

**THE RURAL MUNICIPALITY OF
WHITEMOUTH BY-LAW NO.732/22**

BEING A BY-LAW OF THE RURAL MUNICIPALITY OF WHITEMOUTH TO
AUTHORIZE THE ENTERING INTO AND EXECUTION OF AN AGREEMENT
WITH VALLEY FIBER.

WHEREAS Section 250(2) of Part 8, Division 1, of The Municipal Act provides in part as follows:

250(2) Without limiting the generality of subsection (1), a municipality may for municipal purposes do the following:

- (d) enter into agreements with a person, with an agency of the Government of Manitoba or the Government of Canada, or with another municipality, including a municipality in another province, to do with or on behalf of the municipality anything the municipality has the power to do within the municipality;

AND WHEREAS it is deemed expedient and in the best interest of the residents of The Rural Municipality of Whitemouth that The Rural Municipality of Whitemouth enter into an Agreement with Valley Fiber.

AND WHEREAS the terms of the agreement have been negotiated and are contained in the Agreement attached hereto as Schedule "A";

NOW THEREFORE BE IT AND IT IS HEREBY ENACTED as a By-Law of The Rural Municipality of Whitemouth as follows:


1. **THAT** the entering into of the Agreement attached hereto as Schedule "A" is hereby approved and authorized; and
2. **THAT** the Reeve and the Chief Administrative Officer of The Rural Municipality of Whitemouth be and are hereby authorized and empowered to sign the Agreement and affix thereto the seal of the Municipality.

DONE, PASSED AND ENACTED by the Council of The Rural Municipality of Whitemouth in regular session assembled, this 26th day of April, 2022.

For: Against:
All None



Reeve



Chief Administrative Officer

Read a first time this 12th day of April, A.D., 2022
Read a second time this 12th day of April, A.D., 2022
Read a third time this 26th day of April, A.D., 2022

Rights-of-Way Consent and Access Agreement

This Agreement made this 26th day of April, 2022

BETWEEN:

RURAL MUNICIPALITY OF WHITEMOUTH
P.O Box 248, 49 Railway Avenue, Whitemouth, MB, R0E 2G0
("RM")

- and -

VALLEY FIBER TELECOM CONSTRUCTION LTD.
A corporation incorporated under the laws of Manitoba,
965 MB-14, Winkler, MB, R6W 0L7
("VFTC")

WHEREAS:

- A. The parties have signed a Letter of Intent dated Feb 15, 2022 (the "LOI"), a copy of which is attached hereto as Schedule "A";
- B. Pursuant to the LOI, VFTC shall install a fiber optic network for residents of the RM (herein as the "Networks");
- C. The RM presently owns, and in the future shall own, lands, and presently possesses, and in the future shall possess, rights-of-way within the RM under the direction, control, and management of the RM (together referred to herein as the "RM's Rights-of-Way"). For purposes of this Agreement, any reference to the RM's Rights-of-Way shall include future additional lands and rights-of-way obtained or acquired by the RM;
- D. In order to install the Networks, VFTC requires access to enter RM-owned land and rights-of-way within the RM under the direction, control, and management of the RM;
- E. VFTC requires the RM's consent to the occupancy and use of the RM's Rights-of-Way for constructing the Networks, which occupancy and use include constructing, maintaining, operating, and removing its equipment in, on, over, under, along, or across the RM's Rights-of-Way;
- F. The RM is willing to consent to non-exclusive use and occupancy of the RM's Rights-of-Way for so long as the Networks are maintained by VFTC or any successor entity thereof on the terms and conditions contained in this Agreement provided that such use and occupancy shall be in such a manner that it shall not interfere with the RM's use of the RM's Rights-of-Way, the RM's utility service requirements, or any rights or privileges conferred by the RM to other persons not a party to this Agreement, excepting that the Networks located on the RM's Rights-of-Way shall be exclusive to the RM and VFTC;
- G. The parties desire to, in a manner consistent with the LOI, more fully set out the rights and obligations with respect to installing, constructing, maintaining, operating, and removing the Networks, in, on, over, under, along or across the RM's Rights-of-Way;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the premises and the mutual covenants and obligations hereinafter set forth, the parties hereto agree as follows:

1.0 DEFINITIONS

- 1.1 Whenever used in this Agreement (unless inconsistent with the context), the following words shall have the following meanings:
- 1.1.1 "Agreement" and the words "herein", "hereto", "hereunder", and similar expressions mean or refer to this Agreement and every schedule, addendum, and all amendments hereto;
 - 1.1.2 "Alignment" means the area or all those portions of the RM's Rights-of-Way for which the RM or other competent authority has issued to VFTC a Permit to install Equipment, as evidenced by the "as built" drawings required hereunder;
 - 1.1.3 "Attaching Third Party" means any person, individual, corporate body, firm, or other entity that Attaches, or owns, controls, places or uses an Attachment;
 - 1.1.4 "Attachment" or "Attach" means the physical accessing and use of, or attachment to, the Equipment of VFTC by an Attaching Third Party pursuant to Article 3.00 of this Agreement; which Third Party shall only be such parties approved by the parties hereto;
 - 1.1.5 "Emergency" means an imminent threat to the structural integrity of the RM's Rights-of-Way or existing infrastructure, including electrical, water, or gas services and/or telecommunication service contained within the RM's Rights-of-Way or harm to the public or the employees, agents, or contractors of the RM, VFTC, or any other user of the RM's Rights-of-Way;
 - 1.1.6 "Equipment" means but is not limited to, wires, cables, ducts, conduits, poles, pedestals, vaults, manholes and other accessories, support structures and equipment owned by or under the direction, control, or management of VFTC, and used solely for the purposes of providing telecommunication services pursuant to *The Telecommunications Act*, S.C. 1993, c. 38;
 - 1.1.7 "Manager" means the Chief Administrative Officer (CAO) for the RM or their designate;
 - 1.1.8 "RM Purposes" means those powers, duties, and functions that the RM is authorized by *The Municipal Act (Manitoba)* and other enactments to undertake, including work performed by the RM or other persons relating to arterial roadways, but excluding work performed solely for beautification projects or projects initiated to provide concessions to third parties;
 - 1.1.9 "RM's Rights-of-Way" means the highways, streets, road allowances, alleys, walkways, lots, bridges, public spaces, or public waterways within the RM and owned by or under the direction, control, and management of the RM.
 - 1.1.10 "Third Party" means any person, individual, body corporate, firm or other entity that provides services or work in relation to or adds to the Equipment;

1.1.11 "Permit" means a permit issued by the RM for an approved Alignment on RM's Rights-of-Way; and

1.1.12 "Work" means any work related to the installation, maintenance, operation, repair, replacement, extension or removal of the Equipment or any Attachment on RM's Rights-of-Way by VFTC or an Attaching Third Party.

2.0 Grant of Access

- 2.1 Subject to applicable law and the terms and conditions of this Agreement, the RM hereby grants to VFTC non-exclusive consent to use and occupy the sections of the RM's Rights-of-Way, as approved by the RM, for the purpose of installing, maintaining, operating, repairing, replacing, extending, and removing the Equipment for the Term.
- 2.2 The grant of consent to VFTC pursuant to this Agreement shall not in any way restrict the RM's right to cross VFTC's Equipment with its equipment or otherwise use the RM's Rights-of-Way for any purpose, at no cost to the RM; or to allow any person not a party to this Agreement to cross VFTC's Equipment with its equipment, on reasonable terms, or use the RM's Rights-of-Way for any purpose.
- 2.3 The RM may make use of or share in the use and occupation of trenches excavated by VFTC provided such use and occupation complies with all applicable law and does not interfere with the use and occupation by VFTC or any Attaching Third Party. The RM shall be responsible for any additional costs directly arising from its use and occupation of the said trenches. However, the RM shall not have access to the VFTC Network, without VFTC's prior written consent first obtained.
- 2.4 The use or occupation of RM's Rights-of-Way pursuant to this Agreement shall not create or vest in VFTC any ownership or property rights in the RM's Rights-of-Way or any portion thereof, or permit them to authorize any person (subject to Article 3.0 herein) to use or occupy any RM's Rights-of-Way for any purpose.
- 2.5 Placement of the Equipment in the RM's Rights-of-Way shall not create or vest in the RM any ownership or property rights to the Equipment, except as specifically provided herein.

