

# THE CITY OF TRAIL

## BYLAW NO. 2765

### **A BYLAW TO ESTABLISH AND REGULATE THE PROVISION OF DARK FIBRE AND TO IMPOSE RATES, TERMS AND CONDITIONS FOR THE SUPPLY OF THE DARK FIBRE SERVICE**

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**WHEREAS** the Council of the City of Trail considers it desirable to provide access to the community to optical dark fibre owned by the City and to regulate the supply of the service as part of an Open Access Network;

**NOW THEREFORE**, Council, in open meeting assembled, **ENACTS AS FOLLOWS**:

#### **PART 1 – INTERPRETATION**

##### 1.1 Definitions

“**Applicant**” means the person or legal entity that has applied to the City for Service;

“**City**” means the City of Trail;

“**Council**” means the duly elected Council for the City;

“**Customer**” means any natural person or other legal entity whose application for the supply of the Service has been approved by the City;

“**Dark Fibre**” means fibre optic cable strands within the Network not lit by electronic equipment for use by the Customer;

“**Illegal Activity**” means a violation of federal and/or provincial law, including any City bylaws, whether or not the violation is an offence under the Criminal Code;

“**Installation Fee**” is a non-refundable one-time fee charged by the City to the Customer for connection to the Network;

“**Internet Service Provider**” is a business or organization that offers customers access to digital services such as Internet access and other related products;

“**Lit Fibre**” means fibre optic cable strands within the Network lit by electronics for use by the Customer;

“**Network**” means the Lit Fibre and Dark Fibre infrastructure owned and operated by the City;

“**Network Operator**” is a business or organization that operates the electronic inter-connecting equipment in order to deliver digital services offered by an Internet Service Provider to the customer;

“**Open Access Network**” means a business model that separates the physical access to the Network from the delivery of digital services on the network;

“**Service**” means the provision of the Network and access by the Customer to the Network subject to the terms and conditions of this Bylaw, the terms and conditions of the Network Operator and the terms and conditions of the Internet Service Provider;

##### 1.2 Interpretation

Any reference in this bylaw to an appendix, schedule, statute, regulation, bylaw or other legislative or regulatory instrument shall be deemed to mean a reference to that legislative or regulatory instrument in force at the effective date of this bylaw, and as amended, superseded or replaced from time to time.

## **PART 2 – SERVICE AREA**

- 2.1 This Bylaw applies to all lands within the geographic jurisdiction of the City where the Service is available.

## **PART 3 – PROVISION OF SERVICE**

- 3.1 The City will provide the Service for the Customer's use in accordance with the terms and conditions of this Bylaw and the approved application.
- 3.2 A person or legal entity who desires the Service must complete an application on the form provided by the City and submit it, along with applicable fees, to the City.
- 3.3 The City may refuse to provide the Service to any Applicant where access to the Service is unavailable, or where the Applicant has been charged or convicted of Illegal Activity which, in the City's sole determination, renders the Applicant ineligible to receive the Service, or where the intended use of the Service by the Applicant is not otherwise appropriate.
- 3.4 The Customer acknowledges that all right, title and interest in the Network and Dark Fibre remains with the City.
- 3.5 The Customer may use the Service within its normal business operations, provided that such normal business operations do not include the sale, exchange, lease or other transfer rights in the Service.
- 3.6 Except as approved by the City, the Customer may not sublease any rights in the Service or make the Service available to third parties as Dark Fibre.
- 3.7 Except as approved by the City, the Customer may not attach any electronics to the Network except via the electronic inter-connecting equipment provided by the Network Operator.
- 3.8 Where the Customer controls access to premises into which the Dark Fibre is to be installed, the Customer will do or cause to be done, at its expense and to the satisfaction of the City, all acts reasonably necessary for the City to obtain such registrations, permits or approvals as required by the City to access the Customer's premises and building fixtures, to install, maintain, repair and relocate the Dark Fibre and appurtenances as required.

## **PART 4 – PAYMENT**

- 4.1 The Applicant will pay to the City the Installation Fee as set out in Schedule "A" attached to and forming part of this Bylaw.
- 4.2 The Installation Fee is payable at the time of application for the Service. If the application for Service is refused by the City, the Installation Fee will be refunded to the Applicant.
- 4.3 Except as provided in 4.2, the Installation Fee is non-refundable.

## **PART 5 – TERMINATION OF SERVICE**

- 5.1 The City may terminate the Service to any Customer immediately and without notice if:
- (a) The Customer is in breach of any of the terms and conditions applicable to the Service in this Bylaw or the approved application;
  - (b) The Customer has been charged or convicted of any Illegal Activity;
  - (c) The Customer has tampered with or misused the Service or the City's equipment in any way; or
  - (d) The Customer is or has been using the Service for a purpose which, in the sole determination of the City, is not appropriate.
- 5.2 Upon termination of the Service, the Customer will pay any costs incurred by the City for disconnection of the service to the Customer.

**PART 6 – LIABILITY LIMITATION**

- 6.1 The City is not liable to any Customer, or third party, for any direct, indirect, special, consequential or incidental damages or loss of revenue or profit arising out of or in connection with the use or inability to use the Service, any interruption in the City’s supply of the Service, or inability of the City to supply the Service, including any loss or anticipated loss from the Customer or third party’s unauthorized use or tampering of or with the Service or the City’s equipment utilized for the Service.
- 6.2 The Customer is solely responsible for determining whether the Service is suitable for use for the Customer’s purposes, and the City in providing the Service makes no warranty as to suitability for the Customer’s purposes.

**PART 7 – OFFENCES AND PENALTIES**

- 7.1 No person shall prevent or obstruct, or attempt to prevent or obstruct, the entry of an authorized City employee or City contractor in the performance of his or her duties under this Bylaw, including entry to inspect for compliance with the terms and conditions of this Bylaw.
- 7.2 Any person who violates a provision of this Bylaw, or fails or neglects to do something required under his Bylaw, is liable on conviction to a penalty not exceeding ten thousand (\$10,000) dollars and costs of prosecution. The penalties imposed under this sub-section are in addition to and not a substitute for any other remedy the City may have with respect to a violation of this Bylaw.
- 7.3 Each day a violation of the provisions of this Bylaw occurs or is permitted to exist shall constitute a separate offence.

**PART 8 – SEVERABILITY**

- 8.1 If any portion of this Bylaw is held invalid by a court of competent jurisdiction, then the invalid portion will be deemed to be severed and the remainder of this Bylaw will be deemed to be valid.

**PART 9 – CITATION**

- 9.1 This bylaw may be cited for all purposes as the “**City of Trail Optical Fibre Service Bylaw No. 2765, 2013**”.

**READ** the **FIRST, SECOND** and **THIRD** time the 12<sup>th</sup> day of November, 2013.

**ADOPTED** the 25<sup>th</sup> day of November, 2013.

  
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 MAYOR

  
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 CORPORATE ADMINISTRATOR

Certified a true copy of  
Bylaw No. 2765, 2013.

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**CORPORATE ADMINISTRATOR**

**BYLAW NO. 2765**

**SCHEDULE "A"**

**1. INSTALLATION FEE**

Pursuant to Part 4 of this Bylaw, the fee payable by the Applicant for a dark fibre service connection shall be based on the actual cost of the installation to the City and reduced as follows:

- by 100% if application for connection is received on or before March 31, 2014;
- by 50% if application for connection is received after March 31, 2014 but on or before December 31, 2014; or
- by 0% if application for connection is received after December 31, 2014.