

ACCESS TO MUNICIPAL RIGHTS-OF-WAY AGREEMENT

This Agreement made the 14th day of May 2019.

BETWEEN:

THE COUNTY OF ST. PAUL NO. 19
(the “**Municipality**”)

- and -

Buried Glass Inc.
(the “**Company**”)

WHEREAS the Company is a Canadian carrier as defined in section 2 of the *Telecommunications Act*, S.C. 1993, c. 38, as amended or is a distribution undertaking as defined in subsection 2(1) of the *Broadcasting Act*, S.C. 1991, c.11, as amended (collectively “**Canadian carrier**”); and

WHEREAS, in order to operate as a Canadian carrier, the Company requires to construct, maintain and operate its Plant in, on, over, under, across or along (“**Within**”) the Municipality’s Rights-of-Way; and

WHEREAS, the Company requires the Municipality’s consent to construct its transmission facilities Within the Municipality’s Rights-of-Way; and

WHEREAS the Municipality is willing to permit the use of its Rights-of-Way where, in its judgment, such use will not interfere with its own service requirements and the public use of the Rights-of-Way, including the consideration of the economy and safety and any rights or privileges previously conferred or hereafter conferred by the Municipality by contract or otherwise on others not parties to this Agreement to use any of the Rights-of-Way; 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 obtained.

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

DEFINITIONS

1. In this Agreement, the following words and phrases shall have the following meanings:
 - (a) “**Affiliate**” means “affiliate” as defined in the Canada Business Corporations Act;
 - (b) “**Agreement**” means this Municipal Access Agreement and all the Schedules attached hereto;

- (c) “**Director**” means the Municipality’s Director of Engineering and Construction, or the person designated by him or her;
- (d) “**Emergency**” means an unforeseen situation where immediate action must be taken to preserve public health, safety or essential service of either the Municipality or the Company;
- (e) “**Hamlet of Mallaig**” means all that portion of the Municipality shown within Schedule “A” attached to this Agreement;
- (f) “**Hazardous Substance**” means any harmful substance, including, but is not limited to, electromagnetic or other radiation, petroleum products or bi-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 municipal;
- (g) “**Municipal Consent**” means the written consent of the Director, with or without conditions, for access to the Municipality’s Rights-of-Way;
- (h) “**Municipality’s Costs**” means the reasonable and verifiable costs and expenses of the Municipality to complete an activity, based on the cost of labour and materials, plus an overhead cost equal to fifteen percent (15%) of the total cost of labour and materials;
- (i) “**Plant**” means any wires, fibre optic cables, ducts, manholes poles, cables, pipes, conduits, pedestals, antennas, vaults, support structures or other related facilities or structures owned and operated by the Company, excluding cell towers.
- (j) “**Right-of-Way**” or “**Rights-of-Way**” means any highway, street, road allowance, lane, bridge or viaduct under the jurisdiction of the Municipality, and contained within:
 - (i) the Hamlet of Mallaig; and
 - (ii) Range Road 100 connecting Highway 28 to the Hamlet of Mallaig;
- (k) “**Road Occupancy Permit**” means a permit issued by the road authority of the Municipality for the purpose of authorizing the commencement and undertaking of any Work in a Right-of-Way;
- (l) “**Service Drop**” means Plant that, by its design, capacity and relationship to other Plant of the Company, can be reasonably considered to be for the sole purpose of connecting the Plant to not more than a single customer or building point but shall not include Plant designed to carry multiple customer traffic;
- (m) “**SUE**” means subsurface utility engineering and is the non-proprietary/ generic process of locating underground facilities using more advanced locating techniques at varying levels of accuracy;
- (n) “**Third Party**” means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof that may attach its facilities to the Plant under an agreement with the Company but does not include subscribers to the Company’s services; and
- (o) “**Work**” means, but is not limited to, any installation, removal, construction, maintenance, repair, replacement, relocation, adjustment or other alteration of Plant Within any Right-of-Way.

TERM

2. The initial term of this Agreement shall be as needed, commencing on the day the Agreement is executed and ending upon the earlier of:

- (a) the abandonment of the Plant, or the ceasing to operate or provide service by or through the Plant, for a continuous period of greater than thirty-six (36) months;
- (b) the termination of this Agreement as provided for within this Agreement, at common law, or by other statutory authority.

