



THE CORPORATION OF THE COUNTY OF WELLINGTON

BY-LAW NUMBER 5351-13

A By-law to authorize the Warden and Clerk to execute Telecommunication Access Agreements that the County Engineer considers to be consistent with the "County Standard Telecommunications Access Agreement".

WHEREAS the Municipal Act, S.O. 2001, c.25 as amended provides that a municipality may enter into agreements;

NOW THEREFORE, The Council of The Corporation of the County of Wellington enacts as follows:

- 1.** **THAT** the Warden and Clerk are hereby authorized to execute Telecommunication Access Agreements that the County Engineer considers to be consistent with the "County Standard Telecommunications Access Agreement" and attached as Schedule 'A'.

READ A FIRST, SECOND AND THIRD TIME AND PASSED MAY 23, 2013



A handwritten signature in black ink, appearing to read "Chris White", written above a horizontal line.

CHRIS WHITE, WARDEN

A handwritten signature in blue ink, appearing to read "Donna Bryce", written above a horizontal line.

DONNA BRYCE, COUNTY CLERK

TELECOMMUNICATIONS ACCESS AGREEMENT

This agreement made this day of .

Between

The Corporation of the County of Wellington
herein called the "**County**"
of the First Part

and

YYYYY
hereinafter called "**XXXXX**"
of the Second Part

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

AND WHEREAS, in order to operate as a Carrier, XXXXX requires to construct, maintain and operate its Equipment in, on, over, under, across or along ("**Within**") the highways, streets, road allowances, lanes, other public places, bridges or viaducts which are under the jurisdiction of the County (collectively, the "**Rights-of-Way**" or "**ROWS**");

AND WHEREAS, pursuant to section 43 of the Telecom Act, XXXXX requires the County's consent to construct its Equipment within the ROWs and the County is willing to grant XXXXX 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 by the County on Third Parties to use or access the ROWs;

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

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

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions.** In this Agreement, the following words and phrases shall have the following meanings:

- (a) "**Affiliate**" means "affiliate" as defined in the *Canada Business Corporations Act*;
- (b) "**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) "**County Engineer**" means • or the individual designated by him or her;
- (d) "**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);
- (e) "**Equipment**" means the transmission and distribution facilities owned by and/or its Affiliates, comprising fibre optic, coaxial or other nature or form

of cables, pipes, conduits, poles, ducts, manholes, handholds and ancillary structures and equipment located within the ROWs;

- (f) **"Municipal Consent"** or **"MC"** means the written consent of the County, with or without conditions, to allow XXXXX to perform Work within the ROWs;
- (g) **"Permit"** means a MC or a ROP or both;
- (h) **"Road Occupancy Permit"** or **"ROP"** means a Permit issued by the road authority of the County authorizing XXXXX to occupy the ROWs with its workforce, vehicles and other equipment when performing the Work;
- (i) **"Service Drop"** means a cable that, by its design, capacity and relationship to other fibre optic cables of XXXXX, 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;
- (j) **"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 XXXXX; and
- (k) **"Work"** means, but is not limited to, any installation, removal, construction, maintenance, repair, replacement, relocation, removal, operation, adjustment or other alteration of the Equipment performed by XXXXX within the ROWs, including the excavation, repair and restoration of the ROWs.
- (l) **"County"** means the County and its Chair, the County Engineer, Council members, officers, employees, contractors, agents, successors and assigns
- (m) **"XXXXX"** means XXXXX Telecommunication Company and its directors, officers, employees, contractors, agents, successors and assigns
- (n) **"Claims"** means any and all claims, actions, causes of action, complaints, demands, suits or proceedings of any nature or kind; and
- (o) **"Losses"** means, in respect of any matter, all losses, damages, liabilities, deficiencies, costs and expenses (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), and for the purposes of this definition, "costs" shall mean those costs 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.

