

The Corporation of the Municipality of Brockton



By-Law 2021-050

Being a By-Law to Authorize the Signing of a Telecommunications Access Agreement With EH!Tel Networks Inc. for the Purpose of Providing Broadband Internet Access.

Whereas The Council for the Corporation of the Municipality of Brockton deems it expedient to enter into a Telecommunications Access Agreement with EH!Tel Networks Inc. with respect to providing broadband internet access;

Now Therefore the Council of the Corporation of the Municipality of Brockton enacts as follows;

- 1.0 That the Corporation of the Municipality of Brockton Council hereby enter into a Telecommunications Access Agreement with EH!Tel Networks Inc. which is attached as "Schedule A" and forms part of this By-Law;
- 2.0 The execution by the Mayor and Clerk of said agreement dated May 1, 2021, between the Corporation of the Municipality of Brockton and EH!Tel Networks Inc. is hereby authorized, ratified, and confirmed.
- 3.0 This By-Law shall come into full force and effect upon final passage.
- 4.0 This By-Law may be cited as the "EH!Tel Networks Inc. Telecommunications Access Agreement By-Law".

Read, Enacted, Signed and Sealed this 13th day of April, 2021.

Mayor – Chris Peabody

Clerk – Fiona Hamilton

TELECOMMUNICATIONS ACCESS AGREEMENT

This agreement made shall be effective as of the 1st day of May, 2021.

Between

Eh!Tel Networks Inc.

hereinafter called "**EH!tel**"

and

The Corporation of the Municipality Of Brockton

WHEREAS Eh!tel is a "Canadian carrier" as defined in the *Telecommunications Act*, S.C 1993, c.38 ("**Telecom Act**") or "distribution undertaking" as defined in the *Broadcasting Act*, S.C 1991, c.11 (collectively, a "**Carrier**") and is subject to the jurisdiction of the Canadian Radio-television and Telecommunications Commission (the "**CRTC**");

AND WHEREAS, in order to operate as a Carrier, EH!tel requires to construct, maintain and operate its Equipment in, on, over, under, across or along ("**Within**") the highways, streets, road allowances, lanes, other public places, bridges, or viaducts which are under the jurisdiction of the Municipality (collectively, the "**Right-of-Way**" or "**ROWS**");

AND WHEREAS, pursuant to section 43 of the Telecom Act, EH!tel requires the Municipality's consent to construct its Equipment within the ROWs and the Municipality is willing to grant EH!tel a non-exclusive right to access and use the ROWs, nor any rights or privileges previously conferred by the Municipality on Third Parties to use or access the ROWs;

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

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

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions.** In this Agreement, the following words and phrases shall have the following meanings:

- a) **"Affiliate"** means, "affiliate" as defined in the *Canada Business Corporations Act*;
- b) **"Emergency"** means an unforeseen situation where immediate action must be taken to preserve the environment, public health, safety or an essential service of either of the Parties;
- c) **"County Engineer"** means the individual designated by him or her;
- d) **"Hazardous Substance"** means any harmful substance including, without limitation, electromagnetic or other radiation contaminants, pollutants, dangerous substances, dangerous goods and toxic substances, as defined, judicially interpreted or identified in any applicable law (including the common law);
- e) **"Equipment"** means the transmission and distribution facilities owned by EH!tel and/or its Affiliates, comprising fibre optic, coaxial or other nature or form of cables, pipes, conduits, poles, ducts, manholes, handholds and ancillary structures and equipment located within the ROWs;
- f) **"Municipal Consent"** or **"MC"** means the written consent of the County or Municipality with or without conditions, to allow EH!tel to occupy the ROWs;
- g) **"Permit"** means a MC or a ROP or both;
- h) **"Road Occupancy Permit"** or **"ROP"** means a Permit issued by the road authority of the County or Municipality authorizing EH!tel, to occupy the ROWs with its workforce, vehicles and other equipment when performing the Work;
- i) **"Service Drop"** means a cable that, by its design, capacity and relationship to other fibre optic cables of EH!tel, can be reasonably considered to be for the sole purpose of connecting backbone of the Equipment to not more than one individual customer or building point of presence;
- j) **"Third Party"** means any person that is not a party to this Agreement nor an Affiliate of either Party, and includes any person that attaches its facilities in, on or to the Equipment under an agreement with EH!tel
- k) **"Work"** means, but is not limited to, any installation, removal, construction, maintenance, repair, replacement, relocation, removal, operation, adjustment or other alteration of the Equipment performed by EH!tel within the ROWs, including the excavation, repair and restoration of the ROWs.
- l) **"County"** means, the County and its Chair, the County Engineer, Council members, officers, employees, contractors, agents, successors and assigns
- m) **"EH!tel"** means EH!tel Networks Inc. and its directors, officers, employees, contractors, agents, successors and assigns
- n) **"Claims"** means any and all claims, actions, causes of action, complaints, demands, suits and proceedings of any nature or kind; and
- o) **"Losses"** means, in respect of any matter, damages, liabilities, costs and expenses (including, without limitation, all legal and other professional fees and disbursements, interest, liquidated damages and amounts paid in settlement, whether from a Third Party or otherwise), and for the purposes of this definition, "costs" shall mean those costs awarded in accordance with the order of a court of competent jurisdiction, the order of a broad, tribunal or arbitrator or costs negotiated in the settlement of a claim or action.

1.2 **Legislation.** All references to statutes in this Agreement shall include amendments thereto, regulations thereof, and successor legislation thereafter.

1.3 **Schedules.** The following schedules are annexed to this Agreement and are hereby incorporated by reference into this Agreement and form part hereof:

Schedule B – Road Occupancy Permit Required by the Municipality

2. USE OF ROWs

2.1 **Consent to use ROWs.** The Municipality hereby consents to EH!tel use of the ROWs for the purpose of performing its Work, subject to the terms and condition of this Agreement and in accordance with all applicable laws or other municipal by-laws, rules, policies, standards and guidelines (“**Municipal Guidelines**”) pertaining to the Equipment and the use of the ROWs; to the extent, however, that any municipal laws and the Municipal Guidelines are not inconsistent or conflict with this Agreement or with applicable federal laws in which case such municipal laws and Municipal Guidelines prevail.

2.2 **Restrictions on use.** EH!tel shall not, in the exercise of its rights under this Agreement, unduly interfere with the public use and enjoyment of the ROWs.

2.3 **Third Party Equipment acquired by EH!tel** The Parties agree that, where EH!tel acquires, or has acquired, directly or indirectly, facilities from a Third Party that are located within the ROWs (the “**New Equipment**”), then, effective the day of the acquisition of the New Equipment by EH!tel:

a) the New Equipment shall form part of the Equipment and shall be governed by the terms and conditions of this Agreement; and

b) where that Third Party is a Party to a valid and existing municipal access agreement with the Municipality (the “**Old MAA**”) and EH!tel, directly or indirectly, acquires the rights and obligations under the Old MAA, the Old MAA shall be terminated.

2.4 **No ownership rights.** The parties acknowledge and agree that:

a) the use of the ROWs under this Agreement shall not create nor vest in any ownership or property rights in the ROWs; and

b) the placement of the Equipment within the ROWs shall not create or vest in the Municipality any ownership or property rights to the Equipment.

3. PERMITS TO CONDUCT WORK

3.1 **Where Permits required.** Subject to **Section 3.4**, EH!tel shall not enter upon, excavate, break up or otherwise disturb the surface of any ROW for the purpose of performing its Work without first obtaining, where required, the applicable Permits for the specific Work activity described in **Schedule B**. EH!tel shall pay all fees required by the Municipality for the issuance of Permits.

