

MUNICIPAL ACCESS AGREEMENT

B E T W E E N:

CITY OF HAMILTON

- and -

COGECO CABLE CANADA LP

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MUNICIPAL ACCESS AGREEMENT

THIS AGREEMENT made this 1st day of January, 2010 (the “**Effective Date**”).

B E T W E E N:

CITY OF HAMILTON,
(hereinafter called the “**Municipality**”)

- and -

COGECO CABLE CANADA LP
acting by its sole general partner
Cogeco Cable Canada GP Inc.
(hereinafter called the “**Company**”)

WHEREAS the Company is a Canadian carrier as defined in section 2 of the *Telecommunications Act*, S.C. 1993, c.38, (the “**Telecom Act**”) as amended or is a distribution undertaking as defined in subsection 2(1) of the *Broadcasting Act*, S.C. 1991, c.11, as amended (collectively “**Canadian Carrier**”);

AND WHEREAS the Company wishes to construct, install and maintain its Equipment in, on, under, over, either along or across (“**Within**”) highways, streets, road allowances, lanes, bridges, or viaducts of the Municipality (singularly a “**Highway**” and collectively, the “**Highways**”);

AND WHEREAS, pursuant to section 43 of the Telecom Act the Company requires the Municipality’s consent to perform its Work Within the Municipality’s Highways;

AND WHEREAS the Municipality is willing to permit the use of its Highways where, in its judgment, such use will not interfere with its own service requirements and the public use of

the Highways including the consideration of the economy, safety or any rights or privileges previously conferred or hereafter conferred by the Municipality by contract or otherwise on others not parties to this Agreement to use any of the Highways;

AND WHEREAS the Company acknowledges that it must not unduly interfere with the public use, enjoyment and safety of the Highways and must share the use of the Highways with other providers of services to the public when occupying and using the Highways as described herein;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which by each of the parties hereto is hereby acknowledged, the Municipality and the Company each agree with each other as follows:

Defined Terms

1. In this Agreement, the following terms shall have the respective meanings specified or referred to below and grammatical variations of such terms shall have corresponding meanings:
 - (a) **"Affiliate"** means an affiliated body corporate as defined in the *Canada Business Corporations Act*, as well as any partnership or other unincorporated association in which the Company or any of its affiliated bodies corporate (as so defined) has a controlling interest;
 - (b) **"Agreement"** means this Municipal Access Agreement;
 - (c) **"Business Day"** means a day that is not Saturday, Sunday or a statutory or civic holiday in the province of Ontario;

- (d) “**Commissioner**” means the General Manager of Public Works who has responsibilities for Highways within and under the jurisdiction of the Municipality, or the person designated by him or her or such other person as may from time to time be designated by the Council of the Municipality;
- (e) “**Contractor**” includes subcontractors, workers, suppliers and material men;
- (f) “**Emergency**” means an unforeseen situation where immediate action must be taken to preserve the environment, public health, safety or a service;
- (g) “**Equipment**” means the Company’s wires, fibre-optic and coaxial cables, ducts, conduits, handholes, manholes, pedestals and any other accessories, structures, transmission facilities and equipment;
- (h) “**Hazardous Substance**” means any hazardous substance and includes, but is not limited to electromagnetic or other radiation, petroleum products and by-products, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any applicable law, ordinance, rule, regulation, by-law or code, whether federal, provincial or municipal;
- (i) “**Letter of Credit**” means a letter of credit in the form approved by the Municipality and issued by a chartered bank;
- (j) “**Mainline**” means conduit, direct buried cables, manholes, handwells and buried structures;
- (k) “**Municipality’s Costs**” means the costs and expenses of the Municipality or its agents to complete an activity, based on the cost of labour and materials plus an overhead cost equal to fifteen percent (15%) of the total cost of labour and material. Where requested, the Municipality will provide particulars of such costs and expenses;

- (l) **“Road Occupancy Permit”** means the Municipality’s documents including excavation permits and municipal consents which grant conditional approval for applicants to occupy and/or access a Municipality’s Highway to perform Work;
- (m) **“Third Party”** means any person that is not a party to this Agreement and includes a person that attaches or affixes its equipment to the Company’s Equipment pursuant to an agreement with the Company; and
- (n) **“Work”** means, but is not limited to, any installation, removal, construction, maintenance, repair, replacement, relocation, excavation, adjustment or other alteration of Equipment Within a Highway.

Term

- 2. This Agreement shall be subject to approval by the City Council and upon such approval shall be deemed effective on the Effective Date and shall, unless earlier terminated in accordance with this Agreement, expire five (5) years after the first day of the month in which the Agreement is deemed effective. This Agreement shall automatically renew for up to two (2) consecutive renewal periods of five (5) years each unless either the Municipality or the Company gives written notice of its intention not to renew to the other party not less than six (6) months prior to the expiration of this Agreement or any renewal term thereof, following which all rights and privileges hereunder shall come to an end, save and except for the Company’s continued use of the Highways and the Company’s and Municipality’s applicable obligations pursuant to **Sections 15, 16, 18-23, 25 and 26-36** of this Agreement.

