

**TOWN OF OLDS
BYLAW 2010-11**

**MUNICIPAL ACCESS BYLAW
Accessing and Managing Municipal Rights-of-Way**

A Bylaw of the Municipality to authorize the Mayor and Administrator to execute a Municipal Access Agreement for the purpose of regulating the Use and Occupation of Municipal Rights-of-Way.

WHEREAS pursuant to Section 7 of the Municipal Government Act , R.S.A. 2000, c.M-26, as amended, a Council of a municipality may pass bylaws for municipal purposes respecting the safety, health and welfare of people and the protection of people and property;

AND WHEREAS pursuant to Section 7 of the Municipal Government Act , R.S.A. 2000, c.M-26, as amended, a Council may pass bylaws for municipal purposes respecting people, activities and things in, on or near a public place or place that is open to the public;

AND WHEREAS pursuant to Section 18 of the Municipal Government Act , R.S.A. 2000, c.M-26, as amended, a municipality has the direction, control and management of all roads within the municipality;

AND WHEREAS pursuant to Section 61 of the Municipal Government Act , R.S.A. 2000, c.M-26, as amended, a municipality may grant rights, exclusive or otherwise, with respect to its property, including property under the direction, control and management of the municipality;

NOW THEREFORE, the Council of the Town of Olds, duly assembled, hereby enacts as follows:

1. PURPOSE

(1) The purpose of this Bylaw is:

- (a) to require every person proposing to carry out work for the installation, maintenance, repair, replacement, extension or operation of Equipment in Rights-of-Way to obtain the Town's consent to any such work and to apply to the Town for the required Permits;
- (b) to provide the Town with information on the type and location of Equipment situated in Rights-of-Way so that the Town can manage its Rights-of-Way effectively and efficiently;
- (c) to establish permit and other fees to compensate the Town for the installation, maintenance, repair, replacement, extension, operation or ongoing presence of Equipment in Rights-of-Way; and
- (d) to protect the Town from costs, damages or liability associated with the installation, maintenance, repair, replacement, extension or operation of Equipment in Rights-of-Way by any person.

2. DEFINITIONS

(1) In this Bylaw

- (a) "Alignment" means a location specified or approved by the Town for the location of Equipment in Rights-of-Way;
- (b) "Applicant" means a person applying for a Permit;
- (c) "Chief Administrative Officer" ("CAO") means the Town Manager or designate;
- (d) "Council" means the council of the Town of Olds;
- (e) "Director of Operational Services" means a Municipal official in the responsible role of Director of Operational Services of the Town of Olds or designate;
- (f) "Emergency Work" means the installation, maintenance, repair or replacement of Equipment in Rights-of-Way where health, safety or the provision of essential services is endangered;
- (g) "Equipment" means any poles, cables, pipes, conduits, pedestals, antennas, vaults, support structures or other similar facilities or structures;
- (h) "in", with reference to the placement of Equipment in Rights-of-Way only, means "in, on, over, under, along or across";
- (i) "Permit" means any one of the permits and any corresponding applications, in a form set out in Schedule "A" and/or other by laws of the Town, as further modified by the CAO in any specific case;
- (j) "person" includes one or more individuals, partnerships, bodies corporate, unincorporated organizations, governments, government agencies, trustees, executors, administrators or other legal representatives, other than the Town or its legal representatives;
- (k) "Municipal Access Agreement" means an agreement approved by Council that contains one or more provisions for the granting of consent to a person to do Work in Rights-of-Way upon compliance by such person with all other applicable municipal requirements which shall include the Agreement attached as Schedule "F" to this Bylaw;
- (l) "Municipal Enforcement Officer" means a person recommended by the Director of Operational Services for the Town of Olds as a Municipal Enforcement Officer who shall have the authority of a peace officer only with respect to the enforcement of the bylaws of the Town;
- (m) "Rights-of-Way Fees" means the fees set out in Schedule "B" and/or other bylaws of the Town or the corresponding fees set out in a Municipal Access Agreement other than Rights-of-Way Occupancy Fees;

