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<b>TO:</b>	<b>CHAIR AND MEMBERS CIVIC WORKS COMMITTEE MEETING ON FEBRUARY 4, 2013</b>
<b>FROM:</b>	<b>EDWARD SOLDO, P.ENG. DIRECTOR, ROADS AND TRANSPORTATION</b>
<b>SUBJECT:</b>	<b>HIGHWAY 401 INTERCHANGE PROJECTS AGREEMENT WITH MINISTRY OF TRANSPORTATION</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the Director, Roads and Transportation:

- a) The draft agreement negotiated between Her Majesty the Queen In Right of the Province of Ontario, Represented by the Minister of Transportation for the Province of Ontario (MTO) and the Corporation of the City of London for the construction of Highway 401 interchanges in the City of London, attached hereto as Appendix 'A', **BE APPROVED** substantially in the form attached and as approved by the City Solicitor;
- b) The attached proposed By-law **BE INTRODUCED** at the Municipal council meeting on February 12, 2013 to approve the agreement between the City and the Minister of Transportation, and to authorize the Mayor and Clerk to sign the agreement;
- c) The financing related to this agreement **BE APPROVED** as set out in the Sources of Financing Report attached hereto as Appendix 'B'; and,
- d) Civic Administration **BE AUTHORIZED** to undertake all the administrative acts that are necessary in connection with these projects.

<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
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Highway 401 Provincial Study

- Environment and Transportation Committee – January 12, 2004 – Highway 401 Improvement: Planning Study Completion

Wonderland Road Interchange:

- Environment and Transportation Committee – December 9, 2002 – Wonderland Road South / Highway 401 Interchange: Planning Study Completion
- Environment and Transportation Committee – October 18, 2010 – Wonderland Road South / Highway 401 Interchange: Environmental Study Report Addendum
- Built and Natural Environment Committee – November 2, 2011 – Wonderland Road Interchange: Appointment of a Consulting Engineer
- Civic Works Committee – April 23, 2012 – Highway 401/Wonderland Road Interchange Provincial Class Environmental Assessment

Veterans Memorial Parkway South Extension and Interchange:

- Built and Natural Environment Committee - March 28, 2011 – Veterans Memorial Parkway Extension to Wilton Grove Road
- Built and Natural Environment Committee – August 15, 2011 - Veterans Memorial Parkway Extension Environmental Assessment: Appointment of Consulting Engineer
- Civic Works Committee – April 23, 2012 - Veterans Memorial Parkway South Extension Environmental Assessment: Consultant Assignment Scope Change

Highbury Avenue Interchange:

- Civic Works Committee – September 10, 2012 – Highbury Avenue Interchange Reconstruction: MTO Class Environmental Assessment Addendum

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**BACKGROUND**

**Purpose:**

The purpose of this report is to provide Committee and Council with an update on the status of the Highway 401 Interchange projects and to seek approval of the legal agreement negotiated with the Ministry of Transportation (MTO). The procurement process for a design-build contract for the construction of the Wonderland Road Interchange has been initiated by MTO and the execution of the agreement is necessary for the MTO to proceed with the delivery of the interchange program.

**Context:**

The Province of Ontario is investing approximately \$2 billion for the repair and expansion of provincial highways and bridges within southern Ontario in 2012/2013, creating 18,500 direct and indirect jobs. Improving Ontario's transportation network is part of the government's plan to strengthen the economy, keep bridges and roads in a state of good repair, reduce congestion and improve safety. With the London area, key investments are planned between 2012 and 2016 for the section of Highway 401 between the Colonel Talbot interchange and Veterans Memorial Parkway interchange.

One of the key objectives of London's Economic Strategy is establishing the City as the trade and transportation hub of Southwestern Ontario. Improved access to this key highway NAFTA trade corridor will stimulate the proposed Highway 401/402 development and will further enhance London's ability to recruit leading edge manufacturers.

A new interchange at Wonderland Road and an expanded interchange and south extension of Veterans Memorial Parkway (VMP) were included in the London Economic Development Plan options, supported by the Industrial Land Development Strategy Update recommendations and recommended by the Smart Moves 2030 London Transportation Master Plan. The improvements along the Highway 401 corridor will allow for future industrial development and enable residential and commercial growth in the South West Area Plan.

Provincial government support for these projects was provided during a media event on May 27, 2011 and a subsequent letter from Kathleen Wynne, then Minister of Transportation, on August 29, 2011. A media event was held with Chris Bentley, MPP for London West at the site of the future interchange on October 10, 2012.

The multi-phase project is identified in MTO Southern Highways Program identifying Highway 401 new interchange / interchange improvements from Colonel Talbot Road to Veterans Memorial Parkway.

Previous planning work for these improvements and a status update regarding each interchange is provided as follows:

Highway 401 Planning Study

MTO completed a provincial environmental assessment (EA) study of Highway 401 from Colonel Talbot Road / Hwy 4 to Highbury Avenue in 2004. The Transportation Environmental Study Report (TESR) identified the short, medium and long-term (2021) needs for the corridor. The TESR included recommendations for additional highway lanes and interchange improvements at Highbury Avenue, Wellington Road and Colonel Talbot Road. The construction of interchange improvements at Wellington Road and additional Highway 401 lanes from Highway 402 to the east side of the interchange were constructed in 2006 and 2007.

Wonderland Road Interchange

The need for a future interchange at Wonderland Road South and Highway 401 is identified as part of the City of London's Official Plan. During the 2004 MTO Highway 401 planning study, the City completed a coordinated municipal class environmental assessment for the implementation of the interchange. The Ministry of Transportation and City of London recently completed a provincial class EA for the interchange to update the environmental approval and refine the design.

This project will connect Wonderland Road across Highway 401 and provide full access to the freeway. The interchange is proposed to be a Parclo A-2 design. The bridge is an underpass which means that Wonderland Road will be lowered to pass beneath Highway 401. The

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interchange design allows for the future addition of direct on-ramps in the northwest and southeast quadrants when warranted.

Property acquisition and procurement of a design-build contract is underway for the construction of the interchange. Construction is anticipated to begin in 2014 and be complete by the fall of 2015.

#### Veterans Memorial Parkway

In April of 2011, Municipal Council requested the commencement of an environmental assessment study for the extension of VMP south to Wilton Grove Road in order to prepare for future development opportunities in that area. The environmental assessment, meeting both municipal and provincial requirements, was commenced in October 2011 and is scheduled for completion this year.

Subject to completion of the study, the VMP extension will be a rural two-lane road and will necessitate construction of a Parclo A-3 interchange for full freeway access. Property acquisition will be required for both the interchange and road extension. The new Highway 401 bridge structure will accommodate for the expansion to a future 10-lane Highway 401 cross-section.

Construction of the VMP interchange improvements will require the closure of the eastbound ramps for several months during construction; closures will be communicated and detour routes will be signed. The projects will be scheduled so that the VMP and Highbury Avenue interchanges are not under construction at the same time. Due to EA, design and property acquisition schedules, the VMP project will follow Highbury Avenue interchange.

#### Highbury Avenue

The requirements for an expanded interchange were recommended in the 2004 MTO TESR, primarily to address capacity concerns created by future growth. This area was also the subject of a 2009 OMB hearing triggered by Highbury Avenue traffic capacity concerns with future development in this part of the Urban Growth Area.

MTO recently conducted a TESR Addendum to refine the design of this interchange reconstruction. The interchange layout will be a Parclo A-4, similar to what exists. Highbury Avenue will be widened to six lanes from Hwy 401 to Wilton Grove Road and the bridge will be lengthened to accommodate a future 10-lane cross-section on Highway 401.

The TESR Addendum reduced the property impacts of the project. The only large property requirement is along the frontage of a vacant City-owned parcel in the southwest quadrant of the interchange. With the completion of the TESR Addendum and an expeditious property acquisition schedule, this project is positioned for a probable construction start in 2015.