3.2 **Submission of Plans.** Unless otherwise agreed to by the Municipality, EH!tel shall, prior to undertaking any Work that requires a MC, submit the following to the County Engineer or designate:

a) construction plans or the proposed Work, showing the locations of the proposed or existing Equipment and specifying the boundaries of the area within the Municipality within which the Work is proposed to take place; and

- b) all other relevant plans, drawings, and other information as may be normally required by the County Engineer from time to time for the purposes of issuing Permits.
- c) EH!tel shall pay all fees required by the Municipality and/or County.

3.3 Refusal to issue Permits. The Municipality may refuse to issue a Permit in accordance with **Section 3.1** for any *bona fide* municipal purpose, including reasons of public safety and health, conflicts with existing infrastructure, proposed road construction, or the proper functioning of public services, all as identified in writing by the Municipality and/or County.

3.4 No Permits for Routine Work. Notwithstanding **Section 3.1**, EH!tel may, without first obtaining a Permit:

- a) utilize existing ducts or similar structures of the Equipment with at least twenty-four (24) hours advance to the Municipality ; and
 - b) carry out routine maintenance and field testing to its Equipment;
- provided that in no case shall EH!tel carry out any physical disruption or change to the ROW or its use without the Municipality prior written consent.

3.5 Restoration of EH!tel service during Emergencies. Notwithstanding **Section 3.1**, in the event of an Emergency, EH!tel shall be permitted to perform such remedial Work as is reasonably necessary to restore its services without complying with **Section 3.1**; provided that EH!tel, with their best efforts, comply with **Section 3.1** within five (5) business days of completing the Work.

4. MANNER OF WORK

4.1 Compliance with Applicable Laws, etc. All Work shall be conducted and completed to the satisfaction of the Municipality and in accordance with:

- a) the applicable laws (and, in particular, all laws and codes relating to occupational health and safety);
- b) the Municipal Guidelines;
- c) applicable industry standards;
- d) this Agreement; and
- e) the applicable Permits issued under **Section 3.1**.

4.2 Underground Equipment. EH!tel shall place those portions of the Equipment that cross beneath streets or existing buried utilities in ducts, carrier pipes or encased in concrete, or as otherwise specified by the Municipality.

4.3 Stoppage of Work. The Municipality may order the stoppage of the Work for any *bona fide* municipal purpose or cause relating to public health or safety, regardless of Road Occupancy Permit issued by the Municipality, special events or any circumstances beyond its control. In such circumstances, the Municipality shall provide EH!tel with a verbal order and reasons to stop the Work and EH!tel shall cease the Work immediately. Within two (2) business days of the verbal order, the Municipality shall provide EH!tel with a written stop work order with reasons. When the reasons for the Work stoppage have been resolved, the Municipality shall advise EH!tel

immediately that it can re-commence the Work.

4.4 Coordination of Work. EH!tel shall use reasonable efforts to coordinate its construction Work and the placement of new Equipment within the ROW by sharing the use of support structures with other existing and new occupants of the ROWs and including minimizing the necessity for road cuts.

4.5 Open Road Cuts. No open road cuts are allowed on any Municipal and/or County Roads, both directional bore and trenching are permitted. In the event an open road cut is required EH!tel shall request permission through the Municipal Consent or Road Occupancy Permit process.

4.6 Identification of contractors. EH!tel shall ensure that all of its contractors have proper identification visible on the Work site displaying the company name in which the work is being completed for.

4.7 Emergency contact personnel. EH!tel and the Municipality shall provide to each other a list of twenty-four (24) hour emergency contact personnel available at all times and shall ensure that the list is kept current.

4.8 Emergency work by Municipality . In the event of an Emergency, the Municipality may take such measures it deems necessary to re-establish a safe environment, and EH!tel shall pay the Municipality's reasonable and verifiable costs that are directly attributable to the Work of the presence of the Equipment in the ROWs.

4.9 "As-built" drawings. Where required and requested by the Municipality , EH!tel shall, no later than forty-five (45) days after completion of any Work, provide the County Engineer or designate with accurate "as-built" drawings, prepared in accordance with such standards as may be required by the General Manager, sufficient, for planning purposes, to accurately establish the location of the Equipment installed within the ROWs.

