

ROAD USER AGREEMENT

THIS ROAD USER AGREEMENT (the "**Agreement**") made in duplicate this [__] day of February, 2022 (the "**Effective Date**")

B E T W E E N:

THE CORPORATION OF THE COUNTY OF ESSEX
(hereinafter referred to as the "**County**")

OF THE FIRST PART

- and -

COGECO CONNEXION INC.
(hereinafter referred to as "**Cogeco**".)

OF THE SECOND PART

WHEREAS the County is the owner of and Road Authority for a network of Highways (as defined below) in the County of Essex, including, among others, County Roads 8, 14, 18, 31, 33, 34, and 37 within the Municipality of Leamington, County Roads 18, 23, 29, and 31 within the Town of Kingsville, and County Roads 11, 12, 15, 18, 20, 23, and 50 within the Town of Essex;

AND WHEREAS Cogeco is a telecommunications company licensed by the Canadian Radio and Telecommunications Commission ("**CRTC**"), that operates, among other things, as an internet service provider;

AND WHEREAS Cogeco has requested permission from the County to construct, install, and maintain cable lines for the provision of telecommunication services in the County of Essex (the "**Installation**"). Portions of the Installation shall run across, over, and/or under certain County Highways (as defined below), including across, over, and/or under certain sections of:

- (a) County Roads 8, 14, 18, 31, 33, 34, and 37 within the Municipality of Leamington, in the County of Essex, with the route of the Installation depicted in **Schedule "A"** attached hereto;
- (b) County Roads 18, 23, 29, and 31 within the Town of Kingsville, in the County of Essex, with the route of the Installation depicted in **Schedule "B"** attached hereto; and
- (c) County Roads 11, 12, 15, 18, 20, 23, and 50 within the Town of Essex, in the County of Essex, with the route of the Installation depicted in **Schedule "C"** hereto.

AND WHEREAS Cogeco shall provide upon request of the County proof of Cogeco having obtained any necessary lower tier municipal approvals related to its Installations;

AND WHEREAS the County has agreed to grant Cogeco permission to perform the Work (as defined below) along the Highways (as defined below), on certain terms and conditions as set out in this Agreement;

AND WHEREAS by By-law passed by the Council of the County (the "**By-law**"), the duly authorized individuals have been authorized and directed to execute this Agreement on behalf of the County;

AND WHEREAS the Effective date of this Agreement shall be the date this Agreement is executed by the County, which execution shall not occur until all Schedules have been finalized, approved by the County and attached to this Agreement, and the Agreement has been executed by Cogeco;

NOW THEREFORE IN CONSIDERATION of the undertakings and covenants hereinafter expressed and upon the terms hereinafter set forth, and other valuable consideration, the receipt and sufficiency of which is hereto acknowledged, the County and Cogeco mutually covenant and agree as follows:

1. **RECITALS**

1. The Parties warrant that the above recitals are true and that same form an integral part of this Agreement and are accordingly hereby incorporated into this Agreement by reference.

2. **DEFINITIONS**

1. In this Agreement:

- (a) "**Applicable Laws**" means any and all applicable laws, statutes, codes, ordinances, principles of common and civil law and equity, rules, approvals, regulations, and applicable federal laws and municipal by-laws which are binding upon the Work and the Installation;
- (b) "**Approved Plans**" means, as applicable, the Plans for the Installation as approved by the County Engineer, in his reasonable discretion, in accordance with the provisions of this Agreement;
- (c) "**County Engineer**" means the most senior individual employed by the County with responsibilities for Highways within the County or the person designated by such senior employee or such other person as may from time to time be designated by the Council of the County;
- (d) "**Crossing(s)**" means any place where any component(s) of the Installation cross, in whole or in part, any travelled portion of a Highway;

- (e) "**Highway(s)**" means any common and public highway, street, roadway, avenue, parkway, driveway, square, bridge, viaduct or trestle, any part of which is intended to be used for or is used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance now or at any time during the term hereof under the jurisdiction of the County, and without limiting the generality of the foregoing, for the purposes of this Agreement specifically refers to parts of County Roads 8, 11, 12, 14, 15, 18, 20, 23, 29, 31, 33, 34, 37, and 50, and the rights-of-way thereof;
- (f) "**Installation**" has the meaning given to such term in the Recitals;
- (g) "**Party**" means, singularly, either the County or Cogeco and "**Parties**" means, collectively, both the County and Cogeco;
- (h) "**Plan**" means:
 - (i) construction plans for the proposed Installation, showing the locations and boundaries within the County's jurisdiction where such construction is proposed to take place; and,
 - (ii) all other relevant plans, drawings and other information as may be ordinarily required by the County as part of its regular approval/permit issuing processes under Applicable Laws.
- (i) "**Term**" has the meaning given to such term in **Section 5** of this Agreement;
- (j) "**Tree Work**" means cutting, trimming, or removing, trees or hedges growing on the Highway(s);
- (k) "**Work**" or "**Works**" means any work related to the installation, construction, maintenance, repair, replacement, relocation, removal, operation, adjustment, or other alteration of the Installation to be undertaken by Cogeco or its agents or contractors over, under, and/or along the Highway; and

whenever the singular, masculine or feminine is used in this Agreement, it shall be considered as if the plural, feminine or masculine has been used where the context of the Agreement so requires.