#### Colonel Talbot Road

A new interchange configuration was recommended in the 2004 MTO TESR primarily to address operational and capacity concerns at this location. The existing interchange is a substandard full cloverleaf design that presents a traffic weaving concern between the freeway on- and off-ramps. The TESR recommends a Parclo A-4 interchange design at this location with a northerly realignment of Glanworth Drive and Littlewood Drive.

Minor interim interchange improvements were constructed at this interchange in 2003 to improve safety and to accommodate a new advance border crossing facility. However, the need to totally reconstruct this interchange remains.

MTO has initiated a review of the TESR recommendations at this interchange similar to what has been recently conducted for the Highbury Avenue interchange. Included in this will be a review of Glanworth Drive and Littlewood Drive alignments. EA, design and property acquisition scheduling place the implementation schedule for this project at the end of the program.

#### Other MTO Highway Projects Within the 401 Corridor

MTO has additional unrelated improvements planned in the City of London that are not part of this legal agreement.

The Highway 401 Westminster Drive underpass bridge is planned for replacement in 2014 due to structural deficiencies. An EA was recently completed during which the City was consulted

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as a stakeholder. The new bridge will provide for a future Highway 401 widening. Construction is planned using “Get-in Get-out” technologies to minimize the duration of the Westminster Drive closure.

MTO also plans to replace the Highway 401 bridges over Pond Mills Road and CN Rail. The EA for these replacements will begin in the near future. The construction timing for this project has not been established.

The estimated value of this work is approximately \$25,000,000.

### Aesthetic Enhancements

In April of 2011, Council directed staff to explore opportunities to create a sense of presence for London at the Highway 401 and 402 interchanges.

Staff is using the current partnership and proposed interchange work as an opportunity to enhance the City’s identity to travelers on Highway 401. Aesthetic enhancements and themes that can be applied at the various project locations are currently being considered for implementation with the proposed interchange works. Discussions on the specific elements are underway and staff will report back to Council at a later date.

<b>DISCUSSION</b>
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The City and MTO have been working in good faith on coordinated engineering activities since August of 2011. The most advanced project, the Wonderland Road Interchange, can proceed to award of a large-value design-build contract, once a formal agreement related to cost sharing, timing of improvements and project responsibilities is completed.

The agreement negotiated with MTO attached in Appendix “A” defines the responsibilities allocated to each party. The terms are summarized as follows.

### Engineering

The defined project delivery responsibilities build upon the shared efforts that have been carried out to date with the City leading most EA and design activities for the Wonderland Road and VMP projects and MTO leading activities for Highbury Avenue and Colonel Talbot Road projects. Going forward, MTO assumes the lead project management role for all projects and will procure and administer the design-build construction contracts. The City would be responsible for some minor additional future activities where necessary such as the coordination of utility relocations where the City is the road authority. City staff would also continue to participate in the projects to facilitate delivery and ensure that City needs are met.

### Land

MTO is responsible for the land acquisition required for all projects with the exception of the VMP extension. MTO will acquire the land required for the VMP interchange improvements and City forces will acquire the land for the extension of the municipal road. The unique arrangement for the VMP project is based on which agency is the long-term property owner and may leverage synergies with City industrial land acquisition.

The agreement stipulates that London dedicate City-owned lands where required for the projects. City-owned land is required at three locations as follows:

- a. Vacant agricultural land at the southeast quadrant of the Wonderland Road Interchange;
- b. A narrow parcel of land at the northwest quadrant of the VMP Interchange that was set aside during the development of Innovation Park for future interchange needs; and,
- c. A narrow strip from the frontage of potential development land at the southwest quadrant of the Highbury Avenue Interchange.

The value of these lands is estimated at approximately \$350,000.

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Financial

The agreement acknowledges that the proposed projects provide benefits to both the City of London and MTO. These benefits vary by project location and are difficult to quantify. The total value of the projects is difficult to estimate considering the preliminary nature of the VMP and Colonel Talbot projects. For the purposes of the agreement, they are estimated at a combined total of approximately \$115,000,000. The proposed cost sharing in the agreement requires financial contributions from the City comprising of:

- a. the cost of engineering assignments currently administered by the city estimated at \$1,037,000;
- b. purchase of the lands required for the VMP Extension estimated at \$520,000; and,
- c. payments totaling \$25,000,000 subject to adjustment.

The adjustment of the \$25,000,000 contribution acknowledges that there is significant variability in the combined total cost of the projects and shares the risk of potential cost savings/escalations. In order to minimize the financial exposure/risk, the agreement includes a clause whereby the City's contribution is adjusted proportionately to reflect an increase or decrease in the total cost provided that such an increase or decrease does not exceed a maximum of two million dollars (\$2,000,000).

The City's contribution was developed as a general lump sum and the payment schedule is not reflective of the value of the City investment on an interchange by interchange basis.

**Construction Contribution Schedule**

Project	Contribution	Projected Timing
Wonderland Road	10,000,000	Upon Completion of the Individual Interchange Works
Highbury Avenue	5,000,000	
VMP	5,000,000	
Colonel Talbot Road	5,000,000 *	

*\* Adjustments will be applied*

Cash flow towards the pre-engineering assignments is underway as approved through previous Council reports. The payment schedule in the agreement commits the City to contributions to MTO upon completion of construction of the interchanges as shown in the following table. The payments are subject to credit adjustments based on City expenditures for utility relocations and any cost adjustments are per the agreement.

In summary, the City's projected commitment to these projects, including the minor value of in-kind land contributions described earlier, totals \$26,907,000 which equates to 23% of the overall cost. Details are provided in the attached Sources of Financing Report.

It should be noted that initial discussions on the City's contribution was based on improvements related to three interchanges and a value of over \$30,000,000 plus engineering costs. The contribution identified above provides for the expansion of the program to four interchanges and an alignment of the financial contributions with the appropriate roadway authority.

The proposed funding for this program is predominantly from the Economic Development Account. The 2009 DC Study does not provide for any development charges funding for the noted 401 interchange projects but Civic Administration will look to include these projects as part of the 2014 DC Study and amend the source of financing as appropriate. The first three projects were included in the approved Transportation Master Plan and will be included in the initial Transportation DC rate calculations in the 2014 DC Study. Approval of a DC rate that incorporates these works would make the project eligible for some level of DC funding.

The future additional operating costs associated with these projects will be minimal. MTO will be the owner of the interchanges and responsible for operations and maintenance. The new VMP Extension will add approximately 800 m to the City's roadway network.

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<b>CONCLUSION</b>
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The City of London has a unique opportunity to enter into a partnership with the Ministry of Transportation to improve the majority of the highway interchanges within the 401 corridor over the next 5 years.




The City and Ministry of Transportation have developed an agreement that defines the responsibilities for implementation and outlines the basis for cost sharing. The approval and execution of the agreement by the City will allow for the initiation of the construction program.

The terms of the agreement were negotiated in good faith and are fair to the City. The projects provide tangible benefits to the City, create local jobs as part of the construction and will facilitate economic development along the Highway 401 corridor. The City is a partner in the projects but the responsibility for ultimate project delivery lies with the MTO as identified in the Provincial Southern Highways Program.

Staff will continue to provide Council with updates as the projects proceed. The City and MTO will develop a traffic management plan/communication strategy work in partnership with adjacent municipalities to minimize disruption of day to day travel for residents.

This agreement has been reviewed and endorsed by Engineering, Finance, Realty and Legal staff. The agreement is noted as draft, only because it requires final review by MTO's Legal Department. Previous similar versions have been approved and no substantive changes are anticipated.

This report was prepared with assistance from Grant Hopcroft, Director Intergovernmental and Community Liaison, Mark Henderson, Director Business Liaison, David Munteer, Solicitor and Bill Warner, Manager Realty Services.

