

## Report CCR-CW-03-17

**To:** Warden Barfoot and Members of Grey County Council  
**From:** Sharon Vokes and Pat Hoy  
**Meeting Date:** March 9, 2017  
**Subject:** **Municipal Access Agreement Template for Road Right of Ways**  
**Status:** Recommendation adopted by Committee of the Whole as presented per Resolution CW42-17; Endorsed by County Council March 23, 2017 per Resolution CC13-17;

### Recommendation

1. That Report CCR-CS-03-17 be received and the **Municipal Access Agreement Template for road right of ways be approved as presented in the report; and**
2. That staff are authorized to negotiate terms that are substantially in accordance with the approved **Municipal Access Agreement without bringing forward a report to Committee of the Whole; and**
3. That **Municipal Access Agreements be formalized by by-law.**

### Background

Telecom providers (Providers) have the authority under The Telecom Act to use any highway or other public place for the purpose of constructing, maintaining or operating transmission lines. Providers are required to obtain approval from municipalities in the form of a municipal access agreement.

Grey County has entered into a variety of municipal access agreements with Providers from as far back as the 1990's. Over the years the agreements have become more complex and cumbersome to negotiate and administer. In 2014 Council directed that staff work towards updating the County's policies to decrease the cost and complexity of installing facilities required to improve broadband (particularly fibre).

### Agreements in General

In an effort to improve customer service, support economic development and increase compliance, staff have adopted the following principles to be applied to agreements:

- Use plain language
- Eliminate barriers to negotiating and executing timely agreements
- Open for business – look for solutions and process improvements
- Seek to manage risk responsibly, not eliminate it entirely

This same philosophy will be applied to permits as they are created and/or updated.

## Revised Municipal Access Agreement

In 2016 staff began the update of the municipal access agreement for the County's right of ways using the above principles. Staff used a template agreement from the CRTC as a starting point. This will position Grey County well for rolling out the South Western Integrated Fibre Technology (SWIFT) project in the future.

Staff also considered the concerns of the Providers in developing a new municipal access agreement, and have shared the draft agreement with several Providers for their input. Comments of the two responding Providers have been considered by staff and changes made where warranted. One Provider made the following observation, "it (draft municipal access agreement) is indicative of a County that is interested in further development of the telecom infrastructure as well as fair competition".

The key changes that are being recommended in the updated municipal access agreement are as follows:

### *Insurance Requirements*

Current insurance requirements in the County's municipal access agreements span from very little to \$10 million commercial general liability (CGL). This is the amount that would generally be applied to work on the county's roads. Most encroachment permits require \$5 million.

The new agreement requires \$2 million CGL and \$2 million non-owned auto. There is a clause in the agreement that allows the County to adjust the levels. The logic of lowering the insurance requirements is two-fold:

1. The majority of the risk for the County takes place when work is being done in the right of ways. This is covered off when the encroachment permit is given. Often the Provider contracts this work out to another company who would be responsible for a higher level of insurance;

2. It is hoped that lowering the insurance limits will allow more small Providers the opportunity to get into, or expand, their market base. It is hoped that Grey County will be seen as a great place to expand broadband to.

### *Specific Requirements for Placement of Cable/Fibre*

The current agreement places the requirement to bury any cable or fibre 1.2 metres. This is typically the depth used for going under a road.

This has been removed from the agreement on the basis that the best place to determine the requirements for a specific road is through the encroachment permit. Through this process staff can work with Providers and/or their contractors to consider any necessary requirements.

### *Financial Responsibility if Cable/Fibre needs to be Moved for County Construction*

Municipal access agreements currently in place vary in the area of financial responsibility. The most recent one has Providers fully responsible for any move of the infrastructure after five years. The Public Service Works on Highways Act (Act) provides for a 50/50 split of labour as defined in the Act if not covered by an agreement.