3.0 ATTACHMENTS BY AN ATTACHING THIRD PARTY

- 3.1 Subject to any applicable law, to the extent that VFTC is reasonably able to allow any person to access or use its Equipment, VFTC shall have the right to allow an Attaching Third Party to Attach to its Equipment and to charge and recover a fee from that person for that right, provided that no portion of that fee shall be a charge for the use or occupation of the RM's Rights-of-Way.
- 3.2 VFTC shall be responsible to ensure that all Attachments and all activities and operations of any Attaching Third Party on RM's Rights-of-Way are in compliance with the terms and conditions of this Agreement. VFTC agrees that a breach of any of the terms of this Agreement by an Attaching Third Party shall be a breach of this Agreement by VFTC.
- 3.3 VFTC shall promptly provide to the RM all information requested by the RM, acting reasonably, with respect to those Attachment rights.

- 3.4 VFTC shall advise any Attaching Third Party using its Equipment that, should the Attaching Third Party break out of VFTC's Equipment and place its own Equipment in an Alignment, that the Attaching Third Party must obtain and maintain any and all permits, including but not limited to a Consent and Access Agreement and Permits, licenses, official inspections or any other approvals and consents necessary or required for the placement or operation of the Attaching Third Party's Equipment.

4.0 TERM

- 4.1 This Agreement shall be valid commencing upon signing of this Agreement, and shall run in perpetuity, unless the VFTC Network is dismantled or if the VFTC Network is non-operational for five years.

5.0 WORK ON RM'S RIGHTS-OF-WAY

- 5.1 All costs and expenses associated with installation, maintenance, operation, repair, replacement, or removal of Equipment, or any other activity by VFTC in the exercise of its rights pursuant to this Agreement on the RM's Rights-of-Way, shall be borne by VFTC.
- 5.2 The Equipment shall only be installed at such locations on those portions of the RM's Rights-of-Way as approved by the RM.
- 5.3 VFTC shall provide to the RM a copy of its construction and servicing standards within seven (7) days of receiving prior request.
- 5.4 VFTC's construction and servicing standards ("VFTC's Service Standards") must meet or exceed the requirements of the RM's Design and Construction Standards, the RM's policies or practices. It is VFTC's sole responsibility to determine if its construction and servicing standards meet the RM's requirements. If the RM's standards do not cover all articles dealt with in VFTC's construction and servicing standards the RM, then reserves the right to review and approve those articles of VFTC's standards prior to granting VFTC a Permit.
- 5.5 Prior to the commencement of any excavation or of installation of any Equipment or Attachment in, on, under or across RM's Rights-of-Way in a new Alignment, at any time during the term of this Agreement, VFTC shall obtain a Permit from the RM and provide to the Manager plans showing the location of the Equipment or Attachment in such detail as required by the Manager.
- 5.6 Notwithstanding Paragraph 5.5 of this Agreement, VFTC may carry out routine maintenance, field testing, and subscriber connections without the consent of the RM, but in no case shall it carry out any excavation except pursuant to this Agreement.
- 5.7 VFTC agrees that all Work carried out by VFTC on RM's Rights-of-Way pursuant to this Agreement shall:
- 5.7.1 be carried out in a good, workmanlike, and timely manner;
 - 5.7.2 comply with all applicable construction and safety codes and the RM's construction and service standards, and procedures, as the RM, acting reasonably, may amend from time to time;

