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# CONNECTIVITY COMMITTEE MEETING

Thursday, April 29, 2021  
2:00 p.m.  
Meeting to be held electronically.

## **Agenda**

1. Approval of Agenda
  2. Adoption of April 8, 2021 Minutes
  3. Disclosure of Pecuniary Interest and the General Nature Thereof
  4. Technical Consultant RFP Update (verbal) – Chief Administrative Officer
  5. Connectivity Committee Action Plan Follow-up Report – General Manager of Engineering, Planning, & Enterprise / Deputy CAO
  6. Telecommunication Equipment Consent and Road User Agreement – General Manager of Engineering, Planning, & Enterprise / Deputy CAO
  7. Correspondence – None
  8. Date of Next Meeting
  9. Adjournment
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**Meeting:** Connectivity Committee  
**Date:** April 8, 2021  
**Time:** 2:00 p.m.  
**Location:** Webex

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**Attendees:** Tom Marks, Warden and Committee Chair  
 Dominique Giguère, Councillor and Committee Vice Chair  
 Duncan McPhail, Councillor  
 Mike Andrews, Community Member  
 Justin Pennings, Community Member

**Regrets:** Joshua Kiirya, Community Member

**Staff:** Julie Gonyou, Chief Administrative Officer  
 Jim Bundschuh, Director of Financial Services  
 Al Reitsma, Manager of IT  
 Jeremy Sharkey, IT Coordinator  
 Cecil Coxen, IT Manager – Township of Malahide  
 Katherine Thompson, Supervisor of Legislative Services  
 Carolyn Krahn, Legislative Services Coordinator

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## DRAFT MINUTES

### 1. Call to Order

The Connectivity Committee met this 8<sup>th</sup> day of April, 2021. The meeting was called to order at 2:03 p.m.

### 2. Approval of Agenda

Moved by: Mike Andrews  
 Seconded by: Councillor McPhail

RESOLVED THAT the agenda be approved.

#### Recorded Vote

	Yes	No
Councillor Giguère	Yes	
Councillor McPhail	Yes	

Mike Andrews	Yes	
Justin Pennings	Yes	
Warden Marks	Yes	
	5	0

- Motion Carried.

### 3. Adoption of March 11, 2021 Minutes

Moved by: Councillor Giguère

Seconded by: Justin Pennings

Resolved that the minutes of the previous meeting be adopted.

#### Recorded Vote

	Yes	No
Councillor Giguère	Yes	
Councillor McPhail	Yes	
Mike Andrews	Yes	
Justin Pennings	Yes	
Warden Marks	Yes	
	5	0

- Motion Carried.

### 4. Disclosure of Pecuniary Interest and the General Nature Thereof

None.

### 5. SWIFT Request for Proposal Update (Verbal) – Warden Marks

Warden Marks presented an update on the SWIFT Request for Proposal for expanding access to high-speed internet in Elgin County. More details on the results can be found on the SWIFT [website](#).

### 6. Fibre Installation Guidelines and Tower Wireless Service Opportunity – Director of Engineering Services

Moved by: Councillor Giguère

Seconded by: Councillor McPhail

Resolved that the report from the Director of Engineering Services be deferred until the next meeting of the Connectivity Committee.

### Recorded Vote

	Yes	No
Councillor Giguère	Yes	
Councillor McPhail	Yes	
Mike Andrews	Yes	
Justin Pennings	Yes	
Warden Marks	Yes	
	5	0

- Motion Carried.

## 7. Correspondence

### i. Email from Mike Bachner Re: Connectivity in Elgin and SWIFT RFP Results

The Committee received the email from Mike Backner.

## 8. New Business

- i. Warden Marks brought to the Committee's attention an email from a resident of Southwold regarding fibre deployment in Shedden. The resident wrote that there is fibre on one side of Highway 3, but it is not available on the other side of the Highway. Justin Pennings confirmed this information. Mike Andrews will reach out to the SWIFT recipient for funding for this area to see what can be done to help Shedden residents.
- ii. The Committee discussed outreach to member municipalities to encourage them to think about how they can make improving connectivity a priority in their decision-making process. Options include a one (1) page fact sheet about ways to support connectivity locally, or a presentation from the Chair of the Connectivity Committee to the local municipal partners. The Committee decided to wait to present to the local municipal partners until the Director of IT has had an opportunity to

review information from the Consultant and develop some next steps for the Committee.

## 9. Date of Next Meeting

The Committee will meet again on April 29, 2021 at 2:00 pm.

## 10. Adjournment

Moved by: Mike Andrews

Seconded by: Justin Pennings

RESOLVED THAT the meeting be adjourned at 2:43 p.m.

### Recorded Vote

	Yes	No
Councillor Giguère	Yes	
Councillor McPhail	Yes	
Mike Andrews	Yes	
Justin Pennings	Yes	
Warden Marks	Yes	
	5	0

- Motion Carried.



## **REPORT TO CONNECTIVITY COMMITTEE**

**FROM:** Brian Lima, General Manager of  
Engineering, Planning & Enterprise

**DATE:** March 3, 2021

**SUBJECT:** Fibre Installation Guidelines and Tower  
Wireless Service Opportunity

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### **RECOMMENDATION:**

THAT the report titled “Fibre Installation Guidelines and Tower Wireless Service Opportunity” from Elgin County’s Director of Engineering Services dated March 3, 2021 be received and filed.

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### **INTRODUCTION:**

At its meeting on February 25, 2021, the Director of Engineering Services provided information to the Committee regarding fibre installation requirements on County roads and recent work with local ISPs.

The Committee requested that the Director prepare fibre installation guidelines, confirm the possibility of the installation of fibre crossing MTO highway corridors, and present follow-up information regarding Turris Communications Ltd. and the possibility to install other third-party wireless equipment to the communications tower located at the County’s Whites Station Operations Centre property.

This report provides an update on the preparation of fibre installation guidelines, and addresses the latter two items.

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### **DISCUSSION:**

#### **Fibre Installation Guidelines**

Preparation of County wide ‘Fibre Installation Guidelines’ remains ongoing in partnership with municipal partners and in consultation with several local fibre installation contractors to ensure the guidelines reflect today’s industry best practices.

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The purpose of these guidelines is to assist ISPs, and public agencies as they begin or continue to develop their fibre optic cable programs and to create a shared understanding with consistency to help facilitate sharing agreements among agencies. The guidelines are intended to cover a variety of topics that include the technical aspects of a fibre optic network, agreements with other organizations and range from before the network to after it has been installed.

The manual once completed is also intended to be a living document, so feedback and comments throughout its existence are welcome for further editions.

A draft copy of said guidelines is planned to be presented at a future Committee meeting for its consideration and endorsement to County Council.

### **Fibre Crossing Installation of MTO Highway Corridors**

Following staff consultation with the Ministry of Transportation (MTO) West Operations Branch Corridor Management Section, MTO staff advised that all fibre optic cable installations which cross a provincial highway, whether aerial or underground, shall require an Encroachment Permit from the MTO prior to installation. A broad set of requirements are contained within Chapter 3 of the MTO's Highway Corridor Management Manual (2018) and provides guidance for utility installations within MTO's permit control.

