MUNICIPAL ACCESS AGREEMENT

BETWEEN

THE MUNICIPALITY

AND

THE COMPANY

This model Municipal Access Agreement (MAA) is intended to be a non-binding resource document for use by municipalities and carriers when negotiating their own MAAs.

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CRTC Decisions on Municipal Access

Ledcor/Vancouver – Construction, operation and maintenance of transmission lines in Vancouver, Decision CRTC 2001-23, 25 January 2001 (the "**Ledcor Decision**")

Part VII application by MTSA Corp. seeking access to Light Rail Transit (LRT) lands in the City of Edmonton, Telecom Decision CRTC 2005-36, 17 June 2005 (the "**Allstream - Edmonton Decision**")

Shaw Cablesystems Limited's request for access to highways and other public places within the District of Maple Ridge on terms and conditions in accordance with Decision 2001-23, Telecom Decision CRTC 2007-100, 25 October 2007 (the "**Shaw - Maple Ridge Decision**")

Shaw Cablesystems Limited's request for access to highways and other public places in the County of Wheatland, Alberta, Telecom Decision CRTC 2008-45, 30 May 2008 (the "**Shaw - Wheatland Decision**")

Application by the City of Baie-Comeau regarding the costs to relocate TELUS Communications Company's telecommunications facilities, Telecom Decision CRTC 2008-91, 19 September 2008 (the "Telus - Baie-Comeau Decision")

MTSA Inc. – Application regarding a Municipal Access Agreement with the City of Vancouver, Telecom Regulatory Policy CRTC 2009-150, 19 March 2009 (the "**Allstream – Vancouver Decision**")

Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Application regarding access to municipal property in the City of Thunder Bay, Telecom Decision CRTC 2010-806, 29 October 2010 (the "**Bell – Thunder Bay Decision**")

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MUNICIPAL ACCESS AGREEMENT

This Municipal Access Agreement shall be effective as of the ___ day of _____, 20__ (the "**Effective Date**").

B E T W E E N:

[NAME OF MUNICIPALITY]
(the "**Municipality**")

- and -

[NAME OF COMPANY]
(the "**Company**")

(each, a "**Party**" and, collectively, the "**Parties**")

RECITALS

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

AND WHEREAS, in order to operate as a Carrier, 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 Municipality (collectively, "**Rights-of-Way**" or "**ROWs**")[1] or other public places[2] as agreed to by the Parties;

AND WHEREAS, pursuant to section 43 of the Telecom Act, the Company requires the Municipality's consent to construct its Equipment Within the ROWs and the Municipality 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 the public use and enjoyment of the ROWs, nor any rights or privileges previously conferred or conferred after the Effective Date by the Municipality on

1 Rights-of-way can also be referred to as streets, highways, road allowances and alignments.

2 For a discussion of "other public places", see the Allstream - Edmonton Decision and the Allstream – Vancouver Decision.

Third Parties to use or access the ROWs;[3]

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

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

1. DEFINITIONS AND INTERPRETATION

1.1. **Definitions.**

(a) "**Affiliate**" means:

i. in the case of the Company, "affiliate" as defined in the *Canada Business Corporations Act* that is also a Carrier.

ii. in the case of the Municipality, a local board, agency or commission of the Municipality or a corporation which is partially or solely owned by, and is controlled by, the Municipality, and which has as a primary purpose, the management and maintenance of the ROWs.

(b) "**Emergency**" means an unforeseen situation where immediate action must be taken to preserve the environment, public health, safety or an essential service of either of the Parties.

(c) "**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).

(d) "**Equipment**" means the transmission and distribution facilities owned by the Company and 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.

(e) "**Municipal Consent**" means the written consent of the Municipality, with or without conditions, to allow the Company to perform Work Within the ROWs that requires the excavation or breaking up of the ROWs (as more fully described in **Schedule B**).

3 Sections 43 and 44 of the Telecom Act set out the Company's and Municipality's basic statutory rights.

(f) "**Municipal Engineer**" means the [●] of the Municipality or the individual designated by him or her.

(g) "**Municipality's Costs**" means the reasonable and verifiable costs and expenses of the Municipality, including the cost of labour and materials, plus a reasonable overhead charge of [●][4].

(h) "**Permit**" means a Municipal Consent or a Road Occupancy Permit or both.

