

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2004-90

Being a by-law to authorize the signing of an agreement between the Corporation of the Town of Amherstburg and Hydro One Networks Inc.

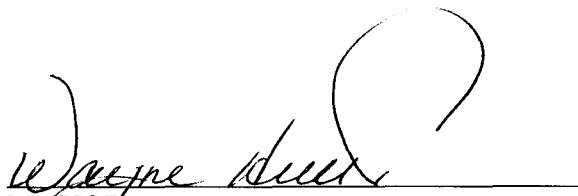
WHEREAS the Town of Amherstburg wishes to place, affix or attach or continue to place affix or attach, as the case may be, Attachments to poles owned by Hydro One Networks Inc. and Hydro One Networks Inc. is agreeable to granting such license to the Town of Amherstburg for said purpose and upon the terms and conditions attached hereto;


AND WHEREAS an Agreement has been prepared between the Town of Amherstburg and Hydro One Networks Inc. specifying the terms and conditions which is attached hereto as Schedule "A";

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF
THE TOWN OF AMHERSTBURG HEREBY ENACTS AS FOLLOWS:**

1. That the Mayor and Clerk be, and they are hereby authorized and instructed, to execute the originals and the copies of the said agreement and to affix the corporate seal thereto.
2. That this By-law shall come into force and take effect on the date of final passage thereof.

Passed this 25th day of **October, 2004**


MAYOR


CLERK

1st Reading: Oct. 25, 2004

2nd Reading: Oct. 25, 2004

3rd Reading: Oct. 25, 2004

THIS AGREEMENT FOR LICENSED OCCUPANCY OF POWER UTILITY DISTRIBUTION POLES made in duplicate this 17th day of June 2003.

BETWEEN:

HYDRO ONE NETWORKS INC., a corporation
incorporated pursuant to the laws of the Province of Ontario
(hereinafter referred to as "HONetworks")

OF THE FIRST PART,

- AND-

THE CORPORATION OF THE TOWN OF AMHERSTBURG
(hereinafter referred to as the "Licensee")

OF THE SECOND PART.

WHEREAS the Licensee wishes to place, affix or attach or continue to place affix or attach, as the case may be, Attachments (as defined in Section 1.0 herein) to poles owned by HONetworks and HONetworks is agreeable to granting such license to the Licensee for said purpose and upon the terms and conditions as herein contained (hereinafter referred to as the "License");

AND WHEREAS the parties acknowledge that the License shall be of mutual advantage and shall provide an environment that maximizes the efficiencies and effectiveness of Joint Use (as defined in Section 1.0 herein) to better serve the parties' respective customers;

AND WHEREAS the parties agree to deal with each other with due consideration for the safety of their respective employees, agents and contractors and the preservation of each other's property and assets and the interests of their respective customers;

AND WHEREAS the parties shall encourage open and effective communication between all Joint Use Pole users regarding joint planning for the use of such Joint Use Poles (as defined in Section 1.0 herein); and

AND WHEREAS both parties acknowledge that safety shall be of paramount importance in the joint planning, design, placement, maintenance and removal of Attachments on or along the Joint Use Poles.

NOW THEREFORE in consideration of the terms and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged, the parties hereto agree as follows:

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1.0 DEFINITIONS:

The terms defined in this section for the purposes of the provisions herein and the Contract Administration Guide for Road Authorities (hereinafter referred to as the "CAG" and attached hereto as Schedule "A"), shall have the following meanings unless the context expressly or by necessary implication otherwise requires:

"Application" means the form attached hereto as Schedule "B", the format of which may be revised from time to time by HONetworks at its discretion, to be completed and submitted to HONetworks by the Licensee when the Licensee wishes to place its attachments on HONetworks' poles in accordance with the terms and conditions of this License.

"Approval" means the execution of the Application by HONetworks in accordance with the terms and conditions of this License, such that the Licensee may attach its Attachments, as specified in the Application to the Joint Use Poles, to other equipment or In-Span.

"Attachment(s)" means any material, apparatus, equipment or facility owned, in full or in part by the Licensee and attached to, either by being carried on or supported by, the poles of HONetworks, with the exception of equipment to provide Telecommunication Services (as hereafter defined). Without limiting the generality of the foregoing, Attachments may include:

- mast arms, luminaires, supply conductors, relays and other equipment required to operate a street lighting system
- traffic signal, power and control cables, junction and splice boxes and any other equipment and/or devices normally required for the operation of traffic signals
- service attachments
- decorative lighting
- standards
- seasonal decorations.

For the purpose of this Agreement, Attachment(s) does not include any material, apparatus, equipment or facility owned by the Licensee for the provision of Telecommunication Services and all such attachments shall require a separate License.

"Contract Administration Guide" or "CAG" means the administrative and operating practices and processes outlined in Schedule "A" attached hereto.

"Emergency" means a situation in which there is a risk of bodily injury or death or an imminent or existing interruption of power or service to customers.

"Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in North America during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time the decision was made,

could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in North America.

"Hazardous Condition" means a structural/mechanical or electrical condition that has the potential to cause harm or injury to persons or property and which requires specific work methods until the condition is removed.

"HONetworks' Costs" means the actual charges for labour, materials and equipment plus the applicable overheads.

"Inter-Spaced Pole" means a Pole(s) that has been added between existing Pole(s).

"In-Span" means a position between poles.

"Joint Use" means the use or intended use of a Pole to support the Attachments of authorized parties, including parties other than the Licensee which have Joint Use of Pole Licenses with HONetworks.

"Joint Use Pole(s)" means a pole(s) owned by HONetworks that supports, or is intended to support, Attachments of other parties, including the Licensee and includes any pole(s) installed at the request of the Licensee.

"License" means this Agreement and shall include the Schedules "A", and "B" attached hereto, which are to be read with and form part of this License.

"Limits of Approach" means the minimum distance that must be maintained between personnel and/or equipment and exposed live electrical apparatus in order to work safely as provided in the Occupational Health and Safety Act, R.S.O. 1990, c. 0.1, as amended and/or Part II of the Canada Labour Code, R.S.C. 1985, c.L.2, as amended, and all applicable regulations thereto.

"Line Clearing" means the provision of adequate clearance from tree interference for all Attachments carried on, to, or supported by Joint Use Poles, and includes underbrushing, tree removal, pruning or trimming, treatment of cuts, application of herbicidal sprays and disposal of debris.

"Make-ready Work" means work that is necessary and required solely for the purpose of directly accommodating the Attachment(s) that the Licensee wishes to attach to HONetworks' pole(s) and includes, but is not limited to, initial Line Clearing, any changes or additions to or rearrangement of HONetworks' poles or HONetworks' attachments. Without restricting the generality of the foregoing, Make-ready Work does not include the replacement of defective poles, or previously scheduled betterment programs initiated by HONetworks.

"Permit" means the approved Application evidenced by the signature of a duly authorized HONetworks employee or designate in accordance with the terms and conditions of this License.

"Pole Rental Rate" means the annual fee payable by the Licensee to HONetworks pursuant to the terms of this License.

"Rearrange" or "Rearrangement" means the removal of Attachment(s) from one position on a Joint Use Pole and placing the same Attachment(s) and such incidental material as may be required in another position on the same Joint Use Pole.

"Road Authority" means the Ministry of Transportation, a municipal corporation, board, commission, or other recognized body being in control of the construction, improvement, alteration, maintenance and repair of a highway or road and responsible therefor.

"Standards" means the Canadian Standard Association Standard C22.3 No. 1-M87 "Overhead Lines", C22.2 "Electrical Code Part 1" or HONetworks Distribution Standards where such Distribution Standards are more stringent, as may be amended or updated from time to time hereafter.

"Telecommunications Services" is as defined in the *Telecommunications Act* (federal).

"Transfer" means the removal of Attachment(s) from one Joint Use Pole and placing the same Attachment(s) and such incidental materials as may be required on another Joint Use Pole.

2.0 TERM:

2.1 Subject to Sections 10.0 and 17.0 herein, the term of this License shall commence on the date first written above (the "Commencement Date") and will continue in full force and effect **until the last day of December following a minimum one (1) year period from the Commencement Date (the "Initial Term")** and shall thereafter be automatically renewed **on the first day of January** for successive periods of one (1) year upon the same terms and conditions (with the exception of the Pole Rental Rate) herein (the Initial Term and renewal periods shall be collectively referred to as the "Term"); provided that either party may terminate this License at any time after the expiry of the Initial Term or any renewal period of 1 year by providing three (3) months written notice of termination to the other party, which notice may be given prior to the expiry of the Initial Term or the current 1-year renewal period.

