

COMMITTEE OF THE WHOLE JUNE 21, 2004

REVISED MUNICIPAL ACCESS AGREEMENTS (MAA)

Recommendation

The Commissioner of Engineering and Public Works in consultation with the Director of Legal Services recommends that:

1. That the subject report be received as information.
2. That a bylaw be enacted to authorize execution of a standard form Municipal Access Agreement with Telecommunications (Utility) Companies, in a form satisfactory to the Commissioner of Engineering and Public Works and the City Solicitor.

Purpose

To inform Council of the status of discussions of Area Municipal partners from the York Durham Utility Coordination Group (YDUCG) involved in drafting a standard form Municipal Access Agreement (the "MAA") and to obtain Council approval for execution of the standard form approval. This document is to be used as the foundation for **all** private utilities requesting to install and operate facilities within public rights-of-ways.

Background

On April 14, 2003 council enacted By-law No. 128-2003 authorizing a form of Municipal Access Agreement (revised) for execution by the City and Utility Companies.

In 2000, the YDUCG was formed to discuss and review approval procedures and operating practices related to public and private utility companies conducting business and specifically installing their "plant" within public lands, more precisely, municipal road allowances and rights-of-way.

Out of this, a group representing some nineteen municipalities including both upper and lower tier jurisdictions, created a standard operating procedures manual (reference: YDUCG Model Utility Procedures Manual, May 2003) which is being promoted as "the guideline" to be used by Utilities and Municipalities alike in administering the various aspects of utility installations, involving such areas as design, approvals, records and cost recovery.

The two-volume manual is rooted in the FCM principles endorsed supporting telecommunications' (utility) installations within public rights-of way. In short;

1. Municipalities must have the right to manage the use of rights-of-way.
2. Municipalities must recover all costs associated with administration related to the occupancy and use of rights-of-way.
3. Municipalities must not be responsible for the costs associated with relocating telecommunications facilities (utilities).
4. Municipalities must not be held responsible for any losses associated with disruption of telecommunication (utility) services or damage to their plant.
5. Municipalities must receive compensation for the use of rights-of-way by telecommunications' (utility) providers.

Disagreement has arisen between the Municipalities (Owners) and Utilities (Service Providers), particularly related to principle 5, Compensation. The principles were tested in a landmark case, Ledcor Inc. versus North Vancouver. The final ruling was available in the Fall of 2003 from the Canadian Radio Telecommunications Commission (CRTC) as the governing agency having jurisdiction. While not entirely supporting the Municipalities' position it did allow for certain rights

to prevail and provided “guiding principles” to be considered for parties contemplating such works. The decision acted as the catalyst for both Telecommunications (telephone and cable tv) companies and Municipalities to formally initiate the process to draft an MAA document.

Since that time the Region of Durham and Region of York, through the Utility Coordination Group, have taken lead roles in facilitating numerous meetings with all stakeholders including both Area Municipalities and Utilities alike. The consultation process has been extensive in both time and resources involving Engineering, Finance and Legal staff input from both sides. The DRAFT document produced, Municipal Access Agreement for Telecommunication Providers’ (see Attachment No. 1) is the culmination of these efforts and is presently in a form acceptable to the YDUCG. The document is now in circulation to the Telecommunications’ Group for their final comments as well as being reviewed by an independent Solicitor with background experience in MAAs and similar such undertakings that has been engaged by YDUCG. Our steering committee anticipates with closing revisions that the DRAFT form of Agreement should be finalized and available for individual member Municipalities’ use in the summer, 2004.

The formalization of this process will bring direction to the Municipal Consent approval and Road Occupancy permitting functions now resident in the Engineering and Public Works Department through the newly created Utility Coordinator position. Revenues, based on the City’s Fees and Charges By-law should be realized this fiscal year from such providers as Bell Canada, Rogers Cable, FCI Broadband, Telus, 360 Networks and others.

Relationship to Vaughan Vision 2007

This report is consistent with the priorities previously set by Council.

Conclusion

The review process for revisions to the Municipal Access Agreement is nearing completion. A by-law is required to authorize the execution of the proposed revised standard form of Municipal Access Agreement with Utility Companies, in a form approved by the Commissioner of Engineering and Public Works and City Solicitor.

Attachments

1. DRAFT Municipal Access Agreement for Telecommunication Providers’

Report prepared by:

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Respectfully submitted,

Bill Robinson, P. Eng.,
Commissioner of Engineering and Public Works

Gary P. Carroll, P. Eng.,
Director of Engineering Services

**MUNICIPAL ACCESS AGREEMENT
FOR TELECOMMUNICATION PROVIDERS**

This Agreement made the _____ day of _____, 2004.

