

Schedule "E" to the Agreement Between the Ministry and the Municipality of Kincardine

SCHEDULE "E" – Sidewalk Maintenance Agreement

To an Agreement between the Ministry and the Municipality of Kincardine

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")

OF THE FIRST PART

- and -

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE

(hereinafter referred to as the "Corporation")

OF THE SECOND PART

WHEREAS:

- A. The lands comprising a public highway, being the existing King's Highway No. 21 (the "Highway"), are vested in the Ministry and are under the jurisdiction and control of the Ministry;
- B. The Corporation wishes, at its sole expense and cost, to repair, maintain and use sidewalks and tactiles (the "Sidewalk") for pedestrian purposes at the intersection of Highway 21 and Russell Street and shown on the sketch attached as Schedule "F" hereto;
- C. The Ministry is of the opinion that the maintenance and use of the Sidewalk can be carried out without unduly interfering with the public use of the Highway;
- D. This Agreement is deemed to be a permit to the Corporation from the Ministry under section 34 (2) (a) of the *Public Transportation and Highway Improvement Act* R.S.O. 1990, c. P.50 as amended ("PTHIA");
- E. Despite Recital D above, the Corporation shall apply for and obtain a more specific permit ("Permit") from the Ministry before conducting any repair or maintenance of the Sidewalk in accordance with the requirements of section 34 of the PTHIA as further specified herein; and
- F. The Ministry has agreed to allow the Corporation to repair, maintain and use the Sidewalk upon the terms and conditions of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

TERM

- 1. The term of this Agreement shall be for one (1) year commencing on the day of the issuance of the Permit (the "Effective Date"), provided that the term shall be

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automatically renewed for further periods of one year commencing on its anniversary date unless a party gives the other not less than sixty (60) calendar days prior written notice of its intention to terminate this Agreement at the end of the term or current renewal term.

USE

2. Upon execution of this Agreement by both parties the Corporation may repair, maintain and use the Sidewalk as a pedestrian walkway in general as more particularly set out herein.

APPROVAL

3. The Corporation acknowledges and agrees that the Ministry grants only permission pursuant to the provisions of the PTHIA, and the Corporation shall be responsible for obtaining all approvals required from any other authority in order to carry out any activity with respect to the Sidewalk.

CORPORATION’S RESPONSIBILITIES

4. The Corporation shall:
 - (a) be responsible for the provision of any and all maintenance and repair of the Sidewalk to the satisfaction of the Ministry, acting reasonably, including all illumination (other than MTO lights) associated with the Sidewalk, as well as the removal of debris, garbage, vegetation and snow; and shall carry out all applicable Sidewalk maintenance and any and all other work or services incidental to maintenance and repair, and for any and all costs for said maintenance and repair, including power consumption;
 - (b) ensure that any maintenance and repair performed with respect to the Sidewalk is performed promptly and in such a manner so as to cause no interference with the Highway or the use of the Highway by the public;
 - (c) compensate the Ministry in full for any damage to the Highway and associated structures and road equipment caused directly by the Corporation as a result of the Corporation’s maintenance and repair work being performed, or not performed, with respect to the Sidewalk.
 - (d) complete modifications of access points to the Sidewalk as per Ministry standards as set out in any Permits;
 - (e) take all commercially reasonable steps to ensure the Sidewalk is used for public leisure uses such as walking and cycling uses and no other uses within the Highway property limits, including but not limited to prohibiting the use of motorized vehicles on the Sidewalk;

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- (f) be responsible for Sidewalk signing. The Corporation shall not place any Sidewalk signs within the Highway property limits without the prior written approval and/or a Permit from the Ministry. The Ministry, at its discretion, may remove, relocate and dispose of any Sidewalk signs placed without the required approval; and
- (g) obtain prior written approval in the form of a Permit from the Ministry and comply with the terms and conditions therein for work, other than routine annual or periodic maintenance, that is to be undertaken on the Sidewalk by non-Ministry personnel. The Ministry may renew the Permit upon request of the Corporation. After obtaining the Ministry's approval, the Corporation shall notify the Ministry at least seven (7) calendar days before carrying out any such work.
- (h) be responsible for the costs and maintenance of any modifications to the Highway or its structures necessitated because of the Sidewalk system.