2.2 This License shall be effective as of the Commencement Date and any prior agreements made between the parties providing for Joint Use of poles shall be void and of no effect. Notwithstanding the foregoing, any Permits presently in force and which authorize Joint Use shall be deemed to be Permits under the terms and conditions of this License.

3.0 CONTRACT ADMINISTRATION GUIDE: ("CAG")

3.1 Both parties acknowledge and agree to comply with and be bound by the administrative and operating practices and processes outlined in the CAG for Road Authorities attached hereto as Schedule "A" which forms part of this Agreement. Both parties further acknowledge and agree that the said practices and processes shall govern the License herein and may be amended, added to, substituted or altered from time to time, by mutual agreement of the parties and any reference in this License to the CAG shall be deemed to be a reference to same as it may from time to time be, whether in its original form or as amended, added to, substituted or altered from time to time.

4.0 APPLICATION FOR JOINT USE AND GRANT OF LICENSE:

4.1 HONetworks hereby grants to the Licensee, the right to place its Attachments on Joint Use Poles for the Term of this License in locations expressly authorized by HONetworks, as designated on a Permit or Permits in the form set out in Schedule "B" attached hereto and in accordance with the mutually agreed upon placement and safety practices and specifications outlined in the CAG.

4.2 Whenever the Licensee desires to place its Attachments on HONetworks' Joint Use Poles, both parties shall adhere to and be bound by the procedure set out in the CAG.

4.3 The Licensee shall pay to HONetworks the costs incurred by HONetworks for changes or additions to or Rearrangement of HONetworks' Joint Use Pole(s) and/or HONetworks' attachments to such Joint Use Pole(s) where the change, addition or Rearrangement is necessary to accommodate the Licensee's Attachment(s) and for any Line Clearing that HONetworks in its sole discretion, determines is required in order to accommodate the Licensee's Attachment(s) (the "Make-ready Work"). Upon completion of the Make-ready Work, HONetworks will render an invoice(s) to the Licensee for the costs thereof and the Licensee shall pay said invoice(s) within sixty (60) days of the invoice date.

4.4 Whenever the Licensee desires to modify, Rearrange, add to or remove from a Joint Use Pole its existing Attachments the parties shall proceed in the manner set out in the CAG.

5.0 INSTALLATION, MAINTENANCE AND OPERATION OF JOINT USE POLES:

5.1 In the event that HONetworks determines that there is an incidental Hazardous Condition, which includes, but is not limited to, deteriorated or defective HONetworks attachments and/or Joint Use Poles, HONetworks shall mark or band the Joint Use Pole(s) where the electrical or mechanical hazard exists in accordance with the CAG and shall correct the Hazardous Condition depending on its severity within 24 hours but in no event any longer than 30 days. Where a potential or actual Hazardous Condition is

determined by HONetworks to be wide spread, HONetworks shall notify the Licensee in writing of the potential safety risk and the nature of the hazard, as soon as reasonably possible, quantify, mark or band the poles where the Hazardous Condition exists and shall correct the Hazardous Condition within such reasonable time frame as possible. Until such time that HONetworks has remedied the Hazardous Condition, HONetworks shall offer protection to the Licensee and its employees and contractors at no cost until such time as the condition is corrected.

5.2 Both parties acknowledge and agree that if the Licensee proceeds to work on its Attachments located on the applicable Joint Use Pole(s) after receiving such notification by HONetworks and prior to HONetworks having rectified, replaced or provided adequate protection from the said attachments and/or Joint Use Poles, the Licensee shall do so at its own risk and shall assume all risk of damage, loss or injury to its Attachments or to Attachments of third parties and to its employees, servants, agents, representatives, contractors and other persons acting on its behalf in performing the work and third parties.

5.3 Subject to the foregoing, HONetworks shall at all times and at its sole expense maintain its Joint Use Poles and all of its own supporting attachments in a safe and serviceable condition and in accordance with applicable Standards and repair or replace said attachments and/or Joint Use Poles as they become defective, deteriorated or unsafe.

5.4 In the event that the Licensee determines that there is a potential or actual Hazardous Condition with its equipment, the Licensee shall notify HONetworks in writing of the potential safety risk and the nature of the hazard, as soon as reasonably possible. The Licensee shall correct the Hazardous Condition depending on its severity within 24 hours but in no event any longer than 30 days.

6.0 INSTALLATION, MAINTENANCE AND OPERATION OF ATTACHMENTS:

6.1 During the Term of this License, the Licensee covenants and agrees that it will:

- a) only attach Attachments to Joint Use Poles in locations identified in a Permit approved by HONetworks for those particular Attachments;
- b) attach Attachments in such a way so as not to interfere with the lines, works or equipment of HONetworks or of other permitted users of the Joint Use Poles;
- c) attach Attachments in accordance with the terms and conditions herein;
- d) not attach any Attachments until HONetworks has approved the Application for the specific Attachments;
- e) work in conjunction with HONetworks to develop a standard inventory format for the Attachments and develop an implementation plan with a view to have the inventory of Attachments completed on or before the end of the first three years from the Commencement Date.

6.2 The Licensee shall at all times and at its sole expense and in accordance with the terms and conditions of this License:

- a) maintain and operate its Attachments to the Joint Use Poles in a safe and serviceable condition;
- b) replace the Attachments as they deteriorate, become defective or unsafe; and
- c) remove Attachments that are no longer required.

6.3 The Licensee shall, at its sole cost, Rearrange, Transfer or temporarily remove any of its Attachments, at HONetworks' request, where this is required for purposes of the placement, Rearrangement, maintenance or removal of any of HONetworks' attachments. The Licensee will perform such work within ninety (90) days after being notified in writing by HONetworks to do so, or within a shorter period of time in case of an emergency, as may be determined by HONetworks based on Good Utility Practice and which shall be relayed to the Licensee with reasons therefor. If the Licensee is unable to comply with any such notice, or in the event of emergency requiring immediate action, HONetworks may perform the said work, or cause the said work to be performed by others at the risk of damage to the Licensee's Attachments and at the expense of the Licensee. All costs and expenses incurred shall be properly documented by HONetworks and HONetworks shall be reimbursed by the Licensee for the said costs and expenses within sixty (60) days of issuance of an invoice by HONetworks.

7.0 PERFORMANCE GUARANTEE:

7.1 If HONetworks, in its sole and absolute discretion, determines that the Licensee has not had a previous satisfactory business relationship with HONetworks or any of its predecessors, HONetworks may, in its sole and absolute discretion, require that the Licensee deposit with HONetworks, security in a form satisfactory to HONetworks, securing the due performance of the obligations of the Licensee as provided for in this License. The amount of such security shall be the greater of (i) an amount equal to one year of Joint Use Pole Rental Rates; and (ii) one thousand dollars (\$1,000.00). The security shall be maintained in good standing by the Licensee for a period of three years from the date that it is first placed with HONetworks or may continue if HONetworks, in its sole and absolute discretion, determines that the business relationship with the Licensee requires the continuation of the security.

8.0 RIGHT OF WAY:

8.1 The Licensee shall be responsible for obtaining any and all easements, rights of way, licenses, privileges, authorizations, permissions or other land rights from third parties including but not limited to, authorization or permission to locate on municipal or provincial road allowances or any other applicable authorization or permission required from any municipal, provincial or federal government or any agency, body or board thereof having jurisdiction, as may be necessary for the placement, operation and maintenance of its Attachments upon and along the Joint Use Poles provided for in a Permit. If the Licensee fails to comply with the provisions of this clause, it shall indemnify HONetworks from and against any and all claims or demands or other liability resulting from such failure.

8.2 In the event that an easement, right of way, license, privilege, authorization, permission or other land right referred to in section 8.1 and obtained by the Licensee, becomes the subject of a dispute with any property owner, municipality or other directly interested party, the Licensee shall take all reasonable steps to resolve that dispute and will, in the event it cannot resolve the dispute amicably, cause it to be adjudicated before a court, tribunal or regulatory body having jurisdiction. The Licensee shall forthwith after it is rendered, abide by the final decision of that court, tribunal or regulatory body after any appeals or reviews have been decided. Notwithstanding the foregoing, should the property owner, municipality or other directly interested party obtain a mandatory injunction requiring HONetworks to remove or have the Attachments removed, the Licensee shall forthwith comply with the terms of the injunction as if the injunction was issued against the Licensee instead of HONetworks. If the Licensee does not comply within 48 hours of being notified by HONetworks, HONetworks may remove or cause the Attachments to be removed by others at the risk of damage to the Licensee's Attachments and the Licensee shall pay HONetworks' costs. Nothing in this clause shall be deemed to confer on the Licensee any authority to continue to occupy the Joint Use Pole or otherwise to infringe upon any rights of such property owners, municipalities or other persons.