<b>PREPARED BY:</b>	<b>RECOMMENDED BY:</b>
	
<b>DOUG MACRAE, P. ENG. TRANSPORTATION DESIGN ENGINEER</b>	<b>EDWARD SOLDO, P. ENG. DIRECTOR, ROADS AND TRANSPORTATION</b>
<b>REVIEWED &amp; CONCURRED BY:</b>	
	
<b>JOHN BRAAM, P. ENG. MANAGING DIRECTOR, ENVIRONMENTAL &amp; ENGINEERING SERVICES &amp; CITY ENGINEER</b>	

Attachments: Appendix 'A' – Interchanges Legal Agreement  
 Appendix 'B' – Sources of Financing Report

cc: Kevin Bentley, MTO

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Bill No.

By-law No.

A By-law to authorize an Agreement between The Corporation of the City of London and Her Majesty the Queen in Right of Ontario represented by the Minister of Transportation (MTO) for the construction of Highway 401 interchanges; and to authorize the Mayor and City Clerk to execute the Agreement.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality 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 it is deemed expedient for The Corporation of the City of London (the "City") to enter into an Agreement with Her Majesty the Queen in Right of Ontario represented by the Minister of Transportation (MTO) for the construction of Highway 401 interchanges. (the "Agreement");

AND WHEREAS it is appropriate to authorize the Mayor and City Clerk to execute the Agreement on behalf of the City;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The draft Agreement attached as Schedule "A" to this By-law, being an Agreement between The Corporation of the City of London and Her Majesty the Queen in Right of Ontario represented by the Minister of Transportation (MTO) for the construction of Highway 401 Interchanges is hereby AUTHORIZED AND APPROVED substantially in the form attached and as approved by the City Solicitor.
2. The Mayor and City Clerk are authorized to execute the Agreement authorized and approved under section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council , 2013

Joe Fontana  
Mayor

Catharine Saunders  
City Clerk

First reading -  
Second reading -  
Third reading -

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APPENDIX "A"  
DRAFT LONDON - MTO INTERCHANGES AGREEMENT

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THIS AGREEMENT is made this                      day of                      2013

between:      **THE CORPORATION OF THE CITY OF LONDON** (the "City")

and:            **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO,  
REPRESENTED BY THE MINISTER OF TRANSPORTATION FOR THE  
PROVINCE OF ONTARIO** (the "MTO")

**WHEREAS:**

- A.      The City wishes to pursue future development of lands along the Highway 401 corridor in the City which would require improved access to Highway 401. The MTO recognizes that improved access to Highway 401 will provide broader economic benefits beyond the City.
- B.      The City previously completed a municipal Class Environmental Assessment (EA) for a new interchange at Wonderland Road in 2002 and had updated the EA in 2010.
- C.      The City, in 2010, initiated a municipal Class EA Study for improvements to the Veterans Memorial Parkway (VMP) interchange including an extension of VMP to Wilton Grove Road.
- D.      MTO and the City agreed in 2009 as part of an Ontario Municipal Board Hearing that the widening of Highbury Avenue to six lanes through the Highway 401 interchange area was needed to accommodate the future full build-out of the lands within the City's Urban Growth Boundary in the vicinity of the Highbury Avenue interchange.
- E.      The MTO had completed a provincial Class EA in 2002 for improvements to Highway 401 through London including the Highbury Avenue and Colonel Talbot interchanges.
- F.      The MTO wishes to repair or replace the bridges carrying VMP, Glanworth Drive and Colonel Talbot Road over Highway 401. Replacement of these bridges, as well as the Highbury Avenue bridge, would accommodate the future widening of Highway 401.
- G.      The MTO wishes to carry out improvements at the Colonel Talbot interchange to enhance safety and operations at this location. The City wishes to maintain access for cyclists through this interchange.
- H.      The MTO and the City recognize that interchange improvements at one location will provide construction and traffic staging benefits at adjacent locations.
- I.      The City wishes to create a sense of presence for London along Hwy 401 through the implementation of unique aesthetic design features.
- J.      Highway 401, in the City, is a controlled access highway under the jurisdiction and control of the MTO and therefore development comes within the scope of the permit provisions of sections 2, 38(2)(a), (b), (c), (d), (e), (f), and 38(11), of the *Public Transportation and Highway Improvement Act*, (the "PTHIA" as defined in paragraph 1.15).
- K.      The vehicular impact of the development of lands along the Highway 401 corridor pursuant to section 38(2)(f) of the PTHIA, will necessitate the design and construction of



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interchange improvements (the "Interchange Works" as defined in paragraph 1.12) jointly by the City and MTO and at the cost of the City and MTO, unless otherwise specified, inside and incidental to the corridor of Highway 401.

- L. The formal name style of the MTO is set forth in section 33(7) of the PTHIA.
- M. It is deemed expedient to enter into this Agreement as the City and MTO are desirous of proceeding with the Interchange Works. As listed in MTO's Southern Highways Program 2012-2016, the Interchange Works are targeted for completion in 2016.
- N. It is deemed necessary that the City and the MTO enter into this Agreement to further the construction and incidentals of the Interchange Works, as specified herein, inside and incidental to the corridor of Highway 401.
- O. Attached Schedule "A" illustrates:
  - the lands in the City in the area of Highway 401 within the City's Urban Growth Boundary as defined in the City's Official Plan; and,
  - the lands within MTO's permit control area.

NOW THEREFORE in consideration for the terms of this Agreement and the sum of Ten Dollars (\$10.00) of lawful money of Canada paid by each of the parties of this Agreement to the other, the receipt whereof is hereby acknowledged, and other good and valuable consideration, the City and the MTO agree as follows:

**1. Definitions**

- 1.1 "City" shall mean The Corporation of the City of London.
- 1.2 "City Lands" shall mean the parcels of land owned by the City within Innovation Park, Forest City Industrial Park and any future lands acquired by the City proximate to the Highway 401 on which the City proposes to effect servicing to facilitate Development with vehicular access to Highway 401 via its interchanges.
- 1.3 "construction" includes installation.
- 1.4 "construction costs" shall mean those costs for the construction of the Interchange Works and the Veterans Memorial Parkway Extension Works, being all related hard costs, including without limitation, costs for environmental remediation, surveys, utility relocations, geotechnical investigation, placement of fill, granular lifts, asphalt, zone painting and signing, and the cost for design and contract administration.
- 1.5 "Contributing Lands" shall mean those lands located on the north and south sides of Highway 401 within MTO's permit control area as defined under the PTHIA for controlled access highways as illustrated on Schedule 'A'.
- 1.6 "Contributing Lands Development" shall mean development of lands within the Contributing Lands located on the north and south sides of Highway.
- 1.7 "cost" shall mean the items of cost all howsoever styled inclusive of interest, inclusive of a cost sum or sums, and inclusive, but not limited to, consultant, contractor, construction costs environmental remediation, real property, and 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, but not including staff time of MTO or the City.
- 1.8 "costs" shall mean the same as "cost", but in plural.
- 1.9 "Developer" shall mean any individual, company or corporation proposing to construct on

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any portion of the City Lands or Contributing Lands.

