

Bill No. 287
2018

By-law No. A.-_____

A by-law to approve an agreement between The Corporation of the City of London and Southwestern Integrated Fibre Technology Inc. (SWIFT) regarding funding in order to advance the development of the SWIFT Network.

WHEREAS section 2 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, ("*Municipal Act, 2001*") provides that municipalities are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction and each municipality is given powers and duties under the *Municipal Act, 2001* for the purpose of providing good government with respect to those matters;

AND WHEREAS subsection 5(3) of the *Municipal Act, 2001* provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 8 of the *Municipal Act, 2001* provides that the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

AND WHEREAS subsection 9 of the *Municipal Act, 2001* provides that the City has the capacity, rights, powers and privileges of a natural person for the purposes of exercising its authority under the *Municipal Act, 2001* or any other Act;

AND WHEREAS subsection 10(1) of the *Municipal Act, 2001* provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS subsection 10(2) of the *Municipal Act, 2001* provides that a municipality may pass by-laws respecting: in paragraph 4. Public assets of the municipality acquired for the purpose of exercising its authority under this or any other Act; in paragraph 5. Economic, social and environmental well-being of the municipality; in paragraph 6. Health, safety and well-being of persons; in paragraph 7. Services and things that the municipality is authorized to provide under subsection (1); in paragraph 10. Structures;

AND WHEREAS subsection 106(1) of the *Municipal Act, 2001* provides that a municipality shall not assist directly or indirectly any commercial enterprise through the granting of bonuses for that purpose;

AND WHEREAS subsection 107 of the *Municipal Act, 2001* provides that, subject to section 106, a municipality may make grants to any person, group or body, including a fund, within or outside the boundaries of the municipality for any purpose that council considers to be in the interests of the municipality;

AND WHEREAS Municipal Council of The Corporation of the City of London considers it to be in the interests of the municipality to contribute the sum of \$690,000.00 to SWIFT to advance the development of dark fibre in southwestern Ontario including in the geographic area of the City of London;

AND WHEREAS subsection 110(1) of the *Municipal Act, 2001* provides that the section applies to an agreement entered into by a municipality for the provision of municipal capital facilities by any person, including another municipality, if the agreement provides for assistance provided for in subsection 110(3);

AND WHEREAS subsection 110(3) of the *Municipal Act, 2001* provides that, despite section 106, a municipality may provide financial or other assistance at less than fair market value or at no cost to any person who has entered into an agreement to provide facilities under this section and such assistance may include, (a) giving or lending money and charging interest; (b) giving, lending, leasing or selling property; (c) guaranteeing borrowing; and (d) providing the services of employees of the municipality;

ANDWHEREAS subsection 3(1) of Ontario Regulation 603/06 under the *Municipal Act, 2001* provides that the class of municipal capital facilities described in section 2 of the Regulation are also eligible municipal capital facilities for the purpose of assistance under subsection 110(3) of the Act;

ANDWHEREAS subsection 3(2) of Ontario Regulation 603/06 under the *Municipal Act, 2001* provides that no municipal capital facilities other than those in the classes described in subsection 2(1) of the Regulation are eligible for assistance under subsection 110(3) of the Act;

ANDWHEREAS subsection 2(1) of Ontario Regulation 603/06 under the *Municipal Act*, lists the various classes of municipal capital facilities including: paragraph 5. Municipal facilities related to the provision of telecommunications;

AND WHEREAS subsection 110(4) of the *Municipal Act, 2001* provides that the assistance shall only be in respect of the provision, lease, operation or maintenance of the facilities that are the subject of the agreement;

AND WHEREAS subsection 110(5) of the *Municipal Act, 2001* provides that, upon the passing of a by-law permitting a municipality to enter into an agreement under this section, the clerk of the municipality shall give written notice of the by-law to the Minister of Finance;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The agreement to be entered into between The Corporation of the City of London and Southwestern Integrated Fibre Technology Inc. (SWIFT) in which the City provides funding in order to advance the development of the SWIFT Network, substantially in the form attached as Schedule "A" to this By-law, is approved.
2. The Mayor and the City Clerk are hereby authorized to execute the agreement approved in section 1 above.
3. The City Clerk be authorized to give written notice of this by-law to the Minister of Finance pursuant to subsection 110(5) of the *Municipal Act, 2001*.
4. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on June 26, 2018.