Use of the Municipality’s Highways

- 3. (a) The Municipality hereby provides its consent to the Company to use the Highways for its Work, on a non-exclusive basis, subject to the terms and conditions herein and in accordance with all applicable federal, provincial and municipal statutes,

laws and by-laws or other rules and regulations pertaining to the application and use of the Highways or the Equipment; provided however, that said provincial and municipal statutes, laws and bylaws or other rules and regulations are not in conflict with the applicable federal statutes or regulations or with this Agreement.

(b) No use of a Highway under this Agreement shall create or vest in the Company any ownership of or property rights in a Highway, and the Company shall be and remain a mere non-exclusive occupant of the Highway and placement of the Equipment in a Highway shall not create or vest in the Municipality any ownership in or property rights to the Equipment. Conversely, no use of a Highway or placement of Equipment by the Company Within a Highway shall create in favour of the Municipality any property or ownership rights in such Equipment, and the Company shall be and remain the mere owner or exclusive licensee, as the case may be, of such Equipment.

(c) Nothing in this Agreement shall be construed as affecting any rights or otherwise of others not a party to this Agreement to use any Highway in accordance with the Municipality's legal authority.

4. The Company shall not construct, install or lay any of its Equipment Within a Highway without first obtaining the written consent of the Commissioner with regard to the proposed location of the Equipment Within the Highway. The Company acknowledges that the Commissioner may refuse to grant its consent with regard to any proposed location for reasons in its sole discretion, acting reasonably. The Commissioner shall make a good faith effort to provide and approve alternative suggestions, wherever possible, for routing the Equipment Within the Highway to assist the Company in its efforts to facilitate the installation of its Equipment.
5. Prior to commencing Work of any kind Within a Highway, the Company shall obtain the prior written consent, not to be unreasonably withheld, for such Work from the Commissioner. The Commissioner may establish additional terms and conditions under which the Work may be conducted Within a Highway, including requiring the Company submit detailed construction plans.

6. Despite **Section 4 and Section 5**, the Company may carry out routine maintenance, field testing and subscriber connections without the consent of the Commissioner, but in no case shall it carry out any physical disruption or change to the Highway or its use, without the Commissioner's prior written consent, not to be unreasonably withheld. In the event of an Emergency, the Company shall be permitted to carry out such remedial work as is reasonably necessary to restore and/or maintain uninterrupted services providing the Company complies with **Section 5** within two (2) Business Days of completing the Work.

Conditions of Work

7. All Work conducted by the Company Within a Highway is subject to the following conditions:
- (a) all Work shall be conducted and completed to the satisfaction of the Commissioner and in accordance with this Agreement, all applicable laws, by-laws and the Municipality's policies;
 - (b) the portions of the Equipment which pass over or under existing utilities' buried equipment or which cross beneath streets shall be placed in a carrier pipe or be encased in concrete and shall not place substantial point loading or bear directly on any existing pipe, conduit or structure and, where the Equipment crosses a paved roadway, shall, where practical, be constructed or installed in a trenchless method unless approved otherwise by the Commissioner;
 - (c) if the Company breaks the paved surface of a Highway, it shall at its own expense forthwith temporarily repair and restore the surface of the Highway to substantially the same condition it was in before such Work was undertaken by the Company in accordance, without limitation, with the Municipality's Procedure for the Installation of Utilities on Road Allowances, as amended from time to time, and to the reasonable satisfaction of the Commissioner. The Company shall guarantee the temporary restoration in accordance with the

- conditions of the permit issued by the Municipality. If the Company fails to temporarily repair and restore a Highway after completion of its Work, or to repair, within the warranty period, a temporary restoration it had previously completed to the satisfaction of the Commissioner within twenty-four (24) hours of being notified by the Municipality to do so, the Municipality may effect such repairs and charge all of the Municipality's Costs related thereto to the Company;
- (d) immediately following the completion of the Work, the Company shall advise the Municipality of any Highway requiring permanent restoration and such permanent restoration work shall be carried out by the Municipality and the Municipality's Costs related thereto shall be paid by the Company forthwith upon receipt of an invoice from the Municipality, accompanied by the necessary supporting documents. The Municipality shall make its best efforts to complete the permanent restoration work and render its invoice to the Company within twelve (12) months of completion of the temporary restoration work completed by the Company;
- (e) notwithstanding the foregoing, in the case of Emergencies, and after first making a reasonable attempt to contact the Company, the Municipality reserves the right to make such needed repairs immediately and recover the Municipality's Costs of such repairs;
- (f) if the Municipality requires the Work to be stopped for any *bona fide* municipal purpose or cause relating to public health and safety, special events or any circumstances beyond its control or any reasonable reason, the Company shall cease all such Work forthwith upon receipt of verbal notice from the Municipality, which notice shall include the reason for the Work stoppage. Within two (2) business days of issuing a verbal stop work order under this subsection, the Commissioner will provide to the Company written reasons for such order and advise the Company as to when the stop work order may reasonably be lifted. Upon the Municipality lifting the stop work order in writing to the Company, the Company may resume its Work under the existing approval;

