

Bill No. 392
2017

By-law No. A.- _____

A By-law to authorize a Joint Use Agreement between The Corporation of the City of London and the University of Western Ontario; and to authorize the Mayor and City Clerk to execute the Agreement.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

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

AND WHEREAS it is deemed expedient for The Corporation of the City of London (the "City") to enter into a Joint Use Agreement with the University of Western Ontario for access to City owned conduit pathways (the "Agreement");

AND WHEREAS it is appropriate to authorize the Mayor and City Clerk to execute the Agreement on behalf of the City;

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

1. The Agreement attached as Schedule "A" to this By-law, being a Joint Use Agreement with the University of Western Ontario for access to City owned conduit pathways is hereby AUTHORIZED AND APPROVED.
2. The Mayor and City Clerk are authorized to execute the Agreement authorized and approved under section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on September 5, 2017.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading – September 5, 2017
Second Reading – September 5, 2017
Third Reading – September 5, 2017

Schedule "A"

Conduit Pathway Joint Use Agreement

This Agreement made as of the 31st day of October, 2017

BETWEEN:

The University of Western Ontario
("WESTERN")

and -

The Corporation of the City of London
(the "City")

WHEREAS the City owns a conduit pathway in various road allowances within the city:

AND WHEREAS WESTERN has requested access to specific portions of the pathway for use with installation of ONE 48 strand single mode Fiber Optic Cable, maintenance and emergency access of that one Fiber Optic Cable.

AND WHEREAS the City has agreed to grant to WESTERN a non-exclusive license to install fiber optic cable in the conduit pathway on the terms contained herein;

NOW THEREFORE in consideration of the covenants herein contained and other valuable consideration now paid by WESTERN to the City, the receipt and sufficiency of which is hereby acknowledged, the city grants to WESTERN the non-exclusive right to install and maintain fiber optic cable in its conduit pathway in the locations hereinafter described,

1. Locations

WESTERN shall have permission to access the following conduit for the purpose of installing and maintaining its fiber optic cable:

- a. Downtown Pathway:
 - i. From the North East junction box at Wellington Street and Dufferin Avenue to the basement communications closet of 267 Dundas Street.
- b. Veterans Memorial Pathway:
 - i. Oxford Street at Veterans Memorial Parkway, south to Bradley Avenue.

2. Eligible Users

The following persons shall be permitted access to the conduit pathway locations identified in this Agreement for the purposes of carrying out the terms of this Agreement:

- a. City employees, agents and representatives;

- b. WESTERN employees, agents and representatives, but only while under supervision of City employees, agents or representatives.

When WESTERN discovers any traffic signal or street light wires present in the duct or handhold they agree to immediately request the presence of the City before any investigation, work or other activity occurs.

WESTERN agrees that only qualified, insured Sub-contractors will be permitted to perform work described under 3. Eligible Activities. The City communications Cabling Vendor of record to be utilized if available.

Any party requiring access will be registered with the City, prior to the access — see 4. Access Contacts.

3. Eligible Activities

WESTERN shall be authorized to carry out the following activities in connection with its use of the conduit pathway:

- Cable Installation one time unless replacement required
- Emergency locate and break/fix access
- Occasional maintenance and inspection

WESTERN agrees to pay any costs incurred to "make ready" the conduit pathways, pull points or structure(s) during installation, with prior approval from City. WESTERN is also responsible to ensure that the City is present during any of the above activities and should City-owned property be damaged, to reimburse the City for all costs associated with all necessary repairs performed by or on behalf of the City.

The City communications Cabling Vendor of record to be utilized if available.

4. Access Contacts

Prior to accessing or installing any cable within the conduit WESTERN shall contact the individuals identified in Schedule A attached hereto.

5. Insurance and Hold Harmless

WESTERN agrees to

- a) obtain and maintain at its own expense general liability insurance in a limit not less than \$10,000,000 per occurrence against loss or damage resulting from bodily injury to or death and loss of or damage to property arising in connection with this Agreement. Such policy shall include non-owned automobile liability, personal injury, broad form property damage, contractual liability, owners' and contractors' protective, products and completed operations, contingent employers liability, cross liability and severability of interest clauses and the City as an additional insured;
the City reserves the right to request such higher limits of insurance or other types of policies appropriate to this Agreement as the City may reasonably require;
Provide the City with evidence of insurance on the City's standard form .0788 before any work can be performed
- b) indemnify, defend and hold harmless the City from and against any and all third party claims, demands, lawsuits, causes of action, losses, damages, liabilities, costs and expenses, including reasonable attorney's fees, related to or arising out of the Agreement; and
- c) promptly notify the City of any damage, losses or claims, and to cooperate with the defense and settlement of any such claim;

6. Change Management

Any changes or work performed on said conduit pathways will be governed by the City IT Change Advisory Board (CAB).