Generally speaking MTO does not allow for proactive installation of conduits under its highways if they are not related to a specific fibre installation permit request. The MTO prefers to see the whole installation to ensure conflicts are eliminated and options are considered, especially in locations that may affect intersections and interchanges.

#### Highway 401

The placing of fibre infrastructure within the limits of Highway 401 is prohibited unless in the opinion of MTO it is the only route available or unless a utility corridor has been established by the MTO. A utility may cross Highway 401 subject to the review and approval of MTO. Further, crossings attached to a structure are prohibited and crossings at interchanges should be located outside the functional interchange area.

#### Highway 3 and Highway 4

Utilities are permitted on Highways 3 and 4, subject to meeting satisfactory arrangements as set out by MTO to ensure the safety of the public, and further to ensure that changes do not conflict with the requirements of MTO. Parallel installations are required to be placed within a 2m horizontal strip parallel to and immediately adjacent to the highway right-of-way limit. At intersections, the installation is further required to follow the daylighting triangles.

### Depth of Cover

The depth of cover for any buried fibre infrastructure shall be as determined by the MTO based on the requirements of each individual installation. Installations under Highway 401 require a deeper installation than Highways 3 and 4. For reference the attached sketches provided by MTO illustrates their desirable depths of installations under Highway 401 (5.0m depth) and another for Highways 3 and 4. (1.5m depth) for other roads.

### Plans and Reports

Each permit application is to be accompanied by a plan of the proposed work identifying location of the plant in plan and profile views. Plans submitted to MTO for approval must clearly show the location and extent of the proposed installation as it relates to the highway; highway property limits; property lines; roadway structure; accurate scale, dimensions and north arrow. Any other obtrusive feature not limited to existing utilities, sidewalks, trees, entrances and signs are also required to be identified.

For aerial installations MTO's Clear Zone requirements shall be met, and vary depending on highway crossing location across the province.

There may be situations where the installation of utilities will have to meet MTO's tunnelling guidelines. Attached for reference is the MTO's the most recent version of its Tunneling Guideline. It is advisable to consult MTO early in the process to confirm if a geotechnical report is also required.

### Permits

Each permit for utility installations is accompanied by an *'Appendix – A Conditions for Encroachment Permits and Utility Installations On or Under a King's Highway'*. These general conditions apply to every installation, with additional conditions added on a project specific basis. The appendix also includes a Notification of Field work that must be filed with the MTO's Traffic Operations Centre prior to commencing work.


MTO attachments include:

1. MTO's tunnelling guidelines;
2. Appendix 'A' - Conditions for Encroachment Permits and Utility Installations On or Under a King's Highway';
3. Directionally Drilling under Highway 401 (5.0m depth);
4. Directionally Drilling under Highway 3 and Highway 4 (1.5m depth).

### **Whites Station Operations Centre Communication Tower**

In 1965, the County installed the existing approximate 65 m (215-foot) tall radio communications tower located onsite of its Whites Station Operations Centre property





to provide two-way radio system communications between the County Engineer's Office, then located in the current Elgin County Courthouse in St Thomas and former County administration building, Whites Station, and all mobile vehicles within the boundaries of the County. Two-way communications utilizing this tower remains operational today.

In 2016, the County granted permission to Turriss Communications Ltd. (hereinafter referred to as Turriss), to install, operate, maintain, additional radio communication equipment on its tower. Turriss' equipment includes:

1. One VHF Antenna on a crossarm mount at the 64m (210-foot) level.
2. One 900 Mhz Antenna on a crossarm mount at the 64m (210-foot) level.
3. One UHF Antenna at the 46m (150-foot) level.
4. One Satellite Dish and GPS Antenna at the 7m (20-foot) level.
5. Equipment Shelter at Tower Base (approximately 50 sq. ft.).


The current Lease Agreement term between Elgin and Turriss Communications Ltd. relating to the aforementioned equipment began on July 1, 2016 and ends on June 30, 2021. Turriss is also responsible for all costs associated with the separate electrical meter and supporting connections for the equipment.

Space on the County's tower could be further leased to support other third-party wireless equipment subject to prohibiting interference with existing equipment.

#### **FINANCIAL IMPLICATIONS:**

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None at this time. This report is for investigative purposes only.



**ALIGNMENT WITH STRATEGIC PRIORITIES:**

Serving Elgin	Growing Elgin	Investing in Elgin
<input checked="" type="checkbox"/> Ensuring alignment of current programs and services with community need.  <input checked="" type="checkbox"/> Exploring different ways of addressing community need.  <input checked="" type="checkbox"/> Engaging with our community and other stakeholders.	<input checked="" type="checkbox"/> Planning for and facilitating commercial, industrial, residential, and agricultural growth.  <input type="checkbox"/> Fostering a healthy environment.  <input checked="" type="checkbox"/> Enhancing quality of place.	<input checked="" type="checkbox"/> Ensuring we have the necessary tools, resources, and infrastructure to deliver programs and services now and in the future.  <input type="checkbox"/> Delivering mandated programs and services efficiently and effectively.

**LOCAL MUNICIPAL PARTNER IMPACT:**

None.

**COMMUNICATION REQUIREMENTS:**

None.

**CONCLUSION:**

Elgin County recognizes the importance of adequate broadband infrastructure for the well-being and economic competitiveness of the County's residents, businesses, and institutions. Through the potential implementation of fibre installation guidelines and existing physical infrastructure opportunities, these actions may support broadband network expansion and facilitate increased connectivity throughout the County.

All of which is Respectfully Submitted

All of which is Respectfully Submitted

Brian Lima  
Director of Engineering Services

Julie Gonyou  
Chief Administrative Officer



## REPORT TO CONNECTIVITY COMMITTEE

**FROM:** Brian Lima, General Manager of  
Engineering, Planning, & Enterprise / Deputy CAO

**DATE:** April 21, 2021

**SUBJECT:** Telecommunication Equipment Consent  
and Road User Agreement

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### RECOMMENDATIONS:

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THAT the report titled “Telecommunication Equipment Consent and Road User Agreement”, from the General Manager of Engineering, Planning, & Enterprise (EPE) / Deputy CAO, dated April 21, 2021 be received and filed.

1. The within Report to Council, dated April 8, 2021 and entitled “Review of Draft Telecommunication Equipment Consent and Road User Agreement”, be received and filed; and,
2. County Council approve the form and content of the draft Telecommunication Equipment Consent and Road User Agreement attached as Schedule “A” hereto and authorize its use in relation to telecommunication equipment installation project within road allowances under the jurisdiction and/or ownership of Elgin County.

### INTRODUCTION:

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The purpose of this report is to advise the Committee that a Telecommunication Equipment Consent and Road User Agreement, prepared by the County Solicitor and endorsed by County Council, will now be utilized in relation to proposed telecommunication equipment installation projects within County Road Allowances.