- 1.10 "Development" shall mean the construction of any building or structure on the City Lands or Contributing Lands, which is proposed to be constructed by the City or a Developer.
- 1.11 "Design" shall mean the engineering designs as referred to in article 3, Design of the Interchange Works, and also means those designs are pursuant to the criteria and standards of the MTO and are approved by the MTO.
- 1.12 "Interchange Works" shall mean with respect to Highway 401:
  - (a) obtaining the necessary environmental approvals, acquiring engineering surveys, acquiring geotechnical surveys, undertaking utility relocations, completing property acquisition and completing the engineering design and contract administration;
  - (b) as per the Transportation Environmental Study Report, May 2012, construction of a new Parclo A-2 type interchange at the intersection of Wonderland Road and Highway 401 including, but not limited to, a structure spanning Wonderland Road, loop and directional ramps in the southwest and northeast quadrants of the intersection, the realignment of Morrison Road and Manning Drive, the reconstruction of a two-lane Wonderland Road from Decker Drive southerly 1230m and the reconstruction of 1800m of Highway 401 (the "Wonderland Interchange Works") as illustrated in Schedule "B";
  - (c) as per the approved Transportation Environmental Study Report Addendum, October 2012, reconstruction of the Parclo A-4 type interchange at the intersection of Highbury Avenue and Highway 401 including, but not limited to, replacement of the structure spanning Highway 401 to accommodate six lanes on Highbury and a future ten-lane Highway 401, reconstruction of 1000m of Highbury Avenue to six-lanes, reconstruction of the ramps as necessary (the "Highbury Interchange Works") as illustrated in Schedule "C";
  - (d) subject to EA approvals, reconstruction of the cloverleaf type interchange with a Parclo A-4 type interchange at the intersection of Colonel Talbot Road (Highway 4) and Highway 401 including, but not limited to, replacement of the structure spanning Highway 401 to accommodate four lanes on Colonel Talbot and a future eight-lane Highway 401, loop and directional ramps in the northeast and southwest quadrants of the intersection, directional ramps in the northwest and southwest quadrant, reconstruction of 1750m of Colonel Talbot Road, realignment of Glanworth Drive including a new structure spanning Highway 401 and realignment of Littlewood Drive, Tempo Road and Burtwhistle Lane (the "Colonel Talbot Interchange Works") as illustrated in Schedule "D";
  - (e) subject to EA approvals, reconstruction of the trumpet type interchange with a Parclo A-3 type interchange at the intersection of Veterans Memorial Parkway (VMP) and Highway 401 including, but not limited to, replacement of the structure spanning Highway 401 to accommodate four lanes on VMP and a future ten-lane Highway 401, loop and directional ramps in the northeast and southwest quadrants of the intersection, directional ramp in the northwest quadrant and reconstruction of 325m of VMP within the interchange (the "VMP Interchange Works") as illustrated in Schedule "E";
  - (f) installation of traffic signals and illumination, as necessary in conjunction with the subparagraphs 1.12(b)(c)(d) and (e) construction;
  - (g) zone painting and signing as deemed necessary by the MTO;

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(h) all incidentals all howsoever styled to all the above; and

all above Interchange Works according to the warrants, criteria, standards, and incidentals of the MTO pursuant to the Design.

1.13 "MTO" shall mean the short form of the formal name style as set forth in section 33(7) of the PTHIA and includes the applicable person or persons on the staff of the Ontario Ministry of Transportation, as determined at the sole discretion of the MTO, that relate to a respective provision in this Agreement.

1.14 "MTO Corridor Management – London" and "MTO Engineering – London" shall mean, save as otherwise advised, those offices, in the area of the West Region of the Ontario Ministry of Transportation having the MTO addresses as set forth in paragraphs 8.2 and 8.3 respectively.

1.15 "PTHIA" shall mean the *Public Transportation and Highway Improvement Act*, R.S.O. 1990, c.P.50 and amendments thereto from time to time.

1.16 "terms of this Agreement" shall mean all the provisions in each respective recital, article, paragraph, and schedule of this Agreement; includes the singular and the plural jointly and severally; and includes the concepts of condition, covenant, provision, matter, and item.

1.17 "VMP Extension Works" shall mean with respect to the extension of VMP from the VMP Interchange Works to Wilton Grove Road:

(a) obtaining the necessary environmental approvals, acquiring engineering surveys, acquiring geotechnical surveys, undertaking utility relocations, completing property acquisition and completing the engineering design and contract administration; and

(b) subject to EA approvals, construction of 800m of a 2-lane rural road including turning lanes at Wilton Grove as illustrated in Schedule "E".

**2. Standard MTO short form permit to the City and Developer(s)**

2.1 The MTO, after completion of the article 3 EA and Design for each of the four paragraph 1.12 Interchange Works, on the application of a Developer to MTO Corridor Management – London, and after the Developer has satisfied all MTO requirements, shall issue to the Developer applicable standard MTO short form Building/Land Use permits under Section 2 and/or Section 38(2) of the PTHIA to construct that Development on the Contributing Lands and/or the City Lands.

2.2 Any paragraph 2.1 permit issued prior to the completion of the Interchange Works is subject to the terms printed on that permit and is hereby deemed also to be subject to the terms of this Agreement. In the event of a conflict between the terms of this Agreement and any such permit, the terms of this Agreement shall prevail.

2.3 Any MTO permit issued to the City or Developer under paragraph 2.1, and prior to the completion of the Interchange Works, shall have annotated on it:

This permit is subject to the terms of the Agreement dated the \_\_\_\_\_ day of, 2013 between The Corporation of the City of London and the MTO.

2.4 The City and/or Developer, to accommodate the issuance by the MTO of any paragraph 2.1 permits on a respective date desired by the City and/or Developer, shall give MTO Corridor Management – London reasonable notice of that date. MTO will use reasonable efforts to provide the permits to the City and/or Developer on the date desired by the City and/or Developer.

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2.5 Prior to or after the completion of the Interchange Works, MTO may request the City or Developer to submit an updated traffic study, at the City or Developer's cost, to MTO for review if, in MTO's opinion, there is sufficient change to the land uses or the City's Urban Growth Boundary to cause a significant change in traffic accessing Highway 401 than was contemplated in the article 3 EA and Design for the Interchange Works.

**3. Environmental Assessment, Design and Pre-Engineering of the Interchange Works**

3.1 Wonderland Interchange Works:

(a) The City, at the cost of the City, shall cause the City's Environmental Assessment (EA) to be updated to meet the requirements of MTO's Class Environmental Assessment and cause the initial Design to be effected by a qualified engineering consultant retained by the City. All such EA and Design work being completed to sufficient detail for the procurement by MTO of a Design-Build contractor. The estimated cost of EA and initial Design being \$420,000.

(b) The MTO, at the cost of the MTO, shall cause pre-engineering work (field surveys, geotechnical and foundation investigations) to be effected by qualified engineering consultants retained by MTO. All such pre-engineering work being completed to sufficient detail for the procurement by MTO of a Design-Build contractor. The estimated cost of the pre-engineering work being \$75,000.

3.2 Highbury Interchange Works:

(a) The MTO, at the cost of the MTO, shall cause the MTO's Class EA to be updated and cause the initial Design and pre-engineering work to be effected by a qualified engineering consultant retained by the MTO. All such work being completed to sufficient detail for the procurement by MTO of a Design-Build contractor. The estimated cost of EA, initial Design and pre-engineering work being \$615,000.

3.3 Colonel Talbot Interchange Works:

(a) The MTO, at the cost of the MTO, shall cause the MTO's Class EA to be updated and cause the initial Design and pre-engineering work to be effected by a qualified engineering consultant retained by the MTO. All such work being completed to sufficient detail for the procurement by MTO of a Design-Build contractor. The estimated cost of EA, initial Design and pre-engineering work being \$850,000.

3.4 VMP Interchange Works and VMP Extension Works:

(a) The City, at the cost of the City, shall cause the planning and City's EA to be effected by a qualified engineering consultant retained by the City. The estimated cost being \$300,000.

(b) The City, at the cost of the City, shall cause the initial Design and pre-engineering work to be effected by a qualified engineering consultant retained by the City. All such EA, initial Design and pre-engineering work being completed to meet the requirements of the MTO Class EA to sufficient detail for the procurement by MTO of a Design-Build contractor. The estimated cost of the initial Design and pre-engineering work being \$317,000.

(c) The MTO, at the cost of the MTO, shall cause the pre-engineering work (field surveys, geotechnical and foundation investigations) to be effected by qualified engineering consultants retained by MTO. All such pre-engineering work being completed to sufficient detail for the procurement by MTO of a Design-Build contractor. The estimated cost of the pre-engineering work being \$35,000.

