

MUNICIPAL ACCESS AGREEMENT

THIS AGREEMENT made the _____ day of _____, 20_____
 (“**Effective Date**”)

B E T W E E N:

SHAW CABLESYSTEMS LIMITED

Suite 900, 630 – 3rd Ave SW

Calgary, Alberta

T2P 4L4

(hereinafter called the “**Company**”)

- and -

WHEATLAND COUNTY,

a municipal corporation, in the Province of Alberta

(hereinafter called the “**Municipality**”)

WHEREAS the Company is a “Canadian carrier” as defined in the *Telecommunications Act* (Canada) (“**Telecom Act**”) and a “distributing undertaking” as defined in the *Broadcasting Act* (Canada) (“**Broadcast Act**”);

AND WHEREAS, in order to provide telecommunications and broadcasting services the Company must enter in, on, over, under, along or across those highways within the jurisdiction of the Municipality (“**Rights-of-Way**”) from time-to-time for the purpose of constructing, maintaining, operating, repairing and removing support structures, transmission lines and telecommunications facilities (as that term is defined in the *Telecommunications Act* (Canada) (collectively, the “**Equipment**”) in, on, over, under, along or across such Rights-of-Way.;

AND WHEREAS, the Municipality is the public authority having jurisdiction over the Rights-of-Way;

AND WHEREAS, the Company must obtain the Municipality's consent to construct the Equipment in, on, over, under or along the Rights-of-Way;

AND WHEREAS, the Company must not unduly interfere with the public use, enjoyment and safety of the Rights-of-Way and must share the use of the Rights-of-Way with other providers of services to the public (the Company and all such providers hereinafter collectively called “**Service Providers**”) when occupying and using the Rights-of-Way as described above;

AND WHEREAS the Municipality is willing to grant its consent to the occupancy and use of the Rights-of-Way consisting of the construction, operation, maintenance and removal of the Equipment in, on, over, under, along or across the Rights-of-Way having due regard to the safety, use and enjoyment of the Rights-of-Way by others, as described above;

AND WHEREAS the Municipality and the Company have agreed that it would be mutually beneficial to outline the terms and conditions pursuant to which said consent shall be provided by the Municipality to the Company in the form of a non-exclusive right;

NOW THEREFORE in consideration of the payment of one (\$1.00) dollar paid by the Company to the Municipality, the receipt of which is hereby acknowledged, and in consideration of the promises and mutual covenants herein contained, the Municipality and the Company each agree with the other as follows:

Scope of Municipal Consent

1. The Municipality hereby consents and grants a non-exclusive right to the Company to enter on, occupy and use locations specified by the Municipality within the Rights-of-Way (“**Alignments**”) during the Term as defined in Section 24 hereof for the purpose of constructing, operating, maintaining and removing its Equipment for use only in the provision of “telecommunications services” (as defined in subsection 2(1) of the *Telecommunications Act*) or “broadcasting” (as defined in subsection 2(1) of the *Broadcasting Act* subject to the terms and conditions hereinafter set forth and in accordance with all applicable federal, provincial and municipal statutes, laws and by-laws or other applicable rules and regulations.
2. The Company may enter on and access the Rights-of-Way in accordance with the terms of this Agreement for the purpose of exercising its rights under section 1 of this Agreement.

Authorization of Work

3. The Company shall not excavate, break up or otherwise breach the surface of any Rights-of-Way for the purpose of constructing, operating, maintaining or removing any of its Equipment in, on, over, under, along or across any Rights-of-Way (each of these activities hereinafter collectively called “**Work**”) without first:
 - a) providing a minimum of thirty (30) days notification to the Municipality of the location, type of work and expected time period for all Work to be undertaken;
 - b) providing notification to all adjacent landowners that may be affected the Work of the location, type of work and expected time period for all Work to be undertaken;
 - c) providing plans to the most senior municipal official responsible for overseeing such Work or his designate (“**Municipal Manager**”), setting out a

proposal for an Alignment for the Company's Equipment and such other information required by the Municipal Manager in a form acceptable to the Municipal Manager acting reasonable ;

- d) providing the Municipal Manager, if requested by the Municipality, acting reasonably, a traffic accommodation strategy; and
 - e) obtaining the written authorization of the Municipal Manager to an Alignment.
4. The Company shall provide all required information and obtain all required municipal construction and/or other permits normally required by the Municipality in the circumstances prior to commencing any Work.
 5. In the event of an emergency involving the Company's Equipment, the Company may perform such Work as is strictly necessary to end the emergency without the prior consent of the Municipality, provided that the Company notifies the Municipality of the occurrence of the Work without delay.