BETWEEN:

THE (ENTER MUNICIPALITY HERE)

(the "Municipality")

- and -

(ENTER COMPANY NAME HERE)

(the "Company")

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

AND WHEREAS, in order to operate as a Canadian carrier, the Company requires to construct, maintain and operate its Plant in, on, over, under, across or along the Rights-of-Way;

AND WHEREAS, pursuant to section 43 of the *Telecommunications Act*, the Company requires the Municipality's consent to construct its transmission facilities in, on, over, under, across or along highways and other public places within the jurisdiction of the Municipality;

AND WHEREAS the Company wishes to install and maintain its Plant in, on, under, over, along and across the Municipality's Rights-of-Way;

AND WHEREAS the Municipality is willing to permit the use of Rights-of-Way where, in its judgement, such use will not interfere with its own service requirements and the public use of the Right of Way including the consideration of the economy and safety and any rights or privileges previously conferred or hereafter conferred by the Municipality by contract or otherwise on others not parties to this Agreement to use any of the Rights-of-Way;

AND WHEREAS the Municipality and the Company have agreed that it would be mutually beneficial to outline the terms and conditions pursuant to which said consent shall be obtained;

NOW THEREFORE in consideration of the mutual terms, conditions and covenants herein contained, the Municipality and the Company each agree with each other as follows:

DEFINITIONS

1. In this Agreement, the following words and phrases shall have the following meanings:

- (a) "Commissioner" means the Municipality's ~~Commissioner~~, or the person designated by him or her;
- (b) "Emergency" means an unforeseen situation where immediate action must be taken to preserve public health, safety or essential service.
- (c) "Road Occupancy Permit" means a permit issued by the Road Authority Manager for the purpose of authorizing the commencement of the work for which a Right-of-Way work permit has been issued.
- (d) "Service Drop" means Plant that by its design, capacity and relationship to other Plant of the Company, can be reasonably considered to be for the sole purpose of connecting the Plant to not more than a single customer or building point (as opposed to being designed so as to, in future, carry multiple customer traffic);

- (e) "Plant" means any wires, fibre optic cables, ducts, manholes poles, cables, pipes, conduits, pedestals, antennas, vaults, support structures or other related facilities or structures;
- (f) "Right-of-Way" means any highway, street, road allowance, lane, bridge or viaduct;
- (g) "Service Corridors" means the horizontal and vertical location within the municipal right-of-way where Plant may be located as determined by the Municipality;
- (h) "SUE" means subsurface utility engineering and is the non-proprietary/generic process of locating underground facilities using more advanced locating techniques at varying levels of accuracy; and
- (i) "Third Party" means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof that attaches to the Company's Plant under an agreement with the Company but does not include direct users of the Company's services.

USE OF RIGHTS-OF-WAY

2. The Municipality hereby agrees to permit the Company to use the Right of Way for the purpose of excavating, installing, maintaining and removing the Plant subject to the terms and conditions set out in this Agreement and in accordance with all federal, provincial and municipal statutes, laws and by-laws or other rules, regulations, policies, standards and guidelines pertaining to the application and use of the Right of Way or the Plant.
3. The Company shall not use the Rights-of-Way in whole or in part for any purpose other than that permitted under this Agreement.

APPROVAL OF COMMISSIONER

4. The Company shall not excavate, break up or otherwise break the surface of any Right of Way for the purpose of constructing, maintaining or removing any of its Plant in, on, over, under, across or along any such Rights-of-Way without first:
 - (a) Obtaining the written consent of the Commissioner with regard to the proposed location of the Plant in, on, over, under, across or along any such Right of Way; and
 - (b) Providing detailed engineering plans to the Commissioner's satisfaction setting out the location of the Plant within the relevant Rights-of-Way.

Provided that, in the event of an Emergency, the Company shall be permitted to carry out such remedial work as is reasonably necessary to restore or maintain its essential service prior to satisfying clauses 4(a).

5. Where the Company utilizes existing duct banks or similar structures to pull cable and no physical disturbance or changes to the Right-of Way or its use is required, the Company shall obtain the appropriate Municipal Consent at no charge to the Company from the Municipality as the work or work environment dictate with the exception of paying for any fees associated to the Road Occupancy Permits as defined by the municipalities fees and charges.[w3][s4]
6. Despite Sections 4 and 5, the Company may carry out routine maintenance, field testing, Service Drop connections, and other non-disruptive work, excluding pulling cables through existing ducts, without the consent of the Municipality, but in no case shall the Company carry out any physical disruption or change to the surface of a Right-of-Way or to the use of the Right-of-Way, without obtaining the appropriate Road Occupancy Permit(s) from the Municipality as the work or work environment dictate.[w5][s6]
7. Prior to commencing any work, the Company shall obtain all applicable permits from the Municipality. The Company agrees to work with the Municipality to create an efficient

method of registering the work outlined in Sections 6 so the Municipality is notified of short work assignments within the Right-of-Way.

