

AGREEMENT

THIS AGREEMENT effective this 2nd day of April, 2024.

B E T W E E N:

THE CORPORATION OF THE COUNTY OF MIDDLESEX
(hereinafter called "Middlesex")

OF THE FIRST PART

- and -

THE CORPORATION OF THE COUNTY OF LAMBTON
(hereinafter called "Lambton")

OF THE SECOND PART

WHEREAS:

- A. The Parties (as hereinafter defined) are upper-tier municipalities which have authority with respect to highways under their respective jurisdiction pursuant to by-laws passed under the authority of subsections 9-11 of the *Municipal Act, 2001*, S.O. 2001, Chapter 25 (the "**Act**").
- B. The Parties are neighbouring municipalities who wish to enter into a boundary line highway agreement pursuant to subsection 29.1(1-2) of the *Act*, as amended or replaced, with respect to the repair of certain portions of Boundary Line Highways (as hereinafter defined).
- C. With respect to Boundary Line Highways, subsection 29.1(2) of the *Act* provides that where there is an agreement under subsection 29.1(1) between municipalities with respect to the repair of parts of highways which are Boundary Line Highways, the municipality which has agreed to keep the boundary line portion of a highway in repair has jurisdiction over that portion of the Boundary Line Highway.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT, in consideration of the payment of the sum of TWO DOLLARS (\$2.00) from each Party to the other and for other good and valuable consideration, including the covenants herein, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

Recitals

- 1. The above recitals are true and the same are hereby incorporated into this Agreement by reference.

Initials

Definitions

2. In this Agreement, in addition to terms defined elsewhere in this Agreement, the following terms have the following meanings:
 - (a) **“Agreement”** means this agreement and the schedules attached hereto, as amended, modified or supplemented from time to time.
 - (b) **“Boundary Line Highway”** means that portion of a highway which lines the boundary between the County of Middlesex and the County of Lambton.
 - (c) **“Business Days”** means any day other than a Saturday, Sunday, statutory holiday in Ontario;
 - (d) **“Communication”** means any notice, demand, request, consent, approval, or other communication which is required or permitted by this Agreement to be given or made by the Parties to each other.
 - (e) **“Parties”** means Middlesex and Lambton collectively, and **“Party”** means one of them.
 - (f) **“Plow Damage”** means any damage caused to right of way assets as a result of Winter Maintenance Services performed pursuant to this Agreement.
 - (g) **“Right of Way Repair”** means the repair of all right of way assets in accordance with *Ontario Regulation 239/02* of the Act, as amended or replaced, and the Ontario Traffic Manual, as amended or replaced, other than Winter Maintenance Services, Plow Damage, and capital improvements.
 - (h) **“Winter Maintenance Services”** means sanding, salting, and snowplowing right of way assets.

Covenants

3. All obligations contained in this Agreement, even if not expressed to be covenants, shall be deemed to be covenants.

Term

4. This Agreement, subject to its termination provisions, shall remain in force and effect for a period of five (5) years, commencing the 2nd day of April 2024 at 12:00 a.m. and ending on the 1st day of April 2029 at 11:59 p.m. Subsequently, this Agreement shall automatically renew five (5) times for successive one (1) year periods.

Obligations

5. Lambton hereby covenants and agrees to maintain and keep in repair for the whole width thereof, Road Number 12, being a Boundary Line Highway between the Township of Warwick in the County of Lambton and the Geographic Township of West Williams (*Municipality of North Middlesex*) in the County of Middlesex, extending from the centre line of the road between Lot 1 S.B.C., Geographic Township of Bosanquet (*Municipality of Lambton Shores*), easterly to the centre line of the road between Lot 30, Township of Warwick and Lot 1, Geographic Township of Adelaide (*Municipality of Adelaide-Metcalf*), a distance of approximately 1.6 kilometres as shown on **Schedule "B"** attached hereto.

