

BETWEEN: THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE
(“The Municipality”)
and
HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF
ONTARIO, REPRESENTED BY THE MINISTER OF
TRANSPORTATION FOR THE PROVINCE OF ONTARIO
("MTO")

- A. MTO represents that it is the owner of the lands described as the Highway which is defined in paragraph 1.2;
- B. The Municipality has proposed to construct a Watermain, defined in paragraph 1.4 as the Plant, crossing the Highway by jack and bore; and,
- C. It is deemed expedient to enter into this Agreement to give effect to the Municipality proposal of constructing the Plant within the Highway at the Location defined in paragraph 1.3.

1. Definitions

- 1.1. “As-constructed Drawings” shall mean the drawings signed and sealed by a licenced Professional Engineer that reflect all elements of the completed work. The drawings shall depict coordinates and elevations at 5.0 m intervals along the completed installation based on geodetic datum and a typical detail cross-section;
- 1.2. “Highway” shall mean Highway 21 under the jurisdiction and control of MTO in Municipality of Kincardine, designated as Controlled Access Highway;
- 1.3. “Location” shall mean the area of the Highway 21 at station 11+800 on ETR 186-21/7-0;
- 1.4. “Plant” shall mean a shall mean 42m of a 300mm diameter watermain in a 750mm diameter casing within MTO’s ROW as per BMROSS Consulting Engineer drawings, Sheet 2A dated May 18, 2023 as illustrated in Schedule “A”
- 1.5. “PTHIA” shall mean the Public Transportation and Highway Improvement Act, R.S.O. 1990, c. P.50 and any amendments thereto from time to time.

- 2.1. The Plant shall conform to the drawing contained in in Schedule “A” and be installed a minimum of 3.0m below the bottom of existing Highway ditch.
- 2.2. The Municipality, following the execution of this Agreement, may construct, at no cost to MTO, the Plant within the Highway in accordance with this Agreement, including Schedule “A” and Schedule “B” as applicable.
- 2.3. Within three (3) months of the completion of construction of the Plant, the Municipality will provide As-constructed Drawings to MTO.

3. Maintenance and Repair

- 3.1 The Municipality, under the terms of this Agreement, is hereby deemed to be under an obligation to effect, and shall effect at no cost to MTO, all required maintenance and repair to the Plant according to the standards of the Municipality, any other agencies as required for their approvals, and to the satisfaction of MTO. The Municipality, at no cost to MTO, shall keep the area of the Highway occupied by the Plant in a neat and tidy condition according to the standards of the Municipality, any other agencies as required, and to the satisfaction of MTO. The Municipality shall also obtain the necessary approvals/permits from MTO for all required maintenance and repair to the Plant.
- 3.2 In the case of maintenance and repair (emergency or otherwise), all costs associated with the repair of MTO infrastructure as a result of this activity shall be borne by the Municipality. Further, MTO will coordinate and implement the required traffic management and infrastructure repair in accordance with MTO standards in consultation with the Municipality, at the cost of the Municipality.

4. Relocation and/or Temporary Diversion in whole or in part within the Highway

- 4.1. The Municipality, at its own expense, at any time on the receipt of written notice from MTO, shall suspend operations, remove, alter, or relocate any or all of the Plant contemplated herein as may be required by MTO to facilitate any MTO construction project, reconstruction project, or maintenance project within the Highway which requires the construction of buried foundations, or any other works, at the same location as the buried Plant. MTO agrees that it shall act reasonably in the design and specification of any such construction or reconstruction project, and prior to requiring any such removal, alteration, or relocation of any portion of the Plant, MTO shall assess all reasonable design alternatives which do not necessitate any removal or relocation of the Plant.
- 4.2. Any written notice from MTO referred to in section 4.1 shall be by either registered mail or by facsimile and shall:
- A. specify either the portion or the whole of the Plant to be dealt with; and,
 - B. specify a relocation and/or temporary diversion date of at least 60 calendar days after the date of the postmark, if by mail, or after the date of transmission, if by facsimile
- 4.3. On or following any respective relocation and/or temporary diversion date, the Municipality shall cause the area of the Highway, specified in the paragraph 4.1 notice, to be left in a neat and tidy condition.
- 4.4. On the relocation and/or temporary diversion date referred to in any paragraph 4.1 notice, the use by the Municipality of the portion of the Highway specified by that letter is hereby deemed to be ended.
- 4.5. Notwithstanding the other provisions of this Agreement, in the event of an emergency, as determined by MTO in its sole discretion, requiring MTO to act to repair or maintain the Highway in respect of matters of highway safety or highway traffic flow:
- A. MTO may give the Municipality oral or written notice of such emergency. Upon such notice, MTO may temporarily suspend the rights of the Municipality under this Agreement; and
 - B. MTO shall not be liable to the Municipality for any costs or damages incurred by the Municipality as a result of such temporary suspension.
- 4.6. Notwithstanding the other provisions of this Agreement, in the event of an emergency, as determined by the Municipality in its sole discretion, requiring the Municipality to act to repair or maintain the Plant:

- A. The Municipality shall give MTO oral and written notice of such emergency, and provide a written description of the nature and extent of the emergency repairs required and the potential impacts to highway traffic flow and/or the Highway;
 - B. All work shall be completed to the satisfaction of MTO, in accordance with the Occupational Health and Safety Act (of Ontario) and the Environmental Protection Act. All traffic control shall be in compliance with Ontario Traffic Manual, Book 7; and
 - C. MTO shall not be liable to the Municipality for any costs or damages incurred by the Municipality as a result of undertaking the required emergency repairs.
- 4.7. Nothing under paragraphs 4.1 to 4.5 shall be construed as lessening the obligation of the Municipality to MTO under the paragraph 9.1 indemnity.

5. Insurance

- 5.1. During any construction, maintenance or repair of the Plant, the Municipality or its contractor shall have in place a commercial general liability policy of insurance covering property damage, bodily injury and personal injury, including the following:
- have MTO, via an endorsement, as an additional insured in that policy;
 - not be subject to cancellation without reasonable notice to the MTO;
 - cover the period of time specified above;
 - be in the amount of at least Five Million (\$5,000,000.00) Dollars Canadian per occurrence; and
 - contain a cross liability clause endorsement.

6. Addresses

- 6.1. The address of the Municipality for the purposes of this Agreement, unless the Municipality otherwise advises in writing, is:
- The Municipality of Kincardine
1475 Concession 5, RR#5,
Kincardine, Ontario
N2Z 2X6
Attention: Chief Administrative Officer
Tel. 519-396-3468 ext. 7141
- 6.2. The address for MTO for the purposes of this Agreement, unless MTO otherwise advises in writing, is:
- Corridor Management
Ministry of Transportation
659 Exeter Road
London, ON
N6E 1L3
Tel. (519)-873-4203
Fax: (519) 873-4228

7. Warranty

- 7.1. The Municipality warrants that it has taken all necessary steps, done all acts, passed all by-laws, and obtained all approvals required to give it the authority to enter into this Agreement.

8. MTO Encroachment Permit

- 8.1. Upon execution of this Agreement, MTO will issue to the Municipality a MTO encroachment permit under section 38(2)(a) of the PTHIA. The terms and conditions of this permit are contained in Schedule 'B' of this Agreement.

- 8.2. A copy of this Agreement, including Schedule “A” and Schedule “B”, shall be attached to any future permit issued under PTHIA to the Municipality with respect to the Plant. Any such permit shall reference the same forming part of the terms and conditions of the permit.

9. Indemnification

- 9.1. The Municipality shall save harmless and indemnify MTO from all claims, demands, damages, proceedings, obligations, costs inclusive of solicitor and client costs, interest, and all actions, that MTO may suffer or incur based upon or attributable to anything done or omitted to be done by the Municipality, in connection with this Agreement, save and except to the extent of any negligence of MTO.

10. Compliance with Laws

- 10.1. The Municipality shall comply with all applicable laws in the compliance with any provisions of this Agreement.

11. Assignment

- 11.1. This Agreement may not be assigned by the Municipality without the prior written consent of MTO.

12. Binding Agreement

- 12.1. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors, and permitted assigns.

IN WITNESS OF ALL contained in this Agreement:

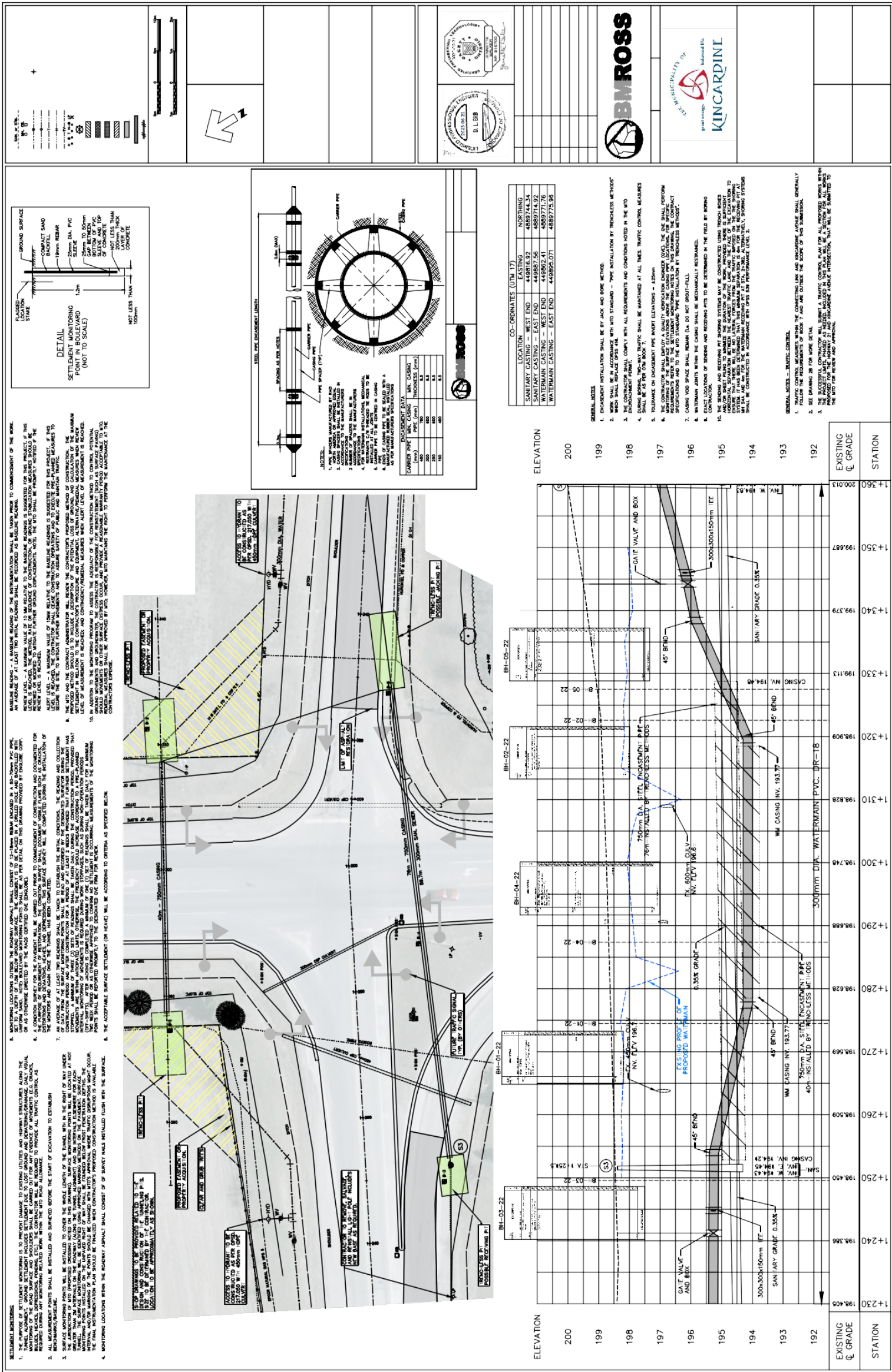
THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE

Mayor

Clerk

**HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO,
REPRESENTED BY THE MINISTER OF TRANSPORTATION FOR THE
PROVINCE OF ONTARIO**

Head, Corridor Management West
For the Ministry of Transportation
For the Province of Ontario



SCHEDULE "B"

Conditions for Encroachment Permits and Utility Installations On or Under a King 's Highway

THIS APPENDIX "A" FORMS PART OF THE CONDITIONS OF YOUR PERMIT. THESE ARE GENERAL CONDITIONS ONLY. PLEASE NOTE ANY SPECIFIC INSTRUCTIONS AND/OR CONDITIONS ON THE FRONT OF YOUR PERMIT.

