

Bill No. 38
2018

By-law No. A.- _____

A by-law to authorize and approve a Memorandum of Understanding between The Corporation of the City of London and each of London Hydro Inc. and Bell Canada; and to authorize the Mayor and the City Clerk to execute the Memorandum of Understanding.

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 The Corporation of the City of London (the "City") plans to reconstruct Dundas Street between Ridout Street and Wellington Street beginning in 2018 to a flexible street to be known as Dundas Place (the "Project");

AND WHEREAS the Project will provide utility companies, including London Hydro Inc. and Bell Canada, with a cost-effective opportunity for infrastructure renewal and upgrades;

AND WHEREAS London Hydro Inc. and Bell Canada have expressed a desire to undertake the replacement of their existing infrastructure;

AND WHEREAS it is deemed expedient for the City to enter into a Memorandum of Understanding (the MOU's) with each of London Hydro Inc. and Bell Canada to confirm the responsibilities of each party in the Project;

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

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

1. The Memorandum of Understanding between The Corporation of the City of London and London Hydro Inc. attached as "Schedule 1" to this by-law is hereby authorized and approved.
2. The Mayor and the City Clerk are authorized to execute the MOU's authorized and approved under section 1 of this by-law.
3. The Memorandum of Understanding between The Corporation of the City of London and Bell Canada attached as "Schedule 2" to this by-law is hereby authorized and approved.
4. The Mayor and the City Clerk are authorized to execute the MOU's authorized and approved under section 2 of this by-law.
5. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on January 16, 2018.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading – January 16, 2018
Second Reading – January 16, 2018
Third Reading – January 16, 2018

“Schedule 1”

Memorandum of Understanding

made this day of , 2017 between

London Hydro Inc. (“Hydro”)

and

The Corporation of the City of London (the “City”)

BACKGROUND:

1. The City plans to reconstruct Dundas Street between Ridout Street and Wellington Street beginning in 2018 to a flexible street to be known as Dundas Place including the installation of premium surface treatments and street furniture (the “Project”);
2. The City completed an environmental assessment for the project in 2017;
3. The project will include the replacement of water mains, pavements, sidewalks and other structures and features (“City Work”);
4. The Project will provide utility companies including Hydro with a cost-effective opportunity for infrastructure renewal and upgrades;
5. London Hydro has expressed a desire to undertake the replacement of existing electrical infrastructure including electrical distribution duct banks, manholes, vaults and wiring as part of the Project (“Hydro Work”);
6. The Project will create a premium surface and future excavations after completion of the project will be strongly discouraged;
7. The parties wish to establish the terms under which they have agreed to proceed with the Project.

UNDERSTANDING AND AGREEMENT OF THE PARTIES:

1. The City will issue a single consolidated tender for the Project which will include the City Work, the Hydro Work and work by other utility companies.
2. The tender will be awarded to the contractor with the lowest compliant bid regardless of individual cost apportionment between the parties and other utility companies in accordance with the City of London Procurement of Goods and Services Policy.
3. The City and its consultant contract administrator will be the sole administrator of the construction contract. The City will manage the contract with input from Hydro and other utility companies.
4. Hydro agrees to pay for the actual cost of the Hydro Work and its share of other actual Project costs in accordance with the cost-sharing in the attached schedule. The attached schedule provides pre-tender estimated costs and these will be updated with tender costs following tender close. The City will act as the administrator for London Hydro with respect to applicable taxes related to London Hydro’s share of the work.
5. Expenditure of the contract contingency funds will be assessed according to the type of work (City Work, Hydro Work and work by other utility companies)

triggering the expenditure and invoiced to Hydro only as expended. The expenditure of contingency funds must be approved prior to work being completed in accordance with an approved change order process.

6. London Hydro will make monthly progress payments to the City during the duration of the contract based on the costs incurred based on the cost sharing described in paragraph 4 above.
7. The parties agree to indemnify and hold each other and their respective employees, officers, directors, agents and representatives harmless from and against all liability for all damages of any nature whatsoever, including any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, which is caused by or directly attributable to the negligent or wrongful act of indemnifying party, its employees, officers, directors, agents and representatives for which it may be responsible in the performance of its obligations hereunder, but only to the extent and in proportion to the negligence or fault of indemnifying party.

This MOU sets out the terms under which Hydro and the City have agreed to proceed with the Project. The parties agree to negotiate in good faith and to use their respective best efforts to conclude the necessary agreements to give effect to the terms of this MOU.

IN WITNESS WHEREOF the parties hereto have executed this MOU.

THE CORPORATION OF THE CITY OF LONDON

Per: _____
Mayor Matt Brown

Per: _____
Catharine Saunders, City Clerk

LONDON HYDRO INC.

