

## MUNICIPAL ACCESS AGREEMENT

This Municipal Access Agreement shall be effective as of the \_\_\_ day of \_\_\_\_\_, 2022 (the “**Effective Date**”).

**BETWEEN:** **THE CORPORATION OF THE TOWN OF ESSEX** located at, represented hereto by the signatory identified below, duly authorized, as so declared, hereinafter referred to as the:

“**Municipality**”

**AND:** **COGECO CONNEXION INC.** a corporation incorporated under the laws of Canada and having its registered office at 1, Place Ville Marie, suite 3301, Montréal (Québec) H3B 3N2, represented hereto by the signatory identified below, duly authorized, as so declared, hereinafter referred to as the:

“**Company**”

(each, a “**Party**” and, collectively, the “**Parties**”)

**WHEREAS** the Company is a “telecommunications common carrier” as defined in the *Telecommunications Act* (“**Telecom Act**”) and a “distribution undertaking” as defined in the *Broadcasting Act*, (collectively, a “**Carrier**”) and is subject to the jurisdiction of the Canadian Radio-television and Telecommunications Commission (the “**CRTC**”);

**WHEREAS**, in order to operate as a Carrier, the Company requires to construct, maintain and operate its Equipment in, on, over, under, across or along (“**Within**”) those certain streets, lanes, highways, bridges, viaducts, tunnels, pedestrian overpasses or underpasses, light rail transit corridors, road allowances, general public utility easements, service corridors and other public places to be identified and mutually agreed to which are under the jurisdiction of the Municipality (collectively, “**Right-of-Way**” or “**ROW**”);

**WHEREAS**, pursuant to section 43 of the Telecom Act, the Company requires the Municipality’s consent to construct its Equipment Within the ROWs and the Municipality is willing to grant the Company a non-exclusive right to access and use the ROWs, provided that such use will not unduly interfere with the public use and enjoyment of the ROWs, nor any rights or privileges previously conferred or conferred after the Effective Date by the Municipality on Third Parties to use or access the ROWs;

**WHEREAS** the Parties have agreed that it would be mutually beneficial to outline the terms and conditions pursuant to which the Municipality hereby provides its consent;

**NOW THEREFORE** in consideration of the mutual terms, conditions and covenants contained herein, the Parties agree and covenant with each other as follows:

# 1. DEFINITIONS AND INTERPRETATION

## 1.1. Definitions

- (a) “**Affiliate**” means:
- i. in the case of the Company, “affiliate” as defined in the *Canada Business Corporations Act* that is also a Carrier or,
  - ii. in the case of the Municipality, a local board, agency or commission of the Municipality or a corporation which is partially or solely owned by, and is controlled by, the Municipality, and which has as a primary purpose, the management and maintenance of the ROWs.
- (b) “**As-Built Drawings**” means Construction Plans in addition to any changes to such plans made on site during installation, and may include all of the following: the location of the Work, including plan view with offset distances from property lines, profiles, typical cross-sections and other industry standard location information.
- (c) “**Construction Plans**” means construction plans of the proposed Work, showing the locations of the existing Equipment, the proposed additions and/or changes, depicting the vertical coordinates (Z value) of the new underground Equipment expressed as metres from ground level, and the boundaries of the municipal area in which the Work will take place; other relevant plans, drawings and information that the Municipal Engineer may reasonably consider for the purposes of issuing Municipal Consent.
- (d) “**Essential Service**” includes any one or more of the following: the transmission of energy (including natural gas, steam or electricity); the supply of water; the removal or carrying of wastewater and stormwater; the provision of traffic control; the re-instatement of Municipality 9-1-1 emergency centre call-in service; and, telecommunications services as determined by the CRTC.
- (e) “**Emergency**” means an unforeseen situation where immediate action must be taken to preserve the environment, public health, safety or an Essential Service of either of the Parties.
- (f) “**Equipment**” means the transmission and distribution facilities owned by the Company and its Affiliates, comprising fibre optic, coaxial or other nature or form of cables, pipes, conduits, poles, ducts, manholes, handholds and ancillary structures and other related telecommunications facilities (as defined in the Telecom Act) located Within the ROWs.
- (g) “**Hard Surface**” of the ROW means the paved, cobbled or otherwise hardened surface of the ROW, such as concrete surfaces and sidewalk bays, exclusive of grass, weeds, wild vegetation, dirt, sand, superficial soil or similar loose matter.

- (h) “**Hazardous Substance**” means any harmful substance including, without limitation, electromagnetic or other radiation, contaminants, pollutants, dangerous substances, dangerous goods and toxic substances, as defined, judicially interpreted or identified in any applicable law.
- (i) “**Municipal Consent**” means the written consent of the Municipality, with or without conditions, to allow the Company to perform Work Within the ROW that requires the excavation or breaking up of the ROW (as more fully described in Schedule B).
- (j) “**Municipal Engineer**” means the public works director of the Municipality or the individual designated by such person.
- (k) “**Permit**” means a Municipal Consent and/or a Road Occupancy Permit.
- (l) “**Relocation**” means work involving the permanent removal, modification or adjustment of Equipment from or at its current location, or the modification, installation or relocation of the relocated or of new Equipment at a new location required due to relocation, including adjusting manholes, which changes the Equipment’s placement or location. The relocation can be aerial, underground, or from aerial to underground, or from underground to aerial within the same Right-of-Way, or from its (current) location to another location in the Right-of-Way.
- (m) “**Relocation Notice**” means a written notice given by the Municipality to the Company identifying the specific location and reason for the relocation of Equipment, and directing the Company to relocate the Equipment designated in the notice to another reasonable location Within the ROW or as otherwise agreed upon by the Parties.
- (n) “**Road Occupancy and/or Encroachment Permit**” means a Permit issued by the Municipality authorizing the Company to conduct Work that includes any activity that involves a deployment of its workforce, vehicles and other equipment in the ROW (the need to be obtained as more fully described in [Schedule B](#)).
- (o) “**Service Drop**” means a cable that, by its design, capacity and relationship to other cables of the Company, can be reasonably considered to be for the sole purpose of connecting backbone Equipment to not more than one individual customer or building point of presence or property.
- (p) “**Third Party**” means any person that is not a party to this Agreement or an Affiliate of either Party, and includes any person that attaches its facilities in, on or to the Equipment under an agreement with the Company.
- (q) “**Work**” means, but is not limited to, any installation, removal, construction, maintenance, repair, replacement, relocation, operation, adjustment or other alteration of the Equipment performed by the Company Within a ROW, including the excavation, repair and restoration of a ROW.

