



Date: July 5, 2011

BRAMPTON CITY COUNCIL

DATE: August 10, 2011

File: EA 10-3130-101

Subject: **PROJECT UPDATE AND RELATIONSHIP AGREEMENT**
Hurontario/Main Street Light Rail Transit Preliminary Design and Transit Project Assessment Process

Contact: Klaus Stolch, P. Eng.
Director, Engineering and Construction
Works and Transportation Department
Phone: 905-874-2554

Overview:

- The cities of Mississauga and Brampton (the "Cities") completed the Hurontario / Main Street Corridor Master Plan process in February 2011.
- At its August 2010 meeting, Council approved the Hurontario/Main Street Corridor Master Plan with direction to initiate a preliminary design and Transit Project Assessment Process ("TPAP") that would complete the overall Environmental Assessment approval for Light Rail Transit on the Hurontario/Main Street corridor.
- Council endorsed Light Rail Transit ("LRT") as the recommended rapid transit solution for Hurontario/Main Street with the final decision on LRT for the segment between Steeles Avenue and Downtown Brampton to be confirmed through the next phase of the study.
- Metrolinx has also completed its Hurontario/Main Street Benefits Case Analysis ("BCA"), which supports the recommendation for LRT technology in the corridor. Metrolinx and the Cities have provided preliminary funding in the amount of \$3.6M to initiate the next phase of the project.
- The Terms of Reference ("ToR") for the next phase of the project, Hurontario/Main Street LRT Preliminary Design and TPAP, was issued and closed on June 9, 2011.
- Prior to award of the study, the Cities need to execute the Hurontario/Main Street LRT Preliminary Design and TPAP Relationship Agreement.
- It is anticipated that the study will commence in fall 2011 with initiation of the six month TPAP in early 2013.

Recommendations:

1. THAT, the report titled "PROJECT UPDATE AND RELATIONSHIP AGREEMENT – Hurontario/Main Street Light Rail Transit Preliminary Design and Transit Project Assessment Process", dated July 5 2011, and attachments be received;
2. THAT, the Mayor and City Clerk or their delegated authority, as the case may be, be authorized to execute the Hurontario/Main Street Light Rail Transit Preliminary Design and Transit Project Assessment Process Relationship Agreement with the City of Mississauga on such terms and conditions as are acceptable to the Commissioner of Works and Transportation and in a form of agreement acceptable to the City Solicitor; and
3. THAT, the City Clerk be directed to forward a copy of this report to the City of Mississauga and Metrolinx for their information.

Background:

The Cities initiated the Hurontario-Main Street Higher Order Transit (HOT) Study in 2008. The Master Plan for the Hurontario / Main Street corridor integrates planning for rapid transit, intensified land use and enhanced urban design to establish a vision for the corridor, and a preferred transit technology including functional design. The Study has fulfilled Phases 1 and 2 of the Municipal Class Environmental Assessment ("EA") process for Master Plans and was completed with the notice of study completion on February 18, 2011.

At its regular meeting of August 11, 2010, City Council passed the following resolutions (C- 183-2010)

- "That, Light Rail Transit (LRT) be endorsed, in principle, as the recommended rapid transit solution for Hurontario/Main Street and that the final decision on LRT for the segment between Steeles Avenue and Downtown Brampton shall be confirmed through the completion of the planning, design and engineering work, which shall include further feasibility and impact assessment for that segment."
- "That, with the Metrolinx Board approval of the Benefit Case Analysis (BCA) report for the Hurontario-Main rapid transit project which strongly supports Light Rail Transit (LRT) technology, the City of Brampton proceed with the project design phases and related technical feasibility

studies followed by the six-month Transit Project Assessment Process to complete the Environmental Assessment approval for Light Rail Transit on the Hurontario/Main Street corridor in conjunction with the City of Mississauga and Metrolinx.”

- “That, the Light Rail Transit alignment and associated road configuration constraints in Downtown Brampton and Main Street South Heritage Area be addressed through the next study phases including consultation with Committee of Council, Brampton Downtown Development Corporation, Metrolinx, local landowners and other stakeholders; and exploration of alternative alignments that benefit the downtown.”

Metrolinx has also completed a Hurontario/Main Street Benefits Case Analysis (BCA), which supports the recommendation for LRT technology in the corridor. Metrolinx has made a commitment to participate in the planning, design, and engineering work anticipated in the next phase of the project.

