

THIS AGREEMENT is effective **this** ____ **day of** _____, **2020 (“Effective Date”)**

BETWEEN:

**HER MAJESTY THE QUEEN 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 -

THE CORPORATION OF THE TOWN OF LAKESHORE
(hereinafter referred to as the "Corporation")

(Individually a “Party”, and collectively the “Parties”)

WHEREAS:

- A. The lands comprising a public highway, being the existing King’s Highway No. 77 (the “Highway”), are vested in the Ministry and are under the jurisdiction and control of the Ministry;
- B. The Ministry will, at the Ministry’s sole expense and cost, design and construct municipal illumination (the “Illumination”) within the Highway from Highway 77 from Essex Road 46 to Highway 401 (1.8 km) as shown on the sketch attached as Schedule “A” as part of an upcoming construction project;
- C. The Corporation has agreed, at its sole expense and cost, to operate, repair, maintain and use the Illumination within the Highway;
- D. The Ministry has agreed to allow the Corporation to repair, maintain and use the Illumination upon the terms and conditions of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the covenants contained herein and for 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 commence on the Effective Date set out on top of this Agreement and shall expire on the second anniversary of the Effective Date.
- 2. Prior to any expiry of the Agreement herein, the term of this Agreement shall be automatically renewed for further periods of one year term unless a Party gives the other not less than sixty (60) days prior written notice of its intention to terminate this Agreement at the end of the term or current renewal term.

USE

3. Upon execution of this Agreement by both Parties the Corporation shall repair, maintain and use the Illumination in general, subject to the conditions herein and any other conditions as required in such permit(s) that may be issued by the Ministry under the PTHIA from time to time ("Permit").

APPROVAL

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

CORPORATION'S RESPONSIBILITIES

5. The Corporation shall:
 - (a) be solely responsible for the provision of any and all operation, maintenance and repair of the Illumination, and all other work or services incidental to operations, maintenance and repair, and for any and all costs for said operations, maintenance and repair, including power consumption;
 - (b) ensure that any maintenance and repair performed with respect to the Illumination 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 and all damage caused or any harm done to the Highway and associated structures and road equipment as a result of maintenance and repair performed, or not performed, as the case may be, by the Corporation with respect to the Illumination;
 - (d) shall not permit the attachment of any signs to the Illumination within the Highway property limits without the prior written approval and/or a Permit from the Ministry. The corporation shall be responsible for enforcing and removing any non-compliant signs attached to the Illumination. Notwithstanding the above, the Ministry may, at its sole discretion, remove and dispose of any such non-compliant sign. Such disposal by the Ministry of any non-compliant signs is not a waiver of the Corporation's responsibility herein;
 - (e) 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 Illumination 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 days before commencing any such work; and
 - (f) be responsible for the costs and maintenance of any modifications to the Highway or its structures necessitated because of the Illumination.

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, at its sole discretion, that;

- (a) it requires the lands under the Highway occupied by the Illumination 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 whatsoever, incurred by the suspension or termination of this Agreement, or any costs whatsoever, incurred by the Corporation to restore the Illumination by reason of this Section.

LIABILITY

6. The Corporation shall indemnify and save harmless at all times, including after the termination of this Agreement, the Ministry, its Minister, servants, employees, and agents (“Indemnified Parties”) from and against any and all demands, losses, costs (including reasonable legal costs), damages, injuries (including death), claims, actions or causes of action, proceedings, in any manner arising due to, out of, from, or in connection with the existence of this Agreement unless caused by the negligence of the Indemnified Parties.
7. 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 arises as a result of any failure of the Corporation or can be reasonably attributed to the negligence and/or failure by the Corporation to comply with the provisions of this Agreement.
8. 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 Illumination save except for negligence and/or the wilful misconduct of an employee or 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. Sections 6, 7, and 8 herein shall survive the termination or expiry of this Agreement.
9. 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 Illumination to be located within the Highway property limits, and the Illumination shall be subject to the authority of the Ministry accordingly.
10. 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

11. The Parties agree that:

- (a) no provision of this Agreement, nor any construction, repair, maintenance or use of the Illumination 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 construct, repair, maintain and use the Illumination in accordance with the terms of this Agreement; and
- (b) pursuant to s.33 of the PTHIA, the Corporation agrees that the Illumination is hereby deemed to be, also a municipal undertaking of the Corporation within the Highway property limits whereby the Corporation is solely liable for want of repair of Illumination 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

12. 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.