- 1.2. **Recitals and Schedules.** The preamble, any amendments, following schedules and any other documents attached to this Agreement are hereby incorporated by reference and form part hereof:
- (a) **Schedule A** - Fees and Charges Payable by the Company
  - (b) **Schedule B** – Permits Required by the Municipality
  - (c) **Schedule C** – Relocation Costs

## 2. **USE OF ROWs**

- 2.1 **Consent to Use ROWs.** The Municipality hereby consents to the Company’s use of the ROWs at the locations specified and mutually agreed to for the purpose of performing its Work, subject to the terms and conditions of this Agreement and in accordance with applicable, operative and enforceable Municipal by-laws.
- 2.2 **Scope of municipal consent.** The Company shall not, in the exercise of its rights under this Agreement, unduly interfere with the public use and enjoyment of the ROWs.
- 2.3 **Proviso.** Notwithstanding **Section 0** and **2.2** and any other provisions of this Agreement, to the extent that any applicable, operative and enforceable Municipal by-law is inconsistent with the terms of this Agreement, the latter takes precedence over the inconsistent Municipal by-law.
- 2.4 **No Ownership Rights.** The Parties acknowledge and agree that:
- (a) The use of the ROWs under this Agreement shall not create nor vest in the Company any ownership or property rights in the ROWs other than those created by the Telecom Act; and
  - (b) The placement of the Equipment Within the ROWs shall not create or vest in the Municipality any ownership or property rights to the Equipment.
- 2.5 **Condition of ROWs.** The Municipality makes no representations or warranties as to the state of repair of the ROWs or the suitability or fitness of the ROWs for any business, activity or purpose whatsoever, and the Company hereby agrees to accept the ROWs on an “as is” basis.

## 3. **PERMITS TO CONDUCT WORK**

- 3.1. **Permits Required.** Work Within the ROWs by the Company is subject to authorization requirements of the Municipality only to the extent and in the form provided in **Schedule B**.
- (a) For each Permit required pursuant to **Section 3.1**, the Company shall submit a completed application form to the Municipality, either in the form provided in **Schedule A** or as agreed upon by the Parties, and shall pay applicable fees.
  - (b) Subject to **Section 3.4**, the Municipality will issue applicable Permits within ten

(10) business days of receiving a completed application form, or such other time as agreed upon by the Parties in consideration of the complexity of the Work and the volume of Permit applications submitted to the Municipality.

- 3.2. **Permit Expiry.** In the event the Company has not commenced construction of the approved Work associated with a given Permit within one (1) year of the date of issuance of the Permit, and has not sought and received an extension to the Permit from the Municipality, which extension shall not be unreasonably withheld, the Permit shall be null and void on the one (1) year anniversary of the date of issuance. In such circumstances, any fees paid by the Company in respect of the expired Permit shall not be refunded and the Company must obtain a new Permit for the Work.
- 3.3. **Construction Plans.** Unless otherwise agreed to by the Municipality, and subject to **Schedule B**, the Company shall, prior to undertaking any Work that requires Municipal Consent, submit Construction Plans to the Municipal Engineer.
- 3.4. **Amendments to Permit Submissions.** The Municipality may, acting reasonably and in consideration of the Company's concerns, in the event of a conflict with its own plans or projects, for reasons of public health and safety, existing infrastructure, road construction, or the proper functioning of public services, request amendments to the plans referred to in **Article 3**.
- 3.5. **Restoration of Services during Emergencies.** Notwithstanding **Section 3.1**, in the event of an Emergency, the Company shall be permitted to perform such remedial Work as is reasonably necessary to restore its services without complying with **Section 3.1**, provided that the Company provides notice to the Municipality within two (2) business days after completing the Work. In these circumstances, and insofar as municipal consent is required pursuant to this Agreement, the Company shall comply with **Section 3.1** once notice has been provided to the Municipality.
- 3.6. **Temporary Changes by Municipality.** Notwithstanding any terms to the contrary in this Agreement, the Municipality reserves the right to set, adjust or change the approved schedule of Work of the Company for the purpose of coordinating or managing any major events or activities, including the restriction of any Work during those time periods; provided, however, that such events or activities are unforeseeable. The Municipality shall provide to the Company seven (7) days advance written notice of any change to the approved schedule of Work, except that, in the case of any Emergency, the Municipality shall provide such advance notice as is reasonably possible in the circumstances.
- 3.7. **Security.** The Company may be required to post security with the Municipality from time-to-time as a result of repeated non-performance in its restoration of the ROW as required under **Article 5**, in an amount and form acceptable to the Municipal Engineer to guarantee the ROW restoration Work to be performed under a Permit. The vehicle by which such security is granted shall, in each case, specify with precision the Work that is guaranteed by the security, and the circumstances under which the Municipality may have recourse to the security. If the Municipality draws down on the security the funds must be used for actual costs to remediate the ROW to the extent as required in **Article**

**5** on behalf of the Company where, in accordance with procedure in **Article 5**, the Company has failed to do so. Security shall be released promptly by the Municipality if and to the extent that the ROW restoration Work is completed to the reasonable satisfaction of the Municipal Engineer acting reasonably.

#### **4. WORK**

- 4.1. **Work Stoppage.** The Municipality may order the stoppage of the Work for any cause relating to public health and safety or any circumstances beyond its control having regard to the public interest in having access to communications, including Municipality 9-1-1 emergency centre call-in service. In such circumstances, the Municipality shall provide the Company with a verbal order and reasons to stop the Work and the Company shall cease the Work immediately. Within two (2) business days of the verbal order, the Municipality shall provide the Company with a written stop work order with reasons. When the reasons for the Work stoppage have been resolved, the Municipality shall advise the Company immediately that the Work may be commenced or resumed.
- 4.2. **Work Coordination.** The Company shall use commercially reasonable efforts to minimize road cuts, construction and the placement of new Equipment Within the ROW by coordinating its Work and sharing the use of support structures with other existing and new occupants of the ROWs.
- 4.3. **Emergency Contact Personnel.** The Company and the Municipality shall provide each other with a list of 24-hour emergency contact personnel, including contact particulars, and shall ensure that the list is kept current.
- 4.4. **Emergency Work by Municipality.** In the event of an Emergency, the Municipality shall, as soon as reasonably practicable, contact the Company and, as circumstances permit, allow the Company a reasonable opportunity to remove, relocate, protect or otherwise deal with the Equipment, having regard to the nature of the Emergency. Notwithstanding the foregoing, the Municipality may take all such measures as it deems necessary to address the Emergency and otherwise re-establish a safe environment.
- 4.5. **Equipment.** Where the placement of any portion of the Equipment in a ROW is located outside a distance of (1) metre horizontally (centre-line to centre-line) from the location approved in the Permit or as shown on the As-Built Drawings and, as a result, the Municipality is unable, without incurring significant additional expenses, to install its facilities Within the affected ROW, in the manner it expected based on the Permit or As-Built Drawings (the “**Conflict**”), the following shall apply:
- i) The Company shall relocate, at its sole expense, its Equipment to the location in the approved permit; or
  - ii) The Company shall leave its Equipment in the location causing the Conflict and pay all reasonable direct costs incurred by the Municipality to adjust the design and

installation of its services intended to be installed Within the ROW at the location of the Conflict.

