

## **Metrolinx-City of Toronto Master Agreement for the GO Expansion Program**

**Date:** September 9, 2020

**To:** City Council

**From:** Deputy City Manager, Infrastructure and Development Services

**Wards:** All

### **SUMMARY**

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Metrolinx's GO Expansion Program (formerly known as Regional Express Rail, or RER) is a major transportation infrastructure program that will expand the GO rail transportation network to meet the needs of a growing region. The GO Expansion Program will provide faster and more efficient trains, two-way, all-day service, an expanded Union Station, and 15-minute or better service on core portions of the GO rail network.

All seven GO corridors run through the City of Toronto. The corridors currently serve 19 stations within Toronto and converge at Union Station, providing access between various parts of the City and the Greater Toronto and Hamilton Area (GTHA) to the downtown core. As such, a significant portion of the infrastructure improvements to facilitate the Program will be made within the City of Toronto, causing impacts during and after construction to residents and businesses within the vicinity of the GO rail corridors. These impacts include work in and around Union Station, the construction of new grade separations (places where the rail network is separated from the road network or other rail lines), modifications or rehabilitation of bridges, relocation and/or replacement of portions of the City's underground infrastructure, and acquisition of City real estate assets. Attachment 1, prepared by Metrolinx, provides more information on the GO Expansion Program, including a full list of current projects in the City of Toronto.

A clear understanding and agreement between the City and Metrolinx on authorities, cost-sharing, ownership, and approvals are crucial to the implementation of the Program and to help avoid the potential for disputes and delays. Accordingly, City and Metrolinx staff have been working closely to establish principles on a range of issues in order to develop a GO Expansion Master Agreement. If approved, the GO Expansion Master Agreement between the City of Toronto and Metrolinx will define the roles and responsibilities of each party to guide the implementation of the Program while protecting City infrastructure, assets, and services. This report seeks Council authority to execute the Master Agreement with Metrolinx based on the key principles identified in this report.

This report also recommends the delegation of authority pertaining to expropriations for transit-related purposes where the City is the property owner or has an interest in the lands being expropriated. This delegated authority will enable staff to respond to the expropriation proceedings in a timely manner to protect the City's interests.

## **RECOMMENDATIONS**

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

1. City Council authorize the City Manager or designate to finalize negotiations, enter into and execute a Master Agreement with Metrolinx for the Metrolinx GO Expansion Program based on the principles identified in this report, and to enter into any such ancillary or related agreements, amendments, and renewals as may be necessary, all on such other terms and conditions as are satisfactory to the City Manager, in consultation with the Deputy City Manager, Infrastructure and Development Services and the Chief Financial Officer and Treasurer and any other relevant official, and in a form acceptable to the City Solicitor.
2. City Council delegate authority to the Deputy City Manager, Infrastructure and Development Services or designate to oversee the management and implementation of the GO Expansion Master Agreement including, without limitation, providing all necessary consents, approving assignments, and enforcement of warranties, but excluding property rights that have been delegated pursuant to Section 213 of the Municipal Code.
3. City Council with respect to any Metrolinx transit project under the GO Expansion Program:
  - a. authorize the Deputy City Manager, Infrastructure and Development Services or designate to identify and approve the inclusion of enhancements to City infrastructure in or near work being done for or near the transit project, as well as investigative, planning and design studies considered necessary for City infrastructure and services in the vicinity of the transit projects ("Additional Infrastructure") which Metrolinx's contractor will be asked to construct as part of GO Expansion project procurements, subject to the following conditions:
    - i. the Deputy City Manager, Infrastructure and Development Services or designate, in consultation with the applicable Division Head is of the view that the price provided by Metrolinx, as may be reviewed by an independent reviewer, for the Additional Infrastructure is fair and reasonable; and
    - ii. the funding for the cost of the Additional Infrastructure is or will be available in the year required, within an approved capital budget;
  - b. authorize the Deputy City Manager, Infrastructure and Development Services or designate, in consultation with the Chief Financial Officer and

Treasurer, to obtain and pay for estimates and pre-estimates for Additional Infrastructure from Metrolinx and/or Metrolinx's contractor;