TERMINATION

13. The Ministry may terminate this Agreement at any time, without cause, upon sixty (60) days written notice being provided to the Corporation.
14. Notwithstanding Section 13, the Ministry may terminate this Agreement, at any time, immediately upon providing notice to the Corporation, if the Corporation breaches or fails to fulfil any of the terms and conditions of this Agreement.
15. Notwithstanding Section 14, the Ministry may, in its reasonable discretion, give written notice to the Corporation of a breach of the terms and conditions of this Agreement and allow the Corporation a reasonable period of time in which to remedy the breach.
16. The Ministry's rights under Section 14 and Section 15 shall not in any manner be prejudiced even if the Ministry has overlooked or condoned any non-compliance with the terms and conditions of this Agreement by the Corporation.

MINISTRY'S RIGHTS ON TERMINATION

17. 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.

18. 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 Illumination is located to a condition at least as good as their former condition, including the replacement of any fences or other barriers present at the commencement of this Agreement.
19. Should the Corporation fail to comply with Section 18 of this Agreement, the Ministry 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 be required to pay the Ministry for all reasonable costs to perform the said work.

COSTS

20. The Corporation shall be solely responsible for all costs and expenses in connection with the repair, maintenance and use of the Illumination as set out in this Agreement.

CONFLICTS

21. Where there is a conflict between this Agreement and the terms and conditions contained in a Permit issued by the Ministry 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 _____, 2020 between the Ministry of Transportation and the Corporation.”

22. 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

23. Any notices to be given under the provisions of this Agreement shall be in writing and shall be given by personal delivery 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: Corridor Management Section, West Region
 Head, Corridor Management
 519-873-4578
 519-873-4228

Corporation: The Corporation of the Town of Lakeshore
 419 Notre Dame St.
 Belle River, ON
 N0R 1A0
 Attention: Clerk

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, 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 or facsimile.

SUCCESSORS AND ASSIGNS

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

SEVERABILITY

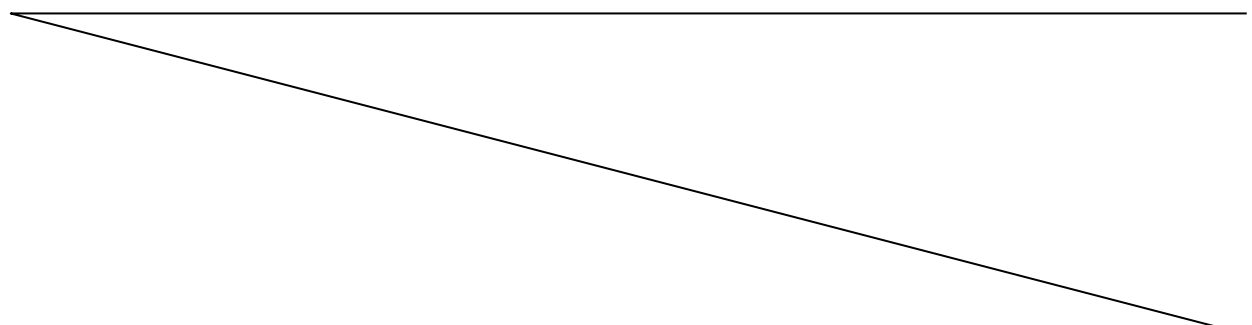
26. If any provision of this Agreement or portion thereof or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable:
 - (a) the remainder of this Agreement and its application to any person or circumstances shall not be affected thereby; and
 - (b) the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

NO PARTNERSHIP

28. 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.

