



County Council

Meeting Date: August 10th, 2021

Submitted by: Wayne Meagher, County Barrister and Solicitor

SUBJECT: Eh!tel Telecommunications Access/Road Use Agreement

BACKGROUND & ANALYSIS:

Eh!tel is the successful bidder of a portion of SWIFT project for fibre-optic installation in Middlesex County and Southwest Middlesex. The Middlesex County Barrister and Solicitor's Office ("MCBSO") and the Eh!tel Networks Inc. team ("Eh!tel") discussed entry into a telecommunications Access/Road Access Agreement and Eh!tel has pre-endorsed the Agreement following the success of those discussions. The Agreement is in the County's usual blanket form, meaning that it provides access to County road allowances across the entire County for telecommunications installation, subject to the obtaining of Work Permits from County Engineering involving the approval of engineering drawings and security.

The County's blanket telecommunications Access/Road Use Agreement has focused on keeping the annual flat fee for miscellaneous causal costs lower than other municipalities, while ensuring that such costs are covered to prevent taxpayer losses and ensure that subsidization is not provided to the telecommunications field beyond County Council's official authorized subsidization of \$784,063.00 to the SWIFT fibre installation initiative or such other officially approved subsidizations moving forward. The practice of using and minimizing a causal costs fee is encouraged by the publications of the Federation of Canadian Municipalities and the County Blanket Agreement has been recognized by the International Municipal Lawyers' Association working group as a model document. For the Eh!Tel Project, the Municipality of Southwest Middlesex retained the MCBSO on joint retainer to use the same form of Agreement with necessary adaptation to Southwest Middlesex roads, which provided for ease of Project discussions and administration.

The County form of Blanket Agreement effects large and small telecoms equally and since its approval in early 2021 has been endorsed by both large and small telecoms. To date, it has been endorsed by Eh!tel and all of the various successful proponents of the SWIFT fibre installation project across Middlesex County and the Middlesex Municipalities. The County appreciates telecoms acting in Middlesex County, supports them as community contributors, and looks forward to the build-out of the Eh!tel fibre initiative.

FINANCIAL IMPLICATIONS:

The blanket nature of the County Access/Road Use Agreement allows Middlesex Municipalities to manage their road allowance infrastructure more fluidly, ensures uniform cost recovery at the lowest cost to the telecom, upholds the principle of 'development paying for development' subject only to official subsidization choices by Councils (ie. the County's SWIFT contribution), and provides for ease of Project discussions and administration.

ALIGNMENT WITH STRATEGIC FOCUS:

This report aligns with the following Strategic Focus, Goals, and Objectives: Cultivating Community Vitality, Connecting through Infrastructure, and Strengthening our Economy.

RECOMMENDATION:

THAT the Municipal Access Agreement between the Corporation of the County of Middlesex and EH!Tel Networks Inc. be approved and that the necessary by-law to authorize the Warden and County Clerk to execute the attached Municipal Access Agreement be approved.

Attachments:

Eh!Tel Access/Road Use Agreement

TELECOMMUNICATIONS MUNICIPAL ACCESS AGREEMENT

This **MUNICIPAL ACCESS AGREEMENT** effective the ____ day of _____, 2021 (the “Effective Date”).

B E T W E E N:

THE CORPORATION OF THE COUNTY OF MIDDLESEX

(hereafter the "**County**")

OF THE FIRST PART

- and –

EH!TEL NETWORKS INC.

(hereafter the "**Company**")

OF THE SECOND PART

WHEREAS:

- A. The Company is a “Canadian carrier” as defined in the *Telecommunications Act*, S.C. 1993, c.38 (“**Telecom Act**”) or “distribution undertaking” as defined in the *Broadcasting Act*, S.C. 1991, c.11 (collectively, a “**Carrier**”) and is subject to the jurisdiction of the Canadian Radio-television and Telecommunications Commission (the “**CRTC**”);
- B. In order to operate as a Carrier, the Company requires to construct, maintain and operate its Equipment in, on, over, under, across or along (“**Within**”) the highways, streets, road allowances, lanes, bridges or viaducts which are under the jurisdiction of the County (collectively, the “**Rights-of-Way**” or “**ROWs**”);
- C. Pursuant to section 43 of the *Telecom Act*, the Company requires the County’s consent to construct its Equipment Within the ROWs and the County is willing to grant the Company a non-exclusive right to access and use the ROWs; provided that such use will not unduly interfere with municipal operations, equipment or installations and the public use and enjoyment of the ROWs, nor any rights or privileges previously conferred or conferred after the Effective Date by the County on Third Parties to use or access the ROWs; and
- D. The Parties have agreed that it would be mutually beneficial to outline the terms and conditions pursuant under which the County hereby provides its consent;

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

1. DEFINITIONS AND INTERPRETATION

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

- (a) “**Affiliate**” means “affiliate” as defined in the *Canada Business Corporations Act*;
- (b) “**Anti-Bribery Law**” means any anti-bribery law or international convention, as may apply now or in the future, including the Canadian Corruption of Foreign Public Officials Act, the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act and the OECD Convention on Combating Bribery of Foreign Public Officials;
- (c) “**County Engineer**” means the County’s reviewing authority or the individual designated by him or her;

