

**THIS AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_

**B E T W E E N:**

**HIS MAJESTY THE KING** in right of the Province of Ontario,  
represented by the Minister of Transportation for the Province of Ontario  
(hereinafter referred to as the "**Ministry**" and "**MTO**")

- and -

**THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE**  
(hereinafter referred to as the "**Municipality**")

Individually a "**Party**" and collectively the "**Parties**".

**WHEREAS:**

- A. The Ministry is undertaking the design and reconstruction of the King's Highway 21 at the Russell Street intersection in the Municipality of Kincardine;
- B. Russell Street is under the jurisdiction and control of the Municipality;
- C. The King's Highway 21 is under the jurisdiction and control of the Ministry;
- D. The Municipality has requested addition of such Municipal Work to be included in the MTO Project, and the Municipality has agreed to pay the Ministry for the costs of such works;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the premises and the covenants contained herein the Parties hereto for themselves and their respective successors and permitted assigns mutually agree as follows:

## **1 DEFINITIONS**

In addition to those words and terms elsewhere defined in this Agreement, in this Agreement,

- 1.1 **“Cost”** shall mean all the items of cost all howsoever style inclusive of a cost sum or sums, and inclusive, but not limited to, out of pocket expenses, consultants, contractors, environmental remediation, surveyors, real property, solicitor, and client costs. And includes the concept of expense and all the items of expense all howsoever styled, inclusive of an expense sum or sums, unless specified otherwise. The staff time of the neither the Municipality nor Ministry shall not be included as a cost, and each Party shall be responsible for cost of their own staff time related to the Municipal Work.
- 1.2 **“Design”** means the detail engineering design of the MTO Project, including the Municipal Work, made pursuant to the warrants, criteria, standards, and incidentals approved by the Ministry and the Municipality.
- 1.3 **“Highway 21”** means the King’s Highway 21 under the jurisdiction and control of the Ministry.
- 1.4 **“MTO Project”** means the design and construction of Highway 21 at the Russell Street intersection including the installation of traffic signals, associated illumination, auxiliary or turning lanes and drainage and grading revisions as shown in Schedule “A” attached to this Agreement.
- 1.5 **“MTO Right-of-Way”** means the Highway 21 including the lateral property lines under the jurisdiction and control of the MTO in the Municipality of Kincardine.
- 1.6 **“Municipal Work”** means all works required to design and construct the municipal infrastructure as described in Article 3 in this agreement and as shown in Schedule “B” attached to this Agreement.
- 1.7 **“MTO Director”** means the Director of Design and Engineering Branch of Transportation Infrastructure Management Division, Ministry of Transportation.

1.8 "PTHIA" means the Public Transportation and Highway Improvement Act, R.S.O. 1990, c. P.50 as amended from time to time;

## **2 DESIGN AND ENGINEERING**

### 2.1 Ministry Responsibilities

2.1.1 The Ministry will undertake the Design of the Municipal Work, in consultation with the Municipality in accordance with Ministry design standards.

2.1.2 The Ministry will incorporate the Design and tendering of the Municipal Work into the MTO Project.

2.1.3 The Ministry will be responsible for obtaining any and all regulatory approvals necessary, including but not limited to Environmental Assessment Act approvals for the MTO Project which includes the Municipal Work.

2.1.4 The Ministry will rely upon and use the relevant standards and specifications contained in the Ontario Provincial Standards for Roads and Public Works: Provincial for the construction of the Municipal Work.

2.1.5 The Ministry will provide a copy of the contract drawings and tender documents related to the Municipal Work to the Municipality for the Municipality's review and approval in writing prior to tendering. Upon contract award, the Ministry will provide the tendered documents related to the Municipal Work to the Municipality.

### 2.2 Municipality Responsibilities

2.2.1 The Municipality shall provide comments on all final drawings and specifications in respect of the Municipal Work within fourteen (14) calendar days upon receipt from the Ministry.

