

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 Corporation wishes, at its sole expense and cost, to have the Ministry design and construct a sidewalk for pedestrian purposes (the “Sidewalk”), as part of the Ministry work project reference GWP 3072-12-00 within the Highway on the west and east side of the Highway as shown on Schedule “A” attached hereto;
- C. The Ministry has agreed to include the Sidewalk as part of the MTO Project at the sole expense and cost of the Corporation upon the terms and conditions as set out herein.

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:

DEFINITIONS

1. In this Agreement:

“cost” shall mean all the items of cost all howsoever styled inclusive of interest, inclusive of a cost sum or sums, and inclusive, but not limited to, out of pocket expenses, consultants, contractors, environmental remediation, surveyors, solicitor and his 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 neither the Corporation nor Ministry shall be included as a cost and each Party shall be responsible for the cost of their own staff time related to the Works.

“costs” shall mean the same as "cost", but in plural.

“cost of construction” shall mean those costs payable for the construction of the Works, being all related hard costs, including without limitation costs for placement of fill, granular lifts, and concrete, material testing, material bonuses, and contract administration.

“Works” or “Sidewalk” shall mean with respect to Highway 77, the works to be effected by MTO, on behalf of the Corporation, pursuant to a tendered contract, as part of the Ministry work project reference GWP 3072-12-00:

- (a) the construction of the new sidewalk extending (59) meters on south side of the Highway to Knapp Road (From STA 20+275 LT to STA 20+334 LT), and (84) meters on the east side of the Highway to Industrial Drive (From STA 20+275 RT to 20+371 RT) as requested by the Corporation as part of GWP 3072-12-00; and
- (b) the replacement of the existing sidewalk within the project limits; and
- (c) in consultation with the Corporation all incidentals all howsoever styled to all the above; and
- (d) all above Works according to the warrants, criteria, standards, and incidentals of the Ministry pursuant to the design.

“Permit” shall mean any applicable permit(s) issued by the Ministry to the Corporation under the PTHIA in relation to the Sidewalk, including but not limited to encroachment permit.

TERM

2. 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.

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 may repair, maintain and use the Sidewalk as a pedestrian walkway in general subject to the conditions herein and any other conditions as required in such Permit(s) that may be issued by the Ministry from time to time.

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, if any, from any other authority in order to carry out any activity with respect to the Sidewalk.

MINISTRY RESPONSIBILITIES AND CONTRACT WORKS

5. The Ministry will, at the cost and expense of the parties as set out in this Agreement:

- (a) undertake an environmental assessment in accordance with the Ministry Class Environmental Assessment for Provincial Transportation Facilities, obtain the necessary environmental approvals, undertake utility relocations as necessary, and complete the design;
- (b) effect and administer the Works including all required tendering and contract administration in accordance with Ministry of Transportation standard specifications, design and construction criteria.

CORPORATION'S RESPONSIBILITIES

6. The Corporation shall:

- (a) be solely responsible for the provision of any and all maintenance and repair of the Sidewalk, including but not limited to the removal of debris, garbage, vegetation and snow; and shall carry out 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;
- (b) ensure that any maintenance and repair performed with respect to the Sidewalk is performed promptly and in accordance with all appropriate industry and statutory standards 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 Sidewalk;
- (d) complete any future modifications of access points to the Sidewalk as per Ministry standards as set out in any Permits;
- (e) take all reasonable steps required 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. The Corporation shall be responsible for enforcing and ensuring Motorized vehicles are not permitted on the Sidewalk;
- (f) supervise the use of the Sidewalk within the Highway property limits as reasonably required to protect the public and adjacent property owners from vandalism and other criminal acts;
- (g) not permit the placement of any Sidewalk signs 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 with the Sidealk. Notwithstanding the above, the Ministry may, at its sole discretion, remove and

dispose of any non-compliant Sidewalk signs. Such disposal by the Ministry of any non-compliant signs is not a waiver of the Corporation's responsibility herein;

- (h) 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 days before commencing any such work; and
- (i) 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

- 7. 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 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 whatsoever, incurred by the suspension or termination of this Agreement, or any costs whatsoever, incurred by the Corporation to restore the Sidewalk by reason of this Section.

LIABILITY

- 8. 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.
- 9. The Corporation shall reimburse the Ministry for all costs reasonably incurred by the Ministry to design, construct, repair and maintain the Highway when the need for such design, construction, repair and maintenance arises as a result of any fault of the Corporation or can be reasonably attributed to the negligence and/or failure of the Corporation to comply with the provisions of this Agreement.
- 10. 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 save except for negligence and/or the wilful misconduct of the Ministry. 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 8, 9, and 10 shall survive the termination or expiry of this Agreement.