Routine Work

6. Notwithstanding Section 3 and subject Section 7, Company may enter on the Rights-of Way and carry out routine maintenance, field testing, subscriber connections, removal and such other work required with respect to the Equipment as well as placing and splicing existing support structure where there is no need to excavate, break up or otherwise breach the surface of any Rights-of-Way (collectively, referred to as "**Routine Work**") without seeking a permit from the Municipality.

Conditions

7. All Work and Routine Work conducted by or on behalf of the Company is subject to the following conditions:
 - a) the Work and Routine Work shall conform to all applicable federal, provincial and municipal statutes, laws and by-laws or other applicable rules and regulations, including, but not limited to, the terms of any authorizations granted by the Municipal Manager, permits issued by the Municipality and the provisions of this Agreement;
 - b) the Work and Routine Work shall be conducted and completed to the satisfaction of the Municipal Manager acting commercially reasonable;
 - c) the Work and Routine Work shall be performed in a manner that safeguards and protects all other support structures, transmission lines, equipment, facilities and improvements of any kind ("**Improvements**") present in the Rights-of-Way;
 - d) the Work and Routine Work shall be performed in a manner that gives due consideration to any features of the Municipality's roads, as well as known

plans by the Municipality to upgrade or relocate the Municipal Roads so as to avoid any pipeline crossing which may have a detrimental effect on the future operation or upgrading of the Municipal Roads;

- e) all Equipment shall be plowed in at approximately one (1) meter from the property line of the Rights-of-Way;
- f) after completion of any Work, the Company shall provide a minimum of five (5) working days notice to the Municipality prior to backfilling the Rights-of-Way to allow for inspection of the Work and the Rights-of-Way;
- g) after inspection by the Municipality of the Work and the Rights-of-Way or after Routine Work, the Company shall restore the Right-of-Way to substantially the same condition in which it was before such Work or Routine Work was undertaken, free from nuisance and to the satisfaction of the Municipal Manager acting commercially reasonable. If the Company fails to repair and restore any Rights-of-Way to the satisfaction of the Municipal Manager within two (2) days if there is a public safety issue or undue interference with the use of the Right-of-Way or in all other cases within five (5) days of being notified by the Municipality, the Municipality may effect such repairs and charge all costs related thereto to the Company;
- h) if the direction boring method is used in any Work in the Rights-of-Way, the Municipality shall verify depth while boring is taking place or the Company shall provide a written record of the recorded depths to the Municipality. If, in the future, it is found that actual depths vary significantly from depths specified in and provided to the Municipality, then that Company will be held responsible for future lowering or modification costs if required, in the event of road construction costs or maintenance work being carried out;
- i) where Equipment is buried in the Rights-of-Way, the Company shall install permanent cable line(s) marker signs on both sides of the Rights-of-Way indicating the existence and location of the its cable line(s), and regular and emergency contact numbers. The Company shall ensure that the signs be in place in perpetuity of the existence of that line;
- j) if the Municipality requires that any Work or Routine Work be stopped due to a danger, threatened danger to public safety, undue interference with the use of the Right-of-Way or where such Work is not in accordance with the Work permit, the Company shall cease such Work or Routine Work upon delivery of a written notice to the Company to that effect by the Municipal Manager. Within three (3) business days of the issuing of a stop Work order under this Section, the Municipality shall provide the Company with written reason for such order. The Company may recommence Work or Routine Work when the danger, threatened danger to public safety, undue interference with use of the Right-of-Way or breach of Work permit has ceased or been addressed;

