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<b>TO:</b>	<b>CHAIR AND MEMBERS CIVIC WORKS COMMITTEE MEETING ON June 17<sup>th</sup>, 2013</b>
<b>FROM:</b>	<b>EDWARD SOLDI, P.ENG. DIRECTOR OF ROADS AND TRANSPORTATION</b>
<b>SUBJECT</b>	<b>ROGERS COMMUNICATIONS PARTERSHIP - MUNICIPAL ACCESS AGREEMENT</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the Director of Roads and Transportation, the following actions **BE TAKEN** with respect to the Municipal Access Agreement with Rogers Communications Partnership;

- (a) That the attached proposed by-law **BE INTRODUCED** at the Municipal Council meeting to be held on June 25, 2013 for the purpose of approving the Municipal Access Agreement between the Corporation of the City of London and Rogers Communications Partnership, substantially in the form attached and satisfactory to the City Solicitor;
- (b) That the Mayor and City Clerk **BE AUTHORIZED** to execute the Municipal Access Agreement on behalf of the municipality; and,
- (c) That the agreement **BE ADOPTED** as the City's model Municipal Access Agreement for telecommunications carriers licensed under the Federal Telecommunications Act that operate within the City.

<b>BACKGROUND</b>
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**Purpose:**

To obtain Council approval for the Municipal Access Agreement between the City and Rogers Telecommunications Partnership, the form of which is attached to the draft By-law as Schedule "A".

**Context:**

Public road allowances are an important resource providing both a right-of-way for public passage and utility corridors for telecommunications, gas and hydro companies as well as for City services such as sewer, water, street light and traffic signal infrastructure. Authorized utilities operating under Federal or Provincial legislation have an inherent right-of-access to public road allowances even though they are under the City's jurisdiction. The City, as the owner and maintainer of public road allowances, has the legal obligation to manage access to this important shared resource.

The City manages its road allowances through the following means;

1. The City's S-1 (Streets) bylaw establishes basic rules and operational criteria for public road allowances owned by the City,
2. Operating agreements with utilities such as Municipal Access Agreement with telecoms and Franchise agreements with gas companies,
3. Approving and coordinating utility plant construction through the joint Utilities Coordinating Committee, and
4. Regulating construction on road allowances through Permits for Approved Works (PAW).

Telecommunications carriers (telecoms) such as Rogers Communications Partnership (Rogers) operate under the federal Telecommunications Act, 1993, C.38 and are regulated by the federal Canadian Radio and Telecommunications Commission (CRTC). Section 43 of the *Telecommunications Act* grants telecoms the right to "enter on and break up any highway or other public place for the purpose of constructing, maintaining or operating its transmission

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lines". Although there is no legislative requirement to do so, the CRTC recommends that all telecoms and municipalities enter into a Municipal Access Agreement (MAA) which sets out terms covering rights and obligations of both parties where telecoms operate within municipalities. Such agreements are now common in Ontario and across Canada.

Until recently, Rogers operated in London under two municipally approved MAA's, one dating from November 8<sup>th</sup>, 1988 covering "London North", and the second dating from April 5<sup>th</sup>, 1972 covering the former Maclean-Hunter Cable TV franchise area now designated as "London South" by Rogers. Rogers also recently acquired the assets of Group Telecom, which also operated within the City. The old MAA's were antiquated and no longer reflected the provisions in modern agreements which have evolved considerable over the past 15 years since the deregulation of the telecommunications industry.

<b>DISCUSSION</b>
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On December 10<sup>th</sup> 2009, Rogers notified the City that it would not renew the existing London North MAA with the City which was due to expire November 8, 2010 which effectively terminated the agreement with the City as of that date. Later, on May 10<sup>th</sup>, 2012, Rogers gave notice that they were also terminating the London South MAA effective October 30<sup>th</sup>, 2012. In their correspondence giving notice of termination, Rogers indicated a desire to enter into negotiations with the City with the intent of replacing both agreements with a single, updated agreement that reflected the current standards in modern MAA's.

Older MAAs typically required the utility to pay for the cost of equipment relocation but CRTC decisions over the past decade have supported a cost sharing arrangement where utility equipment relocation costs are shared between the utility and the City. Equipment relocation cost sharing arrangements have become a standard component of modern MAA's across Canada.

Once Rogers terminated the two agreements, by default the City had to fall back on the provisions of the provincial *Public Service Works On Highways Act* (PSWHA) which provides for a 50/50 split of equipment relocation costs between a utility and the municipality in the absence of an agreement otherwise. Aside from the 50/50 cost sharing requirement, the PSWHA establishes certain restrictions which makes the PSWHA a less desirable option for the City. It is in the City's best interest to negotiate a new MAA with Rogers with terms acceptable to both parties.

Consequently, the City has been working with Rogers to develop a mutually acceptable MAA reflecting modern provisions supported by both the CRTC as well as other municipalities in Ontario. The attached agreement is the result of those negotiations.