Matt Brown
Mayor

Catharine Saunders
City Clerk

SCHEDULE "A"

THIS AGREEMENT MADE THIS 1st DAY OF JULY, 2018.

BETWEEN:

THE CORPORATION OF THE CITY OF LONDON
(hereinafter referred to as the "Municipal Member")

- and -

SOUTHWESTERN INTEGRATED FIBRE TECHNOLOGY INC.
(hereinafter referred to as "SWIFT")

WHEREAS SWIFT, a not-for-profit, non-share capital corporation incorporated under the laws of Canada, has been formed by upper and single tier municipalities to facilitate the construction and interconnection of an ultra-high-speed, open access fibre optic network (the "**SWIFT Network**"), which SWIFT anticipates will include the development of a core fibre backbone, multiple local access fibre branches, and numerous new Points of Presence ("**PoPs**"), throughout southwestern Ontario, Caledon and Niagara (the "**Regions**");

AND WHEREAS the SWIFT Network is intended to enhance the prosperity and overall well-being of communities within the Regions by subsidizing private telecom service providers' ("**TSPs**") network infrastructure costs so they may provide service to residents, businesses, public service organizations, First Nations and other user groups and ultimately provide equitable access to ubiquitous fibre optic infrastructure;

AND WHEREAS the SWIFT Network will be built and operated by the TSPs, owned by the TSPs (subject to any conditions of the federal and provincial funding described below), and overseen by SWIFT;

AND WHEREAS the estimated initial costs of the SWIFT Network are \$288 million (the "**Initial Costs**"), which will be funded as follows:

- (a) the Government of Canada and the Province of Ontario have collectively committed to fund \$180 million of the Initial Costs;
- (b) the counties and municipalities listed on Schedule "A" hereto (the "**Municipal Partners**") have collectively committed to fund **\$17,018,735** of the Initial Costs (the "**Municipal Funding**");
- (c) other municipalities will fund up to an additional \$3,000,000; and
- (d) the TSPs will fund the remaining Initial Costs;

AND WHEREAS the Municipal Partners and the other funding municipalities noted above will benefit from a multiplier of 14:1 or better on a regional basis for their investments in the development of the SWIFT Network, as the total expenditures on the development of the SWIFT Network will equal at least fourteen (14) times the amount of the cumulative contribution by the Municipal Partners and other funding municipalities;

AND WHEREAS in order to advance the development of the SWIFT Network, the Municipal Member has agreed to contribute to SWIFT \$690,000 of the Municipal Funding (the "**Member Contribution**");

AND WHEREAS in consideration for the Member Contribution (and subject to the Municipal Member contributing the full amount of the Member Contribution to SWIFT in accordance with the terms of this Agreement), SWIFT shall facilitate the construction and interconnection of the SWIFT Network, with the total expenditures on the SWIFT Network serving the geographic area of the City of London (the "**Municipal Member's Territory**") being equal to at least four (4) times the amount of the Member Contribution;

AND WHEREAS once the SWIFT Network becomes operational, a portion of the revenues of the TSPs derived from the SWIFT Network (such portion to be agreed between SWIFT and the TSPs) will be paid to SWIFT, aggregated in a Broadband Development Fund, and used by SWIFT to fund expansion of the SWIFT Network by the TSPs throughout the Regions;

NOW THEREFORE IN CONSIDERATION OF THE PREMISES AND MUTUAL COVENANTS HEREIN CONTAINED AND OF OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED BY EACH PARTY, THE PARTIES COVENANT AND AGREE AS FOLLOWS:

1. The Municipal Member shall pay the member contribution set out in Schedule “B” (the “**Member Contribution**”) to SWIFT, for the purposes of advancing and developing the SWIFT Network, provided that the Municipal Member shall only pay such Member Contribution once SWIFT makes the Municipal Member a Contributing Member of SWIFT (as defined in SWIFT By-Law No. 1).
2. The Municipal Member shall pay SWIFT the Member Contribution in annual installments, on such dates and in such amounts set out on Schedule “B” hereto, against receipt by the Municipal Member of invoices from SWIFT therefor.
3. In consideration for the Member Contribution (and subject to the Municipal Member contributing the full amount of the Member Contribution to SWIFT in accordance with the terms of this Agreement), SWIFT shall ensure that the total expenditures by SWIFT and the TSPs on developing SWIFT funded Infrastructure for the SWIFT Network to serve the Municipal Member’s Territory equal at least four (4) times the amount of the Member Contribution.
4.
 - 4.1 The Municipal Member shall provide input and feedback to SWIFT, as requested by SWIFT from time to time, regarding the points of presence and fibre cable plant locations to be established within the Municipal Member’s Territory as part of the SWIFT Network. SWIFT shall otherwise be responsible for coordinating the development of the SWIFT Network with the TSPs.
 - 4.2 The Municipal Member shall provide SWIFT a specific list or map of the areas within the Municipal Member’s Territory deemed by the Municipal Member to be most in need of SWIFT Network infrastructure (the “**Target Areas**”).
 - 4.3 SWIFT shall facilitate the construction and interconnection of the SWIFT Network, with the total expenditures on the SWIFT Network serving the Municipal Member’ Territory being equal to at least four (4) times the amount of the Member Contribution.
 - 4.4 SWIFT shall endeavor to work with the Municipal Member to prioritize investment in the Target Areas.
 - 4.5 SWIFT shall complete construction of the portion of the SWIFT Network located in the Municipal Member’s Territory no later than December, 2022.
5. SWIFT shall procure services of TSPs in an open, public and competitive manner in accordance with the Broader Public Sector Procurement Directive of the Management Board of Cabinet dated July 01, 2011.
6. SWIFT may only use the Member Contribution in respect of the provision, lease, operation or maintenance of the SWIFT Network, pursuant to subsection 110(4) of the *Municipal Act, 2001*.
7. SWIFT shall inform the Municipal Member of the progress of the SWIFT Network by delivering a report to the Municipal Member on a semi-annual basis, which report shall include financial information and information about the status of procurement, construction and operation of the SWIFT Network.
8. A portion of the revenues derived from the SWIFT Network will be reinvested by SWIFT to accelerate or further expand the development of the SWIFT Network. In accordance with the conditions of its federal and provincial funding, SWIFT will own at least 51% of the SWIFT Network for the first seven (7) years following construction completion.
9. If SWIFT, in its sole discretion, elects at any time not to proceed with the construction and interconnection of the SWIFT Network, or if SWIFT breaches any of its obligations under this Agreement, then the Municipal Member may terminate this Agreement, and in such event SWIFT shall refund to the Municipal Member the portion of the Member Contribution received by SWIFT, less the Municipal Member’s proportionate share of SWIFT’s administrative and consulting costs incurred to the date of such refund.

10. If the Municipal Member breaches any of its obligations under this Agreement, then SWIFT may terminate this Agreement, and in such event the Municipal Member (i) shall not be entitled to any refund of any portion of the Member Contribution paid to SWIFT and (ii) shall be liable for any unpaid portion of the Member Contribution if SWIFT has entered into one or more agreements for the development of the SWIFT Network to serve the Municipal Member's Territory in accordance with this Agreement.
11. All of the terms of this Agreement shall be binding upon and shall ensure to the benefit of the parties hereto and their respective successors and assigns.
12. Time shall be of the essence herein.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their officers properly authorized in that behalf on the day and year first written above.

SIGNED, SEALED AND DELIVERED

**THE CORPORATION OF THE CITY
OF LONDON**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Municipal Member.

**SOUTHWESTERN INTEGRATED
FIBRE TECHNOLOGY INC.**

Per: _____
Name: Gerry Marshall
Title: Chair

Per: _____
Name: Geoff Hogan
Title: CEO

I/We have the authority to bind SWIFT.