- k) the Company shall be responsible for all Work and Routine Work, including the cost of such Work or Routine Work; and
- l) in relation any Work or Routine Work in or adjacent to Rights-of-Way that are developed roads or highways under the control of the Municipality (“**Municipal Roads**”), the Company shall:
 - i) insure that any lines being buried adjacent to a Municipal Road will be a minimum of fifteen (15) meters from the legal boundary of the said Municipal Road;
 - ii) construct any Equipment as per the designated construction method, as close to a 90 degree angle as possible to the Municipal Road without any vertical or horizontal bends in the Equipment and to the construction limits and depths of two (2) meters below the surface of the Municipal Road;
 - iii) construct any Equipment crossing a Municipal Road by boring and without damage or disturbance to the roadway surface or embankment, and with no open excavations permitted within three (3) meters of the edge of the traveled Municipal Road surface. When location conditions prevent the use of boring, with written approval of the Municipality they may be made by the open cut method. Equipment installed in any other Rights-of-Way may be done using the open cut method;
 - iv) backfill, compact trim and reseed all excavations and disturbances created within the Municipal Road to the satisfaction of the Municipality and shall be responsible for all future work and costs required to correct any settlement, erosion or other adverse impacts to the Municipal Road resulting from the construction, operation maintenance of the Equipment;
 - v) all Work and Routine Work is done in a manner so as not to interrupt, interfere with or endanger public usage of the Municipal Road and shall provide proper and adequate signage, barricades and traffic control at all times that Work is being carried out; and
 - vi) carry out and obey all directions, orders and requirements of the Municipality with respect to traffic control, signage and barricades within the Municipal Road.

Representations and Warranties

8. The Company represents and warrants to, and covenants and agrees with the Municipality that:
- a) the Company's occupancy and use of the Rights-of-Way shall not unduly interfere with the public use and enjoyment of the Rights-of-Way;
 - b) the Company has no title to or other ownership or property interest in any Alignments or Rights-of-Way;
 - c) the Company shall not register or permit to be registered any instrument claiming an estate, interest or property right in the Rights-of-Way or other property of the Municipality in any real or personal property registry by virtue of the Company's occupancy or use of the Rights-of-Way or this Agreement;
 - d) the Company shall not suffer or permit any lien to be filed or registered against any Rights-of-Way;
 - e) the Municipality has made no representations or warranties as to the state of repair of the Rights-of-Way or the suitability of the Rights-of-Way for any business, activity or purpose whatsoever and the Company hereby agrees to take the Rights-of-Way on an "as is" basis and that the Municipality is not responsible, either directly or indirectly, for any damage to property or injury to a person, including death, arising from the escape, discharge or release of any hazardous substance from its Rights-of-Way except to the extent of any claim for which the Municipality would otherwise be responsible at law;
 - f) the Company shall use reasonable efforts to schedule Work and share Alignments and support structures with other Service Providers occupying and using the Rights-of-Way, with the intent of minimizing the necessity for road cuts, construction and the placement of support structures in the Rights-of-Way;
 - g) the Company shall notify the Municipality of any damage caused by the Company in connection with its Work, Equipment or enjoyment of its right to occupy and use Alignments under this Agreement;
 - h) the Municipality may cross the Company's Equipment with its own Improvements or otherwise, and may use the Rights-of-Way for any purpose, and may allow other parties to cross the Company's Equipment with their Improvements or otherwise and to use the Rights-of-Way, all at no charge to the Municipality and without further agreement with the Company; and
 - i) all of the covenants, representations, warranties, indemnities and outstanding obligations (including outstanding payment obligations) of the Company under this Agreement shall survive the termination of the Agreement in

accordance with the statute of limitations in effect in the Province of Alberta, as may be amended from time to time.

9. The Municipality represents and warrants to and covenants and agrees with the Company that the Municipality has jurisdiction over any Rights-of-Way for which the Municipality grants consent to the Company and has the authority to grant such consent.

As-Built Drawings

10. The Company shall provide "as-built" drawings to the Municipality in form(s) and content acceptable to the Municipal Manager, including electronic format if required, within ninety (90) days of completing the Work in, on, over, under, along or across any Rights-of-Way.

