



# The Municipal Corporation of the Town of Fort Erie

## By-law No. 127-2016

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### Being a By-law to Authorize the Entry into a License Agreement with Bell Mobility Inc. for Small Cell Installations at Select Municipal Properties

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**Whereas** Report No. IS-48-2016 was considered at the Council-in-Committee meeting held on November 21, 2016, and subsequently authorized and approved by Council to enter into an agreement with Bell Mobility Inc. to allow Small Cell installations at select municipal properties, and

**Whereas** it is deemed desirable to enter into a Small Cell – Master License Agreement Bell Mobility Inc.;

**Now therefore** the Municipal Council of The Corporation of the Town of Fort Erie enacts as follows:

1. **That** the entry into a Small Cell – Master License Agreement with Bell Mobility Inc., for the installation of equipment at select municipal properties to improve data connections in poor or overloaded cellular areas, substantially in the form attached as Schedule “A” and forming part of this by-law, is authorized and approved.
2. **That** the Mayor and Clerk are authorized and directed to execute the Small Cell – Master License Agreement, and to affix the corporate seal thereto.
3. **That** the Clerk of the Town is authorized to effect any minor modifications, corrections or omissions, solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after the passage of this by-law.

**Read a first, second and third time and finally passed this 28<sup>th</sup> day of November, 2016.**

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Mayor

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Clerk

I, Laura Bubanko, the Clerk, of The Corporation of the Town of Fort Erie certifies the foregoing to be a true copy of By-law No. 127-2016 of the said Town. Given under my hand and the seal of the said Corporation, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

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**Schedule "A" to By-law No. 127-2016**

**SMALL CELL - MASTER LICENSE AGREEMENT**

**THIS AGREEMENT** made this 1st day of January, 2017.

**B E T W E E N:**

**THE CORPORATION OF THE TOWN OF FORT ERIE**

(hereinafter called the "**Town**")

OF THE FIRST PART

- and -

**BELL MOBILITY INC.**

(hereinafter called "**Bell**")

OF THE SECOND PART

**WHEREAS** this license agreement (the "**Agreement**") between the above parties outlines the terms and conditions of a license from the Town to Bell for the use of certain Town-owned facilities by Bell to attach telecommunications equipment and provide wireless telecommunications services.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the sum of Two Dollars (\$2.00) now paid by each party hereto to the other and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Town and Bell covenant and agree as follows:

1. **Grant:** The Town hereby grants to Bell a non-exclusive right, by way of a license (the "**License**"), to place, attach, install, operate, repair, replace, upgrade, maintain, relocate and remove accessories, structures, devices, and equipment used for the transmission of Bell's wireless communications and other communication services (collectively, the "**Equipment**") in, on or to certain of the Town's property and facilities (including, but not limited to, light poles, utility poles, traffic light poles, or any other pole owned by the Town), each of which are specifically listed in Schedule "A" (collectively, the "**Facilities**", or, individually, a "**Facility**"). The work performed by Bell pursuant to this Agreement is hereinafter referred to as the "**Work**".

2. **Application Fees:** Bell shall pay to the Town a one-time application fee of Five Hundred Dollars (\$500.00) per Facility (plus any Sales Taxes (as defined herein) which Bell is required to pay by law) for the review, processing and approval of Bell's proposed Equipment installation at each Facility.
3. **Annual Fee:** On the Commencement Date (as defined herein), and on each anniversary thereafter during the Term, Bell shall pay to the Town an annual fee (plus any Sales Taxes (as defined herein) which Bell is required to pay by law) per Facility in accordance with Schedule "C", based on the amount of Facilities listed in Schedule "A" as at such date, as same may be amended from time to time. Notwithstanding any amendment to Schedule "A" which may add or remove Facilities to this Agreement during the Term, the Town and Bell agree that the annual fee shall not be increased or decreased until the next anniversary of the Commencement Date (being the next date upon which payment of the annual fee is due).
4. **Additional Fees:** Bell covenants and agrees to pay any and all fees associated with any permits that Bell is required to obtain by law in connection with any Work. Furthermore, Bell covenants and agrees to pay the fees and charges set out in Schedule "B" with respect to the hydro consumption of the Equipment.
5. **Taxes:** The Town confirms that its HST (as defined in this Section) number is 10812 6459 RT0001, and acknowledges and agrees that notwithstanding the forgoing or anything else contained in this Agreement, Bell's obligation to pay to the Town any goods and services tax or harmonized sales tax in addition to the annual fee is conditional upon such HST number being valid and correct.
6. **Payment of Fees:** At the discretion of Bell, the Town agrees that any amount owed by Bell to the Town pursuant to this Agreement may be paid by electronic funds transfers ("EFT"). Upon request by Bell, the Town agrees to provide Bell with all of the necessary information in order to effect an EFT to the Town.
7. **Approval:** Bell shall not place, attach or install any Equipment on a Facility without first obtaining the prior written approval of the Town's Director, Infrastructure Services, or his designate (the "Director") regarding the location of the Equipment and the proposed method of placement, attachment or installation of the Equipment to the Facilities. In applying for said approval, Bell shall submit to the Director:
  - (a) a description of the Equipment;
  - (b) a plan showing the proposed location of the Equipment;
  - (c) a description of the scope of the Work required to place, attach or install the Equipment;
  - (d) a schedule setting out the proposed timetable for the commencement, performance and completion of the Work; and