6. Middlesex hereby covenants and agrees to maintain and keep in repair, the bridge structure, railings and embankments of bridges as follows and as shown on **Schedules "A", "B" and "C"** attached:
 - No. 19-27 - Beaman-Henderson Bridge on Lambton-Middlesex Road No. 18.
 - No. 19-88 - Hungry Hollow Bridge; Lot 21, Concession VIII, Geographic Township of West Williams (Municipality of North Middlesex).
 - No. 19-384 - Mosa-Brooke Townline, Lot 2, Concession XII, Geographic Township of Mosa (Municipality of Southwest Middlesex), and Lot 23, Concession VI, Geographic Township of Brooke (Municipality of Brooke-Alvinston).
 - No. 19-385 - Mosa-Brooke Townline, Lot 1, Concession XI, Geographic Township of Mosa (*Municipality of Southwest Middlesex*), and Lot 25, Concession VII, Geographic Township of Brooke (*Municipality of Brooke-Alvinston*).

7. Lambton hereby covenants and agrees to maintain and keep in repair the bridge structure, railings and embankments of bridges as follows and as shown on **Schedules "B" and "C"** attached:
 - No. 14-234 - Mosa-Brooke Townline, Lots 8 and 9, Concession IX, Geographic Township of Mosa (Municipality of Southwest Middlesex), and Lot 23, Concession II, Geographic Township of Brooke (Municipality of Brooke-Alvinston).
 - No. 14-166 - Metcalfe-Brooke Townline, Lot 1, Concession V, Geographic Township of Metcalfe (Municipality of Adelaide-Metcalf) and Lot 29, Concession XI, Geographic Township of Brooke (Municipality of Brooke-Alvinston).
 - No. 14-169 - Metcalfe-Brooke Townline, Lot 1, Concession VII, Geographic Township of Metcalfe (Municipality of Adelaide-Metcalf) and Lot 29, Concession IX, Geographic Township of Brooke (Municipality of Brooke-Alvinston).

- No. 14-171 - Metcalfe-Brooke Townline, Lot 1, Concession IX, Geographic Township of Metcalfe (Municipality of Adelaide-Metcalfe) and Lot 29, Concession VII, Geographic Township of Brooke (Municipality of Brooke-Alvinston).
- No. 14- 34 - Sylvan Bridge on Lambton-Middlesex Road No. 7.

Costs and Payment

8. Middlesex and Lambton shall share equally all expenses connected with any work carried out as agreed in sections 5 to 7, inclusive.
9. Each party will invoice the other as necessary for its share of the expenditures related to work carried out under sections 5 to 7, inclusive, and, as determined in accordance with section 8 of this agreement, the party being invoiced shall pay the amount invoiced within thirty (30) days of receipt of such invoice.
10. Notwithstanding any other provisions in this Agreement, no capital improvement work of any kind (not being Winter Maintenance Services, Plow Damage or Right of Way Repair under this Agreement) shall be undertaken on any Boundary Line Highway unless such capital improvement work has first been approved by each of the Parties. A municipality whose Council has not approved capital improvement work will not be responsible for any payment to the other municipality on account of such work performed.

Liability, Indemnity, and Insurance

11. Each of Middlesex and Lambton agree that they shall be responsible and liable for any and all damages established which arise from that municipality's failure to maintain the subject highway to the standards it has agreed to pursuant to this Agreement. Without limiting the foregoing, each of Middlesex and Lambton does hereby agree to indemnify and save completely harmless the other from all claims, debts, causes of action, demands, liens, liabilities, losses, damages, costs, and expenses arising from their respective obligations pursuant to this Agreement.
12. Middlesex and Lambton each covenant to carry a minimum of Ten Million Dollars (\$10,000,000.00) public liability insurance during the term of this Agreement. Such insurance shall name the other municipality as an additional insured thereunder and contain the following endorsements: contractual liability, non-owned automobile liability, and cross liability with a severability of interest clause. Such policy shall include a 30-day written notice of cancellation, termination, or material change.
13. Middlesex and Lambton each covenant to carry a minimum of Ten Million Dollars (\$10,000,000.00) automobile third party liability insurance during the term of this Agreement.