- 5.7.3 follow VFTC's Servicing Standards pursuant to Paragraph 5.4 herein; and
- 5.7.4 not interfere in any manner with the property of the RM or any person, including but not limited to, poles, wires, cables, ducts, conduits, pedestals, vaults, manholes, and other accessories, structures, and equipment.
- 5.8 Notwithstanding any other provision in this Agreement, the RM reserves the right to set, adjust or change the approved schedule of work by VFTC within the RM's Rights-of-Way at its sole discretion, acting reasonably, for the purpose of coordinating or managing any major events or activities, including the restriction of any Work on certain RM's Rights-of-Way during certain time periods. The RM shall use its best efforts to provide to VFTC forty-eight (48) hours advance notice of any change to the approved schedule of work by VFTC in the RM's Rights-of-Way.
- 5.9 Pursuant to the LOI, any daylighting or restoration costs on sidewalks, roads/parking lots, and other private property are to be at the expense of VFTC including all restoration (related to top soil and seeding work only) in the RM's Rights-of-Way shall be at the cost of VFTC.
- 5.10 Upon completion of the construction of the VFTC Network, and for any subsequent work pursuant to this Agreement, VFTC shall be responsible for immediately restoring and repair any damage to the RM's Rights-of-Way, other RM property, or property of any other person to the condition in which they existed prior to the subsequent work, and to the satisfaction of the Manager. If VFTC fails to restore and repair pursuant to this Article within twenty (20) days of receipt of notification from the RM, the RM may complete the restoration and repair and charge all costs to VFTC. For clarification, this provision is intended to set out the specific obligations for restoration and repair of the RM's Rights-of-Way, as set out in the LOI, but shall not be construed to expand on the obligations set out in the LOI.
- 5.11 VFTC shall dispose of all earth, stone, asphalt, concrete, and other materials removed from the RM's Rights-of-Way during any Work, at its sole cost and expense, unless otherwise directed by the Manager. The RM may reserve rights to salvage all or a portion of such materials upon notice to VFTC and VFTC shall comply with such direction of the Manager.
- 5.12 Where an installation of any Equipment on RM's Rights-of-Way is required by VFTC or an Attaching Third Party outside of an existing Alignment, VFTC shall obtain or cause the Attaching Third Party to obtain, as the case may be, a Permit from the RM.
- 5.13 VFTC shall complete and maintain throughout the term of this Agreement "as built" drawings within two (2) months of completing the installation of any Equipment.
- 5.14 VFTC shall, at no cost to the RM, provide plans, upon request, of the locations of any Equipment and Attachments within the RM's Rights-of-Way within three (3) business days of receiving such request from the RM, unless the request relates to an Emergency in which case immediate response is required. Drawings must be provided to a level of detail to the satisfaction of the Manager.
- 5.15 Notwithstanding any other provision in this Agreement, at VFTC's option, all surface restoration or repair that is the responsibility of VFTC under this Agreement:

5.15.1 will be completed by VFTC and must meet or exceed the RM's design and construction standards in effect at the time of construction. If VFTC fails to repair or restore the RM's Rights-of-Way surface as required, the RM may, pursuant to Paragraph 7.3, complete such work at the sole cost and expense of VFTC.

6.0 UTILITY CO-ORDINATION

6.1 VFTC agrees that it shall provide all information required by the RM to enable the RM to enter, update, and maintain facility mapping information of VFTC in the GIS (graphical information system) of the RM.

7.0 MAINTENANCE AND REPAIR

7.1 VFTC agrees, at its sole cost and expense, to maintain the Equipment and Attachments in a safe, clean, and sanitary condition and in good and substantial repair, to the satisfaction of the Manager.

7.2 At any reasonable time, VFTC shall permit the RM to inspect the Equipment and Attachments for the purpose of ascertaining the condition or state of repair thereof or of verifying that no default has occurred under this Agreement.

7.3 Where an inspection reveals that repair or maintenance is necessary, the RM, acting reasonably, may give VFTC notice of the need for such repair or maintenance and VFTC hereby agrees to promptly and pursuant to such notice, commence or cause the same to be commenced within the time limited in such notice and to diligently proceed to complete the same in a good and workmanlike manner. In default of VFTC carrying out such repair or maintenance, the RM may carry it out for the account and at the sole cost and expense of VFTC. If the RM effects repairs and maintenance pursuant to this Article, the RM shall incur no liability to VFTC resulting therefrom.