8. **Term:** The License shall be for a “**Term**” of ten (10) years commencing on the 1<sup>st</sup> day of January, 2017 (the “**Commencement Date**”) and ending at 11:59 pm on the 31<sup>st</sup> day of December, 2027, unless sooner terminated in accordance with this Agreement.
9. **Extension:** The Town grants and agrees that the Term of this Agreement may be extended by two (2) successive five (5) year terms on the same terms and conditions. Each extension period shall form part of the “Term”. Unless Bell provides the Town with written notice of its intention not to extend this Agreement at least six (6) months prior to the expiration of the Term or the then current extension period, as the case may be, this Agreement shall automatically extend for an extension period.
10. **Conditions of the Work:** The Work conducted by Bell is subject to the following conditions:
  - (a) the Work shall conform to all applicable federal, provincial and municipal statutes, laws and by-laws, and other applicable rules and regulations, having jurisdiction over Bell’s operations, including those regarding telecommunications, construction, safety and the environment;
  - (b) the Work shall be conducted and completed to the satisfaction of the Director, in accordance with the terms and conditions of this Agreement, and in compliance with any terms and conditions established under Section 7;
  - (c) the Work shall be performed in a manner that safeguards and protects all other support structures, transmission lines, equipment, facilities and improvements of any kind (“**Improvements**”) present on the Facilities at the time of installation;
  - (d) upon completion of any Work, Bell shall repair and restore any damage to the Facilities or Improvements caused by the Work to the condition in which they existed prior to the Work, reasonable wear and tear excepted. If Bell fails to repair and restore the Facilities and Improvements within thirty (30) days of being notified by the Town, the Town may make such repairs and Bell shall pay the Town’s reasonable repair costs, upon presentation of a detailed invoice;
  - (e) Bell shall immediately cease the Work, as the Town reasonably requires for the operation, repair or maintenance of the Facilities or Improvements, or for any emergency purposes, following receipt of written notice in a reasonable time from the Town containing the Town’s bona fide reasons for stopping the Work. Bell may resume the Work once notice is given by the Town that the repair or maintenance is completed, or the emergency has been resolved; and
  - (f) Bell shall be responsible for all Work, including the costs of such Work.
11. **Bell’s Covenants:** Bell represents and warrants to and covenants and agrees with the Town that:

- (a) all Work undertaken shall be carried out diligently, in a good and workmanlike manner, in accordance with good engineering practices, and in a manner that shall:
    - (i) not damage or unduly interfere with the improvements of the Town or a third party;
    - (ii) minimize disruption to private and public lands adjacent to the Facilities; and
    - (iii) minimize interference with the public's use and enjoyment of the Facilities;
  - (b) after completing any Work, Bell shall comply with Section 10(d) and leave the Facilities in a clean, tidy and safe condition, to the reasonable satisfaction of the Director, reasonable wear and tear excepted;
  - (c) Bell shall not suffer or permit any claims or liens to be filed or registered against the Facilities;
  - (d) Bell shall notify the Town of any damage to the Facilities or Improvements arising from the Work (excluding any reasonable wear and tear);
  - (e) The Town may place, attach, install, operate and maintain Improvements on the Facilities, and may use the Facilities for any purpose, and subject to Section 18, may allow other parties to place, attach, install, operate and maintain Improvements and use the Facilities, provided that such use, placement, attachment, installation, operations and maintenance of Improvements on the Facilities shall not interfere with Bell's Equipment and operations;
  - (f) the Town has made no representations or warranties as to the state of repair of the Facilities, or the suitability of the Facilities for any business, activity or purpose whatsoever, and Bell hereby agrees to use the Facilities on an "as is" basis; and
  - (g) Bell shall, at all times, maintain the equipment in a safe condition and good state of repair.
12. **Access:** The Town grants to Bell, its agents, employees and contractors, unrestricted and direct access to each Facility, 24 hours a day, 7 days a week at no additional cost to Bell ("24/7 Access"). The Town acknowledges that 24/7 Access is critical to Bell and its business operation. Notwithstanding, entry into or upon any Town building shall require prior permission from the Town's manager of facilities and shall be done during operating hours of any such facility.
13. **Drawings:** Bell shall provide "as built" drawings to the Town within sixty (60) days of completing the installation or relocation of any Equipment at a Facility.