### 3 MUNICIPAL WORK

3.1 The Parties agree that the Municipal Work, as shown on Schedule “B” attached to this Agreement, will include the following:

- 3.1.1 The construction of a new roadway within the MTO Right-of-Way east of the intersection Highway 21 and Russell Street including lanes created for the purpose of traffic travelling east and west on Russell Street and for traffic entering northbound and southbound of Highway 21 (“**Russell Street East Leg**”), and associated grading and drainage improvements;
- 3.1.2 The construction of a lane at the intersection of Highway 21 and Russell Street for traffic traveling northbound on Highway 21 to turn east onto Russell Street;
- 3.1.3 The construction of a lane at the intersection of Highway 21 and Russell Street for traffic traveling southbound on Highway 21 to turn east onto Russell Street;
- 3.1.4 The construction of sidewalks along Russell Street and within the MTO Right-of-Way, approximately at the following coordinates:
  - A. Station 9+934 to Station 9+990 RT (southwest quadrant);
  - B. Station 9+953 to Station 9+989 LT (northwest quadrant);
  - C. Station 10+011 to Station 10+021 RT (southeast quadrant);
  - D. Station 10+012 to Station 10+021 LT (northeast quadrant);
- 3.1.5 The construction of pedestrian refuges and the creation of pedestrian crosswalks at the intersection;
- 3.1.6 The installation of tactile walking surface indicators in accordance with the Ministry’s Standard Drawings and Specifications, and complying with the

*Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11 (“AODA”);

- 3.1.7 The installation of traffic and pedestrian signals, detections, illumination, and push buttons in accordance with the electrical drawings, the PHM-125 and any applicable revisions, and in compliance with any applicable AODA requirements.

3.2 Notwithstanding Section 3.1, the Parties agree that if the municipal roadway that will connect to Russell Street East Leg is not completed prior to the completion of construction of the MTO Project, the Municipality shall be responsible, at Municipality’s own cost, for the work as set out in Schedule C and described as follows:

- 3.2.1 the installation of the westbound traffic signal(s) except for any works by the Ministry; and
- 3.2.2 the creation of road markings for the lanes described in Section 3.1.2 and Section 3.1.3.

#### **4 TENDERING**

- 4.1 Subject to Section 2.1, the Ministry will tender the Municipal Work as a separate tender item as part of the MTO Project.
- 4.2 Following the close of the tender and before awarding the contract for the construction of the MTO Project, the Ministry will notify the Municipality of the bid prices for the Municipal Work.
- 4.3 The Municipality shall have seven (7) business days to notify the Ministry in writing that it does not accept the bid prices for the Municipal Work and that it wishes to terminate this Agreement, failing such notice from the Municipality, the Ministry will proceed to award the contract for the construction of the MTO Project with the Municipal Work, at the cost of the Municipality. If the Municipality

terminates this Agreement, it shall pay the Ministry all costs incurred to the date of termination.

- 4.4 The Ministry shall ensure that all contracts with third parties obligate such third parties to include the Municipality as an additional insured on any insurance policy.

## 5 CONSTRUCTION

- 5.1 The Ministry will construct and administer the Municipal Work pursuant to the tendered contract and the provisions of this Agreement.
- 5.2 The Ministry will give the Municipality at least fourteen (14) calendar days written notice before commencing construction of the Municipal Work. The Ministry will erect all required public notices relating to the commencement of construction, as required by applicable laws.
- 5.3 The Municipality shall allow the Ministry, including its servants, agents, employees, assigns and contractors, to enter upon the Municipality's lands and right-of-way, as may be necessary to construction the MTO Project, including the Municipal Work and until the completion of the MTO Project, including any warranty and maintenance periods that may be required and set out in the construction contract for the MTO Project.
- 5.4 The Ministry will be responsible for the construction administration associated with the MTO Project including the Municipal Work, and other duties normally associated with the supervision and administration of the construction of the project of this type. It is understood and agreed by the Municipality that the Ministry may retain a consulting engineering firm for the actual or day-to-day construction administration of the Municipal Work. The costs for construction administration ("**Administration Costs**") relating to the Municipal Work shall be calculated in the same proportion as the bidding price of Municipal Work vs. the bidding price of the MTO project.