5. REMEDIAL WORK

5.1 General. Following the completion of any Work, EH!tel shall leave the ROW in a neat, clean and safe condition and free from nuisance, all to the satisfaction of the Municipality. Subject to **Section 5.2**, where EH!tel is required to break or disturb the surface of a ROW to perform its Work, it shall repair and restore the surface of the ROW to the same or better condition it was before the Work was undertaken, all in accordance with the Municipal Guidelines and to the satisfaction of the Municipality .

5.2 Temporary repair. Where weather limitations or other external conditions beyond the control of EH!tel do not permit it to complete and final repair to the ROW within the expected period of time, EH!tel may complete a temporary repair to the ROW; provided that EH!tel replaces the temporary repair within a reasonable period of time. All repairs to the ROW by EH!tel shall be performed in accordance with the Municipal Guidelines and to the satisfaction of the

Municipality .

5.3 **Warranty of repairs.** EH!tel warrants its temporary repair, to the satisfaction of the Municipality, for a period of one (1) year from the date of its completion, and its final repairs for a period of two (2) years from the date of their completion.

5.4 **Repairs completed by Municipality.** Where EH!tel:

- a) fails to complete a temporary repair to the satisfaction of the Municipality within one hundred eighty-six (186) hours of being notified in writing by the Municipality, or such a period as may be agreed to by the Parties; or
- b) EH!tel and the Municipality agree that the Municipality should perform the repair, then the Municipality may effect such work necessary to perform the repair and EH!tel shall pay the Municipality's reasonable and verifiable direct costs of performing the repair.

5.5 **Pavement degradation fees.** At the time of applying for a Permit, EH!tel shall pay the Municipality the pavement degradation fees set out in **Schedule B** based on the age and area of the pavement to be broken by EH!tel, as estimated by the Municipality. Once the Work has been completed, the Parties shall determine the actual area of pavement that was disturbed or broken by EH!tel and the final amount owned by or to EH!tel.

6. LOCATING FACILITIES IN ROWS

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

- a) in the event of an Emergency, shortly after receiving the request or as soon as practicably possible, following which the requesting Party will ensure that it has a representative on site (or alternatively, provide a contact number for its representative) to ensure that the area for the Locates is properly identified; and
- b) in all other circumstances, within a time reasonable agreed upon by the Parties.
- c) EH!tel shall be a registered member with Ontario One Call (Call before you dig) call centre, that facilitates locate requests and notifies registered owners of underground facilities within the vicinity of the dig-site of the planned excavation.

6.2 **Utility co-ordination committee.** EH!tel shall participate in any utility co-ordination committees established by the Municipality and contribute to its equitable share of the reasonable costs of the operation and administration of the committee.

6.3 **Provision of Mark-ups.** The Parties agree to respond within fifteen (15) days to any request from the other Party for a mark-up of municipal infrastructure or Equipment design drawings showing the location of any portion of the municipal infrastructure or Equipment located within the portion of the ROWs shown on the plans (the "**Mark-ups**"), and shall provide such accurate and detailed information as may be reasonably required by the requesting Party.

6.4 Inaccurate Locates. Where EH!tel Locates are found to be in error and, as a result, the Municipality is unable to install its facilities within the affected ROWs in the manner it expected based on the Locates provided by EH!tel, the Municipality will notify EH!tel of the error, following which EH!tel, with best efforts, attempt to resolve the conflict. If EH!tel is unable to, with best efforts, resolve the conflict in a reasonable time commensurate with the situation and to the Municipality's satisfaction, EH!tel will pay the Municipality for its reasonable and verifiable costs incurred as a direct result of the conflict.

7. RELOCATION OF EQUIPMENT

7.1 General. Where the Municipality requires and requests EH!tel to relocate its Equipment for *bona fide* municipal purposes, the Municipality shall notify EH!tel in writing and, subject to **Section 7.3**, EH!tel shall, within ninety (90) days therefore or such other time as agreed to by the Parties having regard to the schedules of the Parties and the nature of the relocation required, perform the relocation and any other required and associated Work.