14. **Third Party Use:** Bell shall not permit any third party who is not an Affiliate (as defined herein) of Bell to use the Equipment, without the prior written approval by the Director, which prior written approval shall not be unreasonably withheld, conditioned or delayed. For the purpose of this Agreement, an “Affiliate” means any entity (including a partnership) now or hereafter existing, who directly or indirectly Controls, is Controlled by or is under common Control with Bell. “**Control**” means: (i) the power, by ownership of voting equity, contract or otherwise, to elect a majority of the board of directors or other governing body of the subject person or to otherwise direct the management and policies of the subjects person; or (ii) the record of beneficial ownership, directly or indirectly, alone or in combination with one or more Affiliate(s), other than by way or security interest only, of more than fifty percent (50%) of the voting rights, income or capital of the subject person; and “**Controlled**” has the corresponding meaning.
15. **Bell Termination:** This Agreement may be terminated by Bell at any time during the Term, on ninety (90) days prior written notice to the Town, if Bell believes that operating its Equipment on the Facilities is no longer commercially desirable. In addition to the above, Bell may terminate this Agreement as it relates to any one or more Facilities listed in Schedule “A” hereto by giving ninety (90) days prior written notice to the Town. In the event of such termination, both the Town and Bell shall be released from any further obligations with respect to any matter under this Agreement as it relates to such terminated Facility or Facilities (as the case may be), provided Bell shall remove the Equipment from the relevant Facility or Facilities (as the case may be) in accordance with Section 17 of this Agreement. In the event that this Agreement is terminated as it relates to a Facility or Facilities (as the case may be) in accordance with this Section, the parties hereto agree to enter into a written agreement to amend Schedule “A” hereto to accurately account for the Facilities subject to this Agreement.
16. **Town Termination:** This Agreement may also be terminated:
  - (a) either in its entirety or as it relates to any one or more Facilities, in the sole and absolute discretion of the Town, by written notice from the Town to Bell, in the event Bell fails to pay any amount payable under this Agreement, which is not subject to bona fide dispute, within thirty (30) days of when the payment was due, and Bell does not rectify this default within thirty (30) days of being notified in writing by the Town;
  - (b) as it relates to any one Facility, by written notice from the Town to Bell, in the event Bell unduly interferes with the public’s use and enjoyment of such Facility, and does not rectify this interference within thirty (30) days of being notified in writing by the Town. Notwithstanding the foregoing, in the event that the aforementioned interference reasonably requires more time to cure than thirty (30) days, the Town shall only have the right to terminate pursuant to this Section if Bell has not commenced remedying the interference by the thirty-first (31st) day, or, is not diligently pursuing remediation of the interference after the thirty-first (31st) day in the opinion of the Town, acting reasonably; or

- (c) in its entirety, by written notice from the Town to Bell, in the event there is filed by or against Bell, in any court, an uncontested petition in bankruptcy or insolvency, or for reorganization, or for the appointment of a liquidator for Bell's property

In the event that this Agreement is not terminated in its entirety, and is rather terminated as it relates to a Facility or Facilities (as the case may be) in accordance with this Section, the parties hereto agree to enter into a written agreement to amend Schedule "A" hereto to accurately account for the Facilities subject to this Agreement.

- 17. **Surrender:** Upon termination of this Agreement as it relates to any one or more Facilities listed in Schedule "A" hereto, Bell shall remove the applicable Equipment within no less than one-hundred and eighty (180) days of such termination, and Bell shall repair and restore the applicable Facilities, as the case may be, to the same or similar condition in which they existed prior to any Work, reasonable wear and tear excepted, to the reasonable satisfaction of the Director.
- 18. **Town's Interference:** In using its Facilities and accessing its Improvements, the Town will use best efforts to avoid interfering with the Equipment (which, for clarification purposes, includes impairing the quality of the telecommunications services being rendered by Bell at the Facilities). However, Bell acknowledges and accepts that the Town may, acting reasonably, interfere with the Equipment for the operation, repair or maintenance of the Facilities and/or Improvements. The Town agrees that in the event of any such repair or maintenance of the Facilities or for Improvements it shall provide Bell thirty (30) business days' prior written notice, unless the requirement to repair and/or maintain a Facility is due to an emergency situation involving the health and safety of the public. Bell agrees that the Town will not be responsible for any costs, losses or damages suffered by Bell, as a result of the Town's interference with the Equipment, unless caused by the willful misconduct or gross negligence of the Town, its elected officials, appointed officers, employees, agents or contractors, and or anyone for whom the Town is responsible by law. The Town agrees to use best efforts to fully cooperate with Bell if any third party using the Facilities interferes with the Equipment.
- 19. **Temporary Removal:** Bell acknowledges that the Town may require certain Equipment to be temporarily removed from a Facility for the purposes of conducting work at such Facility. Within ten (10) days of written request by the Town, Bell agrees to temporarily remove its Equipment, as requested by the Town, for the Town's work. The Town covenants and agrees to use best efforts to complete such work as expeditiously as possible. Following completion of the Town's work, Bell may, at its expense, reinstall the removed Equipment.
- 20. **Damage and Destruction:** The Town shall have no obligation to repair or replace any Facilities in the event of any damage or destruction to any Facilities.
- 21. **Review:** The Town and Bell agree to use reasonable commercial efforts to meet (through their agents or otherwise) two (2) times each year during the Term to review the