Current Situation:

The Terms of Reference (ToR) for the next phase of the project, Hurontario/Main Street LRT Preliminary Design and Transit Project Assessment Process (TPAP), was issued with the proposal submission closing on June 9, 2011. The scope of work includes the completion of preliminary design for the corridor, streetscape and urban design, transit operation strategy, business case update, other technical studies and coordination with the various inter-related municipal initiatives along the corridor.

As part of the Pre-TPAP and Preliminary Design process, extensive consultation with the public and other stakeholders will be carried out including three Public Information Centres (PICs) and Stakeholder Group Meetings prior to each PIC within each municipality.

The proposal evaluation team is comprised of staff from the City of Mississauga (“Mississauga”), the City of Brampton (“Brampton”) and Metrolinx. The evaluation team is currently evaluating the bid responses.

The study is anticipated to be initiated in fall 2011. It is projected that the preliminary studies will take 18 months, followed by the six month TPAP process, with some additional time to finalize the preliminary design, resulting in approximately two years for the study to be completed (fall-2013).

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Prior to award of the study, the Cities need to execute The Hurontario/Main Street LRT Preliminary Design and Transit Project Assessment Process Relationship Agreement, with the following main provisions:

- The procurement process and administration of the study will be carried out by Mississauga.
- Mississauga will be responsible for seventy-five percent (75%) and Brampton will be responsible for twenty-five percent (25%) of the project costs.
- Brampton has \$850,000 as its council-approved funding for the Project.
- Brampton's funding commitment for its portion of the remainder of the Project is subject to Council approval of the 2012 capital budget for the Project.

Corporate Implications:

Planning Design and Development:

The completion of the Hurontario preliminary design and TPAP will bring the project to an advanced state of readiness for construction. The project is in line with municipal objectives, specifically the following from the City of Brampton's Official Plan:

- Objective 4.4
 - (a) To develop a balanced, integrated and accessible multi-modal transportation system which provides for the safe, economic and efficient movement of people, including persons with disabilities, as well as goods and services
 - (b) To ensure the provision of adequate and accessible road, transit, pedestrian and bicycle links between Brampton and adjacent municipalities;
 - (e) To work cooperatively with the neighbouring municipalities and the Regions to develop an integrated transportation plan.

In addition, the Hurontario/Main LRT line continues the expansion of the City's transit system and ridership, which began with the 2004 Transportation and Transit Master Plan, and recently implemented Queen Street Züm service. It also will be designed in a manner that supports the changing urban form planned for Downtown Brampton, and will be required to overcome physical challenges such as crossing 407 ETR and both serving and preserving the heritage areas of Main Street in Brampton.

Corporate Services:

Legal has reviewed this report and will review and approve the form of the Hurontario/Main Street LRT Preliminary Design and TPAP Relationship Agreement.

Financial and Information Services:

Initial funding of the project was approved in the amount of \$3.6 million of which \$850,000 was attributed to the City of Brampton and equally funded by the City and Metrolinx (\$425,000 each).

Conclusion:

The Hurontario / Main Street Corridor Master Plan process is complete and the Cities are retaining a consulting team to undertake the next phase of the project, which includes the completion of preliminary design for the corridor, undertaking all required studies for successfully completing the TPAP and positioning this project for implementation.

The City of Mississauga is the lead on the next phase of the project and will be managing the contract award for this work, which will require approximately two years to complete. The Hurontario/Main Street LRT Preliminary Design and TPAP Relationship Agreement between the Cities has been developed and will need approval by both municipalities prior to award and initiation of the next phase of the project.

Original Signed By

Original Signed By

Klaus Stolch, P.Eng.
Director, Engineering
and Construction

Thomas W. Mulligan, P.Eng.
Commissioner, Works and
Transportation Department

Appendices: Hurontario/Main Street LRT – Preliminary Design and Transit Project Assessment Process Relationship Agreement

Report authored by: Khurram Tunio, P. Eng., Senior Project Engineer

“Consultant” means the successful consultant to be selected through the RFP process;

“Consultant Agreement” means the Professional Services Agreement to be entered into between Mississauga and the Consultant for the Project;

“Dispute” means any claim, dispute, or disagreement between Mississauga and Brampton arising out of or in connection with this Agreement;

“Mississauga Contract Manager” means Mississauga’s Director, Transportation Project Office, or his/her designate;

“Project” means the light rail transit preliminary design and transit project assessment process for the Hurontario/Main Street corridor as identified in Schedule A, and as further described in the SOW;

“RFP” means the Request for Proposals issued for a consultant to complete the Project;

“SOW” means the Statement of Work as attached to the RFP outlining the work required to be done to complete the Project, and as may be amended from time to time;

“Steering Committee” means the steering committee comprised of staff from Mississauga and Brampton; and

“Term” shall have the meaning provided in section 4.1.