8.0 RELOCATION

8.1 If for RM Purposes the RM requires that the Equipment to which this Agreement relates be relocated, then VFTC shall, within sixty (60) days, where, in the sole discretion of the RM there is a specific RM need, relocate such equipment subject to the following:

8.1.1 VFTC shall have received from the RM a written notice requesting the relocations; and

8.1.2 Allocation of costs as follows:

8.1.2.1 following the date the Permit is issued but prior to the end of the fourth (4th) year following the Permit issuance date, the responsibility for the cost shall be shared by the parties hereto on a straight line declining basis from the Permit issuance date to and including the end of the fourth (4th) year following the Permit issuance date with the RM paying as follows:

8.1.2.1.1 Year 1 – 100% of costs of relocation

8.1.2.1.2 Year 2 - 75% of costs of relocation

8.1.2.1.3 Year 3 - 50% of costs of relocation

8.1.2.1.4 Year 4 - 25% of costs of relocation

8.1.2.2 After the end of the fourth (4th) year following the Permit issuance date or if the Equipment is not installed pursuant to the approved Alignment, then VFTC shall be solely responsible for and shall pay all costs of such relocation of the Equipment.

8.2 If VFTC fails to complete the relocation of the Equipment pursuant to Paragraph 8.1, the RM may, but is not obligated to, at its sole option, complete such relocation or other Work. In such event, VFTC shall pay its portion as defined above, of the cost of such relocation Work to the RM, together with an administrative charge of fifteen percent (15%) of such portion.

8.3 VFTC shall be solely responsible for raising its manhole frames and covers for road resurfacing work and the associated cost.

8.4 If a relocation is required because any VFTC equipment has not been constructed as set out in the drawings approved by the RM, such relocation shall be at the sole cost of VFTC.

9.0 EMERGENCY

9.1 In an Emergency involving any Equipment or Attachment, or the activities of VFTC or an Attaching Third Party on RM's Rights-of-Way, which constitutes a danger or potential danger of bodily injury or substantial damage to property, VFTC shall use its best efforts to provide notice to the RM prior to commencing any Emergency repair. If advance notice cannot be provided by VFTC, VFTC shall provide notice to the RM as soon as reasonably possible thereafter. VFTC shall forthwith take steps or cause steps to be taken, at its sole cost and expense, to handle the Emergency in as timely a manner as possible and shall restrict the use of the RM's Rights-of-Way by the RM as minimally as possible in the circumstances.

9.2 Notwithstanding the provisions of Paragraph 9.1 herein, in the event of such an Emergency, the RM may take any measures deemed necessary to alleviate the Emergency as the RM shall determine, and VFTC shall reimburse the RM for all expenses thereby incurred as a result of any Equipment, Attachment, the operations of VFTC or an Attaching Third Party, or the failure of VFTC to comply with Paragraph 9.1 herein.

10.0 HAZARDOUS SUBSTANCES

10.1 The RM has made no representations or warranties as to the quality, condition, or sufficiency of the RM's Rights-of-Way for any purpose, or as to the presence or absence of hazardous substances on or under the RM's Rights-of-Way and the RM's Rights-of-Way are used and occupied by VFTC at its own risk with all faults and imperfections whatsoever and on a strictly "as is, where is" basis. However, if the RM is aware or becomes aware of such hazardous substances, it shall immediately notify VFTC.

10.2 VFTC agrees to assume any and all environmental liabilities relating to the use and occupation of the RM's Rights-of-Way by VFTC or an Attaching Third Party, including but not limited to, liability for clean-up of any hazardous substance on or under the RM's Rights-of-Way which result from the use, activities or operations of VFTC or an Attaching Third Party in, on or about the RM's Rights-of-Way or which result from any products or

goods brought upon the RM's Rights-of-Way by VFTC or an Attaching Third Party, or by any person with the consent, express or implied of VFTC or an Attaching Third Party.

- 10.3 Notwithstanding paragraph 10.2, the provisions of paragraph 10.2 shall not apply to any situation or circumstance in which hazardous substances are present on, in or under the RM's Rights-of-Way, and VFTC shall not be responsible for environmental liability with respect to any hazardous substances present on, in or under the RM Right-of-Way, whether known or unknown to the RM, which may be exposed, or disclosed by virtue of the Work undertaken by VFTC, pursuant to this Agreement.