- (d) **“CRTC”** means the Canadian Radio-television and Telecommunications Commission.
 - (e) **“Emergency”** means an unforeseen situation where immediate action must be taken to preserve the environment, public health, safety or an essential service of either of the Parties;
 - (f) **“Equipment”** means the transmission and distribution facilities owned by the Company and/or its Affiliates, comprising fibre optic, coaxial or other nature or form of cables, pipes, conduits, poles, ducts, manholes, handholds and ancillary structures and equipment located Within the ROWs;
 - (g) **“Hazardous Substance”** means any harmful substance including, without limitation, electromagnetic or other radiation, contaminants, pollutants, dangerous substances, dangerous goods and toxic substances, as defined, judicially interpreted or identified in any applicable law (including the common law);
 - (h) **“Municipal Consent”** or **“MC”** means the written consent of the County, with or without conditions, to allow the Company to perform Work Within the ROWs that requires the excavation or breaking up of the ROWs;
 - (i) **“Permit”** means a Municipal Consent or a Roads Permit or both;
 - (j) **“Roads Permit”** means a permit issued by the County in accordance with applicable County by-laws, which Council may pass and amend from time to time, authorizing the Company to occupy the ROWs with its workforce, vehicles and other equipment when performing the Work, including without limitation, Access/Entrance Permits, Work Permits, and Moving Oversize Load/Weight Vehicles Permits;
 - (k) **“Service Drop”** means a cable that, by its design, capacity and relationship to other fibre optic cables of the Company can be reasonably considered to be for the sole purpose of connecting backbone of the Equipment to not more than one individual customer or building point of presence;
 - (l) **“Term”** means subject to the renewal options described in subparagraph 9.1(a) and termination described in subparagraphs 9.2, 9.3 and 9.4, shall commence on the effect date of this Agreement, set out at the top of page one of this Agreement and will expire and terminate due to expiry ten (10) years from the effective date of this Agreement.
 - (m) **“Third Party”** means any person that is not a party to this Agreement nor an Affiliate of either Party, and includes any person that attaches its facilities in, on or to the Equipment under an agreement with the Company;
 - (n) **“Work”** means, but is not limited to, any installation, removal, construction, maintenance, repair, replacement, relocation, removal, operation, adjustment or other alteration of the Equipment performed by the Company Within the ROWs, including the excavation, repair and restoration of the ROWs.
- 1.2 **Legislation.** All references to statutes in this Agreement shall include amendments thereto, regulations thereof, and successor legislation thereafter.
- 1.3 **Recitals, Schedules and Incorporated Documents.** The beginning part of this Agreement entitled “Recitals”, *Schedule “A”* and “B”, and the By-laws and Municipal Policies referred to in this Agreement are hereby incorporated by reference into this Agreement and form part thereof:

Schedule “A” – Relocation Costs
Schedule “B” – Permit Fees

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2. USE OF ROWs

- 2.1 **Consent to use ROWs.** The County hereby consents to the Company's use of the ROWs for the purpose of performing its Work, subject to the terms and conditions of this Agreement and in accordance with all applicable laws or other municipal by-laws, rules, policies, standards and guidelines ("**Municipal Guidelines**") pertaining to the Equipment and the use of the ROWs; to the extent, however, that any municipal laws and the Municipal Guidelines are not inconsistent or in conflict with this Agreement or with applicable federal laws.
- 2.2 **Restrictions on use.** The Company shall not, in the exercise of its rights under this Agreement, unduly interfere with municipal operations, equipment or installations and the public use and enjoyment of the ROWs, nor any rights or privileges previously conferred or conferred after the Effective Date by the County on Third Parties to use or access the ROWs
- 2.3 **Equipment acquired by the Company.** The Parties agree that, where the Company acquires, or has acquired, directly or indirectly, facilities from a Third Party that are located Within the ROWs (the "**New Equipment**"), then, effective the day of the acquisition of the New Equipment by the Company:
- (a) the New Equipment shall form part of the Equipment and shall be governed by the terms and conditions of this Agreement; and
 - (b) where that Third Party is a Party to a valid and existing municipal access agreement with the County (the "**Old MAA**") and the Company, 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 the Company any ownership or property rights in the ROWs; and
 - (b) the placement of the Equipment Within the ROWs shall not create or vest in the County any ownership or property rights to the Equipment.
- 2.5 **Condition of ROWs.** The County makes no representations or warranties as to the state of repair of the ROWs or the suitability or fitness of the ROWs for any business, activity or purpose whatsoever, and the Company hereby agrees to accept the ROWs on an "as is" basis.

3. APPLICABLE PERMITS

3.1 Permits.

- (a) Subject to Section 3.2 and 3.4, the Company shall not access, enter upon, occupy, excavate, break up, disturb, or move oversized or overweight vehicles or do any Work Within any ROW without first obtaining the applicable Permits, being a Municipal Consent and/or Roads Permit(s), as the case may be.
- (b) For each Permit required above, the Company shall submit to the County a completed application, in a form specified by the County and including the Permit fees, deposits and security associated with applicable County By-laws, as amended or replaced. The Permit fees in effect as of the Effective Date are set out in *Schedule "B"* to this Agreement.