- 5.5 The Ministry will undertake utility relocations as necessary to accommodate the Municipal Work.
- 5.6 Upon completion of the Municipal Work and receipt of written notification from the Ministry of the same, the Municipality shall inspect the Municipal Work and advise the Ministry of any defaults in the completion of the Municipal Work within fourteen (14) calendar days. Upon the Municipality being satisfied that the Municipal Work has been completed and all defaults corrected through the administration of the Ministry, the Municipality shall forthwith advise the Ministry in writing that the Municipal Work has been accepted ("**Acceptance**") or if the Municipality fails to advise the Ministry of any defaults prior to the expiry of the aforementioned time periods, the Municipality shall be deemed to have accepted the Municipal Work ("**Deemed Acceptance**").
- 5.7 The Ministry will be responsible for the resolution of any and all construction liens or disputes in respect of the MTO Project, including the Municipal Work.
- 5.8 The Parties acknowledge and agree that upon Acceptance or Deemed Acceptance of the Municipal Work in accordance with Section 5.6 above, the Parties shall be deemed to have executed the maintenance agreement attached hereto as Schedule "E" of the Agreement (the "Maintenance Agreement"), and the Municipality shall assume full responsibility and liability as set out in the Maintenance Agreement for all future maintenance and repairs of the Sidewalks within MTO ROW, For clarity, the execution date of the Maintenance Agreement shall be the date of construction warranty is expired for the MTO Project.

## 6 PAYMENT

- 6.1 The Municipality shall pay the Ministry for the costs of all Municipal Work including design, construction, relocation of utilities, and contract administration in accordance with this Agreement.
- 6.2 For purposes of budgeting, the Municipality's costs are estimated to be \$1,000,000.00, plus applicable surcharges and the Harmonized Sales Tax ("HST"), as more particularly described in Schedule "D" attached to this Agreement (the "**Budget**").
- 6.3 The Municipality acknowledges and agrees that the Budget is a reasonable estimate for the Municipal Work and that payment shall be made by the Municipality to the Ministry for all actual costs associated with the design, construction and contract administration of the Municipal Work incurred by the Ministry in respect of the Municipal Work and any applicable surcharges and HST.
- 6.4 In addition, the liability of the Municipality to pay the Ministry for the costs for the design, construction, and contract administration of the Municipal Works, includes the following:
- A. To pay one hundred percent (100 %) of all increased costs incurred by the Ministry to complete any additional work beyond the scope of the Municipal Work, which is requested by the Municipality and not included in the bidding cost provided to the Municipality;
  - B. To pay one hundred percent (100 %) of all increased costs incurred by the Ministry to comply with any request of the Municipality to change the Municipal Work; and
  - C. To pay one hundred percent (100 %) of all increased costs incurred by the Ministry attributed to any delays attributed solely to the Municipality with respect to the Municipal Work.



6.5 The Ministry agrees to provide written notice to the Municipality of any extra work relating to the Municipal Work identified during construction, and not included in the original tender package, which is reasonably necessary for the completion of the Municipal Work (the "Extra Work"). The Ministry will provide written notice to the Municipality of any additional costs for such Extra Work that the Municipality is responsible for.

Acting reasonably, the Municipality shall approve the notified Extra Works in a timely manner to avoid delaying of construction, and shall pay for any cost incurred for delays due to the Municipality's failure to approve the Extra Works on time. Notwithstanding the foregoing, the Municipality agrees to release its right for approving Extra Work in urgent situation during construction identified and approved by the contract administrator for the Municipal Work.

The Municipality shall pay its shares of costs (including applicable HST) for any Extra Work as approved by the Municipality and any contractor administrator approved Extra Work in urgent situation for the Municipal Work.

Both parties hereby agree to act in a commercially reasonable manner when submitting requests for and approving Extra Work.

6.6 The Ministry shall invoice the Municipality for the actual cost of the Municipal Work completed for the Municipality that is the financial responsibility of the Municipality under this Agreement. The Municipality shall pay the Ministry the amount of the invoice within thirty (30) calendar days from the receipt of the invoice.

6.7 The Municipality shall not acquire any title, right, easement, licence, or any other interest in the lands of the Ministry, as a result of its payment to the Ministry of any amounts paid or owing pursuant to this Agreement.

## 7 GENERAL PROVISIONS

7.1 Notices under this Agreement shall be in writing and sent by personal delivery, electronic mail transmission (“email”) or by registered mail. Notices by registered mail shall be deemed to have been received on the fourth business day after the date of mailing. Notices by email or by personal delivery shall be deemed to have been received at the time of the delivery or transmission, unless delivered or transmitted on a weekend or holiday, in which case such notice shall be deemed to have been received on the next business day. In the event of an interruption in postal service, notice shall be given by email or by personal delivery. The address, contact person of the Parties under this Agreement, unless otherwise noted is:

The Ministry:       Head,  
                               Project Delivery West  
                               Ministry of Transportation  
                               659 Exeter Road  
                               London, Ontario  
                               N6E 1L3  
                               Engineering.Admin@ontario.ca

The Municipality:   Adam Weishar  
                               Director of Infrastructure & Development  
                               Municipality of Kincardine  
                               1475 Concession 5, R.R. #5  
                               Kincardine, Ontario  
                               N2Z 2X6  
                               aweishar@kincardine.ca

7.2 Each Party warrants that it has taken all necessary steps, done all acts, passed any necessary by-laws and obtained all approvals within its power legally required to give it the authority to enter into this Agreement.