### BACKGROUND:

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On March 23, 2021, Elgin County Council approved preparation and use of a specialized Telecommunication Equipment Consent and Road User Agreement for installation of telecommunication equipment, particularly that equipment requiring municipal consent pursuant to the Telecommunications Act (Canada), within County Road Allowances.


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A draft agreement, modelled upon that implemented in Middlesex County, has now been prepared and the text of which is attached as Schedule “A” hereto for review by County Council.

The critical elements of the County new specialized Agreement include as follows:


1. Municipal consent to use of all County road allowances, subject to terms and conditions of Agreement and all applicable laws, including bylaws (section 2.1).
  2. Use of road allowance does not create or grant ownership interest in that road allowance by the installing/operating company (section 2.4).
  3. No right of access to road allowance to install equipment without application for and issuance of all requisite permits, including Road Occupancy Permit (“ROP”) along with compliance of all terms and conditions of any such permit (section 3.1).
  4. Submission of all requisite plans, including construction/location plans and traffic control plans, to Elgin Engineering Services prior to issuance of permit and commencement of Works (section 3.4).
  5. Issuance of permits by Elgin County deemed to constitute municipal consent pursuant to Telecommunications Act (Canada) (section 3.8).
  6. All equipment to be installed subsurface, unless otherwise authorized by Elgin County (section 4.2).
  7. Onus on installing company to coordinate installation works with other existing users of the road allowance (section 4.5).
  8. Installing company must submit as-built drawings within 60 days of completion of installation works (section 4.10).
  9. Installing company is responsible for remedial repair of the road allowance, generally to the satisfaction of Elgin County (section 5).
  10. Installing company responsible for subsequent locating of its equipment within the road allowance (section 6.1).
  11. At its sole expense, installing company responsible for relocating its equipment, including at its own initiative, at the request of Elgin County, and if necessary under legislative requirement (section 7.3) – if required by a third-party user of the road allowance, relocation works will be undertaken by the installing company but at the expense of the requesting third-party user (section 7.4).
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12. Installing company is required to pay all fees, charges, and security required by Elgin County, including:
    - (i) as required for issuance of ROP (section 8.1);
    - (ii) installation fee (\$250.00 per kilometre at each permitted location) (section 8.2);
    - (iii) agreement preparation fee (\$1000.00) (section 8.2); and
    - (iv) annual contract Administration fee (\$100.00 annually) (section 8.3).
  13. Agreement contemplates a specified initial term with allowance for both renewal and early termination for breach upon specified events (sections 9.1 to 9.3).
  14. Option for Elgin County to require removal of equipment from the road allowance upon expiry or termination of Agreement (section 9.5).
  15. Installing company required to seek and maintain insurance coverages against specified perils and to specified limits, including naming Elgin County as additional insured (sections 10.1 to 10.2).
  16. For a period of 3 years (or longer if required), installing company to deposit with Elgin County a letter of credit in the amount of \$25,000.00 for basic performance security for permitted works, against which letter of credit the County can make demand in respect of financial obligations unfulfilled by the installing company (section 10.6).
  17. At its option, Elgin County may also require project-specific security equal to the cost of rehabilitating the road allowance (section 10.8).
  18. Elgin County has no liability for installed equipment and bears a limited obligation to indemnify the installing company for negligence committed by persons for whom the County is in law responsible (sections 11.1 and 11.4).
  19. Installing company bears a broad obligation to indemnify Elgin County for activities undertaken pursuant to the Agreement (section 11.2).
  20. Installing company bears full liability for environmental losses related to or arising from the installed equipment, installation works, or any other related activity contemplated by and undertaken pursuant to the Agreement (section 12).

## **DISCUSSION:**

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It is submitted that the specialized Agreement now creates a comprehensive scheme for authorizing the installation and use of telecommunication equipment within County Road Allowances. The Agreement constitutes the general “umbrella” under which specific projects are more conveniently authorized pursuant to project permits, thereby avoiding the need for, expense of, and potential delay associated with the preparation and approval of new or amended road user agreements. It is anticipated that, in the final



analysis, the approach and Agreement may attract lower total costs to an installing company and in particular an installing company involved in multiple projects.

### **FINANCIAL IMPLICATIONS:**

The financial impact for Elgin County cannot be precisely estimated at this time, although a decrease in revenue in relation to that collected under traditional road user agreements may be experienced with the deletion of annual fees in favour of the one-time installation fee and reduced annual contract administration fee under the Agreement. Most importantly, the primary purpose of this industry-specific Agreement is the encouragement of telecommunication installation projects to better service the residents of Elgin County.

### **ALIGNMENT WITH STRATEGIC PRIORITIES:**

<b>Serving Elgin</b>	<b>Growing Elgin</b>	<b>Investing in Elgin</b>
<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> <b>Ensuring alignment of current programs and services with community need.</b></li> <li><input checked="" type="checkbox"/> <b>Exploring different ways of addressing community need.</b></li> <li><input checked="" type="checkbox"/> <b>Engaging with our community and other stakeholders.</b></li> </ul>	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> <b>Planning for and facilitating commercial, industrial, residential, and agricultural growth.</b></li> <li><input type="checkbox"/> <b>Fostering a healthy environment.</b></li> <li><input checked="" type="checkbox"/> <b>Enhancing quality of place.</b></li> </ul>	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> <b>Ensuring we have the necessary tools, resources, and infrastructure to deliver programs and services now and in the future.</b></li> <li><input checked="" type="checkbox"/> <b>Delivering mandated programs and services efficiently and effectively.</b></li> </ul>

**Additional Comments:** None

### **LOCAL MUNICIPAL PARTNER IMPACT:**

It is anticipated that local municipal partners, and in particular their respective local residents, will benefit from the anticipated improvement in telecommunication services encouraged by the more convenient regulatory scheme contemplated under the Agreement.

**COMMUNICATION REQUIREMENTS:**

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The Agreement has been shared with local municipal partners for review and potential use in relation to telecommunication installation projects within local road allowances.

**CONCLUSION:**

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Against the commentary and analysis set forth above, County Council has endorsed the Agreement for immediate implementation in relation to proposed future telecommunication equipment installation projects within Elgin County Road Allowances.

All of which is Respectfully Submitted

Brian Lima  
General Manager of Engineering,  
Planning, & Enterprise (EPE) / Deputy  
CAO

Approved for Submission

Julie Gonyou  
Chief Administrative Officer



**TELECOMMUNICATIONS EQUIPMENT CONSENT and ROAD  
USER AGREEMENT**

This Agreement made effective the \_\_\_\_\_ day of \_\_\_\_\_, 20 (the  
“**Effective Date**”).