1.2 Sections & Headings

The division of this Agreement into Articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless inconsistent with the subject matter or context, references to Articles and sections are to Articles and sections of this Agreement.

1.3 Currency

Except where expressly provided otherwise, all amounts in this Agreement are stated and shall be paid in Canadian currency.

1.4 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in Ontario.

ARTICLE II: ROLES & RESPONSIBILITIES**2.1 Committees**

- 2.1.1 The parties agree to participate jointly in the Project in accordance with this Agreement. The parties agree to appoint such staff to the Steering Committee and other committees or teams as may be established from time to time to participate in this Project.
- 2.1.2 Each committee and team as established under this Agreement, including but not limited to the Steering Committee, shall establish its own rules and procedures with respect to its meetings and the making of decisions, except to the extent as provided in this Agreement.

2.2 RFP Process

- 2.2.1 Mississauga will manage the RFP process on behalf of itself and Brampton in accordance with established and applicable Mississauga by-laws and policies, including the issuance of any required addenda and clarification, answering bidders' inquiries as applicable, and issuing the award to the successful bidder. Brampton agrees and acknowledges that Mississauga's by-laws and procurement policies will apply throughout the RFP process in selecting the Consultant.
- 2.2.2 Upon closing of the RFP, Mississauga will provide Brampton with three (3) copies of the bid responses received from each of the bidders. The parties will establish an evaluation team within five (5) days to review the bid responses and conduct an evaluation of the responses to select the successful bidder. The evaluation team shall consist of representatives from both parties and Metrolinx, with four (4) representatives from Mississauga, three (3) from Brampton and one (1) from Metrolinx, unless otherwise agreed to by the Mississauga Contract Manager and Brampton Contract Manager.
- 2.2.3 After evaluating the bid responses, the evaluation team shall report to the Steering Committee on the bid results and make a recommendation to the Steering Committee on the award to the highest ranked bidder. The Steering Committee shall consider the recommendation made by the evaluation team and give its approval of the evaluation team's recommendation. No award of the contract shall be made without the Steering Committee's approval.
- 2.2.4 Subject to applicable Mississauga by-laws and procurement policies and with the approval of the Steering Committee, Mississauga shall make an award of the contract to the chosen successful bidder who complies with all the requirements of applicable Mississauga by-laws and policies and the RFP.

2.3 Project Management

- 2.3.1 The parties agree to work cooperatively with each other and with the Consultant for the completion of the Project.
- 2.3.2 Mississauga will manage and oversee the work of the Consultant to ensure compliance with the terms of the Consultant Agreement and SOW. Mississauga may also terminate, renew or modify the Consultant Agreement as Mississauga deems necessary, acting reasonably, provided that any changes which impact Brampton shall be first consulted with and approved by Brampton.
- 2.3.3 Mississauga will review invoices as submitted and make payment to the Consultant in accordance with the terms of the Consultant Agreement on behalf of itself and Brampton, subject to the terms of this Agreement.
- 2.3.4 Should any of the requirements for the Project change such that a Change Order is required, Mississauga's Contract Manager may issue a Change Order subject to the following terms and conditions:
- a) All Change Orders must be issued in compliance with all applicable Mississauga by-laws and policies.
 - b) No Change Order with respect to or that has an impact on the Hurontario/Main Street Corridor located within the geographic boundaries of the City of Brampton may be issued without Brampton Contract Manager prior written approval.
 - c) Any Change Order that may have an impact on the entire Project timeline or the Project cost will be issued subject to Brampton Contract Manager prior written approval.
- 2.3.5 Brampton undertakes not to direct or give instructions to or otherwise require the Consultant to conduct any work that is in addition to, or otherwise modify the SOW without prior consultation with Mississauga Contract Manager. All changes to the work to be conducted by the Consultant as outlined in the SOW shall be requested by the issuance of a Change Order.

2.4 Termination of Consultant Agreement

- 2.4.1 Mississauga will not terminate the Consultant Agreement unless and until it has consulted with Brampton. Prior to terminating the Consultant Agreement, Mississauga will provide written notice to Brampton of its intent to terminate and the reason of such termination. Such notice will be provided to Brampton at least thirty (30) days prior to the intended date of termination.