(i) "**Road Occupancy Permit**" means a Permit issued by the Municipality authorizing the Company to conduct Work that includes any activity that involves a deployment of its workforce, vehicles and other equipment in the ROWs when performing the Work (as more fully described in **Schedule B**).[5]

(j) "**Service Drop**" means a cable that, by its design, capacity and relationship to other 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 or property.

(k) "**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.

(l) "**Work**" means, but is not limited to, any installation, removal, construction, maintenance, repair, replacement, relocation, 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. **Recitals and Schedules.** The beginning part of this Agreement entitled "Recitals" and the following schedules are annexed to this Agreement and are hereby incorporated by reference into this Agreement and form part hereof:

Schedule A - Fees and Charges Payable by the Company
Schedule B – Permits Required by the Municipality
Schedule C – Relocation Costs

4 Municipality's Costs are incurred in respect of activities the Municipality performs on behalf of the Company.

5 Not every municipality uses Road Occupancy Permits or similar type permits.

2. USE OF ROWs

2.1. **Consent to use ROWs**. The Municipality 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 municipal by-laws, rules, policies, standards and guidelines ("**Municipal Guidelines**") pertaining to the Equipment and the use of the ROWs.

2.2. **Proviso.** Notwithstanding **Section 2.1** and any other provisions of this Agreement, to the extent that any of the Municipal Guidelines are inconsistent with the terms of this Agreement, the Company shall not be required to comply with such Municipal Guidelines.

2.3. **Scope of municipal consent.** The Company shall not, in the exercise of its rights under this Agreement, unduly interfere with the public use and enjoyment of the ROWs.

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 Municipality any ownership or property rights to the Equipment.

2.5. **Condition of ROWs.** The Municipality 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. PERMITS TO CONDUCT WORK

3.1. **Where Permits required.**

(a) Subject to **Section 3.2**, Work Within the ROWs by the Company is subject to the authorization requirements of the Municipality as set out in **Schedule B**.[6]

(b) For each Permit required above, the Company shall submit to the Municipality a completed application, in a form specified by the Municipality and including the applicable fee set out in **Schedule A**.[7]

6 Alternatively, the Municipality may want to refer to its permit by-law.

7 The Municipality may want to refer to its fees by-law instead.

(c) Subject to **Section 3.5**, the Municipality will issue the applicable Permits within ● days of receiving a complete Application, or such other time as agreed to by the Parties having regard to the complexity of the Work covered by the Application and the volume of Permit Applications before the Municipality at that time.

3.2. **No Permits for routine Work.**[8] Notwithstanding **Section 3.1**, the Company may, with advance notice as required by the Municipality's traffic management policies, but without first obtaining a Permit:

(a) utilize existing ducts or similar structures of the Equipment;

(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 Municipality'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 [●] of the date of issuance of the Permit, and has not sought and received an extension to the Permit from the Municipality, 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 Municipality, the Company shall, prior to undertaking any Work that requires a Municipal Consent, submit the following to the Municipal 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 Municipality within which the Work is proposed to take place; and

(b) all other relevant plans, drawings and other information as may be normally required by the Municipal Engineer from time to time for the purposes of issuing Permits.

3.5. **Refusal to issue Permits.** In case of conflict with any *bona fide* municipal purpose, including reasons of public safety and health, conflicts with existing infrastructure, proposed road construction, or the proper functioning of public services, all as identified in writing to the Company by the Municipality, the Municipality may request

8 This provision may be used if the Parties do not want to use Schedule B.

amendments to the plans referred to in **Section 3.4** or may choose to refuse to issue a Permit in accordance with **Section 3.1**.

3.6. **Temporary Connections.**

COMMENTARY

The Municipality may want to address the issue of temporary connections or Service Drops, including clauses that require that:

- wires and cables cross ROWs with adequate vertical clearance and do not lie on the ground;
- the temporary connection be removed within a reasonable time (e.g., the next construction season);
- the Company remedy any conditions deemed unsafe by the Municipality within a certain time; and
- the Company not cause any aerial trespass of adjacent or nearby properties.

3.7. **Restoration of the Company's service during Emergencies**. Notwithstanding **Section 3.1**, in the event of an Emergency, the Company shall be permitted, provided that the Company gives notice to the Municipality as soon as reasonably practicable, to perform such remedial Work as is reasonably necessary to restore its services without complying with **Section 3.1**; provided that the Company does comply with **Section 3.1** within five (5) business days of completing the Work.