The proposed MAA defines terms and conditions and sets out responsibilities for both the City and Rogers. A key feature of the agreement for the City is the relocation cost formula in Section 7. The pro-rata formula being proposed is unique to MAA's used in Ontario but is in keeping with the spirit of CRTC decisions regarding such clauses. Specifically, the formula requires the City to pay 100% of Rogers' relocation costs for the first 5 years of newly installed plant, then declines 10% per year until year 15 and beyond when Rogers is responsible for the relocation costs. The clause puts an onus on the City to ensure approved plant locations do not have to be relocated "prematurely" (i.e. within the first 15 year time span), but protects the City from having to pay to relocate Rogers legacy plant.

**Financial Impact:**

The City's Environmental and Engineering Services Department engineers work cooperatively with utilities during design and construction to minimize the costs to all parties. However, the new cost sharing formula will have a financial impact to the City going forward.

Had the City continued to rely on the provisions of the PSWHA, it is estimated that the City would have to reimburse Rogers approximately \$75,000 in an average year for future equipment relocation costs. Based on the terms in the proposed agreement it is expected that relocation costs will be reduce to less than half of this amount to as low as \$20,000. Although there was no cost to the City under the terms of the old agreements which are now terminated, relocation cost terms in those old agreements are no longer supported by CRTC, it being the

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administrative body responsible for dispute resolution, and it is therefore unlikely the City would win an appeal to the Commission on that basis. Utility relocation costs will continue to be included as part of the budgets of City-driven construction projects.

<b>CONCLUSION</b>
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The proposed Municipal Access Agreement is beneficial to both Rogers and the City and is reflective of modern agreements being used throughout Ontario. Municipal Access Agreements assist the City in its responsibility to administer its road allowances and helps to manage future costs and it is recommended the agreement be approved in the attached form.

**Acknowledgements:**

The proposed MAA was reviewed by David Munteer, Solicitor II with input from Justin Lawrence, Manager of Construction Administration.

<b>PREPARED BY:</b>	<b>RECOMMENDED BY:</b>
<b>A. GARY IRWIN, O.L.S., O.L.I.P.</b> <b>DIVISION MANAGER, GEOMATICS AND CHIEF SURVEYOR</b>	<b>EDWARD SOLDO, P.ENG.</b> <b>DIRECTOR OF ROADS AND TRANSPORTATION</b>
<b>REVIEWED AND CONCURRED BY:</b>	
<b>JOHN M. BRAAM, P.ENG.</b> <b>MANAGING DIRECTOR ENVIRONMENTAL SERVICES AND CITY ENGINEER</b>	

May 27, 2013  
/agi

Copy: David Munteer  
Justin Lawrence

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Bill No.  
2013

By-law No. A. - \_\_\_\_\_

A By-law to authorize a Municipal Access Agreement between The Corporation of the City of London and Rogers Communications Partnership, and to authorize the Mayor and the 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 Municipal Access Agreement with Rogers Communications Partnership, (the "Agreement");

AND WHEREAS it is appropriate to authorize the Mayor and the 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 Municipal Access Agreement between the City and Rogers Communications Partnership is hereby AUTHORIZED AND APPROVED.
2. The Mayor and the 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 June 25, 2013.

Joe Fontana  
Mayor

Catharine Saunders  
City Clerk

Agenda Item # Page #

**SCHEDULE 'A'**

**MUNICIPAL ACCESS  
AGREEMENT**

*BETWEEN*

**THE CORPORATION OF THE CITY OF LONDON**

*AND*

**ROGERS COMMUNICATIONS PARTNERSHIP**

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## **MUNICIPAL ACCESS AGREEMENT**

This Agreement made this ● day of ●, 2013 (the “**Effective Date**”)

B E T W E E N:

**THE CORPORATION OF THE CITY OF LONDON**  
(the “**Municipality**”)

- and -

**ROGERS COMMUNICATIONS PARTNERSHIP**  
(“**Rogers**”)

(each, a “**Party**” and, collectively, the “**Parties**”)

**WHEREAS** Rogers is a “Canadian carrier” as defined in the *Telecommunications Act*, S.C. 1993, c.38 (“**Telecom Act**”) or “distribution undertaking” as defined in the *Broadcasting Act*, S.C. 1991, c.11 (collectively, a “**Carrier**”) and is subject to the jurisdiction of the Canadian Radio-television and Telecommunications Commission (the “**CRTC**”);

**AND WHEREAS**, in order to operate as a Carrier, Rogers requires to construct, maintain and operate its Equipment in, on, over, under, across or along (“**Within**”) the highways, streets, road allowances, lanes, other public places, bridges or viaducts which are under the jurisdiction of the Municipality (collectively, the “**Rights-of-Way**” or “**ROWS**”);

**AND WHEREAS**, pursuant to section 43 of the Telecom Act, Rogers requires the Municipality’s consent to construct its Equipment Within the ROWs and the Municipality is willing to grant Rogers a non-exclusive right to access and use the ROWs; provided that such use will not unduly interfere with municipal operations, equipment or installations and the public use and enjoyment of the ROWs, nor any rights or privileges previously conferred by the Municipality on Third Parties to use or access the ROWs;

**AND WHEREAS** the Parties have agreed that it would be mutually beneficial to outline the terms and conditions pursuant under which the Municipality hereby provides its consent;