3. SCHEDULES

1. The following Schedules (as may be amended from time to time by mutual agreement of the Parties) are attached hereto and form part of this Agreement:

Schedule "A" – Route depicting the areas of the Installation within the Municipality of Leamington;

Schedule "B" – Route depicting the areas of the Installation within the Town of Kingsville;

Schedule "C" – Route depicting the areas of the Installation within the Town of Essex;

Schedule "D" – Permit Fees and Charges; and

Schedule "E" – Relocation Cost Recovery

4. GRANT

1. The consent, permission, and authority of the County is hereby given and granted to Cogeco, its employees, agents, and contractors:
 - (a) to enter upon and use the Highways to perform the Work, in, on, over under, across and/or along the Highways in accordance with the Approved Plans and the terms of this Agreement. The consent, permission, and authority hereby given extends only to the Highways under the jurisdiction of the County; and
 - (b) to do such other things as may be required by the terms of this Agreement and approved by the County to construct the Installation and perform the Works.
2. The consent, permission, and authority hereby given and granted shall be subject to:
 - (a) the rights and obligations of the County to construct, maintain, reconstruct, rehabilitate, and use at any and all times all Highways under the jurisdiction of the County;
 - (b) the right of free and legal use of all Highways by all persons entitled to use them;
 - (c) the rights of the owners of properties adjoining the Highways to enjoy full access to and from the Highways and of constructing crossings and approaches from their properties; and
 - (d) the rights and privileges that the County has granted or may grant to other persons (including, but not limited to, commuters, agricultural vehicles, overweight/oversized loads, and maintenance crews for maintenance of drainage ditches and roadway repairs) on the Highways;

all of which rights are expressly reserved.

3. Save as hereinafter provided, the consent, permission, and authority hereby given and granted to Cogeco to perform the Works shall at all times be subject to Cogeco obtaining all permits and/or approvals required from the County under Applicable Laws, which shall be administered in accordance with the procedures set forth in **Section 6** of this Agreement, and such other approvals as required under this Agreement.
4. The County acknowledges that the placement of any of the Installation, or any Cogeco property, within the Highways shall not create or vest in the County any ownership or property rights in the Installation or such Cogeco property.

5. TERM

1. This Agreement shall have an initial term of twenty (20) years and shall be renewed automatically for successive one (1) year periods (the initial term and each renewal term collectively referred to herein as the "**Term**") unless:
 - (a) this Agreement is terminated by either Party in accordance with this Agreement;
 - (b) a Party delivers written notice of non-renewal to the other Party at least 120 days prior to the expiration of the then current Term; or
 - (c) this Agreement is replaced by a new agreement between the Parties.
2. For clarity, during the initial term and any renewal term, the burdens on the lands owned by the County, and Cogeco's rights granted herein, pursuant to the terms and conditions of this Agreement, shall be binding upon and deemed to run with all Highways and lands owned by the County.
3. Notwithstanding the above, in the event that the County provides notice of non-renewal or termination to Cogeco prior to expiration of the then-current Term and Cogeco still needs its Installation or to perform further Work within or around the Highways, the Parties shall use commercially reasonable efforts to negotiate and enter into a fresh Road User Agreement, with the Parties relying on the Dispute Resolution provision provided by **Section 25** below, if necessary.

6. APPROVAL PROCESS

1. Before commencing any Works that require the issuance of County permits or County approvals under Applicable Laws, Cogeco will deposit both a digital copy and a hard copy of all necessary Plans (including any amendments thereto) with the County Engineer for review and approval pursuant to the terms of this **Section 6**.
2. The County Engineer shall use commercially reasonable efforts to review and provide approval or refusal of such Plans within ten (10) business days of receipt. In the event the County Engineer does not approve the Plans, the County Engineer shall issue written

instructions to Cogeco with any additional information or modifications which are reasonably required by the County Engineer with respect to the Plans, including the imposition of any reasonable terms and conditions as the County Engineer considers to be reasonably required to meet the County's requirements in its capacity as custodian of the Highways owned by the County. The Parties agree to work together in good faith to consider amendments to Plans, provided such amendments comply with Applicable Laws. However, Cogeco shall not undertake Work of any kind until it is in receipt of the Approved Plans or amended Approved Plans, as the case may be, and the relevant permits have been issued by the County.

3. Should there be any disagreement between the County and Cogeco regarding the requirements of any Plan to be submitted by Cogeco, the opinion and requirements of the County Engineer in his reasonable discretion shall prevail.
4. Cogeco is required to consult with the County Engineer in advance of commencing any Works in order to determine what permits and/or approvals are required and agrees to apply for and obtain all such permits and/or approvals from the County for the Works.
5. Cogeco further agrees that prior to commencement of any Work pursuant to this Agreement, it shall obtain all other permits and approvals which are required pursuant to any Applicable Laws, including, where necessary, the approval of any federal, provincial, and/or lower tier municipal government, and the minimum standards of the County, in order to commence any of the Works.
6. Furthermore, it shall be the sole and absolute responsibility of Cogeco to notify any other person or body of which it is aware or otherwise notified by the County, which is operating any equipment, installations, utilities, or other facilities, within the Highways where such Work is to be conducted, of the details of the anticipated Work so as to minimize the potential interference with or damage to such existing equipment, installation, utilities, and other facilities by the said Work, and so as to maintain the integrity and security thereof. Should any dispute arise between Cogeco and any other user of the Highway(s), it is the sole responsibility of Cogeco to resolve the dispute to the satisfaction of itself and any affected third party.

7. **HIGHWAYS**

1. Both the County and Cogeco acknowledge and agree that the parts of the County Roads depicted on **Schedules "A", "B", and "C"** hereto, or such further Highways of the County as the County may expressly agree, are the only Highways authorized for use by Cogeco and its agents and/or contractors, for the Works and the Installation.
2. If and to the extent Cogeco wishes, after commencement of the Works, to alter the specific placement of the Installation set out in the Approved Plans, Cogeco shall request and obtain the prior written approval of the County Engineer prior to altering the Works contained in the Approved Plan related to the scope or location of the Installation, and shall enter into

such amendments to this Agreement as the County may require. Such approval process shall be governed by **Section 6** of this Agreement.