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**4. Ministry Responsibilities**

- 4.1 The MTO will work with the City to complete the article 3 EA, Design and Pre-engineering work for the Interchange Works.
- 4.2 The MTO will, in respect of the Interchange Works, following completion of the article 3 EA, Design and pre-engineering work, at the cost and expense of the parties as set out in article 7 below:
  - (a) obtain the necessary environmental approvals and permits as the proponent under the Environmental Assessment Act and undertake utility relocations as necessary;
  - (b) cause any additional pre-engineering or design work not identified in article 3 and deemed necessary by the MTO, to be effected by qualified engineering consultants retained by MTO;
  - (c) acquire any property required to accommodate the Interchange Works at Wonderland Road, Highbury Avenue, Veterans Memorial Parkway and Colonel Talbot Road interchanges; and
  - (d) effect and administer the Interchange Works and the VMP Extension Works including all required contract procurement and contract administration in accordance with MTO standard specifications, design and construction criteria for Design-Build contracts.
- 4.3 Subject to the MTO receiving the required appropriations from the Legislature of Ontario, the Ministry shall arrange for the phased commencement of the Interchange Works and VMP Extension Works at such time as the EA, Design, Pre-engineering work and property acquisition are complete for each of the four interchange locations, likely commencing in the year 2013 and with a current target completion date of 2016.

**5. City Responsibilities**

- 5.1. The City will work with the MTO to complete the article 3 EA, initial Design and Pre-Engineering work for the Interchange Works.
- 5.2 The City will, in respect of the Interchange Works and VMP Extension Works, following completion of the paragraphs 3.1, 3.2 and 3.4 EA, initial Design and pre-engineering work, at the cost and expense of the parties as set out in article 7 below:
  - (a) set aside sufficient applicable City owned lands (lands already owned but not already designated as public roads) to be dedicated to the MTO for nil consideration as public highway for the applicable Interchange Works;
  - (b) acquire, at the City's cost, any property required to accommodate the VMP Extension Works, and
  - (c) undertake utility relocations as necessary.

**6. Utilities, all required relocations**

- 6.1 Utility relocations, that are required with respect to the Interchange Works, shall be caused to be relocated by the MTO or the City at the cost of the City and MTO as outlined in paragraph 7.2.

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**7. Financial Contributions and Payment**

- 7.1 The actual costs and expenses of the EA, Design and Pre-engineering work shall be paid by the City or MTO as specifically outlined in article 3.
- 7.2 Subject to a credit in favour of the City for any paragraph 5.2(c) utility relocation costs or any other Construction Costs incurred by the City, and in addition to the costs payable by the City under paragraph 7.1, the City shall pay a lump sum of twenty-five million dollars (\$25,000,000). Should the actual costs and expenses of the Interchange Works and VMP Extension Works be more than or less than one hundred fifteen million dollars (\$115,000,000), the City's contribution shall be adjusted proportionately to reflect any such increase or decrease provided that such an increase or decrease does not exceed a maximum of two million dollars (\$2,000,000). For example, if the actual costs and expenses of the Interchange Works and VMP Extension Works are less by an amount of 10%, then the City's contribution will be decreased by 10%, provided that the City's contribution is not less than twenty-three million dollars (\$23,000,000).
- 7.3 After completion of portions of the Interchange Works by MTO, MTO may at that time invoice the City at the paragraph 8.1 address, as per the payment schedule set out below. The City shall pay within 60 calendar days after receipt of an invoice, the sum set forth as payable in that invoice, by cheque made payable to the "Minister of Finance":
- (a) completion of Wonderland Interchange Works, ten million dollars (\$10,000,000);
  - (b) completion of Highbury Interchange works, five million dollars (\$5,000,000);
  - (c) completion of VMP Interchange Works and VMP Extension Works, five million dollars (\$5,000,000); and
  - (d) completion of the Colonel Talbot Interchange Works, five million dollars (\$5,000,000) subject to any paragraph 7.2 credits and adjustments.

The above payments shall be subject to interest if, after 60 days, the invoice remains unpaid.

**8. Addresses of the City and the MTO, Facsimile Service, Schedules, and Captioned Paragraphs**

- 8.1 The address of the City under this Agreement, unless otherwise advised, is:

Mr. Edward Soldo, P.Eng.  
Director, Roads and Transportation  
The Corporation of the City of London  
City Hall, 300 Dufferin Avenue  
PO Box 5035  
London, Ontario  
N6A 4L9  
Tel. (519) 661-2500 ext 4936, Fax (519) 661-5931

- 8.2 For service under article 2 of this Agreement shall be to the MTO Corridor Management – London whose address, unless otherwise advised, is:

Ms. Tanya Cross, P. Eng.  
Head, Corridor Management  
Corridor Management – London  
Ministry of Transportation  
659 Exeter Road  
London, Ontario  
N6E 1L3  
Tel. (519) 873-4578, Fax (519) 873-4228

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8.3 Except as provided in paragraph 8.2, service under this Agreement shall be to the MTO Engineering Office – London whose address, unless otherwise advised, is:

Mr. Kevin Bentley, P. Eng.  
Manager of Engineering  
Engineering Office – London  
Ministry of Transportation  
659 Exeter Road  
London, Ontario  
N6E 1L3  
Tel. (519) 873-4373, Fax (519) 873-4388

8.4 Notices under this Agreement shall be in writing and sent by personal delivery, facsimile transmission ("Fax") or by registered mail. Notices by registered mail shall be deemed to have been received on the fourth business date after the date of mailing. Notices by personal delivery or by Fax 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 personal delivery or Fax.

8.5 Further to paragraph 8.4 the MTO under paragraph 8.4 may serve the City via facsimile to the respective retained consulting engineer of the City.

8.6 All schedules to this Agreement, and all the provisions contained in those schedules, are hereby deemed to be terms of this Agreement.

8.7 The captioned paragraphs throughout this Agreement are for ease of reference and the specific provisions of the paragraphs of this Agreement are hereby deemed to govern.

**9. Title**

9.1 The City (both before and after the completion of the construction of the Interchange Works) is hereby deemed to have no right, title, or interest in the portion of the Interchange Works located inside the right-of-way of Highway 401. All that right, title, and interest (both before and after the completion of construction) of the portion of the Interchange Works located inside the right-of-way of Highway 401 is hereby deemed in the MTO.

9.2 The MTO (both before and after the completion of the construction of the VMP Extension Works) is hereby deemed to have no right, title, or interest in the portion of the VMP Extension located outside the right-of-way of Highway 401. All that right, title, and interest (both before and after the completion of construction) of the portion of the VMP Extension located outside the right-of-way of Highway 401 is hereby deemed in the City.

9.3 The MTO by contributing to the VMP Extension Works under this Agreement shall not be construed as being responsible for any future expansion to VMP.

**10. Assignment**

10.1 The City shall not assign this Agreement without the written consent of the MTO.

**11. Warranty**

11.1 The City warrants that it has taken all necessary steps, done all acts, passed all by-laws and resolutions and obtained all approvals required to give it the authority to enter into this Agreement.

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**12. Dispute Resolution**

12.1 In the event of any dispute between the City and the MTO as to any matter under this Agreement, the dispute shall be dealt with in the following manner and sequence:

- A. The parties will meet to discuss the dispute in good faith and use all reasonable efforts to resolve the matter by negotiation;
- B. If the dispute cannot be resolved by negotiation within a reasonable period of time, then the parties shall submit the matter to non-binding arbitration and the provisions of the *Arbitrations Act, 1991*, S.O. 1991, c.17 as amended, shall apply; and
- C. If the dispute is not resolved through non-binding arbitration, then the parties may pursue their strict legal rights available at law.

**13. Entire Agreement**

13.1 This Agreement, including any schedules attached hereto, constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof and there are no representations, understandings or agreements, oral or written, with respect to the subject matter hereof which are not included herein.

IN WITNESS OF ALL contained in this Agreement:

SIGNED AND SEALED this                      day of                      , 20

**THE CORPORATION OF THE CITY OF LONDON**

\_\_\_\_\_

Mayor

C.S.