EMERGENCY AND HIGHWAY PURPOSES

- 5. Notwithstanding any other provision of this Agreement, the Ministry may suspend or terminate this Agreement at any time before the expiry of its term, if the Ministry deems, in its sole discretion, that;
 - (a) it requires the lands under the Highway occupied by the Sidewalk for an emergency or for the purposes of installing, repairing or maintaining the Highway, or other public needs; or
 - (b) emergency work must be carried out by the Ministry on the Highway in order to protect the travelling public and/or preserve the integrity of the Highway right-of-way;

On the condition that the Ministry give the Corporation oral or written notice of such emergency or need to install, repair or maintain the Highway. The Ministry shall not be liable to the Corporation for any costs incurred by the suspension or termination of this Agreement, or any costs incurred by the Corporation to restore the Sidewalk by reason of this Section 5.

LIABILITY

- 6. The Corporation shall reimburse the Ministry for all costs reasonably incurred by the Ministry to repair and maintain the Highway when the need for such repair and maintenance can be reasonably attributed to the negligence and/or failure by the Corporation to comply with the provisions of this Agreement.
- 7. The Ministry shall not be liable in any manner whatsoever for any loss, injury, or damage to person or property including loss of life, by whosoever suffered, that in any way is connected to the establishment, use or the operation of the Sidewalk unless caused by the negligence or the wilful act of an employee or

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agent of the Ministry while acting within the scope of his or her employment or agency respectively. The Ministry shall not be liable for any incidental, indirect, special or consequential damages or loss of use, revenue or profit suffered by any party arising out of or in any way connected to this Agreement. This provision shall survive the termination or expiry of this Agreement.

8. The terms of this Agreement are hereby deemed to be terms of a Permit from the Ministry to the Corporation, pursuant to section 34 (16) of the PTHIA, allowing the Sidewalk to be located within the Highway property limits, and the Sidewalk shall be subject to the authority of the Ministry accordingly.
9. The Corporation warrants that it has taken all necessary steps, done all acts, passed all by-laws and obtained all approvals within its power required to give it authority to enter into this Agreement.

TITLE IN THE MINISTRY PROPERTY LIMITS / PTHIA SECTION 33 (1) UNDERTAKING

10. The parties agree that:
 - (a) no provision of this Agreement, nor any repair, maintenance or use of the Sidewalk is to be construed as creating in the Corporation any right, title or interest in the Ministry's property limits or fixtures erected thereon other than the right to repair, maintain and use the Sidewalk in accordance with the terms of this Agreement; and
 - (b) the Sidewalk is hereby deemed to be, also a municipal undertaking of the Corporation within the Highway property limits under the end portion of section 33 (1) of the PTHIA whereby the Corporation is liable for want of repair of the municipal undertaking whether the want of repair is the result of nonfeasance or misfeasance, in the same manner and to the same extent as in the case of any other like work constructed by the Corporation.

INSURANCE

11. The Corporation shall, during the term of this Agreement, have in place at its cost, with insurers having a secure A.M. Best rating of B+ or greater or the equivalent, a fully paid-up commercial general liability policy of insurance covering third party property damage, bodily injury and personal injury. Such policy shall include:
 - (a) name the "His Majesty the King in right of the Province of Ontario, represented by the Minister of Transportation for the Province of Ontario" as an additional insured;
 - (b) have the Corporation as named insured;
 - (c) provide thirty (30) calendar days written notice to the Ministry of cancellation, termination or material change;

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- (d) have an inclusive limit of not less than five million dollars (\$5,000,000.00) per occurrence; and
- (e) contain a cross-liability clause endorsement.

A certificate for the said insurance policy for commercial general liability insurance shall be provided to the Ministry within thirty (30) calendar days after the Effective Date of this Agreement. The Ministry shall be provided with renewal replacements on or before the expiry of such insurance.

In addition, a certificate of insurance coverage shall be submitted by the Corporation annually to the Ministry within thirty (30) calendar days from the anniversary date of the Effective Date.