**NOW THEREFORE** in consideration of the mutual terms, conditions and covenants contained herein, the Parties agree and covenant with each other as follows:

### **1. DEFINITIONS AND INTERPRETATION**

1.1 **Definitions.** In this Agreement, the following words and phrases shall have the following meanings:

- (a) “**Affiliate**” means “affiliate” as defined in the *Canada Business Corporations Act*;
- (b) “**Emergency**” means an unforeseen situation where immediate action must be taken to preserve the environment, public health, safety or an essential service of either of the Parties;
- (c) “**Hazardous Substance**” means any harmful substance including, without limitation, electromagnetic or other radiation, contaminants, pollutants, dangerous substances, dangerous goods and toxic substances, as defined, judicially interpreted or identified in any applicable law (including the common law);

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- (d) **“Equipment”** means the transmission and distribution facilities owned by Rogers and/or its Affiliates, comprising fibre optic, coaxial or other nature or form of cables, pipes, conduits, poles, ducts, manholes, handholds and ancillary structures and equipment located Within the ROWs;
- (e) **“City Engineer”** means the Municipality’s reviewing authority or the individual designated by him or her;
- (f) **“Municipal Consent”** or **“MC”** means the written consent of the Municipality, with or without conditions, to allow Rogers to perform Work Within the ROWs;
- (g) **“Permit”** means an **MC** or a **PAW** or both;
- (h) **Permit for Approved Works** or **“PAW”** means a Permit issued by the road authority of the Municipality authorizing Rogers to occupy the ROWs with its workforce, vehicles and other equipment when performing the Work;
- (i) **“Service Drop”** means a cable that, by its design, capacity and relationship to other fibre optic cables of Rogers, can be reasonably considered to be for the sole purpose of connecting backbone of the Equipment to not more than one individual customer or building point of presence;
- (j) **“Third Party”** means any person that is not a party to this Agreement nor an Affiliate of either Party, and includes any person that attaches its facilities in, on or to the Equipment under an agreement with Rogers; and
- (k) **“Work”** means, but is not limited to, any installation, removal, construction, maintenance, repair, replacement, relocation, removal, operation, adjustment or other alteration of the Equipment performed by Rogers Within the ROWs, including the excavation, repair and restoration of the ROWs.

1.2 **Legislation.** All references to statutes in this Agreement shall include amendments thereto, regulations thereof, and successor legislation thereafter.

## **2. USE OF ROWs**

2.1 **Consent to use ROWs.** The Municipality hereby consents to Rogers’ use of the ROWs for the purpose of performing its Work, subject to the terms and conditions of this Agreement and in accordance with all applicable laws or other municipal by-laws, rules, policies, standards and guidelines (**“Municipal Guidelines”**) pertaining to the Equipment and the use of the ROWs; to the extent, however, that any municipal laws and the Municipal Guidelines are not inconsistent or in conflict with this Agreement or with applicable federal laws.

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2.2 **Restrictions on use.** Rogers shall not, in the exercise of its rights under this Agreement, unduly interfere with municipal operations, equipment or installations and rights and privileges already granted to third parties and the public use and enjoyment of the ROWs.

2.3 **Equipment acquired by Rogers.** The Parties agree that, where Rogers acquires, or has acquired, directly or indirectly, facilities from a Third Party that are located Within the ROWs (the “**New Equipment**”), then, effective the day of the acquisition of the New Equipment by Rogers:

- (a) the New Equipment shall form part of the Equipment and shall be governed by the terms and conditions of this Agreement; and
- (b) where that Third Party is a Party to a valid and existing municipal access agreement with the Municipality (the “**Old MAA**”) and Rogers, directly or indirectly, acquires the rights and obligations under the Old MAA, the Old MAA shall be terminated.

2.4 **No ownership rights.** The Parties acknowledge and agree that:

- (a) the use of the ROWs under this Agreement shall not create nor vest in Rogers any ownership or property rights in the ROWs; and
- (b) the placement of the Equipment Within the ROWs shall not create or vest in the Municipality any ownership or property rights to the Equipment.

2.5 **Condition of ROWs.** The Municipality makes no representations or warranties as to the state of repair of the ROWs or the suitability or fitness of the ROWs for any business, activity or purpose whatsoever, and Rogers hereby agrees to accept the ROWs on an “as is” basis.

### 3. **PERMITS TO CONDUCT WORK**

3.1 **Where Permits required.**

Subject to Section 3.4, Rogers shall not occupy or do work on or within any ROW without first obtaining the applicable Permit for the specific work activity as may be required by the Municipality from time to time.

Subject to **Section 3.4**, Rogers shall not enter upon, excavate, break up or otherwise disturb the surface of any ROW for the purpose of performing its Work without first obtaining, where required, the applicable Permits for the specific Work activity being a Municipal Consent and/or Permit for Approved Works, as the case may be. For each Permit required above, Rogers shall submit to the Municipality a completed application, in a form specified



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by the Municipality and including the applicable fee, as established by municipal by-law from time to time.