- (n) "Rights-of-Way Occupancy Fees" means the fees set out in Schedule "C" and/or other bylaws of the Town or the corresponding fees and/or other consideration for the privilege of occupying Rights-of-Way set out by the mutual agreement of the parties to Municipal Access Agreement;
- (o) "Rights-of-Way Resolution" means a resolution passed by Council granting consent for a person to do Work in Rights-of-Way upon compliance by such person with all other applicable municipal requirements;
- (p) "Town" means the Town of Olds;
- (q) "Rights-of-Way" means the highways, roads, road allowances, streets, lanes, road diversions, bridges, public utility lots, public space, public water or other public places within the jurisdiction of the Town, excluding:
 - (i) reserve property;
 - (ii) tax recovery property
 - (iii) easements, leases and licenses;
 - (iv) fee simple titled property;
 - (v) other property designated by the CAO.
- (r) "Violation Ticket" means a ticket issued pursuant to Part II and Part III of the *Provincial Offences Procedure Act*, R.S.A. 2000, c.P-34, as amended, or repealed and replaced from time to time, and regulations thereunder; and
- (s) "Work" means the installation, maintenance, repair, replacement, extension or operation of any Equipment in Rights-of-Way, excluding Emergency Work.

3. REQUIREMENT FOR MUNICIPAL CONSENT

- (1) Council may pass Rights-of-Way Resolutions and Council or the CAO may approve Municipal Access Agreements, subject to such terms and conditions as Council deems appropriate.
- (2) No person shall do any Work in Rights-of-Way unless the person has:
 - (a) obtained the consent of the Town or is acting on behalf of a person who has obtained consent of the Town by way of a Rights-of-Way Resolution or Municipal Access Agreement,
 - (b) obtained all applicable Permits required by the Town as determined by the CAO, and
 - (c) paid all applicable Rights-of-Way Fees required by the Town as determined by the CAO or designate.

4. EXCEPTIONS TO THE REQUIREMENT FOR MUNICIPAL CONSENT

- (1) The provisions of this Bylaw relating to Municipal consent for Work in Rights-of-Way shall not apply to:
 - (a) Work relating to the installation of a pipeline approved by the Alberta Utilities Commission or Energy Resource Conservation Board in accordance with all other applicable legislation;
 - (b) Existing utility franchise agreements approved by the Alberta Utilities Commission; and
 - (c) Existing railway crossing agreements approved by the National Transportation Board.

5. APPLICATION FOR A PERMIT

- (1) Every Applicant shall provide all of the information required for a Permit and pay the applicable Rights-of-Way Fees at the time that the application for the Permit is made. An application for a Permit that does not meet these requirements shall be deemed to be incomplete.
- (2) Subject to subsection (3), upon receipt of an application for a Permit, the CAO shall issue the required Permit subject to such terms and conditions as the CAO deems appropriate. The terms and conditions contained in Schedule "D" are deemed to be included in every Permit for Work in Rights-of-Way, unless otherwise specifically excluded.
- (3) The CAO may reject an application for a Permit where:
 - (a) the application for the Permit is incomplete,
 - (b) the payment of all applicable Rights-of-Way Fees has not been made,
 - (c) the consent of the Town has not been obtained in accordance with Section 3, or
 - (d) any conditions precedent to granting the Permit have not been met.

- (4) The CAO shall provide an Applicant whose application for a Permit is refused, written reasons for the refusal at the time that the Applicant is advised of the refusal.

