

MUNICIPAL ACCESS AGREEMENT

ACCESS TO MUNICIPAL RIGHTS-OF-WAY

This Agreement made the _____ day of _____, 20xx.

BETWEEN:

THE CORPORATION OF THE TOWN OF OAKVILLE
(the “Municipality”)

- and -

XXXXXXXXXX
(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 (“**Within**”) the Municipality’s Rights-of-Way;

AND WHEREAS, the Company requires the Municipality’s consent to construct its transmission facilities Within the Municipality’s Rights-of-Way;

AND WHEREAS the Municipality is willing to permit the use of its Rights-of-Way where, in its judgment, such use will not interfere with its own service requirements and the public use of the Rights-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:

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- (a) “**Affiliate**” means “affiliate” as defined in the *Canada Business Corporations Act*;
- (b) “**Agreement**” means this Municipal Access Agreement and all the Schedules attached hereto;
- (c) “**Director**” means the Municipality’s Director of Engineering and Construction, or the person designated by him or her;
- (d) “**Emergency**” means an unforeseen situation where immediate action must be taken to preserve public health, safety or essential service of either the Municipality or the Company;
- (e) “**Hazardous Substance**” means any harmful substance, including, but is not limited to, electromagnetic or other radiation, petroleum products or bi-products, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any law, ordinance, rule, regulation, bylaw or code, whether federal, provincial or municipal;
- (f) “**Municipal Consent**” means the written consent of the Director, with or without conditions, for access to the Municipality’s Rights-of-Way;
- (g) “**Municipality’s Costs**” means the reasonable and verifiable costs and expenses of the Municipality to complete an activity, based on the cost of labour and materials, plus an overhead cost equal to fifteen percent (15%) of the total cost of labour and materials;
- (h) “**Plant**” means any wires, fibre optic cables, ducts, manholes poles, cables, pipes, conduits, pedestals, antennas, vaults, support structures or other related facilities or structures owned and operated by the Company, excluding cell towers.
- (i) “**Right-of-Way**” or “**Rights-of-Way**” means any highway, street, road allowance, lane, bridge or viaduct under the jurisdiction of the Municipality;
- (j) “**Road Occupancy Permit**” means a permit issued by the road authority of the Municipality for the purpose of authorizing the commencement and undertaking of any Work in a Right-of-Way;
- (k) “**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 but shall not include Plant designed so as to carry multiple customer traffic;
- (l) “**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;
- (m) “**Third Party**” means any individual, corporation, partnership, association, joint

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venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof that may attach its facilities to the Plant under an agreement with the Company but does not include subscribers to the Company's services; and

- (n) “**Work**” means, but is not limited to, any installation, removal, construction, maintenance, repair, replacement, relocation, adjustment or other alteration of Plant Within any Right-of-Way.

TERM

2. The initial term of this Agreement shall be five (5) years, commencing on the first day of the month following the date in which the Agreement is executed, and shall automatically renew for up to two (2) consecutive renewal periods of five (5) years unless either the Municipality or the Company gives written notice of its intention not to renew to the other party not less than six (6) months prior to the expiration of this Agreement or any renewal term thereof. However, if the Agreement is terminated through notice of termination or default, 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.

USE OF RIGHTS-OF-WAY

3. The Municipality hereby agrees to permit the Company to use any Right-of-Way for the purpose of conducting its Work 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, including Town of Oakville By-law No. 2009-072.
4. The Company shall not use any Rights-of-Way in whole or in part for any purpose other than that permitted under this Agreement.
5. The Company will be responsible to secure all other necessary and applicable permits/approvals for the Work and provide copies of same to the Municipality prior to the commencement of any Work.
6. The Parties agree that, where the Company acquires, or has acquired, directly or indirectly, facilities from a Third Party that are located in, on, over, under, across or along the Municipality's Rights-of-Way (the “**Acquired Plant**”) and that Third Party is a party to a valid and existing municipal access agreement with the Municipality (the “**Third Party MAA**”), then, effective the day of the acquisition of the Acquired Plant by the Company:
- (a) the Acquired Plant shall form part of the Company's Plant under this Agreement

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and all related activities shall be governed by this Agreement; and

- (b) if applicable, where the Company has been assigned, or has acquired the rights and obligations under the Third Party MAA, the Third Party MAA shall be terminated.