1.2 **Legislation.** All references to statutes in this Agreement shall include amendments thereto, regulations thereof, and successor legislation thereafter.

1.3 **Schedules.** The following schedules are annexed to this Agreement and are hereby incorporated by reference into this Agreement and form part hereof:

Schedule B – Road Occupancy Permit Required by the County

2. USE OF ROWs

2.1 **Consent to use ROWs.** The County hereby consents to XXXXX use of the ROWs for the purpose of performing its Work, subject to the terms and conditions of this Agreement and in accordance with all applicable laws or other municipal by-laws, rules, policies, standards and guidelines ("**Municipal Guidelines**") pertaining to the Equipment and the use of the ROWs; to the extent, however, that any municipal laws and the Municipal Guidelines are not inconsistent or in conflict with this Agreement or with applicable federal laws in which case such municipal laws and Municipal Guidelines prevail.

2.2 **Restrictions on use.** XXXXX shall not, in the exercise of its rights under this

Agreement, unduly interfere with the public use and enjoyment of the ROWs.

- 2.3 **Third Party Equipment acquired by XXXXX** The Parties agree that, where XXXXX acquires, or has acquired, directly or indirectly, facilities from a Third Party that are located within the ROWs (the "**New Equipment**"), then, effective the day of the acquisition of the New Equipment by XXXXX:
- (a) the New Equipment shall form part of the Equipment and shall be governed by the terms and conditions of this Agreement; and
 - (b) where that Third Party is a Party to a valid and existing municipal access agreement with the County (the "**Old MAA**") and XXXXX, directly or indirectly, acquires the rights and obligations under the Old MAA, the Old MAA shall be terminated.
- 2.4 **No ownership rights.** The Parties acknowledge and agree that:
- (a) the use of the ROWs under this Agreement shall not create nor vest in any ownership or property rights in the ROWs; and
 - (b) the placement of the Equipment within the ROWs shall not create or vest in the County any ownership or property rights to the Equipment.
- 2.5 **Condition of ROWs.** The County makes no representations or warranties as to the state of repair of the ROWs or the suitability or fitness of the ROWs for any business, activity or purpose whatsoever, and XXXXX hereby agrees to accept the ROWs on an "as is" basis.

3. **PERMITS TO CONDUCT WORK**

- 3.1 **Where Permits required.** Subject to **Section 3.4**, XXXXX shall not enter upon, excavate, break up or otherwise disturb the surface of any ROW for the purpose of performing its Work without first obtaining, where required, the applicable Permits for the specific Work activity described in **Schedule B**. XXXXX shall pay all fees required by the County for the issuance of permits.
- 3.2 **Submission of Plans.** Unless otherwise agreed to by the County, XXXXX shall, prior to undertaking any Work that requires a MC, submit the following to the County Engineer or designate:
- (a) construction plans of the proposed Work, showing the locations of the proposed or existing Equipment and specifying the boundaries of the area within the County 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 County Engineer from time to time for the purposes of issuing Permits.
 - (c) XXXXX shall pay all fees required by the County.
- 3.3 **Refusal to issue Permits.** The County may refuse to issue a Permit in accordance with **Section 3.1** for any *bona fide* municipal purpose, including reasons of public safety and health, conflicts with existing infrastructure, proposed road construction, or the proper functioning of public services, all as identified in writing by the County.
- 3.4 **No Permits for Routine Work.** Notwithstanding **Section 3.1**, XXXXX may, without first obtaining a Permit:
- (a) utilize existing ducts or similar structures of the Equipment with at least twenty-four (24) hours advance notice to the County; and
 - (b) carry out routine maintenance and field testing to its Equipment;
- provided that in no case shall XXXXX carry out any physical disruption or change to the ROW or its use without the County's prior written consent.

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

4. **MANNER OF WORK**

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

- (a) the applicable laws (and, in particular, all laws and codes relating to occupational health and safety);
- (b) the Municipal Guidelines;
- (c) applicable industry standards;
- (d) this Agreement; and
- (e) the applicable Permits issued under **Section 3.1**.