6. APPEALS TO COUNCIL

- (1) Any Applicant whose application for a Permit has been refused may appeal the decision of the TCAO to Council by filing with the CAO, within thirty (30) days of the CAO's decision, a notice of appeal containing the Applicant's contact information, grounds of appeal and any related submissions.
- (2) Within thirty (30) days of the filing of an appeal notice as set out in Subsection (1), the CAO shall prepare and deliver a report to Council that shall include:
 - (a) the Permit application,

- (b) the CAO's decision and reasons for any refusal to issue the Permit, and
 - (c) the notice of appeal.
- (3) Following receipt of the report prepared by the CAO, Council shall, at such time and place as it determines, review the report described in Subsection (2) and shall
- (a) confirm the original decision made by the CAO,
 - (b) refer the matter back to the CAO and direct the CAO to reconsider the matter having regard to such considerations or directions as Council may provide, or
 - (c) direct the CAO to issue a Permit on such terms and conditions as Council may determine.

7. COMPLIANCE WITH MUNICIPAL CONSENT AND PERMITS

- (1) Every person who obtains the consent of the Town to do Work in Rights-of-Way shall comply with the terms and conditions of that consent.
- (2) Every person who obtains a Permit shall comply with the terms and conditions of that Permit, including, without limitation, terms and conditions restricting Work in the Rights-of-Way to the Alignments or other portion of the Rights-of-Way for which authorization is granted in the Permit.

8. EMERGENCY WORK

- (1) A person whose Equipment is situated in Rights-of-Way may arrange to have such Emergency Work done as is strictly necessary to end a situation in which the health, safety or the provision of essential services is endangered without the prior consent of the Town, if it is not possible to obtain such consent prior to the commencement of the Emergency Work, provided that the person, without delay, notifies the CAO of the occurrence of the Emergency Work and provides such additional information concerning the Emergency Work and its consequences as the CAO requests.

9. NOTIFICATION OF WORK ADJACENT TO RIGHTS-OF-WAY

- (1) Every person proposing to carry out Work for the installation, replacement, extension or operation of Equipment adjacent to or in lands within 30 metres of the boundary of Rights-of-Way shall provide the Town with one (1) year prior written notice of such work or such other acceptable period of notice as agreed to, in writing, by the CAO. In the event that the Town shall determine that such work will impact the planned future widening, upgrading or maintenance of the Rights-of-Way, the Work shall be carried out in such a manner satisfactory to the Town by the responsible person so as to not adversely impact the future widening, upgrading or maintenance of the Rights-of-Way.

10. RIGHTS-OF-WAY OCCUPANCY FEES

- (1) Every person whose Equipment is situated in Rights-of-Way is liable to pay the applicable Rights-of-Way Occupancy Fees in respect of the period of time during which the Equipment is situated in the Rights-of-Way.

- (2) Payment of Rights-of-Way Occupancy Fees does not constitute a condition precedent for the granting of municipal consent to Work in Rights-of-Way or for the granting of a Permit.

11. PENALTIES

- (1) Every person who fails to do anything that he or she is required to do pursuant to this Bylaw or who does anything that he or she is prohibited from doing under this Bylaw is guilty of an offence and is liable upon summary conviction to fines as set out in Schedule "E".
- (2) Where a contravention under this Bylaw is committed or continued on more than one day, the person who committed the offense is liable to be convicted for a separate offense for each day on which it is committed or continued, and the Town may issue a Violation Ticket for each day on which a contravention is committed or continued.
- (3) Nothing in this Bylaw shall be construed as curtailing or abridging the right of the Town to obtain compensation or to maintain an action for loss of or damage to property from or against the person responsible for a contravention of this Bylaw.
- (4) No person shall willfully obstruct, hinder or interfere with a Peace Officer, a Municipal Enforcement Officer or any other person authorized to enforce and engaged in the enforcement of the provisions of this bylaw.

12. VIOLATION TICKET

- (1) A Municipal Enforcement Officer, the CAO or designate is hereby authorized and empowered to issue a Violation Ticket pursuant to the Part II or III of the *Provincial Offences Procedure Act*, R.S.A. 2000, c. P-34, as amended, or repealed and replaced from time to time, to any person who the Municipal Enforcement Officer, the CAO or designate has reasonable grounds to believe has contravened any provision of this Bylaw.