\_\_\_\_\_

Clerk

SIGNED this                      day of                      , 20

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

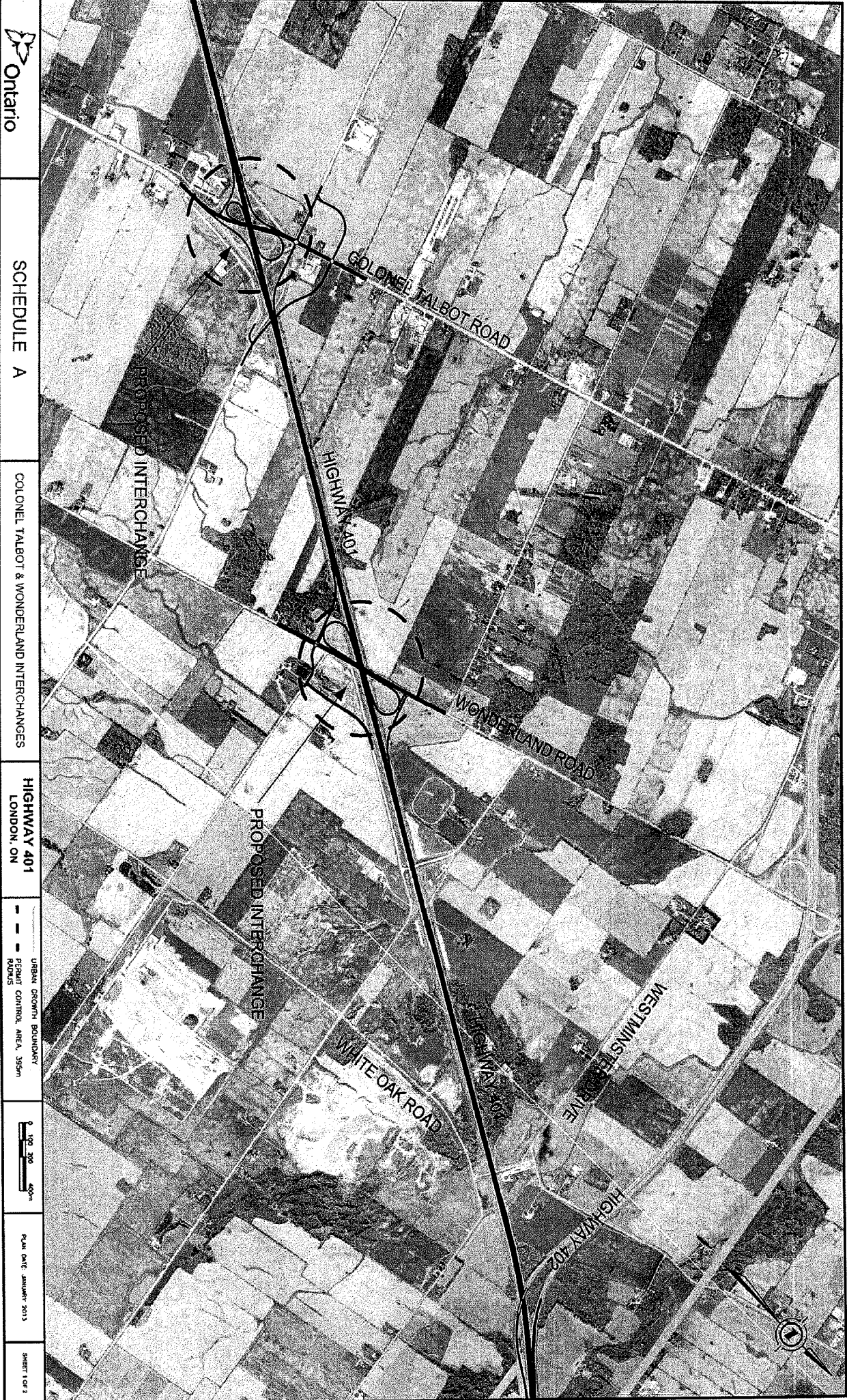
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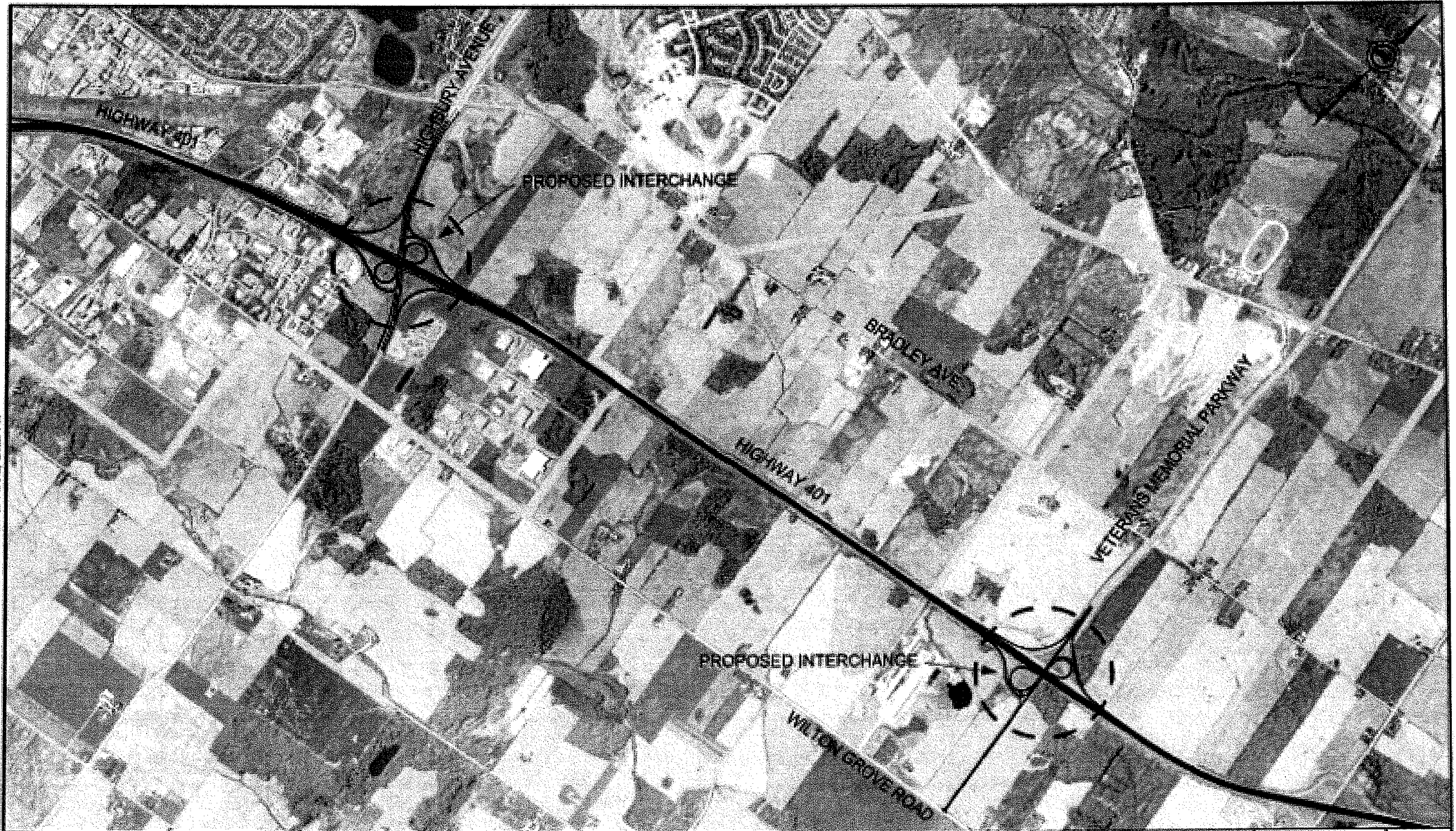
Minister of Transportation