APPROVAL OF DIRECTOR

7. Subject to **Section 9**, the Company shall not perform any Work in or on a Right-of-Way without first:
 - (a) obtaining the applicable Municipal Consent and/or Road Occupancy Permit required for the specific Work activity described in **Schedule A**;
 - (b) providing detailed engineering plans to the Director's satisfaction setting out the location of the Plant within the relevant Rights-of-Way; and
 - (c) paying all associated fees as outlined in the Municipality's relevant and most current Rates and Fees Bylaw.
8. The Company agrees to advise the Municipality, in a format and frequency acceptable to the Municipality, of the Work outlined in **Section 7** that the Company has completed.
9. In the event of an Emergency, the Company shall be permitted to carry out such remedial work as is reasonably necessary to restore its essential service prior to satisfying **subsection 7(a)**.
10. The Company acknowledges and agrees that the Municipality may refuse to grant approval with regard to any proposed location for reasons of public safety, health, conflicts with the Municipality's infrastructure, proposed road reconstruction or the proper functioning of public services identified by the Director.

MANNER OF WORK

11. The Company agrees that its Work shall be subject to the following conditions:
 - (a) All Work shall be conducted and completed to the satisfaction of the Director, at the Director's sole discretion 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 or existing utilities shall be placed in a carrier pipe or be encased in concrete or as otherwise specified by the Director.

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- (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 in accordance with, without limitation, the Municipality's policies and standards, as amended from time to time, and to the satisfaction of the Director. If the Company fails to repair and restore a Right-of-Way to the satisfaction of the Director within twenty-four (24) hours of being notified in writing by the Municipality, the Municipality may complete such repairs and restoration, and charge the Municipality's Costs related thereto to the Company in accordance with **Section 46** of this Agreement.
- (d) Notwithstanding **Section 9**, in the event of an Emergency, the Municipality may take appropriate measures determined necessary, by the Director to re-establish a safe environment. The Municipality's Costs associated in working around the Plant shall be charged back to the Company in accordance with **Section 46** of this Agreement.
- (e) If the Municipality requires any Work to be stopped for any reasonable cause relating to public safety, special events, unacceptable conduct or health identified by the Municipality, or as a result of any circumstances beyond the control of the Municipality as expressed by the Director, the Company shall cease all such Work forthwith upon receipt of written notice from the Municipality and leave the site and all adjoining Rights-of-Way in a safe and clean condition. Within seventy-two (72) hours of issuing a stop work order under this subsection, the Director will provide written reasons for such order to the Company. The Company shall be allowed to resume its Work activities once the reasons for the Work stoppage have been resolved to the satisfaction of the Director.
- (f) Except as provided elsewhere in this Agreement, the Company shall be responsible for all Work, including the cost of such Work.
- (g) The Company shall use reasonable efforts to schedule Work and share Rights-of-Way and support structures with other service providers occupying and using, or intending to occupy or use, the Rights-of-Way, with the intent of minimizing the necessity for road cuts, construction and the placement of support structures in the Rights-of-Way.
- (h) All contractors working for the Company shall have proper identification visible on site displaying the name of the entity they are working for.
- (i) The Company shall in the performance of any Work, ensure that its employees and contractors are qualified and licensed for the work they are performing.
- (j) The Company shall ensure that any and all of its employees, agents and contractors at all times comply with all applicable laws, specifically but not limited to:

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- (i) the *Workplace Safety Insurance Act, 1997*;
- (ii) the *Occupational Health and Safety Act*;
- (iii) the *Canadian Labour Code Part II*; and
- (iv) all applicable environmental laws.

PAYMENT OF FEES

- 12. The Company covenants and agrees to pay to the Municipality fees calculated in accordance with the Municipality's relevant and most current Rates and Fees By-law as amended from time to time.
- 13. The Company covenants and agrees to pay a one time fee for development of this Agreement of \$1,000.
- 14. The Company covenants and agrees to pay a yearly annual fee of \$5,000.00, plus applicable Federal Goods and Services Taxes and any other applicable taxes, to be applied towards the administration of any local utility co-ordination committees as well as the joint planning and co-ordination process.
- 15. The Company covenants and agrees to pay a pavement degradation fee for any road cuts as outlined in **Schedule B** of this Agreement.
- 16. The Company acknowledges and agrees that the fees payable pursuant to this Agreement are exclusive of any fees and charges that may be applied by the Municipality with respect to any other permits required for the Company's Work, including fees or charges applied by the Municipality for Road Occupancy Permits and Municipal Consent reviews.
- 17. In the event that any Right-of-Way is assessed in the future as a direct result of the Company's use of the Right-of-Way, the Company agrees to indemnify the Municipality for any taxes due and payable by the Municipality as a result of the any assessment.
- 18. The Company agrees that it shall pay (if assessed for same) taxes, charges, duties, rates levies and business taxes in respect solely of the use by it of the Right-of-Way pursuant to the rights herein allowed to the Company that may arise pursuant to the *Assessment Act* (Ontario), as and when the same become due.