OTHER PROVISIONS

29. The rights, duties and powers of the Minister under this Agreement may be exercised by the Head of Corridor Management of the Ministry's West Region.
30. Any changes, alterations or amendments to this Agreement shall be made in writing signed by the Municipality's authorized signing officers and by the Head of Corridor Management of the Ministry's West Region.
31. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.



APPLICABLE LAW

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

IN WITNESS OF ALL contained in this Agreement:

Dated this ____ day of _____, 2020.

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO,
REPRESENTED BY THE MINISTER OF TRANSPORTATION FOR THE PROVINCE
OF ONTARIO**

Head, Corridor Management

Dated this ____ day of _____, 2020.

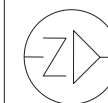
THE CORPORATION OF THE TOWN OF LAKESHORE

I/We have authority to bind the Corporation

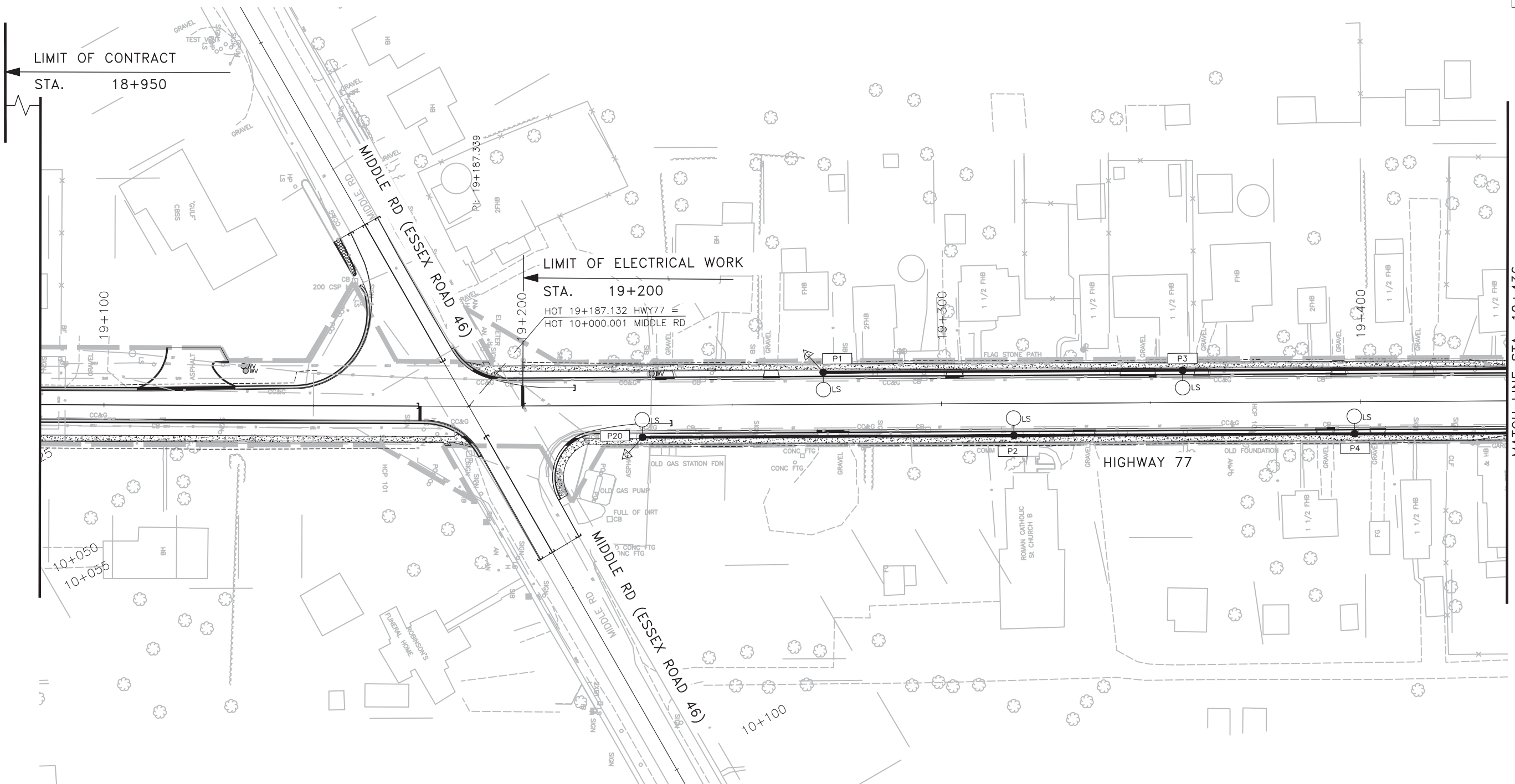
Schedule "A"
to an Agreement between the Ministry of Transportation and the Town of Lakeshore

