



BY-LAW

NO. 2024 –

Being a By-law to Authorize an Agreement with His Majesty the King in Right of the Province of Ontario, Represented by the Minister of Transportation for the Province of Ontario

Whereas Section 8 (1) and 9 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provide that the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues and has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act; and

Whereas The Corporation of the Municipality of Kincardine has jurisdiction and control over Russell Street and the Ministry of Transportation has jurisdiction over the King's Highway #21, Municipality of Kincardine; and

Whereas the Council of The Corporation of the Municipality of Kincardine deems it advisable to enter into an Agreement with His Majesty the King in Right of the Province of Ontario, represented by the Minister of Transportation for the Province of Ontario, for the design and reconstruction of the King's Highway #21 at the Russell Street intersection, Municipality of Kincardine; now therefore be it

Resolved that the Council of The Corporation of the Municipality of Kincardine **Enacts** as follows:

1. That The Corporation of the Municipality of Kincardine enter into an Agreement with the His Majesty the King in Right of the Province of Ontario, represented by the Minister of Transportation for the Province of Ontario, in accordance with the terms and conditions outlined in the Agreement attached hereto as Schedule 'A' and forming part of this By-law.
2. That the Mayor and Clerk be authorized to sign and execute the Agreement, on behalf of The Corporation of the Municipality of Kincardine.
3. That this By-law shall come into full force and effect upon its final passage.
4. That this By-law be cited as "Russell Street Agreement - Ministry of Transportation (2024) By-law".

Read a First and Second Time this 22nd day of May, 2024.

Read a Third Time and Finally Passed this 22nd day of May, 2024.

Mayor

Clerk

Schedule 'A'

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 locations:
 - 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**


MINISTER OF TRANSPORTATION (ONTARIO)

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

**THE CORPORATION OF THE
MUNICIPALITY OF KINCARDINE**



Mayor

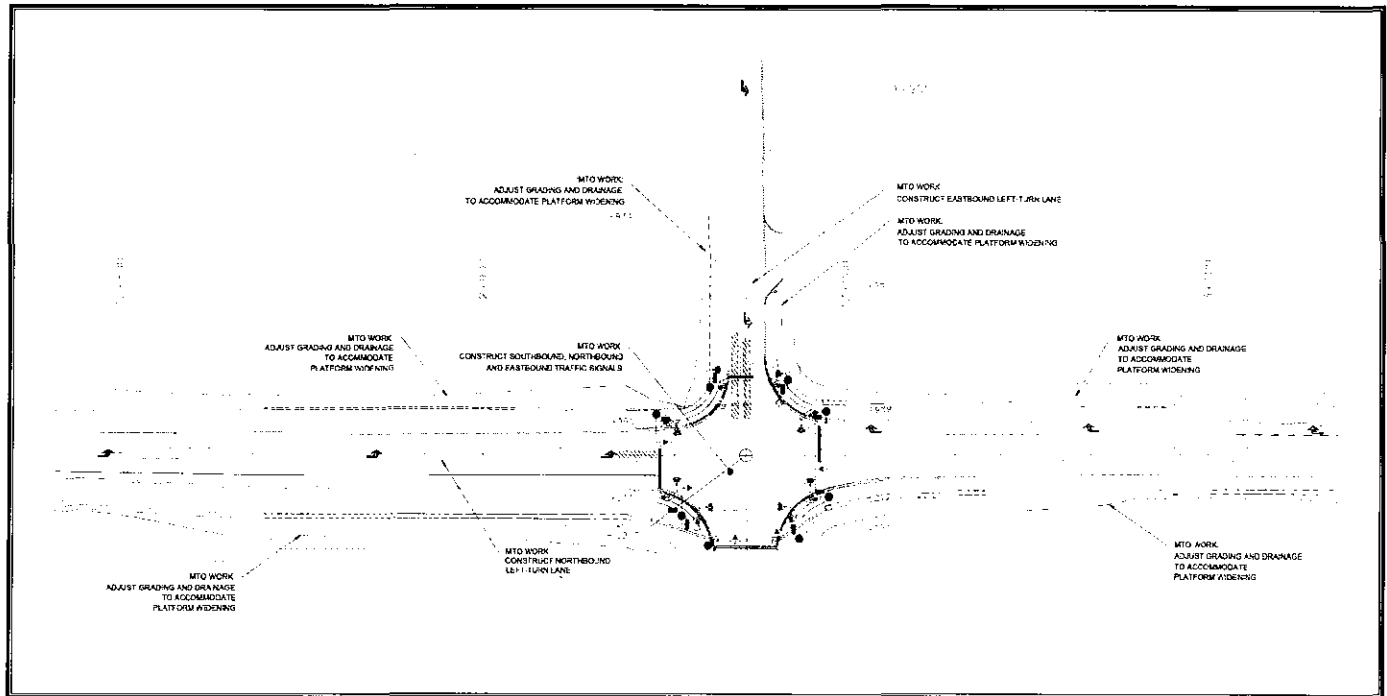


Clerk
(I/we have authority to bind the Municipality)