SECURITY

- 19. The Company agrees to post a blanket irrevocable letter of credit or other form of security acceptable to the Municipality, in the amount of \$25,000.00. Notwithstanding, the above, the Municipality reserves the right to acquire additional securities for significant projects beyond the scope of the original irrevocable letter of credit.

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Alternatively, an irrevocable letter of credit may be posted for each application for the Municipality's consent in a form acceptable to the Municipality, in an amount equal to any and all restoration costs as determined by the Director. The letter of credit shall be released once the conditions of the Municipal Consent have been fulfilled to the satisfaction of the Director and the expiration of the three (3) year warranty period.

20. 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.

THE COMPANY'S WARRANTIES

21. The Company represents and warrants to and covenants and agrees with the Municipality that:
- (a) it is a company in good standing under the applicable corporate and bankruptcy laws;
 - (b) after completion of its Work, 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 Director;
 - (c) the Company warrants its Works, to the satisfaction of the Municipality, for a period of three (3) years from the date of completion, which date will be supplied to the Municipality by the Company;
 - (d) if this Agreement is terminated by the Municipality, all the unfulfilled covenants, indemnities and obligations of the Company herein shall survive such termination; and
 - (e) the Company shall not suffer or permit any lien to be filed or registered against a Right-of-Way. In this regard and, subject to any existing rights of the Company or consents granted to the Company by the Municipality, any instrument claiming an estate, interest, property right or lien against the Right-of-Way or property owned by the Municipality (an "**Instrument**") shall be removed from title to the Right-of-Way, by the Company, within twenty (20) days following notice from the Municipality to the Company of the existence of the Instrument or, alternatively, the Company shall have commenced the process of removing the Instrument from title to the Right-of-Way and be diligently pursuing the removal within the twenty (20) day period referred to above. If the Company fails to discharge or vacate the Instrument within twenty (20) days, then, in addition to any other right or remedy of the Municipality, the Municipality may discharge or vacate the Instrument by paying into Court the amount required by statute to be paid to obtain a discharge, and the amount so paid by the Municipality together with all costs and expenses including solicitor's fees (on a solicitor and his client basis) incurred in connection therewith shall be due and payable by the Company

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to the Municipality on demand.

CONDITION OF THE RIGHT-OF-WAY

22. 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

23. The Company shall provide, in both hard copy and a digital format, “as-constructed” drawings, which may include certification requirements, at its expense, to the satisfaction of the Director within one (1) month of completing the installation of its Plant.

NOTIFICATION TO MUNICIPALITY

24. The parties shall, at no cost to the other party, provide locations of their respective facilities:
- (a) in the event of an Emergency or other high priority circumstances, within two (2) hours of receiving a request by the other party or its contractors or authorized agents, using reasonable best efforts; and
 - (b) in all other circumstances, within a time reasonably agreed upon by the Company and the Municipality.
- 25.
- (a) The Company shall provide utility stakeouts so that the actual location of its Plant is within one metre horizontally and on either side of the mark up or field locate position;
 - (b) The Company shall be responsible to ensure that the approved location of its Plant has been installed in accordance with the following tolerances unless specifically detailed otherwise in the approved MC:

Type of plant	Maximum horizontal and vertical variance	Minimum vertical depth measured from ground
Direct buried cables and ducts within the municipal boulevard	0.5 m horizontally and 0.3 m vertically	0.6 m
Direct buried cables and ducts within travelled	0.5 m horizontally and 0.3 m vertically	1.0 m

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Type of plant	Maximum horizontal and vertical variance	Minimum vertical depth measured from ground
roadways and shoulders		
Major conduits and concrete duct structures within the municipal boulevard	0.3 m horizontally and 0.1 m vertically	1.0 m
Major conduits and concrete duct structures within travelled roadways and shoulders	0.3 m horizontally and 0.1 m vertically	1.5m

26. The Company and the Municipality shall provide to each other a list of 24 hour emergency contact personnel available at all times and shall ensure that the aforementioned list is always up to date.
27. The Company agrees to pursue and become a member of a utility locate notification system recognized by the Municipality and other utility companies, but shall not be obligated to use the locate services of such notification system. The Company further agrees to participate in any public utility co-ordination committees involving all users of the Rights-of-Way as may be established by the Municipality and to contribute to the costs of such committees.