TERMINATION

- 12. The Ministry may terminate this Agreement at any time, without cause, upon sixty (60) calendar days written notice being provided to the Corporation.
- 13. Subject to section 14, the Ministry may terminate this Agreement, immediately upon providing notice to the Corporation, if the Corporation fails to fulfill any of the terms and conditions of this Agreement.
- 14. Prior to exercising the Ministry’s termination right under section 13, the Ministry shall give written notice to the Corporation of the breach of the terms and conditions of this Agreement and allow the Corporation reasonable period of time in which to remedy the breach.
- 15. Notwithstanding any breach of this Agreement by the Corporation, the Ministry may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement without prejudice to any other rights which the Ministry may have in relation to such breach. The failure of the Ministry to exercise any rights under this Agreement, including any right to terminate under sections 14 and 15 and any right to claim damages, shall not be deemed to be a waiver of such rights for any continuing or subsequent breach.

MINISTRY’S RIGHTS ON TERMINATION

- 16. In the event of the termination of this Agreement, the Ministry shall be under no further obligation to the Corporation, except to recover from the Corporation any damages, costs and expenses incurred as a result of such termination.
- 17. Upon the termination of this Agreement, the Corporation shall, at its sole cost and expense, remove entirely any fixtures, unless otherwise instructed by the Ministry, and restore the lands upon which the Sidewalk is located to a condition at least as good as their former condition, ordinary wear and tear excepted, including the

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replacement of any fences or other barriers present at the commencement of this Agreement.

18. Should the Corporation fail to comply with Section 18 of this Agreement, the Ministry, at its discretion, may undertake to do anything that will remedy the default and may, without foregoing any other remedies, perform the removal, restoration or replacement work and the Corporation shall pay the Ministry for all costs reasonably incurred to perform the said work.

COSTS

19. The Corporation agrees to pay all costs and expenses in connection with the repair, maintenance and use of the Sidewalk as set out in this Agreement.

CONFLICTS

20. Where there is a conflict between this Agreement and the terms and conditions contained in a Permit issued to the Corporation, the terms and conditions contained in this Agreement shall govern. Such Permit shall have annotated on it:

“this Permit is subject to the terms of an Agreement dated the 15th day of November, 2023 between the Ministry of Transportation and the Municipality of Kincardine.”

21. Where there is a conflict between this Agreement and the terms and conditions of other agreements that the Corporation may have entered into with another party, this Agreement shall govern.

NOTICES

22. Any notices to be given under the provisions of this Agreement shall be in writing and shall be given by personal delivery, e-mail, or sent by facsimile or mailed by prepaid registered mail. Subject to change by either party with written notice, notice shall be addressed as follows:

The Ministry: Head
Corridor Management
Ministry of Transportation
659 Exeter Road
London, Ontario
N6E 1L3
Corridor.Admin@ontario.ca

The Corporation: Infrastructure & Development
Municipality of Kincardine
1475 Concession 5, R.R. #5
Kincardine, Ontario
N2Z 2X6
iddirector@kincardine.ca

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Such notices, invoices, demands, or correspondence as aforesaid shall be deemed to have been received by the party to whom it is mailed on the third business day following the day of posting, or on the day of delivery or transmission if provided by personal delivery, e-mail, or facsimile, unless delivered or transmitted on a weekend or a holiday, in which case such notice shall be deemed to have been received on the next business day. In the event in an interruption in the postal service, notice shall be given by personal delivery, e-mail or facsimile.

SUCCESSORS AND ASSIGNS

23. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.
24. This Agreement may not be assigned by the Corporation without the prior written consent of the Ministry.

SEVERABILITY

25. If any provision of this Agreement or portion thereof or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable:
 - (a) the remainder of this Agreement and its application to any person or circumstances shall not be affected thereby; and
 - (b) the parties hereto will negotiate in good faith to amend this Agreement to implement the intentions set forth herein.
26. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

NO PARTNERSHIP

27. The parties understand and agree that nothing contained in this Agreement shall constitute or be deemed to create a partnership or joint venture between the parties hereto.

APPLICABLE LAW

28. This Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada.

SURVIVAL

29. Sections 7 of this Agreement shall survive any expiration or termination and continue in full force and effect for a period of two (2) years from the date of such expiration or termination of this Agreement.

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Kincardine**

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

MINISTER OF TRANSPORTATION (ONTARIO)

SIGNED AND SEALED this _____ day of _____, 20____.

