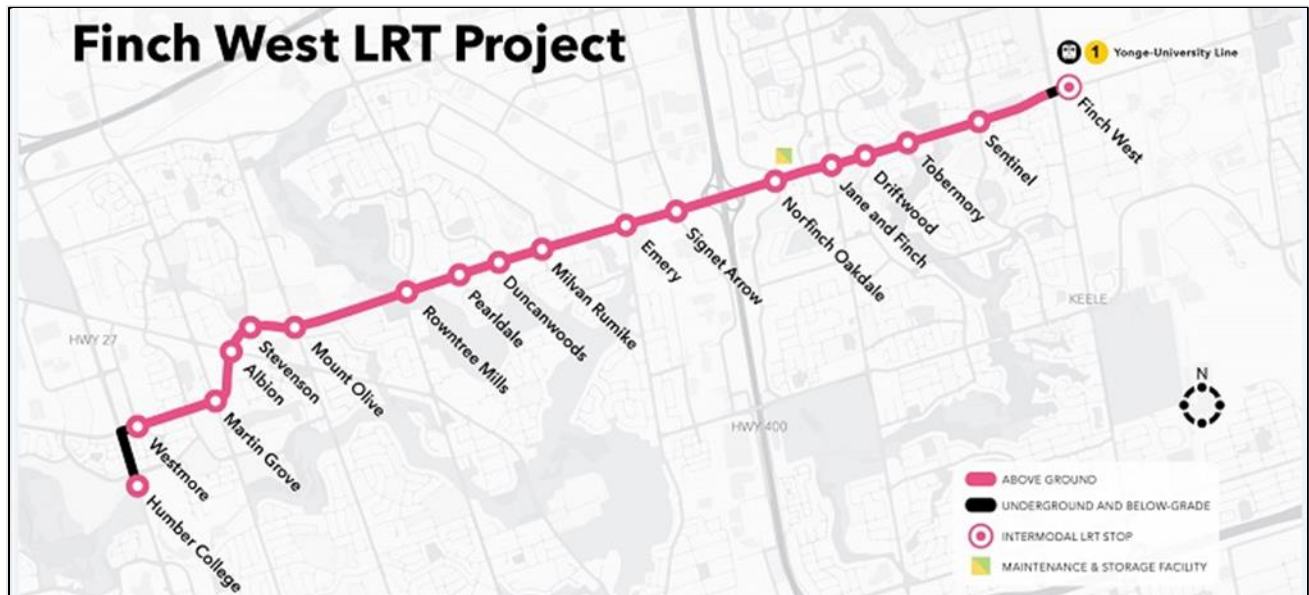


Figure 1. Map of Finch West LRT

Summary of Operating and Services Terms

The FWLRT Train Operating and Services Agreement (TOSA) will establish roles and responsibilities for the TTC's operation of the FWLRT, the City's funding of operations, including day-to-day maintenance costs, and Metrolinx's oversight of the project as the asset owner. The City and TTC have negotiated a Term Sheet with Metrolinx, which is included as Attachment 1 to this report. The Term Sheet outlines the high-level terms and principles that will form the foundation of the TOSA and will establish limits to the City's financial obligations and enable the City to influence decision-making to meet transit service delivery demands across the network. The FWLRT TOSA will align with the operating and funding agreement executed between the City, TTC, and Metrolinx for the Eglinton Crosstown LRT, and will only include changes where necessary to account for the distinct features of the FWLRT project. Subject to City Council approval of the recommendations in this report, City and TTC staff will negotiate the FWLRT TOSA with Metrolinx consistent with the terms provided in Attachment 1 of this report.

The following summarizes the terms outlined in Attachment 1, which are consistent with the 2021 Revised Agreement-in-Principle (AIP) executed between the Province and the City:

- The City will fund the operating and non-lifecycle maintenance costs. The City's funding obligations for operations and non-lifecycle maintenance will be clearly defined in the TOSA, with Metrolinx providing the City transparency into the calculation of all costs.
- The TTC will operate the FWLRT and will coordinate with Metrolinx on day-to-day maintenance through their Project Co., which is known as the Mosaic Transit Group (MTG).

- Metrolinx will provide the City and TTC with transparency into maintenance obligations and activities of MTG that the City will be responsible for funding, and that will impact TTC's operation of the line.
- The City will retain farebox and non-farebox revenue to defray a portion of operating costs.
- As the asset owner and funder of FWLRT capital expenses, the Province, through its agency Metrolinx, will retain revenues associated with development opportunities relating to FWLRT.
- 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.
- 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 continuing to finalize a separate FWLRT PRESTO Agreement which will establish terms for additional fare gates, and the collection and distribution of fare revenue for the FWLRT. This agreement will align with the existing PRESTO Agreement between the TTC and Metrolinx.

The following sections describe in more detail the Term Sheet provisions related to Funding, Non-lifecycle Maintenance Costs, Revenues, Operations, Term Length and Application, Fare Setting and Service Planning, and Dispute Resolution.