- c. authorize the Deputy City Manager, Infrastructure and Development Services or designate, in consultation with the Chief Financial Officer and Treasurer, to negotiate, enter into and execute Municipal Infrastructure Agreements with Metrolinx for Additional Infrastructure, including any amendments; and
  - d. notwithstanding City of Toronto Municipal Code Chapter 71, Financial Control, authorize the Chief Financial Officer and Treasurer to approve budget adjustments, provided that sufficient funds are available, and:
    - i. reallocate funds between capital projects or sub-projects in an amount not more than \$3 million; and
    - ii. report any exercise of this delegated authority to the Budget Committee at the first opportunity.
4. City Council delegate authority to the Deputy City Manager, Infrastructure and Development Services or designate to negotiate, enter into and execute agreements with Metrolinx and any other party, including amendments and renewals for new utility crossing, level crossings and grade separations, including terms related to cost-sharing for both construction and on-going maintenance.
  5. City Council consent to the binding dispute resolution process in the Master Agreement described in Attachment 2 to this report to deal with disputes involving the allocation of costs between the parties in respect of City infrastructure.
  6. City Council delegate to City Officials approval authority pertaining to expropriations for transit related purposes where the City is the property owner or has an interest in the property being expropriated, as outlined in Attachment 3 to this report and that Appendix A of the Toronto Municipal Code Chapter 213, Real Property be amended to reflect this delegation.
  7. City Council authorize the City Solicitor to submit the necessary bill(s) to amend Toronto Municipal Code Chapter 213, Real Property, to give effect to City Council's decision.

## **FINANCIAL IMPACT**

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The Master Agreement is the principal agreement between the City of Toronto and Metrolinx required to implement the GO Expansion Program while protecting City infrastructure, assets and services.

Metrolinx will pay for the Program and associated infrastructure including:

- The costs to design, construct, modify, replace, relocate, protect and commission City infrastructure;
- The costs to relocate third party utilities;
- The costs to obtain required permits, licences, and approvals;
- The costs to obtain real property interests from third parties and the City; and,
- The costs to repair and restore any damage caused to City assets and infrastructure (including streetscape) caused by Metrolinx's construction.

The City has limited direct funding responsibility for the Program. However, under the terms of the draft Master Agreement, the City has cost-sharing obligations for additional infrastructure, utilities (i.e., sewers and watermains), grade separations, and bridges. The cost sharing obligations and potential costs are as follows.

#### *Additional Infrastructure*

The City may request Metrolinx to build additional City infrastructure on its behalf in the interest of construction coordination. Similar to the Master Agreement for Light Rail Transit Projects signed in 2012, where municipal infrastructure is disturbed, relocated, or rebuilt, the City may also wish to consider enhancement and/or upsizing, for the incremental cost of the upgrade (i.e., the amount in excess of the cost otherwise payable by Metrolinx for work on the project). For example, future development intensification in the vicinity of the transit lines may warrant increased water, sewer and road capacity.

Some of these related costs may already be identified in the City's 10-Year Capital Budget and Plan. In such cases, the responsible Division Head will provide the details of the work to Metrolinx in time to include the work in the procurement for Metrolinx's contract. If during the design or construction stage (i.e., post-procurement), the City identifies additional infrastructure that it would like to request, then it can request that the work be completed through the variation procedure in Metrolinx's contract, in which case the City would be required to pay for the pre-estimate and estimate to determine the cost of the work. Metrolinx retains a right to reject the City's request for particular additional infrastructure taking into account various factors including adverse effects on scheduling and completion of the project and future disruptions of not undertaking the work as part of the project.

New and accelerated infrastructure improvement costs associated with the Program will put new pressures on the City's capital program, and will need to be addressed in future budget processes. City staff may also need to respond quickly to unforeseen events impacting City infrastructure or lands. This report recommends delegating authority to the Deputy City Manager, Infrastructure and Development Services to approve "Additional Infrastructure work" provided that (i) the Deputy City Manager, Infrastructure and Development Services, in consultation with the applicable Division Head views the price of the work as reasonable and (ii) the funding for the cost of the Additional Infrastructure is or will be approved within a capital budget in the year required.