7. Term and Termination

- a. This Agreement shall be for a term of five (5) years commencing on the date first written above.
- b. Within the first two years of this agreement, the City may only terminate the agreement pursuant to clause 7(c). Thereafter the City may terminate the agreement at any time for any reason by giving at least one hundred and eighty (180) days advance written notice to WESTERN.
- c. The City may terminate this agreement if WESTERN:
 - i. breaches any condition of this Agreement
 - ii. becomes insolvent;
 - iii. executes an assignment for the benefit of creditors;
 - iv. files or has filed against it a petition under any applicable bankruptcy law;
 - v. applies for or has applied for on its behalf a receiver;
 - vi. has a receiver appointed for it by a creditor; or
 - vii. ceases to carry on business.
- d. Upon the termination of this agreement, for any reason, the City becomes owner of any fiber assets installed in said conduit pathways, unless the City and WESTERN mutually agree to have them removed. In such case, WESTERN agrees to remove fiber assets it owns within ninety (90) days of the termination becoming effective at its expense.

8. Binding Nature

This Agreement is binding and ensures to the benefit of the parties, their successors and permitted assigns.

9. Waiver

Waiver of any default or breach of this Agreement by either party shall not be construed as a waiver of either a subsequent or continuing default. Termination of this Agreement shall not affect a party's liability by reason of any act, default, or occurrence prior to such termination, nor shall it preclude the non-defaulting party from exercising or pursuing any other right or remedy as may be available to it at law or in equity, including a suit for damages or specific performance.

10. Complete Agreement

This Agreement contains the complete and exclusive statement of the agreement between the parties and supersedes all prior and contemporaneous agreements, understandings, proposals, negotiations, representations or warranties of any kind whether written or oral. No oral or written representation that is not expressly contained in this Agreement is binding on either party. This Agreement cannot be amended or modified, other than by a change made in writing, dated and executed by the parties. Time shall be of the essence in this Agreement.

11. Severability

All sections, terms and provisions of this Agreement are severable, and the unenforceability or invalidity of any of these parts of this Agreement shall not affect the validity or enforceability of any other part of this Agreement. If any court or arbitrator of competent jurisdiction determines that any provision in this Agreement is invalid or unenforceable, it is the intention of the parties that the court or arbitrator either partially enforce such provision to the extent enforceable or modify such provision so as to render it valid or enforceable.

12. Independent Contractors

The City and WESTERN are independent contractors, each in full control of its own business. This Agreement does not establish a joint venture or partnership between the City and WESTERN. Neither party is the agent of the other nor does either have the authority to bind the other in respect of any third party. Neither party will under any circumstances hold itself out to be a partner, employee, franchisee, legal representative, servant or agent of the other.

IN WITNESS WHEREOF this Agreement has been executed by the parties as of the date first set forth above.

THE UNIVERSITY OF WESTERN ONTARIO

ASSOCIATE VP -- PLANNING, BUDGETING, & I

Title

R. Chelladurai

Signature

I/we have the authority to bind the corporation

THE CORPORATION OF THE CITY OF LONDON

Matt Brown, Mayor

Catharine Saunders, City Clerk

SCHEDULE A

Access Contacts

Downtown Pathway:

Installation:

Prior to accessing or installing and cable within the conduit, the following parties will be notified: City Of London:

IT:

- Contact A: Manager, Network Services 519-854-4959
- Contact B: Manager, Core Systems 519-854-4757
- Contact C: Director, ITS 226-919-6167

Roadway Lighting & Traffic Control:

- Contact A: Traffic Signal and Street Light Technologist 226-448-8166
- Contact B: Guild Electric 519-808-0538

Emergency and After Hours:

In the event of Emergency, for the purposes of immediate access to the conduit:

City Of London:

IT:

- Contact A: Manager, Network Services 519-854-4959
- Contact B: Manager, Core Systems 519-854-4757
- Contact C: Director, ITS 226-919-6167

Roadway Lighting & Traffic Control:

- Contact A: Traffic Signal and Street Light Technologist 226-448-8166
- Contact B: Guild Electric 519-808-0538

Veterans Memorial Pathway:

Installation:

Prior to accessing or installing and cable within the conduit, the following parties will be notified: City Of London:

Roadway Lighting & Traffic Control:

- Contact A: Traffic Signal and Street Light Technologist 226-448-8166
- Contact B: Guild Electric 519-808-0538
- Contact a 24/7 Hotline 519-661-2641

Emergency and After Hours:

In the event of Emergency, for the purposes of immediate access to the conduit: City Of

London:

Roadway Lighting & Traffic Control:

- Contact A: Traffic Signal and Street Light Technologist 226-448-8166
- Contact B: Guild Electric 519-808-0538
- Contact C: 24/7 Hotline 519-661-2641