MANNER OF WORK

8. The Company agrees that all work conducted by it on a Right-of-Way including, without limitation, excavation, installation, maintenance and removal of the Company's Plant, shall be subject to the following conditions:
 - (a) All work shall be conducted and completed to the satisfaction of the Commissioner, at the Commissioner's sole discretion, acting reasonably, and in accordance with all laws, by-laws and the Municipality's policies and standards, as amended from time to time;
 - (b) The portions of the Plant which cross beneath streets shall be placed in a carrier pipe or be encased in concrete or as otherwise specified by the Commissioner;
 - (c) If the Company breaks or disturbs the surface of a Right-of-Way, it shall repair and restore the surface of the Right-of-Way to the same or better condition it was in before such work was undertaken by the Company in accordance with, without limitation, the Municipality's policies and standards, as amended from time to time, and to the satisfaction of the Commissioner. If the Company fails to repair and restore a Right-of-Way to the satisfaction of the Commissioner within seventy-two (72) hours of being notified by the Municipality, the Municipality may effect such repairs and charge all costs related thereto to the Company in accordance with Section 22 of this Agreement.
 - (d) In the event of an Emergency, the Municipality will take appropriate measures determined necessary, by the Commissioner, acting reasonably; to re-establish a safe environment. Any costs associated in working around the Plant shall be charged back to the Company in accordance with Section 23 of this Agreement.

- (e) If the Municipality requires the excavation, installation, maintenance or removal of the Plant to be stopped for any reasonable cause relating to public safety and health identified by the Municipality, or as a result of any circumstances beyond the control of the Municipality, acting reasonably, expressed by the Commissioner, the Company shall cease all such excavation, installation, maintenance or removal of the Plant forthwith upon receipt of notice from the Municipality and leave the site and all adjoining Right-of-Ways in a safe and clean condition. Within seventy-two (72) hours of issuing a stop work order under this subsection, the Commissioner will provide written reasons for such order to the Company, and the Company shall be allowed to resume its work activities once the reasons for the work stoppage have been resolved;
- (f) The Company shall be responsible for all excavation, installation, repair, replacement or removal of the Plant including the cost of such work when such work is initiated by the Company; and
- (g) The Company shall use reasonable efforts to schedule work and share Service Corridors and support structures with other service providers occupying and using or intending to occupy or use the Service Corridors, with the intent of minimizing the necessity for road cuts, construction and the placement of support structures in the Service Corridors.

THE COMPANY'S WARRANTIES

- 9. The Company represents and warrants to and covenants and agrees with the Municipality that:
 - (a) After completion of any work related to the excavation, installation, maintenance, repair, replacement or removal of the Plant, the Company shall leave the Right of Way in a sanitary, neat, clean, and safe condition and free from nuisance, all to the satisfaction of the Commissioner;
 - (b) The Company warrants all works to the satisfaction of the Municipality, resulting from the permitted work for a period of 3 years from the date of completion;

- (c) If this Agreement is terminated by the Municipality, all the unfulfilled covenants, indemnities and obligations of the Company hereunder shall survive such termination; and

THE MUNICIPALITY'S WARRANTY

10. The Municipality has made no representations or warranties as to the state of repair of the Rights-of-Way or the suitability of the Rights-of-Way for any business, activity or purpose whatsoever and the Company hereby agrees to accept the Rights-of-Way on an "as is" basis.

AS-CONSTRUCTED DRAWINGS

11. The Company shall provide "as-constructed" drawings, which may include certification requirements, at its expense, to the satisfaction of the Commissioner within three (3) months of completing the installation of Plant. All "as-constructed" drawings shall be submitted in both a hard copy format and a digital format, to the satisfaction of the Commissioner.

NOTIFICATION TO MUNICIPALITY

12. The parties shall, at no cost to the other party, provide locations of its Plant within two (2) hours of receiving a request by the other party or its contractors or authorized agents, using reasonable best efforts, in the event of a public safety or health Emergency or other high priority circumstances, otherwise within a time reasonably agreed upon by the Company and the Municipality.
13. The Company and the Municipality shall each provide to each other a list of 24hour emergency contact personnel available at all times and shall ensure that the aforementioned list is always up to date.
14. The Company agrees to pursue and become a member of a Utility Locate Notification system recognized by the Municipality other utility companies. The Company further agrees to participate in any Public Utility Co-ordination Committees involving all users of the Right-of-

Ways as may be established by the Municipality and such users and to contribute to the costs of such committees.

UTILITY PLANT AUTHENTICATION

15. The Company agrees to identify and verify/validate new and existing utility plant on plans created by Municipal staff or its consultants as required for maintenance, new construction and design projects. Such marked up drawings once received by the Company shall be returned to the Municipality or its consultant no later than fifteen (15) business days after receipt of such drawings.