- 4.6 **The Parties recognize that** over time, the location of the Company's Equipment may have changed as a result of activities outside side of its control (such as work performed by the Municipality or a Third Party) and, in such cases, the Company is not responsible for the Conflict. The Parties agree to work in mutual collaboration to determine whether the current location of the Company's Equipment has been impacted by factors outside the Company's control. The Municipality will apply best practices to avoid Conflicts and invite the Company and Third Party users of ROWs to coordinate work and locate Equipment at the design stage of a project.
- 4.7 **Each party will indemnify** and save the other party harmless from any claims, demands, causes of action, losses, costs or damages, legal fees and disbursements that they may suffer, incur or be liable for, resulting from inaccurate locates provided of its Equipment.
- 4.8 **The Company will indemnify** and save the Municipality harmless from any claims, demands, causes of action, losses, costs or damages, legal fees and disbursements that they may suffer, incur or be liable for, resulting from, or related to the construction of the its equipment in a non-approved location.
- 4.9 **Agents and Sub-contractors.** Each Party agrees to work with the other Party to directly resolve any issues arising from any the acts, omissions or performance of its agents and sub-contractors.

## 5. **REMEDIAL WORK**

- 5.1. **General.** Following the completion of any Work, the Company shall leave the ROW in a neat, clean, and safe condition, free from nuisance. Subject to [Section 5.5](#), where the Company is required to break or otherwise disturb the surface of a ROW to perform its Work, it shall repair and restore the surface of the ROW to substantially the same condition it was in before the Work was undertaken, pursuant to [Section 5.2](#) or [5.3](#).
- 5.2. **Permanent Road Restoration.** If the Company has excavated, broken up or otherwise disturbed the surface of a ROW, the requirements for the Company completing the road restoration work will vary depending on if and when pavement has been recently repaved or overlaid, as follows:
- (a) if pavement has been repaved or overlaid within a five-year period immediately prior to the date of issuance of the Permit, then the Municipality may require that the Company grind and overlay the full lane width of pavement in the ROW for the full length of the cut;
  - (b) if, during the five period provided in [subsections 5.2.\(a\)](#), Third Parties, including the Municipality as a provider of services to the public, have excavated, broken up or otherwise disturbed the pavement to be ground and overlaid, the costs of that grind and overlay will be apportioned between the Company, the Third Parties and the Municipality on the basis of the area of their respective cuts;

- (c) the Municipality will not require grind and overlay pursuant to **Section 5.2** above for road restoration work involving:
  - i) Emergencies; and
  - ii) other situations deemed by the Municipal Engineer to be in the public interest.

5.3. **Temporary Repair.** Where weather limitations or other external conditions beyond the control of the Company do not permit completing a final repair to the ROW within the expected period of time, the Company may complete a temporary repair to the ROW, provided that, subject to **Section 5.5**, the Company replaces the temporary repair with a final repair within a reasonable period of time.

5.4. **Warranty for Repairs.** The Company warrants its temporary repair until such time as the final repair is completed by the Company or, where the Municipality is performing the final repair, for a period of two (2) years or, until such time as the final repair is completed by the Municipality, whichever is earlier. The Company shall warrant final repairs performed by it for a period of two (2) years from the date of their completion.

5.5. **Repairs Completed by Municipality.** Where:

- (a) the Company fails to complete a temporary repair to the satisfaction of the Municipality within five (5) days of being notified in writing by the Municipality, or such other period as may be agreed to by the Parties; or
- (b) the Company and the Municipality agree that the Municipality should perform the repair,

then the Municipality may carry out such work necessary to perform the repair and the Company shall pay the Municipality's causal costs of performing the repair.

5.6. **As-Built Drawings.** The Company shall, no later than ninety (90) days after completion of any Work, provide the Municipal Engineer with As-Built Drawings. Such drawings shall only be used for the purposes of facilitating the Municipal Engineer's conduct of planning and issuance of Work permits. The As-Built Drawings are confidential; they must be protected through reasonable measures and must not be shared beyond as required, on a need to know basis, for the purposes described above, nor must they be used for any other purpose or combined with other information.

## 6. **LOCATING FACILITIES IN ROWs**

6.1. **Locates.** Each Party shall, at its own cost and at the request of the other Party (or its contractors or authorized agents), physically locate its respective facilities by marking the ROW using paint, staking or other suitable identification method (the "Locates"), in accordance with the following standards:

- (a) in the event of an Emergency, within two (2) hours of receiving the request or as



soon as practicably possible, following which the requesting Party will have a representative on site or alternatively, provide a contact number for its representative, to ensure that the area for the Locates is properly identified; and

- (b) in all other circumstances, within a time reasonably agreed upon by the Parties; or
- (c) where provincial OneCall legislation is in force, in accordance with the standards set out in such legislation.

6.2. **Depth.** Notwithstanding any other provision of this Agreement, the Parties recognize that over time, the location of the Company's Equipment may have changed as a result of activities beyond its control (such as work performed by the Municipality, its Affiliates or a Third Party). In light of this, the Company shall not be responsible for providing the Municipality with vertical location information for its Equipment

6.3. **Incorrect Locates.** Where the Company's Locates do not accurately correspond with the location of the Equipment and, as a result, the Municipality is unable to install its facilities within the municipal ROWs as expected, based on the Locates provided by the Company (the "**Error**"), the Company shall pay the Municipality the direct costs stemming from the Error.

- (a) An inaccurate Locate resulting from equipment relocated due to ground movement stemming from, amongst others, weather conditions or work or activities carried out by a Third Party or the Municipality is not an Error. In the event of a disagreement as to the existence of an Error, the parties agree to work together to determine whether or not the Error stems from ground movement or from work or activities carried out by Third Parties or the Municipality.
- (b) The Municipality shall not be entitled to rely on minimal deviations or that do not have a material impact on the Municipality, financial or otherwise, in order to avoid responsibility for costs associated with the relocation.
- (c) If it is determined that the conditions of the ROW have changed, the parties agree to be reasonable, including with respect to the allocation of direct costs stemming from the change.

## 7. **RELOCATION**

7.1. **General.** Where the Municipality requires and requests the Company to relocate its Equipment for *bona fide* and valid municipal purposes, the Municipality shall give a written Relocation Notice to the Company and, subject to **Section 7.3**, the Company shall, within 90 days thereafter or such other time as agreed to by the Parties having regard to scheduling issues and the nature of the relocation required, perform the relocation and any other required and associated Work.

7.2. **Municipality's Efforts.** The Municipality must make reasonable efforts to provide alternative routes for the Equipment affected by the relocation to ensure uninterrupted service to the Company's customers. Once the Company has provided the Municipality

with all information the Municipality requires to enable it to process a Permit application, the Municipality shall provide, on a timely basis, all Permits required allowing the Company to relocate the Equipment.

- 7.3. **Reimbursement of Relocation Costs.** The Municipality shall reimburse the Company for reasonable costs incurred in completing relocation requested by the Municipality (the “**Relocation Costs**”) based upon the principles, methodologies and procedures set out in [Schedule C](#).