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3.2 **No Permits for routine Work.** Notwithstanding Section 3.1, the Company may, with advance notice as required by the County, without first obtaining a Permit:

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

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

3.3 **Expiry of Permit.** In the event that the Company has not commenced construction of the approved Work associated with a particular Permit within ninety (90) days of the date of issuance of the Permit, and has not sought and received an extension to the Permit from the County, which extension shall not be unreasonably withheld, the Permit shall be null and void. In such circumstances, any fees paid by the Company in respect of the expired Permit shall not be refunded and the Company must obtain a new Permit for the Work.

3.4 **Submission of plans.** Unless otherwise agreed to by the County, the Company shall, prior to undertaking any Work that requires a Municipal Consent, submit the following to the County Engineer:

- (a) construction plans of the proposed Work, showing the locations of the proposed and existing Equipment and other facilities, and specifying the boundaries of the area within the County within which the Work is proposed to take place;
- (b) Traffic control plans for the protection of the workers, public and traveling public including detours as required to minimize traffic disruption; and
- (c) all other relevant plans, drawings and other information as may be normally required by the County Engineer from time to time for the purposes of issuing Permits.

3.5 **Refusal to issue Permits.** The County may refuse to issue a Permit in accordance with Section 3.1 for any *bona fide* municipal purpose, including but not limited to reasons of public safety and health, conflicts with existing infrastructure, proposed road construction, or the proper functioning of public services, all as identified in writing by the County. Without limiting the foregoing, the County may refuse to issue a Permit where, in the opinion of the County Engineer, there is insufficient space Within a ROW to accommodate the proposed Equipment taking into account existing and potential future public service infrastructure.

3.6 **Restoration of the Company's service during Emergencies.** Notwithstanding Section 3.1, in the event of an Emergency, the Company shall be permitted to perform such remedial Work as is reasonably necessary to restore its services without complying with Section 3.1; provided that such Work does not unduly disrupt any Municipal service or activity and provided that the Company does comply with Section 3.1 within five (5) business days of completing the Work.

3.7 **Temporary changes by County.** Notwithstanding any other provision in this Agreement, the County reserves the right to set, adjust or change the approved schedule of Work by the Company for the purpose of coordinating or managing any major events or activities, including the restriction of any Work during those restricted time periods; provided however, that any such adjustment or change shall be conducted so as minimize interruption to the Company's operations. The County shall use its commercially reasonable efforts to provide to the Company forty-eight (48) hours advance written notice of any change to the approved schedule of Work, except that, in the case of any Emergency,

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the County shall provide such advance notice as is reasonably possible in the circumstances.

4. MANNER OF WORK

- 4.1 **Compliance with Applicable Laws, etc.** All Work shall be conducted and completed to the satisfaction of the County and in accordance with:
- (a) the applicable laws (and, in particular, all laws and codes relating to occupational health and safety);
 - (b) the Municipal Guidelines;
 - (c) this Agreement; and
 - (d) the applicable Permits issued under Section 3.1.
- 4.2 **Underground Equipment.** The Company shall place those portions of the Equipment that cross beneath streets or existing buried utilities in ducts, carrier pipes or encased in concrete, or as otherwise specified by the County.
- 4.3 **Installation.** The Company shall utilize construction methods that minimize the impact on the ROWs, including but not limited to trenchless installation technology and single trench installation methods.
- 4.4 **Stoppage of Work.** The County may order the stoppage of the Work for any *bona fide* municipal purpose or cause relating to public health and safety, special events or any circumstances beyond its control. In such circumstances, the County shall provide the Company with a verbal order and reasons to stop the Work and the Company shall cease the Work immediately. Within two (2) business days of the verbal order, the County shall provide the Company with a written stop work order with reasons. When the reasons for the Work stoppage have been resolved, the County shall advise the Company immediately that it can commence the Work.
- 4.5 **Coordination of Work.** To minimize the necessity for road cuts, construction and the placement of new Equipment Within the ROW, the Company shall:
- (a) coordinate its work with other existing and new occupants of the ROW;
 - (b) where the Company seeks access to a ROW with an existing transmission line, use its reasonable efforts to negotiate an agreement for the use of the supporting structures of the existing transmission line, failing which the Company shall apply to the CRTC for permission to access said support structures; and
 - (c) where the Company has installed a transmission line Within a ROW, use its reasonable efforts to reach an agreement for the use of the supporting structures of the Company's transmission line, where access to said support structures is requested by a Third Party.
- 4.6 **Existing Facilities.** The Company acknowledges that, due to space constraints, the placement of new Equipment Within a ROW that is occupied by the telecommunications facilities of a Third Party, save and except for Equipment to be placed on or in existing support structures of said Third Party, shall only be permitted in exceptional circumstances at the discretion of the County Engineer.
- 4.7 **Identification of contractors.** The Company shall ensure that all of its contractors have proper identification visible on the Work site displaying the name of the person for which they work.
- 4.8 **Emergency contact personnel.** The Company and the County shall provide to each other a list of twenty-four (24) hour emergency contact personnel available at all times and shall ensure that the list is kept current.