7.3 The rights, duties and powers of the Minister under this Agreement may be exercised by the MTO Director.

- 7.4 Any changes, alterations or amendments to this Agreement shall be made in writing signed by the Municipality's authorized signing officers and by the MTO Director.
- 7.5 This Agreement shall be governed by the laws of the Province of Ontario and any applicable federal laws of Canada.
- 7.6 This Agreement may be executed in any number of counterparts, and by electronic or digital signature, delivered by email, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 7.7 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**[REST OF THE PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE  
FOLLOWS]**

**IN WITNESS WHEREOF** contained in this Agreement.

**SIGNED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**HIS MAJESTY THE KING in right of the  
Province of Ontario, represented by the  
Minister of Transportation for the Province  
of Ontario**

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MINISTER OF TRANSPORTATION (ONTARIO)

**SIGNED AND SEALED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**THE CORPORATION OF THE  
MUNICIPALITY OF KINCARDINE**

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Mayor

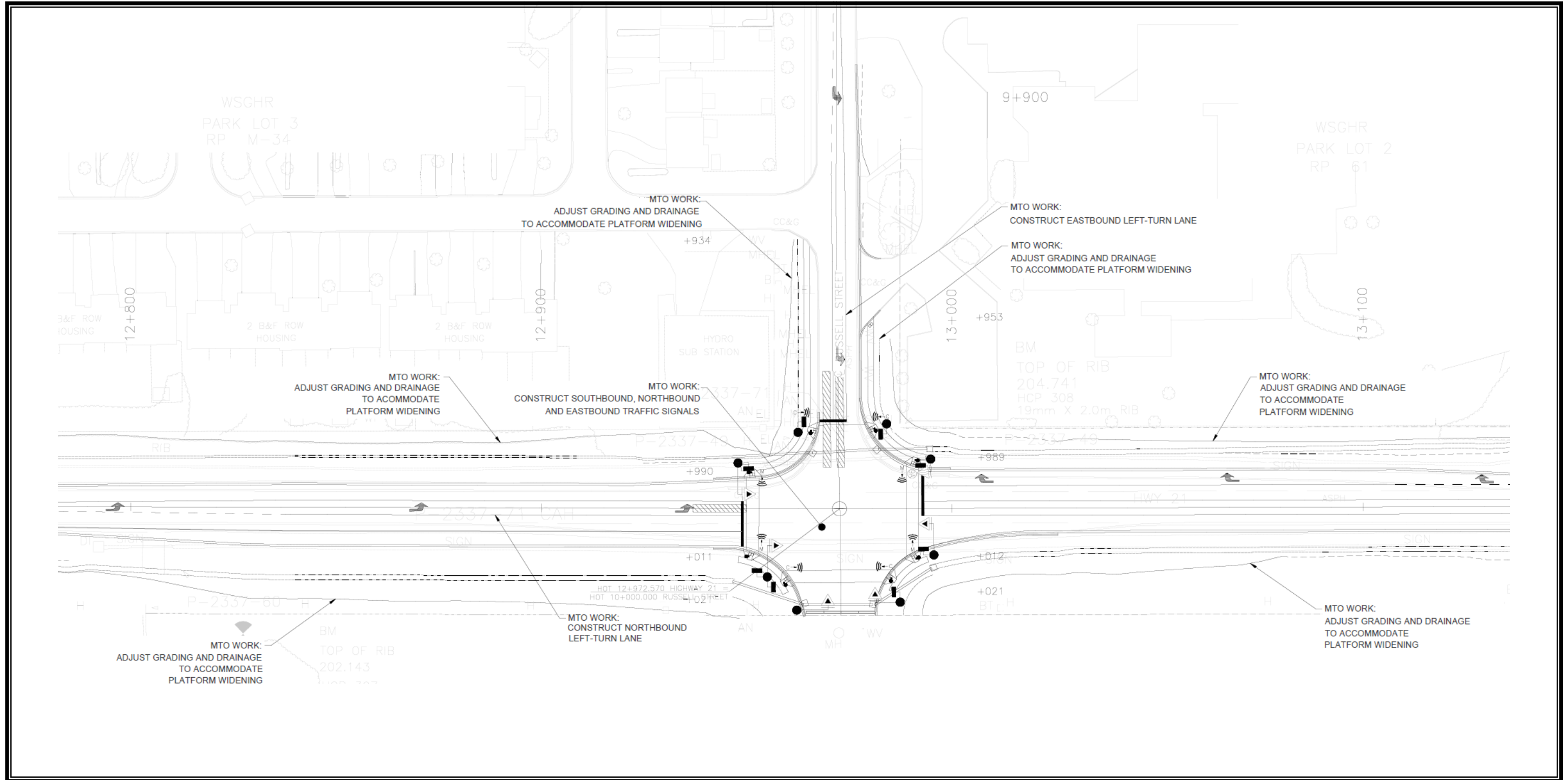
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Clerk  
(I/we have authority to bind the Municipality)