Costs for all Additional Infrastructure work will be determined by Metrolinx and a breakdown of costs will be provided to the City. The City has the right to request a review of the cost estimates using a quantity surveyor or other expert if necessary.

### *City Utilities*

For utility relocations that are required as part of a project that is initiated by Metrolinx, the costs will be shared between the City and Metrolinx on a sliding scale based on a life-cycle depreciation formula as authorized by City Council as part of 2016.EX19.1 and agreed to in the signed Agreement in Principle with the Province:

- Where the City's infrastructure has been in service less than 15 years, Metrolinx will pay 100% of the cost to protect, replace, relocate or restore the impacted City infrastructure.
- Where the City's infrastructure has been in service for more than 15 years but less than 50 years, Metrolinx and the City will share the cost to protect, replace, relocate or restore the impacted City infrastructure in accordance with a straight line sliding scale of 2.85% per year.
- Where the City's infrastructure has been in service more than 50 years, the City will pay 100% of the cost to protect, replace, relocate or restore the impacted City infrastructure.

### *Grade Separations*

The following five grade separations will be cost-shared per terms agreed to by Council as part of 2016.EX19.1 and agreed to in the Agreement in Principle:

- Steeles Avenue East (Stouffville GO Corridor)
- Finch Avenue East (Stouffville GO Corridor)
- Scarborough Golf Club Road (Lakeshore East GO Corridor)
- Galloway Road (Lakeshore East GO Corridor)
- Morningside Drive (Lakeshore East GO Corridor)

The City and Metrolinx have also reached agreement on a cost-sharing arrangement for the following five additional grade separations based on Canada Transportation Agency guidelines:

- Passmore Avenue (Stouffville GO Corridor)
- McNicoll Avenue (Stouffville GO Corridor)
- Huntingwood Road (Stouffville GO Corridor)
- Danforth Road / Midland Avenue (Stouffville GO Corridor)
- Progress Avenue (Stouffville GO Corridor)

Metrolinx will be responsible for 85% of the costs for Passmore Avenue, McNicoll Avenue, and Huntingwood Road and the City will contribute the remaining 15%. For Danforth Road and Progress Avenue, Metrolinx and the City will each contribute 50% of the cost of the grade separations. The actual implementation cost to the City will be dependent upon the finalization of detailed design and tender of work. Currently, the

total estimated cost of implementation for all 10 grade separations is approximately \$141 million and anticipated to span eight years from 2022 to 2029. Funding commitments will be considered in future Transportation Services Capital Budget submissions and will be reviewed against all other City funded and unfunded priorities as the implementation costs and City funding requirements for each grade separation are finalized.

### *Bridge Works*

The City and Metrolinx are developing a bridge co-ordination strategy to rehabilitate bridges in the City's 10-year rehabilitation plan. The City will pay Metrolinx to deliver bridge rehabilitation works as part of the procurement contract for project work. Metrolinx will be responsible for 100% of costs to modify or protect bridges to support electrification, as well 100% of costs for any bridge widening required to accommodate the GO service concept.

### *Real Estate*

The City will transfer the necessary property interests to Metrolinx for the Program. These interests will consist of fee simple transfers, easements, licences and permits in respect of City property including City rights-of-way, which interest may be above or below ground, as required for the Program and in accordance with the Real Estate Protocol, a schedule to the Master Agreement. In addition, consideration to be paid for the City property shall be as set out in the Real Estate Protocol and as authorized by City Council as part of 2018.EX33.1.

The Real Estate Protocol further sets out the terms and conditions upon which the City will accept Metrolinx lands for the purposes of operating and maintaining City assets and infrastructure once constructed by Metrolinx.

### *Staffing*

The City will continue to dedicate staff resources to enable timely Metrolinx project reviews and to minimize delays, construction costs and disruptions to Toronto residents and businesses, as originally approved as part of 2018.EX33.1. Under the Master Agreement, City staff costs will be borne by Metrolinx. The Master Agreement contemplates renewal and amendment of the resourcing agreement as required. Any additional resources will be considered in future year budget processes.

