

Bill No. 235
2019

By-law No. A.-_____ - ____

A by-law to approve the “Pilot Municipal Small Cell Licence Agreement” with Rogers Communications Canada Inc.; and to authorize the Mayor and the City Clerk to execute the Agreement.

WHEREAS subsection 5(3) of the Municipal Act, 2001 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;

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

1. The “Pilot Municipal Small Cell License Agreement” to be entered into between The Corporation of the City of London and Rogers Communications Canada Inc., attached as Schedule “A” to this By-law, is approved.
2. The Mayor and the City Clerk are authorized to execute the agreement approved under section 1 above.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on June 25, 2019.

Ed Holder
Mayor

Catharine Saunders
City Clerk

First Reading – June 25, 2019
Second Reading – June 25, 2019
Third Reading – June 25, 2019

Schedule A

PILOT MUNICIPAL SMALL CELL LICENCE AGREEMENT

This Agreement (the “**Agreement**”) is made effective as of July 9, 2019 (the “**Effective Date**”).

B E T W E E N:

THE CORPORATION OF THE CITY OF LONDON

Hereinafter called the “**Municipality**”

- and -

ROGERS COMMUNICATIONS CANADA INC.

Hereinafter called “**Rogers**”

WHEREAS the Municipality is the owner and operator of various properties, structures and facilities, including but not limited to: buildings, utility poles, street light poles, traffic control poles, towers and other structures (the “**Structures**”) which are identified in Schedule “A” to this Agreement;

AND WHEREAS the Municipality and Rogers have agreed to enter into a fixed term agreement to allow Rogers to attach certain Equipment to, in, at or on the Structures in order to provide small cell wireless telecommunications services (the “**Services**”) within the area outlined in red on Schedule “B” to this agreement (the “**Defined Area**”);

AND WHEREAS the Municipality and Rogers have agreed that this “Pilot Project” will run for a period up to twenty-four (24) months, during which time Rogers may attach Equipment to, in, at or on the Structures, within the Defined Area, in accordance with Schedule “A”.

THEREFORE, in consideration of the mutual covenants and agreements herein expressed, the parties agree as follows:

1.0 GRANT

1.1 The Municipality hereby grants to Rogers a non-exclusive right, by way of a licence (the “**Licence**”) to install, construct, place, remove, replace, relocate, inspect, maintain, repair, supplement and operate equipment necessary to provide the Services (the “**Equipment**”) in, at or on Structures owned by the Municipality within the Defined Area. In the event Rogers requires additional utilities by way of cables, including but not limited to, fibre optic cables (the “**Cables**”), to connect and power the Equipment, the Municipality agrees to grant Rogers the right to install such Cables on, over and/or under the property and to the Structures as necessary, provided the location and nature of such Cables are satisfactory to the Municipality.

2.0 FEES AND CHARGES

2.1 **Application Fee.** Rogers shall pay to the Municipality a one-time application fee of fifty dollars (\$50.00) per Structure, plus any applicable sales taxes, for the review, processing and approval by the Municipality of Rogers’ proposed Equipment installation within the Defined Area.

2.2 **Annual Fee.** The annual Licence fee for Equipment installations within the Defined Area is two hundred dollars (\$200) per Structure. This amount is due on January 2 of each year and is not prorateable or refundable.

2.3 **Hydro Fees.** Rogers shall pay to the Municipality, an annual hydro consumption surcharge of two hundred and fifty dollars (\$250) per Structure. This amount is due on January 2 of each year and is not prorateable or refundable.

3.0 TERM

3.1 The Term of the Agreement is twenty-four (24) months, commencing on the Effective Date.

4.0 INSTALLATION, RELOCATION, ALTERATIONS AND/OR IMPROVEMENTS TO THE EQUIPMENT BY ROGERS

4.1 Before installing or relocating any Equipment (save and except for swap-outs, routine repairs and replacement components as identified below), Rogers shall request the written consent of the Municipality.. Rogers' request for such consent shall be in writing and accompanied by any applicable payment and a complete description of the contemplated Work, Equipment and specifications. Working drawings may be required at the discretion of the Municipality.

4.2 All installations, relocations and removal of Equipment carried out by Rogers ("**Work**") shall be done at the sole cost and expense of Rogers, provided that Work undertaken by Rogers in response to a third-party request shall be performed at the expense of that third party, where applicable.