PLANT AUTHENTICATION

28. The Company agrees to identify, verify and validate new and existing Plant on plans created by the Municipality or its consultants as required for maintenance, new construction and design projects. Such plans, 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.
29. The Company agrees to identify, verify and validate existing Plant to the Municipality 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 conflict with the proposed project design and are susceptible to a risk based on the actual location of existing utilities, the Company shall undertake a field investigation to verify horizontal and vertical location of the Plant based upon an agreed method of locating the facilities;
 - (c) if the Company is unable to locate its Plant using non-disruptive locating techniques, the initiation of the appropriate daylighting or SUE method will be used to accurately locate the Plant as agreed upon by the Company and the Municipality. All cost sharing arrangements shall be agreed upon prior to the use

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of such methods; and

- (d) if the results obtained from the field investigation under **subsection 29(b)** are inconclusive, and if the parties are unable to agree on a cost sharing arrangement under **subsection 29(c)**, the Director may, at the Municipality's cost, proceed with the appropriate daylighting or SUE method. If results from either methods uncover different results than those disclosed under **subsection 29(b)**, the Company will bear the associated full cost for the method used in the investigation.

DAMAGES FOR INCORRECT OR INACCURATE LOCATIONS

30. Where utility mark-up drawings or utility stakeouts are found to be incorrect (*i.e.*, actual location found to be beyond 1 meter horizontally or 0.3 meter vertically either side of the mark-up or field locate position) and, where the Municipality incurs any direct or indirect costs as a result of the actual location of the 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 the Municipality's Costs which it incurs.
31. The Company will indemnify and save harmless the Municipality from any claims, demands, causes of action, loss, costs or damages, legal fees and disbursements that the Municipality may suffer, incur or be liable for, resulting from the Company providing inaccurate locates of its Plant, or related to construction of the Plant in a non-approved location.

RELOCATION OF PLANT

32. Upon receipt of not less than sixty (60) days 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.
33. In cases of an Emergency, both parties agree to work co-operatively and apply commercially reasonable efforts to relocate the Plant immediately as directed by the Director, 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.
34. The Municipality will make a good faith effort to provide alternative suggestions for re-routing the Plant affected by the relocation to assist the Company in its efforts to ensure uninterrupted service to its customers.
35. The responsibility for the costs incurred in relocating the Plant or performing such Work

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referenced above will, for the purposes of this Agreement, be based upon the following:

- (a) for Plant installed more than ten (10) years prior to the execution of this Agreement, the Company shall be responsible for all costs of relocating its Plant;
- (b) for Plant installed prior to the execution of this Agreement but installed less than ten (10) years prior to the execution of this Agreement, the provisions of the *Public Service Works on Highways Act* shall apply;
- (c) for Plant installed after the execution of this Agreement and within four (4) years of its installation, the Municipality shall reimburse the Company for 100% of its relocation costs; and
- (d) for Plant installed after the execution of this Agreement in subsequent years, the Municipality shall reimburse the Company for its relocation costs based upon the following chart:

Year After Installation of Plant	Percentage of Relocation Costs Paid by Municipality
Fifth Year	75%
Sixth Year	50%
Seventh Year	25%
Eighth Year and subsequently	0%

- 36. 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's support structures shall be the Municipal Consent date for the construction of the Company's support structure(s).
- 37. The Company will provide to the Municipality a written estimate for each relocation in a format clearly identifying the percentages and dates being applied to each part of the Company's Plant for the purpose of calculating relocation costs.
- 38. The Company will be responsible for the costs of relocation for all Equipment that, at the time of its application for a Municipal Consent, is located within a right of way that is subject to Municipal projects identified in the Municipality's ten (10) year capital roadway plan that will require the relocation of such Equipment in accordance with the terms of this Agreement.
- 39. 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.
- 40. The Municipality will, to the best of its ability, avoid unnecessary relocations but reserves the right to request such relocation as required.

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41. 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.
42. The 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.
43. Under no circumstances shall the Municipality be responsible for the Company's relocations costs where the relocation of the Plant has been requested by parties other than the Municipality.
44. The Municipality shall not be liable for any relocation costs in circumstances where the Company has its Equipment attached to or utilizes support structures of a third party and such third party is required to relocate its support structures by the Municipality.
45. All relocations requested under this section shall be subject to obtaining Municipal Consent and all other applicable permits.
46. If the Company fails to complete the relocation of the Plant in accordance with **Section 32** 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 Director the Municipality may, at its option complete such relocation or repair, and the Company shall pay the Municipality's Costs of such relocation or repair or other work to the Municipality forthwith. In default of payment thereof, the amount of such cost with interest equal to the prime lending rate plus two percent (2%) per annum of the Municipality's principal financial institution carrying on business in the Municipality shall be due and payable by the Company.
47. The Municipality shall be under no financial obligation for costs incurred by the Company to obtain a private easement outside of the Right-of-Way resulting from relocations or adjustments.