7.2 Municipality's efforts. The Municipality will make good faith efforts to provide alternative routes for the Equipment affected by the relocation to ensure uninterrupted service to EH!tel customers. The Municipality shall also provide, in a timely fashion, all Permits and approvals required to allow EH!tel to relocate the Equipment.

7.3 Apportionment of Cost for EH!tel Relocation. The Municipality shall reimburse EH!tel for the cost for labor employed and labor savings devices in such required relocation requested by the Municipality and such cost shall be apportioned equally between the Municipality and EH!tel, and all other costs shall be borne by EH!tel based on the following procedures:

- a) Within sixty (60) days of receiving the request from the Municipality to relocate the Equipment, EH!tel shall provide the Municipality with a written estimate of the Municipality's reimbursement.
- b) Within ninety (90) days of completing the relocation, EH!tel may provide Municipality with a written invoice for the actual Relocation Costs in a format that clearly identifies the Municipality's reimbursement.

7.4 Equipment affected by Municipality's Capital Works Plan. Prior to the issuance of a Permit, the Municipality will advise EH!tel in writing whether EH!tel proposed location for new Equipment will be affected by the Municipality's ten-year capital works plan (the "**Capital Works Plan**"). If the Municipality advises that the new Equipment will be so affected and EH!tel, despite being advised of such, requests the Municipality to issue the Permit, then the Municipality may issue a conditional Permit stating that, if the Municipality requires, pursuant to any project identified in the Capital Works Plan as of the date of the Permit, EH!tel will be required to relocate the Equipment one (1) year prior to the construction of the "Capital Works Plan". EH!tel will be required to relocate the Equipment entirely with 50% of costs covered by the Municipality.

7.5 Municipality not responsible for Third Party Relocation Costs. Unless otherwise agreed to

between the Municipality and the Third Party, in no event shall the Municipality be responsible under this Agreement for;

- a) the costs of EH!tel to relocate Equipment at the request of the Third Party; or
- b) the costs of relocating the facilities of a Third Party installed on or in the Equipment.

7.6 Where the Equipment is located incorrectly. The Municipality shall not be responsible for the costs of relocating any portion of the Equipment that is located outside a distance of two (2) meters horizontally (center line to centre line) from the location approved in the Permit or as shown on the as-built composite utility drawing submitted by a developer's engineering firm. Notwithstanding the foregoing, in circumstances where records or the approval location of the Equipment are non-existent or unavailable, or where the conditions of the applicable ROW have changed materially from what was described in the Permit, the Parties agree to act reasonably when sharing or allocating the associated Relocation Costs.

7.7 Emergency temporary relocation. In cases of an Emergency that requires EH!tel to temporarily relocate the Equipment, the Parties shall work co-operatively and expeditiously to complete the relocation as soon as practicably possible; provided, however, that the Municipality may, with at least twenty-four (24) prior notice to EH!tel, take any measures it deems necessary for reasons of public health and safety.

7.8 Relocation performed by Municipality . In accordance with **Section 7.1** the Municipality will provide notice of its intention to complete such relocation and EH!tel shall have thirty (30) days to complete the request. If EH!tel fails to complete such relocation in accordance to **Section 7.1**, EH!tel shall pay the Municipality's reasonable and verifiable costs of the relocation.