11.0 INDEMNIFICATION

- 11.1 VFTC shall be liable to the RM for, and shall indemnify and hold harmless the RM, its councilors, servants, agents, and employees from and against any and all losses, liabilities, claims, suits, actions, damages including indirect damages, special damages and consequential damages, costs and expenses (and without limiting the generality of the foregoing, including costs as between a solicitor and his own client) which may be brought or made against the RM or which the RM may pay or incur as a result of or in connection with:
- 11.1.1 any of the rights, licenses or privileges granted to VFTC or the use and occupation of the RM's Rights-of-Way by VFTC or an Attaching Third Party pursuant to this Agreement;
 - 11.1.2 any breach, violation or non-performance of any covenant, condition, or agreement in this Agreement to be fulfilled, kept, observed, or performed by VFTC;
 - 11.1.3 any damage to property or injury to a person or persons, including death resulting at any time therefrom, occasioned by the use and occupation, activities, or operations of VFTC or an Attaching Third Party, in, on or about the RM's Rights-of-Way;
 - 11.1.4 any damage to any property or injury to a person or persons, including death resulting at any time therefrom, arising from the escape, discharge, or release of any hazardous substance (including, but not limited to, petroleum products and by-products, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any law, ordinance, rule, regulation, bylaw or code, whether federal, provincial or rural municipality) occasioned by the use and occupation, activities, or operations of VFTC or an Attaching Third Party, in, on, or about the RM's Rights-of-Way;
 - 11.1.5 Any loss, damage to property, or injury to a person or persons, including death resulting at any time therefrom, arising from or relating in any way to the use and occupation of the RM's Rights-of-Way by VFTC or an Attaching Third Party, except when such damage or injuries occur as a result of the RM's willful misconduct or gross negligence.
- 11.2 In the event that any claim, suit, action, or demand is brought or made against the RM, for which VFTC has agreed to indemnify and save harmless the RM, the RM shall give VFTC written notice of thirty (30) days or such reasonable time as determined by the Manager to take carriage of such claim, action, suit or demand, and the RM shall work in cooperation with VFTC to determine if the RM and VFTC will:

11.2.1 settle any such action, suit, claim or demand, on such terms as the RM and VFTC deem reasonable, and VFTC and the RM shall cooperate in defending or settling any such action, suit, claim or demand, or

11.2.2 contest the same or the validity thereof by appropriate legal proceedings.

11.3 VFTC shall pay any judgement rendered against the RM or any of its servants, agents, or employees, together with all proper costs and charges.

11.4 This Article 11.0 shall survive the termination of this Agreement.

12.0 INSURANCE

12.1 Throughout the term of this Agreement, VFTC shall maintain in full force and effect the following:

12.1.1 General Liability insurance in an amount not less than \$5,000,000.00 per occurrence for personal injury and/or property damage. Such policy shall be endorsed to include the following:

12.1.1.1 Contractual Liability (including this Agreement);

12.1.1.2 Non-Owned Automobiles;

12.1.1.3 Independent Contractors (as applicable);

12.1.1.4 Products & Completed Operations (as applicable);

12.1.1.5 Excavation, collapse, shoring and pile driving (as applicable);

12.1.1.6 Broad form Property Damage;

12.1.1.7 Employees as Additional Insureds; and

12.1.1.8 Cross Liability.

12.2 The aforementioned insurance coverage policy shall be endorsed to provide the RM with thirty (30) days prior written notice of cancellation or material change to coverage levels below those stated in Paragraph 12.1, and shall be in a form acceptable to the Manager or his designate.

12.3 Evidence of renewal of coverage shall be provided to the RM prior to expiry in a form acceptable to the Manager or his designate.

12.4 It is further understood and agreed that the policy limits shown under this Article do not define or limit VFTC's liability to indemnify the RM, nor does the RM make any representation as to the adequacy of said limits or scope of coverage in the event of a claim.

13.0 DEFAULT

13.1 In the event that:

13.1.1 any sums payable hereunder by VFTC to the RM shall be unpaid for thirty (30) days after any of the days on which the same become due; or

13.1.2 VFTC is in default in the observance of any other of the terms, conditions and covenants contained in this Agreement and fails to rectify the default within thirty (30) days after receipt of written notice from the RM, or if the default is such that it cannot be rectified in thirty (30) days, VFTC fails to commence rectification within the said thirty (30) days;

then the RM may, at its option, issue a stop work order on any construction that VFTC is carrying on under this agreement. VFTC shall not continue with any construction if a stop work order has been issued by the RM and may not resume any construction until the RM has provided written notice of its retraction of the stop work order.