4.2 **Underground Equipment.** XXXXX shall place those portions of the Equipment that cross beneath streets or existing buried utilities in ducts, carrier pipes or encased in concrete, or as otherwise specified by the County.

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

4.4 **Coordination of Work.** XXXXX shall use reasonable efforts to coordinate its construction Work and the placement of new Equipment within the ROW by sharing the use of support structures with other existing and new occupants of the ROWs and including minimizing the necessity for road cuts.

4.5 **Open Road Cuts.** No open road cuts allowed on any County Roads, only directional bore are permitted. In the event an open road cut is required XXXXX shall request permission through the Municipal Consent or Road Occupancy Permit process.

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

4.7 **Emergency contact personnel.** XXXXX and the County shall provide to each other a list of twenty-four (24) hour emergency contact personnel available at all times and shall ensure that the list is kept current.

4.8 **Emergency work by County.** In the event of an Emergency, the County may take such measures it deems necessary to re-establish a safe environment, and shall pay the County's reasonable and verifiable costs that are directly attributable to the Work or the presence of the Equipment in the ROWs.

4.9 **"As-built" drawings.** Where required and requested by the County, XXXXX shall, no later than forty-five (45) days after completion of any Work, provide the County Engineer or designate with accurate "as-built" drawings, prepared in accordance with such standards as may be required by the General Manager, sufficient, for planning purposes, to accurately establish the location of the Equipment installed within the ROWs.

5. REMEDIAL WORK

- 5.1 **General.** Following the completion of any Work, XXXXX shall leave the ROW in a neat, clean, and safe condition and free from nuisance, all to the satisfaction of the County. Subject to **Section 5.2**, where XXXXX is required to break or disturb the surface of a ROW to perform its Work, it shall repair and restore the surface of the ROW to the same or better condition it was in before the Work was undertaken, all in accordance with the Municipal Guidelines and to the satisfaction of the County.
- 5.2 **Temporary repair.** Where weather limitations or other external conditions beyond the control of XXXXX do not permit it to complete a final repair to the ROW within the expected period of time, XXXXX may complete a temporary repair to the ROW; provided that XXXXX replaces the temporary repair with a final repair within a reasonable period of time. All repairs to the ROW by XXXXX shall be performed in accordance with the Municipal Guidelines and to the satisfaction of the County.
- 5.3 **Warranty of repairs.** XXXXX warrants its temporary repair, to the satisfaction of the County, for a period of one (1) year from the date of its completion, and its final repairs for a period of two (2) years from the date of their completion.
- 5.4 **Repairs completed by County.** Where XXXXX:
- (a) fails to complete a temporary repair to the satisfaction of the County within seventy-two (72) hours of being notified in writing by the County, or such other period as may be agreed to by the Parties; or
 - (b) XXXXX and the County agree that the County should perform the repair, then the County may effect such work necessary to perform the repair and XXXXX shall pay the County's reasonable and verifiable direct costs of performing the repair.
- 5.5 **Pavement degradation fees.** At the time of applying for a Permit, XXXXX shall pay the County the pavement degradation fees set out in **Schedule B** based on the age and area of the pavement to be broken by XXXXX, as estimated by the County. Once the Work has been completed, the Parties shall determine the actual area of pavement that was disturbed or broken by XXXXX and the final amount owed by or to XXXXX.

6. LOCATING FACILITIES IN ROWS

- 6.1 **Locates.** 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 (2) 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.
 - (c) XXXXX shall be a registered member with Ontario One Call (Call before you dig) call centre, that facilitates locate requests and notifies registered owners of underground facilities within the vicinity of the dig-site of the planned excavation.
- 6.2 **Utility co-ordination committee.** XXXXX shall participate in any utility co-ordination committees established by the County and contribute to its equitable share of the reasonable costs of the operation and administration of the committee.