9.0 SAFETY AND COMPLIANCE WITH APPLICABLE LAW:

9.1 Each party agrees that its employees, agents, representatives, contractors or subcontractors in the performance of the party's obligations and the exercise of the party's rights under this License shall at all times:

- a) Comply with the Standards and all applicable laws, rules, orders, ordinances, regulations and other rules of all lawful authorities acting within their powers;
- b) Comply with the placement, safety practices and specifications set out in the CAG;
- c) Ensure that all of its employees, agents, representatives, contractors or subcontractors engaged in the Transfer, Rearrangement, placement, maintenance, operation and removal of Attachments to or from the Joint Use Poles are qualified to deal with electrical hazards in accordance with the requirements of the *Occupational Health & Safety Act*, (Ontario) as amended and all applicable regulations thereto including, Construction Projects – O. Reg. 213/91 or Part 11 of the Canada Labour Code, R.S.C. 1985, c. L.2, as amended and all applicable regulations thereto, whichever is more stringent; and
- d) Ensure that all requirements of the Electrical Safety Authority are met.

10.0 POLE RENTAL RATES:

10.1 The Licensee shall, during the Initial Term of this License, pay to HONetworks a Pole Rental Rate of \$2.04 per Attachment per year. **On or before the first day of November** prior to the expiry of the Initial Term or any one-year renewal period, HONetworks shall notify the Licensee of the Pole Rental Rate applicable from and after the first day of **January** for the next renewal period, and the Licensee shall commence paying the new rate effective the first day of **January** of the said renewal period. If HONetworks fails to notify the Licensee as set out in the immediately preceding sentence, the Pole Rental Rate shall be increased by the increase, if any, to the Cost of Living Index for Ontario ("COLI") as reported for September of the previous year and such increase will be noted on HONetworks' invoice to the Licensee. If HONetworks increases the Pole Rental Rate for any period, the Licensee may, notwithstanding clause 2.1 of this License, terminate this License by giving HONetworks written notice of termination within 30 days after having received from HONetworks the said notice of increase of the Pole Rental Rate for the next renewal period. The said notice of termination shall be effective on the expiry date of the Initial Term or the current one year renewal period, whichever may be applicable.

10.2 The Pole Rental Rate for any given year, during the Term of this License, shall be invoiced by HONetworks **on or before the first day of November** to the Licensee and the Licensee has the option of making a lump sum payment by no later than sixty (60) days after the invoice date or making payments of quarterly installments to be paid on or before the first day of each of January, March, June and September in each year.

10.3 For the purpose of the invoice payable pursuant to the terms and conditions of this License, HONetworks shall invoice the Licensee for and the Licensee shall pay HONetworks the Pole Rental Rate for the renewal period for all Attachments as contained in the inventory as of **September 30th of the year the invoice is prepared**.

10.4 The Licensee shall pay and indemnify and save harmless HONetworks against:

- a) the portion of any access fees or other fees, charges or costs imposed on HONetworks by the Ministry of Transportation, municipal corporations or other road authority for the construction, erection, maintenance, operation and/or removal of Joint Use Poles and other plant or equipment on applicable lands that are directly attributable to, relate to or connected with the presence of its Attachments on Joint Use Poles; and
- b) all taxes, rates, assessments, or fees of every nature and kind which are levied upon its Attachments designated on a Permit or any other taxes, rents, assessments or fees levied by reason of the rights granted to the Licensee by this License.

10.5 Throughout this License, any reference to HONetworks' costs means the actual charges for labour, materials and equipment plus applicable overheads. The above referenced charges and rates are those in effect at the time that the work is performed and materials are provided and will change from time to time during the term of this License.

11.0 DIVISION OF COSTS:

11.1 Except where expressly provided herein, both parties acknowledge and agree that the costs involved in erecting, placing, maintaining and otherwise dealing with the Joint Use Poles and Attachments shall be borne by or divided between each party or the parties respectively as outlined in the CAG.

12.0 UNAUTHORIZED ATTACHMENTS:

12.1 If at any time during the Term of this License an Attachment(s) is attached to the Joint Use Poles without a Permit(s) being approved by or on behalf of HONetworks for such Attachment(s), the Licensee shall remove the said unauthorized Attachment(s) as requested by HONetworks. Failing removal of said unauthorized Attachment(s) HONetworks shall have the right to forthwith remove any and all unauthorized Attachment(s) placed on the Joint Use Poles and to charge the Licensee for all costs incurred by HONetworks as a result of the removal of such unauthorized Attachment(s) on and from its Joint Use Poles. Where it is determined by HONetworks, in its sole and absolute discretion to be feasible to do so, the Licensee may submit a revised or new Application for Licensed Occupancy of Poles to reflect the Attachment(s). In the event the revised or new Application for Licensed Occupancy of Poles is approved by HONetworks, the said Attachment(s) become (s) authorized and may remain on the Joint Use Poles subject to the terms and conditions of this License.

12.2 In addition to the Pole Rental Rate payable for authorized Attachment(s) and the costs identified in clause 12.1 above, the Licensee agrees to pay to HONetworks the total Pole Rental Rate for any unauthorized Attachment(s) commencing from the date upon which the unauthorized Attachment(s) are placed on the Joint Use Poles or for a period of five years or five hundred dollars (\$500.00) whichever amount is greater, the total Pole Rental Rate being calculated by using the Pole Rental Rate for the current year for such Attachment(s).

12.3 The parties agree that the total Pole Rental Rate herein provided shall be deemed to be fair and just in the circumstances and shall be treated as liquidated damages and not as a penalty. Should the number of unauthorized Attachment(s) exceed 2% of the number of Attachments for which Permits have been granted, the Licensee will also pay to HONetworks its labour costs associated with the audit inspection wherein HONetworks discovered the unauthorized Attachment(s).

13.0 EXISTING RIGHTS OF OTHERS:

13.1 If HONetworks has granted to any other individual, partnership, corporation or any other entity that is not a party to this License, by contract or otherwise, rights or privileges to use any of its Joint Use Poles not covered by this License, nothing herein contained shall be construed as affecting such rights or privileges if and when this License is made applicable to such Joint Use Poles, and HONetworks shall have the right, by contract or otherwise, to continue and extend such existing rights or privileges.

14.0 LIABILITY, DAMAGE AND INDEMNIFICATION:

14.1 The Licensee does hereby assume all risk of damage to or loss of its Attachments howsoever caused, and does for itself and its successors and assigns hereby release and forever discharge HONetworks, its successors and assigns, its employees, agents, servants and representatives from all claims and demands with respect thereto except for such loss and damage caused by HONetworks' negligence. The Licensee does hereby fully indemnify and save harmless HONetworks, its successors and assigns, its employees, agents, servants and representatives of, from and against all damage, loss or injury to persons or property which may be suffered or which may hereafter be sustained or incurred by reason of, or in any way relating to, arising from, or based upon the exercise by the Licensee of the permission herein granted or the performance of or purported performance of or non-performance of the Licensee of any of its obligations or covenants in this License and all manner of actions, suits, causes of action, proceedings, charges, expenses, risks, liabilities, debts, obligations, duties, claims and demands in connection therewith, except where the foregoing is caused by HONetworks' negligence.

14.2 HONetworks does hereby fully indemnify and save harmless the Licensee, its successors and assigns, its employees, agents, servants and representatives of; from and against all damage, loss or injury to persons or property which may be suffered or which may hereafter be sustained or incurred by reason of the negligence of HONetworks and all manner of actions, suits, causes of action, proceedings, charges, expenses, risks, liabilities, debts, obligations, duties, claims and demands in connection therewith.

14.3 During the term of this License, the Licensee shall immediately notify HONetworks of any damage whatsoever to HONetworks' or a third party's equipment arising as a result of the Licensee affixing or maintaining any of its Attachments. The Licensee shall also immediately notify HONetworks of any claims received by the Licensee related in any way to its Attachments. HONetworks shall immediately notify the Licensee of any damage whatsoever to the Licensee's Attachments arising as a result of HONetworks replacing, Rearranging, Transferring, modifying, maintaining or repairing any of its Attachments.

14.4 Notwithstanding anything to the contrary in this License, HONetworks shall not be liable to the Licensee for any indirect or consequential damages or damages for pure economic loss.

14.5 Both parties acknowledge and agree that clauses 14.1, 14.2, 14.3 and 14.4 above shall survive termination of this License.

15.0 DISPUTE RESOLUTION:

15.1 HONetworks and the Licensee shall seek to resolve problems or concerns at the operational level, except in circumstances where an emergency exists as may be determined by HONetworks using Good Utility Practice, in which case this Section does

not apply. If such disputes or any other disputes related to this License are not resolved within thirty (30) days, either party may, by notice to the other, refer the dispute to a committee to be formed and to be comprised of two (2) representatives, one appointed by each party. If the two representatives cannot resolve the dispute within ten (10) days after referral to them, either party may seek such further recourse as they deem appropriate. Nothing in this Section serves as a waiver of any other rights or remedies that either party may have pursuant to this License, at law or equity.