INSURANCE

48. The Company shall maintain insurance in an amount and description as set out below to protect the Company, and the Municipality as Additional Insured solely with respect to liability arising out of the negligence of the Company, its employees, agents and contractors, from claims for damages, personal injury including death, and for claims from physical damage to tangible property which may arise from the Company's operations or Work or failure to do Work in the Municipality under this Agreement, including without limitation the Company's use or maintenance of the Plant Within the Rights-of-Way or any act or omission of the Company's agents or employees while

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engaged in the Work, and such coverage shall include all costs, charges and expenses reasonably incurred for any injury or damage for which the Company is responsible in law.

49. The Company shall obtain and maintain at its own expense the following policies of insurance:
- (a) Commercial General Liability Insurance, written on IBC Form 2100 or its equivalent, including but not limited to bodily and personal injury liability, property damage, products liability, completed operations liability, owners & contractors protective liability, blanket contractual liability, premises liability, and contingent employer's liability coverage, having an inclusive limit of not less than \$5,000,000 per occurrence and products and completed operations with an annual aggregate of not less than \$5,000,000, and subject to the following:
 - (i) where the description of the project, supply or Work provides for or contemplates:
 - 1. the use of explosives for blasting;
 - 2. vibration from pile driving or caisson work, or
 - 3. the removal or weakening of support of any property, building or land (whether such support be natural or otherwise), explosion, collapse and underground (XCU) coverages shall be included and same shall be noted on the certificate of insurance;
 - (ii) coverage shall be included for pollution from "hostile fires";
 - (iii) non-owned automobile liability limit of not less than \$1,000,000 per accident in respect of vehicles rented or otherwise not owned by the Company that are used or operated on its behalf for the Work under this Agreement;
 - (iv) coverage shall include Cross Liability and Severability of Interest clauses; and
 - (v) the Municipality and those for whom it is responsible in law, shall be added as an Additional Insured but solely with respect to liability arising out of the negligence of the Company, its employees, agents and contractors.
 - (b) Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than \$2,000,000 per accident in respect of the use or operation of vehicles owned or leased by the Company for the provision of services under this Agreement.

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- (c) The required insurance limits for comprehensive general liability and automobile insurance may be composed of any combination of primary and excess (or ‘umbrella’) insurance policies.
 - (d) Property insurance, as may be applicable, with respect to physical loss or damage (including fire, theft, burglary, etc.) of its own property and property in its care, custody and control, including its equipment, tools and stock, used in connection with the Agreement. Such property insurance shall be written on a replacement cost basis of said property, repairs, additions or equipment being installed, otherwise being handled or stored on or off premises, and include a waiver of subrogation against the Municipality.
 - (e) Errors and Omissions liability insurance on a “claims made” basis with an aggregate insured limit of \$3,000,000 covering economic damages specifically arising from errors & omissions in the rendering of professional services under this Agreement.
50. The insurance policies required to be maintained by the Company shall be primary to the extent of the Municipality’s rights as Additional Insured and shall be placed with insurers maintaining a minimum A.M. Best “A” rating that is licensed to carry on business in Ontario.
 51. Any insurance coverage acquired under the Agreement shall in no manner discharge, restrict or limit the liabilities assumed by the Company under the Agreement. The dollar limit of insurance coverage shall not be limited by the dollar amount of the Agreement.
 52. 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 provide renewals of such insurance coverage.
 53. The Company shall not do or omit to do anything that would impair or invalidate the insurance policies.
 54. Delivery to and examination or approval by the Municipality of any certificates of insurance or other evidence of insurance shall not relieve the Company of any of its indemnification or insurance obligations under the Agreement. The Municipality shall be under no duty either to ascertain the existence of or to examine such certificates of insurance or to advise the Company in the event such insurance coverage is not in compliance with the requirements set out in the Agreement.

ENVIRONMENTAL LIABILITY

55. The Municipality is not responsible, either directly or indirectly, for any damage to property, including any nuisance or injury to any person, howsoever caused, including death, arising from the escape, discharge, spill or release or any Hazardous Substance resulting from the Company’s use of the Rights-of-Way.