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

5. **REMEDIAL WORK**

- 5.1 **General.** Following the completion of any Work, the Company shall leave the ROW in a neat, clean, and safe condition and free from nuisance, all to the satisfaction of the County. Subject to Section 5.5, where the Company is required to break or disturb the surface of a ROW to perform its Work, it shall repair and restore the surface of the ROW to the same or better condition it was in before the Work was undertaken, all in accordance with the Municipal Guidelines and to the satisfaction of the County.
- 5.2 **Permanent Road Restoration.** If the Company has excavated, broken up or otherwise disturbed the surface of a ROW, the requirements for the Company completing the road restoration work will vary depending on if and when pavement has been recently repaved or overlaid, as follows:
 - (a) if pavement has been repaved or overlaid during the five-year period immediately prior to the date of issuance of the Permit, then the County may require that the Company grind and overlay the full lane width of pavement in the ROW;
 - (b) if pavement has been repaved or overlaid during the two-year period immediately prior to the date of issuance, then the County may require that the Company grind and overlay the full width of the pavement in the ROW;
 - (c) in either subsections (a) or (b) above, if Third Parties, including the County as a provider of services to the public, has excavated, broken up or otherwise disturbed the pavement to be ground and overlaid, the costs of that grind and overlay will be apportioned between the Company and the Third Parties on the basis of the area of their respective cuts.
- 5.3 **Temporary repair.** Where weather limitations or other external conditions beyond the control of the Company do not permit it to complete a final repair to the ROW within the expected period of time, the Company may complete a temporary repair to the ROW; provided that, subject to Section 5.5, the Company replaces the temporary repair with a final repair within a reasonable period of time. All repairs to the ROW by the Company shall be performed in accordance with the Municipal Guidelines and to the satisfaction of the County.

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

- 5.4 **Warranty of repairs.** The Company warrants its temporary repair, to the satisfaction of the County until such time as the final repair is completed by the Company, or, where the County is performing the final repair, for a period of one (1) years or until such time as the final repair is completed by the County, whichever is earlier. The Company shall warrant its final repairs for a period of two (2) years from the date of their completion

- 5.5 **Repairs completed by County.** Where:

- (a) the Company fails to complete a temporary repair to the satisfaction of the County within seventy-two (72) hours of being notified in writing by the County, or such other period as may be agreed to by the Parties; or
- (b) the Company and the County agree that the County should perform the repair,

then the County may effect such work necessary to perform the repair and the Company shall pay the County's reasonable and verifiable direct costs of performing the repair.

6. LOCATING FACILITIES IN ROWs

- 6.1. **Locates.** The Company agrees that, throughout the Term it shall, at its own cost, record and maintain adequate records of the locations of its Equipment. Each Party shall, at its own cost and at the request of the other Party (or its contractors or authorized agents), physically locate its respective facilities by marking the ROW using paint, staking or other suitable identification method ("**Locates**"), under the following circumstances:

- (a) in the event of an Emergency, within two hours of receiving the request or as soon as practicably possible, following which the requesting Party will ensure that it has a representative on site (or alternatively, provide a contact number for its representative) to ensure that the area for the Locates is properly identified; and
- (b) in all other circumstances, within a time reasonably agreed upon by the Parties.

- 6.2. **Utility co-ordination committee.** The Company shall participate in a utility co-ordination committee established by the County and contribute to its equitable share of the reasonable costs of the operation and administration of the committee as approved by such 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 the Company's Locates are found to be in error and, as a result, the County is unable to install its facilities Within the affected ROWs in the manner it expected based on the Locates provided by the Company, the County will notify the Company of the error, following which the Company shall attempt to resolve the conflict. If the Company is unable to resolve the conflict in a reasonable time commensurate with the situation and to the County's satisfaction, the Company will pay the County for its reasonable and verifiable costs incurred as a direct result of the conflict.

7. RELOCATION OF EQUIPMENT

- 7.1 **County Request.** Where the County requires and requests the Company to relocate its Equipment for a *bona fide* municipal purpose, the County shall notify the Company in writing and, the Company shall complete the requested relocation within ninety (90) days

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thereafter or such other time as agreed to by the Parties at one hundred percent (100%) the Company's cost, subject to potential reimbursement by the County as set out in ***Schedule "B"***. In the event that the Company fails to relocate its equipment to the standard required by the County at one 100% its cost shall constitute a breach of this Agreement by the Company, and the Company and its representatives, successors and assigns hereby agree to a Consent Judgement Order in the Superior Court of Justice requiring the Company to complete the relocation of its Equipment at one hundred (100%) its cost.