Upon the expiration or termination of this Agreement through notice of termination or default, or otherwise, all rights and privileges hereunder shall come to an end provided that, notwithstanding such termination, the Company shall continue to be liable to the Municipality for all payments due and obligations incurred hereunder prior to the date of such termination, and in respect of any obligations that may survive expiration or termination as provided for within this Agreement.

3. Upon the expiration or termination of this Agreement, without restricting any of the rights or remedies under this Agreement, the Municipality may, at its sole option, declare the Plant abandoned and dealt with as the Municipality may deem appropriate.

USE OF RIGHTS-OF-WAY

4. The Municipality hereby agrees to permit the Company to use any Right-of-Way for the purpose of conducting its Work subject to the terms and conditions set out in this Agreement and in accordance with all federal, provincial and municipal statutes, laws and by-laws or other rules, regulations, policies, standards and guidelines pertaining to the application and use of the Right-of-Way or the Plant.

5. The Company shall not use any Rights-of-Way in whole or in part for any purpose other than that permitted under this Agreement.

6. The Company will be responsible to secure all other necessary and applicable permits/approvals for the Work and provide copies of same to the Municipality prior to the commencement of any Work.

7. The Parties agree that, where the Company acquires, or has acquired, directly or indirectly, facilities from a Third Party that are located in, on, over, under, across or along the Municipality's Rights-of-Way (the "**Acquired Plant**") and that Third Party is a party to a valid and existing municipal access agreement with the Municipality (the "**Third Party MAA**"), then, effective the day of the acquisition of the Acquired Plant by the Company:

- (a) the Acquired Plant shall form part of the Company's Plant under this Agreement and all related activities shall be governed by this Agreement; and
- (b) if applicable, where the Company has been assigned, or has acquired the rights and obligations under the Third Party MAA, the Third Party MAA shall be terminated.

APPROVAL OF DIRECTOR

8. Subject to Section 10, the Company shall not perform any Work in or on a Right-of-Way without first:

- (a) obtaining the applicable Municipal Consent required for the specific Work activity described within or contemplated by the detailed engineering plans provided by the Company to the Director;
- (b) providing detailed engineering plans to the Director's satisfaction setting out the location of the Plant within the relevant Rights-of-Way;
- (c) paying all associated fees, as outlined in the Municipality's relevant and most current Rates and Fees Bylaw; and
- (d) unless otherwise agreed to by the Municipality, the Municipality's Costs associated with the review and approval of the detailed engineering plans and the provision of the Municipality's consent.

9. The Company agrees to advise the Municipality, in a format and frequency acceptable to the Municipality, of the Work outlined in Section 8 that the Company has completed.

10. In the event of an Emergency, the Company shall be permitted to carry out such remedial work as is reasonably necessary to restore its essential service prior to satisfying subsection 8(a).

11. The Company acknowledges and agrees that the Municipality may refuse to grant approval regarding any proposed location for reasons of public safety, health, conflicts with existing or planned infrastructure of the Municipality or third parties, proposed road reconstruction or alterations, or the proper functioning of public services identified by the Director.

MANNER OF WORK

12. The Company agrees that its Work shall be subject to the following conditions:

- (a) Upon completion of any Work, the Company shall provide such digital files as may be necessary to update the Municipality's GIS system or records to reflect the completed Work;
- (b) All Work shall be conducted and completed to the satisfaction of the Director, at the Director's sole discretion and in accordance with all laws, by-laws and the Municipality's policies and standards, as amended from time to time.
- (c) The portions of the Plant which cross beneath streets or existing utilities shall be placed in a carrier pipe or be encased in concrete or as otherwise specified by the Director.
- (d) If the Company breaks or disturbs the surface of a Right-of-Way, it shall repair and restore the surface of the Right-of-Way to the same or better condition it was in before such Work was undertaken in accordance with, without limitation, the Municipality's policies and standards, as amended from time to time, and to the satisfaction of the Director. If the Company fails to repair and restore a Right-of-Way to the satisfaction of the Director within thirty (30) days of being notified in writing by the Municipality, the Municipality may complete such repairs and restoration, and charge the Municipality's Costs related thereto to the Company in accordance with Section 16 of this Agreement.