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

## **DECISION HISTORY**

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In November 2016, City Council considered *EX19.1 Transit Network Plan Update and Financial Strategy*, and endorsed a Summary Term Sheet that set out principles between the City and the Province on cost-sharing related to the GO Expansion Program, including a City funding allocation for five identified grade separations.

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

In October 2017, City Council considered *EX27.12 City-Wide Real Estate - Delegated Authorities Framework and Transition Plan*, and amended the existing delegated approval and signing authorities for real estate matters previously adopted by City Council in May 2010 (EX43.7) in the manner indicated in Appendix A to the September 12, 2017 report from the Deputy City Manager and Chief Financial Officer and the Chief Corporate Officer.

Link: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.EX27.12>

In December 2017, City Council considered *EX29.1 SmartTrack Project Update and Next Steps*, and provided City Council with an update from Metrolinx on the scope and implementation of the GO Expansion Program, including the procurement approach, construction schedule for enabling works, and broader coordination with the City of Toronto. This report also authorized the City Manager to negotiate an agreement with Metrolinx to have Metrolinx fund dedicated staff resources in support of the Program.

Link: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.EX29.1>

In April 2018, City Council considered *EX33.1 Implementation of the SmartTrack Stations Program and Metrolinx Regional Express Rail Program*, and authorized each of the Deputy City Manager, Internal Corporate Services and the Director, Real Estate Services to approve the disposal to Metrolinx and the use by Metrolinx of certain City Property, for nominal consideration (the "Regional Express Rail Excess City Lands"), per conditions set out in that report. City Council also authorized temporary staff resources for the GO Expansion Program, to be fully recovered from Metrolinx.

Link: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.EX33.1>

In December 2019, City Council considered *GL10.8 Authority for Toronto Water Capital Construction Projects Pertaining to Real Property Interests*, and authorized the amendment to certain general conditions of the existing delegated approval and signing authorities for real estate matters.

Link: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.GL10.8>

## ISSUE BACKGROUND

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The GO Expansion Program is a Metrolinx transportation infrastructure program that will expand the GO rail network to provide two-way, all-day service, faster and more efficient trains, more accessible stations, and an expanded Union Station.

The GO Expansion Program is currently grouped in three main packages of work: Early Works, Off-Corridor, and On-Corridor.

### 1. Early Works

Early Works includes works in each of the rail corridors that are required to be completed in advance of the broader network infrastructure such as track work, signalling, and electrification. This work is currently being procured through a combination of Alternative Financing and Procurement (AFP) and traditional contracts.

### 2. Off-Corridor

Off-Corridor refers to work off the railway corridor, including customer and safety-related improvements to existing stations and new stations and expansion of facilities to meet growth in customer demand. Off-corridor projects will be delivered, in many cases, with private partners.

### **3. On-Corridor**

On-Corridor refers to work to design and build any outstanding infrastructure not constructed as part of early works to enable enhanced service. On-Corridor Works (often referred to as "OnCorr") includes new track and facilities (such as layover facilities, storage yards) throughout the network and a number of grade separations. These new elements represent work that is required to enable two-way all-day GO service and includes various projects in Union Station.

Attachment 1, prepared by Metrolinx, provides more information on the GO Expansion Program, including a full list of current projects in Toronto.

## **COMMENTS**

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A series of reports have been brought forward for City Council consideration over the last several years to provide information on the GO Expansion Program and execute agreements with Metrolinx to fund dedicated City staff resources to advance the Program.

If approved by Council, the GO Expansion Master Agreement between the City and Metrolinx will define the roles and responsibilities for the delivery of the Program while ensuring protection of City infrastructure, assets and services. City staff have negotiated the terms of the Master Agreement based on best practices and lessons learned from the 2012 Master Agreement for Light Rail Transit Projects. The Master Agreement is premised on the following fundamental principles:

1. Metrolinx is the owner and developer of the Program and Program Assets, and the City will own and control City infrastructure and assets.
2. Metrolinx will have final authority over the design, construction, and operation of Program assets, but will ensure all work on City infrastructure and assets meets City standards and will, in sufficient time, enable the City to review and provide comment and technical input on matters relating to City infrastructure and assets.
3. Metrolinx and the City will perform their obligations promptly and with due diligence to ensure that the Program is completed in compliance with all applicable law, on time and on budget.
4. Metrolinx will minimize the potential disruption to City programs and services, inconvenience to City residents, and impacts on local businesses during construction of the Program.