**B E T W E E N:**

**CORPORATION OF THE COUNTY OF ELGIN**

(hereafter the "**County**")

**OF THE FIRST PART**

- and -

**###COMPANY###**

(hereafter the "**Company**")

**OF THE SECOND PART**

**WHEREAS:**

- A. The Company 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**”);
- B. In order to operate as a Carrier, the Company requires to construct, maintain and operate its Equipment in, on, over, under, across or along (“**Within**”) the highways, streets, road allowances, lanes, bridges or viaducts which are under the jurisdiction of the County (collectively, the “**Rights-of-Way**” or “**ROWS**”);
- C. Pursuant to section 43 of the *Telecom Act*, the Company requires the County’s consent to construct its Equipment Within the ROWs and the County is willing to grant the Company a non-exclusive right to access and use the ROWs; provided that such use will not unduly interfere with municipal operations, equipment or installations and the public use and enjoyment of the ROWs, nor any rights or privileges previously conferred or conferred after the Effective Date by the County on Third Parties to use or access the ROWs; and
- D. The Parties have agreed that it would be mutually beneficial to outline the terms and conditions pursuant under which the County 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) “**Anti-Bribery Law**” means any anti-bribery law or international convention, as may apply now or in the future, including the Canadian Corruption of Foreign Public Officials Act, the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act and the OECD Convention on Combating Bribery of Foreign Public Officials;
  - (c) “**County Engineer**” means the County’s reviewing authority or the individual designated by him or her;



- (d) “**CRTC**” means the Canadian Radio-television and Telecommunications Commission.
  - (e) “**Emergency**” means an unforeseen situation where immediate action must be taken to preserve the environment, public health, safety or an essential service of either of the Parties;
  - (f) “**Equipment**” means the transmission and distribution facilities owned by the Company and/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;
  - (g) “**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);
  - (h) “**Municipal Consent**” or “**MC**” means the written consent of the County, with or without conditions, to allow the Company to perform Work Within the ROWs that requires the excavation or breaking up of the ROWs;
  - (i) “**Permit**” means a Municipal Consent or a Road Permit or both;
  - (j) “**Road Permit**” means a permit issued by the County in accordance with applicable County by-laws, which Council may pass and amend from time to time, authorizing the Company to occupy the ROWs with its workforce, vehicles and other equipment when performing the Work, including without limitation, Road Occupancy Permit, Access/Entrance Permits, and Moving Oversize Load/Weight Vehicles Permits;
  - (k) “**Service Drop**” means a cable that, by its design, capacity and relationship to other fibre optic cables of the Company 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;
  - (l) “**Term**” means subject to the renewal options described in subparagraph 9.1(a) and termination described in subparagraphs 9.2, 9.3 and 9.4, the Term of this Agreement as commencing on \_\_, 20 and expiring and terminating on \_\_\_\_\_, 2025.
  - (m) “**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 the Company;
  - (n) “**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 the Company Within the ROWs, including the excavation, repair and restoration of the ROWs.
- 1.2 **Legislation.** All references to statutes in this Agreement shall include amendments thereto, regulations thereof, and successor legislation thereafter.
- 1.3 **Recitals, Schedules and Incorporated Documents.** The beginning part of this Agreement entitled “Recitals”, *Schedule “A”* as identified below, and the By-laws and Municipal Policies referred to in this Agreement are hereby incorporated by reference into this Agreement and form part thereof:

**Schedule “A” – Permit Fees**

Initials \_\_\_\_\_

## 2. USE OF ROWs

- 2.1 **Consent to use ROWs.** The County hereby consents to the Company's use of the ROWs for the purpose of performing its Work, subject to the terms and conditions 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 in conflict with this Agreement or with applicable federal laws.
- 2.2 **Restrictions on use.** The Company shall not, in the exercise of its rights under this Agreement, unduly interfere with municipal operations, equipment or installations and the public use and enjoyment of the ROWs, nor any rights or privileges previously conferred or conferred after the Effective Date by the County on Third Parties to use or access the ROWs
- 2.3 **Equipment acquired by the Company.** The Parties agree that, where the Company 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 the Company:
- (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 Road User Agreement with the County (the "**RUA**") and the Company, directly or indirectly, acquires the rights and obligations under the said RUA, the RUA 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 the Company 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 County any ownership or property rights to the Equipment.
- 2.5 **Condition of ROWs.** The County makes no representations or warranties as to the state of repair of the ROWs or the suitability or fitness of the ROWs for any business, activity or purpose whatsoever, and the Company hereby agrees to accept the ROWs on an "as is" basis.

## 3. APPLICABLE PERMITS

### 3.1 Permits.

- (a) Subject to Section 3.2 and 3.4, the Company shall not access, enter upon, occupy, excavate, break up, disturb, or move oversized or overweight vehicles or do any Work Within any ROW without first obtaining the applicable Permits, being a Municipal Consent and/or Roads Permit(s), as the case may be.
  - (b) For each Permit required above, the Company shall submit to the County a completed application, in a form specified by the County and including the Permit fees, deposits and security associated with applicable County By-laws and/or Municipal Guidelines, as amended or replaced. The Permit fees in effect as of the Effective Date are set out in *Schedule "A"* to this Agreement.
- 3.2 **No Permits for routine Work.** Notwithstanding Section 3.1, the Company may, with advance notice as required by the County, without first obtaining a Permit:

- (a) utilize existing ducts or similar structures of the Equipment with at least twenty-four (24) hours advance notice to the County;
- (b) carry out routine maintenance and field testing to its Equipment; and
- (c) install and repair Service Drops;

provided that in no case shall the Company break up or otherwise disturb the physical surface of the ROW without the County's prior written consent.

- 3.3 **Expiry of Permit.** In the event that the Company has not commenced construction of the approved Work associated with a particular Permit within ninety (90) days of the date of issuance of the Permit, and has not sought and received an extension to the Permit from the County, which extension shall not be unreasonably withheld, the Permit shall be null and void. In such circumstances, any fees paid by the Company in respect of the expired Permit shall not be refunded and the Company must obtain a new Permit for the Work.
- 3.4 **Submission of plans.** Unless otherwise agreed to by the County, the Company shall, prior to undertaking any Work that requires a Municipal Consent, submit the following to the County Engineer:
- (a) construction plans of the proposed Work, showing the locations of the proposed and existing Equipment and other facilities, and specifying the boundaries of the area within the County within which the Work is proposed to take place;
  - (b) Traffic control plans for the protection of the workers, public and traveling public including detours as required to minimize traffic disruption; and
  - (c) 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.
- 3.5 **Refusal to issue Permits.** The County may refuse to issue a Permit in accordance with Section 3.1 for any *bona fide* municipal purpose, including but not limited to 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 County. Without limiting the foregoing, the County may refuse to issue a Permit where, in the opinion of the County Engineer, there is insufficient space Within a ROW to accommodate the proposed Equipment taking into account existing and potential future public service infrastructure.
- 3.6 **Restoration of the Company's service during Emergencies.** Notwithstanding Section 3.1, in the event of an Emergency, the Company shall be permitted to perform such remedial Work as is reasonably necessary to restore its services without complying with Section 3.1; provided that such Work does not unduly disrupt any Municipal service or activity and provided that the Company does comply with Section 3.1 within five (5) business days of completing the Work.
- 3.7 **Temporary changes by County.** Notwithstanding any other provision in this Agreement, the County reserves the right to set, adjust or change the approved schedule of Work by the Company for the purpose of coordinating or managing any major events or activities, including the restriction of any Work during those restricted time periods; provided however, that any such adjustment or change shall be conducted so as minimize interruption to the Company's operations. The County shall use its commercially reasonable efforts to provide to the Company forty-eight (48) hours advance written notice of any change to the approved schedule of Work, except that, in the case of any Emergency, the County shall provide such advance notice as is reasonably possible in the circumstances.