- 7.2 **Upon Request of the Company.** In the event that the Company wishes to relocate Equipment which has been previously installed in accordance with this Agreement at one hundred percent (100%) its own expense, the Company shall notify the County of such request, in writing, and such request will thereafter be considered and administered by the County acting reasonably and with diligence giving due consideration to the scope of the works already undertaken by the Company Within the ROWs, provided that, in considering and administering such request the County shall be entitled to take into consideration any specific municipal or engineering interests affected by such relocation including any additional facilities located Within the ROWs. Notwithstanding the foregoing, the County shall not be permitted to unreasonably withhold, delay or condition its approval for such request.
- 7.3 **Required by Legislation or Lawful Order.** In the event relocation of Equipment is required as a result of the County's compliance with a legislative requirement, Ministerial order or such other law or order of a body which has the ability to force the County to act then the costs of the Relocation and/or related installation work associated with the Equipment shall be performed by the Company at one hundred (100%) its own cost.
- 7.4 **Request by Third Party.** Where relocation of Equipment is required due to the County accommodating a third party (hereinafter "**Third Party Work**"), the required relocation or related installation work shall be conducted by the Company in accordance with the terms of this Agreement respecting installation, and the full cost of the amendment or Relocation shall be borne solely by the third party and paid in advance. The County agrees to provide the Company with ninety (90) days' notice of the need for any such Third Party Work and to require that the relevant third party or parties bear the full cost of such Third Party Work and indemnify the Company against all claims and liabilities arising from the amendment or Relocation as a condition precedent to any such amendment or Relocation.
- 7.5 **County efforts.** Where any relocation of Equipment occurs, the County will make good faith efforts to provide alternative routes for the Equipment affected by the relocation to ensure uninterrupted service to the Company's customers. Once the Company has provided the County with all information the County requires to enable it to process a Permit application, the County shall provide, on a timely basis, all Permits required to allow the Company to relocate the Equipment.
- 7.6 **Temporary Reconstruction or Realignment of Road Allowances.** The Company shall, upon reasonable prior notice to the County, have the right to:
- (a) temporarily reconstruct or realign certain portions of the Road Allowances in order to permit the delivery or movement of Equipment.

8. PAYMENT OF FEES AND OTHER CHARGES

- 8.1 **General.** In addition to the Fees referred to in Section 8.2, the Company covenants and agrees to pay to the County any Roads Permit fees, deposits and security associated with applicable County By-laws, as amended or replaced. The Roads Permit fees in effect as of the Effective Date are set out in ***Schedule "B"*** to this Agreement. Payment of Roads Permit fees is exempt from the invoice requirements of section 8.3.

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8.2 **Fees.** The Company shall pay to the County an annual fee in the amount of \$250/km of Equipment for each Municipal Consent applied for by the Company during the term of this Agreement. Such fees shall not exceed one thousand dollars (\$1,000.00) in a one-year period. The first one-year period shall commence on the Effective Date of this Agreement and shall reset on every anniversary thereafter for the term of this Agreement.

8.3 **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.

9. TERM AND TERMINATION

9.1 **Initial term and renewal.** Subject to the renewal options described in subparagraph 9.1(a) and termination described in subparagraphs 9.2, 9.3 and 9.4, shall commence on the effect date of this Agreement, set out at the top of page one of this Agreement and will expire and terminate due to expiry ten (10) years from the effective date of this Agreement (the “**Initial Term**”).

(a) The Company in its sole discretion may renew this Agreement with the County for three (3) separate consecutive renewal terms of five (5) years each. To exercise the first option to renew, the Company must provide the County written notice of such election to renew prior to the expiry of the Initial Term, failing which the Agreement will terminate due to expiry. To exercise the second option to renew, the Company must provide the County written notice of such election to renew prior to the expiry of the first valid five-year extension, failing which the Agreement will terminate due to expiry. To exercise the third option to renew, the Company must provide the County written notice of such election to renew prior to the expiry of the second valid five-year extension, failing which the Agreement will terminate due to expiry.

(b) If a renewal is not exercised prior to the last day of the Initial Term or valid extension, this Agreement shall terminate immediately on the last day of the Term or valid extension, subject to paragraph 9.4 of this Agreement.

9.2 **Termination by either Party.** Either Party may terminate this Agreement without further obligation to the other Party, upon providing at least seven (7) days’ written notice in the event of a material breach of this Agreement by the other Party after notice thereof and failure of the other Party to remedy or cure the breach within thirty (30) days of receipt of the notice. If, however, in the view of the non-breaching Party, it is not possible to remedy or cure the breach within such thirty (30) day period, then the breaching Party shall commence to remedy or cure the breach within such thirty (30) day period and shall complete the remedy or cure within the time period stipulated in writing by the non-breaching Party.

9.3 **Termination by County.** The County may terminate this Agreement by providing the Company with at least seven (7) days written notice in the event that:

- (a) the Company becomes insolvent, makes an assignment for the benefit of its creditors, has a liquidator, receiver or trustee in bankruptcy appointed for it or becomes voluntarily subject as a debtor to the provisions of the *Companies’ Creditors Arrangement Act* or the *Bankruptcy and Insolvency Act*;
- (b) the Company assigns or transfers this Agreement or any part thereof other than in

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accordance with Section 18.2; or

- (c) the Company ceases to be eligible to operate as a Carrier.