16.0 INSURANCE:

16.1 The Licensee shall, during the Term of this Agreement, procure and maintain, at its own expense, insurance policies in which HONetworks is named as an additional insured in the amount of Five Million Dollars (\$5,000,000.00) against liability due to damage to HONetworks' property or property of any other person or persons and against liability due to injury to or death of any person or persons in any one instance. Such policies of insurance shall:

- a) contain a severability of interest clause and cross liability clause between the Licensee and HONetworks.
- b) be non-contributing with, and shall apply only as primary and not excess to any other insurance available to HONetworks;
- c) provide that it shall not be cancelled or amended so as to reduce or restrict coverage except upon thirty (30) days prior notice (by registered mail) to HONetworks.

The insurance referred to herein above shall contain a waiver of any rights of subrogation that the insurer may have against HONetworks, whether or not the damage is caused by the act, omission or negligence of HONetworks.

16.2 The Licensee shall, upon HONetworks' request, provide HONetworks with evidence, satisfactory to HONetworks, of the Licensee's compliance and continued compliance with Section 16.1.

16.3 The Licensee agrees that the insurance described in Section 16.1 herein does not in any way limit the Licensee's liability pursuant to the indemnity provisions of this License.

17.0 TERMINATION:

17.1 The permission granted by any Permit may be terminated by HONetworks: (i) if the Joint Use Pole(s) designated by such Permit is abandoned by HONetworks; or (ii) if HONetworks desires or must discontinue the use of the Joint Use Pole(s), and in either case, HONetworks shall provide the Licensee with at least ninety (90) days prior written notice thereof. If the Joint Use Pole(s) designated by such Permit(s) is sold, HONetworks may not transfer any Joint Use Pole unless as a condition of transfer the purchaser agrees to continue to allow the Attachment(s) thereon for the remainder of the Term.

17.2 If the Licensee defaults at any time in the payment of the Pole Rental Rate or fails to or neglects at any time to fully perform, observe and comply with all the terms, conditions and covenants herein, then HONetworks shall as soon as practicable, notify the Licensee in writing of such default and the Licensee shall correct such default to the satisfaction of HONetworks within thirty (30) days of the issuance of such notice or within a longer time period if agreeable to HONetworks, failing which HONetworks may forthwith terminate this License and the privileges herein granted.

17.3 HONetworks shall be entitled, at its option, to terminate this License immediately upon written notice to the Licensee upon the Licensee becoming bankrupt or insolvent or upon the Licensee ceasing to carry on business.

17.4 The termination of a Permit approved pursuant to this License shall not be deemed to be termination of this License unless such Permit is the last remaining or only Permit approved pursuant to this License in which case the termination of the Permit shall be deemed to be termination of this License.

17.5 Upon the termination of this License or of a Permit approved pursuant to this License, the Licensee shall at its sole expense and at the request of HONetworks, remove from the Joint Use Poles its Attachment(s) covered by this License, or by the terminated Permit within ninety (90) days after receipt of notice thereof or within a shorter period of time in case of an emergency as may be determined by HONetworks, failing which HONetworks may, at the Licensee's risk of damage to the Licensee's Attachment(s) and at the expense of the Licensee, remove such Attachment(s). Upon the removal of such Attachment(s) by HONetworks, HONetworks shall have the right to retain the Attachment(s) so removed until the Licensee pays the cost of removal thereof and if the Licensee fails to pay such costs within thirty (30) days of invoicing then HONetworks shall have the further right to sell the Attachment(s) so removed and apply the amount so received against the costs of removing the Attachment(s).

17.6 It is understood and agreed by both parties that any termination of this License shall not relieve either party of or from its obligations hereunder, save and except for the establishment of new Joint Use Agreement and notwithstanding any such termination, this License shall remain in full force and effect with respect to all Joint Use Poles used by the parties at the time of such termination until the use of such Joint Use Poles has been discontinued by HONetworks or the Licensee has removed its Attachments from such Joint Use Poles whichever shall first occur.

18.0 FAILURE TO COMPLY AND LATE PAYMENTS:

18.1 Failure of either party to enforce or insist upon compliance with any of the terms or provisions of this License shall not constitute a general waiver or relinquishment of any such terms or provisions, but the same shall be and remain at all times in full force and effect.

18.2 All invoices rendered by HONetworks in accordance with the terms and conditions of this License that are outstanding for longer than 60 days from the date of the invoice shall bear interest at 18% per annum.

19.0 FORCE MAJEURE:

19.1 Save and except for the payment of any monies required hereunder, neither party shall be deemed to be in default of this License where the failure to perform or the delay in performing any obligation is due wholly or in part to a cause beyond its reasonable control, including but not limited to an act of God, an act of any federal, provincial, municipal or government authority, civil commotion, strikes, lockouts and other labour disputes, fires, floods, sabotage, earthquakes, storms, epidemics, and an inability to perform due to causes beyond the reasonable control of the party. The party subject to such an event of force majeure shall promptly notify the other party of its inability to perform or of any delay in performing due to an event of force majeure and shall provide an estimate, as soon as practicable, as to when the obligation will be performed. The time for performing the obligation shall be extended for a period equal to the time during which the party was subject to the event of force majeure. Both parties shall explore all reasonable avenues available to avoid or resolve events of force majeure in the shortest time possible, but this requirement shall not oblige the party suffering the strike, lockout or labour dispute to compromise its position in such dispute.

20.0 RELATIONSHIP OF PARTIES:

20.1 Nothing in this License creates the relationship of principal and agent, employer and employee, partnership or joint venture between the parties. The parties agree that they are and will at all times remain independent and are not and shall not represent themselves to be the agent, employee, partner or joint venture of the other. No representations will be made or acts taken by either party which could establish any apparent relationship of agency, employment, joint venture or partnership and no party shall be bound in any manner whatsoever by any Licenses, warranties or representations made by the other party to any other person nor with respect to any other action of the other party.

21.0 NOTICE:

21.1 Any notice or other writing required or permitted to be given under this Agreement or for the purposes of it, to any party, shall be valid only if delivered in writing in accordance with this clause. Notices can be provided to:

in respect of the Licensee:

Name: _____

Address: _____

Fax: _____

in respect of HONetworks:

Hydro One Networks Inc.
Attn: Joint Use Manager
483 Bay Street 15th Floor, North Tower
Toronto, Ontario
M5G 2P5

The parties may change their respective addresses and addressees for delivery by delivering notices of such changes as provided herein. Notice sent accordingly shall be deemed delivered and received:

- (a) If delivered by hand, upon receipt;
- (b) If delivered by fax, 48 hours after the time of transmission, excluding from the calculation weekends and public holidays;
- (c) If delivered by overnight courier, four (4) days after the couriering thereof; and
- (d) If delivered by registered mail, six (6) days after the mailing thereof, provided that if there is a postal strike such notice shall be delivered by hand, or courier or fax.

22.0 NON-ASSIGNMENT:

22. Neither this License nor any rights, remedies, liabilities or obligations arising under it or by reason of it nor Permit(s) granted hereunder shall be assignable by the Licensee, without the prior written consent of HONetworks, which shall not be unreasonably withheld.

23.0 ENTIRE AGREEMENT:

23.1 This License, together with the CAG and other Schedules attached hereto, constitutes the entire agreement between HONetworks and the Licensee with respect to the matter herein and supersedes all prior oral or written representations and agreements.

24.0 AMENDMENTS:

24.1 No amendment, modification or supplement to this License shall be valid or binding unless set out in writing and executed by the parties with the same degree of formality as the execution of this License.

25.0 SEVERABILITY:

25.1 If any provision of this License is declared invalid or unenforceable by any competent authority such provision shall be deemed severed and shall not affect the validity or enforceability of the remaining provisions of this License, unless such invalidity or unenforceability renders the operation of this License impossible.

26.0 OTHER INFORMATION:

26.1 Each party shall at the other party's request and expense execute and do all such further acts and things as may be necessary to carry out the full intent and meaning of this License and the transactions contemplated thereby.

27.0 COUNTERPARTS:

27.1 This License may be executed in counterparts and the counterparts together shall constitute an original.

28.0 REASONABLENESS:

28.1 Each party agrees that it shall at all times act reasonably in the performance of its obligations and the exercise of its rights under this License.

29.0 APPLICABLE LAW:

29.1 This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Province of Ontario and the laws of Canada applicable therein and the Parties hereto irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario in the event of a dispute hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the signatures of their proper representatives duly authorized in that behalf.