3.2 **Submission of plans.** Unless otherwise agreed to by the Municipality, Rogers shall, prior to undertaking any Work that requires a MC, submit the following to the City Engineer:

- (a) construction plans of the proposed Work, showing the locations of the proposed or existing Equipment and specifying the boundaries of the area within the Municipality within which the Work is proposed to take place; and
- (b) all other relevant plans, drawings and other information as may be normally required by the City Engineer from time to time for the purposes of issuing Permits.

3.3 **Refusal to issue Permits.** The Municipality may refuse to issue a Permit in accordance with [Section 3.1](#) for any *bona fide* municipal purpose, including reasons of public safety and health, conflicts with existing infrastructure, proposed road construction, or the proper functioning of public services, all as identified in writing by the Municipality.

3.4 **No Permits for Routine Work.** Notwithstanding [Section 3.1](#), Rogers may, without first obtaining a Permit:

- (a) utilize existing ducts or similar structures of the Equipment with at least twenty-four (24) hours advance notice to the Municipality; and
- (b) carry out routine maintenance and field testing to its Equipment;

provided that in no case shall Rogers carry out any physical disruption or change to the ROW or its use without the Municipality's prior written consent.

3.5 **Restoration of Rogers' service during Emergencies.** Notwithstanding [Section 3.1](#), in the event of an Emergency, Rogers shall be permitted to perform such remedial Work as is reasonably necessary to restore its services without complying with [Section 3.1](#); provided that such Work does not unduly disrupt any Municipal service or activity and provided that Rogers does comply with [Section 3.1](#) within five (5) business days of completing the Work.

#### **4. MANNER OF WORK**

4.1 **Compliance with Applicable Laws, etc.** All Work shall be conducted and completed to the satisfaction of the Municipality and in accordance with:

- (a) the applicable laws (and, in particular, all laws and codes relating to occupational health and safety);
- (b) the Municipal Guidelines;

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- (c) this Agreement; and
  - (d) the applicable Permits issued under [Section 3.1](#).
- 4.2 **Underground Equipment.** Rogers shall place those portions of the Equipment that cross beneath streets or existing buried utilities in ducts, carrier pipes or encased in concrete, or as otherwise specified by the Municipality.
- 4.3 **Stoppage of Work.** The Municipality may order the stoppage of the Work for any *bona fide* municipal purpose or cause relating to public health and safety, special events or any circumstances beyond its control. In such circumstances, the Municipality shall provide Rogers with a verbal order and reasons to stop the Work and Rogers shall cease the Work immediately. Within two (2) business days of the verbal order, the Municipality shall provide Rogers with a written stop work order with reasons. When the reasons for the Work stoppage have been resolved, the Municipality shall advise Rogers immediately that it can commence the Work.
- 4.4 **Coordination of Work.** Rogers shall use its reasonable efforts to minimize the necessity for road cuts, construction and the placement of new Equipment Within the ROW by coordinating its Work and sharing the use of support structures with other existing and new occupants of the ROWs.
- 4.5 **Identification of contractors.** Rogers shall ensure that all of its contractors have proper identification visible on the Work site displaying the name of the person for which they work.
- 4.6 **Emergency contact personnel.** Rogers and the Municipality shall provide to each other a list of twenty-four (24) hour emergency contact personnel available at all times and shall ensure that the list is kept current.
- 4.7 **Emergency work by Municipality.** In the event of an Emergency, the Municipality may take such measures it deems necessary to re-establish a safe environment, and Rogers shall pay the Municipality’s reasonable and verifiable costs that are directly attributable to the Work or the presence of the Equipment in the ROWs.
- 4.8 **“As-built” drawings.** Where required and requested by the Municipality, Rogers shall, no later than forty-five (45) days after completion of any Work, provide the City Engineer with accurate “as-built” drawings, prepared in accordance with such standards as may be required by the City Engineer, sufficient, for planning purposes, to accurately establish the location of the Equipment installed Within the ROWs.

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**5. REMEDIAL WORK**

5.1 **General.** Following the completion of any Work, Rogers shall leave the ROW in a neat, clean, and safe condition and free from nuisance, all to the satisfaction of the Municipality. Subject to **Section 5.2**, where Rogers is required to break or disturb the surface of a ROW to perform its Work, it shall repair and restore the surface of the ROW to the same or better condition it was in before the Work was undertaken, all in accordance with the Municipal Guidelines and to the satisfaction of the Municipality.

5.2 **Temporary repair.** Where weather limitations or other external conditions beyond the control of Rogers do not permit it to complete a final repair to the ROW within the expected period of time, Rogers may complete a temporary repair to the ROW; provided that Rogers replaces the temporary repair with a final repair within a reasonable period of time. All repairs to the ROW by Rogers shall be performed in accordance with the Municipal Guidelines and to the satisfaction of the Municipality.

5.3 **Warranty of repairs.** Rogers warrants its temporary repair, to the satisfaction of the Municipality, for a period of one (1) year from the date of its completion, and its final repairs for a period of two (2) years from the date of their completion.

5.4 **Repairs completed by Municipality.** Where Rogers:

- (a) fails to complete a temporary repair to the satisfaction of the Municipality within seventy-two (72) hours of being notified in writing by the Municipality, or such other period as may be agreed to by the Parties; or
- (b) Rogers and the Municipality agree that the Municipality should perform the repair,

then the Municipality may effect such work necessary to perform the repair and Rogers shall pay the Municipality’s reasonable and verifiable direct costs of performing the repair.