2.4.2 Subject to Section 2.4.1, in the event that Mississauga elects to terminate the Consultant Agreement, Brampton may request the assignment of Mississauga's rights and obligations under the Consultant Agreement to itself. Upon such request, the parties may negotiate in good faith the terms and conditions of such assignment.

2.5 Funding & Payment

2.5.1 Mississauga will be responsible for seventy-five percent (75%) of the total amount of the fees charged by the Consultant to complete the Project. Brampton will be responsible for twenty-five percent (25%) of the total amount of the fees charged by the Consultant to complete the Project.

2.5.2 At the time of execution of this Agreement, Brampton has \$850,000 as its council-approved funding for the Project. Brampton's funding commitment for its portion of the remainder of the Project is subject to Council approval of the 2012 capital budget for the Project.

2.5.3 If Brampton's council does not approve funding for the remainder of Brampton's portion of the Project, this Agreement will be terminated and all payments owing to Mississauga shall become immediately due and payable. Mississauga shall be free to amend the Project scope as it sees fit and Brampton shall have no further right to the remainder work product for the Project produced after termination of this Agreement.

2.5.4 If either party requests additional work to be conducted by the Consultant, the requesting party will be responsible for any applicable additional payment, unless otherwise agreed upon by the parties.

2.5.5 Upon receipt of any invoice from the Consultant for any work satisfactorily completed in accordance with the Consultant Agreement, Mississauga will make payment to the Consultant for the work conducted. For each payment made to the Consultant, Mississauga will forward an invoice to Brampton for 25% of the amount paid to the Consultant by Mississauga. Brampton will pay Mississauga the amount as provided in Mississauga's invoice within thirty (30) days of receipt.

ARTICLE III: CONFIDENTIALITY

3.1 Proprietary Information

Subject to the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA") and the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), and subject to any court order issued by a court of competent jurisdiction, both during and after the term of this Agreement, neither party will use or disclose to a third party any confidential or proprietary information of the other party, save for information disclosed

to persons (including the Consultant) who need to know such information in order to complete the Project.

3.2 RFP Submissions & Discussions

In addition to section 3.1, and subject to MFIPPA and FIPPA, and any court order issued by a court of competent jurisdiction, both parties agree that the submissions of the bidders are confidential information submitted by the bidders in response to the RFP, and that information contained in the bidders' responses, as well as any information disclosed or discussed in the course of the evaluation of the bid responses, will be kept confidential and shall be treated as if it were the parties' own confidential information. The parties further acknowledge and agree that discussions held and any documentation, including any notes made by any of the evaluation committee members are confidential information.

3.3 Prompt Notification

If either party or any of its officers, directors, elected officials, employees, agents, or other representatives becomes legally compelled to disclose any confidential information as described in this Article III, such disclosing party will provide the other party with prompt notice to that effect to allow the other party to seek any protective orders or other remedies as appropriate to prevent or limit such disclosure, and the disclosing party shall co-operate with the other party to prevent or limit such disclosure.

3.4 Survival

This Article III shall survive the termination of this Agreement.

ARTICLE IV: TERM AND TERMINATION

4.1 Term

The term of this Agreement shall commence on the Effective Date and shall terminate sixty (60) days after the Consultant Agreement is terminated or assigned in accordance with section 2.4.2, unless otherwise agreed upon and extended in writing by Brampton Contract Manager and Mississauga Contract Manager (the "Term").

4.2 Events of Default

If a party is in material breach of the performance of any material term, condition or obligation on its part to be observed or performed in this Agreement ("Defaulting Party"), such Defaulting Party shall remedy the event of default within ten (10) business days after receipt of a notice of default from the non-defaulting party or implement a plan satisfactory to the non-defaulting party to remedy such event of default within ten (10) business days and have it fully and diligently carried out. If the Defaulting Party fails to

rectify the non-performance in accordance with this section 4.1, the non-defaulting party may terminate this Agreement at any time upon notice.

4.3 No Fault Termination

In addition to the termination rights in section 4.2, this Agreement may be terminated at any time by agreement of the parties in writing.

4.4 Inability to Determine Successful Bidder

If the Steering Committee cannot come to an agreement on the successful bidder to be awarded the contract for the Project as per section 2.2.4 by the expiry of the irrevocability period of the bid offers to the RFP, any party may request the immediate termination of this Agreement. In such case, Brampton acknowledges and agrees that Mississauga may at its discretion make an award to the consultant of its choice on the basis of the RFP issued and the bids received for the Mississauga portion of the Project.