13. SEVERABILITY

- (1) If any portion of the Bylaw is, for any reason, declared invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion. Such declaration shall not affect the validity of the remaining portions, which shall remain in full force and effect.

14. RESOLUTION OF INCONSISTENCIES

- (1) In the event of any inconsistency between any provision in this Bylaw and a provision in a Rights-of-Way Resolution or a Municipal Access Agreement, the provision in this Bylaw shall take precedence.

15. EFFECTIVE DATE

- (1) This Bylaw shall come into force and take effect upon the passing of third and final reading.

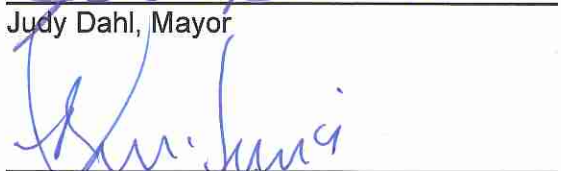
READ the first time this 14th day of June, 2010.

READ the second time this 28th day of June, 2010.

READ the third time and duly passed this 12th day of July, 2010, as amended

TOWN OF OLDS



Judy Dahl, Mayor

Norm McInnis, Chief Administrative Officer

SIGNED by the Chief Elected Officer and the Chief Administrative Officer this 13th day of July, 2010.

SCHEDULE "A" – FORMS OF PERMITS AND PERMIT APPLICATIONS

(The forms for Permits and corresponding applications relating to Work of any kind in the Rights-of-Way should be included in this Schedule.)

The Development Permit Application Template may be found on the:

F:\SHARED\Development\Municipal Access Agreement

(May be revised from time to time to meet current standards and conditions)

The Utility Excavation Permit Template may be found on the

F:\SHARED\Development\Municipal Access Agreement

(May be revised from time to time to meet current standards and conditions)

SCHEDULE "B" – RIGHTS-OF-WAY FEES

(Applicable Rights-of-Way Fees and corresponding methods of computation of such fees, should be listed in this Schedule. Rights-of-Way Occupancy Fees should not be included here and belong in Schedule "C" instead.)

A. Permitting and Inspection Fees

1. These fees are charged to recover the costs of reviewing and circulating applications, issuing Permits and inspecting restoration of the Rights-of-Way.

1.1 The short permit/limited circulation charge of \$_____ per Utility Line Assignment Permit will apply to all applications for a Utility Line Assignment Permit where the length of the Equipment or Work is less than _____ () metres and the proposed Work only requires a limited circulation or no circulation. These fees also apply to Buried Line Drop Applications.

1.2 Applications for a Utility Line Assignment Permit where the length of the Equipment or Work is greater than _____ () metres require a full circulation and the long permit charge of \$_____ per Utility Line Assignment Permit will apply. In addition to this base fee a long permit linear charge of \$_____ per metre of length for each Utility Line Assignment Permit assigned which has Equipment or Work that is greater than _____ () metres will apply.

2. The fees outlined above in Sections 1.1 and 1.2 are 2010 rates and will be adjusted annually based on a percentage increase equal to the Consumer Price Index Variation, expressed as a percentage rate per annum, calculated and compounded annually for each and every year of the Bylaw. If the change in the Consumer Price Index is a negative sum for any given year then the change in the base rate for that year shall be zero. In addition to the annual adjustment for the Consumer Price Index Variation, the Town reserves the right to make further adjustments to the fees as it deems appropriate in its sole discretion.

B. Agreement Preparation and Administration Fees

1. These fees are charged to recover the costs associated with preparing and negotiating Municipal Access Agreements between the Town and all other relevant Parties as well as to cover the costs of administering these agreements.

1.1 Within thirty (30) days of execution of a Municipal Access Agreement, the Company covenants and agrees to pay to the Town an Agreement Preparation and

Administration Fee of up to \$_____ to recover the approval and administration costs associated with the negotiation of the Municipal Access Agreement. The Town CAO, acting reasonably, reserves the right to set this fee commensurate with time required to negotiate, prepare and administer any such Municipal Access Agreement.