- 6.3 **Provision of Mark-ups.** The Parties agree to respond within fifteen (15) days to any request from the other Party for a mark-up of municipal infrastructure or Equipment design drawings showing the location of any portion of the municipal infrastructure or Equipment, as the case may be, located within the portion of the ROWs shown on the plans (the "**Mark-ups**"), and shall provide such accurate and detailed information as may be reasonably required by the requesting Party.
- 6.4 **Inaccurate Locates.** Where XXXXX Locates are found to be in error and, as a result, the County is unable to install its facilities within the affected ROWs in the manner it expected based on the Locates provided by XXXXX, the County will notify XXXXX of the error, following which XXXXX shall attempt to resolve the conflict. If XXXXX is unable to resolve the conflict in a reasonable time commensurate with the situation and to the County's satisfaction, XXXXX will pay the County for its reasonable and verifiable costs incurred as a direct result of the conflict.

7. RELOCATION OF EQUIPMENT

- 7.1 **General.** Where the County requires and requests XXXXX to relocate its Equipment for *bona fide* municipal purposes, the County shall notify XXXXX in writing and, subject to **Section 7.3**, XXXXX shall, within ninety (90) 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 **County's efforts.** The County will make good faith efforts to provide alternative routes for the Equipment affected by the relocation to ensure uninterrupted service to XXXXX customers. The County shall also provide, in a timely fashion, all Permits and approvals required to allow XXXXX to Relocate the Equipment.
- 7.3 **Apportionment of Cost for XXXXX Relocation.** The County shall reimburse XXXXX for the cost for labour employed and labour saving devices in such required relocation requested by the County and such cost shall be apportioned equally between the County and XXXXX, and all other costs shall be borne by XXXXX based on the following procedures:
- (a) Within thirty (30) days of receiving the request from the County to relocate the Equipment, XXXXX shall provide the County with a written estimate of the Relocation Costs for such relocation, including an estimate of the County's reimbursement.
 - (b) Within sixty (60) days of completing the relocation, XXXXX may provide County with a written invoice for the actual Relocation Costs in a format that clearly identifies the County's reimbursement.
- 7.4 **Equipment affected by County's Capital Works Plan.** Prior to the issuance of a Permit, the County will advise XXXXX in writing whether XXXXX proposed location for new Equipment will be affected by the County's ten-year capital works plan (the "**Capital Works Plan**"). If the County advises that the new Equipment will be so affected and XXXXX, despite being advised of such, requests the County to issue the Permit, then the County may issue a conditional Permit stating that, if the County requires, pursuant to any project identified in the Capital Works Plan as of the date of approval, XXXXX to relocate the Equipment within five (5) years of the date of the Permit, XXXXX will be required to relocate the Equipment entirely at its own cost, notwithstanding **Section 7.3**.
- 7.5 **County not responsible for Third Party Relocation Costs.** Unless otherwise agreed to between the County and the Third Party, in no event shall the County be responsible under this Agreement for:
- (a) the costs of XXXXX to relocate Equipment at the request of a Third Party; or

