

THIS EASEMENT AGREEMENT dated the xx day of xx, 20xx.

BETWEEN:

THE CORPORATION OF HALDIMAND COUNTY
(hereinafter, the "County")

-and-

KWIC TELECOM LTD.,
(hereinafter, "KWIC")

WHEREAS the County is the registered owner of the lands legally described as part of PIN # 38204-0316(LT), Kent Street West of HC136506, Plan 357, Haldimand County (the "Easement Lands");

AND WHEREAS KWIC wishes to acquire an easement over a portion of the Easement Lands, as more particularly detailed herein;

NOW THEREFORE in consideration of payment in the sum of ONE DOLLAR (\$1.00) now paid by each party to the other, and in consideration of the premises, the parties hereto agree as follows:

1. The recitals herein are true and accurate.
2. The County hereby grants to KWIC, the following easement for the purposes of constructing, installing, inspecting, altering, repairing, replacing, operating, maintaining and removing telecommunication equipment required for high speed internet service and all appurtenances or accessories thereto, on and over a portion of the Easement Lands, being approximately 20' X 20', and shown hatched on Schedule "A" (the "Easement Lands") more particularly described in the form attached hereto as Schedule "B" – Easement Schedule;
3. The County agrees to keep the Easement Lands reasonably clear of all substantial physical obstructions so as to permit the exercise and enjoyment of the easement rights granted herein. However, KWIC specifically acknowledges that the County shall have no obligation to maintain the Easement Lands, and in particular, shall have no obligation to remove snow, ice, refuse, debris, fallen trees, etc.
4. KWIC agrees to construct, operate, maintain and repair the Easements at its own expense and in accordance with the policies and standards applicable to other County lands. KWIC shall pay for any surveys or R-Plans required to facilitate the registration of this easement agreement.
5. KWIC shall exercise the easement rights granted herein in accordance with all applicable laws, regulations, by-laws of any relevant federal, provincial and/or municipal authority, and shall be responsible for obtaining any required permits, approvals and/or consents from the applicable regulating authorities. The County agrees to cooperate with KWIC, as required, in obtaining any such permits. Prior to construction and any capital improvements, KWIC hereby acknowledges that it must obtain the prior written approval of Haldimand.
6. KWIC covenants and agrees with the County that it will be responsible for any damage or loss caused or suffered by the County as a result of the exercise of the easement rights granted herein. KWIC agrees to indemnify, defend and save harmless the County from any and all liabilities, damages, costs, causes of action, damages or claims arising out of:

- a. any breach, violation or non-performance of any covenant, obligation, agreement, term or condition in this easement agreement;
 - b. any damage to property and any injury to any person or persons, including death resulting at any time therefrom, occasioned by an act or omission of KWIC and those in law for whom it is responsible; and
 - c. such indemnification shall survive the termination of this Easement Agreement. KWIC shall maintain with regard to its use and occupation public liability and property damage insurance, including personal injury and contractual liability with respect to the easement with coverage to include without limitation all activities and operations conducted by KWIC and any other person on the demised easement lands for whom KWIC is in law responsible. Such policy shall be written on a comprehensive basis with a limit of not less than Two Million Dollars (\$2,000,000) for bodily injury to any one or more persons, or property damage. KWIC agrees to name Haldimand County as an additional insured on the said policy and to furnish to the County with a certificate of insurance each year on the anniversary date of the policy.
7. Any notice required or permitted to be given hereunder shall be in writing and be given by personal service, facsimile or by registered letter, with postage fully prepaid, to the address set forth below:

(a) To Haldimand County
53 Thorburn St. S.
Cayuga, ON N0A 1E0
Attention: Position Title
Phone: 905-318-5932
Email:

(b) To KWIC:
Street Address
City, Prov, Postal Code
Attention: Position Title
Phone: XXX-XXX-XXXX
Email:

Notices to be given under this Easement Agreement shall be in writing and may be delivered personally (with a written acknowledgement of receipt of the notice signed by a recipient representing and/or authorized by the County as the case may be), by registered mail (deemed received on third (3rd) business day after posting), or by email transmission (with confirmation of transmission and deemed delivered on the date transmitted if transmitted before 4:00 p.m. on a business day, otherwise transmission is deemed delivered on the next business day, holidays excluded) with a copy also sent by mail to the names, addresses and contact information listed below.