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SCHEDULE A

MEASURY & VETERANS MEMORIAL INTERCHANGES

HIGHWAY 401  
LONDON, ON



Scale 1:50,000

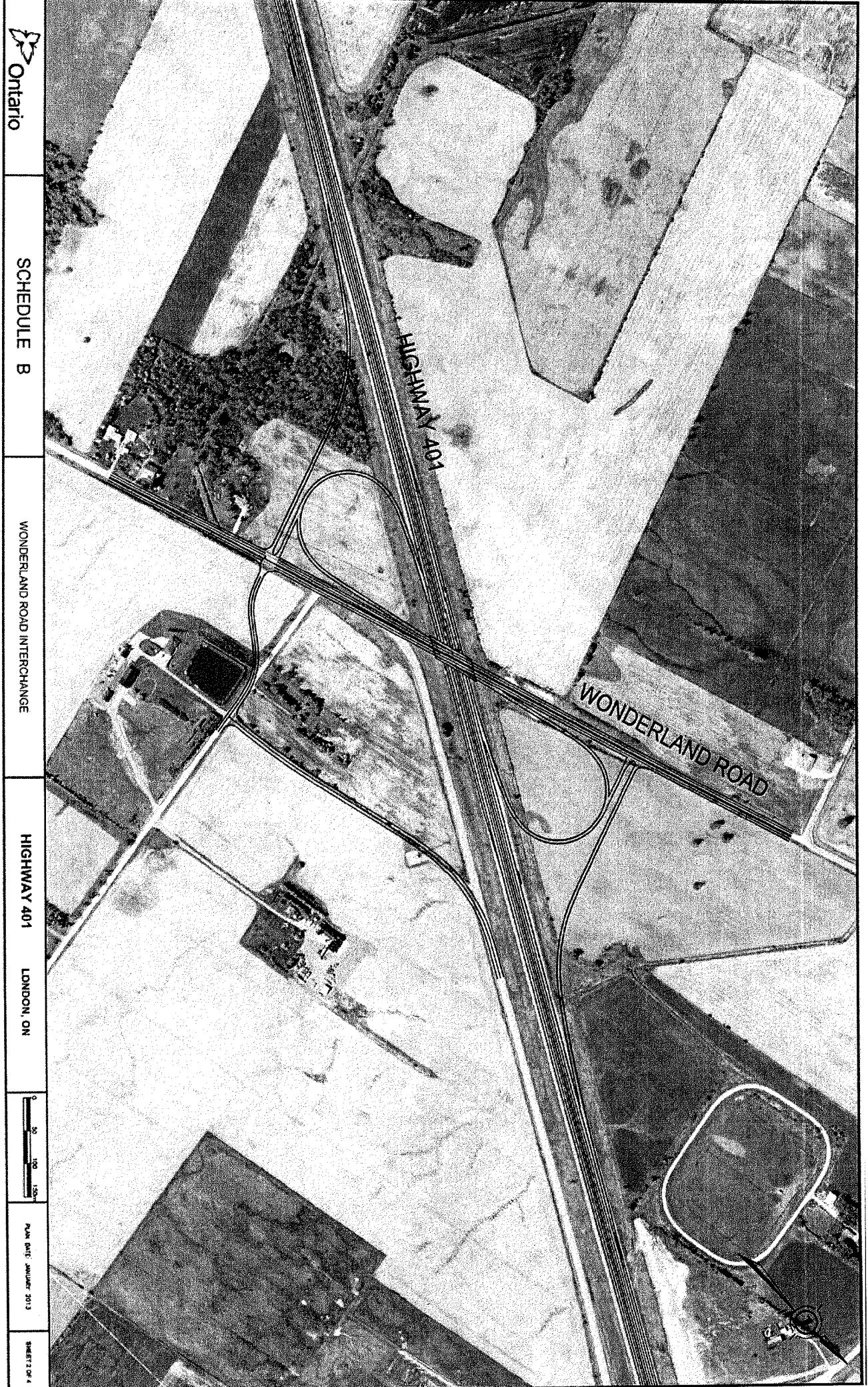
Sheet 1 of 1



Agenda Item #      Page #

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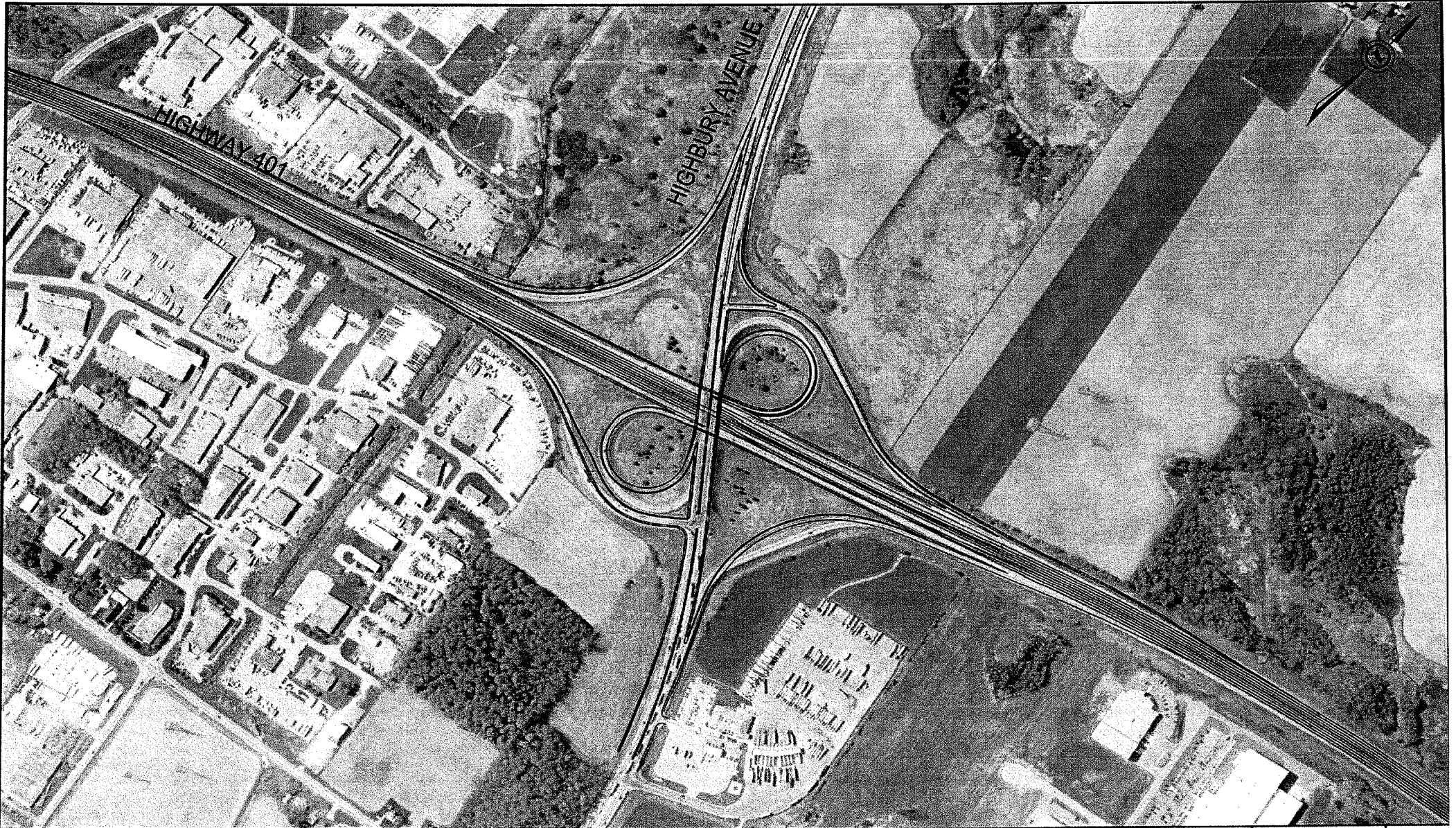
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Agenda Item #