3.8 **Granting of Permit Deemed as Municipal Consent Required Pursuant to the Telecommunications Act (Canada).** The County agrees and acknowledges that, subject to satisfaction and performance of all terms and conditions both hereto and provided herein and the granting and issuance of any Roads Permit authorizing installation of Equipment as contemplated by this Agreement and in relation to a location specified therein shall be considered and deemed to represent municipal consent to such installation and use thereof as is required pursuant to applicable laws of the Dominion of Canada, including but not limited to the Telecommunications Act, S.C. 1993, c. 38, as amended.

#### 4. MANNER OF WORK

4.1 **Compliance with Applicable Laws, etc.** All Work shall be conducted and completed to the satisfaction of the County 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) this Agreement; and
- (d) the applicable Permits issued under Section 3.1.

4.2 **Underground Equipment.** The Company 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 County.

4.3 **Installation.** The Company shall utilize construction methods that minimize the impact on the ROWs, including but not limited to trenchless installation technology and single trench installation methods.

4.4 **Stoppage of Work.** The County may order the stoppage of the Work for any *bona fide* municipal purpose or cause relating to public health and safety, special events or any circumstances beyond its control. In such circumstances, the County shall provide the Company with a verbal order and reasons to stop the Work and the Company shall cease the Work immediately. Within two (2) business days of the verbal order, the County shall provide the Company with a written stop work order with reasons. When the reasons for the Work stoppage have been resolved, the County shall advise the Company immediately that it can commence the Work.

4.5 **Coordination of Work.** To minimize the necessity for road cuts, construction and the placement of new Equipment Within the ROW, the Company shall:

- (a) coordinate its work with other existing and new occupants of the ROW;
- (b) where the Company seeks access to a ROW with an existing transmission line, use its reasonable efforts to negotiate an agreement for the use of the supporting structures of the existing transmission line, failing which the Company shall apply to the CRTC for permission to access said support structures; and
- (c) where the Company has installed a transmission line Within a ROW, use its reasonable efforts to reach an agreement for the use of the supporting structures of the Company's transmission line, where access to said support structures is requested by a Third Party.

4.6 **Existing Facilities.** The Company acknowledges that, due to space constraints, the placement of new Equipment Within a ROW that is occupied by the telecommunications facilities of a Third Party, save and except for Equipment to be placed on or in existing support structures of said Third Party, shall only be permitted in exceptional circumstances at the discretion of the County Engineer.

4.7 **Identification of contractors.** The Company shall ensure that all of its contractors have proper identification visible on the Work site displaying the name of the person for which they work.

- 4.8 **Emergency contact personnel.** The Company and the County 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.
- 4.9 **Emergency work by County.** In the event of an Emergency, the County may take such measures it deems necessary to re-establish a safe environment, and the Company shall pay the County's reasonable and verifiable costs that are directly attributable to the Work or the presence of the Equipment in the ROWs.
- 4.10 **"As-built" drawings.** The Company shall, no later than sixty (60) days after completion of any Work, provide the County Engineer with accurate "as-built" drawings, prepared in accordance with such standards as may be required by the County Engineer, sufficient, for planning purposes, to accurately establish the location of the Equipment installed Within the ROWs. As-built drawings to be provided in electronic format suitable to be incorporated into the County's GIS mapping. As-built information is provided a reference only. The County shall direct all inquiries regarding the location of the Equipment to the Company. Access to Company As-Built records are for use by the County only and shall not be distributed or disclosed to other parties without prior written consent of the Company.
- 4.11 **Agents and Sub-contractors.** Each Party agrees to work with the other Party directly to resolve any issues arising from any the acts, omissions or performance of its agents and sub-contractors.

## 5. REMEDIAL WORK

- 5.1 **General.** Following the completion of any Work, the Company shall leave the ROW in a neat, clean, and safe condition and free from nuisance, all to the satisfaction of the County. Subject to Section 5.5, where the Company 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 in before the Work was undertaken, all in accordance with the Municipal Guidelines and to the satisfaction of the County.
- 5.2 **Permanent Road Restoration.** If the Company has excavated, broken up or otherwise disturbed the surface of a ROW, the requirements for the Company completing the road restoration work will vary depending on if and when pavement has been recently repaved or overlaid.
- 5.3 **Temporary repair.** Where weather limitations or other external conditions beyond the control of the Company do not permit it to complete a final repair to the ROW within the expected period of time, the Company may complete a temporary repair to the ROW; provided that, subject to Section 5.5, the Company replaces the temporary repair with a final repair within a reasonable period of time. All repairs to the ROW by the Company shall be performed in accordance with the Municipal Guidelines and to the satisfaction of the County.

If a temporary repair gives rise to an unsafe condition, then this shall be deemed to constitute an Emergency and the provisions of Section 4.9 shall apply.

- 5.4 **Warranty of repairs.** The Company warrants its temporary repair, to the satisfaction of the County until such time as the final repair is completed by the Company, or, where the County is performing the final repair, for a period of one (1) years or until such time as the final repair is completed by the County, whichever is earlier. The Company shall warrant its final repairs for a period of two (2) years from the date of their completion
- 5.5 **Repairs completed by County.** Where:
- (a) the Company fails to complete a temporary repair to the satisfaction of the County within seventy-two (72) hours of being notified in writing by the County, or such other period as may be agreed to by the Parties; or

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(b) the Company and the County agree that the County should perform the repair, then the County may effect such work necessary to perform the repair and the Company shall pay the County's reasonable and verifiable direct costs of performing the repair.

## 6. LOCATING FACILITIES IN ROWs

**6.1. Locates.** The Company agrees that, throughout the Term it shall, at its own cost, record and maintain adequate records of the locations of its Equipment. 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, within two hours of 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 reasonably agreed upon by the Parties.

**6.2. 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, as the case may be, 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.

**6.3. Inaccurate Locates.** Where the Company's Locates are found to be in error and, as a result, the County is unable to install its facilities Within the affected ROWs in the manner it expected based on the Locates provided by the Company, the County will notify the Company of the error, following which the Company shall attempt to resolve the conflict. If the Company is unable to resolve the conflict in a reasonable time commensurate with the situation and to the County's satisfaction, the Company will pay the County for its reasonable and verifiable costs incurred as a direct result of the conflict.

## 7. RELOCATION OF EQUIPMENT

**7.1 County Request.** Where the County requires and requests the Company to relocate its Equipment for a *bona fide* municipal purpose, the County shall notify the Company in writing and, the Company shall complete the requested relocation within ninety (90) days thereafter or such other time as agreed to by the Parties at the full and sole expense of the Company. The failure of the Company to relocate its equipment to the standard required by the County and/or within the time period set forth above shall constitute a breach of this Agreement by the Company, and the Company and its representatives, successors and assigns hereby agree to a Consent Judgement and/or Order in the Superior Court of Justice requiring the Company to complete the relocation of its Equipment at its full and sole cost.