Funding

Metrolinx will pay for all lifecycle maintenance costs for the FWLRT. This will include the costs associated with closures of the FWLRT to perform lifecycle maintenance activities. The City will be responsible for funding the cost of operations and non-lifecycle maintenance, which will include the following:

- Costs of staffing and operating the FWLRT and associated costs, such as providing shuttle bus services in the event of passenger-related closures;
- 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 TOSA;
- Costs associated with administering the Project Agreement between Metrolinx and Project Co., including funding portions of Metrolinx staff positions that support this work, in accordance with parameters to be established in the TOSA;
- Costs of utilities and payments-in-lieu of taxes for the FWLRT; and
- Fare gate maintenance and start-up costs.

The FWLRT TOSA will include detailed definitions for operating costs, non-lifecycle maintenance costs, and lifecycle maintenance costs in order to clearly define the funding obligations of the parties. 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 Project Co.,

MTG. The TOSA 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 FWLRT 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 MTG. Deductions will be applied against operations and non-lifecycle service payment amounts paid by the City/TTC to MTG through Metrolinx. These deductions will help offset 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 FWLRT 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.

Non-lifecycle Maintenance Costs

Non-lifecycle maintenance refers to the day-to-day maintenance required to meet service standards, including custodial, preventative, and corrective activities. The City will be responsible for payment of non-lifecycle maintenance activities performed by MTG for the FWLRT. The maintenance payment includes a fixed annual payment and a variable payment that will be determined based on any changes to the scheduled vehicles kilometres travelled, to reflect variability in maintenance requirements based on service levels.

The TOSA 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 financial change management process to be established in the TOSA.

Farebox and Non-farebox Revenue

The City will retain the farebox and non-farebox revenue generated by the FWLRT in order to defray the costs of operating the FWLRT, 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 FWLRT for the purposes of generating non-farebox revenue during the term of the TOSA. 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 FWLRT 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 FWLRT, 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 FWLRT infrastructure, should receive revenue from the associated TOC.

Operations

The TTC is actively engaged in the integration of Line 6 (Finch West) into its existing transit network. The TTC will operate the FWLRT and will coordinate with Metrolinx on day-to-day maintenance through their contractor, MTG. The TTC will be performing the functions of vehicle and station operation, providing customer service, managing safety and security, and fare enforcement. The FWLRT will be operated through TTC's Transit Control Centre to ensure that there is a seamless customer interface between FWLRT and the other modes of transit. TTC and City staff have also negotiated with Metrolinx to develop terms that ensure the TTC has visibility and transparency into activities performed by MTG that may impact TTC's ability to deliver on operating functions, in particular, maintenance and safety oversight. The terms in Attachment 1 contain a full list of the operating functions that the TTC will be performing.

Operational readiness activities will be aligned with MTG's project schedule, which anticipates an opening date by end of 2024. 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 once TTC mobilization activities commence. Metrolinx will also reimburse the City for all applicable direct operational costs arising from delays attributable to Metrolinx or its Project Co. that cannot be mitigated, including labour costs and non-labour costs such as fare gate maintenance, contract penalties, and start-up costs.

Term Length and Application

The initial term of the TOSA 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 TOSA. The terms regarding renewal will ensure termination is used only as a last resort.

If the TOSA expires or is terminated, the City and TTC will have no continuing funding nor operating obligations for the FWLRT 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 FWLRT will continue to operate at regular service levels. If an extension to the FWLRT is completed, the parties may agree to incorporate the operation and funding of the extension(s) into the TOSA, subject to further City Council approval.

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 FWLRT that differs from the rest of the TTC network.

Service levels for the FWLRT will be based on the single service level established in the Project Agreement between Metrolinx and MTG. The TTC will continue to conduct an annual service plan review of the TTC network to determine service requirements, which will include the FWLRT. The TTC will propose any service level changes required through an established process that would provide MTG and Metrolinx with sufficient notice regarding potential modifications to service.

Dispute Resolution

The terms in Attachment 1 of this report that will be included in the TOSA will establish a clear understanding between the City, TTC and Metrolinx on funding obligations, approvals, and decision-making processes to avoid potential disputes when the FWLRT is in service. The TOSA will include a dispute resolution process whereby disputes will be addressed through a 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

Should City Council approve the recommendations in this report, City staff will negotiate and execute the FWLRT TOSA with Metrolinx and TTC based on the terms in Attachment 1 of this report. Execution of the TOSA is anticipated to be completed in Q1 of 2024.

CONTACT

Frank Panacci, Director, Capital Implementation, Transit Expansion Division,
frank.panacci@toronto.ca, 437-237-4698

SIGNATURE

Derrick Toigo
Executive Director
Transit Expansion Division

ATTACHMENTS

Attachment 1 – Finch West LRT Operating and Services Term Sheet