4.5 Outstanding Payments

Notwithstanding the termination of the Agreement for any reason, all outstanding payment obligations to the Consultant and/or to Mississauga shall remain in effect, due and payable to Mississauga and/or the Consultant, as applicable.

4.6 Waiver of Breaches

In the event of a breach of any provision of this Agreement by one party, no action or failure to act by the other party shall not constitute a waiver of any right or duty afforded by that party under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any such breach, except as may be specifically agreed to in writing by the party that is not in breach.

ARTICLE V: DISPUTE RESOLUTION

5.1 Dispute Resolution

5.1.1 If any Dispute arises between Mississauga and Brampton while this Agreement is in effect, such Dispute shall first be dealt with by Mississauga's Contract Manager and Brampton's Contract Manager ("First Level").

5.1.2 If the Dispute is not resolved at its First Level, the Dispute shall be escalated to the Steering Committee for resolution ("Second Level").

5.1.3 If the Dispute is not resolved at its Second Level, the Dispute shall be escalated to their respective City Manager for resolution ("Third Level").

5.1.4 If the Dispute is not resolved at its Third Level, the parties may exercise their rights in law.

5.2 Performance to Continue

Notwithstanding that a matter has been referred to dispute resolution under the provisions of this Article V, the parties shall throughout the period of dispute resolution endeavour to perform their respective obligations under the terms of this Agreement to the best of their abilities.

5.3 Non-Applicability

This Article V shall not apply to the determination of a successful bidder in the RFP for the Project unless otherwise agreed upon by the Steering Committee.

ARTICLE VI: GENERAL

6.1 Notice

Where in this Agreement any notice, request, direction or other communication is required to be given or made by either party, it shall be in writing and is effective if delivered in person, sent by ordinary or registered mail, or by facsimile transmission addressed to the other party for whom it is intended at the following addresses, and any notice shall be deemed to have been given:

- 1) if delivered personally, on the date of such delivery;
- 2) if by ordinary mail, on the second business day following the date of mailing;
- 3) if by registered mail, on the day the postal receipt is acknowledged by the other party;
and
- 4) if by facsimile transmission, when transmitted (if received before 4:30 p.m. local time at the recipient's office or failing which on the next business day).

Any notices intended for Mississauga shall be delivered and addressed to:

City of Mississauga
Transportation and Works Department
201 City Centre Drive – 8th Floor
Mississauga, ON L5B 2T4

Attention: Matthew Williams
Tel: (905) 615-3200 ext. 5834
Fax: (905) 615-3173
Email: matthew.williams@mississauga.ca

Any notices intended for Brampton shall be delivered and addressed to:

City of Brampton
Works & Transportation Department
8850 McLaughlin Road, Unit 2
Brampton, ON L6Y 5T1

Attention: Khurram Tunio
Tel: (905) 874-2881
Fax: (905) 874-2599
E-mail: khurram.tunio@brampton.ca

The address of either party may be changed by notice in the manner set out in this section 6.1.

6.2 Assignment

This Agreement may not be assigned in whole or in part to any third party without the other party's prior written consent.

6.3 Entire Agreement

This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressed in it. No amendment, modification or supplement to this Agreement shall be valid or binding unless set out in writing and executed by both parties.

6.4 Severability of Provisions

If any of the provisions of this Agreement is declared illegal or invalid, such illegality or invalidity shall not render the whole agreement illegal or invalid, but the Agreement shall be construed as if it did not contain the illegal or invalid provision or provisions, and the rights and obligations of the parties shall be construed and enforced accordingly.

6.5 Successors

Subject to section 6.2, this Agreement shall enure to the benefit of and be binding upon the parties and their successors and assigns.

6.6 Independent Contractor

In giving effect to this Agreement, no party shall be or be deemed an agent or employee of the other party for any purpose and that their relationship to each other shall be that of independent contractors. Nothing in this Agreement shall constitute a partnership or a

joint venture between the parties. No party shall have the right to enter into contracts or pledge credit of or incur expenses or liabilities on behalf of the other party.

6.7 Time is of the Essence

Time shall be of the essence in all aspect of this Agreement.

6.8 Force Majeure

A party shall not be responsible for failures in performance due to any circumstance or act beyond the party's reasonable control, including an intervening act of God or public enemy, war, acts of terrorism, blockade, civil commotions, fire, flood, earthquake, epidemic, quarantine restriction, stop-work orders or injunctions issued by a public authority of competent jurisdiction, which delays the performance of any obligation created by this Agreement beyond its scheduled time. The party claiming non-performance due to an instance in this section shall notify the other parties as soon as possible and in any event within seven (7) calendar days following the date upon which the affected party first becomes aware of such event. The party claiming non-performance shall resume performance of the obligations suspended as a result of an event in this section as soon as the event in question is no longer in effect.