3.8. **Temporary changes by Municipality.** Notwithstanding any other provision in this Agreement, the Municipality 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 Municipality 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 Municipality shall provide such advance notice as is reasonably possible in the circumstances.

3.9. **Security.**

COMMENTARY

This Article sets out the circumstances in which a security deposit may be required of the Company.

4. MANNER OF WORK

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

(a) the applicable laws (and, in particular, all laws and codes relating to occupational health and safety);

(b) the Municipal Guidelines;

(c) this Agreement; and

(d) the applicable Permits issued under **Section 3.1**.

4.2. **Stoppage of Work.** The Municipality may order the stoppage of the Work for any *bona fide* municipal purpose or cause relating to public health and safety or any circumstances beyond its control. In such circumstances, the Municipality 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 Municipality shall provide the Company with a written stop work order with reasons. When the reasons for the Work stoppage have been resolved, the Municipality shall advise the Company immediately that it can commence the Work.

4.3. **Coordination of Work.** The Company shall use its reasonable efforts to minimize the necessity for road cuts, construction and the placement of new Equipment Within the ROW by coordinating its Work and sharing the use of support structures with other existing and new occupants of the ROWs.

4.4. **Utility co-ordination committee.** The Company shall participate in a utility co-ordination committee established by the Municipality and contribute to its equitable share of the reasonable costs of the operation and administration of the committee as approved by such committee.

4.5. **Emergency contact personnel.** The Company and the Municipality shall provide to each other a list of 24-hour emergency contact personnel, available at all times, including contact particulars, and shall ensure that the list is kept current.

4.6. **Emergency work by Municipality.** In the event of an Emergency, the Municipality shall as soon as reasonably practicable contact the Company and, as circumstances permit, allow the Company a reasonable opportunity to remove, relocate, protect or otherwise deal with the Equipment, having regard to the nature of the Emergency. Notwithstanding the foregoing, the Municipality may take all such measures it deems necessary to address the Emergency and otherwise re-establish a safe environment, and the Company shall pay

the Municipality's Costs that are directly attributable to the Work or the presence of the Equipment in the ROWs.

4.7. **"As-built" drawings.** Where required by the Municipality, the Company shall, no later than [● days] after completion of any Work provide the Municipal Engineer with accurate "as-built" drawings, prepared in accordance with such standards as may be required by the Municipal Engineer, sufficient to accurately establish the plan, profile and dimensions of the Equipment installed Within the ROWs. Such drawings shall only be used for the purposes of facilitating the Municipal Engineer's conduct of planning and issuance of Work permits. The "as-constructed" drawings must be protected through reasonable measures and must not be shared beyond those who require it for the purposes described above, nor must they be used for any other purpose or combined with other information.

4.8. **Where Equipment is located incorrectly**. Where the location of any portion of the Equipment in a ROW is located outside a distance of [●] horizontally (centre-line to centre-line) from the location approved in the Permit or as shown on the as-built drawings (as accepted by the Municipality) and, as a result, the Municipality is unable to install its facilities Within the affected ROWs in the manner it expected based on the Permit or as-built drawings (the "**Conflict**"), the following shall apply:

NON-CONSENSUS – To be negotiated

4.9. **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 Municipality. Subject to **Section 5.5**, where the Company is required to break or otherwise disturb the surface of a ROW to perform its Work, it shall repair and restore the surface of the ROW to substantially the same condition it was in before the Work was undertaken, all in accordance with the Municipal Guidelines and to the satisfaction of the Municipal Engineer.

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, as follows:

(a) if pavement has been repaved or overlaid during the five-year period immediately prior to the date of issuance of the Permit, then the Municipality may require that the Company grind and overlay the full lane width of pavement in the ROW;

(b) if pavement has been repaved or overlaid during the two-year period immediately prior to the date of issuance, then the Municipality may require that the Company grind and overlay the full width of the pavement in the ROW;

(c) in either **subsections (a)** or **(b)** above, if Third Parties, including the Municipality as a provider of services to the public, has excavated, broken up or otherwise disturbed the pavement to be ground and overlaid, the costs of that grind and overlay will be apportioned between the Company and the Third Parties on the basis of the area of their respective cuts;

(d) the Municipality will not require grind and overlay under **subsections (a)** or **(b)** above for road restoration work involving:

i. service connections to buildings where no other reasonable means of providing service exists and the Company had no requirement to provide service before the new pavement was placed;

ii. Emergencies; and

iii. other situations deemed by the Municipal Engineer to be in the public interest; and

(e) if the Municipality has required the Company to grind and overlay under either **subsections (a)** or **(b)** above, the Company will have no obligation to pay Pavement Degradation fees under **Schedule A** in relation to that pavement.