SCHEDULE "C" – RIGHTS-OF-WAY OCCUPANCY FEES

(Only the Rights-of-Way Occupancy Fees and method of their computation should be included in this Schedule.)

A. Lost Productivity Costs

1. The Lost Productivity Costs are charged to recover the extra costs incurred by the Town as a result of extra work required by the Town over and above the costs that would be anticipated if the Equipment did not exist in the Rights-of-Way. These costs are charged out based on actual costs incurred by the Town.

2. The Lost Productivity Costs are payable to the Town within thirty (30) days of receipt of an invoice thereof, provided that the Town has provided reasonable written documentation describing these costs including:

- a) the location of the Equipment;
- b) a description of the Town's work;
- c) an explanation of the nature of the interference caused by the Equipment; and
- d) an itemized breakdown of the Town's costs including labour, supplies, equipment and applicable loading factors.

B. Payment Degradation Costs

3. In instances where the Company excavates, breaks up or otherwise breaches the surface of any Rights-of-Way, the Company will contribute to the cost of the pavement degradation based on the total area of pavement excavated and such amount will be payable within thirty (30) days of completing the restoration of the applicable Rights-of-Way, on a one-time per project basis, in accordance with the following table:

Age of Street Years Since Last Paved as determined by the Town	Fee Per Square Metre of Excavation
0 - 5 years	\$
6 - 10 years	\$
11 - 15 years	\$
16 - 20 years	\$
21 years or greater	\$

SCHEDULE "D" – PERMIT STANDARD TERMS AND CONDITIONS

1. These standard terms and conditions apply to all Work conducted by or on behalf of the Applicant.
2. Unless otherwise specifically provided in these standard terms and conditions, capitalized terms herein have the same meaning given to them in Bylaw ____/2010, "A Bylaw to Regulate the Use and Occupation of a Municipal Rights-of-Way", as amended from time-to-time.
3. All Work shall conform to all applicable federal, provincial and municipal statutes, laws and by-laws and other applicable legal requirements.
4. All Work shall be conducted and completed to the satisfaction of the CAO.
5. All 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.
6. After completion of any Work, the Applicant shall leave the Rights-of-Way in substantially the same condition in which they were before such Work was undertaken by the Applicant, free from nuisance and to the satisfaction of the CAO. If the Applicant fails to repair and restore any Rights-of-Way to the satisfaction of the CAO within two (2) days of being notified by the Town, the Town may effect such repairs and charge all costs related thereto to the Applicant.
7. If the Town requires that any Work be stopped, the Applicant shall cease such Work upon delivery of a written notice to the Applicant to that effect by the CAO.
8. The Applicant shall be at all times responsible for all Work, including the cost of such Work.
9. The Applicant's Work shall not unduly interfere with the public use and enjoyment of the Rights-of-Way.
10. The Applicant shall notify the Town promptly of any damage caused by the Applicant in connection with its Work.
11. The Town 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 Applicant hereby agrees to take the Rights-of-Way on an "as is" basis for the purpose of the carrying out of the

Applicant's Work and the Town 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.

12. The Applicant may be required to post security with the Town from time-to-time in an amount and form acceptable to the CAO to guarantee the performance by the Applicant of its obligations in connection with Work performed under this Permit. 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 Town may have recourse to the security. Security posted in respect of certain Work shall be released promptly by the Town if and to the extent that the Work is completed to the satisfaction of the CAO.
13. The Applicant 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 Town may, on twenty-four (24) hours written notice to the Applicant, or sooner if in the opinion of the Town the likelihood of harm to persons is imminent, suspend Work performed by or on behalf of the Applicant 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.
14. For the purpose of this provision, "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. The Applicant agrees to assume all environmental liability relating to its Work in 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 the Rights-of-Way which result from:
 - a) the operations of the Applicant in, on, over, under, along, across or around the Rights-of-Way; or
 - b) any products or goods brought in, on, over, under, along, across or around the Rights-of-Way by the Applicant, or by any other person with the express or implied consent of the Applicant.