PHYSICAL UTILITY PLANT VERIFICATION

16. The Company agrees to work with the Municipality in verifying the location of existing plant using the following steps:

- (a) Meet with the Municipality or its representatives to discuss potential design and construction conflicts upon request;
- (b) Where utility locations are questionable and the proposed project design is susceptible to a risk based on the actual location of existing utilities, the undertaking of a field investigation shall be required to verify horizontal and vertical location of Plant based upon an agreed method of locating the facilities;
- (c) If unable to locate Plant using non-disruptive locating techniques, the initiation of the appropriate Subsurface Utility Engineering method will be used to accurately locate the facility as agreed upon by the Company and the Municipality. All cost sharing arrangements shall be agreed upon prior to the work being initiated;
- (d) If the results obtained from the field investigation under subsection 16(b) are inconclusive, and if the parties are unable to agree on a cost sharing arrangement

under subsection 16(c), the Commissioner, acting reasonably, may at the Municipality's cost, proceed with the appropriate Subsurface Utility Engineering method. If results from the SUE methods uncover different results than those disclosed under subsection (b), the Company will bear the cost for the SUE investigation.

RELOCATION OF PLANT

17. Upon receipt of not less than sixty (60) days advance written notice from the Municipality, or such additional advance notice as is reasonable, having regard to the nature of the relocation required, the Company shall relocate its Plant within a Right-of-Way, or perform any other work in connection with the Right-of-Way as may be required by the Municipality for Municipal purposes.
18. In cases of urgency, both parties agree to work co-operatively and apply commercially reasonable best efforts to relocate Plant immediately as directed by The Commissioner acting reasonably, provided that in cases of Emergency, the Municipality may take any measures deemed necessary for public safety with respect to the Plant that may be required in the circumstances. The Municipality will make a good faith effort to provide alternative suggestions for re-routing the Plant affected by the relocation or adjustment to assist the Company in its efforts to ensure uninterrupted service to its customers.
19. The responsibility for the costs incurred in relocating the Company Plant or performing such work referenced above will, for the purposes of this agreement, be based upon the following:
 - (a) For relocations cost for Plant installed after the execution of this agreement, the following sliding scale shall apply. Plant installed subject to Municipal Consent between the Company and the Municipality within four (4) years of the consent approval being granted for the installation of such plant, the Municipality will be responsible for all reasonable relocation costs. For subsequent years, the

Municipality will be responsible for the following percentage of reasonable relocation costs:

Year 5	75%
Year 6	50%
Year 7	25%
Year 8	0%

For purpose of this section, the date to be used for calculating the relocation costs will be the date of the Municipal Consent. The municipal consent date associated with any Plant installed in or attached to the Company Support Structures shall be the municipal consent date for the construction of the Company's support structure(s).

- (b) For all Plant requiring relocation installed under any previous agreements between the Company and the Municipality, all previous cost sharing agreements for relocation shall remain in force and effect.
 - (c) The Company will provide to the Municipality a cost estimates breakdown for each project in a format clearly identifying the percentages and dates being applied to each part of the Company's structures and facilities for the purpose of affecting relocating costs.
 - (d) In the case where the Municipality cannot guarantee an ultimate location for the proposed works identified within the Municipality's Capital Works Plan, the Company will be notified of such situations and the Company will be responsible for full relocation costs for their Plant in the future.
 - (e) In the case where the Company's Plant is found to be in non-compliance with any aspect of the approved location, the cost for relocating the plant will be paid for by the Company. The municipality will, to the best of their ability, avoid unnecessary relocations but reserve the right to request such relocation as required.
 - (f) In the case where the Company's plant is found to be in non-compliance with Section 16, the cost for relocating the plant will be paid for by the Company.
20. Both parties agree that special circumstances may arise with respect to specific location approvals whereby it may be appropriate for the parties to mutually agree to waive the above-noted provisions and to negotiate alternative arrangements. These alternative arrangements shall be agreed upon in writing.
21. The allocation of costs associated with the relocation of plant owned by Third Parties and attached to or installed in the Company's Support Structures shall be the sole responsibility of such Third Parties. In no event shall the Municipality be responsible for costs incurred by, or charged to, such Third Parties to relocate their plant installed on or in the Company's Support Structures.