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 Municipality.

If a temporary repair gives rise to an unsafe condition, then this shall be deemed to constitute an Emergency and the provisions of **Section 4.6** shall apply.

5.4. **Warranty for repairs.** The Company warrants its temporary repair, to the satisfaction of the Municipality until such time as the final repair is completed by the Company, or, where the Municipality is performing the final repair, for a period of two (2) years or

until such time as the final repair is completed by the Municipality, 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 Municipality.** Where:

(a) the Company fails to complete a temporary repair to the satisfaction of the Municipality within **[●]** of being notified in writing by the Municipality, or such other period as may be agreed to by the Parties[9]; or

(b) the Company and the Municipality agree that the Municipality should perform the repair,

then the Municipality may effect such work necessary to perform the repair and the Company shall pay the Municipality's Costs of performing the repair.

6. LOCATING FACILITIES IN ROWs

6.1. **Locates.**[10] 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 [●] 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.[11]

9 This time period may be negotiated between the parties. A common time period used is 72 hours.

10 This section may need to be amended to reflect procedures for providing locates that have been established by provincial legislation.

11 Parties to negotiate time (15 days is suggested).

6.3. **Inaccurate Locates.** Where the Company's Locates do not accurately correspond with either the Mark-ups or physical location of the Equipment, and as a result, the Municipality is unable to install its facilities Within the affected ROWs in the manner it expected based on the Locates provided by the Company (the "**Error**"), the following shall apply:

NON-CONSENSUS – To be negotiated

7. RELOCATION OF PLANT

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

7.2. **Municipality's efforts.** The Municipality will make good faith efforts to provide alternative routes for the Equipment affected by the relocation to ensure uninterrupted service to the Company's customers. Once the Company has provided the Municipality with all information the Municipality requires to enable it to process a Permit application, the Municipality shall provide, on a timely basis, all Permits required to allow the Company to relocate the Equipment.

7.3. **Reimbursement by Municipality for the Company's Relocation Costs.** The Municipality shall reimburse the Company for all or part of its reasonable and verifiable costs of completing a relocation requested by the Municipality (the "**Relocation Costs**") based upon the principles, methodologies and procedures set out in **Schedule** C.

8. FEES AND OTHER CHARGES

8.1. **General.** The Company covenants and agrees to pay to the Municipality the fees, charges and Municipality's Costs in accordance with this Agreement, including the fees and charges set out in **Schedule A**.[12]

8.2. **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,

12 The Municipality may want to refer to its fees by-law instead.

and the payment terms. The Parties agree that all payments shall be made in full by no later than **[●]** days after the date of the invoice was received.[13]

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

9. TERM AND TERMINATION

9.1. **Initial term and renewal.** This Agreement shall have an initial term of ● years commencing on the Effective Date and shall be [renewed automatically for successive ● year terms][14] unless:

(a) this Agreement is terminated by either Party in accordance with this Agreement;

(b) a Party delivers initial notice of non-renewal to the other Party at least ● days prior to the expiration of the then current term; or

(c) this Agreement is replaced by a New Agreement (as defined below) between the Parties.

9.2. **Termination by either Party.** Either Party may terminate this Agreement without further obligation to the other Party, upon providing at least twenty-four (24) hours' 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 Municipality.** The Municipality may terminate this Agreement by providing the Company with at least twenty-four (24) hours' written notice in the event that:

13 The payment terms will be negotiated between the parties.

14 The parties may negotiate the renewal terms.

(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 16.7**; 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 **Sections 9.2** and **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 Municipality in writing that it no longer requires the use of the Equipment:

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

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

9.5. **Removing abandoned Equipment.** Where the Company advises the Municipality in writing that it no longer requires the use of any Equipment, the Company shall, at the Municipality'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 Municipal 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 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 such Equipment and restore the ROWs within the time specified above and to the satisfaction of the Municipal Engineer, the Municipality may complete such removal and restoration and the Company shall pay the associated Municipality'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

COMMENTARY

This Article sets out the insurance required of the Company and will depend on the individual requirements of the Parties.