**6. LOCATING FACILITIES IN ROWS**

6.1 **Locates.** Each Party shall, at its own cost and at the request of the other Party (or its contractors or authorized agents), physically locate its respective facilities by marking the ROW using paint, staking or other suitable identification method (“**Locates**”), under the following circumstances:

- (a) in the event of an Emergency, within two (2) hours of receiving the request or as soon as practicably possible, following which the requesting Party will ensure that

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it has a representative on site (or alternatively, provide a contact number for its representative) to ensure that the area for the Locates is properly identified; and

(b) in all other circumstances, within five (5) business days, or a time reasonably agreed upon by the Parties.

6.2 **Utility co-ordination committee.** Rogers shall participate in any utility co-ordination committees established by the Municipality and contribute to its equitable share of the reasonable costs of the operation and administration of the committee.

6.3 **Provision of Mark-ups.** The Parties agree to respond within fifteen (15) days to any request from the other Party for a mark-up of municipal infrastructure or Equipment design drawings showing the location of any portion of the municipal infrastructure or Equipment, as the case may be, located within the portion of the ROWs shown on the plans (the “**Mark-ups**”), and shall provide such accurate and detailed information as may be reasonably required by the requesting Party.

6.4 **Inaccurate Locates.** Where Rogers’ Locates are found to be in error and, as a result, the Municipality is unable to install its facilities Within the affected ROWs in the manner it expected based on the Locates provided by Rogers, the Municipality will notify Rogers of the error, following which Rogers shall attempt to resolve the conflict. If Rogers is unable to resolve the conflict in a reasonable time commensurate with the situation and to the Municipality’s satisfaction, Rogers will pay the Municipality for its reasonable and verifiable costs incurred as a direct result of the conflict.

## 7. **RELOCATION OF PLANT**

7.1 **General.** Where the Municipality requires and requests Rogers to relocate its Equipment for *bona fide* municipal purposes, the Municipality shall notify Rogers in writing and, subject to **Section 7.3**, Rogers shall, within ninety (90) days thereafter or such other time as agreed to by the Parties having regard to the schedules of the Parties and the nature of the relocation required, perform the relocation and any other required and associated Work.

7.2 **Municipality’s efforts.** The Municipality will make good faith efforts to provide alternative routes for the Equipment affected by the relocation to ensure uninterrupted service to Rogers’ customers. The Municipality shall also provide, in a timely fashion, all Permits and approvals required to allow Rogers to Relocate the Equipment.

7.3 **Reimbursement by Municipality for Rogers’ Relocation Costs.** The Municipality shall reimburse Rogers for all or part of its reasonable and verifiable costs of completing

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any relocation requested by the Municipality (the “**Relocation Costs**”) based upon the following principles, methodologies and procedures:

- (a) For Equipment that is not located within 1 metre measured horizontally from the location approved by the Municipal Consent or “standard location”, as the case may be, there shall be no cost to the Municipality to relocate the Equipment .
- (b) For Equipment for which a Permit was issued the Municipality shall pay the percentages of Rogers’ Relocation Costs (“in kind” or “like-for-like” Equipment) set out in the following table:

Age of Rogers Equipment	Percentage or Relocation Costs paid by Municipality
Years 1 to 5	100%
Year 6	90%
Year 7	80%
Year 8	70%
Year 9	60%
Year 10	50%
Year 11	40%
Year 12	30%
Year 13	20%
Year 14	10%
Year 15 and thereafter	0%

For purpose of this Section, the age of the infrastructure is the current date minus the date of the issuance of the Municipal Consent.

- (c) Within thirty (30) days of receiving the request from the Municipality to relocate the Equipment, Rogers shall provide the Municipality with a written estimate of the Relocation Costs for such relocation, including an estimate of the Municipality’s reimbursement under the **subsections (a)**.
- (d) Within sixty (60) days of completing the relocation, Rogers may provide Municipality with a written invoice for the actual Relocation Costs in a format that clearly identifies the Municipality’s reimbursement under **subsections (a)** and delineates materials, labour, and any other project costs.

**7.4 Equipment affected by Municipality’s Capital Works Plan.** Prior to the issuance of a Permit, the Municipality will advise Rogers in writing whether Rogers’ proposed location for new Equipment will be affected by the Municipality’s ten-year (10 year) capital works plan (the “**Capital Works Plan**”). If the Municipality advises that the new Equipment will be so affected and Rogers, despite being advised of such, requests the Municipality to issue the Permit, then the Municipality may issue a conditional Permit stating that, if the Municipality requires, pursuant to any project identified in the Capital Works Plan as of the date of approval, Rogers to relocate the Equipment within ten (10)

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years of the date of the Permit, Rogers will be required to relocate the Equipment at its own cost, notwithstanding [Section 7.3](#).