9.4 **Obligations and rights upon termination or expiry of Agreement.** Notwithstanding any other provision of this Agreement, if this Agreement is terminated (other than in accordance with Section 9.3) or expires without renewal, then, subject to the Company's rights to use the ROWs pursuant to the Telecom Act and, unless the Company advises the County in writing that it no longer requires the use of the Equipment:

- (a) the terms and conditions of this Agreement shall remain in full force and effect until a new municipal access agreement (a "**New Agreement**") is executed by the Parties; and
- (b) the Parties shall enter into meaningful and good faith negotiations to execute a New Agreement and, if, after six (6) months following the expiry of this Agreement, the Parties are unable to execute a New Agreement, then either Party may apply to the CRTC to establish the terms and conditions of the New Agreement.

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

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

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

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

10. INSURANCE AND SECURITY

10.1 **General.** Throughout the term of this Agreement and any renewals or extension thereto, the Company shall maintain, at its sole expense, insurance (the "**Company Insurance**") in an amount and description as described below to protect the Company and the County from claims for damages, bodily injury (including death) and property damage which may arise from the Company's operations under this Agreement, including the use or maintenance of the Equipment Within the ROWs or any act or omission of the Company and its employees, contractors and agents while engaged in the Work. The Company Insurance

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shall include all costs, charges and expenses reasonably incurred with any injury or damage.

10.2 **Comprehensive general liability occurrence-based insurance.** Without limiting the generality of the foregoing, the Company shall obtain and maintain comprehensive general liability occurrence-based insurance coverage which:

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

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

10.4 **General insurance conditions.**

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

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

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

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- 10.7 **Blanket LOC Term.** The Blanket LOC shall be posted for a maximum of three (3) years or until such time as the County determines that the Company has established a satisfactory business relationship with the County. If the County is required to draw upon the Blanket LOC, the County shall advise the Company and the Company shall, within fourteen (14) days thereafter restore the Blanket LOC to its original value.
- 10.8 **Project-specific Security.** The County may also request, and the Company shall provide, additional project-specific securities for Work projects in an amount equal to the estimated restoration costs of the projects as determined by the County. The County shall release the project-specific letter of credit once the Company has fulfilled the conditions of the applicable Permit relating to the restoration of the ROW to the satisfaction of the County.

11. RESPONSIBILITY AND INDEMNIFICATION

- 11.1 **No liability County.** The Company hereby acknowledges that the placement, installation, construction, reconstruction, inspection, maintenance, operation, alteration, enlarging, repair, replacement, relocation and/or removal of the Equipment by the Company is performed entirely at the risk of the Company and that the County shall in no way or under any circumstances be responsible or liable to the Company, its contractors, agents, or customers for any damage or losses in consequence thereof, unless due to the negligence of the County or those for whom at law it is responsible.
- 11.2 **Company Indemnity.** The Company hereby releases, indemnifies, completely holds harmless, and agrees to defend the County, its Councillors, officers, employees, legal counsel, agents and contractors, from and against any and all suits, judgments, claims, demands, expenses, actions, causes of action, duties, assessments, fees, penalties, liabilities, losses and costs which the County and its successors and assigns may at any time or times hereafter bear, sustain, or suffer, as a result of the Equipment, including without limitation, its placement, installation, construction, reconstruction, inspection, maintenance, use, operation, alteration, enlarging, repair, replacement, relocation and/or removal.
- 11.3 **County Acknowledgement.** The County hereby acknowledges that it is responsible for its negligence and the negligence of those for whom it is responsible for at law.
- 11.4 **County Indemnity.** The County hereby releases, indemnifies, completely holds harmless, and agrees to defend the Company, its officers, employees, legal counsel, agents and contractors, from and against any and all suits, judgments, claims, demands, expenses, actions, causes of action, duties, assessments, fees, penalties, liabilities, losses and costs which the Company and its successors and assigns may at any time or times hereafter bear, sustain, suffer, be put to or incur by reason of its negligence and the negligence of those for whom it is responsible at law.
- 11.5 **Survival.** The obligation of a Party to indemnify, defend and save harmless the other Party shall survive the termination or expiry of this Agreement.

12. ENVIRONMENTAL LIABILITY

- 12.1. **County not responsible.** The County is not responsible, either directly or indirectly, for any damage to the natural environment or property, including any nuisance, trespass, negligence, or injury to any person, howsoever caused, arising from the presence, deposit, escape, discharge, leak, spill or release of any Hazardous Substance in connection with the Company's occupation or use of the ROWs, unless such damage was caused directly or indirectly by the negligence or wilful misconduct of the County or those for which it is responsible in law.
- 12.2. **Company to assume environmental liabilities.** The Company agrees to assume all environmental liabilities, claims, fines, penalties, obligations, costs or expenses whatsoever relating to its use of the ROWs, including, without limitation, any liability for the clean-

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up, removal or remediation of any Hazardous Substance on or under the ROWs that result from:

- (a) the occupation, operations or activities of the Company, its contractors, agents or employees or by any person with the express or implied consent of the Company Within the ROWs; or
- (b) any Equipment brought or placed Within the ROWs by the Company, its contractors, agents or employees or by any person with the express or implied consent of the Company;

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

13. NO JOINT VENTURE, PARTNERSHIP OR CO-OWNERSHIP

- 13.1 **No Joint Venture.** The Parties hereby acknowledge and agree that this Agreement is solely an access agreement and that no relationship is formed between the Parties in the nature of a joint venture, partnership co-ownership arrangement or other similar relationship.