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56. The Company agrees to assume all environmental liabilities relating to its use of the Rights-of-Way, including but not limited to any liability for clean-up of any Hazardous Substance on or under the Rights-of-Way which result from:
- (a) the operations of the Company Within the Rights-of-Way; or
 - (b) any Plant brought Within the Rights-of-Way by the Company, its contractors, agents or employees or by any person with the express or implied consent of the Company.
57. The Company agrees that it shall provide in its agreements with Third Parties utilizing any portion of the Plant, an acknowledgement and agreement by those Third Parties that the use of the Plant is subject to the terms of this Agreement, which may be renewed or terminated, and that they shall comply, at their sole expense, with all applicable laws, statues, by-laws, codes, ordinances, rules, orders and regulations of all governmental authorities, and that the Third Party shall obtain and maintain any and all permits, licenses, official inspections or any other approvals and consents necessary or required for the placement or operation of the Third Party's equipment.

WORKERS' SAFETY AND INSURANCE BOARD COVERAGE

58. The Company shall pay to the appropriate provincial Workers Safety and/or Insurance Board/Commission all assessments and levies owing to the Board/Commission by the Company, its employees and others engaged in providing services under this Agreement and any unpaid assessment or levy shall be the sole responsibility of the Company.
59. Prior to commencing the Work, the Company shall provide to the Director evidence of compliance with the requirements of the Province of Ontario with respect to Workers' Compensation Insurance.
60. The Company acknowledges that out-of-province contractors are not exempt from having to register and comply with the requirements of the Workers' Safety and Insurance Board of Ontario. Prior to commencing the Work, out-of-province contractors not required to be registered in Ontario shall provide:
- (a) written confirmation from the Workers' Safety and Insurance Board of Ontario stating that the contractor is not required to be registered in Ontario; and
 - (b) evidence of compliance with the requirements of the province or territory or place of business with respect to workers' compensation insurance.
61. At any time during the term of this Agreement, when requested to do so by the Municipality, the Company shall provide such evidence of compliance by itself and its subcontractors. Failure to provide satisfactory evidence in respect of workers' compensation insurance may result in current permits being suspended and/or future permits being denied by the Municipality until satisfactory evidence of compliance has

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been received by the Director.

INDEMNIFICATION AND LIABILITY

62. The Municipality shall not be responsible, either directly or indirectly, for any damage to the Plant howsoever caused that may occur during 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 Within its Rights-of-Way or otherwise, except for any claims arising from the negligence or willful misconduct by the Municipality or those for whom it is in law responsible.
63. 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 Within the Rights-of-Way, except for any claims arising from the negligence or willful misconduct by the Municipality or those for whom it is in law responsible.
64. 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 judgment 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.

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- (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 amounts 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
 - (e) 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.
65. The Municipality shall indemnify and save harmless the Company from and against all actions, causes of action, proceedings, claims and demands brought against the Company, and from and against all losses, costs, damages or expenses suffered or incurred by the Company, by reason of any damage to property, including property of the Company or any third party, or injury, including injury resulting in death, to persons, including the employees, servants, agents, licensees and invitees of the Company or any third party, caused by, resulting from or attributable to the negligent or willful act or omission of the Municipality or any of its employees, servants, agents, licensees or invitees.
66. Despite anything contained in this Agreement, the Municipality and the Company shall not be liable to each other in any way for special, incidental, indirect, punitive, exemplary or consequential losses, including damages for pure economic loss, howsoever caused or contributed to, in connection with this Agreement or with the Plant or the Right-of-Way.

LEGISLATIVE CHANGE

67. 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 materially affects the rights and/or obligations of either party under 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.
68. If the parties are unable to re-negotiate the terms and conditions for 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 *Arbitration Act, 1991* (Ontario) as amended or its successor legislation, or, in the second instance, to the CRTC. Subject to the right to request

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arbitration, if an amendment to this Agreement or a 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.

DEFAULT

69. The Municipality and the Company mutually agree that, should the Company materially fail to carry out any of the terms, covenants and conditions contained herein 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.

70. Despite **Section 69**, 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 *Winding Up Act*, *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, or loses its status, as a Canadian carrier; 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 Director in an expedient manner.

71. **REMOVAL OF PLANT**

- (a) Whenever the Company ceases to use and will not in the future use ("abandons") any portion of the Plant Within a Right-of-Way, it shall within thirty (30) days of such abandonment file with the Municipality a statement in writing giving in detail the location of the Plant that has been abandoned.
- (b) In the event of abandonment pursuant to **subsection 71(a)**, the Plant shall either:
 - (i) be removed from the Right-of-Way within a reasonable period of time and the Right-of-Way restored to its pre-removal condition. Failing removal

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and restoration by the Company within sixty (60) days of the issuance of the statement referenced in **subsection 71(a)**, the Municipality may complete the removal and restoration, charge the Municipality's Costs to the Company, and ownership of the conduits and manholes will vest in the Municipality without compensation; or

- (ii) at the Company's request and with the approval of the Director, remain in the Rights-of-Way, in which case it will be surrendered by the Company and become the absolute property of the Municipality.
- (c) Notwithstanding **subsection 71(b)**, where the Director determines that the conduits, manholes, vaults and other Plant cannot be removed by the Company without significantly disturbing the Right-of-Way, such Plant shall remain in the Rights-of-Way and will be surrendered by the Company and will become the absolute property of the Municipality.