The agreement also contains provisions for confidentiality, insurance, and indemnity to reduce the need for and scope of individual agreements, streamlining project level negotiations and resources for both parties.



The scope of the recommended GO Expansion Master Agreement covers the full scope of the GO Expansion Program as described in Attachment 1, which may be changed from time to time by Metrolinx but will require notice to the City through the Program governance framework. Various arrangements are already in place between the parties in respect of Early Works that are underway. These arrangements will be reviewed, and where it makes sense to do so, such projects will be subsumed under the GO Expansion Master Agreement. With respect to work on Union Station, a supplementary agreement outlining further terms governing the relationship between Metrolinx and the City at that unique property will be required. The supplementary agreement will be added to the scope of the GO Expansion Master Agreement once the supplementary agreement is reached and its terms are approved by Council. SmartTrack station work is out of scope of the proposed GO Expansion Master Agreement. The Master Agreement is intended to guide construction of the Program and will end once the City has accepted its infrastructure and assets and the applicable warranty period has ended.

The following sections describe Master Agreement terms related to real estate, dispute resolution and program implementation.

## **1. Real Estate**

The City and Metrolinx have negotiated a Real Estate Protocol that sets out processes and principles in respect of the use by, and transfer of, certain interests in City lands to Metrolinx. The Real Estate Protocol further prescribes principles whereby the City will acquire interests in Metrolinx and other lands for the purposes of owning, operating and maintaining City assets and infrastructure which are either newly built, replaced or relocated as a result of the Program.

### *Delegation of Authority Respecting Expropriation Matters*

In order to meet its accelerated timeline for building transit in the City, Metrolinx has, in certain instances, elected to expropriate the lands it requires from the City. It is anticipated there will be more situations where Metrolinx decides to proceed by way of expropriation.

To enable staff to respond to the expropriation proceedings in a timely manner, staff are recommending that the existing delegated authority for real estate matters in Appendix A of Toronto Municipal Code Chapter 213 be amended, as set out in Attachment 3, to delegate approval authority pertaining to expropriations for transit-related purposes where the City is the property owner or has an interest in the lands being expropriated, such as an easement or a leasehold interest.

This additional authority will enable staff to decide whether to request or waive the right to request a hearing of necessity under the *Expropriations Act* and to settle the compensation that is payable to the City in accordance with the requirements of the *Expropriations Act*, subject to the same financial thresholds and General Conditions that apply when the City is the expropriating authority.

City Council approval will still be required where the total compensation exceeds \$10 million.

## **2. Dispute Resolution**

The Master Agreement includes a dispute resolution process whereby disputes are referred to the existing governance framework between the City and Metrolinx. Matters which cannot be resolved by the Program Steering Committee or Program Committee will be referred to an Executive Committee for resolution. The governance framework may also be utilized in the event there is a dispute between the parties in respect of the use of and/or transfer to Metrolinx of City lands.

In respect of technical matters involving the allocation of costs between the City and Metrolinx for City infrastructure to be built by Metrolinx, if the Executive Committee is unable to resolve the dispute, the dispute may be referred to a Dispute Review Board. The Dispute Review Board will be selected jointly by Metrolinx and the City from a Dispute Resolution Panel composed of independent professionals with experience and knowledge in the design and construction of transit projects and municipal infrastructure. The Dispute Review Board will meet as soon as possible after a technical dispute has been referred to it and the decision of the Board will be binding on the parties. Construction will not be suspended pending resolution of the technical dispute.

This report recommends City Council consent to the binding dispute resolution process in the Master Agreement described in Attachment 2 to this report.

## **3. Program Implementation**

The construction of the Program will require cooperation among the parties on matters including permits and approvals, protection of City infrastructure, traffic management, communications and stakeholder engagement.