## **8. MITIGATION**

- 8.1. **Mitigation.** The Municipality shall use reasonable efforts to plan municipal work in a manner as to mitigate the present and future costs borne by the Company as a consequence of such works.
- 8.2. **Alternatives.** The Municipality must consider alternative feasible solutions to relocation, such as bypassing the Equipment (“**Bypass**”), and discuss such alternatives with the Company.
- 8.3. **No Bypass Costs.** If the Municipality elects to Bypass the Company’s Equipment, the Municipality shall not be entitled to compensation for any Bypass costs resulting from the presence, maintenance, repair or use of the Equipment.

## **9. FEES AND OTHER CHARGES**

- 9.1. **General.** The Company covenants and agrees to pay fees to the Municipality pursuant to this Agreement, including the fees and charges set out in [Schedule A](#).
- 9.2. **Invoices.** Unless expressly provided in this Agreement, for payments to be made under this Agreement, the Party requesting payment shall first send a written invoice to the other Party, setting out in detail all amounts owing, including any applicable provincial and federal taxes and interest payable on prior overdue invoices, and the payment terms. The Parties agree that all invoices shall be issued within sixty (60) days, and payments shall be made in full by no later than ninety (90) days after the date of the invoice was received.

## **10. TERM AND TERMINATION**

- 10.1. **Initial Term and Renewal.** This Agreement shall have an initial term of five (5) years commencing on the Effective Date and shall be renewed automatically for up to two successive five (5) year terms unless:
- (a) this Agreement is terminated by either Party in accordance with this Agreement;
  - (b) a Party delivers initial notice of non-renewal to the other Party at least 180 days prior to the expiration of the then current term; or
  - (c) this Agreement is replaced by a New Agreement between the Parties.

- 10.2. **Termination by either Party.** Either Party may terminate this Agreement without further obligation to the other Party, upon providing at least twenty-four (24) hours' notice in the event of a material breach of this Agreement by the other Party after notice thereof and failure of the other Party to remedy or cure the breach within thirty (30) days of receipt of the notice. If, however, in the view of the non-breaching Party, it is not possible to remedy or cure the breach within such thirty (30) day period, then the breaching Party shall commence to remedy or cure the breach within such thirty (30) day period and shall complete the remedy or cure within the time period stipulated in writing by the non-breaching Party.
- 10.3. **Termination by Municipality.** The Municipality may terminate this Agreement by providing the Company with at least twenty-four (24) hour prior written notice in the event that the Company (i) becomes insolvent, makes an assignment for the benefit of its creditors, has a liquidator, receiver or trustee in bankruptcy appointed for it, (ii) assigns or transfers this Agreement or any part thereof other than in accordance with **Section 19.4**, or (iii) ceases to be eligible to operate as a Carrier.
- 10.4. **Effect of Termination or Expiry.** Notwithstanding any provision to the contrary, if this Agreement is terminated (other than in accordance with **Sections 10.2** and **10.3**) or expires without renewal, then, subject to the Company's rights to use the ROWs pursuant to the Telecom Act and, unless the Company advises the Municipality in writing that it no longer requires the use of the Equipment:
- (a) the terms and conditions of this Agreement shall remain in full force and effect until a new municipal access agreement (a "**New Agreement**") is executed by the Parties; and
  - (b) the Parties shall enter into meaningful and good faith negotiations to execute a New Agreement and, if, after six (6) months following the expiry of this Agreement, the Parties are unable to execute a New Agreement, then either Party may apply to the CRTC to establish the terms and conditions of the New Agreement.
- 10.5. **Continuing Obligations.** Notwithstanding the expiry or earlier termination of this Agreement, each Party shall continue to be liable to the other Party for all payments due and obligations incurred hereunder prior to the date of such expiry or termination.

## **11. ABANDONMENT AND DISCONTINUANCE**

- 11.1. **Removing abandoned Equipment.** Where the Company advises the Municipality in writing that it no longer requires the use of any Equipment, the Company shall, at the Municipality's request and within a reasonable period of time as agreed to by the Parties, act as follows at the Company's sole cost and expense:
- (a) remove above-ground abandoned Equipment;
  - (b) make safe any underground vaults, manholes and any other underground structures that are not occupied or used by a Third Party, (collectively "**Abandoned**

**Underground Structures”);**

- (c) where, in the reasonable opinion of the Municipal Engineer, the Abandoned Underground Structures will interfere with any municipally-approved project that will require excavation or otherwise disturb the portions of the ROWs in which the Abandoned Underground Structures are located, then the Company shall, at or about the time the excavation of such portions of the ROWs for said project commences, remove the Abandoned Underground Structures therein.
- (d) Upon removal of the abandoned Equipment or upon the removal or making safe of Underground Structures, the Company shall repair any damage resulting from such removal or making safe and restore the affected ROWs to as near as possible the condition in which they existed prior to the removal or making safe. If the Company fails to remove such Equipment and restore the ROWs within the time specified above and to the satisfaction of the Municipal Engineer, the Municipality may complete such removal and restoration and the Company shall pay the associated Municipality’s Costs.

11.2. **Discontinuance of ROW.** Where the Municipality determines that it no longer requires a ROW or a portion thereof in which the Company’s Equipment is located, the Municipality may discontinue the ROW. However, prior to the discontinuance or conveyance of the ROW, the Municipality shall provide an easement to the Company for its Equipment at the Municipality’s cost. The Municipality will be responsible for the cost of registration of the easement in the land titles office.

**12. EXCESS CAPACITY**

12.1 **Whenever the Company** installs new conduits by open cut within any ROWs, and the new conduits are not used for the sole purpose of connecting a single building or customer location to the Company’s Equipment, the Company shall:

- (a) Unless otherwise waived by the Municipal Engineer in writing, ensure that any conduits to be placed Within the ROWs are sized so as to accommodate the transmission capacity requirements of the Company along or across the Service Corridors. and
- (b) Install such additional excess conduit capacity as the Municipality and the Company may in writing agree or the CRTC or its successor may direct, for the more efficient administration of the occupancy and used the ROWs.

12.2 **The Company shall** use its best efforts to place its Equipment in or along existing support structures situated in the ROWs whenever possible.

**13. INSURANCE**

13.1 **The Company shall maintain** insurance, at its own expense, in sufficient amount and description as will protect the Company and the Municipality as an Additional Insured from claims for damages, personal injury including death, and for claims from property

damage and all costs related thereto which may arise from the Company's operations or Work or failure to do Work in the Municipality under this Agreement, including but not limited to the construction, maintenance, use or operation of the Equipment in, on, under, over, along and across the ROWs or any act or omission of the Company's employees, agents, contractors or licenses and such coverage shall include all costs, charges and expenses reasonably incurred for any injury or damage for which the Company is responsible in law.

13.2 **In addition to the foregoing**, Company covenants and agrees that with respect to the insurance coverage described in **Section 13.1**:

- (a) Commercial General Liability Insurance, including but not limited to bodily personal injury liability, property damage, products liability, completed operations liability, owners and contractors protective liability, blanket contractual liability, premises liability, and contingent employer's liability coverage, having an inclusive limit of not less than \$5,000,000.00 per occurrence and products and completed operations with an annual aggregate of not less than \$5,000,000.00; and
- (b) Standard Form Automotive Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than \$2,000,000.00 per accident in respect of the use or operation of vehicles owned or leased by the Company for the provision of services under this Agreement.