8. This Easement Agreement may only be amended by an agreement in writing and shall enure to and benefit the parties hereto and their successors and permitted assigns.
9. No condoning, excusing or overlooking by either party of any breach of any of the terms of this agreement shall take effect or be binding upon that party unless the same be expressed in writing by that party. Any waiver so given shall extend only to the particular breach so waived and shall not limit or effect rights with respect to any other past, present or future breach.
10. This Easement Agreement shall be governed by and construed in accordance with the laws of the province of Ontario and the parties hereby submit to the jurisdiction of the courts of the Province of Ontario for all matters arising out of or in connection with this Agreement.
11. This Agreement sets forth the entire understanding of the parties as to the subject matter hereof and merges all prior discussions between them. Neither party shall be bound by any conditions,

definitions, warranties or representations with respect to the subject matter of this Agreement other than as expressly provided for herein, or are duly set forth subsequent to the date hereof and in writing signed by an authorized representative of the party to be bound thereby.

- 12. Time shall in all respects be of the essence with respect to this agreement.
- 13. Any provision of this Agreement which is or becomes prohibited or unenforceable in any jurisdiction does not invalidate, affect or impair the remaining provisions hereunder.
- 14. The County shall each have the right to register this Easement Agreement on land titles and each party shall execute all documentation required to effect such registration forthwith upon the request of the other party.
- 15. This Agreement, when executed by the parties authorized signing officer(s), shall constitute a binding agreement.

IN WITNESS WHEREOF the County has on the ____ day of _____, 20XX affixed its corporate seal attested by the hands of the duly authorized officer(s).

THE CORPORATION OF HALDIMAND COUNTY

Per: _____

Name: Ken Hewitt
Title: Mayor

Per: _____

Name: Evelyn Eichenbaum
Title: Clerk

I/We have the authority to bind the Corporation.

IN WITNESS WHEREOF the XX has on the ____ day of _____, 20XX affixed its corporate seal attested by the hands of the duly authorized officer(s).

KWIC TELECOM LTD.