22. The relocation of Plant requested by parties other than the Municipality or those not required for Municipal purposes, shall be at the discretion of the Company acting reasonably and all of the costs of such relocations will be charged directly to the party requesting such relocation. An agreement in writing by each party to assume responsibility for all such relocation costs shall be required prior to commencing any of the associated relocation work. All relocations requested under this section, shall be subject to obtaining Municipal Consent and all other applicable permits.
23. If the Company fails to complete the relocation of the Plant in accordance with Section 16 or fails to repair the Rights-of-Way or do anything else required pursuant to this Agreement in a timely and expeditious manner to the satisfaction of the Commissioner, acting reasonably, the Municipality may, at its option complete such relocation or repair. The Company shall pay the cost of such relocation, repair, removal, restoration or other work to the Municipality forthwith plus an overhead equal to fifteen percent (15%) of such cost. In default of payment thereof, the amount of such cost with interest equal to the prime lending rate of the Municipality's principal financial institution carrying on business in the Municipal Area shall be due and payable by the Company;

DAMAGES

24. Where utility mark-up drawings and/or utility stakeouts are found to be incorrect and where the Municipality may potentially incur any direct or indirect costs as a result of the actual location of the Company's Plant, the Municipality agrees to notify the Company of such within twenty-four (24) hours. If the Company is unable to rectify the problem in a reasonable time commensurate with the situation, the Company will compensate the Municipality for any reasonable and verifiable additional costs which the Municipality incurs.

INDEMNIFICATION AND LIABILITY

25. The Municipality shall not be responsible, either directly or indirectly, for any damage to the Plant howsoever caused that may occur during its excavation, installation, maintenance or

removal by the Company, nor shall the Municipality be liable to the Company for any losses, claims, charges, damages, and expenses whatsoever suffered by the Company including, without limitation, claims for loss of revenue or loss of profits, indirect or consequential damages, on account of any actions or omissions of the Municipality, its Chair, Council members, officers, employees, contractors, agents, successors, local municipalities and assigns working in, under, over, along, upon and across its highways and Rights-of-Way or otherwise, except for any claims arising from the negligence or wilful misconduct by the Municipality or those for whom it is in law responsible.

26. The Company covenants and agrees to indemnify, defend and save harmless the Municipality, its Chair, Council members, officers, employees, contractors, agents, successors, local municipalities and assigns from and against all losses, claims, including claims for injurious affection, charges, damages and expenses which the Municipality may at any time or times bear, sustain or suffer, by reason, or on account of the placement, installation, relocation, maintenance or use of the Plant in, on, under, over along or across a Right-of-Way, except for any claims arising from the negligence or wilful misconduct by the Municipality or those for whom it is in law responsible and the Company shall, upon demand by the Municipality and at its own sole risk and expense, defend any and all suits, actions or other legal proceedings which may be brought or instituted by third persons against the Municipality on any such claim, demand or cause of action, and will pay and satisfy any judgement or decree which may be rendered against the Municipality in any such suit, action or other legal proceeding, and shall reimburse the Municipality for any and all reasonable legal expenses on a solicitor-client basis incurred in connection therewith. The Company's obligation to indemnify, defend and save harmless the Municipality shall survive the termination of this Agreement.

(a) If the Municipality becomes aware of any claim to which the Company's indemnity as set out above or elsewhere in this Agreement applies, the Municipality will promptly and in any event within seven (7) business days of the Municipality becoming aware of the claim, advise the Company in writing. The Municipality will provide reasonable particulars (to the extent of the Municipality's knowledge) of the factual basis for the claim and the amount of the claim.

- (b) With respect to any third party claim, the Company will have the right at its expense, to participate in or assume control of the negotiation, settlement or defence of the claim.
- (c) If the Company does not assume and continue control of the defence of any third party claim within fifteen (15) business days of the initial written notice of the claim from the Municipality, then the Municipality shall have the exclusive right to contest, settle or pay the amount claimed, and shall have the right to recover all amount in full from the Company.
- (d) Where the Company assumes control of any third party claim, the Company has the right to settle the claim on such terms and conditions as are acceptable to the Company and the Municipality, and will provide and execute such releases or such other documentation as may be necessary to complete the settlement of such claim.

TERM

27. The initial term of this Agreement shall be one (1) year, commencing on the first day of the month following the date in which the Agreement is executed, and shall automatically renew for an additional one (1) year periods upon the same terms and conditions contained herein, including payment of the annual fee, unless terminated by the parties, in writing, at least thirty (30) days prior to the expiry of the term. However, if the Agreement is terminated, all rights and privileges hereunder shall come to an end, provided that notwithstanding such termination the Company shall continue to be liable to the Municipality for all payments due and obligations incurred hereunder prior to the date of such termination.

PAYMENT OF FEES

28. The Company covenants and agrees to pay to the Municipality all applicable Consent and Permit Fees in respect of each installation, in accordance with the Municipality's Schedule of Fees and Charges as amended from time to time and in accordance with the methodology outlined in Schedule A, Tables A, B and C in consultation with the Company.