SCHEDULE A

To an Agreement between the Ministry and the Municipality of Kincardine

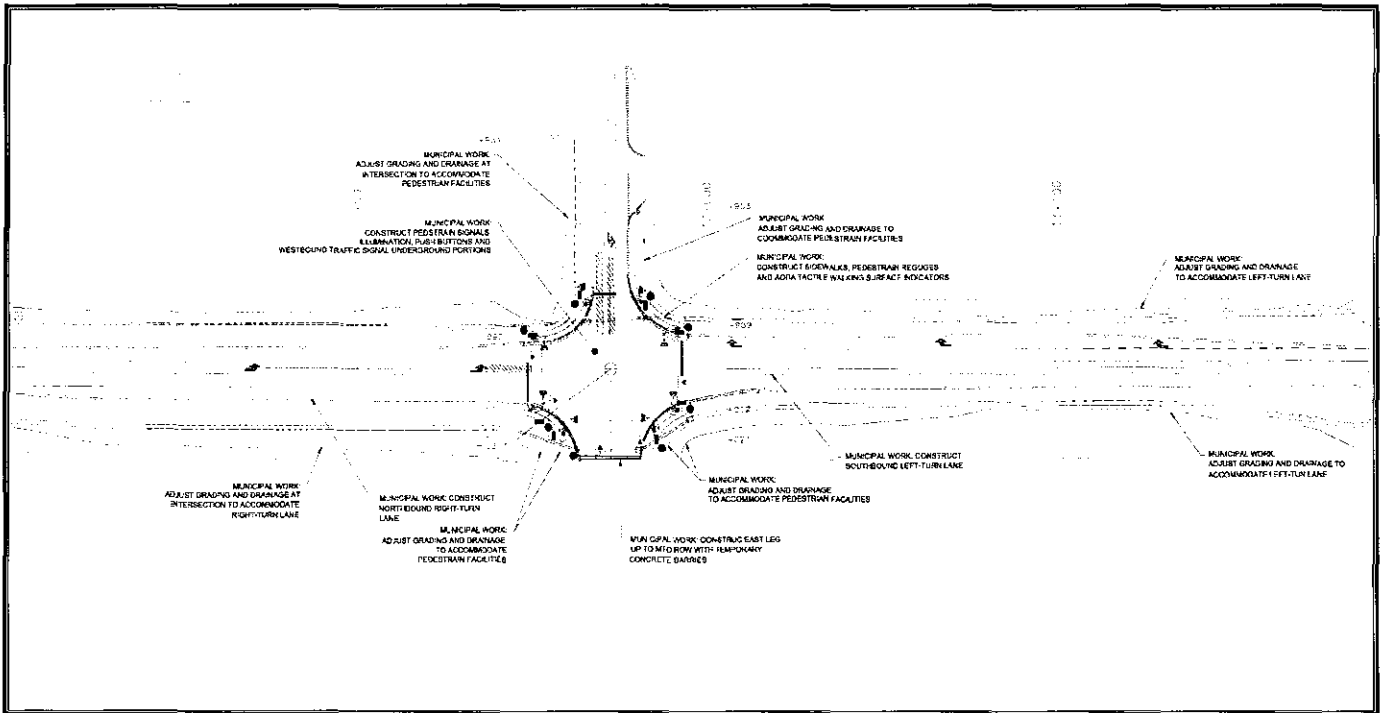
MTO Project - MTO Work



SCHEDULE B

To an Agreement between the Ministry and the Municipality of Kincardine

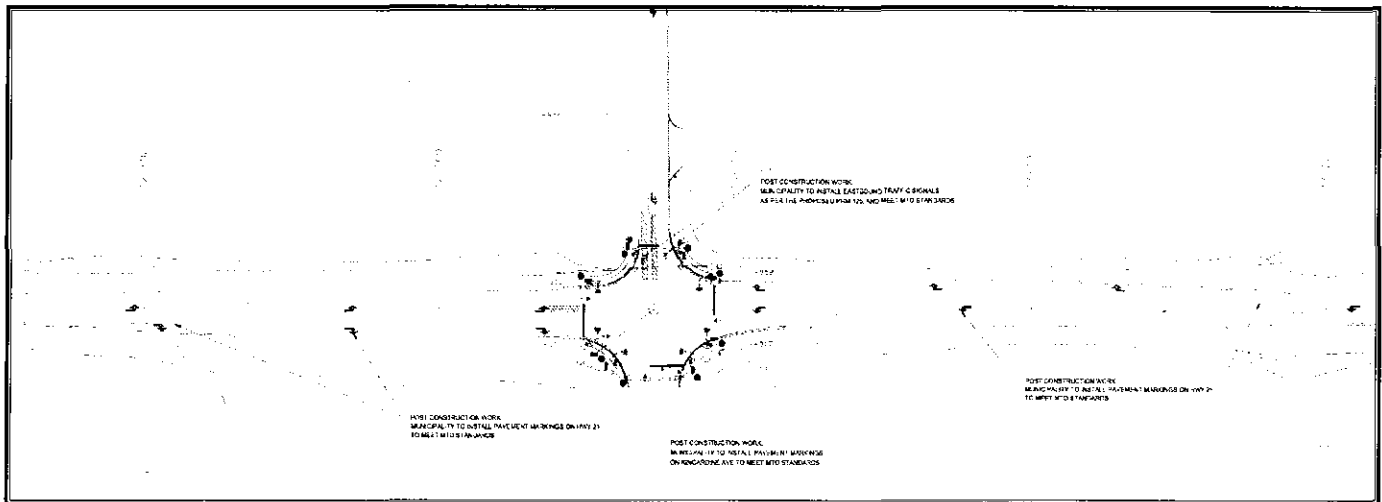
MTO Project - Municipal Work



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

NO	ITEM	ESTIMATED COSTS
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	TOTAL	\$1,000,000.00+ HST

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

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

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;

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

- (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

**Schedule "E" to the Agreement Between the Ministry and the Municipality of
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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;