ASSIGNMENT

- 72. 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; or
 - (ii) provided the sublicensee, grantee, transferee or assignee is an Affiliate of the Company.
- 73. Despite the sublicense, grant, transfer or assignment of this Agreement by the Company, the Company will remain fully responsible to the Municipality for fulfillment 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.
- 74. The Company may pledge the license 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.

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ARBITRATION

75. The parties agree that:

- (a) Notwithstanding the right of the Company to refer any matter under this Agreement to the CRTC for dispute resolution, in the event of any dispute or disagreement between the parties hereto as to the meaning or interpretation of anything contained in this Agreement or as to the performance or non-performance hereof or as to the respective rights and obligations of the parties hereunder, the parties may agree to refer such dispute or disagreement to arbitration.
- (b) The procedure for an arbitration shall be as follows:
 - (i) Within twenty (20) days after the written request of either of the parties hereto for arbitration, in the event the parties are unable to agree upon a single, mutually acceptable arbitrator, each of them shall appoint one arbitrator and the two so appointed shall, within twenty (20) days after the expiration of the twenty day period select a third. In case either of the parties hereto fails to name an arbitrator within twenty (20) days after the written request for arbitration, the arbitrator appointed shall be the only arbitrator. In case the two arbitrators so appointed are unable to agree on a third arbitrator within twenty (20) days after the expiration of the first twenty day period mentioned above, application shall be made as soon as reasonably possible to any Judge of the Superior Court of Justice for the appointment of a third arbitrator. The arbitrator or arbitrators so appointed shall have all the powers accorded to arbitrators by the *Arbitration Act, 1991* (Ontario) as from time to time amended, or any Act in substitution therefor. The decision of the said arbitrator or arbitrators (or of a majority of such arbitrators) shall be final and binding on the parties hereto;
 - (ii) either party may appeal an arbitration award to the Courts of the Province of Ontario on a question of law;
 - (iii) either party may apply to a court of competent jurisdiction;
 - 1. for an interim measure of protection; or
 - 2. for any order for relief which the arbitrator or arbitrators do not have the jurisdiction to provide.

NO OWNERSHIP RIGHTS

76. 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

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Plant, except as provided in this Agreement.

NOTICES

- 77. 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:

Corporation of the Town of Oakville
1225 Trafalgar Road
P.O. Box 310
Oakville, ON L6J 5A6

Attention: Director of Engineering and Construction
Tel: 905-845-6601 Fax: 905-338-4159

and to the Company at the following address:

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
Attention: XXXXXXXXXXXXXXXXXXXX
Fax: XXXXXXXXXXXXXXXX

with a copy to:

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
Attention: XXXXXXXXXXXXXXXXXXXX
Fax: XXXXXXXXXXXXXXXX

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.

TIME OF ESSENCE

- 78. Time shall be of the essence in this Agreement.

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TREES

79. The Company is responsible for the costs of any remedial work required to rehabilitate any trees damaged in the performance of its Work permitted by this Agreement or, in the event any trees suffer irreparable damage, the Company shall compensate the Municipality for the value of the trees as determined by the Municipality.

REMOVAL OF GRAFFITI

80. The Company shall take all reasonable measures, to the satisfaction of the Municipality, to clean, remove or conceal graffiti or other unauthorized markings in accordance with the Municipality's current policy or bylaw for graffiti removal.
81. In the event that the Company does not remove or conceal the graffiti in accordance with this section, the Municipality may take such steps as it deems reasonable and necessary to remove or conceal the said graffiti and shall charge the Municipality's Costs of the removal or concealment to the Company.

EXCESS CAPACITY

82. **Excess Capacity Provided by Company.** Within ten (10) days of receiving an application for Municipal Consent from the Company, the Municipality may request in writing that the Company purchase and install additional ducts and/or cabling on its behalf at the same time the Equipment is installed. Provided that the fulfillment of such request does not unduly delay the completion of the proposed Work, the costs associated with the supply and installation of the additional ducts and/or cabling will be the responsibility of the Municipality and be based on the proportionate costs incurred by the Company, including design and engineering costs, in installing the additional ducts and/or cabling. Upon installation and payment in full to the Company, the additional ducts and/or cabling will become the property of the Municipality.