7.9 Discontinuance of ROW. Where, in the opinion of the Municipality, the lands on which a ROW (or any portion thereof) in which Equipment is located is no longer required for use by the Municipality, the Municipality may cause such ROW to be discontinued by providing EH!tel with 90 days' notice of the same and EH!tel shall execute a Discontinuance Agreement with the Municipality on such terms as may be required by the Municipality; provided that:

- a) if the Municipality owns the land upon the ROW is located and does not require EH!tel to Relocate the Equipment, it will, prior to conveyance of the Lands on which the ROW exists, cause an easement to be registered against the lands being sold in favor of EH!tel, the cost of preparation of such easement being at the cost of EH!tel;
- b) if the Municipality owns the land upon which the ROW is located and does require EH!tel to Relocate the Equipment, the Parties will, prior to be discontinuance of the ROW, affect the relocation of the Equipment in accordance with **Sections 7.1** and **7.2**; and
- c) in all cases, EH!tel shall be responsible for the applicable Relocation Costs unless otherwise agreed to by the Municipality in writing.

8. PAYMENTS OF FEES AND OTHER CHARGES

8.1 Invoices. Unless expressly provided elsewhere in this Agreement, where there are any payments to be made under this Agreement, the Party requesting payment shall first send a

written invoice to the other Party, setting out in detail all amounts owing, including any applicable provincial and federal taxes and interest payable on prior overdue invoices, and the payment terms. The Parties agree that all payments shall be made in full by no later than one hundred eighty-two (182) days after the date of the invoice was received.

8.2 Payment of taxes. EH!tel shall pay, and shall expressly indemnify and hold the Municipality harmless from, all taxes lawfully imposed now or in the future by the Municipality or all tax rates, duties, levies or fees lawfully imposed now or in future by any regional, provincial, federal, parliamentary or other governmental body, corporate authority, agency or commission (including, without limitation, school boards and utility commissions) but excluding the Municipality, that are attributable to EH!tel use of the ROW.

9. TERM AND TERMINATION

9.1 Initial term and renewal. This Agreement shall have an initial term of five (5) years commencing on the date of this agreement and shall be renewed automatically for successive five (5) year terms unless:

- a) this Agreement is terminated by either Party in accordance with this Agreement;
- b) a Party delivers initial notice of non-renewal to the other Party at least one hundred eighty (180) days prior to the expiration of the then current term; or
- c) this Agreement is replaced by a new agreement between the Parties.

9.2 Termination by either Party. Either Party may terminate this Agreement without further obligation to the other Party, upon providing at least thirty (30) days' notice in the event of a material breach of this Agreement by the other Party after notice thereof and failure of the other Party to remedy or cure the breach within thirty (30) days of receipt of the notice.

9.3 Termination by Municipality . The Municipality may terminate this Agreement by providing EH!tel with at least seventy-two (72) hours written notice in the event that:

- a) EH!tel becomes insolvent, makes an assignment for the benefit of its creditors, has a liquidator, receiver or trustee in bankruptcy appointed for it or becomes voluntary subject as a debtor to the provisions of the *Companies' Creditors Arrangement Act* or the *Bankruptcy and Insolvency Act*;
- b) EH!tel assigns or transfers this Agreement or any part thereof other than in accordance with **Section 16.2**; or
- c) EH!tel ceases to be eligible to operate as a Carrier.

9.4 Obligations and rights upon termination or expiry of Agreement. Notwithstanding any other provision of this Agreement, if this Agreement is terminated (other than in accordance with **Section 9.3**) or expires without renewal, then, subject to use the ROWs pursuant to the Telecom Act and, unless EH!tel advises the Municipality in writing that it no longer requires the use of the Equipment:

- a) the terms and conditions of this Agreement shall remain in full force and effect until a new municipal access agreement (a "**New Agreement**") is executed by the Parties; and

b) the Parties shall enter into meaningful and good faith negotiations to execute a New Agreement and if, after six (6) months following the expiry of this Agreement, the Parties are unable to execute a New Agreement, then either Party may apply to the CRTC to establish the terms and conditions of the New Agreement.

10. INSURANCE

10.1 General. Throughout the term of this Agreement and any renewals or extension thereto, EH!tel shall maintain, at its sole expense, insurance (the “**EH!tel Insurance**”) in an amount and description as described below to protect EH!tel and the Municipality from claims for damages, bodily injury (including death) and property damage which may arise from EH!tel operations under this Agreement, including the use or maintenance of the Equipment within the ROWs or any act or omission of EH!tel and its employees, contractors and agents while engaged in the Work. The EH!tel Insurance shall include all costs, charges and expenses reasonably incurred with any injury or damage.