3. In the event it becomes necessary, during the construction of the Installation, for Cogeco to transport goods by way of oversized loads on any County Highway(s), Cogeco shall obtain all of the necessary permits from the County to do so, including posting any security required pursuant to such permits, and to comply with any reasonable conditions that may be required or imposed by the County at that time. Provision of such approvals shall be subject to the timelines specified in **Section 6**.
4. Cogeco hereby agrees to comply with the provisions of all relevant By-laws of the County with respect to weight restrictions on the Highways, unless and until it receives the express written permission of the County Engineer to be exempted from the weight restrictions, with such permission and terms of such permission at the sole and absolute discretion of the County Engineer.

8. RELOCATION AND ABANDONMENT

1. In the event the County, acting reasonably, deems it necessary or requires that the Installation be relocated within the Highways and, or be altered in its location on the Highways, Cogeco hereby agrees to relocate and/or alter the location of the Installation and restore the affected area, with costs for same to be apportioned in accordance with **Schedule "E"** hereto, provided that the County gives one hundred and twenty (120) days' notice in writing to Cogeco of the requirement to relocate or alter the location of the Installation, with the timeline for such relocation and/or alteration to be negotiated by the Parties acting reasonably, in an attempt to ensure continued access to the services provided to the customers of Cogeco. It is acknowledged and agreed that in the event weather conditions negatively impact the ability of Cogeco to comply with the provisions of this paragraph within the timeline agreed to, the said timeline shall be extended accordingly to allow for the delay caused by adverse weather conditions.
2. The County must make reasonable efforts to provide alternative routes for the Installation affected by the relocation to attempt to ensure uninterrupted service to Cogeco's customers. Once Cogeco has provided the County with all information the County requires to enable it to process a permit application, the County shall provide, on a timely basis, all permits required allowing Cogeco to relocate the Installation.
3. The costs for reasonable, verifiable actual costs, including engineering and design, incurred in completing relocation requested by the County (the "Relocation Cost

Recovery") shall be paid in accordance with the methodology set out in Schedule "E".

4. Should Cogeco advise the County in writing that it no longer requires the use of any part of its Installation, Cogeco shall, at the County's request and within a reasonable period of time, as agreed to by the Parties, act as follows, at Cogeco's sole cost and expense:
 - (a) remove all abandoned parts of the Installation that are above-ground;
 - (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**"); and
 - (c) where, in the reasonable opinion of the County Engineer, the Abandoned Underground Structures will interfere with any municipally-approved project that will require excavation or otherwise disturb the portions of the Highways in which the Abandoned Underground Structures are located, then Cogeco shall, at or about the time the excavation of such portions of the Highways for said project commences, remove the Abandoned Underground Structures therein.
5. Should the County determine that it no longer requires lands on which the Installation is located, or a portion thereof, in which Cogeco's Installation is located, the County may dispose of the lands. However, prior to the conveyance of the lands, the County shall provide an easement over the lands being disposed of for Cogeco's Installation, and this Agreement will no longer apply to the affected portions of land or Cogeco's Installation, and with the County being responsible for the cost of registration of the easement in the land titles office.

9. TREE CLEARING AND REPLACEMENT

1. In the event that trees along the Highway are removed or damaged beyond repair by Cogeco and thereby require removal (a "**Tree Removal**"), Cogeco shall, subject to requirements under Applicable Law, and at its own and sole expense, completely remove the tree(s), including any residual tree stumps to a level below grade and restore and remediate the surface where the tree(s) were located to an even grade.
2. Further, for each Tree Removal, Cogeco shall, at the option of the County, provide the County with the tree replacement fee set out in **Schedule "D"** hereto.

10. METHOD OF CONSTRUCTION

1. Cogeco shall construct the Installation by the method of construction identified in the Approved Plans as submitted to and approved by the County Engineer.

2. Cogeco shall not deviate from any locations set out in Approved Plans without the prior written approval of the County Engineer. Cogeco shall be required to provide the County Engineer, within forty-five (45) days of the completing construction of the Installation, as-built drawings (electronically) satisfactory to the County Engineer, which drawings shall also note the date of completion of the Installation and any related construction aspects of the Works.
3. Cogeco shall be required to construct the Installation in accordance with the provisions of this Agreement and shall:
 - (a) provide all required traffic control in accordance with the "Ontario Traffic Manual Book 7", and in accordance with the standards of the County, all of which Cogeco is required to seek and obtain the approval of the County prior to construction being commenced;
 - (b) In the event there is any conflict between the standards mandated in the Ontario Traffic Manual Book 7 and the standards of the County, the standards of the County shall take precedence, as long as they meet or exceed the requirements in Ontario Traffic Manual Book 7;
 - (c) during the construction of the Installation procure and maintain commercial liability insurance (the "**Construction Insurance Policy**"), shall file a copy of the Construction Insurance Policy and the Certificate of Insurance with the County, and the said Construction Insurance Policy shall:
 - (i) be comprised of primary and/or umbrella coverage with a limit of not less than five million dollars (\$5,000,000.00) per occurrence;
 - (ii) include commercial general liability covering all operations and liability assumed under this Road User Agreement with the County, and shall include coverage for the following:
 1. Premises and Operations
 2. Blanket Contractual
 3. Broad Form Property Damage
 4. Contingent Employer's Liability
 5. Cross Liability
 6. Severability of Interests
 7. Owners and Contractors Protective

8. Personal Injury
9. Employer's Liability
10. Employees as Additional Insureds
11. Non-Owned Automobile Including SEF # 96
12. Hostile Fire
13. Attached Machinery
14. Third Party Environmental Liability