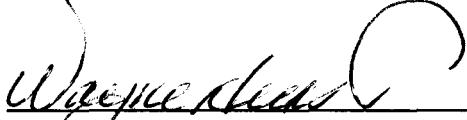
HYDRO ONE NETWORKS INC.

I have the authority to bind the Corporation.

Name: Laura Formosa

Title: Secretary


THE CORPORATION OF THE TOWN OF AMHERSTBURG



I have the authority to bind the Town

Name: WAYNE HURST

Title: MAYOR.


DAVID MAILLOUX
CLERK

SCHEDULE "A"

Contract Administration Guide ("CAG")

1.0 APPLICATION FOR JOINT USE

- 1.1 Whenever the Licensee desires to place Attachments on HONetworks' Poles, the Licensee shall submit to HONetworks an Application. The Licensee shall fully complete and submit to HONetworks a written or electronic Application, signed by its duly authorized officer (see sample attached hereto as Appendix 1). The location of the Joint Use Pole(s) in question and the number and kind of Attachments that the Licensee desires to place thereon shall be specified in the Application.
- 1.2 The location of Attachments on Joint Use Poles shall be reviewed and determined if appropriate by HONetworks at a joint field visit before Joint Use is established unless otherwise expressly agreed to by both parties. The usual position for Attachments will be on the roadside of Joint Use Poles. All of the Attachments will normally be on the same side of the Joint Use Pole to minimize climbing hazards and to facilitate pole replacement.
- 1.3 If HONetworks is willing to grant the permission requested in the Application, HONetworks shall signify its acceptance of the Application by affixing the signature of its duly authorized representative, upon the duplicate copy of the Application or electronic Application and shall return it to the Licensee and such accepted Application shall thereupon be and shall constitute a Permit hereunder.
- 1.4 Notwithstanding anything contained herein, it is understood and agreed by both parties that HONetworks may reject any Application it receives pursuant to clause 1.1; and when HONetworks rejects an Application, it shall return the duplicate thereof to the Licensee indicating thereon its rejection and the reason therefor. When the reason for rejection may be satisfied by the Licensee, the Licensee may re-submit the Application to HONetworks for re-consideration and if accepted by HONetworks such accepted Application shall thereupon be and shall constitute a Permit hereunder.
- 1.5 HONetworks shall return the Application to the Licensee either accepted or rejected within 30 days after receipt of the Application for installations up to and including 49 proposed Attachments or 60 days for larger Applications unless extenuating circumstances prevent HONetworks from doing so within this timeframe.
- 1.6 HONetworks may, at its discretion, require the Licensee to pay the costs of having HONetworks' employee(s) attend at the location of the poles designated on the Application to determine the following: (i) Make-ready Work required to accommodate the Licensee's Attachment(s); (ii) the cost of preparing an estimate of such Make-ready Work; and (iii) the cost of preparing an Application (if requested to do so by the Licensee).
- 1.7 Both parties acknowledge and agree that the permission to attach Attachments to the Joint Use Poles shall be deemed to be effective as of the date of the approval of each Permit approved by or on behalf of HONetworks.

1.8 Upon the request by the Licensee, HONetworks may, in its sole discretion, agree to rebuild, alter, add to or change the existing Joint Use Poles to accommodate the Attachments and the parties shall comply with the division of costs incurred as a result thereof in accordance with Decision Table 13.

1.9 Both parties acknowledge and agree that the application process shall consider existing safety hazards, route design, as well as imminent and future loading on the specified poles.

2.0 CONTRACTORS, OWNERS AND EMPLOYEES

2.1 Contractors may be used by HONetworks or the Licensee to do any work in connection with HONetworks' attachments on Joint Use Poles and the Licensee's Attachments respectively. Each party is responsible for retaining its own contractors and for ensuring compliance with the terms and conditions set out in the CAG and the Agreement for Licensed Occupancy of Power Utility Distribution Poles (the "Agreement").

2.2 Each party shall ensure that its employees, agents, representatives, contractors or subcontractors in the performance of the party's obligations and the exercise of the party's rights under the Agreement and the CAG:

- a) Comply with the Standards and all applicable laws, rules, orders, ordinances, regulations and other rules of all lawful authorities acting within their powers as well as the requirements of the Electrical Safety Authority;
- b) Comply with the placement, safety practices and specifications set out in the CAG;
- c) Are competent and qualified to deal with electrical hazards in accordance with the requirements of the *Occupational Health & Safety Act*, (Ontario) as amended and all applicable regulations thereunder including, without limitation, Construction Projects – O. Reg. 213/91 or Part 11 of the Canada Labour Code, R.S.C. 1985, c. L.2, as amended and all applicable regulations thereunder, whichever is more stringent.

2.3 A party shall not direct or supervise employees, agents, representatives contractors or subcontractors of the other party. Notice of violation or non-compliance given to a contractor shall also be provided at the same time or as soon as possible thereafter to an authorized representative of the party responsible for the contractor.

2.4 HONetworks may request from the Licensee and, within 30 days after receipt of such request, the Licensee shall provide to HONetworks, documentation in respect of processes and procedures that the Licensee and/or its contractors and subcontractors have in place to ensure that work on the Joint Use Poles is completed in a competent and safe manner.

3.0 OWNERSHIP IDENTIFICATION OF POLES

3.1 Pole markings are placed on all HONetworks Joint Use Poles to clearly indicate ownership, placement year, and pole test and treatment date as shown in Figure 3-1

below. The Joint Use Poles may also be marked with pole tag insignia to denote pole number, switch number, transformer location and other information. Any additional markings, desired by the Licensee, must first be approved by HONetworks.

- (a) Standard for installing dating nails; prior to June 4, 2003:

For Joint Use Poles 55 ft (16.8M) or less, the brands is 10ft (3.0M) from the butt. For Joint Use Poles over 55 ft, the brand is 14 ft (4.3 M) from the butt.



Note: Top diagram depicts nail with treatment year. Bottom diagram depicts nail with installation year.



- (b) New standard for installing dating nails; after June 4, 2003:

For Joint Use Poles 70 ft (21.3 M) or less, the brands is 10ft (3.0 M) from the butt. For Joint Use Poles over 70 ft, the brand is 15 ft (4.6 M) from the butt.



Note: Dating nails to be installed one above the other, e.g. 2003

It should be noted the dating nails are installed at or near the brand height.

Figure 3-1: HONetworks Owned Pole Marking

4.0 MARKING AND CORRECTION OF HAZARDOUS CONDITIONS

- 4.1 Hazardous Conditions identified by either party shall be corrected by HONetworks as soon as practicable and the Licensee shall cooperate as fully as possible for the said correction. Subject to Section 13.0 herein, Hazardous Conditions created by HONetworks' Joint Use Pole identified by either party shall be marked or banded in accordance with clause 4.2 below and shall be corrected by HONetworks. In the event of a potential or actual wide spread Hazardous Condition created by HONetworks on the Joint Use Pole, HONetworks shall notify the Licensee in writing of the potential safety risk and the nature of the Hazardous Condition. If the Hazardous Condition is created by the Licensee and the Licensee does not agree to pay for the costs to correct the said Hazardous Condition, HONetworks may remove the Licensee's Attachments at the Licensee's expense and at the sole risk of damage to the Licensee's Attachments. HONetworks shall be reimbursed by the Licensee for the said costs of removal within thirty (30) days of issuance of and invoice by HONetworks.
- 4.2 Defective or deteriorated Joint Use Poles and electrical Hazardous Conditions shall be marked by HONetworks as follows:

- (a) Electrical hazards: Red belted tag holder with tag
- (b) Structural hazards: Orange band or painted orange/red band around pole (4' to 5' above ground line.)

Note: HONetworks uses a red belted tag holder for work protection and under no circumstances shall anyone work above the red band.

5.0 CLEARANCES

- 5.1 The placement of Attachments shall meet or exceed the requirements as noted in the CAG.

6.0 SAFE CLIMBING CONDITIONS

- 6.1 The Licensee shall comply with the following requirements which are concerned primarily with the provision for safe climbing conditions:

- (a) Clearance from Base of Poles

No Licensee pedestal or other above ground fixture shall be installed above grade within 2.5m (8 ft.) of the base of a HONetworks Joint Use Pole. New Joint Use Poles should be located 3m away from above ground objects such as hydrants or fence posts.

- (b) Pole Mounted Attachments on a Pole

The Licensee's Attachments can include the following:

- (i) mast arms, luminaries, supply conductors, relays and other equipment required to operate a street lighting system
- (ii) traffic signal, power and control cables, junction and splice boxes and any other equipment and/or devices normally required for the operation of traffic signals
- (iii) service attachments
- (iv) decorative lighting
- (v) standards (banners down the side of poles)
- (vi) seasonal decorations.