14.0 SALE

14.1 In the event of the sale of the VFTC Network in the RM, or all or substantially all of the shares of VFTC, the subsequent owner of the assets or shares shall be required, as a condition of such purchase, to acknowledge acceptance of the obligations and liabilities of VFTC pursuant to this Agreement, and shall covenant to be bound in the place and stead of VFTC.

15.0 ARBITRATION

15.1 If a dispute arises that cannot be settled through direct discussions, the parties may agree to first endeavor to settle the dispute in an amicable manner by mediation or arbitration. For clarity: the parties are not obligated to use mediation or arbitration to settle a dispute.

15.2 This Articles does not apply to a dispute which may fall under the jurisdictional competency of the Canadian Radio Television and Telecommunications Commission.

16.0 TAXES

~~16.1~~ The fees payable by VFTC pursuant to this Agreement are not in lieu of taxes (including, without limiting the generality of the foregoing, business, property, and linear property taxes) or local improvement charges payable to the RM, and VFTC shall pay to the RM all taxes properly assessable under the taxing authority of the RM.

16.2 VFTC agrees that no taxes, rates, assessments, charges, levies or impositions of any kind or nature of any governmental authority shall be payable by or placed upon the RM in relation to any use or occupation of the RM's Rights-of-Way by VFTC or an Attaching Third Party pursuant to this Agreement, and if any such taxes, rates, assessments, charges, levies, or impositions shall be levied, imposed, or placed, VFTC shall make payment thereof.

17.0 FAILURE TO PERFORM

17.1 If VFTC at any time fails to perform its obligations pursuant to this Agreement, the RM may at its option:

17.1.1 perform such obligations upon notice to VFTC in that regard. Within sixty (60) days of receipt by VFTC from the RM of an invoice setting forth the costs incurred by

the RM in performing such obligations or any other costs payable by VFTC to the RM hereunder, VFTC shall pay such costs to the RM; and

17.1.2 withhold any approval or permit required to be given prior to the commencement of any Work, until VFTC has complied with its obligations pursuant to this Agreement.

17.2 Neither of the parties shall 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 one or more of the following events; namely, acts of God or of the enemies of Canada, fire or other casualty, war, disaster, riots, strikes, walk-outs or other disturbances or for any other causes beyond the control of the party seeking relief 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.

17.3 When any amount payable hereunder by VFTC to the RM shall be in arrears, such amount shall bear interest at the rate of one and one-quarter percent (1.25%) per month, being the equivalent of fifteen percent (15 %) per annum, until paid but this stipulation for interest shall not prejudice or affect any other remedies available to the RM by law or by the terms of this Agreement.

18.0 COMPLIANCE WITH LAWS

18.1 VFTC shall procure and maintain at its sole cost and expense, such licenses, permits or approvals, from federal, provincial, RM or other government authorities as may be necessary to enable VFTC to conduct its business or exercise the rights granted to it pursuant to this Agreement on the RM's Rights-of-Way.

18.2 VFTC shall operate its business and shall carry on and conduct all activities on RM's Rights-of-Way in compliance with all federal, provincial, and rural municipal statutes, orders, regulations, and bylaws as amended.

19.0 GENERAL

19.1 Any notice required to be given under this Agreement may be sent by registered mail, postage prepaid, addressed to the parties as follows:

RM of Whitemouth: P.O Box 248, 49 Railway Avenue, Whitemouth, MB, R0E 2G0

VFTC: 965 MB-14, Winkler, MB, R6W 0L7

If so mailed, such notice shall be deemed to be received five (5) days after mailing.

19.2 It is understood and agreed that all of the covenants and agreements herein made by the RM, and all of the acts and undertakings herein agreed to be done by the RM will be performed, done, and undertaken within the limits of all applicable laws, rules, and regulations of legislative bodies superior to the RM and notwithstanding anything herein before contained, the RM will be under no higher obligation or duty than to exercise its best efforts to perform, do, and undertake those covenants, agreements, acts, or undertakings herein before referred to, and the RM will be under no liability to VFTC or any other person, firm, or corporation for its failure to perform, do, and undertake any of

the covenants, agreements, acts, or undertakings if such failure is beyond the control of the RM or caused by operation of law.