(iii) include a copy of the endorsement or a letter from the insurer verifying coverage is to accompany the Certificate of Insurance;

(iv) include insurance against liability of bodily injury and property damage caused by vehicles and/or owned and operated by Cogeco, or its agents, and used in conjunction with the construction of the Installation either within or outside the terms of this Road User Agreement, and shall have a limit of liability of not less than five million dollars (\$5,000,000.00) inclusive for any one occurrence;

(v) be endorsed to provide that the policy or policies will not be altered, cancelled, or allowed to lapse without providing thirty (30) days prior written notice to the County, with any such notice to be filed with the County Engineer, Department of Engineering, 360 Fairview Avenue West, Essex, Ontario N8M 1Y6, and via facsimile at 519-776-4455;

(vi) be endorsed to include the County as an additional named insured.

(d) provide the County with confirmation, in a form acceptable to the County in its sole discretion, that Cogeco or its contractors have any required WSIB coverage in place.

11. RESTORATION

1. Any restoration work required by Cogeco under this Agreement shall be subject to the approval procedures in **Section 6**.

12. PROTECTION OF HIGHWAYS, ACCESS, AND FUTURE EXPANSION

1. Cogeco expressly acknowledges and agrees that it shall not unduly interfere with the right of free and legal use of all Highways by all persons entitled to use them during completion of the construction of the Installation and any related future maintenance of same, and will

follow all direction of the County Engineer, acting reasonably, with respect to access by other users of the Highways.

2. Cogeco further acknowledges and agrees that:
 - (a) the County has an overarching responsibility to ensure that the Highways, are operated and utilized in a manner that ensures safety of users and that maintains the traffic carrying ability and physical integrity of the Highways; and,
 - (b) in light of the responsibility of the County, Cogeco shall complete the construction of the Installation in such a manner so as not to harm the structural integrity of the Highways, or interfere with the safety of users of the Highways, during construction and future maintenance of the Installation.

Protection of Highways from Damage

3. No tracked or overweight equipment shall be placed by Cogeco on the Highways unless County approved protection methods are in place, and with special care and attention being provided with respect to the paved surface of the Highways.

Accommodation of County Moving Permits

4. It is a requirement of this Agreement, that the Highways remain open and available at all times for use by users of the Highways, including users who have been issued oversized/super-load permits by the County, and this provision shall be addressed in a Traffic Management Plan to be filed with and approved by the County.

13. SCHEDULE OF INSTALLATION

1. Prior to commencement of any Work, and at least ten (10) business days in advance of commencement of any Work, Cogeco shall provide a schedule of the construction of the relevant Installation to the County, which schedule is subject to approval by the County, in its sole and absolute discretion, acting reasonably.

14. ENVIRONMENTAL LIABILITY

1. The County is not responsible, either directly or indirectly, for any damage to the natural environment or to any property, including any nuisance, trespass, negligence, or injury to any person, howsoever caused, arising from the presence, deposit, escape, discharge, leak, spill, or release, of any hazardous substance directly attributed to Cogeco's occupation or use of the Highways as part of this Agreement and the Installation.
2. Cogeco agrees to assume all environmental liabilities, claims, fines, penalties, obligations, costs, or expenses, whatsoever, directly related to the construction of the Installation, any future removal of same, and/or its use of the Highways as part of the construction and future maintenance of the Installation and/or any future removal of same, including,

without limitation, any liability for the clean-up, removal, or remediation of any hazardous substance on or under the Highways that directly result from:

- (a) the occupation, operations, or activities of Cogeco, its contractors, agents, or employees, or by any person with the express or implied consent of Cogeco within the Highways; or
- (b) any Works brought or placed within the Highway by Cogeco, its contractors, agents, or employees, or any person with the express or implied consent of Cogeco;

unless such environmental liabilities (including, without limitation, any liability for the clean-up, removal, or remediation of any hazardous substance) were caused directly or indirectly in whole or in part by the negligence or willful misconduct on the part of the County or those for which it is responsible under Applicable Laws.

15. EMERGENCY

1. For the purposes of this Agreement, "**emergency**" means an unforeseen situation where immediate action must be taken to preserve the environment, public health, safety, or an essential service of the Parties.
2. As soon as is reasonably possible after an emergency involving the Installation is discovered, Cogeco shall notify the applicable authorities and advise the County Engineer by telephone and shall keep the County Engineer advised throughout the emergency. Subject to **Section 23**, if the emergency is caused by the negligence or willful misconduct of Cogeco, then Cogeco shall reimburse the County for its costs incurred in connection with the emergency. Forthwith after the emergency, Cogeco shall provide a written report to the County Engineer of what restoration Work needs to be undertaken with respect to the Installation, which Work shall be subject to the approval process in **Section 6**.
3. Should Cogeco fail to comply with its obligations pursuant to this section of the Agreement to the satisfaction of the County Engineer, in his reasonable discretion, the County may complete any and all necessary restoration Work following an emergency caused by Cogeco or directly resulting from Cogeco's Works or Installation, or retain a qualified third party contractor to do so, and shall charge the amounts for same, plus any and all other expenses incurred by the County, which includes, but is not limited to the time expended by the County to oversee the work and for any additional third party expenses, to Cogeco. Cogeco expressly agrees to pay for said charges forthwith upon demand from the County.

16. URGENT HIGHWAY REPAIRS

1. During construction of the Installation or any other Works, should the County determine that urgent repairs to the Highway are required, and which repairs are not required as a

result of the Works, Cogeco shall, if requested by the County due to the Work interfering with the County's ability to perform the urgent Highway repairs, immediately cease any Works underway to permit the County to complete the repairs it deems necessary, in the County's reasonable discretion. Upon completion of such Highway repairs the County shall notify Cogeco in writing that it may re-enter the Highway to reconvene its Works.