For purposes of the Agreement, an Attachment does not include any material, apparatus, equipment or facility owned by the Licensee for the provision of Telecommunications Services and all such attachments shall require a separate License.

Metal signs presenting a thin knife-like edge will not be allowed on HONetworks' poles. These signs represent significant opportunity for injury if not removed when working aloft and are to be avoided.

The Licensee's Attachments shall be identified on the Application. Location on frequently climbed poles such as recloser, switch or transformer poles is to be avoided if

possible, although it is recognized that for roadway lighting, installation on these poles may be required. Subsidiary apparatus poles are the preferred alternatives.

Attachments that do not have access by aerial devices shall not be allowed on poles.

The space in which miscellaneous attachments can be installed is 2.5m (8 ft.) (lowest point of attachment) above grade to 1m (3ft.) feet below the telecommunication section on the pole. Attachments are limited to two per pole and may be permitted only if all safety and climbing conditions are met.

Banners and strings of lights extending from one pole to another, typically across the road allowance will not be allowed. These installations can be accommodated by the municipality installing separate poles with the proper back-guying to accommodate the banner and strings of lights.

(c) Size & weight of Attachments

The maximum size of any Attachment in or below communication space shall be 1m (3 ft) high by 0.3m (1 ft.) wide and a depth of 0.3m (1 ft.) for equipment not including standoff brackets that allow a minimum of 80mm (3 in.) space between the Joint Use Pole and the Attachment. The maximum size for a bracket mounted Attachment shall not exceed 2m (6ft) high by 1m (3ft.) wide and a depth of 0.7m (30in.). Attachments cannot exceed 80 pounds.

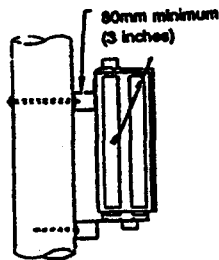


Figure 6.1: Attachments with Stand-off Brackets (where permissible)

Standards (banners down the side of poles) must be detachable at the bottom to minimize their impact on climbing the pole and will be required to have a proper mounting bracket at the top to securely attach to the pole. The mounting bracket should be sufficiently heavy to support the banner under all weather conditions and wide enough not to present a knife like edge in case of a falling accident. A rounded bracket is preferred.

(d) Structural /Material Composition

All Attachments shall be constructed and composed of a non flammable material and be supported by a bracket made of stainless steel, aluminum or aluminum alloy which is easy to remove from the pole.

(e) **Methods of attachment to the Pole**

Attachments to the Joint Use Poles shall be by means of stainless steel banding tape or galvanized clamp bands.

(d) **Location of Attachments on Pole**

Attachments must be mounted on the roadside of the Joint Use Pole to maximize safe climbing space. Vertical Attachments such as conductors, cables, and conduit shall be grouped together such that a minimum continuous surface of 60% of the Joint Use Pole circumference shall remain clear for climbing.

(e) **Special Poles**

Steel, concrete or wood poles treated with preservatives, which restrict climbing, prohibit normal construction and operational methods using conventional climbing practices. If normally accepted climbing practices cannot be employed, then the parties shall agree to an alternate method required to install and maintain their respective Attachments on the said poles.

(f) **Subsidiary Apparatus Pole**

Where required, the Licensee's apparatus pole shall be placed 'in line' and at least 3 meters (10 ft.) from a Joint Use Pole. The top of the apparatus pole should not extend more than 0.3m (1 ft.) above the Licensee's Attachment.

(g) **Separation of Aerial and Underground Facilities**

Separation of at least one meter from below ground facilities shall be maintained between centerlines of overhead and underground facilities to enable safe operating space for power augers during the replacement or addition of HONetworks' Joint Use Poles. The Licensee acknowledges that any encroachments of the one meter separation may cause a potential risk of future interruptions, cable damage and expense to repair for the Licensee.

7.0 GUYING AND ANCHORING

7.1 For streetlights and other miscellaneous attachments, additional guys and anchors are normally not required. If additional anchoring is required due to the Licensee's Attachments, the anchors and guys shall be installed by the Licensee and at the Licensee's expense.

7.2 The Licensee's anchors must be placed with a minimum separation of 1.5 m (5ft) from HONetworks' anchor.

7.3 Where separate anchoring is undesirable, the parties may cooperate to jointly study the feasibility of and, if agreeable to HONetworks, implement joint anchoring. If

HONetworks agrees to such joint anchoring, HONetworks will install such joint anchoring at the Licensee's expense.

- 7.4 When adding or changing guys and anchors, the installing party shall not affect the existing tension on the other party's guys or disturb existing anchors.
- 7.5 Crossing guy wires is undesirable, however, where it is unavoidable, the minimum clearance between crossing guys (the point at which two guys cross) shall be 80 mm (3in).

8.0 STRAIN INSULATORS

- 8.1 Strain insulators of the appropriate mechanical strength and voltage rating shall be installed on all down guys. Strain insulators on the Licensee's guys must be installed between 2.7 m to 3.6 m (8 to 12 feet) above ground and shall be installed by the Licensee. The Licensee's insulators must be maintained by the Licensee in safe working condition at all times.

9.0 POLE TOP EXTENSIONS

9.1 Description

Pole top extensions are made of solid epoxy resin fiberglass rod and may, at HONetworks' discretion, be installed by HONetworks at the pole top to raise the primary conductor in order to obtain the separation required at the higher voltage. An explanation will be provided in the case of denial.

9.2 Restriction

The pole top extension(s) are to be used only by HONetworks for tangent applications where a Joint Use Pole replacement would otherwise be necessary (i.e. they cannot be used on new construction).

10.0 BONDING AND CONNECTION

- 10.1 Bonding of all metal components (streetlight arm and head) with a minimum conductor size of #4 copper stranded is required and shall be adhered to by the Licensee.
- 10.2 The Licensee shall request any electrical connection required for new installations by contacting HONetworks.
- 10.3 The Licensee may employ a qualified worker or contractor to perform work on the streetlight system. Such workers may disconnect and reconnect any streetlight component connected from HONetworks' wires for maintenance purposes provided all rules, standards and Electrical Safety Authority requirements are complied with. Such qualified worker may also connect the #4 bond wire to the HONetworks electrical system, that may be absent from older installations.

- 10.4 The Licensee shall make all appropriate applications to the Electrical Safety Authority and shall provide all of the streetlight information to HONetworks to ensure accurate information is provided for energy billing and audit purposes.
- 10.5 The Licensee acknowledges that where the Attachments on Joint Use Poles constitute streetlights or other plant that consumes energy, the amounts charged for the energy consumption is usually based on a flat rate and is calculated using the lamp size and ballast losses.

11.0 ELECTRICAL INTERFERENCE AND OPERATION

- 11.1 If the Licensee's Attachments are causing electrical interference, the Licensee shall take the appropriate action at its sole expense to rectify the situation. The parties shall cooperate with each other to facilitate the Licensee's action to resolve such problems.
- 11.2 The Licensee shall ensure that photo cells properly operate and turn the streetlights off during daylight hours. The Licensee shall monitor this issue independent of HONetworks and shall develop a response mechanism that allows the repair of any such light in 5 working days from notice of constant operation.

12.0 JOINT PLANNING

- 12.1 Subject to clause 12.3 below, regular Joint Use meetings will be held annually to plan for new construction, re-construction, major changes and Line Clearing programs. Job progress and any problems that have developed since the previous meeting shall be discussed. HONetworks will use its best efforts to include all other third party owners of attachments.
- 12.2 Subject to clause 12.3 below, HONetworks agrees to provide the Licensee with the right to reserve extra space for its Attachments on Joint Use Poles during the design phase of placing, replacing or upgrading Joint Use poles. The Licensee agrees that prior to commencement of construction, the Licensee will confirm its Agreement to pay HONetworks the extra costs associated with the said extra space. HONetworks will issue an invoice for the extra cost and payment is due 60 days from the date the invoice is issued.
- 12.3 Both parties understand that due to the changing work environment, clauses 12.1 and 12.2 may not be an achievable goal and therefore do not hold each other liable in the event that the parties fail to comply with the obligations contained in the said clauses.

13.0 DIVISION OF COSTS (see Table 13)

If Make-ready Work is required, the cost of such work will be paid for as described below. Should a situation arise that is not adequately described in this section, HONetworks has sole discretion to determine the amount the Licensee will pay and the Licensee shall pay such amount when due. All final interpretations of the application of the policy described in this section will be as decided by HONetworks.