4.3 Prior to the commencement of any Work, other than routine repairs and replacements, Rogers shall:

- (a) provide plans, specifications, list of materials, construction schedule and any related information reasonably requested by the Municipality;
- (b) appoint a specific individual to act as a contact person with the Municipality for all matters relating to the planned Work;
- (c) contact the Municipality's staff to discuss and review the plans for the installation and relocation Work, including but not limited to, the placement of Equipment and methods of attaching same to the Structures; and
- (d) ensure that all Work is carried out at times approved by the Municipality, so that Work does not unduly interrupt or interfere with the use of roads by the Municipality, its tenants or the public.

4.4 The parties agree that the term "routine repairs and replacements" shall include the repair of existing approved Equipment or its replacement with Equipment that is not materially different from the approved Equipment.

4.5 Rogers represents that the Work it conducts and the Equipment it installs or uses will comply with all applicable federal, provincial and municipal laws.

4.6 Upon the expiration or termination of this Agreement, Rogers shall remove its Equipment and repair and restore the Structures to their original condition, save for normal wear and tear, to the satisfaction of the Municipality, acting reasonably.

4.7 Save for normal wear and tear, the repair of damage to the Structures caused by the installation, maintenance, operation or removal of the Equipment shall be at Rogers' sole cost and expense.

5.0 MUNICIPALITY's COVENANTS

5.1 The Municipality agrees:

- (a) that Equipment installed by Rogers remains the property of Rogers, notwithstanding its attachment to a Structure,
- (b) that if it plans to renovate, repair or provide for construction in, on or at a Structure, which involves displacing or moving Rogers' Equipment, the Municipality shall, in the absence of emergent need, provide Rogers with a

minimum of thirty (30) days' advance written notice, and Rogers shall during the notice period, relocate the Equipment to a mutually acceptable location, at no expense to the Municipality;

- (c) to provide Rogers and its authorized representatives and agents, direct next day access to each Structure that is not a building for installations, repairs or replacements, provided that any work on arterial roads that would occupy a travelled lane should be outside the following hours: 7:00 am to 9:30 am & 3:30 pm to 6:30 pm, Monday to Friday;
- (d) that in the event of an Emergency, defined as an unforeseen situation where immediate action must be taken to preserve the environment, public health, safety or an essential service (telecommunications service) of Rogers, the Municipality shall provide Rogers and its authorized representatives and agents, direct access to each Structure that is not a building, 24 hours a day, 7 days a week.

6.0 NOTICE

6.1 Any demand, notice or communication to be provided hereunder by a party shall be in writing and may be given:

- (a) by personal delivery, or
- (b) by prepaid registered mail, addressed to the respective parties as follows:

In the case of Rogers, to:

Rogers Communications Canada Inc.
333 Bloor Street East
Toronto, Ontario M4W 1G9
Attention: SVP, Regulatory
Tel: 416.935.3515
Email: regulatory.access@rci.rogers.com

With a copy to:

Rogers Communications Canada Inc.
333 Bloor Street East,
Toronto, Ontario M4W 1G9
Attention: Chief Legal and Regulatory Officer
Tel: 416.935.2505
Email: legal.notices@rci.rogers.com

and, in the case of the Municipality, to:

The Corporation of the City of London
City Clerk
300 Dufferin Avenue, P.O. Box 5035
London, ON, N6A 4L9

or to such other address as a party may from time to time, designate.

- 6.2 Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been received by the party to which it is addressed on the day of actual delivery thereof.
- 6.3 Any notice sent by prepaid registered mail shall be deemed to have been delivered on the fifth (5th) business day (excluding Saturdays, Sundays and statutory holidays) following the date of mailing thereof provided that postal services have not been interrupted, in which case notice shall only be given by personal delivery as aforesaid.

7.0 ASSIGNMENT

- 7.1 Except for an assignment to a corporate affiliate of Rogers or a purchaser of all of Rogers' assets and operations, no assignment by a party is permitted without the other party's prior written consent.
- 7.2 Rogers shall not permit use of all or any portion of a Structure or the exercise of any rights of Rogers hereunder, unless the Municipality gives its prior written consent.
- 7.3 Assignment shall not relieve a party of its obligations under this Agreement.