- 19.3 VFTC shall provide to the RM a list of twenty-four (24) hour emergency contact personnel for VFTC and shall ensure that the list is always current.
- 19.4 VFTC shall not suffer or permit any builder's lien(s) or other construction liens to be filed or registered against the RM's Rights-of-Way resulting from the operations or activities of VFTC or an Attaching Third Party. Any lien so filed shall be removed from title to the RM's Rights-of-Way by VFTC within twenty (20) days following notice from the RM to VFTC of the existence of a lien.
- 19.5 No rights or consents granted hereunder shall create or vest in VFTC any ownership or property rights in the RM's Rights-of-Way nor create an interest in land, and VFTC shall not register its interest under this Agreement as such.
- 19.6 VFTC agrees that it shall, at its own cost and expense, procure and carry or cause to be procured, carried, and paid for, full Workers' Compensation Board coverage for itself and all workers, employees, servants, and others engaged in or upon any Work.
- 19.7 Use of the word "will" or "shall" in this Agreement creates a mandatory obligation.
- 19.8 The insertion of headings is for convenience of reference only and shall not be construed so as to affect the interpretation or construction of this Agreement.
- 19.9 This Agreement shall be construed and governed by the laws of the Province of Manitoba.
- 19.10 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors, including successors in title, and permitted assigns.
- 19.11 VFTC covenants not to assign this Agreement nor share the use or advantages thereof except as expressly allowed by the terms of this Agreement, and VFTC agrees that this Agreement grants rights which are personal to VFTC only and which are not assignable without the written consent of the RM which consent may not be unreasonably withheld.
- 19.12 Notwithstanding Paragraph 19.11, the RM shall provide, upon written request from VFTC, consent of assignment of this Agreement to a lending institution for purposes of providing confirmation of VFTC's rights contained herein. The RM agrees to provide such consent provided that:
 - 19.12.1 the assignment is to a Canadian Chartered Bank or any other Registered Financial Institution acceptable to the Manager;
 - 19.12.2 VFTC shall remain bound to the covenants contained within this Agreement.
- 19.13 All contracts, whether of employment or otherwise, entered into by VFTC with respect to this Agreement, including without limiting the generality of the foregoing, agreements with an Attaching Third Party, shall be made by VFTC as principal and not as agent of the RM and the RM shall have no liability thereon.

- 19.14 Nothing herein shall be construed as in any way constituting this a partnership among or a joint venture by the parties hereto, or be construed to evidence the intention of the parties to constitute such a relationship. Neither party shall hold itself out contrary to the terms of this Article by advertising otherwise, nor become liable or bound by any representation, act, or omission whatsoever of the other party contrary to the provisions of this Paragraph.
- 19.15 The reference to any legislation in this Agreement shall be deemed to include all amendments thereto and all regulations thereunder and all statutes, including all amendments thereto and regulations thereunder, that may be substituted for that legislation.
- 19.16 The waiver by the RM or VFTC of the strict performance of any condition, covenant or agreement herein contained shall not constitute a waiver of or abrogate such or any other condition, covenant or agreement nor shall it be deemed a waiver of any subsequent breach of the same or of any other condition, covenant, or agreement.
- 19.17 Should any provision of this Agreement be void, voidable, or unenforceable for any reason whatsoever, it shall be considered separate and severable from the remaining provisions of this Agreement, which shall remain in force and be binding as though the said provision had not been included.
- 19.18 This Agreement shall not be modified, varied, or amended except by an instrument in writing signed by the parties hereto.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF the RM has caused its corporate seal to be hereunto affixed, attested by the hands of its proper officers in that behalf, the 26th day of April, 2022.

RM of Whitemouth

Per: _____

Per: Colleen Brown

IN WITNESS WHEREOF VFTC has executed this Agreement the 4 day of May, 2022.

SIGNED,
In the presence of:

[Signature]
Witness, as to both

)
)
)
)
)
)
)

Valley Fiber Telecom Construction Ltd.

[Signature]
Per: Hank Wall, President