14. FORCE MAJEURE

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

15. DISPUTE RESOLUTION

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

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

- 15.2 **Resolution of Disputes.** The Parties will attempt to resolve any dispute, controversy, claim or alleged breach arising out of or in connection with this Agreement ("**Dispute**") promptly through discussions at the operational level. In the event a resolution is not achieved, the disputing Party shall provide the other Party with written notice of the Dispute and the Parties shall attempt to resolve such Dispute between senior officers who have the authority to settle the Dispute. All negotiations conducted by such officers shall be confidential and shall be treated as compromise and settlement negotiations. If the

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Parties fail to resolve the Dispute within thirty (30) days of the non-disputing Party's receipt of written notice, the Parties agree to utilize the services of a mutually agreed upon independent third party mediator. The mediator shall be knowledgeable regarding the area of the disputed issue. The mediator shall meet with the Parties together or separately, as necessary, to review all aspects of the issue. In a final attempt to assist the parties in resolving the issue themselves prior to proceeding to legal proceedings and/or the CRTC, the mediator shall provide, without prejudice, a non-binding written recommendation for settlement, within thirty (30) days of holding a mediation. Upon receipt of the written settlement recommendation, if an agreement cannot be reached, either Party may initiate legal proceedings and/or submit the Dispute to the CRTC for resolution.

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

16. NOTICE

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

To the County:

The Corporation of the County of Middlesex
399 Ridout Street North
London, ON N6A 2P1

To the Company:

Eh!Tel Networks Inc.
392058 Grey Road 109
Holstein, ON N0G 2A0

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

17. FOREIGN CORRUPT PRACTICES ACT AND ANTI-BRIBERY INDEMNITY

- 17.1 Notwithstanding anything to the contrary herein, the County, in its administration of this Agreement, shall refrain from offering, giving or promising, directly or indirectly, money or anything of value to a Canadian or foreign governmental official to influence the official in his or her official capacity, induce the official to do or omit to do an act in violation of his or her lawful duty, or to secure any improper advantage in order to assist in obtaining or retaining business for or with, or directing business to, any person. For the purposes of this Section, "**anything of value**" includes, but is not limited to, cash or a cash equivalent, discounts, gifts, use of materials, facilities or equipment, entertainment, drinks, meals, transportation, lodging, insurance benefits, or promise of future employment. "Governmental official" shall mean any person holding any level of legislative, administrative, or judicial office of the Canadian or a foreign government or any of its departments or agencies or divisions; any person acting on behalf of the Canadian or a foreign government, including a local or provincial agency, enterprise, or organization; any official or agent of a Canadian or a foreign public administration or publicly funded

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organization; any official of a Canadian or a foreign political party; any officer or agent of a public international organization (e.g., World Bank, International Monetary Fund, World Health Organization, United Nations, World Trade Organization); or any relatives or close family/household members of any of those listed above. The County shall indemnify and hold harmless the Company from all claims brought against the Company as a result of the County or its representatives' failure to comply with Anti-Bribery Law. The County shall immediately report any breach of Anti-Bribery Law by the County or its representatives. The County shall immediately report any breach of Anti-Bribery Law by the County or its representatives'. The Company shall have the right to audit the County's books and records with respect to payments made on behalf of the Company in the event that the Company believes that the County has violated this Section 17. The Company shall have the right to immediately terminate all payments to the County under this Agreement if the County fails to comply with this Section 17.

18. GENERAL

- 18.1 **Entire Agreement.** This Agreement, together with the Schedules attached hereto, constitute the complete and exclusive statement of the understandings between the Parties with respect to the rights and obligations hereunder and supersedes all proposals and prior agreements, oral or written, between the Parties.
- 18.2 **Assignment.** This Agreement may not be assigned or transferred, in whole or in part, without the prior written consent of the other Party. Notwithstanding the foregoing, the Company shall, provided that it is not in material breach of this Agreement, have the right to assign this Agreement to an Affiliate without the consent of the County, provided that the Company has given notice to the County.
- 18.3 **Gender and number.** In this Agreement, words importing the singular include the plural and vice versa, words importing gender, include all genders.
- 18.4 **Currency.** Unless otherwise indicated, references in this Agreement to money amounts are to the lawful currency of Canada.
- 18.5 **Parties to act reasonably.** Each Party shall at all times act reasonably in the performance of its obligations and the exercise of its rights and discretion under this Agreement.
- 18.6 **Amendments.** Except as expressly provided in this Agreement, no modification of or amendment to this Agreement shall be effective unless agreed to in writing by the County and the Company.
- 18.7 **Survival.** The terms and conditions contained in this Agreement that by their sense and context are intended to survive the performance thereof by the Parties hereto shall so survive the completion of performance, the expiration and termination of this Agreement, including, without limitation, provisions with respect to indemnification and the making of any and all payments due hereunder.
- 18.8 **Waiver.** Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.
- 18.9 **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and everything else in this Agreement shall continue in full force and effect.
- 18.10 **Enurement.** This Agreement is and shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and permitted assigns,

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and may not be changed or modified except in writing, duly signed by the Parties hereto.