14. The Parties shall provide proof of insurance identifying all lines of coverage by way of Certificate of Insurance in a form satisfactory to the Parties each year, or ten (10) days prior to renewal of the respective policy.
15. In addition to and without limiting any proof of insurance requirements in this Agreement, at any time requested by any Party, the Parties shall provide each other with proof of insurance.

Termination

16. Notwithstanding section 4, this Agreement may be terminated in its entirety by Communication in writing being given by either Party to the other no less than one (1) year prior to the intended termination date. In the spirit of this Agreement, such notice will presume that reasonable effort has been made to ensure such termination is well founded and that other options have been considered.

Notices

17. Any Communication must be in writing, and either be:
 - (a) delivered personally or by courier.
 - (b) sent by prepaid registered mail; or
 - (c) transmitted by facsimile, e-mail or functionally equivalent electronic means of transmission, charges (if any) prepaid.

Any Communication must be sent to the intended Party at its address for service listed on the signature pages of this Agreement or to any other address as any Party may at any time advise the other by Communication given or made in accordance with this section. Any Communication delivered to a Party to whom it is addressed will be deemed to have been given or made and received on the day it is delivered at that Party's address, provided that if that day is not a Business Day, then the Communication will be deemed to have been given or made and received on the next Business Day. Any Communication transmitted by facsimile, e-mail or other functionally equivalent electronic means of transmission will be deemed to have been given or made and received on the day on which it is transmitted; but if the Communication is transmitted on a day which is not a Business Day or after 4:00 pm (local time of the recipient), the Communication will be deemed to have been given or made and received on the next Business Day.

Amendment and Waiver

18. No amendment, discharge, modification, restatement, supplement, termination or waiver of this Agreement or any section of this Agreement is binding unless it is in writing and executed by the Parties to be bound. No waiver of failure to exercise, or delay in exercising, any section of this Agreement constitutes a

waiver of any other section (whether or not similar) nor does any waiver constitute a continuing waiver unless otherwise expressly provided.

Assignment and Enurement

19. Neither this Agreement nor any right or obligation under this Agreement may be assigned by any Party, other than provided for herein, without the prior written consent of the other Parties. This Agreement enures to the benefit of and is binding upon the Parties and their respective heirs, executors, administrators, estate trustees, trustees, personal or legal representatives, successors and permitted assigns.

Dispute Resolution

20. Upon written request to resolve any disputes arising from this Agreement, which is sent by one Party to another, the Parties hereby agree to resolve all disputes pursuant to this section. Upon receipt by the receiving Party of a written request to resolve disputes, the Parties shall first attempt to resolve all disputes by way of formal negotiation between the Parties and their appointed representatives. If the disputes cannot be settled within thirty (30) days from the receipt of the written request to resolve disputes by the receiving Party, then the Parties shall enter into a structured negotiation on a without prejudice basis with the assistance of a mediator appointed by them. If the disputes cannot be settled within ninety (90) days from the receipt of written request to resolve disputes by the receiving Party, or such longer period as may be agreed to by the Parties, the Parties shall, refer the matter forthwith to arbitration which shall finally resolve the dispute(s). The aforementioned arbitration shall be conducted in accordance with the Ontario *Arbitration Act, 1991*, c 17, as amended.