Utility Coordination

11. The Company agrees that throughout the Term it shall register and maintain a membership in good standing with the Alberta One-Call Corporation. All costs associated with obtaining and maintaining membership with the Alberta One-Call Corporation shall be borne by the Company.
12. The Company agrees to participate in any utility coordinating committees or forums as may be established by the Municipality , and to pay its proportionate share of the reasonable costs of the administration of such forums. The Municipality and Company agree that as part of such committee the parties will consider such matters as capacity needs as they relate to the use of the Rights-of-Way by all Service Providers.
13. The Company shall, at no cost to the Municipality, provide locations of its Equipment within twenty-four (24) hours of receiving a request by the Municipality in the case of an emergency and within three (3) business days of receiving a request by the Municipality in all other cases.

Emergencies

14. The Company shall provide to the Municipal Manager a list of twenty-four (24) hour emergency contact personnel and shall ensure that the aforementioned list is always current.
15. The Municipality shall provide to the Company a current list of twenty-four (24) hour emergency contact personnel for both its own personnel and those of the other Service Providers.

Relocation

16.

a) Notice

In the event the Municipality requires the Company to relocate its Equipment as may be required by the Municipality to comply with safety standards or accommodate any relocation, installation, modification, repair, construction, upgrading or removal of Municipality facilities or for its own municipal purposes or, including, without limitation, for the benefit of a private entity or the purpose of public interests, the Municipality agrees to provide to the Company at least ninety (90) calendar days written notice of the proposed relocation, and any alternate Alignment to accommodate the relocation of the Company's Equipment. In the event a reasonable alternate Alignment to accommodate the Company's Equipment is available, the Company, upon receipt of notice of the request for relocation shall relocate such Equipment within the Rights-of-Way or perform any other work in connection with its Equipment as may be required by the Municipality.

(b) Allocation of Costs

Subject to Section 16 (b) (v), (vi) and (vii), the responsibility for the cost of Municipality-initiated Equipment relocation shall be allocated as follows:

- (i) For any Equipment constructed and/or installed in the Rights-of-Way after the date of this Agreement and where the Company has made application to construct and/or install the Equipment within any Rights-of-Way after the Municipality had indicated to the Company in its Five Year Capital Works Plan that relocation will be required for municipal purposes and Company nevertheless constructs and/or installs its Equipment in such Rights-of-Way, Company shall be responsible for all of its relocation costs.
- (ii) For any Equipment constructed and/or installed in the Rights-of-Way after the date of this Agreement which is required to be relocated as a result of any municipal project not identified by the Municipality in the Municipality's current Five Year Capital Works Plan, the percentage of costs paid for by the Municipality shall be 100% for the first year and then reduced by 20% in each subsequent year if the relocation is required within the first six (6) years of the Company's construction and/or installation of such Equipment, and thereafter such costs shall be paid for by the Company. The Municipality shall promptly provide the Company with each new Five Year Capital Works Plan.

- (iii) For Company Equipment constructed and/or installed in the Rights-of-Way prior to the date of this Agreement, the Company will be responsible for all of costs to relocate its Equipment.
 - (iv) Each of the parties agree that special circumstances may arise with respect to specific location approvals whereby it may be appropriate for the parties to mutually agree to waive the above-noted provisions and to negotiate alternative arrangements. These alternative arrangements shall be agreed upon in writing prior to Equipment location being approved.
 - (v) If relocation is the result of **any project and/or work of a third party**, the Municipality will endeavour to assist, to the extent of the Municipality's lawful authority, the Company in any negotiations for payment of and the Company's collection of the costs of relocating the Company's Equipment, **prior to any relocation work by the Company, but the Municipality shall not be liable at any time for such relocation costs.**
 - (vi) In cases of emergency, the Municipality may take any measures deemed necessary for public safety with respect to the Equipment that may be required in the circumstances as the Municipality shall determine and the Company shall reimburse the Municipality for all related expenses thereby incurred.
 - (vii) In the event the Municipality requires the Company to relocate its Equipment primarily for beautification, aesthetic or other similar purposes, the Municipality shall pay 100%, minus depreciation, salvage and betterment of the Company's costs related to the relocation of the Company's Equipment.
17. If the Company fails to complete the relocation of the Equipment in accordance with Section 16, or fails to repair the Rights-of-Way or to perform any other Work required to be done by the Company pursuant to this Agreement in a timely and expeditious manner to the satisfaction of the Municipal Manager, the Municipality may, but is not obligated to, at its sole option, complete such relocation or other Work. In such event, the Company shall pay the cost of such relocation Work to the Municipality, together with an administrative charge of fifteen percent (15%) of such cost. In performing such relocation work, the Company agrees that the Municipality shall not be liable for any damage howsoever caused to the Equipment or for any other loss suffered by the Company or any third party howsoever caused.