10.2 Comprehensive general liability occurrence-based insurance. Without limiting the generality of the foregoing, EH!tel shall obtain and maintain comprehensive general liability occurrence-based insurance coverage which:

- a) covers claims and expenses for liability for personal injury, bodily injury and property damage in an amount not less than Five Million Dollars(\$5,000,000.00) per claim (exclusive of interest and costs);
- b) extends to cover the contractual obligations of EH!tel as stated within this Agreement;
- c) names the Municipality as an additional insured; and
- d) contains cross liability and severability of interest clauses.

10.3 Insurance certificates. As soon as possible after the execution of this Agreement, EH!tel shall provide, in a form acceptable to the Municipality, the Municipality with certificates or insurance in respect of the EH!tel Insurance evidencing the cross liability and severability clauses and confirming the Municipality as an “additional insured”. Thereafter, EH!tel shall provide the Municipality with evidence of all renewals of the EH!tel Insurance in a form applicable to the Municipality.

10.4 General Insurance Conditions.

- a) The Municipality shall not be liable for any premiums relating to policies under the EH!tel Insurance.
- b) The policies under the EH!tel Insurance shall provide:
 - i) that they are primary insurance which will not call into contribution any other insurance available to the Municipality;
 - ii) a waiver for severability of interest; and
 - iii) that EH!tel Insurance shall not be cancelled, lapsed or materially changed to the detriment of the Municipality without at least thirty (30) business days’ notice to the Municipality by registered mail.

c) EH!tel will immediately notify the Municipality of any changes to or cancellation of the EH!tel Insurance if they will directly affect or reduce the coverage made available to the Municipality.

11. LIABILITY AND INDEMNIFICATION

11.1 No liability, Municipality . Except for Claims or Losses arising, in whole or in part, from the negligence or willful misconduct of the Municipality, the Municipality shall not:

a) be responsible, either directly or indirectly, for any damage to the Equipment howsoever caused that may occur as a result of any Work by EH!tel.

11.2 No liability, both Parties. Notwithstanding anything else in this Agreement, neither Party shall be liable to any person in any way for special, incidental, indirect, consequential, exemplary or punitive damages, including damages for pure economic loss or 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.

11.3 Indemnification by EH!tel. Except for Claims or Losses arising, in whole or in part, from the negligence or willful misconduct of the Municipality , EH!tel covenants and agrees to indemnify, defend and save harmless the Municipality from and against any and all Claims or Losses that the Municipality may suffer or incur arising from:

a) EH!tel exercise of any of its rights under this Agreement;

b) EH!tel performance of any Work within the ROWs and the operation or use of the Equipment by EH!tel.

c) EH!tel undertaking any activity within the ROWs which is ancillary to EH!tel exercise of its rights under this Agreement; and

d) any breach of this Agreement by EH!tel.

11.4 Survival. The obligation of a Party to indemnify, defend and save harmless the other Party shall survive the termination or expiry of this Agreement.

12. ENVIRONMENTAL LIABILITY

12.1 Municipality not responsible. The Municipality is not responsible, either directly or indirectly, for any damage to the natural environment or 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 in connection with EH!tel occupation or use of the ROWs, unless such damage was caused directly or indirectly by the negligence or willful misconduct of the Municipality of those for which it is responsible in law.

12.2 EH!tel to assume environment liabilities. EH!tel agrees to assume all environmental liabilities, claims, fines, penalties, obligations, costs or expenses whatsoever relating to its use of the ROWs, including, without limitation, any liability for the clean-up, removal or remediation of any

Hazardous Substance on or under the ROWs that result from:

- a) the occupation, operations or activities of EH!tel, its contractors, agents or employees or by any person with the express or implied consent of EH!tel within the ROWs; or
- b) any Equipment brought or placed within the ROWs by EH!tel, its contractors, agents or employees or by any person with the express or implied consent of EH!tel, unless such damage was caused directly or indirectly in whole or in part by the negligence or willful misconduct on the part of the Municipality or those for which it is responsible by law.