- 18.11 **Counterparts:** This Agreement may be executed by the Parties and delivered by facsimile or PDF transmission and in one or more counterparts which when held together shall be considered one and the same Agreement.
- 18.12 **Equitable Relief.** Either Party may, in addition to any other remedies it may have at law or equity, seek equitable relief, including without limitation, injunctive relief, and specific performance to enforce its rights or the other party’s obligations under this Agreement.
- 18.13 **Governing law.** This Agreement shall be governed by the laws of the Province of Ontario and all federal laws of Canada applicable therein.

[ONE (1) ENDORSEMENT PAGE FOLLOWS]

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

SIGNED, SEALED AND DELIVERED
in the presence of:

**THE CORPORATION OF THE COUNTY
OF MIDDLESEX**

Date: _____

Cathy Burghardt-Jesson, Warden

Date: _____

Marci Ivanic, Clerk

We have the authority to bind the Corporation

SIGNED, SEALED AND DELIVERED
in the presence of:

EH!TEL NETWORKS INC.

Date: _____

Per: Antonius Peeters
Title: CEO

I/We have the authority to bind the Corporation

SCHEDULE “A”
RELOCATION COSTS

1. **Reimbursement by County for the Company’s Relocation Costs.** The County shall reimburse the Company for all or part of its reasonable and verifiable costs of completing any relocation requested by the County (the “**Relocation Costs**”) based upon the following principles, methodologies and procedures:
- (a) For Equipment that is not located within 1 metre measured horizontally from the location approved by the Municipal Consent or “standard location”, as the case may be, there shall be no cost to the County to relocate the Equipment.
 - (b) For Equipment for which a Permit was issued the County shall pay the percentages of the Company’s Relocation Costs (“in kind” or “like-for-like” Equipment) set out in the following table:

Age of the Company Equipment	Percentage or Relocation Costs paid by County
Years 1 to 5	100%
Year 6	80%
Year 7	60%
Year 8	40%
Year 9	20%
Year 10 and thereafter	0%

For the purpose of this Section, the age of the infrastructure is the current date minus the date of the issuance of the Permit.

- (c) Within thirty (30) days of receiving the request from the County to relocate the Equipment, the Company shall provide the County with a written estimate of the Relocation Costs for such relocation, including an estimate of the County’s reimbursement under the subsection (b).
 - (d) Within sixty (60) days of completing the relocation, the Company may provide the County with a written invoice for the actual Relocation Costs in a format that clearly identifies the County’s reimbursement under subsection (b) and delineates materials, labour, and any other project costs.
2. **Equipment affected by the County’s Capital Works Plan.** Prior to the issuance of a Permit, the County will advise the Company in writing whether the Company’s proposed location for new Equipment will be affected by the County’s ten-year (10 year) capital works plan (the “**Capital Works Plan**”). If the County advises that the new Equipment will be so affected and the Company, 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, the Company to relocate the Equipment within ten (10) years of the date of the Permit, the Company will be required to relocate the Equipment at its own cost, notwithstanding Section 1 above.
3. **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 the Company 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; or
 - (c) the costs of the Company to relocate Equipment where the Company is a Third Party to the owner of the Equipment.
4. **Emergency temporary relocation.** In cases of an Emergency that requires the Company

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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 the Company, take any measures it deems necessary for reasons of public health and safety.

5. **Relocation performed by County.** If the Company fails to complete the relocation in accordance with Section 7.1 of this Agreement, the County may, at its option, complete such relocation and the Company shall pay the County's reasonable and verifiable costs of the relocation.
6. **Discontinuance of ROW.** Where the County authorises the legal closing of a ROW under its jurisdiction as a public highway either by Court Order or By-law, the County shall be responsible for registering an easement against the property in favour of the Company unless alternative arrangements have been made, all to the satisfaction of the Company.

SCHEDULE "B"

Permits and Fees

**All references to legislation, by-laws and fees in this Schedule shall be interpreted as references to those by-laws and fees as they may be amended, superseded or replaced from time to time.*

<u>By-Law Reference</u>	<u>Permit Required with Appropriate Application</u>	<u>Cost</u>
By-law #5783: Use, Construction or Alteration; By-law #6410: User Fees	Access/Entrance Permit (authorizing access, via entrance application)	\$400 fee + refundable deposit determined by County Engineer
By-law #5783: Use, Construction or Alteration; By-law #6410: User Fees	Work Permit (authorizing work and/or services, via work application)	\$400 fee + refundable deposit determined by County Engineer
Highway Traffic Act, R.S.O. 1990, Chapter 198; By-law #6410: User Fees	Moving Oversize Load/Weight Vehicles on County Roads Permit (via application with utility company and emergency services sign-offs)	Variable fee between \$50 and \$500 depending on dimensions and weight of load + \$500 refundable deposit (\$2M liability insurance required)