13.3 Any insurance coverage acquired under the Agreement shall in no manner discharge, restrict or limit the liabilities assumed by the Company under the Agreement. The dollar limit of insurance shall not be limited by the dollar amount of the Agreement.

13.4 Forthwith upon the execution of this Agreement, the Company shall provide the Municipality with certificates of insurance evidencing the insurance coverage required by this Agreement and thereafter provide renewals of such insurance coverage.

13.5 The Company shall not do or omit to do anything that would impair or invalidate the insurance policies.

13.6 Delivery to and examination or approval by the Municipality of any certificates of insurance or other evidence of insurance shall not relieve the Company of any of its indemnification or insurance obligations under the Agreement. The Municipality shall be under no duty either to ascertain the existence of or to examine such certificates of insurance or to advise the Company in the event such insurance coverage is not in compliance with the requirements set out in this Agreement.

## 14. LIABILITY AND INDEMNIFICATION

14.1 **Definitions.** For the purposes of this [Article 0](#), the following definitions shall apply:

- (a) “**Claims**” means any and all claims, actions, causes of action, complaints, demands, suits or proceedings of any nature or kind;
- (b) “**Company**” means the Company and its directors, officers, employees, contractors, agents, successors and assigns;
- (c) “**Costs**” means costs (including, without limitation, all legal and other professional fees and disbursements, interest, liquidated damages and amounts paid in settlement, whether from a third party or otherwise) awarded in accordance with the order of a court of competent jurisdiction, the order of a board, tribunal or arbitrator or costs negotiated in the settlement of a claim or action;
- (d) “**Losses**” means, in respect of any matter, all losses, damages, liabilities, deficiencies, Costs and expenses;
- (e) “**Municipality**” means the Municipality and its elected and appointed officials, officers, employees, contractors, agents, successors and assigns;

14.2 **No liability, both Parties.** Notwithstanding anything else in this Agreement, neither Party shall be liable to any person in any way for special, incidental, indirect, consequential, exemplary or punitive damages, including damages for pure economic loss or for failure to realize expected profits, howsoever caused or contributed to, in connection with this Agreement and the performance or non-performance of its obligations hereunder.

14.3 **Indemnification by the Company.** Except for Claims or Losses arising, in whole or in part, from the negligence or willful misconduct of the Municipality, the Company covenants and agrees to indemnify, defend and save harmless the Municipality from and against any and all Third Party Claims or Losses that the Municipality may suffer or incur resulting from or attributable to the negligence or willful misconduct of the Company or its employees, servants or agents and arising from:

- (a) the Company’s performance of any Work Within the ROWs and the operation or use of the Equipment by the Company or any other Person;
- (b) the Company undertaking any activity Within the ROWs which is ancillary to the Company’s exercise of its rights under this Agreement; and
- (c) any breach of this Agreement by the Company.

14.4 **Indemnification by Municipality.** Except for Claims or Losses from the negligence or willful misconduct of the Company, the Municipality shall indemnify, defend and save harmless the Company from and against all Third Party Claims and Losses that the

Company may suffer or incur resulting from or attributable to the negligence or willful misconduct of the Municipality or its employees, servants or agents and arising from any of the following:

- (a) damage to property (including property of the Company);
- (b) injury to individuals (including injury resulting in death), including the Company's employees, servants, agents, licensees and invitees; and
- (c) breach of this Agreement by the Municipality.

## **15 ENVIRONMENTAL LIABILITY**

15.2 **Municipality not responsible.** The Municipality is not responsible for any damage to the natural environment or property, including any nuisance, trespass, negligence, or injury to any person, howsoever caused, arising directly from the presence, deposit, escape, discharge, leak, spill or release of any Hazardous Substance in connection with the Company's occupation or use of the ROWs, unless such damage was caused directly or indirectly by the negligence or wilful misconduct of the Municipality or those for which it is responsible in law.

15.3 **Company to assume environmental liabilities.** The Company agrees to assume all environmental liabilities, claims, fines, penalties, obligations, costs or expenses whatsoever relating to its use of the ROWs, including, without limitation, any liability for the clean-up, removal or remediation of any Hazardous Substance on or under the ROWs that result directly from:

- (a) the operations or activities of the Company, its contractors, agents or employees or by any person with the express or implied consent of the Company Within the ROWs; or
- (b) any Equipment brought or placed Within the ROWs by the Company, its contractors, agents or employees or by any person with the express or implied consent of the Company;
- (c) unless such damage or environmental contamination was pre-existing and/or was caused directly or indirectly in whole or in part by the negligence or wilful misconduct on the part of the Municipality or those for which it is responsible in law.

## **16 FORCE MAJEURE**

16.2 **General.** Except for the Parties' obligations to make payments to each other under this Agreement, neither Party shall be liable for a delay in its performance or its failure to perform hereunder due to causes beyond its reasonable control, including, but not limited to, acts of God, fire, flood, or other catastrophes; applicable and operative government, legal or statutory restrictions on forms of commercial activity arising subsequent to this Agreement; or order of any civil or military authority; national emergencies,

insurrections, riots or wars or strikes, lock-outs or work stoppages (“**Force Majeure**”).

- 16.3 **Notice and Delay.** In the event of any one or more of the foregoing occurrences, notice shall be given by the Party unable to perform to the other Party and the Party unable to perform shall be permitted to delay its performance for so long as the occurrence continues. Should the suspension of obligations due to Force Majeure exceed two (2) months, either Party may terminate this Agreement without liability, upon delivery of notice to the other Party.

## 17 **DISPUTE RESOLUTION**

- 17.2 **General.** The Parties hereby acknowledge and agree that it is the intention of the Parties that all Disputes be resolved in a fair, efficient, and timely manner without incurring undue expense and, wherever possible, without the intervention of the CRTC. The CRTC shall be requested by the Parties to consider and provide a decision only with respect to those matters which form the basis of the original Dispute as set out in the Dispute notice issued under this [Article 17](#).

- 17.3 **Dispute Resolution.** The Parties will attempt to resolve any dispute, controversy, claim or alleged breach arising out of or in connection with this Agreement (“**Dispute**”) promptly through discussions at the operational level. In the event a resolution is not achieved, the disputing Party shall provide the other Party with written notice of the Dispute and the Parties shall attempt to resolve such Dispute between senior officers who have the authority to settle the Dispute. All negotiations conducted by such officers shall be confidential and shall be treated as compromise and settlement negotiations. If the Parties fail to resolve the Dispute within thirty (30) days of the non-disputing Party’s receipt of written notice, either Party may initiate legal proceedings and/or submit the Dispute to the CRTC for resolution.

- 17.4 **Continued Performance.** Except where clearly prevented by the nature of the Dispute, the Municipality and the Company agree to continue performing their respective obligations under this Agreement while a Dispute is subject to the terms of this.