GENERAL

83. This Agreement is the entire agreement between the Municipality and the Company regarding the subject of this Agreement. This Agreement may only be amended or supplemented by a document executed in writing by both the Municipality and the Company.
84. This Agreement benefits and binds the Municipality and the Company and the successors of each of them.
85. 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 this Agreement and this Agreement remains in force unaffected by that finding or by the severance of that term.

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86. 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.
87. No amendments or waiver of any provision of this Agreement shall be binding on either party unless consented to in writing by such party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver unless expressly provided.
88. The relationship of the Company and the Municipality established by this Agreement is that of independent contractors, and nothing in this Agreement shall be construed:
- (a) to give either party the power to direct or control the day-to-day activities of the other;
 - (b) to constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; or
 - (c) to allow either party to create or assume any obligations on behalf of the other party for any purposes whatsoever.
89. 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.
90. 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.
91. In this Agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.
92. 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 attorn to the jurisdiction of the Courts of the Province of Ontario.
93. Nothing in this Agreement shall be construed as affecting any rights or otherwise of others not a party to this Agreement to use any Right-of-Way with the Municipality's legal authority.
94. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, whether written or oral between the parties. Except as provided in this Agreement, there are no conditions, covenants, agreements, representations, warranties,

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acknowledgments or other provisions, express or implied, collateral, statutory or otherwise, that form part of or affect this Agreement. The execution of this Agreement has not been induced by, nor do any of the parties rely upon or regard as material, any conditions, covenants, agreements, representations, warranties, acknowledgments, or other provisions not expressly made in this Agreement.

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

) **THE CORPORATION OF THE TOWN OF OAKVILLE**

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) Per: _____

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) Per: _____

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) **XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX**

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) Per: _____

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) Per: _____

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SCHEDULE "A"

Consents Required by the Municipality

ROP = Road Occupancy Permit

MC = Municipal Consent

WORK ACTIVITY	No ROP or MC	ROP	MC
<ul style="list-style-type: none"> Maintenance, testing and repair to cabinets, pedestals, poles and other above ground equipment, including replacement (except pole replacement), but with no significant increase in the size, depth or capacity and no physical disturbance or changes to the Right-of-Way or its use, but excluding the business improvement areas (BIA) 	X		
<ul style="list-style-type: none"> Routine maintenance and repair where there will be physical disturbance or changes to the Right-of-Way or its use, including: <ul style="list-style-type: none"> - field testing; - installing single service connections or cable inside existing duct structure; or - replacing "like for like" structures (without adding more Plant) 		X	
<ul style="list-style-type: none"> Aerial Service Drops (temporary or emergency repairs) 	X		
<ul style="list-style-type: none"> Permanent aerial Service Drops 		X	
<ul style="list-style-type: none"> Buried Service Drops 		X	
<ul style="list-style-type: none"> Pulling or placing cabling through or on existing support structures (with or without pits) Tree trimming 		X	
<ul style="list-style-type: none"> Excavations (including day-lighting and test-pitting) within the Right-of-Way to investigate subsurface conditions, infrastructure location or to perform maintenance - No additional Plant installed 		X	
<ul style="list-style-type: none"> Cable pulling and placing through incidental duct where there will be excavation 		X	
<ul style="list-style-type: none"> Directional boring and associated pits for Work of installing new Plant < 20m in residential areas and < 30m in commercial/industrial areas 		X	
<ul style="list-style-type: none"> Directional boring and associated pits for Work of installing new Plant < 20m in residential areas and < 30m in commercial/industrial areas 		X	
<ul style="list-style-type: none"> All new direct aerial installations (excluding Service Drops) 		X	
<ul style="list-style-type: none"> All new direct buried installations (excluding Service Drops) 		X	X
<ul style="list-style-type: none"> Directional boring and associated pits for Work of installing new Plant (excluding any installations < 20m in residential areas and < 30m in commercial/industrial areas) 		X	X
<ul style="list-style-type: none"> New installation of cabinets, pedestals, poles and other above-ground equipment, or significant increase in size of any of the above 		X	X
<ul style="list-style-type: none"> Road crossings, including buried Service Drops crossing the road 		X	X
<ul style="list-style-type: none"> Relocation of underground or surface Plant 		X	X

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**Schedule “B”
Pavement Degradation Schedule of Fees**

Compensation Item	Mechanism	Compensation
Pavement degradation (life cycle losses)	Levy at the time of permitting. Adjust based on actual extent of trenching if necessary.	Needs to be updated