- (g) the Company is responsible for all construction, excavation, installation, maintenance and removal of its Equipment including the cost of such Work. In this regard, the Company is responsible for any cost it incurs to support, maintain, protect or upgrade its equipment made necessary as a result of the normal activities of the Municipality;
- (h) the Company shall comply with municipal tree protection requirements in place at the time such work is undertaken and shall not cut down or trim trees or the roots of trees on any Highway without the prior permission of the Municipality;
- (i) the Company shall take all reasonable measures, to the satisfaction of the Municipality, to clean, remove or conceal graffiti or other unauthorized marks from Equipment. Without limiting the generality of the foregoing, the Company will remove or conceal graffiti which is considered offensive or inflammatory within two (2) Business days' notice from the Municipality and all other graffiti within five (5) Business days of notice from the Municipality or within such other time period as mutually agreeable to the parties. In the event the Company does not remove or conceal the graffiti in accordance with this subsection, the Municipality may take such steps as it deems reasonable and necessary to remove or conceal the said graffiti and shall charge the Municipal Costs related thereto to the Company; and
- (j) the Company shall ensure that all worksites have signage clearly identifying the Contractor working there on behalf of the Company and showing the name and phone number of the Company.

Work of the Company to be in Conformity with all Applicable Laws

8. The Company shall, in performing any and all Work in connection with this Agreement, ensure that:
- (a) its employees and Contractors are qualified for the activities they perform;
 - (b) safe work practices are used in carrying out the Work;

- (c) any and all of its employees, agents and Contractors, at all times, comply with all applicable laws, including but not limited to, the *Workplace Safety Insurance Act*, 1997, the *Occupational Health and Safety Act* and the *Canadian Labour Code* Part II, and all applicable environmental laws; and
- (d) all Work shall be in accordance with applicable law.

Other Obligations of the Company

9. The Company covenants and agrees with the Municipality that:

- (a) after completion of any Work, the Company shall leave the Highway in a neat, tidy, and safe condition and free from nuisance, all to the satisfaction of the Commissioner;
- (b) the Company shall not suffer or permit any lien to be filed or registered against a Highway. In this regard and subject to any existing rights of the Company or consents granted to the Company by the Municipality, any instrument claiming an estate, interest, property right or lien against the Highway or property owned by the Municipality that is directly related to the Equipment or the Work Within the Highway, shall be removed from title to the Highway by the Company within twenty (20) days following notice from the Municipality to the Company of the existence of the instrument, or the Company shall have commenced the process of removing the instrument from title to the Highway and be diligently pursuing the removal within the twenty (20) day period referred to above. If the Company fails to remove or commence to remove such instrument within the twenty (20) days, then in addition to any other right or remedy of the Municipality, the Municipality may discharge or vacate the instrument by paying into Court the amount required by statute to be paid to obtain a discharge, and the amount so paid by the Municipality together with all costs and expenses including solicitor's fees (on a solicitor and his client basis) incurred by the Municipality in connection therewith, shall be due and payable by the Company to the Municipality on demand;

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- (c) if this Agreement is terminated by the Municipality in accordance with the terms hereof, all the unfulfilled covenants, indemnities and obligations of the Company hereunder shall survive such termination;
- (d) the Municipality has made no representations or warranties to the Company as to the state of repair of the Highways or the suitability of the Highways for any business, activity or purpose whatsoever and the Company hereby agrees to take the Highways on an "as is" basis;
- (e) the Company represents and warrants to the Municipality that it is a company in good standing under the applicable laws;
- (f) the Company will agree to circulate and obtain related approvals for all its permit applications to the Utilities Coordinating Committee ("UCC") of the Municipality;
- (g) the Company shall apply for and maintain active membership in the UCC of the Municipality and bear a reasonable share of its proportionate costs related to the operation of any utility plan registries maintained in connection with the work of such committees, provided such utility plan registry is generally accepted in the industry and where such operation is agreed to by the Company, in accordance with the cost-sharing arrangement established by such committees from time to time; and
- (h) the Company will indemnify and save harmless the Municipality from any claims, demands, causes of action, loss, costs or damages, legal fees and disbursements that the Municipality may suffer, incur or be liable for, resulting from the Company providing inaccurate locates of its Equipment, or related to construction of Equipment in a location other than as approved by the Municipality.