A. CONTRACTOR TO REMOVE AND SALVAGE EXISTING STEEL POLES P1 TO P20 INCLUDING, LUMINAIRE, BRACKET AND FOOTING. UPON COMPLETION OF SEWER WORK, SALVAGED EQUIPMENT SHALL BE RE-INSTALLED IN SAME LOCATION.

PLATE	No
CONT	2017-3000
WP	3072-12-02



SHEET
E1



MATCH LINE STA. 19+436

SCALE

5m 0 10

Horizontal

A. CONTRACTOR TO REMOVE AND SALVAGE EXISTING STEEL POLES P1 TO P20 INCLUDING, LUMINAIRE, BRACKET AND FOOTING. UPON COMPLETION OF SEWER WORK, SALVAGED EQUIPMENT SHALL BE RE-INSTALLED IN SAME LOCATION.

PLATE No	
CONT	2017-3000
WP	3072-12-02


SHEET
E2



DRAWING NAME: F:\9827\Phase 700 - Electrical\Design of Traffic Signals at Knapp Street\4.4 CAD Design\9827-EL-U-PERU-D-1500.dwg (46)
PLOT DATE: 2020/02/14 3:28:04 AM

DRAWING NAME: F:\9827\Phase 700 - Electrical\Design of Traffic Signals at Knapp Street\4.4 CAD Design\9827-EL-L-FERM-D-1500.dwg (47)
PLOT DATE: 2020/02/14 3:28:10 AM

PR-D-707 88-05
MINISTRY OF TRANSPORTATION, ONTARIO

NOTES:

1. CONTRACTOR TO PROTECT EXISTING LUMINAIRE MOUNTED ON HYDRO POLE DURING CONSTRUCTION.
2. CONTRACTOR SHALL INSTALL POLES P21 TO P25 PRIOR TO REMOVING THE EXISTING LIGHTING NORTH OF FORD STREET.
CONTRACTOR SHALL ENSURE THAT LIGHTING IS MAINTAINED AT ALL TIMES.