- (b) the costs of relocating the facilities of a Third Party installed on or in the Equipment.
- 7.6 **Where Equipment is located incorrectly.** The County shall not be responsible for the costs of relocating any portion of the Equipment that is located outside a distance of one (1) metre horizontally (centre line to centre line) from the location approved in the Permit or as shown on the as-built composite utility drawing submitted by a developer's engineering firm. 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.
- 7.7 **Emergency temporary relocation.** In cases of an Emergency that requires XXXXX to temporarily relocate the Equipment, the Parties shall work co-operatively and expeditiously to complete the relocation as soon as practicably possible; provided, however, that the County may, with at least twenty-four (24) prior notice to XXXXX, take any measures it deems necessary for reasons of public health and safety.
- 7.8 **Relocation performed by County.** If XXXXX fails to complete the relocation in accordance with **Section 7.1** the County may, at its option, complete such relocation and XXXXX shall pay the County's reasonable and verifiable costs of the relocation.
- 7.9 **Discontinuance of ROW.** Where, in the opinion of the County, the lands on which a ROW (or any portion thereof) in which Equipment is located is no longer required for use by the County, the County may cause such ROW to be discontinued by providing XXXXX with 90 days notice of the same and XXXXX shall execute a Discontinuance Agreement with the County on such terms as may be required by the County; provided that:
- (a) if the County owns the land upon which the ROW is located and does not require XXXXX to Relocate the Equipment, it will, prior to conveyance of the Lands on which the ROW exists, cause an easement to be registered against the lands being sold in favour of XXXXX, the cost of preparation of such easement being at the cost of XXXXX;
 - (b) if the County owns the land upon which the ROW is located and does require XXXXX to Relocate the Equipment, the Parties will, prior to the discontinuance of the ROW, affect the relocation of the Equipment in accordance with **Sections 7.1** and **7.2**; and
 - (c) in all cases, XXXXX shall be responsible for of the applicable Relocation Costs unless otherwise agreed to by the County in writing.

8. PAYMENT OF FEES AND OTHER CHARGES

- 8.1 **Invoices.** Unless expressly provided elsewhere in this Agreement, where there are any payments to be made under this Agreement, the Party requesting payment shall first send a written invoice to the other Party, setting out in detail all amounts owing, including any applicable provincial and federal taxes and interest payable on prior overdue invoices, and the payment terms. The Parties agree that all payments shall be made in full by no later than forty-five (45) days after the date of the invoice was received.
- 8.2 **Payment of taxes.** XXXXX shall pay, and shall expressly indemnify and hold the County harmless from, all taxes lawfully imposed now or in the future by the County 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 County, that are attributable to XXXXX use of the ROW.

9. TERM AND TERMINATION

- 9.1 **Initial term and renewal.** This Agreement shall have an initial term of five (5) years commencing on the date of this agreement and shall be renewed automatically for successive five (5) year terms 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 ninety (90) days prior to the expiration of the then current term; or
 - (c) this Agreement is replaced by a new agreement 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.
- 9.3 **Termination by County.** The County may terminate this Agreement by providing XXXXX with at least twenty-four (24) hours written notice in the event that:
- (a) XXXXX 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) XXXXX assigns or transfers this Agreement or any part thereof other than in accordance with **Section 16.2**; or
 - (c) XXXXX ceases to be eligible to operate as a Carrier.
- 9.4 **Obligations and rights upon termination or expiry of Agreement.** Notwithstanding any other provision of this Agreement, if this Agreement is terminated (other than in accordance with **Section 9.3**) or expires without renewal, then, subject to XXXX rights to use the ROWs pursuant to the Telecom Act and, unless XXXXX advises the County in writing that it no longer requires the use of the Equipment:
- (a) the terms and conditions of this Agreement shall remain in full force and effect until a new 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.

10. INSURANCE

- 10.1 **General.** Throughout the term of this Agreement and any renewals or extension thereto, XXXXX shall maintain, at its sole expense, insurance (the "**XXXXX Insurance**") in an amount and description as described below to protect XXXXX and the County from claims for damages, bodily injury (including death) and property damage which may arise from XXXXX operations under this Agreement, including the use or maintenance of the Equipment within the ROWs or any act or omission of XXXXX and its employees, contractors and agents while engaged in the Work. The XXXXX Insurance shall include all costs, charges and expenses reasonably incurred with any injury or damage.
- 10.2 **Comprehensive general liability occurrence-based insurance.** Without

limiting the generality of the foregoing, XXXXX shall obtain and maintain comprehensive general liability occurrence-based insurance coverage which:

- (a) covers claims and expenses for liability for personal injury, bodily injury and property damage in an amount not less than Five Million Dollars (\$5,000,000.00) per claim (exclusive of interest and costs);
- (b) extends to cover the contractual obligations of XXXXX as stated within this Agreement;
- (c) names the County as an additional insured; and
- (d) contains cross liability and severability of interest clauses.