Supply of Information

10. Upon request of the Municipality at the time of municipal consent application, the Company shall provide to the Municipality, at its own expense and within two (2) months of completing the construction or installation of any of the Equipment, "as-constructed" record drawings to the standards as mutually agreed upon in the UCC and in an electronic

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format compatible with the UCC's utility plan registry. Upon request from the Company, and subject to any licensing restrictions relating to the release of information, any available licensing digital ortho-imagery and/or mapping shall be provided by the Municipality to the Company at the Company's expense for the Company's use as a base map on which to submit permits to the Municipality.

11. The Company shall, at the request of the Commissioner to support the development and improve the accuracy of the utility plan register, provide to the Municipality, in a format satisfactory to the Municipality a listing or record of the location of all Mainline Equipment installed, altered, relocated, or removed by it, or on its behalf in the Highways to the date of such request.
12. (a) Upon receiving a request from either party, or its authorized agent, the responding party shall, at no cost to the other, provide locates (stake outs) of its equipment:
 - (i) within two (2) hours in the event of an emergency, using reasonable best efforts;
 - (ii) within a reasonable time to be agreed upon the Company and the Municipality in all other cases.
- (b) The locates provided by the Company to the Municipality for pre-design shall contain sufficient design information and survey detail as required by the Commissioner.
13. Each party shall provide to the other party a list of southern Ontario emergency contact personnel who shall be available at all times and shall ensure that the aforementioned list is current.

Additional Ducts or Cables

14. Within ten (10) days of receiving a submission for proposal for Work from the Company, the Municipality may submit a written request for the installation of additional ducts and/or cabling on behalf of the Municipality at the same time the Work is installed provided the request does not unduly delay the completion of the proposed Work. The

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costs associated with the supply and installation of the additional ducts and/or cabling will be the responsibility of the Municipality and be based on the proportionate costs incurred by the Company, including design and engineering costs, in installing the additional ducts and/or cabling. Upon installation and payment in full to the Company, the additional ducts and/or cabling will become the property of the Municipality.

Fees

15. The Company shall pay to the Municipality upon execution of this Agreement and annually thereafter on the anniversary date of the execution of this Agreement, an annual fee in the amount of five thousand dollars (\$5,000) plus applicable taxes, as compensation to the Municipality for its causal costs in the administration of this Agreement.
16. The Company shall pay to the Municipality all applicable amounts, including application fees, permit fees, including excavation or Road Occupancy Permit fees and charges, as charged by the Municipality in accordance with applicable Federal and Provincial law. The Municipality shall give notice to the Company through the UCC process with respect to any increase in such fees or the application thereof.
17. The Company and the Municipality shall pay simple interest at the Prime Rate plus two percent (2%) per annum on all amounts required to be paid under this Agreement, excepting any amounts that may be in dispute which shall not be charged interest, from the due date until payment in full, both before and after judgment.

Relocation of Equipment

18. Upon receipt of no less than sixty (60) days written notice from the Municipality or such other time as is reasonable as agreed to by the parties, having consideration for the complexity and nature of the Work required to complete the relocation and to the minimizing of the potential for service losses or interruptions that may affect the Company's customers, the Company shall relocate or commence to relocate its Equipment Within a Highway. The Municipality will make a good faith effort to avoid

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damage to the Equipment affected by the relocation and to assist the Company in its efforts to ensure uninterrupted service to its customers.

In cases of emergency, after first making a reasonable attempt to contact the Company, the Municipality may take such temporary measures with respect to the Equipment it deems necessary for public safety or the public interest in the circumstances. The Company shall forthwith reimburse the Municipality for the Municipal Costs thereby incurred which are directly related to the existence of the Equipment Within the Highway.

19. If the Company fails to complete the relocation of the Equipment in accordance with the above Section, the Municipality may, but is not obligated to, at its option complete such relocation and the Company shall pay the Municipality the Municipality's Costs related thereto.
20. The Municipality will make a good faith effort to provide and approve alternative suggestions, wherever possible, for re-routing the Equipment Within the Highway affected by the relocation to assist the Company in its efforts to facilitate the uninterrupted provision of services to its customers.

Reimbursement for Relocation Costs

21. The Municipality shall reimburse the Company for its costs of relocating its Equipment as follows:
 - (a) for Equipment installed more than ten years prior to the execution of this Agreement, the Company shall be responsible for all costs of relocating this Equipment;
 - (b) for Equipment installed prior to the execution of this Agreement but installed less than ten years prior to the execution of this Agreement, the provisions of the *Public Service Works on Highway Act* shall apply to such Equipment;
 - (c) for Equipment installed after the execution of this Agreement and within four years of its installation, the Municipality shall reimburse the Company for 100% of its relocation costs of such Equipment; and

thereafter the Municipality shall reimburse the Company for its relocation costs of such Equipment based upon the following chart:

Year After Installation of Equipment	Percentage of Relocation Costs Paid by Municipality
Fifth Year	75%
Sixth Year	50%
Seventh Year	25%
Eighth Year and subsequently	0%