**7.2 Upon Request of the Company.** In the event that the Company wishes to relocate Equipment which has been previously installed in accordance with this Agreement at its own expense, the Company shall notify the County of such request, in writing, and such request will thereafter be considered and administered by the County acting reasonably and with diligence giving due consideration to the scope of the works already undertaken by the Company Within the ROWs, provided that, in considering and administering such request the County shall be entitled to take into consideration any specific municipal or engineering interests affected by such relocation including any additional facilities located Within the ROWs. Notwithstanding the foregoing, the County shall not be permitted to unreasonably withhold, delay or condition its approval for such request.

**7.3 Required by Legislation or Lawful Order.** In the event relocation of Equipment is required as a result of the County's compliance with a legislative requirement, Ministerial order or such other law or order of a body which has the ability to force the County to act

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then the costs of the Relocation and/or related installation work associated with the Equipment shall be performed by the Company at its full and sole cost.

- 7.4 **Request by Third Party.** Where relocation of Equipment is required due to the County accommodating a third party (hereinafter "**Third Party Work**"), the required relocation or related installation work shall be conducted by the Company in accordance with the terms of this Agreement respecting installation, and the full cost of the amendment or Relocation shall be borne solely by the third party and paid in advance. The County agrees to provide the Company with ninety (90) days' notice of the need for any such Third Party Work and to require that the relevant third party or parties bear the full cost of such Third Party Work and indemnify the Company against all claims and liabilities arising from the amendment or Relocation as a condition precedent to any such amendment or Relocation.
- 7.5 **County efforts.** Where any relocation of Equipment occurs, the County will make good faith efforts to provide alternative routes for the Equipment affected by the relocation to ensure uninterrupted service to the Company's customers. Once the Company has provided the 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 to allow the Company to relocate the Equipment.
- 7.6 **Temporary Reconstruction or Realignment of Road Allowances.** The Company shall, upon reasonable prior notice to the County, have the right to:
- (a) temporarily reconstruct or realign certain portions of the Road Allowances in order to permit the delivery or movement of Equipment.

## 8. PAYMENT OF FEES AND OTHER CHARGES

- 8.1 **General.** In addition to the Fees referred to in Section 8.2, the Company covenants and agrees to pay to the County any Roads Permit fees, deposits and security associated with and required or demanded under applicable County By-laws, as amended or replaced. The Roads Permit fees and charges and security requirements in effect as of the Effective Date are set out in *Schedule "A"* to this Agreement. Payment of Roads Permit fees and/or security as referenced above are exempt from the invoice requirements of section 8.3.
- 8.2 **Fees.** The Company shall pay to the County an installation fee in the amount of \$250.00 per kilometer of Equipment installed at each location for each Municipal Consent applied for by the Company and permit therefor granted by the County during the term of this Agreement.
- 8.3 On or before the Effective Date, the Company shall pay to the County the sum of ONE THOUSAND DOLLARS (\$1,000.00) to offset engineering, legal, and administrative costs associated with preparation of this Agreement.
- In addition to that set forth immediately above and on or before the Effective Date, the Company shall also pay to the County the sum of FIVE HUNDRED DOLLARS (\$500.00) for administration of this Agreement during the Term hereof, calculated at the rate of ONE HUNDRED DOLLARS (\$100.00) per year of such Term.
- 8.4 **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 thirty (30) days after the date of the invoice was received.

## 9. TERM AND TERMINATION

- 9.1 **Initial term and renewal.** Subject to the renewal options described in subparagraph 9.1(a) and termination described in subparagraphs 9.2, 9.3 and 9.4, the Term of this Agreement shall commence on \_\_\_\_\_, 2020 and expire and terminate due to expiry on \_\_\_\_\_, 2025 (the “**Initial Term**”).
- (a) The Company in its sole discretion may renew this Agreement with the County for three (3) separate consecutive renewal terms of five (5) years each. To exercise the first option to renew, the Company must provide the County written notice of such election to renew prior to the expiry of the Initial Term, failing which the Agreement will terminate due to expiry. To exercise the second option to renew, the Company must provide the County written notice of such election to renew prior to the expiry of the first valid five-year extension, failing which the Agreement will terminate due to expiry. To exercise the third option to renew, the Company must provide the County written notice of such election to renew prior to the expiry of the second valid five-year extension, failing which the Agreement will terminate due to expiry.
- (b) If a renewal is not exercised prior to the last day of the Initial Term or valid extension, this Agreement shall terminate immediately on the last day of the Term or valid extension, subject to paragraph 9.4 of this Agreement.
- 9.2 **Termination by either Party.** Either Party may terminate this Agreement without further obligation to the other Party, upon providing at least seven (7) days’ written notice in the event of a material breach of this Agreement by the other Party after notice thereof and failure of the other Party to remedy or cure the breach within thirty (30) days of receipt of the notice. If, however, in the view of the non-breaching Party, it is not possible to remedy or cure the breach within such thirty (30) day period, then the breaching Party shall commence to remedy or cure the breach within such thirty (30) day period and shall complete the remedy or cure within the time period stipulated in writing by the non-breaching Party.
- 9.3 **Termination by County.** The County may terminate this Agreement by providing the Company with at least seven (7) days written notice in the event that:
- (a) the Company becomes insolvent, makes an assignment for the benefit of its creditors, has a liquidator, receiver or trustee in bankruptcy appointed for it or becomes voluntarily subject as a debtor to the provisions of the *Companies’ Creditors Arrangement Act* or the *Bankruptcy and Insolvency Act*;
- (b) the Company assigns or transfers this Agreement or any part thereof other than in accordance with Section 18.2; or
- (c) the Company 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 the Company’s rights to use the ROWs pursuant to the Telecom Act and, unless the Company advises the County 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 replacement 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.



9.5 **Removing abandoned Equipment.** Where the Company advises the County in writing that it no longer requires the use of any Equipment, the Company shall, at the County's request and within a reasonable period of time as agreed to by the Parties, act as follows at the Company's sole cost and expense:

- (a) Remove the abandoned Equipment that is above ground;
- (b) Subject to (c) immediately below, make safe any underground vaults, manholes and any other underground structures that are not occupied or used by a Third Party, (collectively "**Abandoned Underground Structures**");
- (c) Where, in the reasonable opinion of the County Engineer, the Abandoned Underground Structures will interfere with any municipally-approved project that will require excavation or otherwise disturb the portions of the ROWs in which the Abandoned Underground Structures are located, then the Company shall, at or about the time the excavation of such portions of the ROWs for said project commences, remove the Abandoned Underground Structures therein.