Entire Agreement

21. This Agreement constitutes the entire agreement between the Parties pertaining to the repair of Boundary Line Highways and non-Boundary Line Highways and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written, of the Parties. The Parties acknowledge that there are no representations, warranties or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement and that no Party has been induced to enter into this Agreement in reliance on, and there will be no liability assessed, either in tort or contract, with respect to, any warranty, representation, opinion, advice or assertion of fact, except to the extent it has been reduced to writing and included as a term in this Agreement. Except as amended herein, the terms of this Agreement shall remain in full force and effect.
22. This Agreement includes the provisions of this Agreement, each of its Schedules, Ontario Regulation 239/02 of the *Act*, as amended or replaced, and the Ontario Traffic Manual, as amended or replaced, all of which shall be read together in the forming of this Agreement. In the event there is a conflict between the provisions

of this Agreement and its Schedules, the provisions of this Agreement shall prevail.

Voluntary Enforceable Agreement

23. The Parties warrant that this Agreement is voluntary, that none of the Parties are under any legal disability and that each Party has had an opportunity to seek the advice of independent legal counsel with respect to this Agreement.

Counterparts

24. This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which will be an original, and each of which may be delivered by facsimile, e-mail or other functionally equivalent electronic means of transmission, and those counterparts will together constitute one and the same instrument.

Severability

25. Each section of this Agreement is distinct and severable. If any section of this Agreement, in whole or in part, is or becomes illegal, invalid, void, voidable or unenforceable in any jurisdiction by any court of competent jurisdiction, the illegality, invalidity or unenforceability of that section, in whole or in part, will not affect:
- (a) the legality, validity, or enforceability of the remaining sections of this Agreement, in whole or in part; or
 - (b) the legality, validity, or enforceability of that section, in whole or in part, in any other jurisdiction.

Governing Law

26. This Agreement is governed by and is to be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable in that Province.

[ONE (1) SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF this Agreement has been executed by the Parties hereto on the date(s) set out below and the Parties agree that this Agreement shall be effective on the ___ day of ___ 2024.

THE CORPORATION OF THE COUNTY OF MIDDLESEX

Date: _____, 2024

Address for Service:
Attn: County Clerk
Administration Offices
399 Ridout Street North
London, ON N6A 2P1

Per: _____
Warden

Per: _____
Clerk

I/We have authority to bind the Corporation

THE CORPORATION OF THE COUNTY OF LAMBTON

Date: _____, 2024

Address for Service:
Attn: Clerk
Administration Offices
789 Broadway Street, Box 3000
Wyoming ON N0N 1T0