8.0 TERMINATION

- 8.1 Rogers may terminate the Agreement, in its entirety or as it relates to any one or more Structures, by written notice to the Municipality of not less than sixty (60) days,
- 8.2 The Municipality may terminate the Agreement, in its entirety or as it relates to any one or more Structures, by written notice to Rogers of not less than one hundred and twenty (120) days.
- 8.3 In the event of a termination permitted under the Agreement, both parties are released from further obligations under the Agreement, other than those obligations which pertain to payment, reinstatement and liability.

9.0 RELEASE AND INDEMNITY

- 9.1 Other than if caused by the Municipality or those for whom the Municipality is at law responsible, Rogers shall release the Municipality or the Municipality's officers, employees, agents or contractors ("**Municipality's Personnel**") from any and all liability for any losses, injuries, damages or expenses suffered or incurred by Rogers or Rogers' officers, employees, agents or contractors ("**Rogers' Personnel**") in connection with:
- (a) the use of Municipal property or any Structures by Rogers or Rogers' Personnel;
 - (b) the performance of Work on or near Municipal property;
 - (c) the presence of Equipment or other items, or of Rogers' Personnel, on or near Municipality property; or
 - (d) any damage to Equipment.
- 9.2 Other than if caused by or contributed to by the Municipality or those for whom the Municipality is at law responsible, Rogers shall indemnify, defend and hold harmless the Municipality and the Municipality's Personnel for, from and against any and all losses, injuries, damages and expenses, including all legal expenses, suffered, incurred or experienced by them or any of them, and shall indemnify and defend them and hold them harmless for, from and against all complaints, demands, claims, actions, suits, fines, judgments and orders in respect of any and all losses, injuries, damages and expenses suffered by them or any of them, arising out of, connected with or attributable in whole or in part to Equipment or to the acts or omissions of Rogers or Rogers' Personnel, including:
- (a) any breach, violation or non-performance by Rogers or Rogers' Personnel of any terms, conditions, covenants or obligations under this Agreement;
 - (b) any damage to, or loss or destruction of, or loss of use of, any of the Municipality's property, or any other real or personal property, including Equipment, occasioned by the use of Municipality property or any Structures by Rogers or Rogers' Personnel or the use or existence of any

Equipment thereon;

- (c) injury to or death to any person resulting from the use of any Structure, Municipal property, or any portion thereof, by Rogers or Rogers' Personnel or relating to any Equipment installed or placed by Rogers;
- (d) the performance of any Work on any Municipal property by Rogers or Rogers' Personnel pursuant to the Agreement;
- (e) a failure on the part of Rogers to comply with health and safety laws or regulations;
- (f) the failure or malfunction of Rogers Equipment or services, for whatever reason or cause; or
- (g) Rogers' or Rogers' Personnel's installation, operation, maintenance, relocation, replacement, repair or removal of any Equipment or the use of any Structure.

9.3 Notwithstanding any other provision, in no event will either party be liable for any indirect, consequential or economic losses of the other party (but without prejudice to the obligation of Rogers, to indemnify, defend and hold harmless the Municipality and the Municipality's Personnel for, from and against losses, injuries, damages and expenses arising from the indirect, consequential or economic losses of third parties).

10.0 INSURANCE

10.1 Rogers shall obtain and maintain during the Term, and thereafter as advised, the following policies of insurance:

- (a) Commercial general liability insurance with a limit of not less than \$5,000,000 per occurrence, protecting Rogers against third-party claims or losses, for bodily injury, death, property damage or loss of use of property occurring within or about any Municipal Property or Structures and arising from Rogers's operations, Equipment or its occupation or use of any Structure. The policy shall contain a cross-liability or severability of interests clause and shall add the Municipality and the Municipality's Personnel as additional insureds. The policy shall contain the following extensions of coverage:
 - (i) broad-form property damage and completed operations
 - (ii) personal injury;
 - (iii) blanket contractual liability;
 - (iv) contingent employer's liability; and
 - (v) non-owned automobile liability.
- (b) All-risks property insurance, including earthquake and flood insurance, with coverage up to full replacement costs, for loss of, or damage to, property of description owned by Rogers, as well as property of others of which Rogers has care, custody, liability or control.