29. The Company covenants and agrees to pay a one time fee for development of the Municipal Access Agreement as outlined in the Municipality's Schedule of Fees and Charges by-law
30. The Company covenants and agrees to pay a yearly annual fee of \$xxxx.xx to be applied towards local Utility Co-ordination Committees as well as the joint planning and co-ordination process.
31. If at any time subsequent to the entering into of this Agreement the Provincial or Federal government or a regulatory authority, acting within its jurisdiction, enacts or repeals any legislation or regulation, or orders, directs or mandates anything which pertains to the subject matter of this Agreement then either party may notify the other of its intention to require the other party to enter into good faith negotiations to amend this Agreement, or to enter into a new agreement reflecting such legislative or regulatory action or court or tribunal decision, as the case may be, within thirty (30) days after written notice (the "Notice") from the notifying party and any newly permitted terms and conditions, charges or fees pursuant to such new or amended agreement will take effect from the date upon which the Notice expires.

If the parties are unable to re-negotiate the terms and conditions of this Agreement then the unresolved matters may, within thirty (30) days prior written notice from the requesting party, be referred by the party in the first instance to arbitration for resolution, in accordance with the *Ontario Arbitration Act*, as amended or its successor legislation, or in the second instance to the CRTC. Subject to the right to request arbitration, if an amendment or new agreement is not reached within ninety (90) days from the date on which the Notice was received, either party may terminate this Agreement without further notice and both parties shall fulfil their respective obligations thereafter in accordance with this Agreement.

32. The Company covenants and agrees to pay a pavement degradation fee for any road cut as outlined in Schedule B of this agreement.

SECURITY

33. The Company agrees to post a standing irrevocable letter of credit, or other form of security acceptable, to the Municipality at a value agreed upon by the Municipality and the Company.

Notwithstanding, the Municipality reserves the right to acquire additional securities for significant projects beyond the scope of the original standing irrevocable letter of credit. Alternatively, an irrevocable Letter of Credit may be posted for each project application for Municipal Consent in a form acceptable to the Municipality, in an amount equal to any and all restoration costs as determined by the Commissioner. The security shall be reduced to 20% of the original value upon acceptance of the installation of the Plant by the Commissioner. The 20% will be released after the warranty period has expired as noted in the "Companies Warranty" section.

34. Should the Municipality require that it draw on the securities, the Company shall immediately reinstate the securities to the original value or residual value in effect at the time of drawing.

DEFAULT

35. The Municipality and the Company mutually agree that should the Company materially fail to carry out any of the terms, covenants and conditions herein contained or default in any of its obligations under the terms hereof and fail within thirty (30) days after receiving written notice from the Municipality to correct any such failure, then this Agreement may, at the option of the Municipality be terminated by giving written notice to be effective upon receipt, provided that the Company shall continue to be liable to the Municipality for all payments due and obligations incurred under the Agreement prior to such termination.
36. Despite section 35, this Agreement may be terminated immediately and without prior notice by the Municipality 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*, the *Bankruptcy and Insolvency Act*, as amended from time to time, or any successor legislation;

- (b) the Company transfers, assigns, or sublicenses any part or all of its interest in this Agreement other than in accordance with the provisions of this Agreement, or attempts to do same;
- (c) the Company ceases to be licensed as a Canadian carrier or distribution undertaking within the meaning of the *Telecommunications Act*, or as regulated by the CRTC as amended from time to time, or any successor legislation; or
- (d) The Company violates any law or by-law in connection with the use of a Right-of-Way and fails to remedy the violation to the satisfaction of the Commissioner, acting reasonably, in an expedient manner.

BINDING ON SUCCESSORS

37. This Agreement shall be binding upon and shall enture to the benefit of the parties hereto and their respective successors and assigns.

ASSIGNMENT

38. This Agreement may be sublicensed, granted, transferred or assigned:

- (a) By the Municipality or the Company in its entirety, to a single sublicensee, grantee, transferee or assignee with the other's prior consent in writing, which consent shall not be unreasonably withheld; or
- (b) By the Company in part during the term of this Agreement without the Municipality's prior consent in writing;
 - i Upon having first given notice to the Municipality of the sublicense, grant, transfer or assignment;
 - ii Provided the sublicensee, grantee, transferee or assignee is an affiliate of the Company within the meaning of the *Business Corporations Act* of Ontario as amended from time to time; and

iii Despite the sublicense, grant, transfer or assignment of this Agreement in part by the Company, the Company will remain fully responsible to the Municipality for fulfilment of the obligations and liabilities of the Company described in this Agreement regardless of whether the obligations or liabilities arise out of any acts or omissions by the sublicensee, grantee, transferee or assignee.