## 18 **NOTICES**

- 18.1 **Method of Notice.** Any notice required may be sufficiently given by personal delivery or, if other than the delivery of an original document, by facsimile or email transmission to either Party at the following addresses:

**If to the Municipality:**

The Corporation of the Town of Essex  
33 Talbot Street South, Essex, ON. N8M  
1A8

**With a copy to:**

Director of Infrastructure Services, Town  
of Essex



**If to the Company**

Cogeco Connexion Inc.  
950 Syscon Road  
Burlington, ON  
L7R 4S6  
Attention: Manager, M&IR, Legal Affairs

With a copy to:

Cogeco Connexion Inc.  
Legal Affairs  
[Affaires.juridiques@cogeco.com](mailto:Affaires.juridiques@cogeco.com)

18.2 **Delivery of notice.** Any notice given pursuant to this Agreement shall be deemed to have been received on the date on which it was delivered in person, or, if transmitted by email or facsimile during the regular business hours of the Party receiving the notice, on the date it was transmitted, or, if transmitted by email or facsimile outside regular business hours of the Party receiving the notice, on the next regular business day of the Party receiving the notice; provided, however, that either Party may change its address and/or facsimile number and/or email address for purposes of receipt of any such communication by giving ten (10) days' prior written notice of such change to the other Party in the manner described above.

**19 GENERAL**

19.1 **Entire Agreement.** This Agreement constitutes the complete and exclusive statement of the understandings between the Parties with respect to the rights and obligations hereunder and supersedes all proposals and prior agreements, oral or written, between the Parties.

19.2 **Interpretation.** Words importing the singular include the plural and vice versa, words importing gender include all genders. A reference to a statute includes all regulations and rules made pursuant to the statute and, unless otherwise specified, the provisions of any statute or regulation which amends, supplements or supersedes the statute or the regulation. Where the word "including" or "includes" is used in this Agreement it means "including (or includes) without limitation as to the generality of the foregoing".

19.3 **Currency.** Unless otherwise indicated, references to money amounts are to the lawful currency of Canada.

19.4 **Assignment.** This Agreement may not be assigned, in whole or in part, without the prior written consent of the other Party. Notwithstanding the foregoing, either Party shall have the right to assign this Agreement to an Affiliate without the consent of the other Party, provided that: i) it has given prompt written notice to the other Party; ii) any assignee agrees to be bound by the terms and conditions of this Agreement; and iii) the assignee is not in direct competition with the other Party, in which case, prior written consent would be required.

19.5 **Good Faith.** Each Party shall at all times act reasonably and in good faith in the performance of its obligations and the exercise of its rights and discretion under this Agreement.

- 19.6 **Amendments.** Except as expressly provided in this Agreement, no modification of or amendment to this Agreement shall be effective unless agreed to in writing by the Municipality and the Company.
- 19.7 **Survival.** The terms and conditions contained in this Agreement that by their sense and context are intended to survive the performance thereof by the Parties hereto shall so survive the completion of performance, the expiration and termination of this Agreement, including, without limitation, provisions with respect to indemnification and the making of any and all payments due hereunder.
- 19.8 **Governing Law.** This Agreement shall be governed by the applicable laws in the Province of Ontario.
- 19.9 **Sealed Plans.** Construction Plans, As-Built Drawings, Mark-Ups or other similar documents requested from the Company must be accurate, but they need not be signed or sealed by an engineer, architect or other licensed professional, unless required in such form by applicable, operative and enforceable provincial or federal statutes (exclusive of municipal by-laws or regulations).
- 19.10 **Confidentiality.** The Parties recognize that documents shared by the Company with the Municipality as part of this Agreement and under the Telecom Act contain information that represents commercially sensitive, confidential information. In the event that any documents relating to this Agreement are captured by a third-party access to information request made under provincial access to information legislation, prior to providing such information to a Third Party, the Municipality agrees to inform the Company and provide the Company with an opportunity to comment on whether or not the information should be disclosed.
- 19.11 **Waiver.** Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.
- 19.12 **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and everything else in this Agreement shall continue in full force and effect

19.13 **Inurement.** This Agreement is and shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and permitted assigns, and may not be changed or modified except in writing, duly signed by the Parties hereto.

**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement by their duly authorized representatives.

**THE CORPORATION OF THE TOWN COGECO CONNEXION INC  
OF ESSEX**

\_\_\_\_\_  
Mayor, Town of Essex

\_\_\_\_\_  
Authorized Signatory, [name & title]

\_\_\_\_\_  
Clerk, Town of Essex

We have authority to bind the corporation

## SCHEDULE A

### FEEES AND CHARGES PAYABLE BY THE COMPANY

#### 1. MUNICIPAL CONSENT (“MC”) FEES

- 1.1. The Company shall pay \$300.00 per permit submission that is greater than 100 metres in length (including a wrap-around to a side street of no more than 20 meters) to the Municipality for the issuance of a MC when required in accordance with **Schedule B** (a “MC Fee”). For permit submissions that are less than 100 metres the MC Fee shall be \$200.00 per permit submission.

#### 2. ROAD OCCUPANCY PERMITS (“ROP”) FEES

- 2.1 The Company shall pay a ROP Fee of \$100.00 for each ROP issued in that particular calendar year.
- 2.2 **All-Inclusive and Adjustment.** Fees in sections 1 and 2 of this **Schedule A** are all-inclusive meaning that no additional amounts in that particular calendar year may be charged nor are any other fees thereto to be assessed or levied by the Municipality in reviewing, approving and/or inspecting the Work or its design and the Municipality will not require the Company obtain any other types of permits from the Municipality. The Fees in sections 1 and 2 may be subject to annual adjustment based upon applicable adjustments that may be imposed by the Municipality’s Fees and Charges By-law.

#### 3. APPLICATION FORMS

**Per Attached**



# Utility Construction Municipal Consent (MC) Permit

**DATE:** \_\_\_\_\_

Permit No. \_\_\_\_\_

## 1. LOCATION

The following proposed works will be carried out at \_\_\_\_\_  
as shown on the enclosed Plan No. \_\_\_\_\_, dated \_\_\_\_\_  
County Consent Required?     Yes     No

## 2. TYPE OF WORK

Construct / Install New       Repair / Replace Existing       Relocate Existing

## 3. WORKS TO BE COMPLETED

Main Installation       Pedestal       Directional Bore  
 Service Connections       Poles       Open Trench  
 Other       Road Crossings       Dig and Repair

Please describe: \_\_\_\_\_  
\_\_\_\_\_

## 4. CONSTRUCTION PERIOD

Start Date: \_\_\_\_\_      Completion Date: \_\_\_\_\_

## 5. WORK DONE BY

Bell Canada       ELK       Union Gas/Enbridge  
 Cogeco       Hydro One       Other:

Contact Name: \_\_\_\_\_      Emergency Contact Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_      Emergency Phone Number: \_\_\_\_\_