7.5 **Municipality not responsible for Third Party Relocation Costs.** Unless otherwise agreed to between the Municipality and the Third Party, in no event shall the Municipality be responsible under this Agreement for:

- (a) the costs of Rogers to relocate Equipment at the request of a Third Party; or
- (b) the costs of relocating the facilities of a Third Party installed on or in the Equipment; or
- (c) the costs of Rogers to relocate Equipment where Rogers is a Third Party to the owner of the Equipment.

7.6 **Emergency temporary relocation.** In cases of an Emergency that requires Rogers to temporarily relocate the Equipment, the Parties shall work co-operatively and expeditiously to complete the relocation as soon as practicably possible; provided, however, that the Municipality may, with at least twenty-four (24) prior notice to Rogers, take any measures it deems necessary for reasons of public health and safety.

7.7 **Relocation performed by Municipality.** If Rogers fails to complete the relocation in accordance with [Section 7.1](#) the Municipality may, at its option, complete such relocation and Rogers shall pay the Municipality's reasonable and verifiable costs of the relocation.

7.8 **Discontinuance of ROW.** Where the Municipality authorises the legal closing of a ROW under its jurisdiction as public highway either by Court Order or By-law, the Municipality shall be responsible for registering an easement against the property in favour of Rogers unless alternative arrangements have been made, all to the satisfaction of Rogers.

## 8. [PAYMENT OF FEES AND OTHER CHARGES](#)

8.1 **Invoices.** Unless expressly provided elsewhere in this Agreement, where there are any payments to be made under this Agreement, the Party requesting payment shall first send a written invoice to the other Party, setting out in detail all amounts owing, including any applicable provincial and federal taxes and interest payable on prior overdue invoices, and the payment terms. The Parties agree that all payments shall be made in full by no later than forty-five (45) days after the date of the invoice was received.

8.2 **Payment of taxes.** Rogers shall pay, and shall expressly indemnify and hold the Municipality harmless from, all taxes lawfully imposed now or in the future by the Municipality or all taxes, rates, duties, levies or fees lawfully imposed now or in future

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by any regional, provincial, federal, parliamentary or other governmental body, corporate authority, agency or commission (including, without limitation, school boards and utility commissions) but excluding the Municipality, that are attributable to Rogers' use of the ROW.

## 9. **TERM AND TERMINATION**

9.1 **Initial term and renewal.** This Agreement shall have an initial term of five (5) years commencing on the Effective Date and shall be renewed automatically for successive five (5) year terms unless:

- (a) this Agreement is terminated by either Party in accordance with this Agreement;
- (b) a Party delivers initial notice of non-renewal to the other Party at least ninety (90) days prior to the expiration of the then current term; or
- (c) this Agreement is replaced by a new agreement between the Parties.

9.2 **Termination by either Party.** Either Party may terminate this Agreement without further obligation to the other Party, upon providing at least twenty-four (24) hours notice in the event of a material breach of this Agreement by the other Party after notice thereof and failure of the other Party to remedy or cure the breach within thirty (30) days of receipt of the notice.

9.3 **Termination by Municipality.** The Municipality may terminate this Agreement by providing Rogers with at least twenty-four (24) hours written notice in the event that:

- (a) Rogers becomes insolvent, makes an assignment for the benefit of its creditors, has a liquidator, receiver or trustee in bankruptcy appointed for it or becomes voluntarily subject as a debtor to the provisions of the *Companies' Creditors Arrangement Act* or the *Bankruptcy and Insolvency Act*;
- (b) Rogers assigns or transfers this Agreement or any part thereof other than in accordance with **Section 16.2**; or
- (c) Rogers ceases to be eligible to operate as a Carrier.

9.4 **Obligations and rights upon termination or expiry of Agreement.** Notwithstanding any other provision of this Agreement, if this Agreement is terminated (other than in accordance with **Section 9.3**) or expires without renewal, then, subject to Rogers' rights to use the ROWs pursuant to the Telecom Act and, unless Rogers advises the Municipality in writing that it no longer requires the use of the Equipment:

- (a) the terms and conditions of this Agreement shall remain in full force and effect

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until a new municipal access agreement (a “**New Agreement**”) is executed by the Parties; and

- (b) the Parties shall enter into meaningful and good faith negotiations to execute a New Agreement and, if, after six (6) months following the expiry of this Agreement, the Parties are unable to execute a New Agreement, then either Party may apply to the CRTC to establish the terms and conditions of the New Agreement.

## **10. INSURANCE**

10.1 **General.** Throughout the term of this Agreement and any renewals or extension thereto, Rogers shall maintain, at its sole expense, insurance (the “**Rogers Insurance**”) in an amount and description as described below to protect Rogers and the Municipality from claims for damages, bodily injury (including death) and property damage which may arise from Rogers’ operations under this Agreement, including the use or maintenance of the Equipment Within the ROWs or any act or omission of Rogers and its employees, contractors and agents while engaged in the Work. The Rogers Insurance shall include all costs, charges and expenses reasonably incurred with any injury or damage.

10.2 **Comprehensive general liability occurrence-based insurance.** Without limiting the generality of the foregoing, Rogers shall obtain and maintain comprehensive general liability occurrence-based insurance coverage which:

- (a) covers claims and expenses for liability for personal injury, bodily injury and property damage in an amount not less than Five Million Dollars (\$5,000,000.00) per claim (exclusive of interest and costs);
- (b) extends to cover the contractual obligations of Rogers as stated within this Agreement;
- (c) names the Municipality as an additional insured; and
- (d) contains cross liability and severability of interest clauses.