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

NO OWNERSHIP RIGHTS

39. No use of a Right-of-Way under this Agreement shall create or vest in the Company any ownership or property rights in a Right-of-Way, and the Company shall be and remain a mere non-exclusive licensee of the Right-of-Way. Placement of the Plant in a Right-of-Way shall not create or vest in the Municipality any ownership or property rights to the Plant, except as provided elsewhere in the agreement

40. Nothing in this Agreement shall be construed as affecting any rights or otherwise of others not a party to this Agreement to use any Rights-of-Way in accordance with the Municipality's legal authority.

INSURANCE

41. The Company shall maintain insurance in sufficient amount and description as will protect the Company and the Municipality from claims for damages, personal injury including death, and for claims from property damage which may arise from the Company's operations in the Municipal Area under this Agreement, including without limitation the use or maintenance of the Plant on or in the Rights-of-Way or any act or omission of the Company's agents or employees while engaged in the work of excavating, placing, maintaining, renewing or removing the Equipment and such coverage shall include all costs, charges and expenses reasonably incurred with any injury or damage.

In addition to the foregoing the Company covenants and agrees that

- (a) The Company shall maintain at its expense during the term of this Agreement comprehensive general liability occurrence-based insurance coverage with an insurer licensed to sell insurance in Ontario covering claims and expenses for liability for Personal Injury, Bodily Injury and Property Damage in an amount not less than Five Million (\$5,000,000.00) Dollars per claim exclusive of interest and costs and such insurance coverage shall include the contractual obligations of the Company as stated within this Agreement and name the Municipality as an additional insured;
- (b) That the insurer must be approved by the Municipality
- (c) The company shall complete any insurance certificate forms as required by the Municipality.
- (d) All policies shall provide that they are primary insurance which will not call into contribution any other insurance available to the Municipality, provide a waiver of subrogation and for severability of interest and further that such insurance shall not be cancelled, lapsed or materially changed to the detriment of the Municipality, acting reasonably, without at least thirty (30) business days notice to the Municipality by registered mail;
- (e) The insurance coverage required under this Agreement shall not be construed to, and shall in no manner, limit or restrict the Company's liability or obligations under this Agreement; and
- (f) Forthwith upon the execution of this Agreement, the Company shall provide the Municipality with certificates of insurance evidencing the insurance coverage required by this Agreement and thereafter renewals of such insurance coverage.

NOTICES

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

XXXXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

Attention: XXXXXXXXXXXX
Tel: XXXXXXXX Fax: XXXXXXXX

and to the Company at the following address:

the Company Canada
[ADDRESS]

Tel: • Fax: •

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.

GENERAL

43. This Agreement is the entire agreement between the Municipality and the Company regarding the subject of this Agreement and it can be amended or supplemented only by a document executed in writing by both the Municipality and the Company.
44. This Agreement benefits and binds the Municipality and the Company and the successors of each of them.
45. If any term of this Agreement is found to be invalid, illegal, or unenforceable by a court having the jurisdiction to do so, that term is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that finding or by the severance of that term.
46. This Agreement creates contractual rights only between the Municipality and the Company and not an interest in the Rights-of-Way and the Company covenants and agrees with the

Municipality that the Company shall cease and desist from any registration of this Agreement or of any right howsoever arising under it.

47. No alleged waiver or breach of this Agreement is effective unless it is an express waiver in writing of the breach in respect of which it is asserted against the party alleged to have given the waiver. No waiver by a party of any breach of this Agreement operates as a waiver of any other breach of this Agreement.

48. In this Agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.

49. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada which may be applicable to a party in the Province of Ontario and both parties irrevocably attorney to the jurisdiction of the Courts of the Province of Ontario.

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

) **THE (MUNICIPALITY)**
)
)
) Per: _____
)
)
) Per: _____
)
) **THE COMPANY**
)
)
) Per: _____
)
)
) Per: _____
)
)

Schedule "A"

The following tables outline the methodology only. This method will be used in order to calculate Permit Fees per Municipality. **Table A** represents the minimum fee to be charged for a Short Route application (< 10 metres) as defined in the York Durham Model Utility Manual. This table represents the minimum time spent on application for Municipal Consent. For a short route application, this will be the Municipal Consent permit cost.

Table B represents an extension to **Table A** where a Long Route application has been submitted (>10 metres). The intent is to charge a per metre length for the review of the application as well as a unit cost for each piece of street furniture and the like. This table is broken down into Rural and Urban, Aerial and Buried, disruptive and non disruptive. Once this table has been compiled, the final fee will be a combined fee of both **Table A** and **Table B**.

Percentages are applied to represent the different levels of review required for each type of installation.

The base permit fees as well as the per metre length will vary between Municipalities, therefore enabling Municipalities with small or large volumes of applications to staff themselves accordingly and charge the appropriate fees to recover their causal costs. **Table A** would contain every staff member that affects the application from the administrative staff to the inspection staff. The time associated to each staff member would be an estimated time that they would need in order to review or process the application for a short route application.