11. 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.
12. 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

13. The Parties agree that:

- (a) no provision of this Agreement, nor any construction, 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) pursuant to s.33 of the PTHIA, the Corporation agrees that the Sidewalk 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 the Sidewalk 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

14. The Corporation, at its own expense, shall obtain and maintain, during the term of this Agreement, with insurers having a secure A.M. Best rating of B+ or greater or the equivalent, all the necessary and appropriate insurance that a prudent person engaged in the operation and maintenance of the Sidewalk under this Agreement would maintain including, but not limited to, the requirements set out in Section 15 below.
15. The Section 15 insurance policies shall include:
 - a. commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than \$5,000,000. The policy is to include the following:
 - i. the Ministry as an additional insured with respect to liability arising in the course of operation and maintenance of the Sidewalk, or otherwise in connection with this Agreement;
 - ii. contractual liability coverage;
 - iii. cross-liability clause; and
 - iv. 30-day written notice of cancellation, termination or material change.

16. Upon request by the Ministry, the Corporation shall provide the Ministry with proof of insurance required by this Agreement in the form of valid certificates of insurances that reference this Agreement.

TERMINATION

17. The Ministry may terminate this Agreement at any time, without cause, upon sixty (60) days written notice being provided to the Corporation.
18. Notwithstanding Section 17, 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.
19. Notwithstanding Section 18, 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.
20. The Ministry's rights under Sections 18 and 19 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

21. 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.
22. 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, including the replacement of any fences or other barriers present at the commencement of this Agreement.
23. Should the Corporation fail to comply with Section 22 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

24. It is agreed that the costs associated with the Works are one hundred percent (100%) the responsibility of the Corporation for the sidewalk extensions and twenty (20%) the responsibility of the Corporation for the sidewalk replacement.
25. It is agreed that the estimated cost of the Works that the Corporation is responsible for is eighty-eight thousand dollars (\$88,000.00). Twenty-two thousand, four hundred dollars (\$22,400.00) for the extension Works and sixty-five thousand, six hundred dollars (\$65,600.00) for the replacement Works.

26. Despite Section 25 estimated cost, the Corporation is responsible for the actual cost of the Works as described in Section 24 and all incidentals howsoever styled of the Works.
27. The Ministry, upon completion of the Works will at that time invoice the Corporation at the Section 31 address for the outstanding costs associated with the Works. The Corporation shall pay by cheque submitted to the Ministry, made payable to the order of “Minister of Finance” within 30 calendar days after receipt of said invoice, the sum set forth as payable in that invoice.
28. Costs and responsibility for costs associated with any additional works identified or requested, during the Works, beyond those illustrated in Schedule A and defined as the Works, will be agreed upon between the Ministry and the Corporation prior to initiation of those additional works.

CONFLICTS

29. 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 _____, 2020 between the Ministry of Transportation and the Corporation.”

30. 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

31. 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
Ministry of Transportation
659 Exeter Road
London, ON
N6E 1L3

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

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

SEVERABILITY

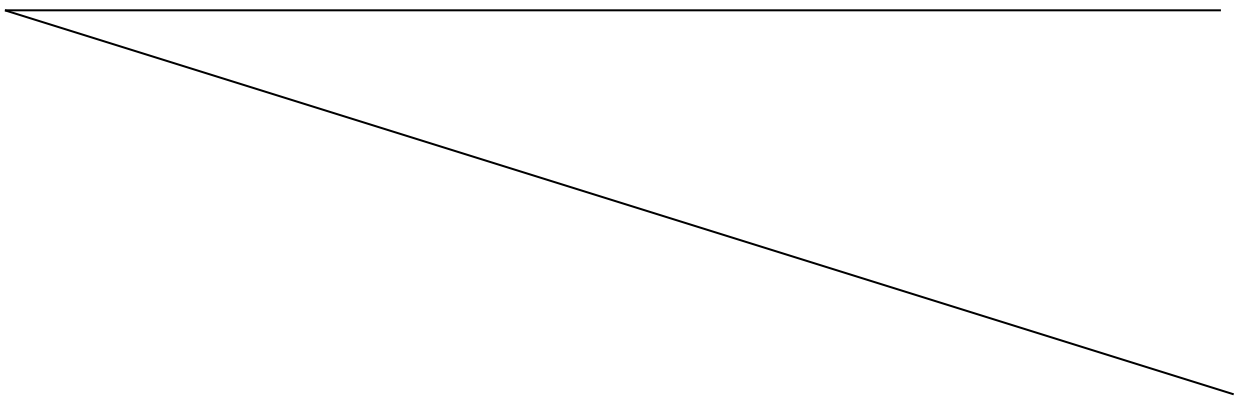
34. If any provision of this Agreement or portion thereof or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable:
- (a) the remainder of this Agreement and its application to any person or circumstances shall not be affected thereby; and
 - (b) the Parties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

NO PARTNERSHIP

36. 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

37. The rights, duties and powers of the Minister under this Agreement may be exercised by the Regional Director of the Ministry's West Region.
38. Any changes, alterations or amendments to this Agreement shall be made in writing signed by the Municipality's authorized signing officers and by the Regional Director of the Ministry's West Region.
39. 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

40. 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**

Regional Director (West Region)

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
HIGHWAY 77, COMBER
GWP 3072-12-00



LEGEND

PROPOSED SIDEWALK