### *Applicable Laws, Permits and Approvals*

For City infrastructure and connections to City infrastructure, Metrolinx will build to City standards, including all legislative requirements, and will obtain all necessary approvals and permits.

For work on City-owned land, Metrolinx intends to ensure that nothing it does on such land puts the City offside of any of the City's legislative obligations, and Metrolinx will indemnify the City for damages, losses, etc. directly resulting from any of its actions on such land including any actions that breach federal, provincial or municipal laws binding on the City. This means that Metrolinx will be responsible for any losses that arise as a direct and natural result of Metrolinx's activities on and use of the City's land, as well as any resulting losses that could reasonably be expected to have been in the parties' contemplation at the time they entered into the agreement, based on the known facts and circumstances. The City will retain the risk for any unforeseeable losses that the parties could not reasonably be expected to have contemplated when they entered into the agreement. It should be noted that disputes may arise between the parties as to whether or not the indemnity applies.

For Program Assets not on City lands, Metrolinx has agreed to comply with City permits and approvals and work cooperatively with the City, but in the event of a dispute Metrolinx has the final approval authority over its assets in accordance with its Crown Immunity. If Metrolinx does not meet the conditions of any City permit or approval, the City is not required to issue permits or approvals and Metrolinx will assume all responsibility and liability for the project infrastructure. If Metrolinx applies for and meets the requirements for City permit and approvals, it will comply with those terms and will work with the City to ensure it can continue to do so even in the face of changed or previously unknown site conditions or increased costs.

### *Protection of City Infrastructure*

Metrolinx will protect, relocate and replace all City infrastructure that may be impacted by the Program. All work that may be required to relocate or restore City infrastructure to the pre-construction service levels, and to current standards, will be completed and paid for by Metrolinx, subject to cost-sharing arrangements previously discussed regarding utilities and bridges. Metrolinx will repair any damage to City assets that occurs as a result of the Program.

### *Traffic Management*

The Master Agreement sets out the need for the mitigation of impacts on pedestrian and vehicle mobility and parking during construction. To minimize disruption, Metrolinx or the project contractor will prepare pedestrian, parking and traffic management plans that will be in force during the construction of the Program. These plans will be submitted to the City for review and approval before beginning construction on a particular project area.

### *Communications and Public Engagement*

Metrolinx will be responsible for all communications and community, stakeholder, and media relations pertaining to the Program. Communications dealing with City infrastructure and assets, or impacts to City services or facilities will be managed jointly between the City and Metrolinx. A wide range of tools will be used to convey messages and notifications to the public and to receive questions and comments, including websites, social media, and Construction Liaison Committee meetings.

The City will provide input to Metrolinx on local interests and concerns through a joint Communications Group platform, which will be used to inform Metrolinx's community and stakeholder relations plans and activities. Together, Metrolinx and the City will provide for timely, transparent, and proactive communications with the public and elected officials, which builds trust and public understanding for the Program.

More information regarding the Metrolinx communications strategy and Councillor Engagement Process can be found in Attachment 1.

## **Conclusion**

If approved, the GO Expansion Master Agreement between the City of Toronto and Metrolinx will define the roles and responsibilities of each party to guide the implementation of the Program while protecting City infrastructure, assets and services. This report seeks Council authority to execute the Master Agreement with Metrolinx based on the key principles identified. Metrolinx is committed to working in partnership with the City of Toronto to ensure GO Expansion is constructed in a manner that reflects the input of the City, meets shared objectives, and that Toronto plays a critical role in the delivery of the GO Expansion program.

## **CONTACT**

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Derrick Toigo, Executive Director, Transit Expansion Office  
Email: [derrick.toigo@toronto.ca](mailto:derrick.toigo@toronto.ca), Tel: 416-338-5222

## **SIGNATURE**

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Tracey Cook  
Deputy City Manager, Infrastructure and Development Services

## **ATTACHMENTS**

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Attachment 1 – Metrolinx update on the GO Expansion Program  
Attachment 2 – GO Expansion Master Agreement Dispute Resolution Terms  
Attachment 3 – Delegation of Authority for Expropriation Matters