## 6. INSURANCE & INDEMNIFICATION (Minimum \$2,000,000 Liability Required)

Insurance Provider \_\_\_\_\_

Liability Insurance Policy No. \_\_\_\_\_

- Permit Application
- Plan/drawings detailing location and extent of proposed works
- Insurance Certificate (With Town of Essex named as additionally insured)
- Permit Fee (Cheque made payable to the Corporation of the Town of Essex)

**THE APPLICANT AGREES TO ALL CONDITIONS SHOWN HEREIN AND AS SHOWN ON THE REVERSE SIDE OF THIS PERMIT**

Print Name: \_\_\_\_\_      Title: \_\_\_\_\_

Signature: \_\_\_\_\_      Date: \_\_\_\_\_

Email: \_\_\_\_\_      Phone No.: \_\_\_\_\_

**\*\*TOWN USE ONLY\*\***

Design Modifications: \_\_\_\_\_

Permit Issuance Date: \_\_\_\_\_

Permit Issued By: \_\_\_\_\_

As-builts received?     Yes     No

**THIS PERMIT EXPIRES ONE (1) YEAR FROM DATE OF ISSUE**



# Utility Construction Municipal Consent (MC) Permit

**DATE:** \_\_\_\_\_

Permit No. \_\_\_\_\_

**1. LOCATION**

The following proposed works will be carried out at \_\_\_\_\_  
as shown on the enclosed Plan No. \_\_\_\_\_, dated \_\_\_\_\_  
County Consent Required?     Yes     No

**2. TYPE OF WORK**

Construct / Install New       Repair / Replace Existing       Relocate Existing

**3. WORKS TO BE COMPLETED**

Main Installation       Pedestal       Directional Bore  
 Service Connections       Poles       Open Trench  
 Other       Road Crossings       Dig and Repair

Please describe: \_\_\_\_\_  
\_\_\_\_\_

**4. CONSTRUCTION PERIOD**

Start Date: \_\_\_\_\_      Completion Date: \_\_\_\_\_

**5. WORK DONE BY**

Bell Canada       ELK       Union Gas/Enbridge  
 Cogeco       Hydro One       Other:

Contact Name: \_\_\_\_\_      Emergency Contact Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_      Emergency Phone Number: \_\_\_\_\_

**6. INSURANCE & INDEMNIFICATION (Minimum \$2,000,000 Liability Required)**

Insurance Provider \_\_\_\_\_  
Liability Insurance Policy No. \_\_\_\_\_

- Permit Application
- Plan/drawings detailing location and extent of proposed works
- Insurance Certificate (With Town of Essex named as additionally insured)
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**THE APPLICANT AGREES TO ALL CONDITIONS SHOWN HEREIN AND AS SHOWN ON THE REVERSE SIDE OF THIS PERMIT**

Print Name: \_\_\_\_\_      Title: \_\_\_\_\_

Signature: \_\_\_\_\_      Date: \_\_\_\_\_

Email: \_\_\_\_\_      Phone No.: \_\_\_\_\_

**\*\*TOWN USE ONLY\*\***

Design Modifications: \_\_\_\_\_

Permit Issuance Date: \_\_\_\_\_

Permit Issued By: \_\_\_\_\_

As-builts received?     Yes     No

**THIS PERMIT EXPIRES ONE (1) YEAR FROM DATE OF ISSUE**

## **Conditions of Permit Issuance**

### **General:**

1. This permit is not valid until a copy, signed by an Infrastructure Services Manager, is received from the Town of Essex.
2. Two copies of detailed construction plans must be submitted with this permit.
3. All works carried out under this permit must be in conformance with current Town of Essex standards and requirements.
4. Prior to commencing work, locates must be obtained from all utilities' plant within the project area.
5. All changes and/or deviations from the approved plans and/or locations shall be subject to re-approval by the Town of Essex.
6. The site, as detailed in the approved plans, must be restored to the satisfaction of the Town of Essex.
7. "As Constructed" drawings, based on in situ measurements, are required to be submitted to the Town of Essex for any new installations.
8. If the applicant has a valid agreement with the Town of Essex that governs the requirement to obtain permits and do work in the right-of-way, and there is a difference between the terms and condition herein verses what is contained in the agreement, then the agreement shall prevail.

### **Installation / Placement:**

1. A minimum clearance of one (1) metre must be maintained between existing infrastructure and proposed installations.
2. A minimum depth of one metre below the bottom of an existing ditch must be maintained for all crossings. Depth below rivers, creeks or municipal drains will be determined by the Town of Essex prior to permit issuance.
3. Approval of proposed installations with less than minimum clearances will require the affected existing infrastructure to be spotted / day-lighted at areas of potential conflict, by means of hydrovaccing, at the Applicant's expense.

### **Road Cut / Excavation:**

1. Positive drainage shall be maintained during the course of work.
2. All utilities' infrastructure shall be protected and supported, to the satisfaction of the affected utility.
3. The Applicant shall not cut, trim or interfere with any trees (including roots) in the right-of-way without approval by the Town of Essex.
4. The road shall not be closed without the written consent of the Manager of Operations.
5. Property owners and/or residents shall receive a minimum of 24 hour written notice prior to temporary closing of an entrance, unless it is an emergency.
6. The Applicant agrees and accepts full responsibility to supply, maintain, clean and place all barricades, warning signs, delineators and flashing lights necessary for the protection of the public and the safe operation of the installation at the Applicant's own expense, and comply with all other applicable requirements of the Ontario Traffic Manual, Book 7, latest revision. (Note: This manual depicts minimum standards, additional signing may be required.)
7. All disturbed or affected areas will be maintained and restoration guaranteed, for one year after complete acceptance of this work by the Town of Essex at the Applicant's expense.

### **Insurance and Indemnification:**

The Applicant agrees to:

1. Accept full responsibility for the protection of all utilities' plant, private property and persons affected by its operations.
2. Provide proof of liability insurance (\$2,000,000 minimum), naming the Town of Essex as additional insured.
3. Indemnify and save harmless the Town of Essex from all actions, incorrectly or negligently performed by the Applicant as required by the terms of this permit or the By-law, and will be responsible for damages, injuries, or accidents resulting from any of his/her operations, or caused by reason of construction, maintenance or existence of the Road Cut or Excavation, or materials, plants, equipment used in connection with the construction, maintenance or existence of the Road Cut or Excavation.

**\*Failure to comply with all conditions will void this permit.\***

## **Conditions of Permit Issuance**

### **General:**

1. This permit is not valid until a copy, signed by an Infrastructure Services Manager, is received from the Town of Essex.
2. Two copies of detailed construction plans must be submitted with this permit.
3. All works carried out under this permit must be in conformance with current Town of Essex standards and requirements.
4. Prior to commencing work, locates must be obtained from all utilities' plant within the project area.
5. All changes and/or deviations from the approved plans and/or locations shall be subject to re-approval by the Town of Essex.
6. The site, as detailed in the approved plans, must be restored to the satisfaction of the Town of Essex.
7. "As Constructed" drawings, based on in situ measurements, are required to be submitted to the Town of Essex for any new installations.
8. If the applicant has a valid agreement with the Town of Essex that governs the requirement to obtain permits and do work in the right-of-way, and there is a difference between the terms and condition herein verses what is contained in the agreement, then the agreement shall prevail.