Per: _____
Warden

Per: _____
Clerk

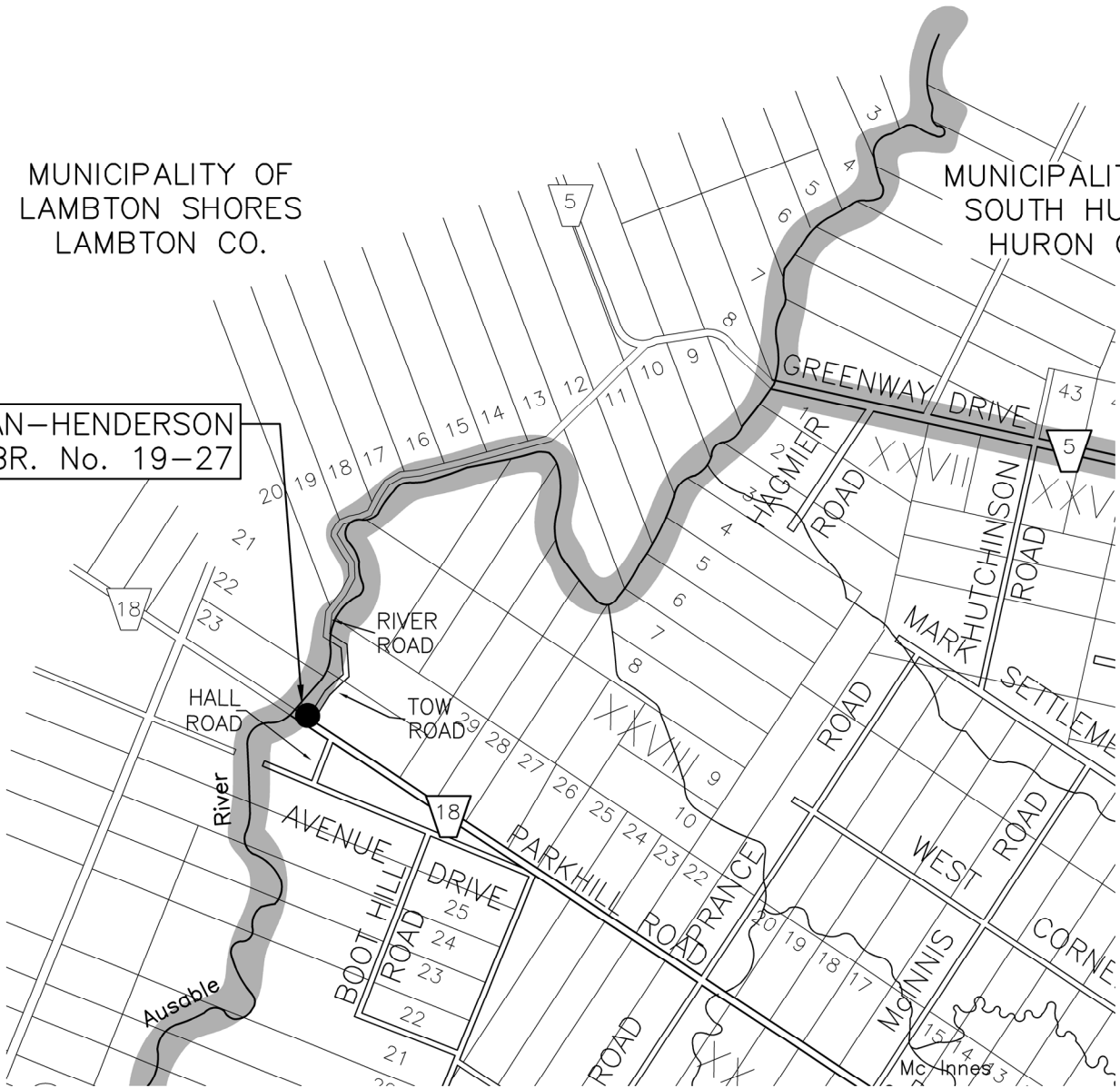
I/We have authority to bind the Corporation



MUNICIPALITY OF
LAMBTON SHORES
LAMBTON CO.

MUNICIPALITY OF
SOUTH HURON
HURON CO.