Per: _____

Per: _____
we have authority to bind the Corporation

Schedule showing estimated Hydro costs for Project

	Work Component	Total Cost Estimate (1)	London Hydro Share	Hydro Portion Cost Estimate
1.	London Hydro Infrastructure <i>(Currently Part G of Form of Tender)</i>	\$3,756,000	100%	\$3,756,000
2.	Restoration Work Exclusive to London Hydro Work identified in the Roadworks Part of Tender (predominantly on Richmond Street and lesser extent on Clarence Street)	\$25,000	100%	\$25,000
3.	Investigation for / relocation of other utilities to accommodate infrastructure specific to London Hydro	\$215,000 (2)	100%	\$215,000
4.	Traffic Control, Temporary Traffic Signals, Temporary Concrete Barrier, Construction Fencing, Temporary Sidewalks, Provision for Temporary Pedestrian Access, Project Communications and Stakeholder Liaison (Section N and O of the Form of Tender)	\$713,000	Prorated Based on London Hydro's Share of Overall Contract (3)	\$171,000
5.	Miscellaneous Items including Performance and Material Bonds, Project Insurance and Foundation Wall Condition Assessments (Section P of the Form of Tender)	\$729,000	Prorated Based on London Hydro's Share of Overall Contract (3)	\$175,000
6.	Consultant Contract Administration Services	\$2,500,000	Prorated Based on London Hydro's Share of Overall Contract (3)	\$600,000
	Subtotal			\$4,942,000
	Contingency (to be used as necessary)		15%	\$741,300
	Total			\$5,683,300

Note 1 – Estimate at 90% Design

Note 2 – Allowance Only

Note 3 – Based on estimated London Hydro Share at 24% (to be finalized based on tender actuals)

“Schedule 2”

Memorandum of Understanding

made this day of , 2017 between

Bell Canada (“Bell”)

and

The Corporation of the City of London (the “City”)

BACKGROUND:

1. The City plans to reconstruct Dundas Street between Ridout Street and Wellington Street beginning in 2018 to a flexible street to be known as Dundas Place including the installation of premium surface treatments and street furniture (the “Project”);
2. The City completed an environmental assessment for the project in 2017;
3. The project will include the replacement of water mains, pavements, sidewalks and other structures and features (“City Work”);
4. The Project will provide utility companies including Bell with a cost-effective opportunity for infrastructure renewal and upgrades;
5. Bell has expressed a desire to undertake the replacement of existing communications infrastructure including manholes and duct banks as part of the Project (“Bell Work”);
6. The Project will create a premium surface and future excavations after completion of the project will be strongly discouraged;
7. The parties wish to establish the terms under which they have agreed to proceed with the Project.

UNDERSTANDING AND AGREEMENT OF THE PARTIES:

1. The City will issue a single consolidated tender for the Project which will include the City Work, the Bell Work and work by other utility companies.
2. The tender will be awarded to the contractor with the lowest compliant bid regardless of individual cost apportionment between the parties and other utility companies in accordance with the City of London Procurement of Goods and Services Policy.
3. The City and its consultant contract administrator will be the sole administrator of the construction contract. The City will manage the contract with input from Bell and other utility companies.
4. Bell agrees to pay for the actual cost of the Bell Work and its share of other actual Project costs in accordance with the cost-sharing in the attached schedule. The attached schedule provides pre-tender estimated costs and these will be updated with tender costs following tender close. The City will act as the administrator for Bell Canada with respect to applicable taxes related to Bell Canada’s share of the work.

5. Expenditure of the contract contingency funds will be assessed according to the type of work (City Work, Bell Work and work by other utility companies) triggering the expenditure and invoiced to Bell only as expended. The expenditure of contingency funds must be approved prior to work being completed in accordance with an approved change order process.
6. Bell will make monthly progress payments to the City during the duration of the contract based on the costs incurred based on the cost sharing described in paragraph 4 above.
7. The parties agree to indemnify and hold each other and their respective employees, officers, directors, agents and representatives harmless from and against all liability for all damages of any nature whatsoever, including any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property, which is caused by or directly attributable to the negligent or wrongful act of indemnifying party, its employees, officers, directors, agents and representatives for which it may be responsible in the performance of its obligations hereunder, but only to the extent and in proportion to the negligence or fault of indemnifying party.

This MOU sets out the terms under which Bell and the City have agreed to proceed with the Project. The parties agree to negotiate in good faith and to use their respective best efforts to conclude the necessary agreements to give effect to the terms of this MOU.

IN WITNESS WHEREOF the parties hereto have executed this MOU.

THE CORPORATION OF THE CITY OF LONDON

Per: _____
Mayor Matt Brown

Per: _____
Catharine Saunders, City Clerk

BELL CANADA

Per: _____
 Per: _____
 we have authority to bind the Corporation

Schedule showing estimated Bell costs for Project

	Work Component	Total Estimate(1)	Bell Canada Share	Bell Portion Cost Estimate
1.	Bell Canada Infrastructure <i>(Currently Part H of Form of Tender)</i>	\$1,379,000	100%	\$1,379,000
2.	Investigation for / relocation of other utilities to accommodate Bell infrastructure	\$50,000 (2)	100%	\$50,000
3.	Traffic Control, Temporary Traffic Signals, Temporary Concrete Barrier, Construction Fencing, Temporary Sidewalks, Provision for Temporary Pedestrian Access, Project Communications and Stakeholder Liaison (Section N and O of the Form of Tender)	\$713,120	Prorated Based on Bell's Share of Overall Contract (3)	\$57,000
4.	Miscellaneous Items including Performance and Material Bonds, Project Insurance and Foundation Wall Condition Assessments (Section P of Form of Tender)	\$729,000	Prorated Based on Bell's Share of Overall Contract (3)	\$58,000
5.	Consultant Contract Administration Services	\$2,500,000	Prorated Based on half of Bell's Share of Overall Contract in recognition of site inspection services provided by Bell (3)	\$100,000
	Subtotal			\$1,644,000
	Contingency (to be used as necessary)		15%	\$247,000
	Total			\$1,891,000

Note 1 – Estimate at 90% Design

Note 2 – Allowance Only

Note 3 – Based on Bell Share at 8% (to be finalized at Tender Close)