- (e) Notwithstanding Section 10, in the event of an Emergency, the Municipality may take appropriate measures determined necessary, by the Director to re-establish a safe environment. The Municipality's Costs associated in working around the Plant shall be charged back to the Company in accordance with Section 16 of this Agreement.
- (f) If the Municipality requires any Work to be stopped for any reasonable cause relating to public safety, special events, unacceptable conduct or health identified by the Municipality, or as a result of any circumstances beyond the control of the Municipality as expressed by the Director, the Company shall cease all such Work forthwith upon receipt of written notice from the Municipality and leave the site and all adjoining Rights-of-Way in a safe and clean condition. Within seventy-two (72) hours of issuing a stop work order under this subsection, the Director will provide written reasons for such order to the Company. The Company shall be allowed to resume its Work activities once the reasons for the Work stoppage have been resolved to the satisfaction of the Director.
- (g) The Municipality shall have the right to require that Work conducted by the Company or its contractors is:
 - (i) subject to such safety policies, protocols or procedures as the Municipality may reasonably approve, for the purposes of ensuring compliance with all health and safety legislation and codes applicable to the Work;
 - (ii) supervised by a representative of the Municipality, or, at the Company's option, subject to the use of such flagmen, traffic control, and/or safety personnel or equipment as the Municipality may reasonably require;to ensure the safe conduct of the Work, safe operation of the Right of Way, and continued public use of the Right of Way in a safe and acceptable manner.
- (h) Except as provided elsewhere in this Agreement, the Company shall be responsible for all Work, including the cost of such Work.
- (i) The Company shall use reasonable efforts to schedule Work and share Rights-of-Way and support structures with other service providers occupying and using, or intending to occupy or use, 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.
- (j) All contractors working for the Company shall have proper identification visible on site displaying the name of the entity they are working for.
- (k) The Company shall in the performance of any Work, ensure that its employees and contractors are qualified and licensed for the work they are performing.
- (l) The Company shall ensure that any and all its employees, agents and contractors always comply with all applicable laws, specifically but not limited to:
 - (i) all applicable municipal bylaws;
 - (ii) the Workplace Safety Insurance Act, 1997;
 - (iii) the Occupational Health and Safety Act;
 - (iv) the Canadian Labour Code Part II; and
 - (v) all applicable environmental laws.

PAYMENT OF FEES AND COSTS

13. The Company covenants and agrees to pay to the Municipality fees calculated in accordance with the Municipality's relevant and most current Rates and Fees By-law as amended from time to time.

14. The Company acknowledges and agrees that the fees payable pursuant to this Agreement are exclusive of any fees and charges that may be applied by the Municipality with respect to any other permits required for the Company's Work, including fees or charges applied by the Municipality for Road Occupancy Permits and Municipal Consent reviews.

15. If any Right-of-Way is assessed in the future as a direct result of the Company's use of the Right-of-Way, the Company agrees to indemnify the Municipality for any taxes due and payable by the Municipality as a result of the any assessment.

16. Without limiting any of the foregoing or any other provisions of this Agreement (including, without restriction, Section 8 and Section 30) the Company covenants and agrees to pay to the Municipality all the Municipality's Costs (including, without restriction, engineering costs and legal costs) associated with:

- (a) the supervision of the conduct of the Work by the Municipality, and all work around activities, as contemplated within Section 12(f) of this Agreement, if applicable or where required;
 - (b) the incremental cost of working around and/or accommodating the existence and location of the Plant, as a result of operations of the Municipality within the Right of Way, as a result of the selection of an alternative to relocation of the Plant pursuant to Section 23;
 - (c) emergency work or activities contemplated within Section 24 of this Agreement;
 - (d) performance of the Company's obligations in default as contemplated within Section 27 of this Agreement; and
 - (e) the review, revision, negotiation and execution of this Agreement;
- in each case unless otherwise agreed to by the Municipality.

THE COMPANY'S WARRANTIES

17. The Company represents and warrants to and covenants and agrees with the Municipality that:

- (a) it is a company in good standing under the applicable corporate and bankruptcy laws;
- (b) after completion of its Work, the Company shall leave the Right-of-Way in a sanitary, neat, clean, and safe condition and free from nuisance, all to the satisfaction of the Director;
- (c) the Company warrants its Works, to the satisfaction of the Municipality, for a period of three (3) years from the date of completion, which date will be supplied to the Municipality by the Company;
- (d) if this Agreement is terminated by the Municipality, all the unfulfilled covenants, indemnities and obligations of the Company herein shall survive such termination; and
- (e) the Company shall not suffer or permit any lien to be filed or registered against a Right-of-Way.

CONDITION OF THE RIGHT-OF-WAY

18. 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 accept the Rights-of-Way on an “as is” basis.