HEAMAN-HENDERSON
BR. No. 19-27

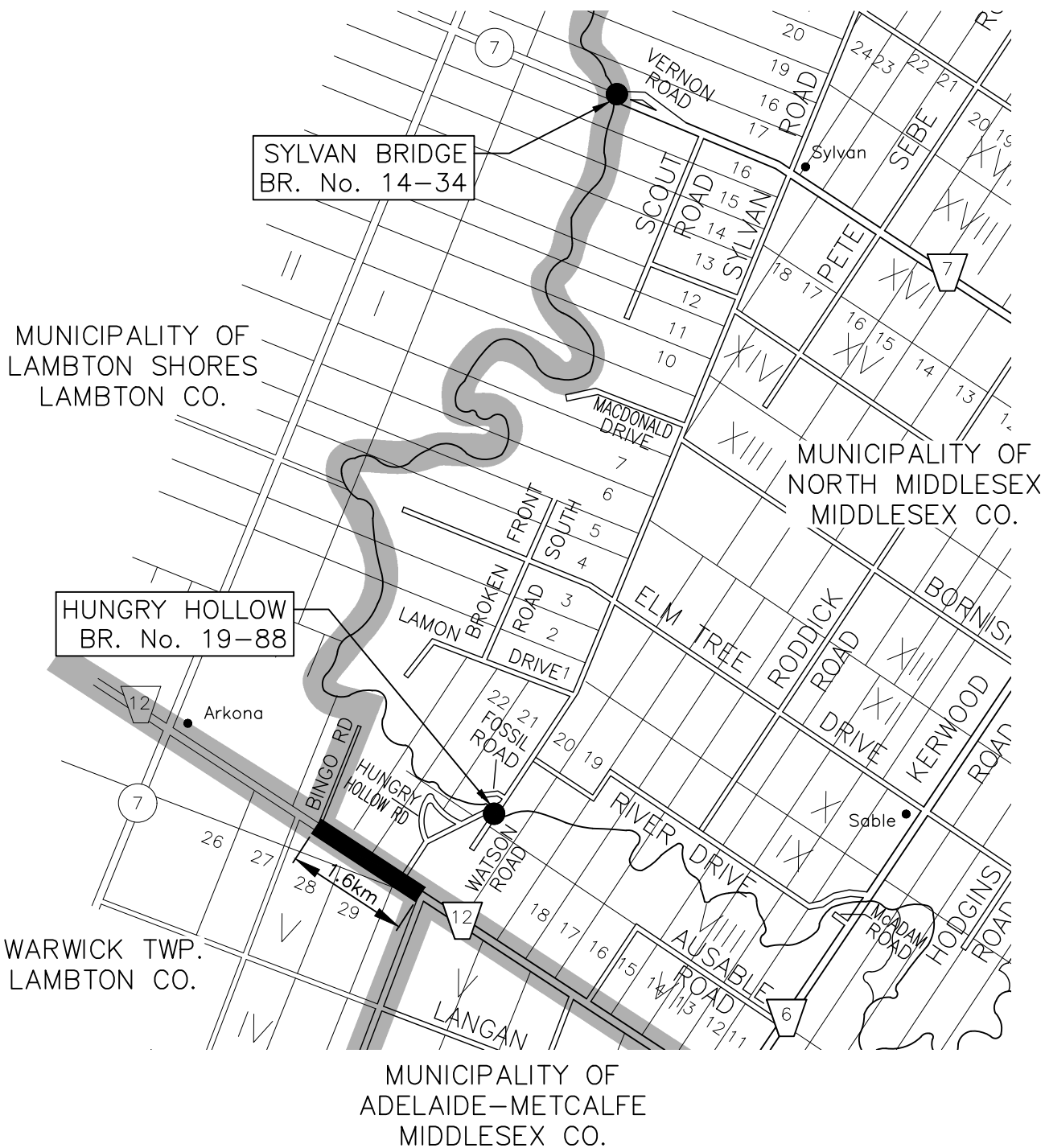


MUNICIPALITY OF
NORTH MIDDLESEX
MIDDLESEX CO.

SCHEDULE 'A'

BRIDGE LOCATIONS FOR MIDDLESEX-LAMBTON BOUNDARY AGREEMENT
DATE: MARCH 2024 DRAWN BY: JT





SCHEDULE 'B'

BRIDGE LOCATIONS FOR MIDDLESEX-LAMBTON BOUNDARY AGREEMENT
DATE: FEBRUARY 2024
DRAWN BY: JT





MUNICIPALITY OF
BROOKE-ALVINSTON
LAMBTON CO.