Security

18. The Company may be required to post security with the Municipality from time-to-time in an amount and form acceptable to the Municipal Manager to guarantee the

performance by the Company of its obligations in connection with Work performed under this Agreement. The vehicle by which such security is granted shall, in each case, specify with precision the Work that is guaranteed by the security, and the circumstances under which the Municipality may have recourse to the security. Security posted in respect of certain Work shall be released promptly by the Municipality if and to the extent that the Work is completed to the satisfaction of the Municipal Manager.

Taxes and Utilities

19. The Company shall, in addition to other amounts specifically payable by it under this Agreement, be responsible for the payment of all taxes attributable to the Company, including, without limitation, those taxes attributable to the Company's use and occupancy of the Rights-of-Way, and for the payment of the cost of all services and utilities consumed in respect of the Company's operations.
20. For the purpose of Section 19, "taxes" includes, without limitation, all taxes, duties, levies, assessments, rates, fees or charges of any kind whatsoever, imposed, levied, assessed or charged now or in the future by any government authority of any kind, and any payments that are levied in substitution, or in lieu, or in addition to any of the foregoing.
21. All taxes or assessments in the nature of sales taxes, goods and services taxes or value added taxes which may be charged, levied or assessed as a result of this Agreement, whether or not such taxes are charged, levied or assessed as against the Municipality, shall be the responsibility of the Company.

Late Payment Charges

22. Payment terms are net thirty (30) days under this Agreement. Overdue payments shall be charged interest at the rate of two percent (2%) per month compounded monthly or at the maximum lawful rate, which ever is lower.

Obsolete and Abandoned Equipment

23. The Company shall notify the Municipality promptly when it ceases to use any Equipment situated in, on, over, under, along or across the Rights-of-Way. Upon such notification, the Municipality and the Company shall discuss whether such Equipment shall be removed, at the Municipality's sole discretion, from the Rights-of-Way or be deemed to have been abandoned by the Company and title thereto vested in the Municipality, at the sole option of the Municipality. If the Municipality requires the Company to remove the said Equipment within a specified period of time, being no less than ninety (90) days from the date of the Company's notification, the Company shall remove such Equipment for the Rights-of-Way at the Company's sole cost. Should the Municipality determine that such Equipment is required to be removed and the Company fails to do so, the Municipal may at its option, remove Such Equipment and recover the costs associated with the removal from the Company.

Third Party Equipment

24. The Company shall not grant any third party a right to access any Alignment occupied by the Company under this Agreement to perform Work in such Alignment.
25. In all cases where the Company shares ownership or other rights with a third party in respect of any Equipment situated in, on, over, under, along or across an Alignment occupied or used by the Company under this Agreement, the Company shall remain responsible for performing all of its obligations under this Agreement, as if it is the sole owner of the Equipment. In its agreements with third parties the Company will include a provision that requires third parties to comply with all applicable federal, provincial and municipal statutes, laws and bylaws or other applicable rules and regulations.

Term of Agreement

26. Unless otherwise terminated in accordance with its provisions, the initial term of this Agreement shall commence on the Effective Date and shall be five (5) years in duration. Unless the Agreement is otherwise terminated in accordance with its provisions, it shall be automatically renewed for two (2) additional successive terms of five (5) years each. The initial term and the subsequent terms, to the extent applicable, shall be called the Term.