13. FORCE MAJEURE

Except for the Parties' obligations to make payments to each other under this Agreement, neither Party shall be liable for a delay in its performance or its failure to perform hereunder due to causes beyond its reasonable control, including, but not limited to, acts of God, fire, flood, or other catastrophes; government, legal or statutory restrictions on forms of commercial activity; or order of any civil or military authority; national emergencies, insurrections, riots or wars or strikes, lock-outs or work stoppages ("**Force Majeure**"). In the event of any one or more of the foregoing occurrences, notice shall be given by the Party unable to perform to the other Party and the Party unable to perform shall be permitted to delay its performance for so long as the occurrence continues. Should the suspension of obligations due to Force Majeure exceed two (2) months, either Party may terminate this Agreement without liability upon delivery of notice to the other Party.

14. DISPUTE RESOLUTION

The Parties will attempt to resolve any dispute arising out of this Agreement promptly through discussions at the operation level. In the event that a resolution is not achieved, the disputing Parties shall provide the other Party with written notice of the same and the Parties shall attempt to resolve such dispute between senior officers who have the authority to settle such dispute. All negotiations conducted by such officers shall be confidential and shall be treated as compromise and settlement negotiations. If the Parties fail to resolve such dispute within thirty (30) calendar days of the non-disputing Party's receipt of written notice, either Party may initiate legal proceedings and/or submit the matter to the CRTC for resolution.

16. NOTICES

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 Municipality at the following address:

If to EH!tel Networks :

EH!tel Networks Inc.
392058 Grey Road 109
Holstein, ON
Antonius Peeters
Phone: 519-369-4183
Office: 519-594-0946 ext. 4183

If to the County :

Municipality Of Brockton
100 Scott Street
Walkerton, ON
Attention: Director of Operations
Gregg Furtney
Phone: 519-881-2223 ext. 134

Any notice may also be given by prepaid registered mail mailed within the Province of Ontario and such notice shall be effective five (5) business 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 as stated above.

16. GENERAL

16.1 Entire agreement. This Agreement, together with the Schedules attached hereto, constitute the complete and exclusive statement of the understandings between the Parties with respect to the rights and obligations hereunder and supersedes all proposals and prior agreements, oral and written, between the Parties.

16.2 Assignment. This Agreement may not be assigned or transferred, in whole or in part, without the prior written consent of the other Party. Notwithstanding the foregoing, EH!tel shall, provided that it is not in material breach of this Agreement, have the right to assign this Agreement to an Affiliate without the consent of the Municipality, provided that EH!tel has given notice to the Municipality.

16.3 Parties to act responsibly. Each Party shall at all times act reasonably in the performance of its obligations and the exercise of its rights and discretion under this Agreement.

16.4 Amendments. Except as expressly provided in this Agreement, no modification of or amendments to this Agreement shall be effective unless agreed to in writing by the Municipality and EH!tel.

16.5 Survival. The terms and conditions contained in this Agreement that by their sense and

context are intended to survive the performance thereof by the Parties hereto shall so survive the completion of performance, the expiration and termination of this Agreement, including, without limitation, provisions with respect to indemnification and the making of any and all payments due hereunder.

16.6. **Governing law.** This Agreement shall be governed by the laws of the Province of Ontario and all federal laws of Canada applicable therein.

16.7 **Waiver.** Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise of the exercise of any right, power or remedy.

16.8 **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable shall attach only to such provision and everything in this Agreement shall continue in full force and effect.

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

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

EH!tel Networks Inc.

Antonius Peeters
CEO/President

I have the Authority to Bind the Corporation

The Municipality of Brockton

Mayor, Chris Peabody

Clerk, Fiona Hamilton

We have the Authority to Bind the Corporation