McPHAIL BRIDGE
BR. No. 19-385

BRIDGE
BR. No. 14-166

McPHAIL BRIDGE
BR. No. 14-169

MORROGH CREEK
BR. No. 19-384

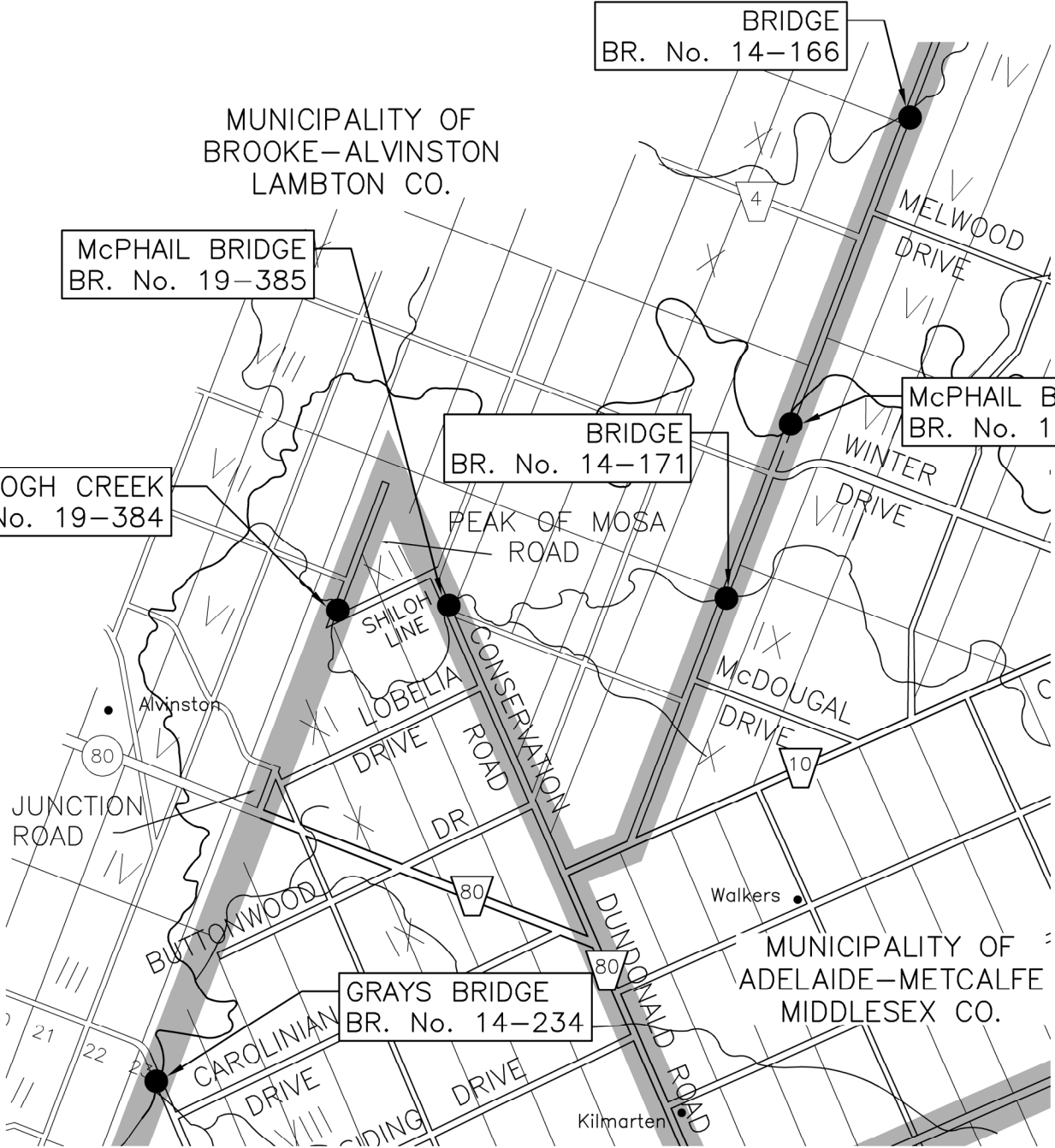
BRIDGE
BR. No. 14-171

PEAK OF MOSA
ROAD

GRAYS BRIDGE
BR. No. 14-234

MUNICIPALITY OF
ADELAIDE-METCALFE
MIDDLESEX CO.

MUNICIPALITY OF
SOUTHWEST MIDDLESEX
MIDDLESEX CO.



SCHEDULE 'C'

BRIDGE LOCATIONS FOR MIDDLESEX-LAMBTON BOUNDARY AGREEMENT
DATE: MARCH 2024 DRAWN BY: JT