17. RECORD DRAWINGS

1. Cogeco shall provide two (2) copies of the "as constructed" Installation (with sufficient detail to the satisfaction of the County) for the records of the County plus a final electronic copy prepared in an AUTOCAD, CAD, or GIS environment, prior to release of any deposits or securities (including the Security).

18. PAYMENT OF SECURITY AND FEES

1. Cogeco acknowledges and agrees that **Schedule "D"** attached hereto is a list of fees and charges associated with permits, which are consistent with fees and charges normally required by the County, and which may be requested and issued by the County in respect of the construction of the Installation and the associated Works contemplated by this Agreement, and further undertakes and agrees to pay such fees and charges in accordance with **Schedule "D"**.

19. FORCE MAJEURE

1. If either Party is prevented from carrying out its obligations under this Agreement by reason of any cause beyond its reasonable control, such Party shall be relieved from such obligations while such inability continues; provided, however, that this Section shall not relieve a Party from its obligations to indemnify the other as contemplated herein, and provided further that nothing herein shall require either Party to settle any labour or similar dispute unless it is in the best interests of such Party to do so.

20. APPLICABLE LAWS

1. It is acknowledged and agreed by the Parties that this Agreement is subject to the provisions of all Applicable Laws of the Province of Ontario and Canada.

21. NOTICES

1. Any notice to be given under any of the provisions of this Agreement shall be provided to the County by delivering the notice to the Clerk of the County, or by sending the notice by facsimile transmission to 519-776-4455, or by registered mail, postage prepaid, addressed

to the attention of the Clerk of the County at 360 Fairview Avenue West, Suite 202, Essex, Ontario N8M 1Y6, and to Cogeco by delivering the same to its head office, or by sending same to its business office by registered mail, postage prepaid, addressed to Cogeco as follows:

Cogeco Connexion Inc.
950 Syscon Road
Burlington, Ontario L7R 4S6
(T) 289-337-7222
(E) tim.brown@cogeco.com

With a copy to:
Cogeco Connexion Inc.
1, Place Ville-Marie
Office 3301
Montreal, Quebec H3B 3N2
(E) legal@cogeco.ca

2. If any notice is sent by facsimile or other electronic transmission, the notice shall be deemed to have been given on the next business day following its transmission. If any notice is sent by mail, the same shall be deemed to have been given on the fifth (5th) day following the posting of the notice, provided that in the event of a disruption in postal service, either at the point of mailing or the point of delivery, any notice sent by mail shall be deemed to have been given on the day when it is actually received by the addressee of such notice.

22. ASSIGNMENT

1. Cogeco may assign this Agreement to an affiliate of Cogeco, but shall provide notice of any assignment to an affiliate to the County in writing forthwith following an assignment. Cogeco may not otherwise assign any part of this Agreement without the express written consent of the County, which consent shall not be unreasonably withheld. Cogeco further acknowledges that any proposed assignee shall be required to covenant, in favour of the County, to assume full responsibility of this Agreement.

23. INDEMNIFICATION

1. Cogeco shall indemnify and save harmless the County, its Councillors, officers, directors, legal counsel, agents, and contractors from and against all claims, suits, demands, liabilities, losses, costs, damages, or other expenses of every kind that the County may incur or suffer as a consequence of or in connection with the Installation or the Works, or in any other way with the rights granted hereunder, except to the extent that such claims,

liabilities, losses, costs, damages, and other expenses are caused by the County's negligence or breach or negligence.

2. The County shall likewise indemnify and save harmless Cogeco, and its representatives officers, directors, employees, agents, affiliates, and/or personnel, but only to the extent that the County is grossly negligent or a party for whom the County is responsible commits willful misconduct.
3. To the extent prohibited by law, and notwithstanding any damages that a Party might incur (for any reason whatsoever) a Party's entire liability and exclusive remedy to the other shall be limited to actual and direct damages resulting from the negligence or willful misconduct of the other.
4. In this Section, "Losses" are an amount awarded to a third party in, or to be paid to a third party in settlement of, any judicial, administrative, or arbitration claim, investigation, or proceeding. "**Representatives**" are the officers, directors, employees, agents, affiliates, personnel, and councilors (in the case of the County) of a Party to this Agreement. 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.
5. Each Party defends and indemnifies the other Party, and the other Party's Representatives, against all Losses which they suffer as a result of the indemnifying Party's negligence, willful misconduct, or breach of the terms of this Agreement, subject to all of the following:
 - (a) The indemnification is limited by the limitations set out in **Subsections 23(1) and 23(2)**, and **Subsection 23(3)**;
 - (b) The indemnified Party promptly notifies the other party of the claim in writing; and
 - (c) The indemnifying Party has sole control over defence or settlement of the Losses, but the indemnified Party will provide the other Party, and that Party's Representatives, with reasonable assistance in doing so.

24. BREACHES OF THIS AGREEMENT

1. If either Party commits a breach of or otherwise fails to comply with any of the provisions of this Agreement, the other Party shall give notice in writing to the breaching Party specifying the breach complained of. In the event the breaching Party fails to remedy such breach within sixty (60) days of receipt of such notice (or such longer period of time having regard to the nature of the breach as the notifying Party may reasonably deem appropriate), the matter shall be addressed in accordance with **Section 25** of this Agreement, being the Dispute Resolution provisions provided for hereunder. If the matter cannot be resolved

pursuant to the Dispute Resolution provisions, then the notifying Party may terminate this Agreement on written notice.