13.1 Joint Use Pole:

- (a) If a pole change(s) is required to establish Joint Use, the Make-ready Work required to accommodate the Licensee's request shall be charged to the Licensee and the Licensee shall pay all labour, payroll burden, specific overheads, either general construction or general administrative overhead, material, and sundry costs to install and relocate all HONetworks attachments. This actual cost shall be discounted 2% per year to a maximum of 75%. The per year is calculated using the year the new pole is installed minus the age of the replaced pole.

Example: $(2002 - 1972) \times 2\% = 40\%$
The Licensee shall pay the actual costs less 40%

13.2 Ceasing Joint Use:

- (a) Subject to clause 13.2(b) below, the cost of removing Joint Use Pole(s) is borne by HONetworks, who retains ownership of the Joint Use Pole(s) unless otherwise agreed to by the parties.
- (b) Where HONetworks has removed its attachments from a Joint Use Pole and has cut off the top of the Joint Use Pole above the Licensee's Attachments, the Licensee shall either acquire the Joint Use Pole (at a mutually agreed price or remove its Attachments from the said Joint Use Pole by no later than 60 days after the date of notification to the Licensee by HONetworks and the Licensee shall remove its Attachments at its own risk and expense.
- (c) Where the Licensee desires or is required to discontinue the use of Joint Use Poles or where the use of such Joint Use Poles has been terminated by cancellation of the Permit, the Licensee shall remove its Attachments, from the Joint Use Poles. The Licensee shall remove all such attachments within 90 days after receipt of notification to remove from HONetworks and if the Licensee fails to comply, HONetworks shall remove the Licensee's Attachments at the Licensee's expense and at the Licensee's risk of damage to the Licensee's Attachments.
- (d) If the Licensee wishes to modify, Rearrange, add to or remove its Attachments from Joint Use Poles, it shall notify HONetworks and submit a revised Application or cancel its existing applicable Permit accordingly. In the case of the Licensee's request for additional Attachments, HONetworks will inspect the Joint Use Poles at the Licensee's expense and review the revised Application in accordance with section 1.0 above.

13.3 Existing Joint Use - Cost re: Attaching, Transferring & Rearranging Attachments:

- (a) Licensee's Request
Where HONetworks is required to attach, Transfer or Rearrange its attachments solely for the purpose of establishing new Joint Use or adding to existing Joint Use, the Licensee shall pay the costs to attach, Transfer or Rearrange HONetworks' attachments.

(b) Third Party Requests to Remove, Replace or Relocate Poles

Where a third party requests the Licensee to Transfer or Rearrange its Attachments as a result of a request to remove, replace or relocate poles, the Licensee shall resolve any issues with respect to costs with the third party.

(c) Third Party Requests for Attachment

Where the Licensee or HONetworks is required to Transfer or Rearrange its Attachments or attachments respectively to accommodate a third party, the costs associated therewith shall be the responsibility of the third party.

(d) HONetworks' Requirement

Where a Transfer of the Licensee's Attachment(s) and HONetworks' attachments is involved in the replacement of Joint Use Poles due solely to the requirements of HONetworks, the Licensee and HONetworks shall bear the cost for the Transfer of the Licensee's Attachments and HONetworks' attachments respectively.

13.4 Extra Space - Replacement of Joint Use Poles:

(a) HONetworks' Requirement

Where extra space is required solely for HONetworks' purposes or as a result of requirements of a governing body with respect to HONetworks' attachments only, the existing Joint Use Pole shall be replaced at the sole expense of HONetworks. Each party shall bear the cost for the Transfer of its own Attachments respectively. Where the space occupied by the Attachments of the Licensee causes HONetworks to replace a Joint Use Pole with a higher Joint Use Pole to accommodate additional HONetworks attachments, then the Licensee shall pay the costs incurred by HONetworks to replace the Joint Use Pole. These costs will include an amount equal to the value of the existing Joint Use Pole, the cost of Transferring HONetworks' existing attachments (for example, equipment, regulator or recloser installations and switches) to the new Joint Use Pole and the cost of transferring the Licensee's own Attachments.

(b) Licensee's Requirement

Where extra space is required solely for the Licensee's purposes, or as a result of the requirements of a governing body with respect to the Licensee's Attachments only, the Licensee shall pay HONetworks' costs to supply and install the new Joint Use Pole and the costs to Transfer HONetworks' attachments.

(c) Both parties

Where extra space is required by both parties, the Licensee shall pay to HONetworks a sum equal to one half of the costs of installing a new Joint Use Pole. The Licensee and HONetworks shall be responsible for the Transfer of the Licensee's Attachments and HONetworks' attachments respectively and the costs associated therewith.

(d) Pole Replacements

In order to facilitate Joint Use Pole replacements, the Licensee or designated contractor may be required to attend during pole replacement to make any necessary Transfers at the same time.

(e) Reserving extra space

HONetworks agrees to provide the Licensee with the opportunity to reserve extra space for its Attachments on the Joint Use poles during the design phase of placing, replacing or upgrading the Joint Use Poles, provided that prior to the commencement of construction, the Licensee confirms its agreement to pay HONetworks for the costs associated with the said extra space thirty days after issuance of an invoice therefor by HONetworks. The said invoice shall be issued by HONetworks after completion of construction.

13.4 Inter-spaced Poles

Where a Joint Use Pole is added (interspaced) to an existing line of Joint Use Poles for the sole requirements of the Licensee, the cost of such new Joint Use Pole as well as HONetworks' attachment costs shall be paid by the Licensee. This new Joint Use Pole shall be the property of HONetworks. The applicable Pole Rental Rate shall be paid by the Licensee and the existing Permit shall be modified by the Licensee in both cases no later than 30 days after the Joint Use Pole is added. If the interspaced pole is required by both parties, it shall be installed by HONetworks, material and installation charges will be shared equally by both parties and each party will bear its own attachment costs.

13.5 Emergency Transfer of Attachments

From time to time HONetworks is required to perform work under emergency conditions to restore power. In these instances, the reconstruction of the poles can involve the transfer of the Licensee's Attachments to complete the work at the location. Under emergency conditions, HONetworks shall transfer the Attachments of the Licensee and invoice the Licensee for the associated costs and the Licensee shall pay said costs when due.

13.6 Written Cost Estimates and Invoicing:

Unless otherwise specifically provided herein, when HONetworks performs work which expense is to be borne in whole or in part by the Licensee, HONetworks, prior to performing the work, will prepare and provide the Licensee with a written cost estimate for labour, materials and miscellaneous expenses. When the written cost estimate is signed and returned to HONetworks, such estimate is considered a valid purchase order and shall form the basis for invoicing. Upon completion of the work, an invoice is rendered and becomes due and payable within sixty (60) days of issuance of the invoice. All invoices that are not paid by the relevant due date shall bear late payment interest charges at the prevailing late payment rate, currently 1.5% per month.

Division of Costs - Summary, Decision Table 13

TYPE OF WORK	REASON FOR WORK	PARTY PAYING
Supply and install pole	Provide pole for HONetworks' requirements	HONetworks
Joint planning re: new lines or re-located lines	joint coordination and previews	each party pays for own engineering services
Design time	if requested by Licensee	Licensee
Estimates by HONetworks	for Licensee's make ready	Licensee
Application for Licensed Occupancy of Poles form – review and approval by HONetworks	Caused by Licensee's new or revised Application	Licensee
Rearrange each party's attachments	Caused by Licensee	Licensee
Rearrange each party's attachments	caused by HONetworks	each party pays for its own costs to Rearrange
Pole top extension	Required for Licensee	Licensee
Crossarm	Required for Licensee	Licensee
Replace existing JU pole	Licensee's requirement	Licensee
Interspaced JU pole	Licensee's requirement	Licensee
Interspaced JU pole	HONetworks requirement third party requirement	each party bears own costs per Licensee's 3 rd party agreement
Pole removal	Ceasing Joint Use by HONetworks	HONetworks
Remove Licensee's Attachments	pole removal	Licensee
Replacement of pole with existing Attachments	Vehicle/storm damage, deterioration	each party bears own costs of transfers
Replacement of pole with existing Attachments	HONetworks' requirement, 3rd party requirement	each party bears own costs per respective 3 rd party agreement
Single pole replaced or added in non-joint use line	Common crossing for Licensee	Licensee
Attaching, Transfer or Rearrange HONetworks attachments	Accommodation of Licensee's Attachments	Licensee
Attach, Transfer or Rearrange HONetworks attachments	HONetworks request	each party pays own costs to Transfer its attachments
Remove safety hazards	safety requirement	party creating hazard
Make ready Line Clearing	for Licensee's attachments	Licensee
Maintenance Line Clearing	Routine Line Clearing	Licensee contributes in Pole Rental Rate
New Connection	Licensee's requirement	Licensee
Request for additional space	To reserve space on new construction	Licensee

14.0 LINE CLEARING

14.1 HONetworks shall carry out Line Clearing determined to be necessary for maintenance purposes on Joint Use Poles.

14.2 The Licensee's monetary contribution towards maintenance Line Clearing of Joint Use Poles which is incorporated in the Pole Rental Rate is based upon and recognizes the following:

- (a) HONetworks' incremental costs to maneuver in and around the Licensee's Attachments as part of maintenance Line Clearing around Joint Use Poles.
- (b) HONetworks' removal and clean-up of storm damaged trees along a line of Joint Use Poles.
- (c) Maintenance Line Clearing reduces costs for new or added Attachments.
- (d) Licensee's input and influence in the local Line Clearing program to meet joint requirements when feasible.
- (e) Joint interest in maintaining the integrity of HONetworks' neutral along a line of Joint Use Poles from tree-related damage.