22. Notwithstanding the provisions of the previous subsections, the parties agree that, depending on the circumstances, any one of the following exceptions may apply:
- (a) Special circumstances may arise with respect to a specific relocation whereby the parties may mutually agree to negotiate alternative cost sharing arrangements. Such alternative arrangements shall be agreed upon in writing by both parties prior to approval of a new location;
 - (b) At the time of the Company's application, the Municipality shall notify the Company of any municipal project(s) that are scheduled within the Municipality's five (5) year plan that may necessitate the relocation of the Company's Equipment planned to be installed under such application. If all or a part of the Company's Equipment approved under such application needs to be relocated within the period referred to in the previous subsection due to such identified project(s), the Company will be totally responsible for the cost of the relocation if it installs the Equipment approved by such application. The Municipality shall advise the Company of its five (5) year plans through the process of the UCC meetings;
 - (c) Where a particular project is funded by someone other than the Municipality or the Company and that funding allocates a specific amount to pay for the cost of the relocation of Company Equipment, then the amount paid by such other party to the Company for relocation shall be applied in reduction of the total Equipment relocation cost. The formula in **Section 21** above shall be applied to the balance of the total cost of Equipment relocation to calculate the amount, if any, that the

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Municipality shall pay the Company for its share of any relocation costs in this subsection;

- (d) The Municipality shall have no financial responsibility for costs incurred by the Company to obtain a private easement outside of the Highway resulting from relocation of Equipment;
- (e) The Company shall be solely responsible for any costs and expenses associated with the relocation of any Equipment by the Company and initiated at the Company's sole behest; and
- (f) In no event shall the Municipality be responsible in any way for costs incurred for relocating Equipment for which the Equipment is not installed in the location approved by the Municipality. Where records are non-existent or Highway conditions may have changed, the parties agree to act reasonably in allocating relocation compensation.

Letter of Credit

23. Upon the Municipality's request, the Company shall provide to the Municipality security for the performance of its obligations consisting of a Letter of Credit or other form of security acceptable to the Municipality in an amount that represents the projected restoration costs to the Highway resulting from the Company's pending Work, and naming the Municipality as beneficiary. The Company shall keep such Letter of Credit in effect for a period of one (1) year after completion of the final restoration Work to the Highway. If requested by the Municipality, the Letter of Credit shall be provided prior to starting the proposed Work.

Liability and Indemnification

24. (a) Except for negligence or wrongful act of the Municipality, its servants, agents or employees, the Company shall, at all times, defend, indemnify and save harmless the Municipality from and against all claims, including costs related thereto, for all damages or injuries including death to any person or persons and for damage

to any property, arising out of the Company's Work in the Highways, or utilizing its Equipment for the delivery of its services to Third Parties or users.

- (b) Except for negligence or wrongful act of the Company, its servants, agents or employees, the Municipality shall, at all times, defend, indemnify and save harmless the Company from and against all claims, including costs related thereto, for all damages or injuries including death to any person or persons and for damage to any property, arising out of the Municipality's activities in the Highways.
- (c) The rights to indemnity provided for in this Section shall survive the expiration or any termination of the Agreement.
- (d) Despite anything contained in this Agreement, the Municipality and the Company shall not be liable to each other in any way for special, incidental, indirect or consequential losses, including damages for pure economic loss, howsoever caused or contributed to, in connection with this Agreement or the Highway even if advised of the possibility thereof.

Insurance

- 25. The Company shall maintain insurance in an amount and description as set out below to protect the Company and the Municipality as additional insured solely with respect to liability arising out of the negligence of the Company, its employees, agents and Contractors, from claims for damages, personal injury including death, and for claims from physical damage to tangible property which may arise from the Company's operations or Work or failure to do Work under this Agreement, including without limitation the Company's use or maintenance of the Equipment on or in the Highways or any act or omission of the Company's agents or employees while engaged in Work 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.

- 26. The Company shall obtain and maintain at its own expense the following policies of insurance:

(a) Commercial General Liability Insurance, written on IBC Form 2100 or its equivalent, including but not limited to bodily and 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 \$2,000,000 per occurrence or, an annual aggregate of not less than \$4,000,000 for completed Work and subject to the following;

- (i) where the description of the project, supply or Work provides for or contemplates:
 - (I) the use of explosives for blasting; or
 - (II) vibration from pile driving or caisson work; or
 - (III) the removal or weakening of support of any property, building or land whether such support be natural or otherwise;

then explosion, collapse and underground (XCU) coverage shall be included and same shall be noted on the certificate of insurance.

- (ii) coverage shall be included for pollution from "hostile fires".
- (iii) non-owned automobile liability limit of not less than \$1,000,000 per accident in respect of vehicles rented or otherwise not owned by the Company that are used or operated on its behalf for the Work under this Agreement.
- (iv) coverage shall include Cross Liability and Severability of Interest clauses.
- (v) the Municipality and those for whom it is responsible in law, shall be added as an additional insured but solely with respect to liability arising out of the negligence of the Company, its employees,

agents and Contractors.