25. DISPUTE RESOLUTION

1. Any controversy, dispute, difference, question or claim arising between the Parties hereto in connection with the interpretation, performance, construction, or implementation of this Agreement that cannot be resolved by the County Engineer and a representative of Cogeco (the "**Dispute**") shall be settled in accordance with this Section. The aggrieved Party shall send the other Party written notice identifying the Dispute, the amount involved (if any) and the remedy sought, and invoking the procedures in this Section. The Parties shall confer in an effort to resolve the Dispute themselves. If the Parties are unable to resolve the Dispute within five (5) business days after receipt of the written notice of the Dispute, then the Dispute is to be referred to a Mediator selected by Agreement between the Parties. If the Parties cannot agree on the selection of a Mediator, the final decision as to the Mediator shall be at the sole discretion of the County, provided that the Mediator selected is a certified Mediator, a respected senior lawyer with experience in municipal law, or a retired Judge.
2. If the Dispute cannot be resolved by way of Mediation, the Parties may then pursue any remedies available to them at law.
3. Except to the extent that a matter is specifically subject to a Dispute, both Parties shall continue to observe and perform the terms and conditions of this Agreement pending the resolution of the Dispute.

26. CONFIDENTIALITY

1. The County agrees not to use confidential information provided by Cogeco, including but not limited to information relating to the Installation and the Works, or such other information as Cogeco considers to be of a competitive nature respecting Cogeco's customers, Installation, and its business operations ("**Confidential Information**") for any purposes other than performance of the Agreement. The County shall protect the confidentiality of the Confidential Information to the same degree or greater as the County protects the confidentiality of its own confidential information which, in any event, shall not be less than a reasonable degree of care. The County shall not disclose any Confidential Information to any third party unless such disclosure is consented to in writing by Cogeco or otherwise required by law and then only after the County has provided written notice of such requirement to Cogeco.

27. NUMBER AND GENDER

1. This Agreement shall be construed with all changes in number and gender as may be required by the context.

28. COVENANTS

1. All obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants.

29. INCLUSIONS

1. Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" do not precede such list or reference.

30. SEVERABILITY

1. The Parties agree that all covenants and conditions contained in this Agreement shall be severable, and that should any covenant in the Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions of the remainder of the Agreement shall remain valid and of full force and effect.

31. NO JOINT VENTURE, PARTNERSHIP, OR CO-OWNERSHIP

1. The Parties hereby acknowledge and agree that this Agreement is solely a road user agreement, and that no relationship is formed between the Parties in the nature of a joint venture, partnership, co-ownership arrangement or other similar relationship.

32. GOVERNING LAW

1. This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario and Canada.

33. WAIVER

1. No waiver of any part of this Agreement shall be effective unless in writing and no such waiver shall be deemed a waiver of any other provision in this Agreement or a continuing waiver unless agreed to in writing by the Parties.

34. SURVIVAL

1. 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.

35. BINDING AGREEMENT

1. This Agreement, together with the Schedules attached hereto, constitutes the complete and exclusive statement of the understandings between the Parties, with respect to the Services hereunder and supersedes all proposals and prior agreements, oral or written, between the Parties. This Agreement shall extend to, benefit, and bind the Parties hereto, and their respective successors and permitted assigns.

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement, written on this and the preceding seventeen (17) pages, with effect from the day first written above.

**THE CORPORATION OF THE
COUNTY OF ESSEX**

COGECO CONNEXION INC.

Per: Gary McNamara
Title: Warden

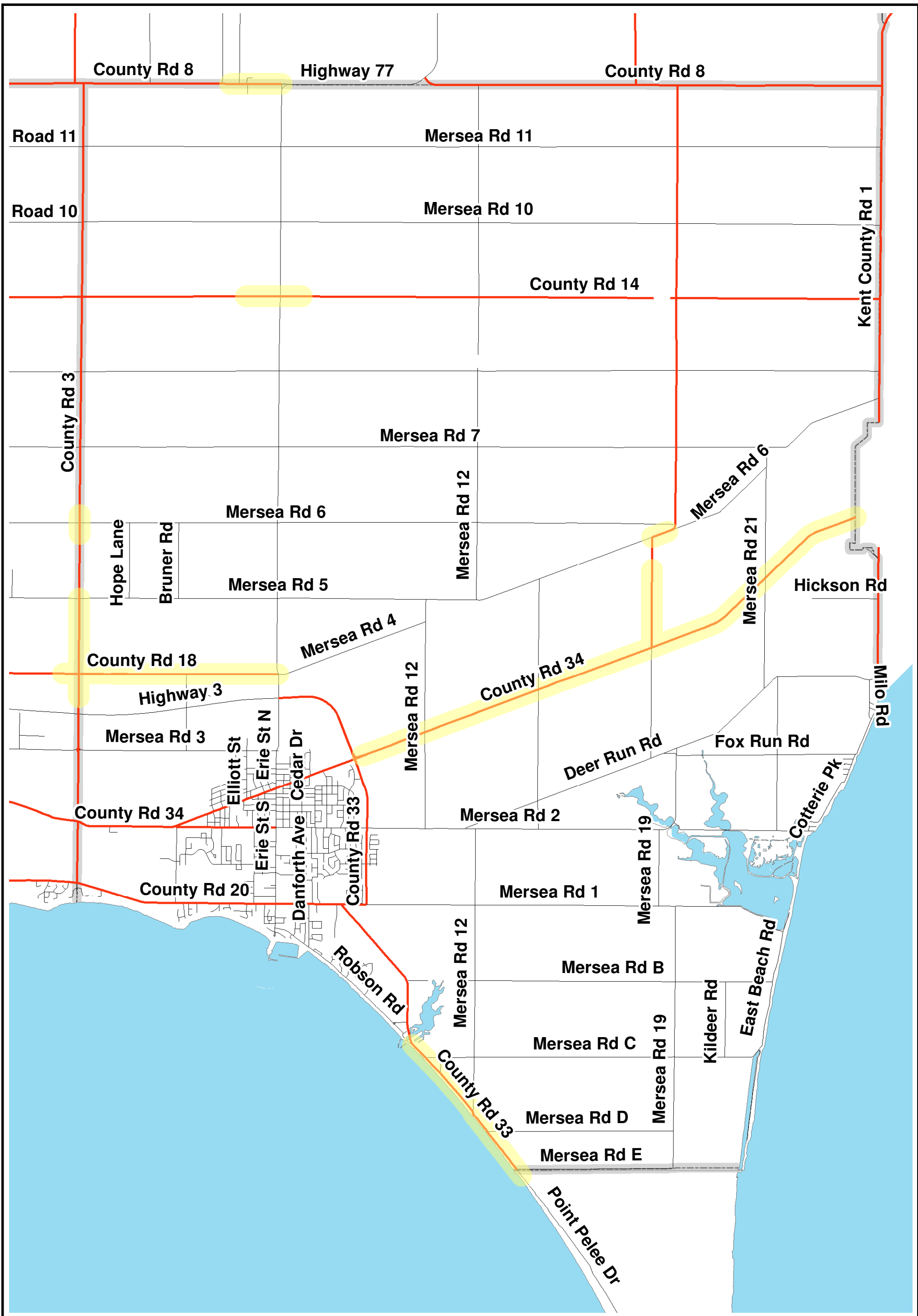
Per:
Title:

I have authority to bind Cogeco.

Per: Mary Birch
Title: Clerk

We have authority to bind the County.

SCHEDULE "A"



County of Essex

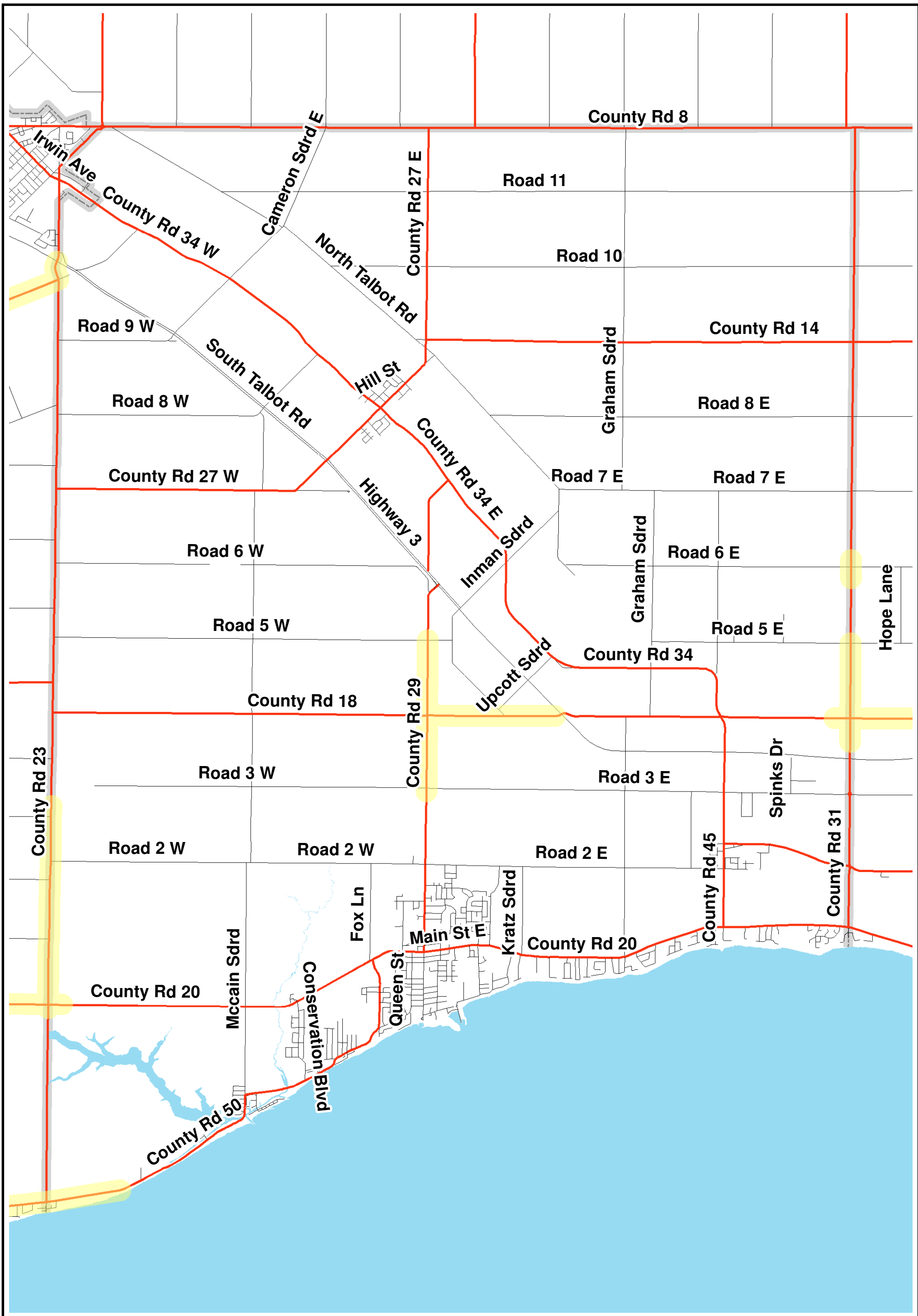


Proposed Work Area

Date: June 21, 2021

Source Map: <https://swift.maps.arcgis.com/apps/webappviewer/index.html?id=a37be42c85dd4029a35a76f78d8634e6>