10.2 Each of the policies of insurance required by Subsection 10.1 shall:

- (a) be obtained from and issued by an insurance company that is duly licensed or authorized to conduct business in Ontario;
- (b) contain a provision that the coverage afforded will not be cancelled without the insurance company providing at least (30) days' prior written notice to the Municipality; and
- (c) be primary with respect to claims or losses arising out of Rogers's

operations and activities, such that any insurance or self-insurance maintained by the Municipality shall be in excess of such insurance and shall not be obligated to contribute.

- 10.3 Upon the execution of the Agreement, Rogers shall provide a certificate of insurance satisfactory to the Municipality of each policy of insurance required.

11.0 MISCELLANEOUS

- 11.1 No interest in land: No leasehold interest shall pass to or be vested in Rogers by virtue of the Agreement.
- 11.2 No Derogation: Nothing contained or implied in this Agreement shall derogate from the obligations of Rogers under any other agreement with the Municipality or prejudice or affect the Municipality's rights, powers, duties or obligations in the exercise of its functions, and the rights, powers, duties and obligations of the Municipality under all public and private statutes, by-laws, orders and regulations, which may be as fully and effectively exercised in relation to any Municipal property as if this Agreement had not been executed.
- 11.3 Priority: Notwithstanding any other provision, the rights of Rogers hereunder shall be limited or shall not apply to the extent they are inconsistent with the full exercise of the rights granted by statute or previously granted by the Municipality to another person, and Rogers shall comply with all reasonable requests of any such other licensee in relation to the use of the relevant Structure.
- 11.4 Overholding: If Rogers is using a Structure after the end of the Term with the written consent of the Municipality, the Agreement shall be deemed to continue with respect to that Structure on a monthly basis, for a monthly licence fee equal to one twelfth of the annual Licence Fee, until termination by either party with 30 days' written notice.
- 11.5 Authority: Each party represents and warrants that it has full authority to enter into and sign the Agreement and bind itself accordingly.
- 11.6 Schedules: The schedules attached to this Agreement form part of this Agreement. Any obligation imposed on Rogers in a schedule shall be deemed to be a covenant of Rogers in the Agreement. To the extent that there is an inconsistency between the terms and conditions of the Agreement and anything in a schedule, the terms and conditions of the Agreement shall prevail to the extent of the conflict.
- 11.7 Entire Agreement: This Agreement contains all agreements, promises and understandings between the Municipality and Rogers in relation to the subject matter, and supersedes all previous agreements or arrangements, whether oral or in writing between the parties or their respective representatives. No subsequent alteration, amendment, change or addition shall be binding on the parties unless in writing and executed by the parties.
- 11.8 Enurement: The terms and conditions of this Agreement shall enure and bind the successors and assigns of the parties.
- 11.9 Severability: Invalid provisions are severable and do not impair the validity of the balance of the Agreement.
- 11.10 Payment: Rogers's obligations to pay money under this Agreement are additional to, and not in substitution for, all other amounts payable by Rogers to the Municipality by separate agreement or by law.
- 11.11 Governing Law: This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein, and the parties hereby submit to the jurisdiction of the courts of Ontario. The Municipality and Rogers acknowledge that laws may come into force during the Term which affect the

Agreement and the rights and obligations of the parties hereunder. Notwithstanding anything contained in the Agreement, if the Agreement or any right or obligation provided under the Agreement becomes invalid or illegal, or if any law comes into force which, as determined by either party acting reasonably, requires changes to this Agreement or any right or obligation under this Agreement, the parties shall restructure the Agreement or any rights or obligations hereunder to ensure that it is in compliance with all such laws.

11.12 Time is of the Essence: Time shall be of the essence of this Agreement.

11.13 Counterparts: This Agreement may be executed in one or more counterparts each of which shall constitute an original and together shall constitute one and the same Agreement. This Agreement may be executed by the parties and transmitted electronically or by facsimile and if so executed and transmitted, the Agreement shall be for all purposes as effective as if the parties had delivered an executed original Agreement

DATED this 9th day of, July 2019.

THE CORPORATION OF THE CITY OF LONDON

by its authorized signatories:

Signature

Print Name and Title

Signature

Print Name and Title

ROGERS COMMUNICATIONS CANADA INC.

by its authorized signatory:

Signature

Print Name and Title

I have authority to bind the corporation.