Default and Termination

27. This Agreement may be terminated at any time during the Term by the mutual written agreement of the Municipality and the Company.
28. This Agreement may be terminated by the Municipality by written notice delivered to the Company upon the occurrence of one of the following events:
 - a) the Company fails to pay any undisputed amount payable pursuant to this Agreement within ninety (90) days of the date on which the payment is due;
 - b) the Company unduly interferes with the public's (including Service Providers) use or enjoyment of the Rights-of-Way and does not rectify such interference within thirty (30) days of being notified by the Municipality of the occurrence of such undue interference; or
 - c) there is filed by or against the Company in any court an uncontested petition in bankruptcy or insolvency or for reorganization or for appointment of a liquidator of the Company's property, or if the Company makes an assignment or petitions for or enters into an arrangement for the benefit of creditors and any such assignment or petition remains undismissed after thirty (30) days or is not stayed on appeal.

29. A party to this Agreement may terminate the Agreement upon one hundred and eighty (180) days written notice delivered to the other party if that other party defaults under any of its material obligations under this Agreement and fails to correct the default prior to the expiry of the one hundred and eighty (180) day period For the purposes of this section, a “material obligation” shall include any obligation of the parties to this Agreement that is fundamental to the uninterrupted and safe use of the Rights-of-Way.
30. Six (6) month prior to the termination of this Agreement for any reason **the Company and the Municipality shall** enter into meaningful negotiations for a new agreement and if the parties are not able to negotiate reasonable terms for a new agreement within such six (6) month period the matter shall be subject to the dispute resolution process as provided herein. Upon the termination of this Agreement the provisions of section 23 shall apply.

Occupational Health and Safety and Traffic

31. The Company shall conform and shall be responsible for the conformance by its officers, employees, agents, contractors and invitees to all health and safety laws including any regulations requiring installation of safety devices or appliances, and any applicable traffic laws or regulations (collectively “**Safety Rules**”). The Municipality may, on twenty-four (24) hours written notice to the Company, or sooner if in the opinion of the Municipality the likelihood of harm to persons is imminent, suspend Work performed by or on behalf of the Company on that portion of the Equipment located in, on, under, along or across Rights-of-Way where there appears to be a lack of compliance with the Safety Rules or because conditions of danger exist that would likely result in injury to any person. Such suspension shall continue until the lack of compliance or danger is eliminated.

Environmental Responsibility

32. The Company agrees to assume all environmental liability relating to its occupancy and use of the Rights-of-Way, including but not limited to any liability for clean-up of any hazardous substance in, on, under, along, across and around Rights-of-Way which result from:
 - a) the operations of the Company in, on, under, along, across or around the Rights-of-Way; or
 - b) any products or goods brought in, on, under, along, across or around the Rights-of-Way by the Company, or by any other person with the express or implied consent of the Company.
33. For the purpose of Section 31 and Section 8(e), “hazardous substance” means any hazardous substance and includes, but is not limited to, radiation, petroleum products and byproducts, industrial wastes, contaminants, pollutants, dangerous substances, and

toxic substances, as defined in or pursuant to any law, ordinance, rule, regulation, by-law or code, whether federal, provincial or municipal.

34. Notwithstanding any provision contained hereunder to the contrary, the Company shall not be liable for any hazardous substance existing or which may or are present in, on, under, along and/or around the Rights-of-Way prior to Company's Work or for any hazardous substance brought to the Rights-of-Way by a third party without the Company's express consent.

Liability and Indemnification

35. The Company shall indemnify and save harmless the Municipality from and against all actions, causes of action, proceedings, claims and demands brought against the Municipality, and from and against all losses, costs, damages or expenses suffered or incurred by the Municipality, by reason of any damage to property, including property of the Municipality or any third party, or injury, including injury resulting in death, to persons, including the employees, servants, agents, licensees and invitees of the Municipality or any third party, caused by, resulting from or attributable to the negligent act or omission of the Company or any party for which the Company is responsible in law.
36. The Municipality shall indemnify and save harmless the Company from and against all actions, causes of action, proceedings, claims and demands brought against the Company, and from and against all losses, costs, damages or expenses suffered or incurred by the Company, by reason of any damage to property, including property of the Company or any third party, or injury, including injury resulting in death, to persons, including the employees, servants, agents, licensees and invitees of the Company or any third party, caused by, resulting from or attributable to the negligent act or omission of the Municipality or any party for which the Municipality is responsible in law.
37. Notwithstanding anything contained in this Agreement to the contrary, neither the Municipality nor the Company shall be liable for indirect or consequential losses or damages, or damages for pure economic loss, howsoever caused or contributed to, in connection with this Agreement or with any Equipment or Rights-of-Way governed hereby.