11. LIABILITY AND INDEMNIFICATION

11.1. **Definitions.** For the purposes of this **Article 11**, the following definitions shall apply:

(a) "**Municipality**" means the Municipality and its elected and appointed officials, officers, employees, contractors, agents, successors and assigns;

(b) "**Company**" means the Company and its directors, officers, employees, contractors, agents, successors and assigns;

(c) "**Claims**" means any and all claims, actions, causes of action, complaints, demands, suits or proceedings of any nature or kind;

(d) "**Losses**" means, in respect of any matter, all losses, damages, liabilities, deficiencies, Costs and expenses; and

(e) "**Costs**" means those costs (including, without limitation, all legal and other professional fees and disbursements, interest, liquidated damages and amounts paid in settlement, whether from a third party or otherwise) awarded in accordance with the order of a court of competent jurisdiction, the order of a board, tribunal or arbitrator or costs negotiated in the settlement of a claim or action.

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

(a) be responsible, either directly or indirectly, for any damage to the Equipment howsoever caused; and

(b) be liable to the Company for any Losses whatsoever suffered or incurred by the Company,

on account of any actions or omissions of the Municipality under this Agreement.

11.3. **No liability, both Parties.** Notwithstanding anything else in this Agreement, neither Party shall be liable to any person in any way for special, incidental, indirect, consequential, exemplary or punitive damages, including damages for pure economic loss or for failure to realize expected profits, howsoever caused or contributed to, in connection with this Agreement and the performance or non-performance of its obligations hereunder.

11.4. **Indemnification by the Company.**

NON-CONSENSUS – To be negotiated

11.5. **Indemnification by Municipality.**

NON-CONSENSUS – To be negotiated

12. ENVIRONMENTAL LIABILITY

12.1. **Municipality not responsible.** The Municipality is not responsible, either directly or indirectly, for any damage to the natural environment or property, including any nuisance, trespass, negligence, or injury to any person, howsoever caused, arising from the presence, deposit, escape, discharge, leak, spill or release of any Hazardous Substance in connection with the Company's occupation or use of the ROWs, unless such damage was caused directly or indirectly by the negligence or wilful misconduct of the Municipality 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 wilful misconduct on the part of the Municipality or those for which it is responsible in law.

13. FORCE MAJEURE

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

14. DISPUTE RESOLUTION

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

(a) this Agreement has been entered into voluntarily by the Parties with the intention that is 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 **Section 14.2**) 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 **Article 14**.

14.2. **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, either Party may initiate legal proceedings and/or submit the Dispute to the CRTC for resolution.

14.3. **Continued performance.** Except where clearly prevented by the nature of the Dispute, the Municipality and the Company agree to continue performing their respective obligations under this Agreement while a Dispute is subject to the terms of this **Article 14**.

15. NOTICES

15.1. **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:

If to the Municipality:	With a copy to:
If to the Company	With a copy to:

15.2. **Delivery of notice.** Any notice given pursuant to **Section 15.1** 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.

15.3. **Alternative Method of Notice.**

> **COMMENTARY**
>
> This Section sets out alternate methods of notice that the Parties may negotiate.

16. GENERAL

16.1. **Entire agreement.** This Agreement, together with the Schedules attached hereto, constitutes 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.

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

16.3. **Sections and headings.** The division of this Agreement into articles, sections and subsections and the insertion of headings are for convenience of reference only and do not affect the interpretation of this Agreement. Unless otherwise indicated, references in this Agreement to an article, section, subsection or schedule are to the specified article, section or subsection of or schedule to this Agreement.

16.4. **Statutory references.** A reference to a statute includes all regulations and rules made pursuant to the statute and, unless otherwise specified, the provisions of any statute or regulation which amends, supplements or supersedes the statute or the regulation.

16.5. **Including.** Where the word "including" or "includes" is used in this Agreement it means "including (or includes) without limitation as to the generality of the foregoing".

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

16.7. **Assignment.** This Agreement may not be assigned, in whole or in part, without the prior written consent of the other Party. Notwithstanding the foregoing, either Party shall have the right to assign this Agreement to an Affiliate without the consent of the other Party, provided that: i) it is not in material breach of this Agreement; ii) it has given prompt written notice to the other Party; iii) any assignee agrees to be bound by the terms and conditions of this Agreement; and iv) the assignee is not in direct competition with the other Party, in which case, prior written consent would be required.

16.8. **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.

16.9. **Amendments.** Except as expressly provided in this Agreement, no modification of or amendment to this Agreement shall be effective unless agreed to in writing by the Municipality and the Company.