Upon removal of the abandoned Equipment or upon the removal or making safe of Abandoned Underground Structures, the Company shall repair any damage resulting from such removal or making safe and restore the affected ROWs to the condition in which they existed prior to the removal or making safe. If the Company fails to remove Equipment or to remove or make safe Abandoned Underground Structures and restore the ROWs within the time specified above, and to the satisfaction of the County Engineer, the County may complete said work and the Company shall pay the associated County's Costs.

9.6 **Continuing obligations.** Notwithstanding the expiry or earlier termination of this Agreement, each Party shall continue to be liable to the other Party for all payments due and obligations incurred hereunder prior to the date of such expiry or termination.

## 10. INSURANCE AND SECURITY

10.1 **General.** Throughout the term of this Agreement and any renewals or extension thereto, the Company shall maintain, at its sole expense, insurance (the "**Company Insurance**") in an amount and description as described below to protect the Company and the County from claims for damages, bodily injury (including death) and property damage which may arise from the Company's operations under this Agreement, including the use or maintenance of the Equipment Within the ROWs or any act or omission of the Company and its employees, contractors and agents while engaged in the Work. The Company 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, the Company 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 the Company as stated within this Agreement;
- (c) names the County as an additional insured;
- (d) contains cross liability and severability of interest clauses.
- (e) the Company shall be required to carry at all times during this Agreement the following

10.3 **Insurance certificates.** As soon as possible after the execution of this Agreement, the Company shall provide on the County's standard form, the County with certificates of insurance in respect of the Company Insurance evidencing the cross liability and severability clauses and confirming the County as an "additional insured". Thereafter, the Company shall provide the County with evidence of all renewals of the Company Insurance in a form acceptable to the County.

**10.4 General insurance conditions.**

- (a) The Company Insurance shall not be construed to, and shall in no manner, limit or restrict the Company's liability or obligations under this Agreement.
- (b) The County shall not be liable for any premiums relating to policies under the Company Insurance.
- (c) The policies under the Company Insurance shall provide:
  - (i) that they are primary insurance which will not call into contribution any other insurance available to the County;
  - (ii) a waiver for severability of interest; and
  - (iii) that the Company Insurance shall not be cancelled, lapsed or materially changed to the detriment of the County without at least thirty (30) business days' notice to the County by registered mail.
- (d) The Company will immediately notify the County of any changes to or cancellation of the Company Insurance if they will directly affect or reduce the coverage made available to the County.

10.5 **Workplace Safety and Insurance Board.** The Company shall provide Workplace Safety and Insurance Board ("WSIB") clearance certificate that confirms the Company is in good standing with the WSIB. The Company shall ensure the WSIB clearance remains in effect when the Company's personnel are working within the ROWs.

10.6 **Blanket Letter of Credit.** If requested by the County, the Company shall, within thirty (30) days thereafter, post an irrevocable blanket letter of credit, or other form security in a form satisfactory to the County's Chief Administrative Officer, for the minimum amount of twenty-five thousand dollars (\$25,000.00) (the "**Blanket LOC**"). Once posted by the Company, the County may draw upon the Blanket LOC and apply the funds therein against any outstanding financial obligations owed by the Company to the County under this Agreement.

10.7 **Blanket LOC Term.** The Blanket LOC shall be posted for a maximum of three (3) years or until such time as the County determines that the Company has established a satisfactory business relationship with the County. If the County is required to draw upon the Blanket LOC, the County shall advise the Company and the Company shall, within fourteen (14) days thereafter restore the Blanket LOC to its original value.

10.8 **Project-specific Security.** The County may also request, and the Company shall provide, additional project-specific securities for Work projects in an amount equal to the estimated restoration costs of the projects as determined by the County. The County shall release the project-specific letter of credit once the Company has fulfilled the conditions of the applicable Permit relating to the restoration of the ROW to the satisfaction of the County.

**11. RESPONSIBILITY AND INDEMNIFICATION**

11.1 **No liability County.** The Company hereby acknowledges that the placement, installation, construction, reconstruction, inspection, maintenance, operation, alteration, enlarging, repair, replacement, relocation and/or removal of the Equipment by the Company is performed entirely at the risk of the Company and that the County shall in no way or under any circumstances be responsible or liable to the Company, its contractors, agents, or customers for any damage or losses in consequence thereof, unless due to the negligence of the County or those for whom at law it is responsible.

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- 11.2 **Company Indemnity.** The Company hereby releases, indemnifies, completely holds harmless, and agrees to defend the County, its Councillors, officers, employees, legal counsel, agents and contractors, from and against any and all suits, judgments, claims, demands, expenses, actions, causes of action, duties, assessments, fees, penalties, liabilities, losses and costs which the County and its successors and assigns may at any time or times hereafter bear, sustain, or suffer, as a result of the Equipment, including without limitation, its placement, installation, construction, reconstruction, inspection, maintenance, use, operation, alteration, enlarging, repair, replacement, relocation and/or removal.
- 11.3 **County Acknowledgement.** The County hereby acknowledges that it is responsible for its negligence and the negligence of those for whom it is responsible for at law.
- 11.4 **County Indemnity.** The County hereby releases, indemnifies, completely holds harmless, and agrees to defend the Company, its officers, employees, legal counsel, agents and contractors, from and against any and all suits, judgments, claims, demands, expenses, actions, causes of action, duties, assessments, fees, penalties, liabilities, losses and costs which the Company and its successors and assigns may at any time or times hereafter bear, sustain, suffer, be put to or incur by reason of its negligence and the negligence of those for whom it is responsible at law.
- 11.5 **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 **County not responsible.** The County 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 the Company's occupation or use of the ROWs, unless such damage was caused directly or indirectly by the negligence or willful misconduct of the County or those for which it is responsible in law.
- 12.2 **Company to assume environmental liabilities.** The Company agrees to assume all environmental liabilities, claims, fines, penalties, obligations, costs or expenses whatsoever relating to its use of the ROWs, including, without limitation, any liability for the clean-up, removal or remediation of any Hazardous Substance on or under the ROWs that result from:
- (a) the occupation, operations or activities of the Company, its contractors, agents or employees or by any person with the express or implied consent of the Company Within the ROWs; or
  - (b) any Equipment brought or placed Within the ROWs by the Company, its contractors, agents or employees or by any person with the express or implied consent of the Company;

unless such damage was 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 in law.

## 13. NO JOINT VENTURE, PARTNERSHIP OR CO-OWNERSHIP

- 13.1 **No Joint Venture.** The Parties hereby acknowledge and agree that this Agreement is solely an access 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.

## 14. FORCE MAJEURE

- 14.1 **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

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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.

## 15. DISPUTE RESOLUTION

15.1 **General.** The Parties hereby acknowledge and agree that:

- (a) this Agreement has been entered into voluntarily by the Parties with the intention that it shall be final and binding on the Parties until it is terminated or expires in accordance with its terms;
- (b) it is the intention of the Parties that all Disputes (as defined in subsection 15.2) be resolved in a fair, efficient, and timely manner without incurring undue expense and, wherever possible, without the intervention of the CRTC; and
- (c) the CRTC shall be requested by the Parties to consider and provide a decision only with respect to those matters which form the basis of the original Dispute as set out in the Dispute Notice issued under this Section 15.