METRIC
DIMENSIONS ARE IN METRES
AND/OR MILLIMETRES
UNLESS OTHERWISE SHOWN

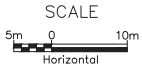
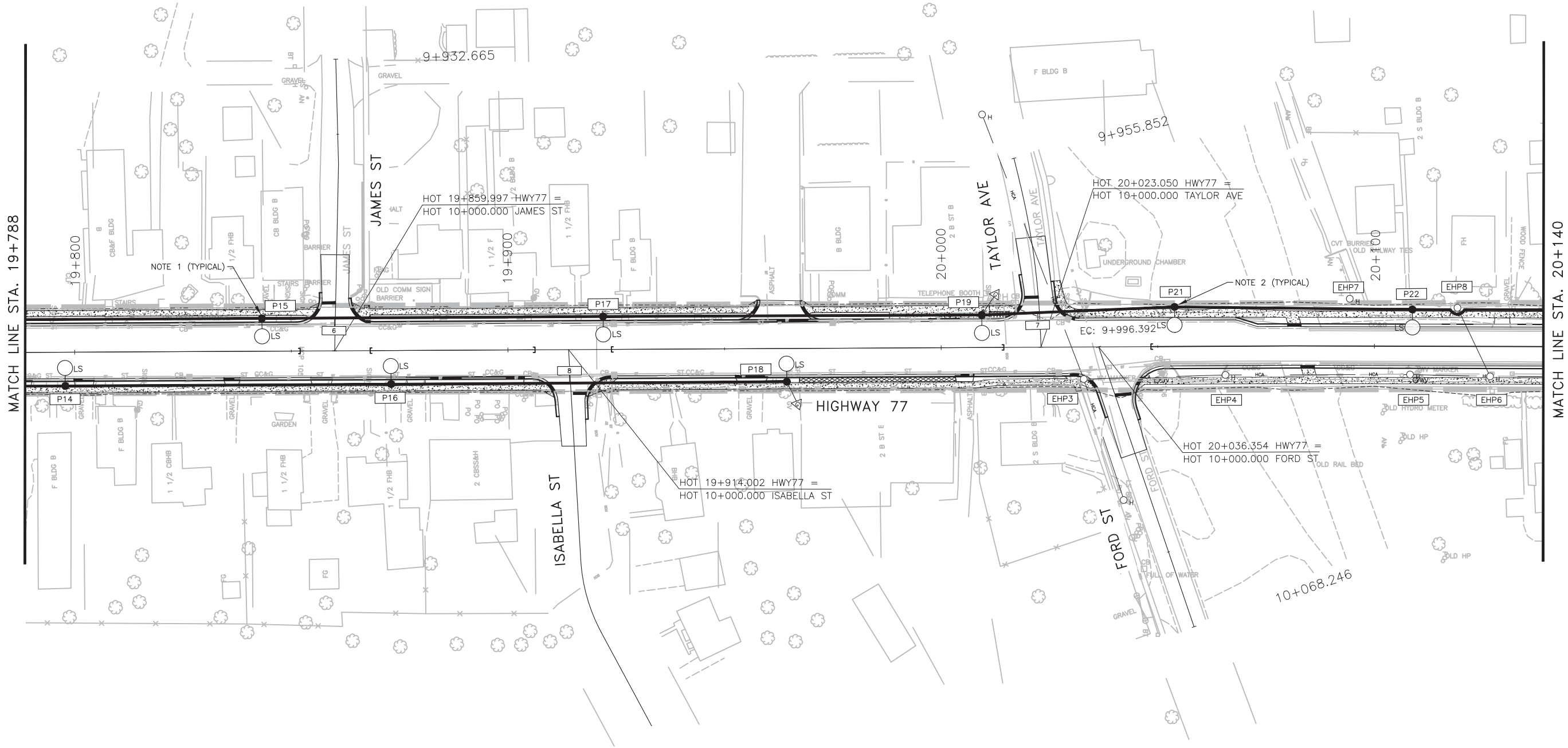
PLATE No
CONT 2017-3000
WP 3072-12-02

ELECTRICAL LAYOUT-MUNICIPAL
HWY 77
STA 19+788 TO STA 20+140

LEA Consulting Ltd.
Consulting Engineers
and Planners
www.LEA.ca



SHEET
E3



GENERAL NOTE:

A. CONTRACTOR SHALL INSTALL POLES P21 TO P25 PRIOR TO REMOVING THE EXISTING LIGHTING NORTH OF FORD STREET.
CONTRACTOR SHALL ENSURE THAT LIGHTING IS MAINTAINED AT ALL TIMES.