15. The Town shall not, in connection with the Applicant's Work, be liable for any damage to the Equipment or other property of the Applicant, or for the injury or death of any officer, employee, agent, contractor, licensee or invitee of the Applicant.
16. The Applicant hereby indemnifies the Town from and against all losses, liabilities, costs, damages, and expenses (including reasonable legal fees and disbursements) incurred by the Town in connection with the Applicant's Work as a result of any claim, action, suit or proceeding based on a claim of injury to the person or property of any third party caused by the Applicant, its officers, employees, agents, contractors, licensees or invitees.
17. The Town shall not be liable in any way for indirect or consequential losses or damages, or damages for pure economic loss, howsoever caused or contributed to, in connection with the Applicant's Work.
18. The Applicant 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.
19. The Applicant shall maintain insurance coverage, sufficient in amount and coverage to meet the requirements of the Town, as notified by the CAO from time-to-time. All such insurance policies shall provide that they cannot be cancelled, lapsed or materially changed without at least thirty (30) days notice to the Town by registered mail. All such insurance policies shall contain a cross-liability clause and no subrogation clause as against the Town and shall name the Town as a named insured.

(Additional and/or alternate standard terms and conditions may be required depending on municipal needs and practices.)

Relocation

20. Upon receipt of thirty (30) days advance written notice from the CAO, or such other time as is mutually agreed to by the parties, the Applicant shall, at its own expense, relocate Equipment to which this Agreement relates, or perform any other Work in connection with the Rights-of-Way as may be required by the Town for municipal purposes. If the relocation is not for a Municipal purpose but is for the benefit of a third party, then the Applicant shall relocate the Equipment to which this Agreement relates, or perform any other Work in connection with the Rights-of-Way as may be required by the Town and may negotiate for compensation for the relocation of the Equipment with the third party. However, in cases of emergency, the Town may take any measures deemed necessary for public safety with respect to the Equipment that may

be required in the circumstances as the Town shall determine and the Applicant shall reimburse the Town for all related expenses thereby incurred.

21. If the Applicant fails to complete the relocation of the Equipment in accordance with section 20, or fails to repair the Rights-of-Way or to perform any other Work required to be done by the Applicant pursuant to this Agreement in a timely and expeditious manner to the satisfaction of the CAO, the Town may, but is not obligated to, at its sole option, complete such relocation or other Work. In such event, the Applicant shall pay the cost of such relocation Work to the Town, together with an administrative charge of fifteen percent (15%) of such cost.

Utility Coordination

22. The Applicant shall register and maintain a membership in good standing with the Alberta One-Call Corporation or an alternative location support system, acceptable to the Town at its sole discretion. All costs associated with obtaining and maintaining membership with the Alberta One-Call Corporation or an acceptable alternative system shall be borne by the Applicant. The Applicant further agrees to participate in any utility coordinating committees or forums as may be established by the Town, and to pay its proportionate share of the costs of the administration of such forums.
23. The Applicant shall, at no cost to the Town, provide locations of Equipment within forty-eight (48) hours of receiving such requests from the Town.

SCHEDULE "E" – FINES

(Include all applicable fines.)

VIOLATION	PENALTY
Each Contravention of any provision of this Bylaw	\$10,000
For each subsequent day of the offence	\$10,000



SCHEDULE "F" – MUNICIPAL ACCESS AGREEMENT

The Municipal Access Agreement template may be found on the:

F:\SHARED\Development\Municipal Access Agreement

(May be revised from time to time to meet current standards and conditions)

A handwritten signature in blue ink, located in the bottom right corner of the page. The signature is stylized and appears to be a first name followed by a last name.