Per: _____

Name: Insert
Title: Insert

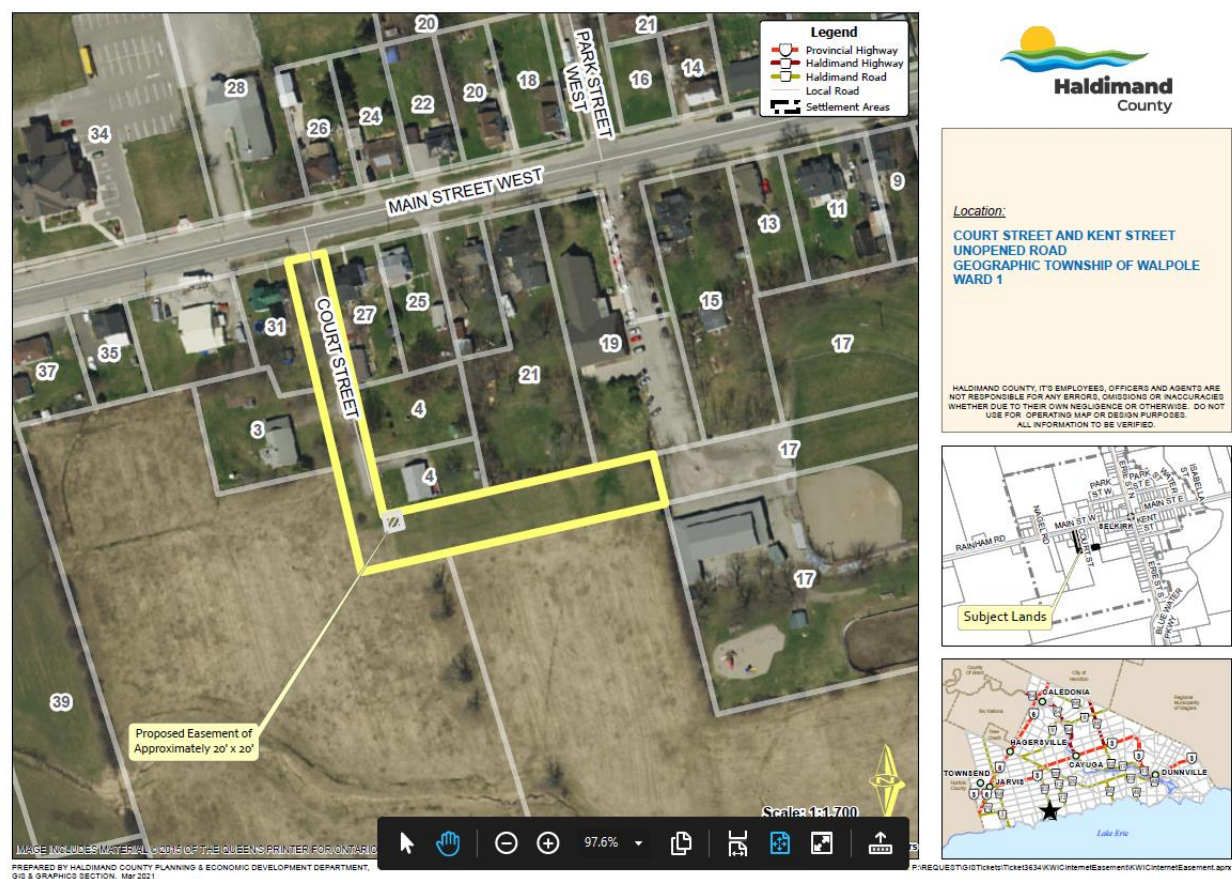
Per: _____

Name: Insert
Title: Insert

I/We have the authority to bind the Corporation.

SCHEDULE "A" – EASEMENT LANDS

Being Part of PIN # 38204-0316(LT), Kent Street West of HC136506, Plan 357, Haldimand County



SCHEDULE "B" - EASEMENT SCHEDULE

1. The Transferor hereby provides a free and unencumbered easement in, over, upon, under and/or through the lands described in the Easement Agreement. This Easement shall include the right of KWIC, its successors, assigns, servants and agents to use the surface of the Easement Lands for ingress and egress on foot and/or with vehicles, supplies, machinery and equipment at any time and from time to time but only for such purposes necessary or incidental to the exercise and enjoyment of the rights hereby granted with respect to the Works.
2. The Transferee shall have the right, acting reasonably, at any time and from time to time to remove any boulder or rock and to sever, fell, remove or control the growth of any roots, trees, stumps, brush or other vegetation on or under the Easement Lands that would have the effect of interfering with the exercise and enjoyment of the rights hereby granted with respect to the Works.
3. The XX shall have the right to assign or transfer its rights hereunder in whole or in part, subject to written agreement by the County which shall not be unreasonably withheld.
4. Notwithstanding any rule of law or equity, any Works constructed by KWIC shall be deemed to be the property of KWIC even though the same may have become annexed or affixed to the Easement Lands.
5. KWIC shall at its own expense as soon as reasonably possible after the construction of any Works or other exercise of its rights hereunder, remove all surplus sub-soil and debris from the Easement Lands and restore them to their former state so far as is reasonably practicable.
6. KWIC covenants and agrees as follows:
 - a. be responsible for any damage caused at any time by its agents or employees to the Easement Lands. When practical, KWIC, after any of its activities, shall restore the Easement Lands appropriately. The subsequent maintenance of the Easement Lands shall be the responsibility of the County; and
 - b. to assume all environmental liabilities related to its use of the Easement Lands including but not limited to any liability for clean-up of any Hazardous Substance on or under the Easement Lands which result from the operations of KWIC in, on, under, above, over, along, or across the Easement Lands, or any equipment brought in, on, under, above, over, along or across the Easement Lands by KWIC, its contractors, agents, or employees or by any person with the express or implied consent of KWIC.
7. The County is not responsible, either directly or indirectly, for any damage to property, including any nuisance effects or injury to any person, howsoever caused, including death, arising from the escape, discharge, spill or release of any Hazardous Substance resulting from KWIC use of the Easement Lands. The foregoing release shall not extend to any loss, damage, injury or death caused by the gross negligence or wilful misconduct of the County, its employees, agents, contractors or those other persons for whom the County is in law responsible.
8. Except in cases of its gross negligence or wilful misconduct, the County shall not be responsible, either directly or indirectly, for any damage to the Equipment that may occur during its installation, maintenance or removal by KWIC, not for any losses, claims, charges, damages and expenses whatsoever suffered by KWIC including claims for loss or revenue or loss of profits on account of actions of the County working in, under, over, along, upon and across its roads, highways and Easement Lands or other property owned by the County.