



M E M O R A N D U M (OPEN)

TO: Middlesex Centre Council

DATE: January 12th, 2022

FROM: Wayne P. Meagher, legal counsel

FILE: 11-104

Re: Rogers Blanket Telecommunications Access Agreement

INTRODUCTION

The Middlesex County Barrister & Solicitor's Office ("MCBSO") was retained by the Municipality of Middlesex Centre to negotiate a blanket Telecommunications Access Agreement with the Rogers team ("Rogers") for Council consideration. We proceeded on the basis of staff instructions in an attempt to obtain from Rogers a willingness to endorse a municipal blanket Access Agreement in a form that addresses Middlesex Centre staff needs, can be used for road allowances on a Middlesex Centre-wide basis, can be supported under CRTC case law, and is compatible with the upper-tier Middlesex County Blanket Telecommunications Agreement, which provides for ease of Telecom administration and expectations across Middlesex County. Each of the above goals has successfully been achieved through the negotiation of the attached draft Agreement.

ANALYSIS

It is particularly notable that under this Agreement that Rogers will be obliged to obtain Roads Permits (which in Middlesex Centre include Entrance Permits, Road Occupancy Permits, and Oversize/Overweight Vehicle Permits depending on the scope of work proposed), pay the associated fees (subject to inflation), pay applicable pavement degradation fees, and provide as-built drawings. Rogers will also pay a loading factor of an additional 20% per Roads Permit to account for additional miscellaneous indirect and variable causal costs that will be caused as a result of the Telecom's equipment in Middlesex Centre that are not covered by the Municipality's established Roads Permit Fee. Loading factors to cover causal costs are specifically allowed pursuant to CRTC case law. The blanket Agreement will see Middlesex Centre focus on keeping fees for causal costs lower than other municipalities, while ensuring that such costs are covered to prevent taxpayer losses. The practice of using and minimizing a causal costs is encouraged by the publications of the Federation of Canadian Municipalities. A provision exists in the Agreement which triggers a negotiated increase in fees in the event that the fees ever become insufficient to cover the Municipality's causal costs and/or Middlesex Centre needs to restructure how it currently administers Road Permits and fees.

County Building • 399 Ridout Street N. London, ON N6A 2P1

T • 519-434-7321 ext. 2283 F • 519-434-0638 E • wmeagher@middlesex.ca



With respect to security, Rogers is agreeable to the Municipality holding blanket security in the amount of \$55,000.00. The blanket security secures any outstanding and non-complaint obligations of the Telecom under the Agreement and secures individualized permit security that applies at the discretion of Public Works & Engineering to all work in Middlesex Centre road allowances. The blanket security provides for administrative efficiency/reduction of cost of processing individual permit security which is appreciated and desired by the vast majority of Telecoms and is in no manner a penalty clause. The provision includes an appropriate top-up clause and negotiated increase in the event that the amount were ever to become insufficient to cover the ongoing projects of Telecom in the Municipality.

With respect to coordination or work, the Agreement requires the Telecom to use reasonable efforts to coordinate its work with other existing and new occupants of its road allowances and make commercially reasonable efforts to reach agreement for the use of shared infrastructure wherever possible. The Agreement requires road allowances restored by Telecoms post construction to the condition the road allowances were in prior to construction. Rogers provides for full responsibility, indemnity, and insurance (including environmental insurance) over its equipment, as expected by the Municipality. With respect to relocation costs, the Telecom is responsible for the costs of relocations that it causes, and the costs for relocations that may be caused by the Municipality are subject to the sliding costs scale in *Schedule "A"* of the Agreement, which has been ruled to be applicable by the CRTC.

The form of the blanket agreement being used by Middlesex Centre, which was drafted by the MCBSO and is used by numerous municipalities across Middlesex County has been recognized by the International Municipal Lawyers' Association working group as a model document. There has been a willingness by all Telecoms both large and small in all recent fibre-buildout applications in the upper-tier County, Southwest Middlesex, Thames Centre, now Middlesex Centre, and by all of the SWIFT Project successful respondents except for one, which remains outstanding. Should Council have any further questions on the Telecommunications Municipal Access Agreement, it can raise those to Mr. Cascaden, Director of Public Works & Engineering in open session or to the drafter of this report, who can answer questions in open or closed session or a combination thereof depending on the nature of the question. Should some legal advice or confidential questions need to be raised, such can be raised and answered *in camera* following a duly passed motion.

CONCLUSION

Middlesex Centre appreciates Telecoms acting in Middlesex Centre, supports them as community contributors, and looks forward to the build-out of fibre initiatives across Middlesex Centre and the entire County. Endorsement of this Agreement will allow for the fibre buildout of Ilderton and beyond.

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RECOMMENDATION

That Council for the Municipality of Middlesex Centre resolve for the Mayor and Clerk to endorse the attached Rogers Telecommunications Municipal Agreement on behalf of the Municipality and for such resolution to be confirmed by the passing of an appropriate by-law.

Attachment:

Telecommunications Municipal Access Agreement

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