After listening to the concerns of the Providers, staff have proposed a sliding scale of apportioning these costs as follows:

<b>Year(s) After Installation of Equipment</b>	<b>Percentage of Relocation Costs Borne by the Municipality (Labour and Material Only)</b>
1 to 5 years  Only applicable for Equipment installations not addressed in Section 1(a) of this Schedule	100%
6 to 8 years	50%
9 to 11 years	25%
12 to 14 years	10%

Year(s) After Installation of Equipment	Percentage of Relocation Costs Borne by the Municipality (Labour and Material Only)
15 years or more	0%

In the scenario above, the County will only pay the full costs in the first five years if the Provider wasn't notified at the time of issuing the encroachment permit that the road in question is in the Five Year Capital Plan.

### *Health and Safety and WSIB Concerns*

The health and safety and WSIB clauses in this agreement template, along with all agreements going forward, have been greatly simplified. The requirements have been restated to ensure the Providers follow health and safety and WSIB legislation. The County is to be informed of any accidents which are reported to WSIB or the Ministry of Labour.

### *Facilitating Implementation of Broadband*

Previous agreements included requirements related to broadband. This does confuse the true purpose of the municipal access agreement which is to give access to the County's right of ways.

A couple of agreements include the requirement to give the County dedicated ownership of two strands of fibre which can only be used by the public sector. This helps the County (the corporation) with its direct needs, but really doesn't work towards solving the real issue of affordable, high speed Internet for the County's residents and businesses.

Staff did consider including wording that would ensure any fibre placed in the road allowance must be open access with the agreement. This is a key principle of SWIFT. After speaking with a Provider this has been removed and the agreement drafted to be solely an access agreement to the right of ways.

The open access principle is key to the success of SWIFT. A prudent Provider will be taking into consideration SWIFT as well as messaging which has recently come from the CRTC regarding more competition when pursuing their business endeavours.

### **Moving Forward**

Once approved by Council the process will be to use the template with any Provider requiring access to the County's right of ways. A by-law will go directly to Council

unless staff determine there are substantive changes from the approved template. In that case a report will be brought forward to committee of the whole. This will provide for a streamlined and efficient process for the Providers.

There are several signed agreements which need to be revisited based on the new agreement template.

The template will be shared with the member municipalities in the event there is an interest in updating local agreements.

Ideally, having one municipal access agreement template for every municipality within SWIFT would be beneficial. In speaking with Mr. Hogan, Executive Director of SWIFT, this is at least one year away. The County cannot wait that long as Providers have been asking for a new agreement and at least one wants to start work in early spring 2017.

## Financial/Staffing/Legal/Information Technology Considerations

There are no Information Technology considerations related to this report from a County (corporation) perspective. Creating an environment that encourages Providers to want to use the County's right of ways to install fibre could mean faster implementation resulting in better service to the residents and businesses in the County.

The new agreement has been reviewed by the County's solicitor and adjusted based on his recommendations.

It will be easier for staff to manage one agreement rather than multiple variations.

The next step in this process is to review and update the encroachment permit to make it more user friendly. Transportation Services' staff will be undertaking this review as time permits.

The proposed agreement shares the burden of the cost of relocating the telecom equipment using a sliding scale. One Provider has suggested a 50/50 split of costs as outlined as the default position of the Public Service Works on Highways Act. The other responding Provider did not indicate an issue with the sliding scale for relocation costs. It is the view of staff that there isn't a high probability of requiring equipment to be relocated. Where staff believe there will be a need for turning lanes, etc, this is communicated to Providers and dealt with through the encroachment permit process.

It is hoped that a more streamlined and business friendly municipal access agreement will provide an environment for Providers to want to build new broadband, or expand

their current infrastructure, in the County.

## Link to Strategic Goals/Priorities

This is supportive of Goal 1 of Growing the Grey County Economy. It specifically supports the development of the SWIFT Network as well as the Grey Regional Area Telecom Network (GREAT).

## Attachments

[Municipal Access Agreement Template](#)

Respectfully submitted by,

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