**THE CORPORATION OF THE MUNICIPALITY OF
KINCARDINE**

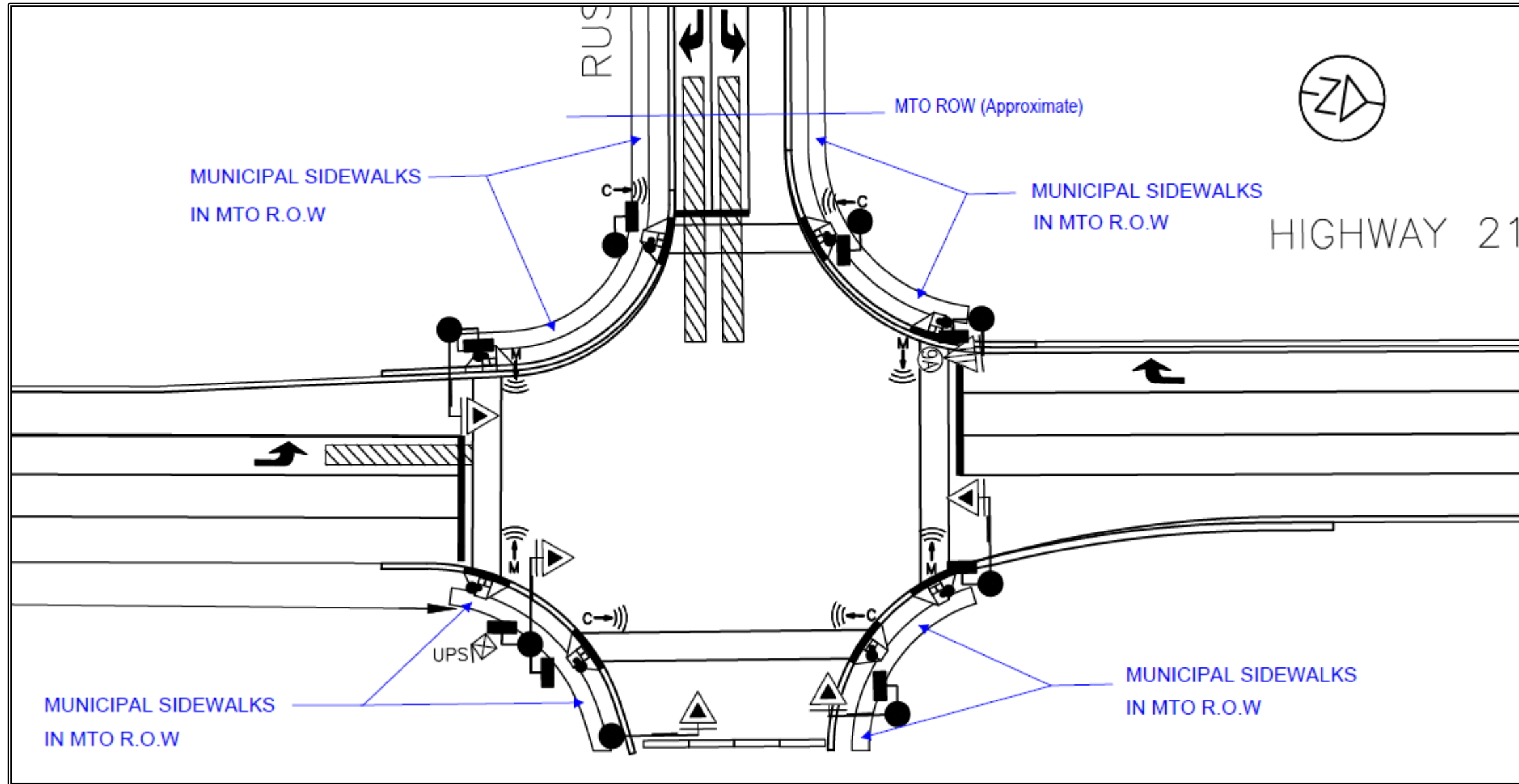
Mayor

Clerk

We have authority to bind the Corporation.

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Schedule "F"
to an Agreement between the Ministry of Transportation and the Municipality of Kincardine



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