10.3 **Insurance certificates.** As soon as possible after the execution of this Agreement, Rogers shall provide, on the Municipality’s form .0788, the Municipality with certificates of insurance in respect of the Rogers Insurance evidencing the cross liability and severability clauses and confirming the Municipality as an “additional insured”. Thereafter, Rogers shall provide the Municipality with evidence of all renewals of the Rogers Insurance in a form acceptable to the Municipality.

10.4 **General insurance conditions.**



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- (a) The Rogers Insurance shall not be construed to, and shall in no manner, limit or restrict Rogers' liability or obligations under this Agreement.
- (b) The Municipality shall not be liable for any premiums relating to policies under the Rogers Insurance.
- (c) The policies under the Rogers Insurance shall provide:
  - (i) that they are primary insurance which will not call into contribution any other insurance available to the Municipality;
  - (ii) a waiver for severability of interest; and
  - (iii) that the Rogers Insurance shall not be cancelled, lapsed or materially changed to the detriment of the Municipality without at least thirty (30) business days notice to the Municipality by registered mail.
- (d) Rogers will immediately notify the Municipality of any changes to or cancellation of the Rogers Insurance if they will directly affect or reduce the coverage made available to the Municipality.

## 11. LIABILITY AND INDEMNIFICATION

### 11.1 General. For the purpose of this [Article 11](#),

- (a) “**Municipality**” means the Municipality and its Chair, the General Manager City Engineer, Council members, officers, employees, contractors, agents, successors and assigns;
- (b) “**Rogers**” means Rogers and its directors, officers, employees, contractors, agents, successors and assigns;
- (c) “**Claims**” means any and all claims, actions, causes of action, complaints, demands, suits or proceedings of any nature or kind; and
- (d) “**Losses**” means, in respect of any matter, all losses, damages, liabilities, deficiencies, costs and expenses (including, without limitation, all legal and other professional fees and disbursements, interest, liquidated damages and amounts paid in settlement, whether from a Third Party or otherwise), and for the purposes of this definition, “costs” shall mean those costs awarded in accordance with the order of a court of competent jurisdiction, the order of a board, tribunal or arbitrator or costs negotiated in the settlement of a claim or action.

### 11.2 **No liability, Municipality.** Except for Claims or Losses arising, in whole or in part, from the negligence or wilful misconduct of the Municipality, the Municipality shall not:

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- (a) be responsible, either directly or indirectly, for any damage to the Equipment howsoever caused that may occur as a result of any Work by Rogers; and
- (b) be liable to Rogers for any Losses whatsoever suffered or incurred by Rogers on account of any actions or omissions of the Municipality working Within the ROWs.

11.3 **No liability, both Parties.** Notwithstanding anything else in this Agreement, neither Party shall be liable to any person in any way for special, incidental, indirect, consequential, exemplary or punitive damages, including damages for pure economic loss or for failure to realize expected profits, howsoever caused or contributed to, in connection with this Agreement and the performance or non-performance of its obligations hereunder.

11.4 **Indemnification by Rogers.** Except for Claims or Losses arising, in whole or in part, from the negligence or wilful misconduct of the Municipality, Rogers covenants and agrees to indemnify, defend and save harmless the Municipality from and against any and all Claims or Losses that the Municipality may suffer or incur arising from:

- (a) Rogers' exercise of any of its rights under this Agreement;
- (b) Rogers' performance of any Work Within the ROWs and the operation or use of the Equipment by Rogers or any other Person;
- (c) Rogers undertaking any activity Within the ROWs which is ancillary to Rogers' exercise of its rights under this Agreement; and
- (d) any breach of this Agreement by Rogers.

11.5 **Indemnification by Municipality.** Except for Claims or Losses arising, in whole or in part from the negligence or wilful misconduct of Rogers, the Municipality shall indemnify, defend and save harmless Rogers from and against all Claims and Losses that Rogers may suffer or incur arising from:

- (a) any damage to property (including property of Rogers); or
- (b) any injury to individuals (including injury resulting in death), including Rogers' employees, servants, agents, licensees and invitees,

caused by, resulting from or attributable to the act or omission of the City or its employees, servants or agents.

11.6 **Survival.** The obligation of a Party to indemnify, defend and save harmless the other Party shall survive the termination or expiry of this Agreement.

## 12. ENVIRONMENTAL LIABILITY

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12.1 **Municipality not responsible.** The Municipality is not responsible, either directly or indirectly, for any damage to the natural environment or property, including any nuisance, trespass, negligence, or injury to any Person, howsoever caused, arising from the presence, deposit, escape, discharge, leak, spill or release of any Hazardous Substance in connection with Rogers' occupation or use of the ROWs, unless such damage was caused directly or indirectly by the negligence or wilful misconduct of the Municipality or those for which it is responsible in law.