16.10. **Survival.** The terms and conditions contained in this Agreement that by their sense and context are intended to survive the performance thereof by the Parties hereto shall so survive the completion of performance, the expiration and termination of this Agreement, including, without limitation, provisions with respect to indemnification and the making of any and all payments due hereunder.

16.11. **Governing law.** This Agreement shall be governed by the laws of the Province of [●] and all federal laws of Canada applicable therein.

16.12. **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.

16.13. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction 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

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

16.15. **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.

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

MUNICIPALITY	**COMPANY**
Authorized Signatory, [name & title]	Authorized Signatory, [name & title]
Authorized Signatory, [name & title]	Authorized Signatory, [name & title]

SCHEDULE A
FEES AND CHARGES PAYABLE BY THE COMPANY

Definition of Causal Costs

NON-CONSENSUS – To be negotiated

Determination of Causal Costs

COMMENTARY

The discussion below provides a high level description of the methodology established by the CRTC to calculate causal costs based on generally accepted economic principles. This methodology was first described in CRTC Telecom Decision CRTC 79-16, *Inquiry into Telecommunications Carriers' Costing and Accounting Procedures – Phase II: Information Requirements for New Service Tariff Filings* (28 August 1979). However, as discussed below, the parties may mutually agree to negotiate how causal costs may be determined and/or applied through fees and other charges.

"Causal costs" are prospective (*i.e.*, forward-looking, in that "sunk" costs are not included) and incremental (*i.e.*, only costs that change as a result of the project are considered). Such causal costs are determined through an economic study specifying a Reference Plan and an Alternative Plan.

The Reference Plan consists of expected activities if a right of way is not granted to the telecommunications service provider in question. In most cases, the Reference Plan will reflect normal operation of the street, regular maintenance with no (additional) right of way, etc. Occasionally, however, some repair activity may already be planned, e.g. repair of cracks in the pavement. In such cases, the planned activities should be reflected in the Reference Plan.

Similarly, the Alternative Plan should be elaborated by listing all costs associated with the construction of the transmission line by a specific telecommunications service provider. The Alternative Plan should be as specific as possible, giving the location and length of the right of way and the timing of construction.

The resulting costs (expressed as present values) should be added up for each of the Alternative Plan and the Reference Plan. The difference between the total for the Alternative Plan and the Reference Plan is the present value of the costs of the project (*i.e.*, the causal costs).

Municipalities and carriers have the flexibility to negotiate the fee structure for the recovery of these costs. For example, they could be recovered in one lump sum payment, or a series of payments, fees or charges or some combination, as long as the payment scheme chosen by the municipality generates revenues whose present value equals the present value of costs.

In practice, carriers and municipalities often agree on certain fees/charges as a proxy for the municipality's causal costs, rather than requiring the municipality to conduct a cost study which may be complex and time consuming. Through the many cases that have been considered by the Commission and agreements that have been concluded freely between municipalities and carriers, there are a number of fee structures that have been accepted as a means of recuperating a municipality's causal costs.

In this Schedule are listed fees that have been used in agreements in Canada between carriers and larger cities or municipalities. While the quantum of the fees are not listed here as they would differ from municipality to municipality and potentially carrier to carrier, Municipalities and Carriers may wish to familiarize themselves with sample agreements and satisfy themselves that, within a reasonable range and considering inflation and other factors, these fees will adequately reflect the local context.

Recovery of Causal Costs

The following constitutes various fees or charges that have been applied in the past by municipalities. The examples of fees listed below are meant to assist negotiations between municipalities and carriers, but the examples might not all be applicable and there may be others that apply. Such fees may include:

1. Permit application fees;
2. Inspection fees;
3. Lost productivity or workaround costs;
4. Pavement degradation costs; and
5. Lost parking meter revenue and associated costs

To which may be added a loading factor and adjustments for inflation.

1. Permit Application and Permit Change Fees

This fee can be used to allow municipalities to recover their costs that are directly attributable to the review and approval of the carriers' construction projects. The type of work involved is reviewing alignments and providing optimal routing; planning space for

future utility work; providing input to traffic plans; processing and filing design and as-built drawings, etc.[15]

The fee can be simplified to differentiate short projects from long projects recognizing differences in the degree of effort required to review, to provide feedback as necessary and to approve final drawings.

Requests for changes to permits (including extensions) can give rise to additional fees. These fees allow municipalities to recover their costs that are directly attributable to the review and approval of the permit change requests.