- (b) Standard Form Automobile 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 per accident in respect of the use or operation of vehicles owned or leased by the Company for Work under this Agreement.
- (c) The required insurance limits for comprehensive general liability and automobile insurance may be composed of any combination of primary and excess (or 'umbrella') insurance policies.
- (d) The Company shall maintain property insurance, as may be applicable, with respect to loss or damage (including fire, theft, burglary, etc.) of its own property and property in its care, custody and control, including its equipment, tools and stock, used in connection with the Agreement. Such Property insurance shall be written as a replacement cost basis of said property, repairs, additions or equipment being installed, otherwise being handled or stored on or off premises and include a waiver of subrogation against the Municipality;
- (e) Errors and Omissions liability insurance on a "claims-made" basis with an aggregate insured limit of \$3,000,000 covering economic damages specifically arising from errors & omissions in the rendering of professional services under this Agreement.


27. The insurance policies required to be maintained by the Company shall:

- (a) be primary to the extent of the Municipality's rights as additional insured and shall be placed with insurers maintaining a minimum A.M. Best "A-" rating that is licensed to carry on business in Ontario;
- (b) be maintained continuously during the course of carrying out of the Work;
- (c) provide that at least thirty (30) days prior written notice (fifteen (15) days in the case of automobile liability insurance and ten (10) days in the event of non-payment of premiums) shall be given to the Municipality by the Insurer before policy cancellation, or termination or material change of insurance coverage to the

detriment of the Municipality.

28. 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 coverage shall not be limited by the dollar amount of the Agreement.

Proof of Insurance and Claims Protocol

29. The Company shall deposit with the Municipality prior to the execution of this Agreement certificates of insurance as well as renewal certificates thereafter.
30. The Company shall not do or omit to do anything that would impair or invalidate the insurance policies.
31. 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 the Agreement.
32. Claims reported to the Company by a third party or by the Municipality (a “**Claimant**”) shall be promptly investigated by the Company. The Company shall make contact with the Claimant within forty-eight (48) hours of receipt of notice of a claim. The Company shall initiate an investigation of the claim immediately upon notice, and advise the Claimant by letter of its position regarding resolution of the claim within twenty (20) Business Days of the notice. The Company shall include in its letter of resolution the reasons for its position. Failing acceptance of the resolution by the Claimant of the proposed resolution, the Company agrees to report the claim to its insurer for further review and response to the Claimant. Failure to follow this procedure shall permit the Municipality to investigate and resolve any claims and offset the resultant costs against any monies due, from time to time, under the Agreement.
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WSIB

33. The Company, prior to commencing the Work:

- (a) (i) shall submit to the Municipality an original Clearance Certificate from the Ontario Workplace Safety and Insurance Board (“WSIB”) and shall provide additional certificates with respect to such coverage as often as the Municipality deems necessary during the term of the Agreement to ensure continued good standing with the WSIB; or
 - (ii) furnish proof in a form satisfactory to the Municipality from the WSIB that the Company does not require WSIB insurance, but in such a case if the Company changes its status during the term of the Agreement so that such coverage is required, the Company shall immediately provide the Municipality with the certificate required under **clause (i)**;
- (b) Where a substantial portion of the Work to be done under the Agreement is to be carried out by a subcontractor, the Municipality may require the Company to furnish the same evidence as provided under subsection (a).

Environmental Liability

34. The Municipality is not responsible, either directly or indirectly, for any damage to property, including any nuisance or injury to any person, howsoever caused, including death, arising from the escape, discharge, spill or release of any Hazardous Substance resulting from the Company’s use of the Highway. The foregoing release shall not extend to any loss, damage, injury or death caused by the negligence or wilful misconduct of the Municipality, its employees, agents, Contractors or those other persons for whom the Municipality is in law responsible.

35. The Company agrees to assume all environmental liabilities relating to its use of the Highway, including but not limited to, any liability for clean-up of any Hazardous

Substance on or under the Highway which arise from:

- (a) the operations or Work of the Company Within the Highway; or
- (b) any Equipment brought Within the Highway by the Company, its Contractors, agents or employees or by any person with the express or implied consent of the Company.

The Municipality agrees to provide notice to the Company of any liability arising under this provision in a reasonable period of time after the occurrence. For clarity, the Company shall not be liable in any manner for any events which occurred before its Equipment occupied the Highways.