### **Installation / Placement:**

1. A minimum clearance of one (1) metre must be maintained between existing infrastructure and proposed installations.
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3. Approval of proposed installations with less than minimum clearances will require the affected existing infrastructure to be spotted / day-lighted at areas of potential conflict, by means of hydrovaccing, at the Applicant's expense.

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3. The Applicant shall not cut, trim or interfere with any trees (including roots) in the right-of-way without approval by the Town of Essex.
4. The road shall not be closed without the written consent of the Manager of Operations.
5. Property owners and/or residents shall receive a minimum of 24 hour written notice prior to temporary closing of an entrance, unless it is an emergency.
6. The Applicant agrees and accepts full responsibility to supply, maintain, clean and place all barricades, warning signs, delineators and flashing lights necessary for the protection of the public and the safe operation of the installation at the Applicant's own expense, and comply with all other applicable requirements of the Ontario Traffic Manual, Book 7, latest revision. (Note: This manual depicts minimum standards, additional signing may be required.)
7. All disturbed or affected areas will be maintained and restoration guaranteed, for one year after complete acceptance of this work by the Town of Essex at the Applicant's expense.

### **Insurance and Indemnification:**

The Applicant agrees to:

1. Accept full responsibility for the protection of all utilities' plant, private property and persons affected by its operations.
2. Provide proof of liability insurance (\$2,000,000 minimum), naming the Town of Essex as additional insured.
3. Indemnify and save harmless the Town of Essex from all actions, incorrectly or negligently performed by the Applicant as required by the terms of this permit or the By-law, and will be responsible for damages, injuries, or accidents resulting from any of his/her operations, or caused by reason of construction, maintenance or existence of the Road Cut or Excavation, or materials, plants, equipment used in connection with the construction, maintenance or existence of the Road Cut or Excavation.

**\*Failure to comply with all conditions will void this permit.\***



## SCHEDULE B

### PERMITS REQUIRED BY THE MUNICIPALITY

| WORK ACTIVITY  | MC <sup>1</sup> | ROP <sup>2</sup> | Notificati<br>on only | No Permit or<br>Notification |
|--|-----------------|------------------|-----------------------|------------------------------|
| Any installation of plant that requires Excavation <sup>3</sup> in the ROW, including: <ul style="list-style-type: none"> <li>– installation of buried plant crossing a road;</li> <li>– installation of new Above-ground Equipment<sup>4</sup>;</li> <li>– relocation of buried plant or Above-ground Equipment ; and</li> <li>– replacement of existing Above-ground Equipment with equipment that is significantly larger;</li> </ul> | X               | X                |                       |                              |
| The installation of aerial plant if work materially interferes with the public use and enjoyment of the ROW (excluding aerial Service Drops).  |                 | X                |                       |                              |
| Tree trimming on ROWs, where such is not performed as part of the installations described above and if the work materially interferes with the public use and enjoyment of the ROW.  |                 | X                |                       |                              |
| The replacement of existing Above-ground Equipment without adding more plant or significantly increasing its size (pole replacements excluded)   |                 |                  | X                     |                              |

1 “MC” means Municipal Consent.

2 “ROP” means Road Occupancy Permit.

3 “Excavation” means the breaching or breaking up of the Hard Surface of the ROW, and includes activities such as day-lighting, test pitting, digging pits and directional boring but excludes hand-digging.

4 “Above-ground Equipment” means, in all cases above, any structure located on the surface of the ROW used to house or support the plant, and includes cabinets, pedestals, poles and lamp poles but excludes aerial Plant.

| <b>WORK ACTIVITY</b>   | <b>MC<sup>1</sup></b> | <b>ROP<sup>2</sup></b> | <b>Notificati<br/>on only</b> | <b>No Permit or<br/>Notification</b> |
|--|-----------------------|------------------------|-------------------------------|--------------------------------------|
| Pulling cable through existing underground duct  |                       |                        | X                             |                                      |
| The maintenance, installation, testing and repair of plant (including pole replacement) where there is minimal physical disturbance or changes to the ROW  |                       |                        |                               | X                                    |
| Any other Work activity agreed to by the Municipality  |                       |                        |                               | X                                    |
| <b>Service Drops:</b>  |                       |                        |                               |                                      |
| The installation of buried Service Drops that cross a road or break a hard surface of the ROW  | X                     | X                      |                               |                                      |
| The installation of new buried Service Drops that do not cross a road or break the Hard Surface of a ROW, including those installed with a saw cut between the end of the drive and the sidewalk |                       |                        | X                             |                                      |
| The replacement or repair of existing buried Service Drops where there is no breaking of a hard surface  |                       |                        | X                             |                                      |
| The installation, replacement or repair to aerial Service Drops  |                       |                        |                               | X                                    |

## SCHEDULE C

### RELOCATION COSTS

1. **Reimbursement of Relocation Costs.** Upon Municipality-initiated request to relocate Company Equipment, the Municipality shall, upon completion, reimburse the Company for half (50%) of its reasonable and verifiable Relocation Costs.
2. **Beautification.** The Municipality will be solely responsible for and will pay to the Company all Relocation Costs attributable to relocation required for beautification, aesthetics, or other similar purposes. These costs include, but are not limited to, depreciation, betterment, and salvage costs.
3. **Municipality's Capital Works Plan.** Prior to the issuance of a Permit, the Municipality will advise the Company in writing whether the Company's proposed location for new Equipment will be affected by municipal work to take place within the Five (5) years of the Municipality's capital works plan (the "**Capital Works Plan**"). If the Municipality advises that the new Equipment will be so affected and the Company, despite being advised of such, requests the Municipality to issue the Permit, then the Municipality may issue a conditional Permit stating that, if the Municipality requires, pursuant to any project identified to take place within the next Five (5) years of the Capital Works Plan as of the date of approval, the Company to relocate the Equipment within a year of the date of the Permit, the Company will be required to relocate the Equipment at its own cost.
4. **Third Party Relocation Costs - Municipality.** Unless otherwise agreed between the Municipality and a Third Party, in no event shall the Municipality be responsible for:
  - (a) costs of the Company to relocate Equipment at the request of a Third Party; or
  - (b) costs or relocation of Third Party facilities installed on or in the Equipment.
5. **Third Party Relocation Costs - Company.** Unless otherwise agreed between the Company and a Third Party, in no event shall the Company be responsible for:
  - (a) costs of the Company to relocate Equipment at the request of a Third Party or an Affiliate of the Municipality under this Agreement; or
  - (b) costs of relocating the facilities of a Third Party or an Affiliate of the Municipality installed on or in the Equipment.
6. **Adjustments.** Adjustment of Equipment located in the ROW to accommodate a regrading, elevation adjustment or resurfacing activity by the Municipality is considered relocation, and allocation of costs is to be determined pursuant to Section 1 of this Schedule.