14.3 The costs involved in make-ready Line Clearing determined by HONetworks as necessary to be carried out on Joint Use Poles shall be shared as follows:

- (a) Where Joint Use is to be established on existing HONetworks' poles or existing Joint Use Poles must be replaced for said purpose, all make-ready Line Clearing costs shall be borne by the Licensee. Tenders may be called by the Licensee and contracts may be awarded to HONetworks or to qualified forestry contractors for any make-ready Line Clearing required by the Licensee provided the work is done in compliance with HONetworks' Line Clearing specifications and the work is on a public road allowance. If HONetworks performs the make-ready Line Clearing, the costs for the make-ready Line Clearing shall be paid by the Licensee within 60 days of the date of the invoice issued by HONetworks therefor.
- (b) Where new Joint Use is to be created or an existing line of Joint Use Poles is re-located, make ready Line Clearing shall be performed by HONetworks. Notice shall be provided to the Licensee along with the estimate of the costs of the make-ready Line Clearing work to be performed. The cost of such Line Clearing for the new Joint Use Poles shall be shared 75% by HONetworks and 25% by the Licensee as will be provided for in an invoice to be issued by HONetworks. The Licensee shall pay the said costs to HONetworks within 60 days of the date of the invoice issued by HONetworks therefor.

15.0 LINE CLEARING PROGRAM

15.1 The following specifications are a standard for Line Clearing that shall be applied to all Joint Use Poles. Approved arboricultural practices shall be followed while still assuring plant safety and reliability.

- (a) Trees are to be pruned sufficiently to provide clearances with adequate provision to reach the next maintenance Line Clearing cycle, giving due consideration to tree species, growth, planned clearing cycles and location.
- (b) All pruner and saw cuts are to be made using the natural target pruning technique. All cuts will be made by drop crotch pruning to a lateral or parent limb, which should be at least one-third the diameter of the limb being removed.
- (c) Pruner and saw cuts need not be painted with tree wound dressing unless otherwise specified by HONetworks' Forestry representative.
- (d) All brush is to be removed from the site and disposed of appropriately.

16.0 PERMITS AND SAFETY AUDITS:

- 16.1 At such time as deemed necessary by HONetworks, Joint Use Poles will be audited by HONetworks or mutually, if agreed, in order:
- (a) To detect and subsequently correct all deficiencies within ninety (90) days or sooner except Hazardous Conditions which, except as otherwise specified in the Agreement or the CAG, in the case of an emergency require correction within thirty (30) days;
 - (b) To confirm that Joint Use is properly authorized by Permit; and
 - (c) To confirm the accuracy of Pole Rental Rates being charged.
- 16.2 Subject to the following, where an audit is carried out by both parties simultaneously, each party shall bear its own respective costs associated with the audit. Should an audit reveal that the number of unauthorized Attachments exceeds 2% of the number of Joint Use Poles for which Permits have been granted, then the Licensee will pay HONetworks' labour costs associated with the audit as well as applicable back rent for unauthorized Attachments as set out in the Agreement.
- 16.3 The Licensee will be responsible for making application and obtaining all permits required from the Electrical Safety Association and HONetworks for occupancy on the Joint Use Poles and for the connection of power.
- 16.4 The installation of any third party attachments other than those of the Road Authority or Municipality will require municipal approval prior to installation. Any such attachment made will be under the care and control of the Municipality and will follow the conditions outlined in the License and CAG.

APPENDIX 1

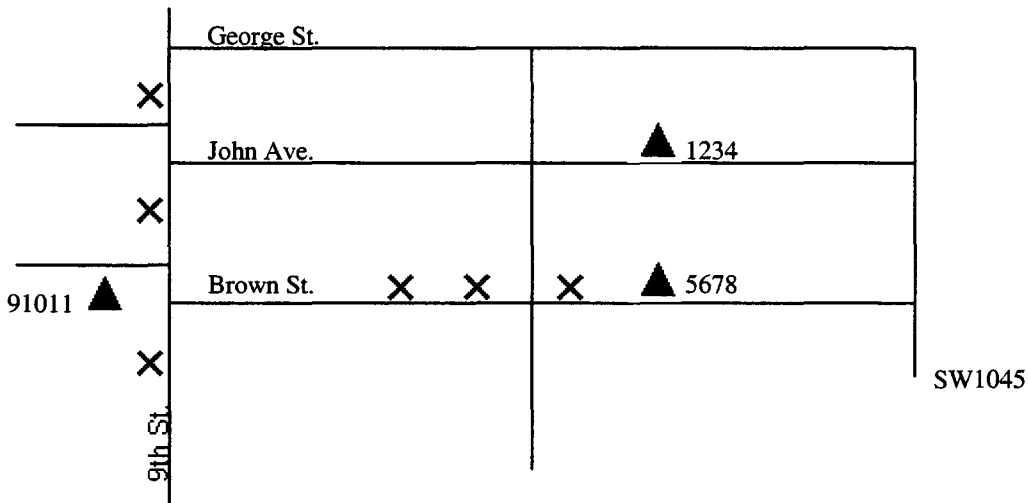


**APPLICATION FOR LICENSED OCCUPANCY OF POLES
(Draft example)**

NOTE: The Licensee agrees that all connected flat rate load information will be shared with the Licensee's energy supplier for the purpose of ensuring accurate energy billing.

*Please complete all boxes above the dotted line.

to be attached to and form part of the Agreement effective:		Licensee's project name/refer #	
		Supercedes Permit No. or "New"	
Permission is requested by City of Brockville	Signed: (by authorized Road Authority or Mun. rep)	Print Name and title:	
to place attachments as follows: (note specific quantity, size and nature of proposed attachment(s))			
3 X 70 W HPS PLUS 3 X 30 W BALLASTS on 9th Street			
3 X 100 W HPS PLUS 3 X 30 W BALLAST on Brown Street			
Desired Construction Target			
lot nos. (in or between)	Conc./street or road names 9th and Brown Street	Township/village or town of City of Brockville	county/municipality Leeds & Grenville



Please orient sketch to the north, show occasional HONetworks transformer numbers and adjacent Permit numbers-

Approved (HONetworks)	Legend	No. of full rental poles
Name and Title (please print)	X = Rental Pole	
Operations manager or designate: Operations/ Front Line Manager		
Operations Centre Brockville SC	Permit no. 97-1	
Date	Other internal project YES	NO

SCHEDULE "B"



APPLICATION FOR LICENSED OCCUPANCY OF POLES

NOTE: The Licensee agrees that all connected flat rate load information will be shared with the Licensee's energy supplier for the purpose of ensuring accurate energy billing.

*Please complete all boxes above the dotted line.

to be attached to and form part of the Agreement effective:		Licensee's project name/refer #	
		Supercedes Permit No. or "New"	
Permission is requested by	Signed:	Print Name and title:	
to place attachments as follows: (note specific quantity, size and nature of proposed attachment(s))			
Desired Construction Target			
lot nos. (in or between)	Conc./street or road names	Township/village or town of	county/municipality

* Please orient sketch to the north, show occasional HONetworks transformer numbers and adjacent Permit numbers

Approved (HONetworks)	Legend	No. of full rental poles
Name and Title (please print)		
Operations manager or designate:		
Operations Centre	Permit no.	
Date	Other internal project	



Seasonal Decorative Lighting Information for Billing Purposes

Municipality / Community	Fixture Type*	Date Normally Installed	Date Normally Removed	Hours per Day "ON" **	# of Fixtures	# of Bulbs per Fixture	Wattage of Bulbs

Notes:

* e.g. strings of Christmas tree lights, mini-lights or rope lighting; decorations (wreaths, etc) with lights etc.

** Please note if lights are controlled by photo-eye or timer.

**Completed by
(Name):** _____

Title: _____

Telephone number: _____

Date _____

**Please return to
Hydro One Networks Inc.**