AS-CONSTRUCTED DRAWINGS

19. The Company shall provide, in both hard copy and a digital format, “as-constructed” drawings, which may include certification requirements, at its expense, to the satisfaction of the Director within one (1) month of completing the installation of its Plant.

NOTIFICATION TO MUNICIPALITY

20. The parties shall, at no cost to the other party, provide locations of their respective facilities:

- (a) in the event of an Emergency or other high priority circumstances, within two (2) hours of receiving a request by the other party or its contractors or authorized agents, using reasonable best efforts; and
- (b) in all other circumstances, within Fifteen (15) days of written request of the Municipality, or such other time period as may be reasonably agreed upon by the Company and the Municipality.
- (c) the Company shall provide utility stakeouts so that the actual location of its Plant is within one metre horizontally and on either side of the mark up or field locate position;
- (d) the Company shall be responsible to ensure that the approved location of its Plant has been installed in accordance with the following tolerances unless specifically detailed otherwise in the Municipal Consent:

Type of plant	Maximum horizontal and vertical variance	Minimum vertical depth measured from ground
Direct buried cables and ducts within the municipal boulevard	0.5 m horizontally and 0.3 m vertically	0.6 m
Direct buried cables and ducts within travelled roadways and shoulders	0.5 m horizontally and 0.3 m vertically	1.0 m
Major conduits and concrete duct structures within the municipal boulevard	0.3 m horizontally and 0.1 m vertically	1.0 m
Major conduits and concrete duct structures within travelled roadways and shoulders	0.3 m horizontally and 0.1 m vertically	1.5m

21. The Company and the Municipality shall always provide to each other a list of 24-hour emergency contact personnel available and shall ensure that the list is always up to date.

22. The Company agrees to pursue and become a member of a utility locate notification system recognized by the Municipality and other utility companies but shall not be obligated to use the locate

services of such notification system. The Company further agrees to participate in any public utility co-ordination committees involving all users of the Rights-of-Way as may be established by the Municipality and to contribute to the costs of such committees.

RELOCATION OF PLANT

23. Upon receipt of not less than sixty (60) days written notice from the Municipality, or such additional advance notice as is reasonable having regard to the nature of the relocation required, the Company shall relocate its Plant within a Right-of-Way at the Company's own cost, or perform any other Work in connection with the Right-of-Way as may be required by the Municipality for municipal purposes.

24. In cases of an Emergency, both parties agree to work co-operatively and apply commercially reasonable efforts to relocate the Plant immediately as directed by the Director, acting reasonably, provided that in cases of Emergency the Municipality may take any measures deemed necessary for public safety with respect to the Plant that may be required in the circumstances.

25. The Municipality will make a good faith effort to provide alternative suggestions for re-routing the Plant affected by the relocation to assist the Company in its efforts to ensure uninterrupted service to its customers.

DEFAULT

26. Each one of the following events shall constitute a default under this Agreement:

- (a) if the Company makes an assignment of its assets for the benefit of its creditors, or makes a proposal to its creditors under any bankruptcy or insolvency legislation of any jurisdiction;
- (b) if a petition in bankruptcy is filed and presented against the Company or if a receiver, receiver and manager, custodian or similar agent is appointed or takes possession of any property or business of the Company;
- (c) if the Company abandons the Plant, or the ceasing to operate or provide service by or through the Plant, without prior authorization from the Municipality for a continuous period of greater than thirty-six (36) months;
- (d) if Company fails to:
 - (i) comply with all applicable laws, bylaws or statutory regulations in force from time to time;
 - (ii) relocate the Plant in accordance with the provisions of this Agreement; or
 - (iii) observe and/or perform any of other terms, covenants or conditions of this Agreement;

and such default continues after the Municipality provides notice in writing of such default for a period of THIRTY (30) days (unless the rectification of the default is not reasonably capable of being rectified within the said period of THIRTY (30) days, in which case the Company shall not be in default unless the Company fails to commence rectifying within the said period

of THIRTY (30) days and/or thereafter fails to continuously and diligently pursue the rectification of the default).

27. Upon the occurrence of a default as defined above, the Municipality shall be entitled to any and all rights and remedies available at law or in equity including, without restriction, the right to perform the obligations of the Company at its sole cost (to be paid upon invoicing), as well as the right to terminate this Agreement without any further compensation to the Company whatsoever, and without prejudice to any claims, rights of action or remedies available to the party not in default.