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

10.4 **General insurance conditions.**

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

11. LIABILITY AND INDEMNIFICATION

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

- (a) be responsible, either directly or indirectly, for any damage to the Equipment howsoever caused that may occur as a result of any Work by XXXXX; and
- (b) be liable to XXXXX for any Losses whatsoever suffered or incurred by XXXXX on account of any actions or omissions of the County working within the ROWs.

11.2 **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.

11.3 **Indemnification by XXXXX.** Except for Claims or Losses arising, in whole or in part, from the negligence or wilful misconduct of the County, XXXXX covenants and agrees to indemnify, defend and save harmless the County from and against any and all Claims or Losses that the County may suffer or incur arising from:

- (a) XXXXX exercise of any of its rights under this Agreement;

- (b) XXXXX performance of any Work within the ROWs and the operation or use of the Equipment by XXXXX or any other Person;
- (c) XXXXX undertaking any activity within the ROWs which is ancillary to XXXXX exercise of its rights under this Agreement; and
- (d) any breach of this Agreement by XXXXX.

11.4 **Survival.** The obligation of a Party to indemnify, defend and save harmless the other Party shall survive the termination or expiry of this Agreement.

12. ENVIRONMENTAL LIABILITY

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

12.2 **XXXXX to assume environmental liabilities.** XXXXX 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 XXXXX, its contractors, agents or employees or by any person with the express or implied consent of XXXXX within the ROWs; or
- (b) any Equipment brought or placed within the ROWs by XXXXX its contractors, agents or employees or by any person with the express or implied consent of XXXX,

unless such damage was caused directly or indirectly in whole or in part by the negligence or willful misconduct on the part of the County or those for which it is responsible in law.

13. 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

The Parties will attempt to resolve any dispute arising out of this Agreement promptly through discussions at the operation level. In the event a resolution is not achieved, the disputing Party shall provide the other Party with written notice of the same and the Parties shall attempt to resolve such dispute between senior officers who have the authority to settle such 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 such dispute within thirty (30)

calendar days of the non-disputing Party's receipt of written notice, either Party may initiate legal proceedings and/or submit the matter to the CRTC for resolution.

15. NOTICES

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 County at the following address:

If to the County:

County of Wellington, Roads Division

74 Woolwich Street
Guelph, Ontario N1H 3T9
Attention: Operations Manager
Facsimile: 519.837.8138

If to XXXXX:

XXXXX
XXXXX
XXXXX ON XXX XX

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.

16. GENERAL

- 16.1 **Entire agreement.** This Agreement, together with the Schedules attached hereto, constitute the complete and exclusive statement of the understandings between the Parties with respect to the rights and obligations hereunder and supersedes all proposals and prior agreements, oral or written, between the Parties.
- 16.2 **Assignment.** This Agreement may not be assigned or transferred, in whole or in part, without the prior written consent of the other Party. Notwithstanding the foregoing, XXXXX shall, provided that it is not in material breach of this Agreement, have the right to assign this Agreement to an Affiliate without the consent of the County, provided that XXXXX has given notice to the County.
- 16.3 **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.
- 16.4 **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 County and XXXXX.
- 16.5 **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.
- 16.6 **Governing law.** This Agreement shall be governed by the laws of the Province of Ontario and all federal laws of Canada applicable therein.

- 16.7 **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.
- 16.8 **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and everything else in this Agreement shall continue in full force and effect.
- 16.9 **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.

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

YYYYY

(Seal)

**THE CORPORATION OF THE
COUNTY OF WELLINGTON**

Warden – County of Wellington

Clerk – County of Wellington

(Seal)

SCHEDULE B
Permits Required by the County