The short route and long route fees, base permit fee and per metre fee respectively, would be reviewed each year and adjusted where required and warranted in consultation with the Company.

The final **Table C** is the combined amounts from **Table A** and **Table B** and would represent the final permit fee per application for Municipal Consent. This fee would not include any other permit fees as required by each Municipality such as any Road Occupancy Permits.

Table A

Base Permit Fee Calculation (Short Route)

Base Permit Worksheet - Short Route Work

Staff Position/Title	Hourly Rate (\$)	Overburden (hr *2)	Minimum Time spent per application (hrs)	Fee per Employee (\$)
		\$ -		\$ -

Staff Position/Title	Hourly Rate (\$)	Overburden (hr *2)	Minimum Time spent per application (hrs)	Fee per Employee (\$)
		\$ -		\$ -

Staff Position/Title	Hourly Rate (\$)	Overburden (hr *2)	Minimum Time spent per application (hrs)	Fee per Employee (\$)
		\$ -		\$ -

Staff Position/Title	Hourly Rate (\$)	Overburden (hr *2)	Minimum Time spent per application (hrs)	Fee per Employee (\$)
		\$ -		\$ -

Staff Position/Title	Hourly Rate (\$)	Overburden (hr *2)	Minimum Time spent per application (hrs)	Fee per Employee (\$)
		\$ -		\$ -

Staff Position/Title	Hourly Rate (\$)	Overburden (hr *2)	Minimum Time spent per application (hrs)	Fee per Employee (\$)
		\$ -		\$ -

Staff Position/Title	Hourly Rate (\$)	Overburden (hr *2)	Minimum Time spent per application (hrs)	Fee per Employee (\$)
		\$ -		1 \$ -

Staff Position/Title	Hourly Rate (\$)	Overburden (hr *2)	Minimum Time spent per application (hrs)	Fee per Employee (\$)
		\$ -		1 \$ -

Total Base Fee (Staff) \$ -

Table B

Permit Fee Calculation (Long Route)

Description	Length	Rate	Review Surcharge	Extension	Subtotal
Long Route Municipal Consent Fee (Linear Length based on Each Municipality)					
Rural Condition					
Aerial Cables	0	\$x,xxx/m		\$ -	
Pulled Cables in Conduit (no Excavation)	0	\$ x,xxx /m		\$ -	
Pulled Cables in Conduit (with Pits)	0	\$ x,xxx /m	10%	\$ -	
New Cables/Conduit (Open Cut or Directional Bore)	0	\$ x,xxx /m	10%	\$ -	
Urban Condition					
Aerial Cables	0	\$ x,xxx /m		\$ -	
Pulled Cables in Conduit (no Excavation)	0	\$ x,xxx /m		\$ -	
Pulled Cables in Conduit (with Pits)	0	\$ x,xxx /m	10%	\$ -	
New Cables/Conduit (Open Cut or Directional Bore)	0	\$ x,xxx /m	20%	\$ -	
Administration Surcharge <small>(To encompass other Municipal fees not being collected due to telecom presence such as blocked parking meters, etc)</small>					
		\$ -	15%	\$ -	\$ -
Fee Cap Review (Verification or appropriate MC Fee)					
Cabinet Review					
Pedestal	0	\$ x,xxx		\$ -	
Cabinet	0	\$ x,xxx		\$ -	\$ -
Entrance Review (to review road entrances to cabinets)					
Each	0	\$ x,xxx		\$ -	\$ -
Pavement Degradation Fee (Applied where applicable)					
	Area (sq. m)	Unit charge			
Pavement Age (0-2 years)	0	\$24		\$ -	
Pavement Age (2-4 years)	0	\$20		\$ -	
Pavement Age (4-7 years)	0	\$16		\$ -	
Pavement Age (7-10 years)	0	\$10		\$ -	
Pavement Age (10 onwards)	0	\$4		\$ -	\$ -
Final Cost for Municipal Consent Review					\$ -

NOTE: THE PER METRE FEE WOULD INCLUDE ADDITIONAL REVIEW BASED ON LENGTH OF PROJECT AS WELL AS SUPPLIES, MILEAGE, MAILING, ETC.

Table C

Permit Fee

Total Staff Time Fee	\$	-
Total Work Fee	\$	-
Total Permit Fee	\$	-

Schedule "B"

Pavement Degradation Schedule of Fees

- Based on the Ottawa-Carlton study

Compensation Item	Mechanism	Compensation
Pavement degradation (life cycle losses)	Levy at the time of permitting. Adjust based on actual extent of trenching if necessary.	Based on pavement age: \$24 per m ² for 2 years or less \$20 for 2 to 4 years \$16 for 4 to 7 years \$10 for 7 to 10 years \$4 for 10 or more years