**SCHEDULE A**

**To an Agreement between the Ministry and the Municipality of Kincardine**

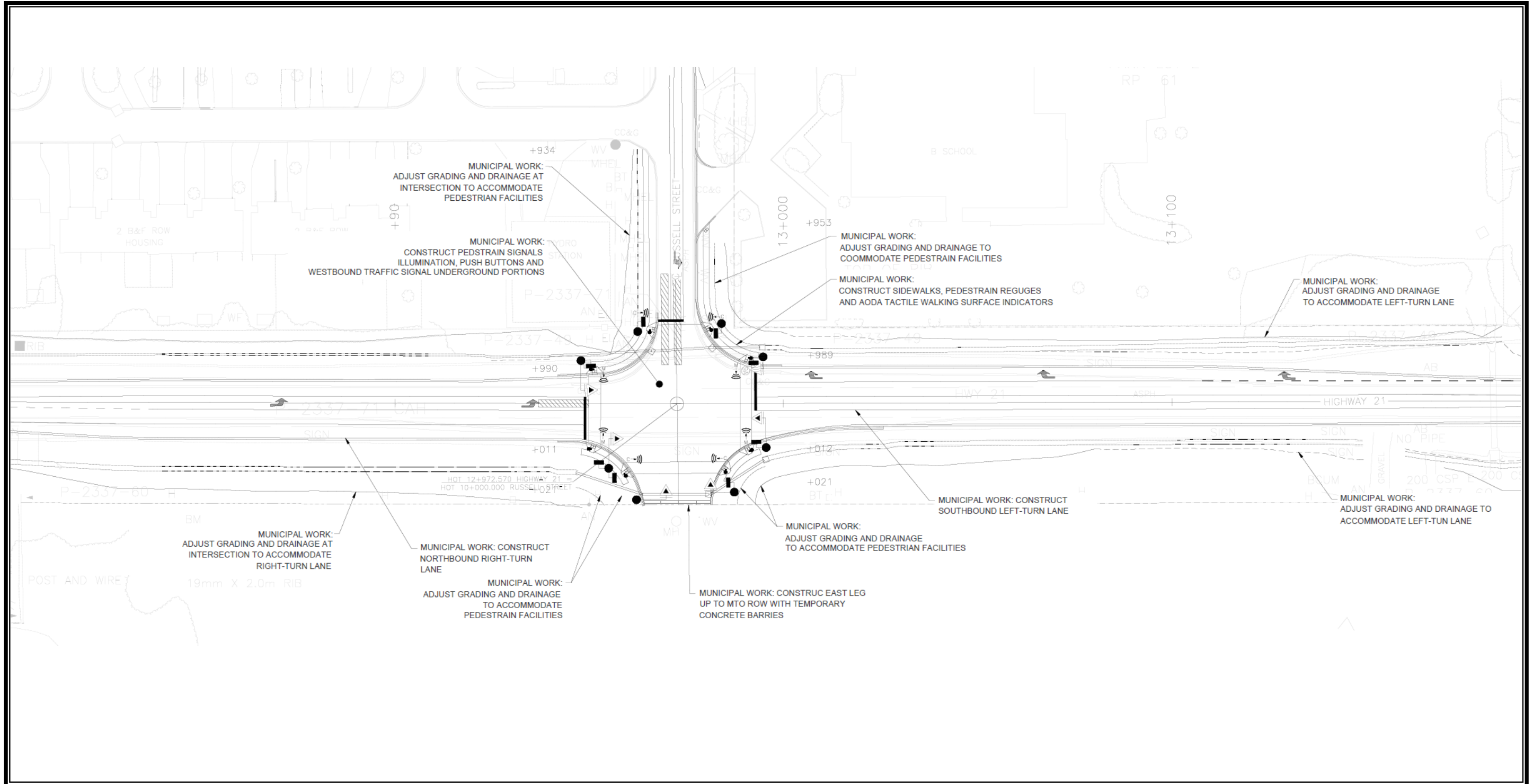
**MTO Project - MTO Work**



**SCHEDULE B**

**To an Agreement between the Ministry and the Municipality of Kincardine**

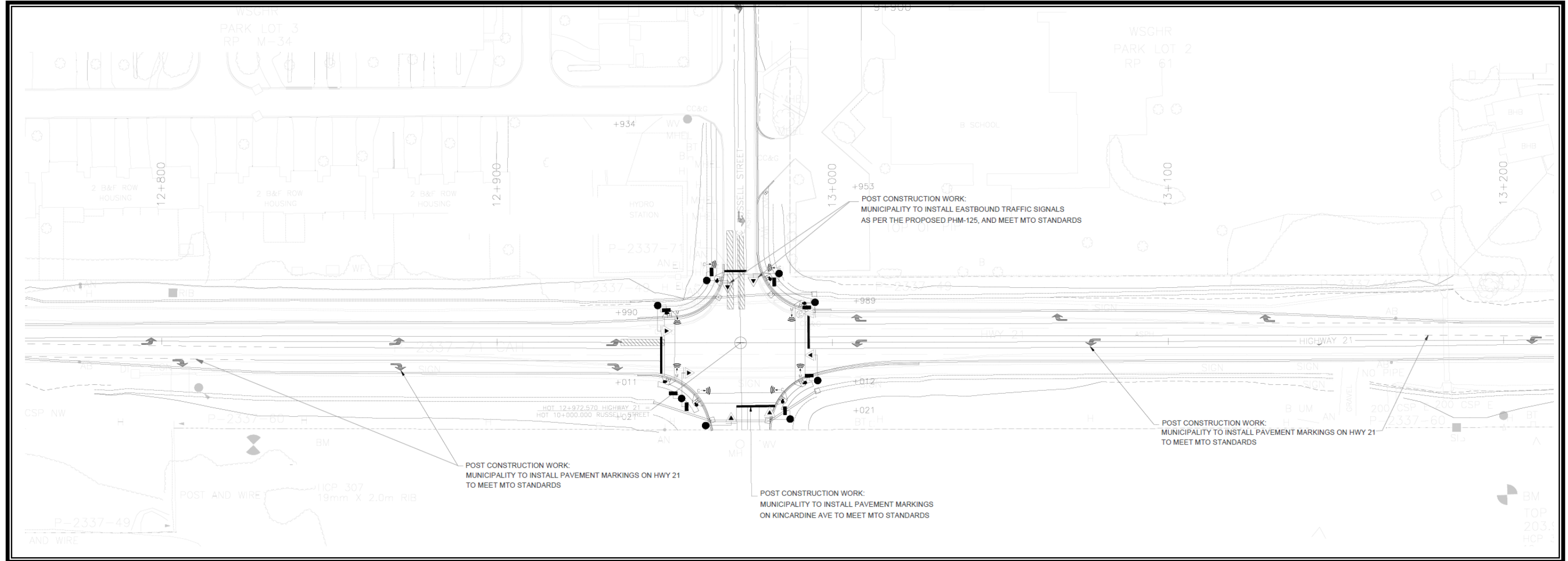
**MTO Project - Municipal Work**



**SCHEDULE C**

**To an Agreement between the Ministry and the Municipality of Kincardine**

**MTO Project Post Construction - Municipal Work**



**SCHEDULE D****To an Agreement between the Ministry and the Municipality of Kincardine****Estimated Cost of Municipal Work**

<b>NO</b>	<b>ITEM</b>	<b>ESTIMATED COSTS</b>
1	Design	\$80,000.00
2	Construction	\$830,000.00
3	SUBTOTAL	\$910,000.00
4	Contract Administration Costs (assumed 10% of construction costs)	\$90,000.00
5	<b>TOTAL</b>	<b>\$1,000,000.00+ HST</b>