Successors and Assigns

38. This Agreement shall be binding upon and shall inure to the benefit of the Company and the Municipality and their respective successors and assignees. For the purposes of this Agreement, "successors" of a party shall include any person, firm, corporation, or other entity which at any time, whether by merger, acquisition, purchase, or otherwise, shall acquire all or substantially all of the assets of that party. The Company may assign this Agreement during the Term to an "affiliate", as that term is

defined in the *Canada Business Corporations Act* (Canada), upon advance written notice to the Municipality.

39. In the event of assignment of the Agreement by the Company to someone other than an “affiliate”, the Company shall seek the Municipality’s prior written consent, which consent cannot be unreasonably withheld, and shall remain liable under this Agreement in all respects and the Municipality may require the assignee to enter into an agreement to assume all obligation under this Agreement.
40. Despite Section 38, the Company may pledge the rights granted by this Agreement as security without the consent of the Municipality to any person directly or indirectly providing financing to the Company but such pledge shall not release the Company from its obligations and liabilities under this Agreement.

Non-Parties to Agreement

41. Nothing in this Agreement shall be construed as affecting any rights or otherwise of others not a party to this Agreement.

No Property Rights

42. No occupancy or use of the Rights-of-Way under this Agreement shall create or vest in the Company or any other party any ownership or property rights in any Alignments or in the Rights-of-Way, and the Company shall be and remain a non-exclusive occupant and user of the Rights-of-Way.
43. Placement of the Equipment in the Rights-of-Way shall not create or vest in the Municipality any ownership or property rights to the Equipment, except as specifically provided herein.

Workers' Compensation Coverage

44. The Company agrees that it shall, at its own expense, procure and carry, or cause to be procured and carried and paid for, full workers' compensation coverage for itself and all workers, employees, and others engaged in or upon any Work.

Insurance

45. The Company shall maintain insurance in sufficient amount and description as will protect the Municipality from claims for damages, personal injury including death, and for claims from property damage which may arise under this Agreement, including but not limited to the construction, maintenance or operation of the Equipment in, on, under, over, along and across the Rights-of-Way or any act or omission of the Company's employees, agents, contractors or licensees.

46. In addition to the foregoing, the Company covenants and agrees that with respect to the insurance coverage described in section 45:
- a) the limits of liability for personal injury, bodily injury and property damage combined shall be for not less than five million dollars (\$5,000,000.00) for each occurrence, or such other amount as the Municipality may require by written notice delivered to the Company, from time-to-time;
 - b) the general liability insurance shall extend to cover the obligations of the Company as stated within this Agreement, shall list the Municipality as an additional insured, shall be endorsed to state it is the primary insurance policy and shall contain a cross-liability clause; and
 - c) all policies shall provide that they cannot be cancelled or lapsed without at least thirty (30) days notice to the Municipality. The Company shall endeavor to provide the Municipality at least thirty (30) days notice of any material change to such policies.
47. Upon execution of this Agreement the Company shall provide the Municipality a certificate of insurance as evidence of the foregoing insurance and shall thereafter issue certificates of insurance each year during the Term upon the request of the Municipality.

Dispute Resolution

48. The parties will attempt to resolve any dispute arising out of this Agreement 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 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 officer 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 the written notice, either party may [submit matters that are within the jurisdiction of the Canadian Radio-television Telecommunications Commission \(CRTC\) to the CRTC for resolution](#) or initiate arbitration proceedings in accordance with the *Arbitration Act* of Alberta for resolution of all other matters in dispute.

Fees

49. The Company shall pay the fees set out in Schedule "A". For certainty, these are the only fees that shall be levied by the Municipality in respect of the consents granted to the Company pursuant to this Agreement.

General

50. **Independent Contractors.** The relationship of the Company and the Municipality established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed:
- a) to give either party the power to direct or control the day-to-day activities of the other;
 - b) to constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking; or
 - c) to allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever.
51. **Notice.** All notices hereunder shall be in writing and shall be deemed effective upon receipt when delivered by hand, overnight delivery courier, by facsimile transmission or when mailed by registered or certified mail (return receipt requested), postage prepaid, to the parties at the addresses listed below (or at such other address for a party as shall be specified by like notice).