1. The Applicant shall give the Owen Sound Highway Maintenance Ltd. Patrol Supervisor, **Tyler McDonald, 519-510-1000, email; Tyler.McDonald@millergroup.ca** five (5) working days notice **PRIOR** to commencing any work, and shall also inspect the site on completion with the Patrol Supervisor. If the Applicant is unable to contact the Patrol Supervisor, the District/Area office responsible for issuing the permit must be contacted five (5) working days **PRIOR** to commencing any work. Contact **Emerson Nicoll Phone: (519) 404-7348**
2. The applicant and their contractor(s) are responsible for all safety precautions and shall assume all liability for accidents. Two way traffic must be maintained with a minimum of disruption at all times unless arrangements have been approved by the ministry. Traffic safety measures must be taken in accordance with the **Ontario Traffic Manual, Book 7, April 2022.**
3. The Applicant shall also provide notice to the **Ministry of Transportation Traffic Operations Centre, Fax Number: (519) 873-4443 or by e-mail at WestRegion.TOC@Ontario.ca.** Notification must be received by 1600 hours on the day **PRIOR** to commencing any work.
4. **For MTO electrical locates please call 1-800-265-6072.**
5. No Material and Equipment shall be stored within 7.0m (23') of the travelled portion of any roadway.
6. No excavation is permitted within 3 m (10') of edge of pavement or back of curb. Excavations must be backfilled or fully enclosed/protected when unattended. All augured/directional bores shall have a one year performance warranty against heaving/settlements.
7. No excavating of the highway roadbed will be allowed for the purpose of recovering a boring device or underground piercing tool.
8. No torpedoes will be allowed for highway undercrossings.
9. Highway shoulders which are disturbed as a result of an installation will be restored by the Applicant with material as specified by the Ministry, at the applicant ' s expense, and to the satisfaction of the Ministry.
10. Pavement surfaces which become damaged as a result of an installation will be repaired by the Applicant as specified by the Ministry, at the applicant ' s expense, and to the satisfaction of the Ministry.
11. Affected areas to be restored to the original condition or better at no cost to the Ministry. All disturbed areas to be top-soiled, seeded or sodded as required. All disturbed ditches to be restored with at least four rows of sod placed in the bottom.
12. Any damage to trees, shrubs, ditches, grass areas shall be repaired or replaced by the Applicant, at the discretion of this Ministry. No trenching and/or plowing will be permitted within "Drip Line" of trees, without prior approval.
13. The Applicant is responsible for all damages to any existing utilities and/or encroachments during the installation. The Applicant is advised to contact the owner(s) of such, for location prior to commencing work.
14. The Applicant shall give the Ministry's district/Area Office written notice of completion of work, and of any changes made during construction. Any changes to the alignment of the installation beyond 0.5 m must have Ministry approval.
15. Work must be started within six (6) months of the date the permit is issued, or the permit becomes null and void.
16. This Permit may be temporarily revoked as result of the ministry wishing to carry out construction or other works in the area or for any other reasons, for any works carried out by the applicant under this permit.
17. The applicant must contact other agencies and municipalities (ie: conservation authorities, ministry of the environment, municipal drainage superintendent, etc.) as required, for their approvals.
18. All work performed within the right-of-way shall be done in accordance with the Occupational Health and Safety Act (of Ontario) and the Environmental Protection Act.
19. Hydro poles and anchors shall be located a minimum of 7.0 m (23') from the edge of the travelled portion of the lane closest to the plant.
20. The applicant shall co-ordinate the work with other Contractors within and/or adjacent to the project limits to ensure that they do not perform work in the same area at the same time. The applicant is

responsible for notifying the issuer of this permit if they become aware of this situation.

NOTE: APPLICANT IS RESPONSIBLE FOR ENSURING THE CONTRACTOR IS MADE AWARE OF ALL CONDITIONS AND IS PROVIDED WITH A COPY OF THE PERMIT AND ALL CONDITIONS.



NOTIFICATION OF FIELD WORK OPERATIONS

Sent by and phone #		MTO Contact and phone #:		Sent Date:	
Contract #		24 Hr Contact and phone:		Highway #:	
Location From: (Km or Interchange or nearest Community)		Location To: (Km or Interchange or nearest Community)			
Ramp Closure (If applicable) Interchange # / Road Name					Times:
		<input type="checkbox"/> Eastbound <input type="checkbox"/> Off Ramp <input type="checkbox"/> On Ramp			
		<input type="checkbox"/> Westbound <input type="checkbox"/> Off Ramp <input type="checkbox"/> On Ramp			
		<input type="checkbox"/> Northbound <input type="checkbox"/> Off Ramp <input type="checkbox"/> On Ramp			
		<input type="checkbox"/> Southbound <input type="checkbox"/> Off Ramp <input type="checkbox"/> On Ramp			
Lane Closures (indicate date and hours)					
<input type="checkbox"/> Eastbound-		Left	Centre	Right	Shld. Only
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Westbound-		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Northbound-		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Southbound-		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Work to be Performed:					
Equipment:					
General Information	yes	no	Comments / Extra Info:		
Weather permitting	<input type="checkbox"/>	<input type="checkbox"/>			
Reduced speed	<input type="checkbox"/>	<input type="checkbox"/>			
Advanced signing to be erected	<input type="checkbox"/>	<input type="checkbox"/>			
Mobile operation	<input type="checkbox"/>	<input type="checkbox"/>			
Flagging operation	<input type="checkbox"/>	<input type="checkbox"/>			
Signature:					
Please remember the information supplied is required for public and Emergency Services information via media advisories. Keep all details clear, concise and correct.					
E-Mail to WestRegion.TOC@ontario.ca or fax to West Region TOC (519)873-4443 or no later than 1600hrs the day before the closure is to occur. TOC phone number is 519-873-4223					