15.2 **Resolution of Disputes.** The Parties will attempt to resolve any dispute, controversy, claim or alleged breach arising out of or in connection with this Agreement (“**Dispute**”) promptly through discussions at the operational level. In the event a resolution is not achieved, the disputing Party shall provide the other Party with written notice of the Dispute and the Parties shall attempt to resolve such Dispute between senior officers who have the authority to settle the Dispute. All negotiations conducted by such officers shall be confidential and shall be treated as compromise and settlement negotiations. If the Parties fail to resolve the Dispute within thirty (30) days of the non-disputing Party’s receipt of written notice, the Parties agree to utilize the services of a mutually agreed upon independent third party mediator. The mediator shall be knowledgeable regarding the area of the disputed issue. The mediator shall meet with the Parties together or separately, as necessary, to review all aspects of the issue. In a final attempt to assist the parties in resolving the issue themselves prior to proceeding to legal proceedings and/or the CRTC, the mediator shall provide, without prejudice, a non-binding written recommendation for settlement, within thirty (30) days of holding a mediation. Upon receipt of the written settlement recommendation, if an agreement cannot be reached, either Party may initiate legal proceedings and/or submit the Dispute to the CRTC for resolution.

15.3 **Continued performance.** Except where clearly prevented by the nature of the Dispute, the County and the Company agree to continue performing their respective obligations under this Agreement while a Dispute is subject to the terms of this Section 15.

## 16. NOTICE

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

**To the County:**

Corporation of the County Elgin  
450 Sunset Drive  
St. Thomas, Ontario N5R 5V1

**To the Company:**

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16.2 **Delivery of Notice.** Any notice given pursuant to Section 16.1 shall be deemed to have been received on the date on which it was delivered in person, or, if transmitted by facsimile during the regular business hours of the Party receiving the notice, on the date it was transmitted, or, if transmitted by facsimile outside regular business hours of the Party receiving the notice, on the next regular business day of the Party receiving the notice; provided, however, that either Party may change its address and/or facsimile number for purposes of receipt of any such communication by giving ten (10) days' prior written notice of such change to the other Party in the manner described above.

## 17. FOREIGN CORRUPT PRACTICES ACT AND ANTI-BRIBERY INDEMNITY

17.1 Notwithstanding anything to the contrary herein, the County, in its administration of this Agreement, shall refrain from offering, giving or promising, directly or indirectly, money or anything of value to a Canadian or foreign governmental official to influence the official in his or her official capacity, induce the official to do or omit to do an act in violation of his or her lawful duty, or to secure any improper advantage in order to assist in obtaining or retaining business for or with, or directing business to, any person. For the purposes of this Section, "**anything of value**" includes, but is not limited to, cash or a cash equivalent, discounts, gifts, use of materials, facilities or equipment, entertainment, drinks, meals, transportation, lodging, insurance benefits, or promise of future employment. "Governmental official" shall mean any person holding any level of legislative, administrative, or judicial office of the Canadian or a foreign government or any of its departments or agencies or divisions; any person acting on behalf of the Canadian or a foreign government, including a local or provincial agency, enterprise, or organization; any official or agent of a Canadian or a foreign public administration or publicly funded organization; any official of a Canadian or a foreign political party; any officer or agent of a public international organization (e.g., World Bank, International Monetary Fund, World Health Organization, United Nations, World Trade Organization); or any relatives or close family/household members of any of those listed above. The County shall indemnify and hold harmless the Company from all claims brought against the Company as a result of the County or its representatives' failure to comply with Anti-Bribery Law. The County shall immediately report any breach of Anti-Bribery Law by the County or its representatives. The County shall immediately report any breach of Anti-Bribery Law by the County or its representatives'. The Company shall have the right to audit the County's books and records with respect to payments made on behalf of the Company in the event that the Company believes that the County has violated this Section 17. The Company shall have the right to immediately terminate all payments to the County under this Agreement if the County fails to comply with this Section 17.

## 18. GENERAL

18.1 **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 or written, between the Parties.

18.2 **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, the Company 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 County, provided that the Company has given notice to the County.

18.3 **Gender and number.** In this Agreement, words importing the singular include the plural and vice versa, words importing gender, include all genders.

18.4 **Currency.** Unless otherwise indicated, references in this Agreement to money amounts are to the lawful currency of Canada.

18.5 **Parties to act reasonably.** 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.

18.6 **Amendments.** Except as expressly provided in this Agreement, no modification of or

Initials \_\_\_\_\_

amendment to this Agreement shall be effective unless agreed to in writing by the County and the Company.

- 18.7 **Survival.** The terms and conditions contained in this Agreement that by their sense and context are intended to survive the performance thereof by the Parties hereto shall so survive the completion of performance, the expiration and termination of this Agreement, including, without limitation, provisions with respect to indemnification and the making of any and all payments due hereunder.
- 18.8 **Waiver.** Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.
- 18.9 **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and everything else in this Agreement shall continue in full force and effect.
- 18.10 **Enurement.** 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.
- 18.11 **Counterparts:** This Agreement may be executed by the Parties and delivered by facsimile or PDF transmission and in one or more counterparts which when held together shall be considered one and the same Agreement.
- 18.12 **Equitable Relief.** Either Party may, in addition to any other remedies it may have at law or equity, seek equitable relief, including without limitation, injunctive relief, and specific performance to enforce its rights or the other party's obligations under this Agreement.
- 18.13 **Governing law.** This Agreement shall be governed by the laws of the Province of Ontario and all federal laws of Canada applicable therein.

[ONE (1) ENDORSEMENT PAGE FOLLOWS]

Initials \_\_\_\_\_

**IN WITNESS WHEREOF** this Agreement has been executed by the Parties hereto on the date(s) set out below and the Parties agree that this Agreement shall be effective on the date as set out at the top of page one (1) of this Agreement.

SIGNED, SEALED AND DELIVERED  
in the presence of:

**CORPORATION OF THE COUNTY OF  
ELGIN**

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

\_\_\_\_\_  
Tom Marks, Warden

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

\_\_\_\_\_  
Julie Gonyou, Chief Administrative Officer

*We have the authority to bind the Corporation*

SIGNED, SEALED AND DELIVERED  
in the presence of:

**###COMPANY###**

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

\_\_\_\_\_  
Per:  
Title:

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

\_\_\_\_\_  
Per:  
Title:

*I/We have the authority to bind the Corporation*

Initials \_\_\_\_\_

**SCHEDULE "A"****Fees and Charges****Telecommunication Equipment Consent and Road User Agreement**

<b>By-Law</b>	<b>Fee/Charge</b>	<b>Amount</b>
21-16	Preparation of Agreement	\$1000.00
21-16	Permit Fee	\$200.00 (per installation location)
21-16	Installation Fee	\$250.00 per kilometer (at each installation location)
21-16	Contract Administration Fee	\$100.00 per year
21-16	Road Occupancy Permit	\$200.00 to \$400.00 (plus refundable deposit)

Initials \_\_\_\_\_