If to the Municipality:

Wheatland County
Highway 1, RR1
Strathmore, Alberta T1P 1J6
Phone: (403) 934-3321
Fax: (403) 934-4889
Attention: Municipal Manager

If to the Company:

Shaw Cablesystems Limited
Suite 900, 630 – 3rd Ave SW
Calgary, Alberta T2P 4L4
Attention: Vice President, Operations
Fax: (403) 750-4501

With Copy to:
Vice-President, Law
Fax: (403) 716-6544

52. **Modifications.** No waiver of or changes to any provision of this Agreement shall be effective unless reduced to writing and signed by authorized representatives of both parties.

53. **Waiver.** The failure of either party to insist upon strict adherence to any term or condition of this Agreement on any occasion shall not be considered a waiver of any right thereafter to insist upon strict adherence to that term or condition or any other term or condition of this Agreement.
54. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable by a court or regulator of competent jurisdiction, then the remaining provisions will nevertheless remain in full force and effect, and the parties shall endeavour to give effect to the Agreement as originally contemplated before the provision was held to be invalid or unenforceable to the maximum extent permitted by law.
55. **Counterparts; Original Signature Copies.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one Agreement. Facsimile reproductions of signatures shall be deemed to be original.
56. **Time.** Time is of the essence in this Agreement.
57. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein, excluding the conflict of laws provisions thereof.
58. **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.
59. **Headings.** The section headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. The terms "subsection" and "section" refer to subsection and section of this Agreement, respectively, unless explicitly otherwise stated.
60. **Gender, Number and Person.** Words importing the neuter gender shall include the masculine and feminine genders. In this Agreement, "party", "third party" or "person" includes any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative of any of the foregoing. Words importing the singular shall include the plural and vice versa.
61. **Treatment of Personnel.** Each party shall bear sole responsibility for payment of compensation (including applicable benefits) to its employees assigned to perform that party's obligations under this Agreement, and shall also bear sole responsibility for any applicable source deductions required by law in respect of such employees. Under no circumstances shall the other party be considered the employer of any such personnel.

62. **Cumulative remedies.** Except as otherwise expressly stated in this Agreement, all remedies available to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
63. **No Rules of Construction.** This Agreement shall not be interpreted in favour or against a party on the basis of the existence or absence of legal representation in the case of either party.
64. **Inconsistency with Municipal By-laws.** In the event of an inconsistency between this Agreement and the Wheatland County By-law 2007-83 as amended or repealed and replaced from time to time, the Agreement shall take precedence to the extent of the inconsistency.
65. **Entire Agreement.** This Agreement set forth the entire agreement and understanding of the parties relating to the subject matter herein and supersede all prior agreements, whether oral or written, relating to the subject matter hereof.
66. **Acknowledgement.** Each party acknowledges that it has read this Agreement, including the Schedules attached hereto and forming part hereof, and each party understands and agrees to be bound by its terms and conditions.
67. **Force Majeure.** Neither of the parties will be liable for failing to perform any of its respective obligations, covenants and agreements herein contained (excepting always obligations, covenants or agreements to pay), if failure, damage or loss is caused by an event of force majeure according of law in the Province of Alberta and any date affected thereby shall be extended for the number of days equal to that number of days during which any such event is operative.
68. **Confidentiality.** The Company acknowledges that the Municipality has obligations to manage its Rights-of-Way and in that regard may disclose to third parties the Company's name and the Alignment of any of the Company's Equipment located in the Municipality's Rights-of-Way. In regards to any other information provided by the Company to the Municipality pursuant to the obligations under this Agreement, the Municipality shall consult with the Company prior to the disclosure of such information in accordance with the *Freedom of Information and Protection of Privacy Act* of Alberta, as amended.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

SHAW CABLESYSTEMS LIMITED

Name:

Title:

Name:

Title:

**THE MUNICIPALITY –
WHEATLAND COUNTY**

Name:

Title:

Name:

Title:

SCHEDULE "A"

RIGHTS-OF-WAY FEES

\$1 for each request for written authorization to engage in Work in an Alignment.