INSURANCE, INDEMNIFICATION AND LIABILITY

28. The Company, or its contractors as applicable, shall maintain the following insurance coverage:

- (a) comprehensive general liability insurance with insurable limits of no less than Five Million (\$5,000,000.00) DOLLARS for each occurrence or incident; and
- (b) during periods of construction upon or within the Right of Way, all risks builders' policy, including extended coverage endorsement, as per industry standard, insuring the full value of the Plant;

together with such additional limits or additional coverage as the Municipality may reasonably require from time to time. The Municipality shall be an additional insured in all liability policies. All such policies shall provide that an event of default on the part of the Company, its servants or agents, shall not be an event of default on the part of the Municipality, as well as provide that the policies shall not be cancelled unless Thirty (30) days prior written notice of cancellation is first given to the Municipality. Copies of all policies of insurance shall immediately be provided to the Municipality upon written request by the Municipality.

29. The Municipality shall not be responsible, either directly or indirectly, for any damage to the Plant howsoever caused that may occur during excavation, installation, maintenance or removal by the Company, nor shall the Municipality be liable to the Company for any losses, claims, charges, damages, and expenses whatsoever suffered by the Company, including, without limitation, claims for loss of revenue or loss of profits, indirect or consequential damages, on account of any actions or omissions of the Municipality, its Chair, Council members, officers, employees, contractors, agents, successors, local municipalities and assigns working within its Rights-of-Way or otherwise, except for any claims arising from the negligence or willful misconduct by the Municipality or those for whom it is in law responsible.

30. The Company covenants and agrees to indemnify, defend and save harmless the Municipality, its Council members, administration, officers, employees, contractors, agents, successors, local municipalities and assigns from and against all losses, claims, including claims for injurious affection, charges, damages and expenses (including, without restriction, claims of third parties as a result of damage to property caused by the Company or its contractors), which the Municipality may at any time or times bear, sustain or suffer, by reason, or on account of, the placement, installation, relocation, maintenance or use of the Plant within the Rights-of-Way, except for any claims arising from the negligence or willful misconduct by the Municipality or those for whom it is in law responsible.

ASSIGNMENT

31. This Agreement may be sublicensed, granted, transferred or assigned:
- (a) by the Municipality or the Company in its entirety, to a single sublicensee, grantee, transferee or assignee with the other's prior consent in writing, which consent shall not be unreasonably withheld; or
 - (b) by the Company in part during the term of this Agreement without the Municipality's prior consent in writing;
 - (i) upon having first given notice to the Municipality of the sublicense, grant, transfer or assignment; or
 - (ii) provided the sublicensee, grantee, transferee or assignee is an Affiliate of the Company.
32. Despite the sublicense, grant, transfer or assignment of this Agreement by the Company, the Company will remain fully responsible to the Municipality for fulfillment of the obligations and liabilities of the Company described in this Agreement regardless of whether the obligations or liabilities arise out of any acts or omissions by the sublicensee, grantee, transferee or assignee.
33. The Company may pledge the license 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.

NOTICES

34. Any notice required or permitted to be given hereunder or any tender or delivery of documents may be sufficiently given by personal delivery or, if other than the delivery of an original document, by facsimile transmission to the Municipality at the following address:

County of St. Paul No. 19
5015 - 49 Avenue
St. Paul, AB
T0A 3A4

and to the Company at the following address:

Buried Glass Inc.
P.O. Box 98
4810 50th Ave
St Paul AB
T0A3A0

GENERAL

35. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Province of Alberta and the laws of Canada which may be applicable to a party in the Province of Alberta and both parties irrevocably attorn to the jurisdiction of the Courts of the Province of Alberta.

36. Nothing in this Agreement shall be construed as affecting any rights or otherwise of others not a party to this Agreement to use any Right-of-Way with the Municipality's legal authority. This

Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, whether written or oral between the parties. Except as provided in this Agreement, there are no conditions, covenants, agreements, representations, warranties, acknowledgments or other provisions, express or implied, collateral, statutory or otherwise, that form part of or affect this Agreement. The execution of this Agreement has not been induced by, nor do any of the parties rely upon or regard as material, any conditions, covenants, agreements, representations, warranties, acknowledgments, or other provisions not expressly made in this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by their duly authorized representatives.

) **COUNTY OF ST. PAUL NO. 19**

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) **BURIED GLASS INC.**

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