METRIC
DIMENSIONS ARE IN METRES
AND/OR MILLIMETRES
UNLESS OTHERWISE SHOWN

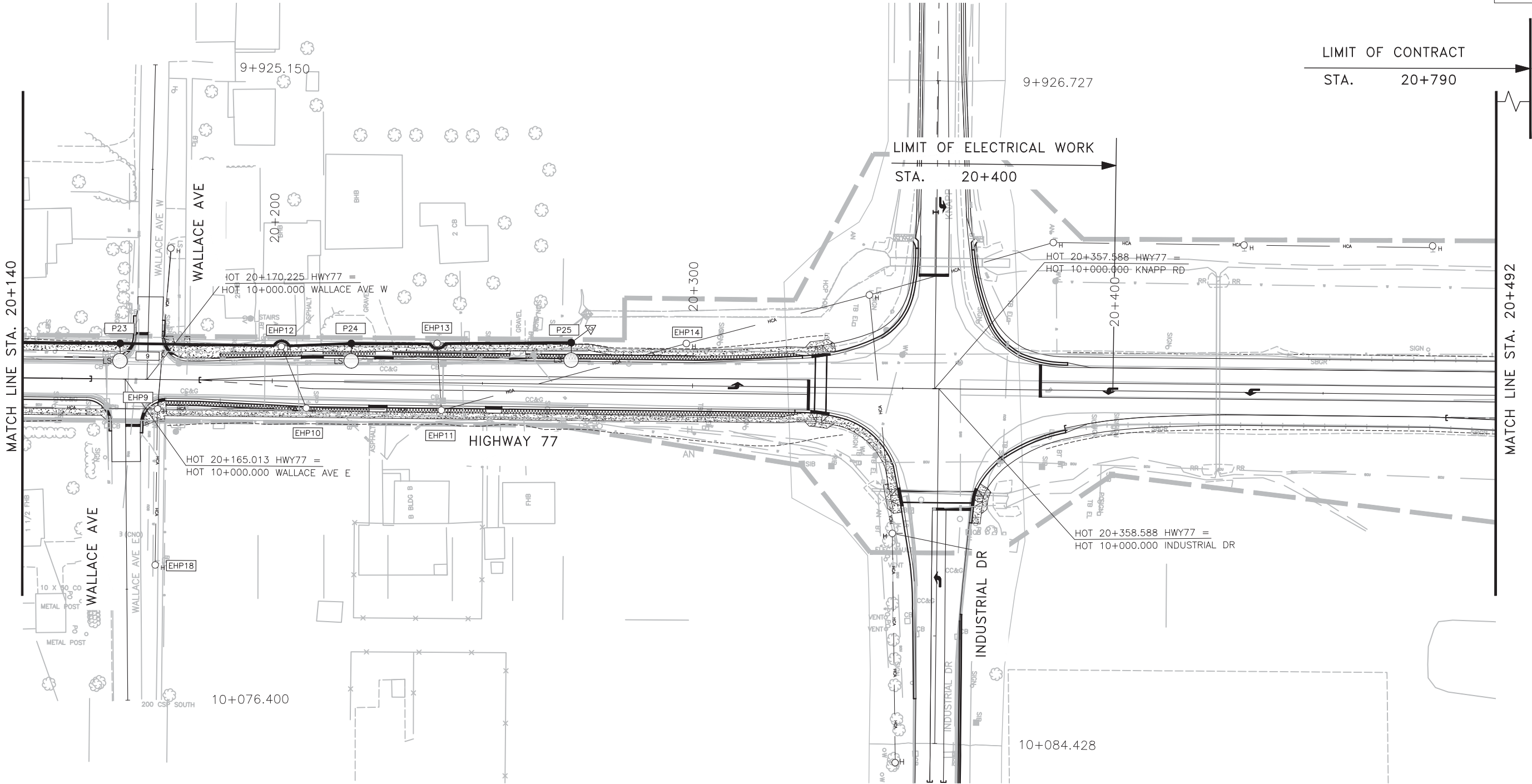
PLATE No
CONT 2017-3000
WP 3072-12-02

ELECTRICAL LAYOUT-MUNICIPAL
HWY 77
STA 20+140 TO STA 20+492

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SHEET
E4



SCALE
5m 0 10m
Horizontal