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

- (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

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

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 _____ day of _____, 2024 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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Kincardine**

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.

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

Kenneth Craig

Mayor

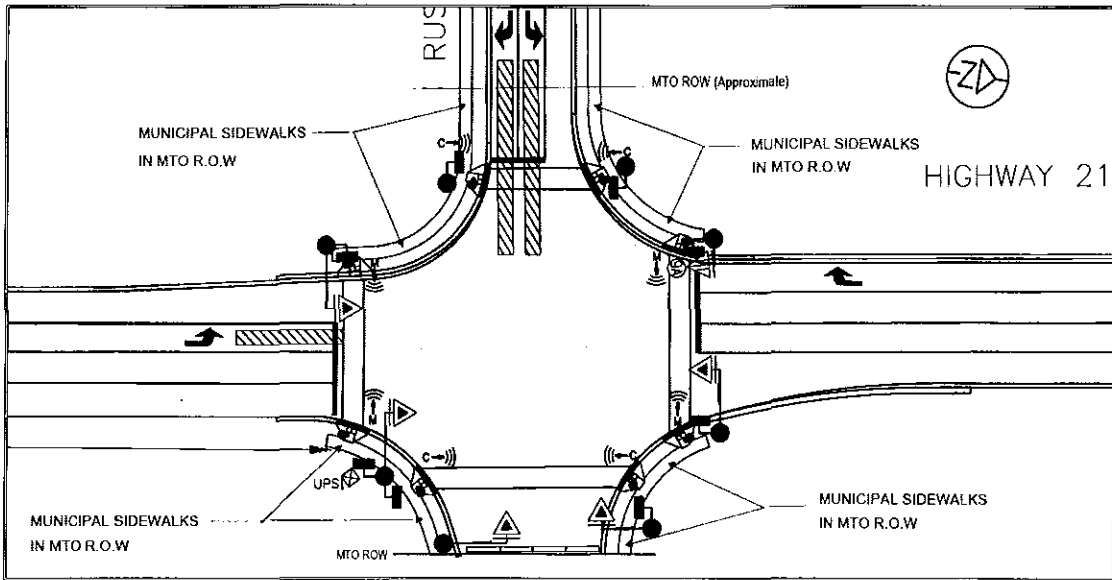
Jenny Lawrie

Clerk

We have authority to bind the Corporation.

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

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



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