Legislative Change

- 36.** (a) If at any time subsequent to the parties entering into this Agreement:
- (i) the provincial or federal government or a regulatory authority, board or body, including the CRTC, enacts or repeals any legislation or regulation, or orders, directs or mandates anything which pertains to the subject matter of this Agreement; or
 - (ii) there is rendered any decision of a court or tribunal which pertains to the subject matter of this Agreement;
- then either party (the “**Requesting Party**”) may notify the other of its intention to require the other party to enter into good faith negotiations to amend this Agreement to conform to such legislation, order or decision or to enter in a new agreement reflecting such legislative or regulatory action, court, tribunal decision or board, as the case may be, within thirty (30) days after written notice (the “**Notice**”) from the Requesting Party.
- (b) If the parties are unable to re-negotiate the terms and conditions of this Agreement under **subsection 40(a)** at the expiration of the Notice, then, either party may, with thirty (30) days prior written notice to the other party, refer the unresolved matter to the CRTC or any successor authority, or alternatively to non-binding arbitration for resolution, in accordance with **Section 40**.

Am.

Termination

37. (a) The Municipality and the Company mutually agree that should either party materially fail to carry out any of the terms, covenants and conditions herein contained or default in any of its obligations under the terms hereof and fail within thirty (30) days after receiving written notice from the other party to correct or commence to correct any such failure capable of correction, then this Agreement may be terminated by the non-defaulting party with written notice to be effective upon receipt, provided that the defaulting party shall continue to be liable to the non-defaulting party for all payments due and obligations incurred under the Agreement prior to such termination.
- (b) Despite **subsection 38(a)**, the Municipality may terminate this Agreement immediately and without prior notice in the event that:
- (i) the Company becomes insolvent, makes an assignment for the benefit of its creditors, has a liquidator, receiver or trustee in bankruptcy appointed for it or becomes voluntarily subject as a debtor to the provisions of the *Winding-Up Act, the Companies' Creditors Arrangement Act, the Bankruptcy and Insolvency Act*, as amended from time to time, or any successor legislation;
 - (ii) the Company transfers, assigns, or sublicenses any part or all of its interest in this Agreement other than in accordance with the provisions of this Agreement, or attempts to do same.

Rights Upon Termination – Continuation of Agreement

38. Notwithstanding any other provision of this Agreement, if this Agreement is terminated (other than in accordance with **subsection 37(b)**) or expires without renewal, then, subject to the Company's rights to use the Highways 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 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.

Rights Upon Termination – Abandonment of Equipment.

39. If this Agreement is terminated in accordance with **subsection 37(b)** and the Company confirms in writing to the Municipality that it intends to abandon and no longer use the Equipment, then, at the Municipality’s option:
- (a) the Company shall, within six months’ written notice from the Municipality and at its own expense, remove all or any portion of its Equipment that is used solely by the Company from the affected Highways and restore such Highways in accordance with this Agreement, failing which the Municipality may remove such Equipment and restore the affected Highways and charge its reasonable costs of doing so back to the Company; or
 - (b) all right, title and interest in the Equipment will vest in the Municipality on an “as is, where is” basis, free and clear of all liens and charges, and the Company shall have no further right, title or interest in such Equipment.

Arbitration

40. (a) In the event of any dispute or disagreement between the parties hereto as to the meaning or interpretation of anything contained in this Agreement or as to the performance or non-performance hereof or as to the respective rights and obligations of the parties hereunder, the parties may agree to refer such dispute or disagreement to non-binding arbitration.

Am.

- (b) The procedure upon an arbitration pursuant to the provisions of subsection 39(a) shall be as follows:

Within twenty (20) days after the written request of either of the parties hereto for arbitration, in the event the parties are unable to agree upon a single, mutually acceptable arbitrator, each of them shall appoint one arbitrator and the two so appointed shall, within twenty (20) days after the expiration of the twenty day period select a third. In case either of the parties hereto fails to name an arbitrator within twenty (20) days after the written request for arbitration, the arbitrator appointed shall be the only arbitrator. In case the two arbitrators so appointed are unable to agree on a third arbitrator within twenty (20) days after the expiration of the first twenty day period mentioned above, application shall be made as soon as reasonably possible to any Judge of the Superior Court of Justice for the appointment of a third arbitrator. The arbitrator or arbitrators so appointed shall have all the powers accorded to arbitrators by the *Arbitrations Act*, R.S.O. 1991, SO 1991, c. 17. Either party may appeal an arbitration award to the Courts of the Province of Ontario on a question of law, or either party may apply to a court of competent jurisdiction;

- for an interim measure of protection; or
- for any order for relief which the arbitrator or arbitrators do not have the jurisdiction to provide.

Transfers

41. (a) This Agreement may be sub-licensed, granted, transferred or assigned:
- (i) by the Municipality or the Company in whole or in part to any sub-licensee, grantee, transferee or assignee with the other party's prior written consent, which consent shall not be unreasonably withheld; or
 - (ii) by the Company in whole or in part to a parent company, any Affiliate, subsidiary, partnership, joint venture or any other entity in the context of any corporate re-organization with notice to the Municipality.
- (b) Any sub-licensee, grantee, transferee or assignee shall be bound by the terms and

conditions of this Agreement as those terms and conditions relate to the interest sub-licensed, granted, transferred or assigned; and such sub-license, grant, transfer or assignment shall not release the Company from its obligations and liabilities under this Agreement until the Municipality has entered into a satisfactory agreement with the sub-licensee, grantee, transferee or assignee.