12.2 **Rogers to assume environmental liabilities.** Rogers agrees to assume all environmental liabilities, claims, fines, penalties, obligations, costs or expenses whatsoever relating to its use of the ROWs, including, without limitation, any liability for the clean-up, removal or remediation of any Hazardous Substance on or under the ROWs that result from:

- (a) the occupation, operations or activities of Rogers, its contractors, agents or employees or by any person with the express or implied consent of Rogers Within the ROWs; or
- (b) any Equipment brought or placed Within the ROWs by Rogers, its contractors, agents or employees or by any person with the express or implied consent of Rogers,

unless such damage was caused directly or indirectly in whole or in part by the negligence or wilful misconduct on the part of the Municipality or those for which it is responsible in law.

### 13. **FORCE MAJEURE**

Except for the Parties' obligations to make payments to each other under this Agreement, neither Party shall be liable for a delay in its performance or its failure to perform hereunder due to causes beyond its reasonable control, including, but not limited to, acts of God, fire, flood, or other catastrophes; government, legal or statutory restrictions on forms of commercial activity; or order of any civil or military authority; national emergencies, insurrections, riots or wars or strikes, lock-outs or work stoppages ("**Force Majeure**"). In the event of any one or more of the foregoing occurrences, notice shall be given by the Party unable to perform to the other Party and the Party unable to perform shall be permitted to delay its performance for so long as the occurrence continues. Should the suspension of obligations due to Force Majeure exceed two (2) months, either Party may terminate this Agreement without liability upon delivery of notice to the other Party.

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**14. DISPUTE RESOLUTION**

The Parties will attempt to resolve any dispute arising out of this Agreement promptly through discussions at the operation level. In the event a resolution is not achieved, the disputing Party shall provide the other Party with written notice of the same and the Parties shall attempt to resolve such dispute between senior officers who have the authority to settle such dispute. All negotiations conducted by such officers shall be confidential and shall be treated as compromise and settlement negotiations. If the Parties fail to resolve such dispute within thirty (30) calendar days of the non-disputing Party’s receipt of written notice, either Party may initiate legal proceedings and/or submit the matter to the CRTC for resolution.

**15. NOTICES**

Any notice required or permitted to be given hereunder or any tender or delivery of documents may be sufficiently given by personal delivery or, if other than the delivery of an original document, by facsimile transmission to the Municipality at the following address:

**If to the Municipality:**

**With a copy to:**

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<p><b>If to Rogers</b></p> <p><b>Rogers Communications Partnership</b>          333 Bloor Street East, 9<sup>th</sup> Floor          Toronto, Ontario M4W 1G9          Attention: Vice President, Regulatory          Facsimile: (416) 935-4655</p>	<p><b>With a copy to:</b></p> <p><b>Rogers Communications Partnership</b>          333 Bloor Street East, 9<sup>th</sup> Floor          Toronto, Ontario M4W 1G9          Attention: VP &amp; General Counsel          Facsimile: (416) 935-3548</p>
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Any notice may also be given by prepaid registered mail mailed within the Province of Ontario and such notice shall be effective five (5) business days following the date of mailing, except in the event that there shall be a disruption in postal services at the date of mailing, in which case notice shall be effective by personal delivery or a facsimile transmission as stated above.

**16. GENERAL**

16.1 **Entire agreement.** This Agreement, together with the Schedules attached hereto, constitute the complete and exclusive statement of the understandings between the Parties with respect to the rights and obligations hereunder and supersedes all proposals and

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prior agreements, oral or written, between the Parties.

- 16.2 **Assignment.** This Agreement may not be assigned or transferred, in whole or in part, without the prior written consent of the other Party. Notwithstanding the foregoing, Rogers shall, provided that it is not in material breach of this Agreement, have the right to assign this Agreement to an Affiliate without the consent of the Municipality, provided that Rogers has given notice to the Municipality.
  
- 16.3 **Parties to act reasonably.** Each Party shall at all times act reasonably in the performance of its obligations and the exercise of its rights and discretion under this Agreement.
  
- 16.4 **Amendments.** Except as expressly provided in this Agreement, no modification of or amendment to this Agreement shall be effective unless agreed to in writing by the Municipality and Rogers.
  
- 16.5 **Survival.** The terms and conditions contained in this Agreement that by their sense and context are intended to survive the performance thereof by the Parties hereto shall so survive the completion of performance, the expiration and termination of this Agreement, including, without limitation, provisions with respect to indemnification and the making of any and all payments due hereunder.
  
- 16.6 **Governing law.** This Agreement shall be governed by the laws of the Province of Ontario and all federal laws of Canada applicable therein.
  
- 16.7 **Waiver.** Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.
  
- 16.8 **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and everything else in this Agreement shall continue in full force and effect.
  
- 16.9 **Inurement.** This Agreement is and shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and permitted assigns, and may not be changed or modified except in writing, duly signed by the Parties hereto.

Agenda Item #      Page #

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**IN WITNESS WHEREOF** the Parties hereto have executed this Agreement by their duly authorized representatives.

**MUNICIPALITY**

**ROGERS COMMUNICATIONS  
PARTNERSHIP**

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Pamela Dinsmore  
Vice President, Regulatory - Cable

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Kenneth Engelhart  
Senior Vice President, Regulatory