Page #

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SCHEDULE C

HIGBURY AVENUE INTERCHANGE

HIGHWAY 401 LONDON, ON



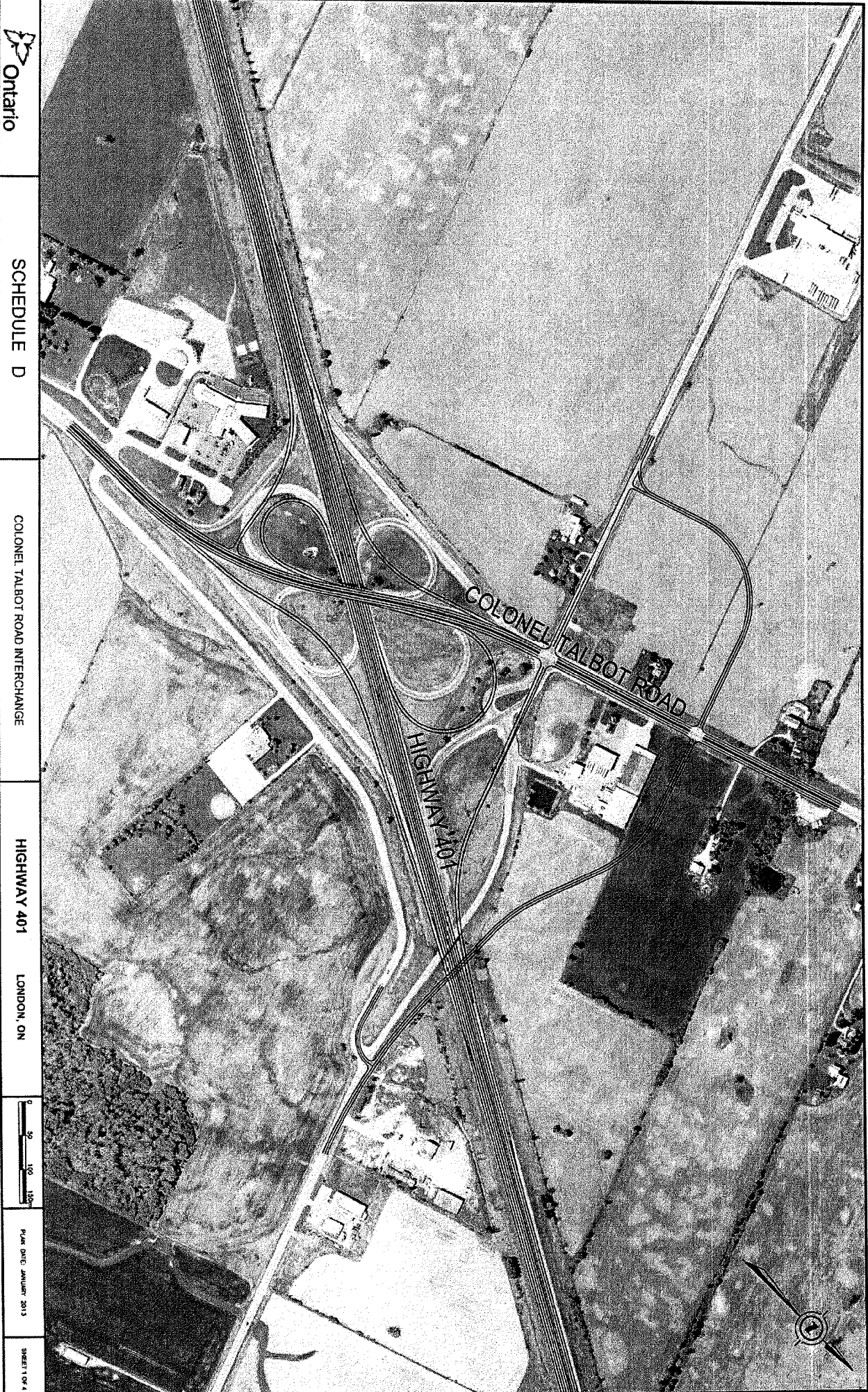
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SHEET 3 OF 4



Agenda Item #      Page #

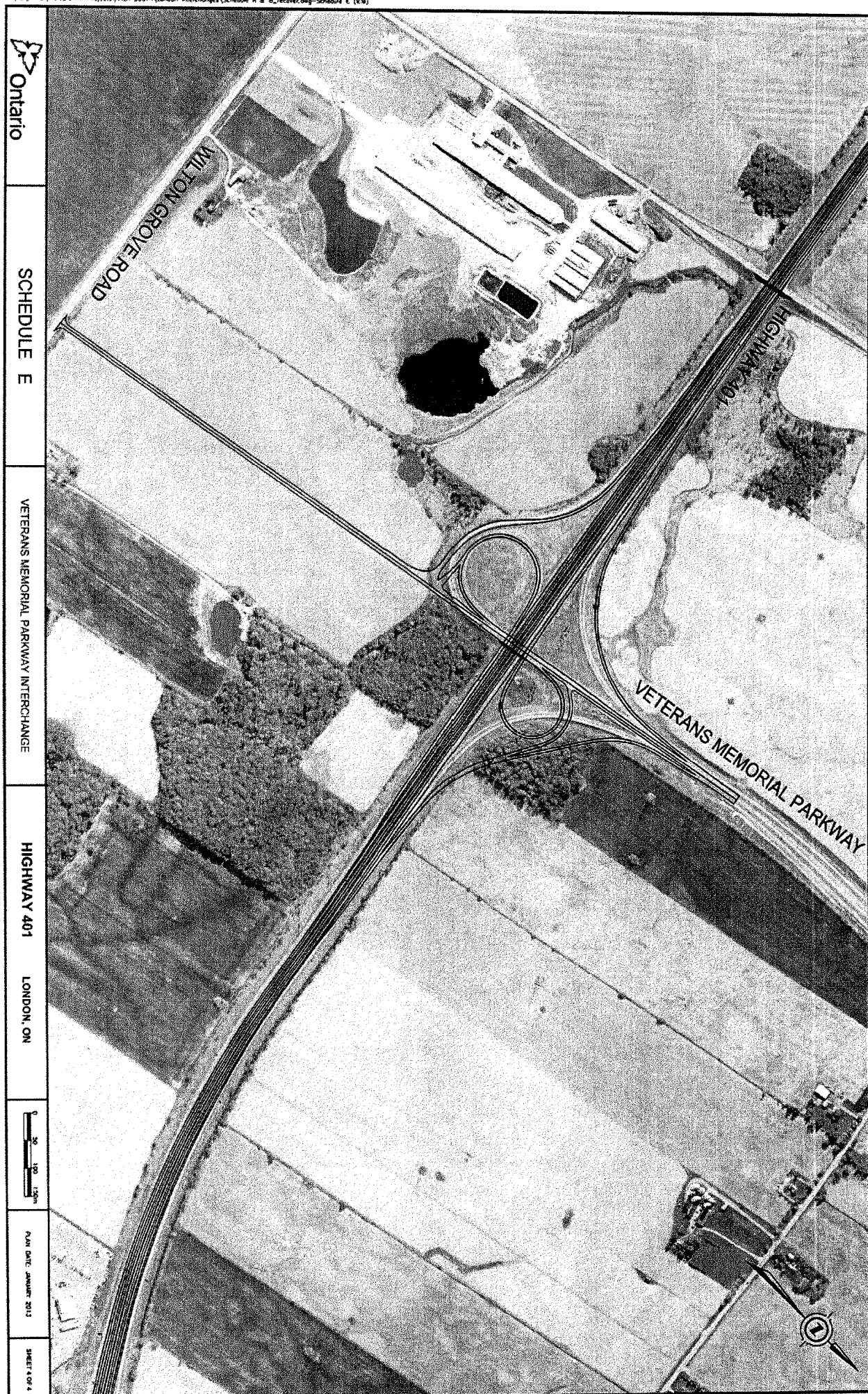
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Agenda Item #      Page #

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 Ontario

SCHEDULE E

VETERANS MEMORIAL PARKWAY INTERCHANGE

HIGHWAY 401

LONDON, ON



PLAN DATE: JANUARY 2012

SHEET 4 OF 4