- (c) The Company may pledge the license granted by this Agreement as security without the consent of the Municipality to any person directly or indirectly providing financing to the Company but such pledge shall not release the Company from its obligations and liabilities under this Agreement.

Notice

42. Any notice required or permitted to be given hereunder or any tender or delivery of documents may be sufficiently given by personal delivery or, if other than the delivery of an original document, by facsimile transmission to the other party at the following address:

Office of *City* Clerk

Attn: Gord McGuire, OLS, OLIP
Manager, Survey and Technical Services
City of Hamilton
Public Works
71 Main Street West, 2nd Floor
Hamilton, Ontario L8P 4Y5

and to the Company at the following address:

Attn: Cogeco Cable Canada LP
Senior Manager Municipal Relations
950 Syscon Road
PO Box 5076, STN LCD1
Burlington, ON L7R 4S6

with a courtesy copy to:

Cogeco Cable Canada GP Inc.

Attn: Legal Affairs
5 Place Ville-Marie, Suite 1700
Montreal, PQ H3B 0B3
Telecopier : (514) 874-0776

Any notice may also be given by prepaid registered mail mailed within the Province of Ontario and such notice shall be effective five (5) days following the date of mailing, except in the event that there shall be a disruption in postal services at the date of mailing, in which case notice shall be effective by personal delivery or a facsimile transmission followed by receipt of original notice the next business day of transmission as stated above.

Interpretation

43. The Company agrees that it shall pay (if assessed for same) taxes, charges, duties, rates, levies and business taxes in respect solely of the use by it of the Highways pursuant to the rights herein allowed to the Company, that may arise pursuant to *The Assessment Act of Ontario*, as and when the same become due.
44. This Agreement benefits and binds the Municipality and the Company and the successors of each of them.
45. If any term of this Agreement is found to be invalid, illegal, or unenforceable by a court having the jurisdiction to do so, that term is to be considered to have been severed from this Agreement and the rest of this Agreement shall remain in force unaffected by the severance of that term.
46. Time shall be of the essence in this Agreement.
47. Words having well known technical or trade meanings within the context of municipal construction and the communications industry shall be so construed, and all listings of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.

48. All references to statutes in this Agreement shall include amendments thereto, regulations thereof, and successor legislation thereafter.
49. If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day.
50. The relationship of the Company and the Municipality established by this Agreement is that of independent contractors, and nothing in this Agreement shall be construed:
- (a) to give either party the power to direct or control the day-to-day activities of the other;
 - (b) to constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; or
 - (c) to allow either party to create or assume any obligations on behalf of the other party for any purposes whatsoever.
51. No alleged waiver or breach of this Agreement is effective unless it is an express waiver in writing of the breach in respect of which it is asserted against the party alleged to have given the waiver. No waiver by a party of any breach of this Agreement operates as a waiver of any other breach of this Agreement.
52. In this Agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.
53. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, whether written or oral between the parties. Except as provided in this Agreement, there are no conditions, covenants, agreements, representations, warranties, acknowledgments or other provisions, express or implied, collateral, statutory or otherwise, that form part of or affect this Agreement. The execution of this Agreement has not been induced by, nor do any of the parties rely upon or regard as material, any



conditions, covenants, agreements, representations, warranties, acknowledgments, or other provisions not expressly made in this Agreement.

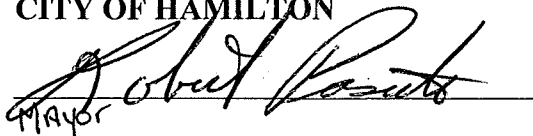
54. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada which may be applicable to a party in the Province of Ontario.
55. In the performance of obligations and the exercise of rights or discretion under this Agreement, or whenever the approval, consent or a decision is requested or required from either party under this Agreement, each party shall at all times act reasonably.



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

SIGNED, SEALED AND DELIVERED

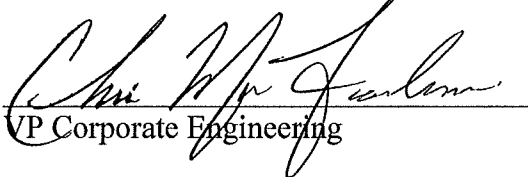
CITY OF HAMILTON


MAYOR

Clerk

Date: April 19, 2010

COGECO CABLE CANADA LP
acting by its sole general partner
Cogeco Cable Canada GP Inc.


VP Corporate Engineering

CHRIS MACFARLANE

Print Name

I have the authority to bind the corporation

Date: 2010-01-15

OFFICE OF THE CLERK
APPROVED BY COUNCIL
DATE: Apr 14, 2010
REPORT: PLW 10-005 ITEM 2
INTL. [initials] YEAR/FILE 2010-6792