SCHEDULE "B"



County of
Essex

Cogeco fibre to the home - proposed work area on County Roads (Town of Kingsville)

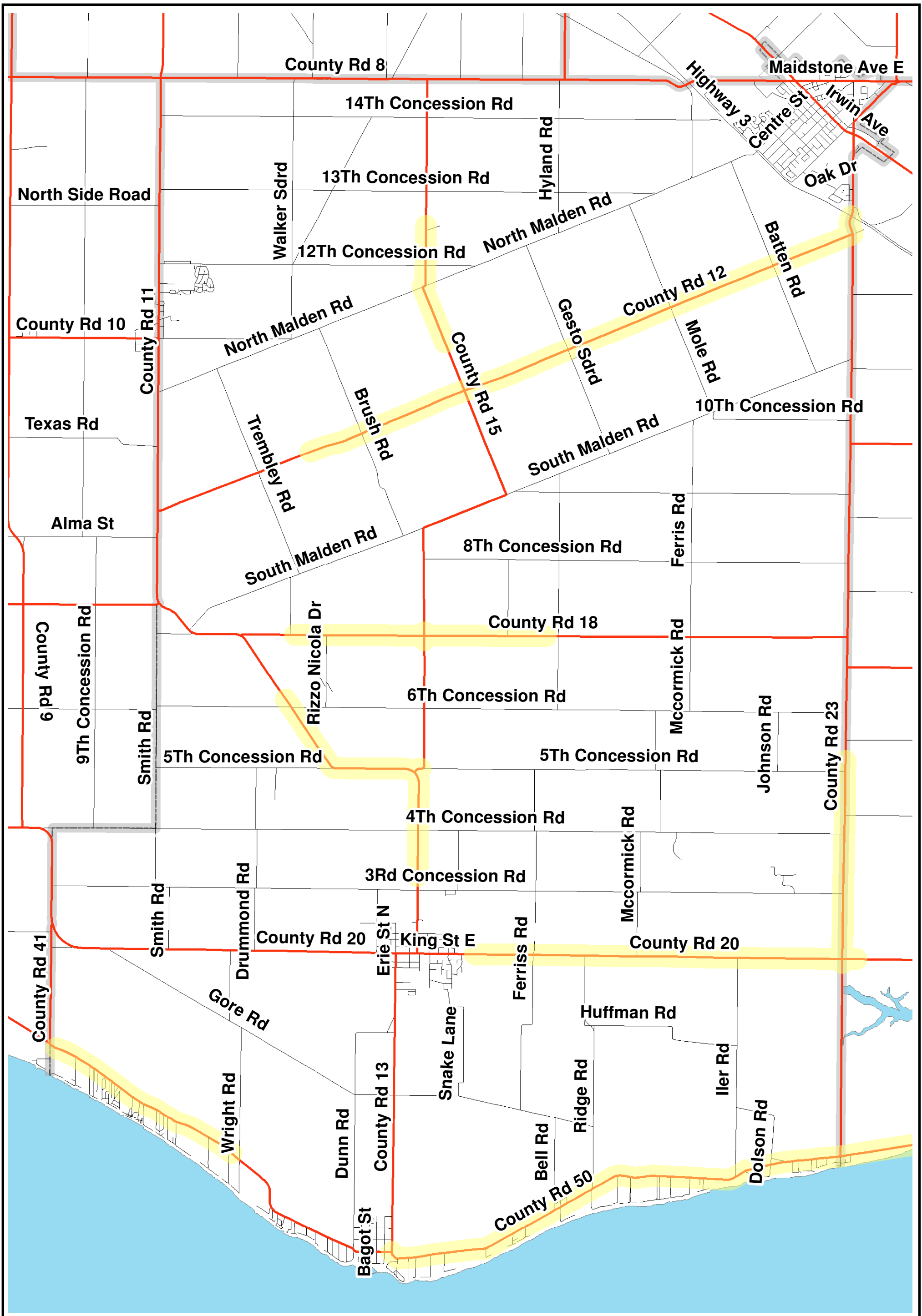


Proposed Work Area

Date: June 21, 2021

Source Map: <https://swift.maps.arcgis.com/apps/webappviewer/index.html?id=a37be42c85dd4029a35a76f78d8634e6>

SCHEDULE "C"



County of Essex

Cogeco fibre to the home - Proposed work area on County Roads (Town of Essex)

 Proposed Work Area

Date: June 21, 2021
 Source Map: <https://swift.maps.arcgis.com/apps/webappviewer/index.html?id=a37be42c85dd4029a35a76f78d8634e6>

This map was produced by the County of Essex GIS Department and is intended for illustrative purposes only. Every attempt has been made to ensure the accuracy of the information, however errors may occur. Any omissions or errors can be reported by calling 519-776-6441 ext. 1391.

SCHEDULE "D"

**COSTS AND
PERMIT FEES
AND CHARGES**

1. Permit Fees:
 - (a) Per Kilometer of Highway - \$150.00
 - (b) Tree Replacement Fee - \$300.00

SCHEDULE "E"
RELOCATION COSTS

Number of years after Installation of Equipment calculated from the date of this Agreement	Percentage or Relocation Costs paid by County
1	100%
2	100%
3	100%
4	90%
5	80%
6	70%
7	65%
8	60%
9	55%
10	45%
11	40%
12	35%
13	30%
14	20%
15	10%
16	5%
17 onwards	0%