2. Inspection Fees

The general principle is that the Municipality should be entitled to recover the cost of overseeing the actual construction work and ensuring compliance with the approved plans, as well as the Municipality's reinstatement standards. This may be considered as a separate fee or, for convenience, included in the permit application fee.[16]

3. Lost Productivity or "Work Around" Costs

If significant lost productivity costs can be isolated and accurately calculated and attributed to a telecommunications installation, the Municipality can invoice these items directly to the Company.[17]

The CRTC has indicated that such invoices should include the following information:

- a description of the costs being recovered;
- the location of the telecommunications equipment and the municipal work being done;
- a description of the municipal work being done;
- an explanation of the nature of the interference of the telecommunications facility;
- an itemized breakdown of the Municipality's additional costs; and
- the methodology and data sources used to determine the costs.

15 For further discussion, see paras. 66-72 of the Ledcor Decision and paras. 59-66 of the Allstream-Vancouver Decision.

16 For further discussion, see paras. 66-72 of the Ledcor Decision and paras. 59-66 of the Allstream-Vancouver Decision.

17 For further discussion, see paras. 89-92 of the Ledcor Decision and paras. 82-89 of the Allstream-Vancouver Decision.

4. Pavement Degradation Costs

These fees reflect the fact that once pavement has been cut, the strength and longevity of the pavement cannot be restored. The cut edges lead to cracks and ultimately potholes and other defects that require ongoing maintenance and premature replacement. The fee reflects that ongoing maintenance and loss of pavement life.[18]

5. Lost Parking Meter Revenue and Associated Costs

This fee captures lost revenue due to parking meters rendered unusable during construction. The fee should reflect actual measured or estimated average occupancy rates of the meters. The fee can also include the costs of signage required to take the meters out of service.[19]

Further Areas to be Addressed

(a) *Loading Factor* - It has been recognized that there are miscellaneous indirect and variable common costs that are difficult to quantify. Any such costs that are not quantified directly can be recovered by a loading factor that is applied to all of a municipality's cost-based fees and charges. Alternatively, the municipality may want to charge a flat annual administrative fee.

(b) *Adjustment to Fees* - This section provides for the adjustment of fees based on CPI or whatever other basis is considered appropriate by the parties.

(c) *Renegotiation of Fees* - This section can provide a mechanism to renegotiate fees periodically; perhaps every 5 years in order to better reflect changes in legislation, CRTC decisions, municipal bylaws, changes in knowledge or installation techniques.[20]

18 For further discussion, see paras. 67-73 of the Allstream-Vancouver Decision.

19 For further discussion, see paras. 74-79 of the Ledcor Decision and paras. 90-100 of the Allstream-Vancouver Decision.

20 For further discussion, see para. 47 of the Ledcor Decision.

SCHEDULE B
PERMITS REQUIRED BY THE MUNICIPALITY[21]

WORK ACTIVITY	MC[22]	ROP[23]	Notification only[24]	No Permit or Notification[25]
Any installation of Plant that requires Excavation[26] in the ROW, including: – the installation of buried Plant crossing a road; – the installation of new Above-ground Equipment27; – the relocation of buried Plant or Above-ground Equipment; – the replacement of existing Above-ground Equipment with equipment that is significantly larger; and – the installation of buried Service Drops that cross a road or a break a hard surface of the ROW.	X	X		
The installation of aerial Plant (excluding aerial Service Drops)		X		
Tree trimming on ROWs		X		
The replacement of existing Above-ground Equipment without adding more Plant or significantly increasing its size (pole replacements excluded)			X	
The installation of buried Service Drops that do not cross a road or break the hard surface of a ROW			X	
Pulling cable through existing underground duct			X	
The installation of or repair to aerial Service Drops				X
The maintenance, testing and repair of Plant where there is minimal physical disturbance or changes to the ROW				X
Any other Work activity agreed to by the Municipality				X

21 This is a sample of how permits may be administered by the Municipality. The actual requirements will vary with each municipality.

22 "**MC**" means Municipal Consent.

23 "**ROP**" means Road Occupancy Permit.

24 Depending on the nature of the Work, the type of ROW or the Municipality's Traffic Management Policy, the Municipality may require an ROP or other type of consent.

25 Subject to its Traffic Management Policy, the Municipality may require notification or an ROP.

26 "**Excavation**" means the breaching or breaking up of the hard surface of the ROW, and includes activities such as day-lighting, test pitting, digging pits and directional boring but excludes hand-digging.