IN WITNESS WHEREOF Mississauga and Brampton have executed this Agreement.

**THE CORPORATION OF THE CITY OF
MISSISSAUGA**

Martin Powell
Commissioner of Transportation and Works

Crystal Greer
City Clerk

We have the authority to bind the Corporation.

APPROVED AS TO FORM City Solicitor MISSISSAUGA			
Date	2011		

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**THE CORPORATION OF THE CITY OF
BRAMPTON**

Susan Fennell, Mayor

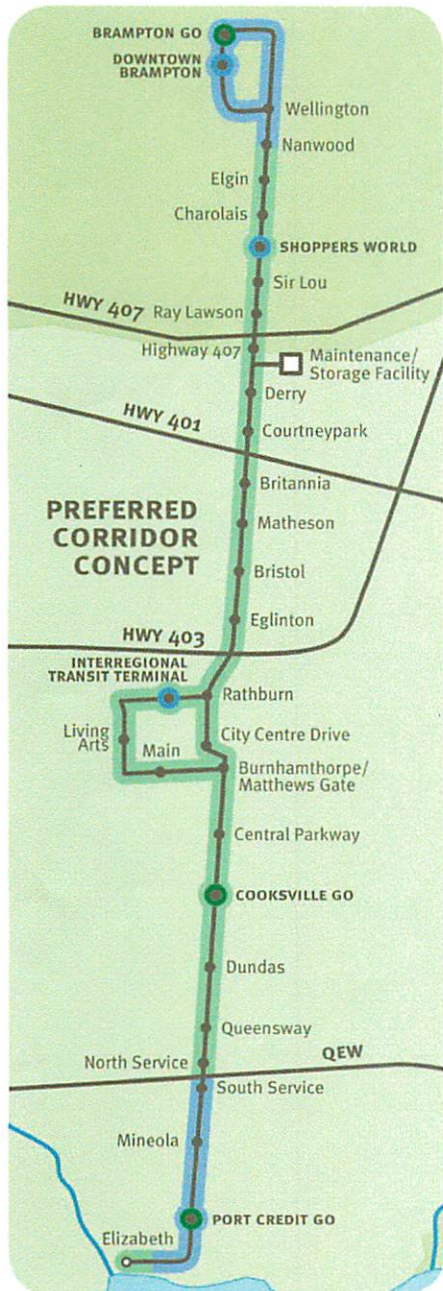
Peter Fay
City Clerk

We have the authority to bind the Corporation.

SCHEDULE A

The Project

The Project is the next step of the Hurontario/Main Street Study that Mississauga and Brampton initiated in 2008 that led to the development of a Hurontario/Main Street Corridor Master Plan (“Master Plan”). The Master Plan integrated rapid transit, land use and urban design in the corridor extending from Port Credit to Downtown Brampton, as shown in the diagram below. The Master Plan supported the vision identified by Metrolinx and the municipalities for moving people and goods, and accommodating future growth. The Metrolinx Regional Transportation Plan identified rapid transit for the Hurontario / Main Street Corridor as one of 15 “priority projects” for the Greater Toronto and Hamilton Area.



The Hurontario/Main Street Study was carried out in accordance with the *Environmental Assessment Act* and completed Phases 1 and 2 of the Municipal Class Environmental Assessment (EA) process (October 2000, as amended in 2007) for Master Plans. It addressed the planning process for this project including research, analysis, public and stakeholder consultation and recommendations. By assessing the need, justification and review of alternative solutions, the Master Plan recommended ***Light Rail Transit (LRT) technology for the corridor and identified the general transit corridor alignment, station locations, preferred maintenance facility location and proposed framework for Land Use and Urban Design.***

The respective councils of Mississauga and Brampton have approved reports that adopt the completion of the Master Plan. The Master Plan has identified the selection of light rail technology and provided a general alignment and configuration for the corridor from Port Credit in Mississauga to the Brampton GO Station in Brampton. Metrolinx has also completed a benefits case analysis for this corridor supporting LRT technology. Both municipalities have agreed that the next phase of this study should be the completion and approval of the Transit Project Assessment Process and the completion of preliminary design in order to position light rail transit for implementation.