27 "**Above-ground Equipment**" means, in all cases above, any structure located on the surface of the ROW used to house or support the Plant, and includes cabinets, pedestals, poles and lamp poles but excludes aerial Plant.

SCHEDULE C
RELOCATION COSTS

COMMENTARY[28]

The CRTC, in adjudicating disputes between carriers and municipalities has recognized that, in general carriers are entitled to the recovery of all or a portion of their relocation costs caused by the construction or activities of the municipality. The CRTC has not prescribed a single mechanism governing the allocation of relocation costs. It has stated, however, that the parties should negotiate a suitable allocation taking into account the following factors:

(a) who has requested the relocation, *i.e.*, the municipality, the carrier, or a third party;

(b) the reason for the requested relocation (*e.g.*, safety reasons, aesthetic reasons, to better serve customers); and

(c) when the request is made *vis-à-vis* the original date of construction (*e.g.*, whether the request is made a considerable length of time after the original construction, or very shortly after that time).

1. Reimbursement for Relocation Costs

NON-CONSENSUS – To be negotiated

2. Equipment affected by Municipality's Capital Works Plan. Prior to the issuance of a Permit, the Municipality will advise the Company in writing whether the Company's proposed location for new Equipment will be affected by the Municipality's [●]-year capital works plan (the "**Capital Works Plan**").[29] If the Municipality advises that the new Equipment will be so affected and the Company, despite being advised of such, requests the Municipality to issue the Permit, then the Municipality may issue a conditional Permit stating that, if the Municipality requires, pursuant to any project identified in the Capital Works Plan as of the date of approval, the Company to relocate the Equipment within [●] years of the date of the Permit, the Company will be required to relocate the Equipment at its own cost, notwithstanding Section 1.

3. Beautification.

NON-CONSENSUS – To be negotiated

28 For further discussion, see paras. 130-138 of the Ledcor Decision and paras.74-81 of the Allstream-Vancouver Decision.

29 The duration of the Municipality's capital works program may vary.

4. Municipality not responsible for Third Party Relocation Costs.

Unless otherwise agreed to between the Municipality and the Third Party, in no event shall the Municipality be responsible under this Agreement for:

(a) the costs of the Company to relocate Equipment at the request of a Third Party; or

(b) the costs or relocating the facilities of a Third Party installed on or in the Equipment.

5. Company not responsible for Third Party Relocation Costs.
Unless otherwise agreed to between the Company and the Third Party, in no event shall the Company be responsible under this Agreement for:

(a) the costs of the Company to relocate Equipment at the request of a Third Party [**NON-CONSENSUS – To be negotiated**]; or

(b) the costs of relocating the facilities of a Third Party [**NON-CONSENSUS – To be negotiated**] installed on or in the Equipment.

6. Where Equipment is located incorrectly. Where the location of any portion of the Equipment in a ROW is located outside a distance of [●] horizontally (centre-line to centre-line) from the location approved in the Permit or as shown on the as-built drawings (as accepted by the Municipality), then the Municipality shall not be responsible for the costs of relocating such Equipment or portion thereof. Notwithstanding the foregoing, in circumstances where records of the approved location of the Equipment are non-existent or unavailable, or where the conditions of the applicable ROW have changed materially from what was described in the Permit, the Parties agree to act reasonably when sharing or allocating the associated Relocation Costs.

7. Maintenance Cover adjustments.

NON-CONSENSUS – To be negotiated

8. Equipment Upgrades. Unless otherwise agreed to by the Parties, Relocation Costs shall not include the installation of any Equipment by the Company for the purpose of providing an up-graded service, which shall be at the sole cost of the Company. The Parties agree that the Relocation Costs to be allocated between the parties shall be based on the use of the same approximate quantity, quality and type of Equipment and manner of construction for the new installation as was used for the original, subject to any adjustments required due to:

(a) technological change or industry construction methods;

(b) the need for an installation of greater length or other modifications due to, for example, space constraints or the presence of third party equipment; or

(c) the undergrounding of aerial Equipment where required as part of the relocation where cost sharing is permitted under this Agreement.

9. Relocation performed by Municipality. If the Company fails to complete the relocation in accordance with **Section 7.1** of the Agreement, the Municipality may, at its option, upon reasonable final notice to the Company, complete such relocation and the Company shall pay the Municipality's Costs of the relocation.