performance of the parties under this Agreement, including identifying any opportunities to expand the relationship of the parties hereto.

22. **Release:** Bell, its Affiliates and their respective directors, officers and employees, or any person or persons claiming by, through or under them hereby release and forever discharge the Town of and from any and all actions, damages, losses, causes of actions, claims and demands of any kind or nature whatsoever, which Bell may have against the Town for or by any reason arising from, or out of, or connected in any way to the Work or use of the Facilities or to the transmission of wireless services, except for any actions, damages, losses, causes of actions, claims and demands caused by the gross negligence or willful misconduct of the Town, its elected officials, appointed officers, employees, agents, contractors or any person the Town is responsible for in law.
23. **Indemnity:** Bell further agrees, at its own cost and expense, to indemnify, protect and save the Town harmless from and against any and all actions, damages, losses, causes of actions, claims and demands of any kind or nature whatsoever, which may be ordered or awarded against the Town by third parties or lawful authority arising from, or out of, or connected in any way to the Work or to the transmission of wireless services, except for any actions, damages, losses, causes of actions, claims and demands caused by the negligence or willful misconduct of the Town, its elected officials, appointed officers, employees, agents, contractors or any person the Town is responsible for in law.
24. **Hazardous Substances:** Bell specifically acknowledges that the Town is not responsible for the escape, discharge or release of any hazardous substances from the Equipment, and specifically agrees to indemnify, protect and save the Town harmless from any and all actions, causes of actions, claims and demands regarding any such hazardous substance that has escaped, been discharged or released from the Equipment unless caused by the negligence or willful misconduct of the Town, its elected officials, appointed officers, employees, agents, contractors or any person the Town is responsible for in law. “**Hazardous Substance**” means any hazardous or toxic substance, and includes radiofrequency electromagnetic energy, or other radiation, petroleum products and byproducts, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any law, ordinance, rule, regulation, bylaw or code, whether federal, provincial or municipal.
25. **Environmental Liability:** Bell agrees to assume all environmental liability under federal, provincial and local government laws in Canada, as a responsible person or otherwise, relating to its occupancy and use of the Facilities, including but not limited to any liability for clean-up of any Hazardous Substance in, on, under, along, across and around the Facilities, which are proven to result directly from:
  - (a) the installation, occupation, operation and removal by Bell of the Equipment;
  - (b) any materials or goods brought to the Facilities by Bell, or by any other person with the express or implied consent of Bell.



If a Hazardous Substance is discovered at a Facility by Bell during the Term and such Hazardous Substance did not arise out of the occupancy or use by Bell of the Facility or was not occasioned by any act or omission of Bell or those for whom Bell is in law responsible, Bell may request that any such Hazardous Substance be removed at the Town's sole expense.. For further clarification, Bell shall not be responsible for, or required to remove or remediate any Hazardous Substances that have migrated onto or into a Facility or which existed at a Facility prior to Bell's occupation or use of such Facility.

26. **Insurance:** For the duration of the Term:

- (a) Bell shall maintain comprehensive general liability insurance with coverage up to five million dollars (\$5,000,000.00), per occurrence and in the annual aggregate for products and completed operations, to protect Bell from claims for personal injury, bodily injury or broad form property damage arising out of Bell's Work and/or operation of the Equipment. In addition, Bell agrees that:
  - (i) the Town shall be added as an additional insured but only with respect to Bell's legal liabilities arising out of Bell's operations under this Agreement; and
  - (ii) the insurance shall include coverage for: products and completed operations; blanket contractual liability; cross-liability; non-owned automobile liability.
- (b) Bell shall also maintain automobile liability insurance, with coverage for bodily injury and property damage, for any Bell owned or leased vehicles used in the performance of the Work in the amount of two million dollars (\$2,000,000.00) per accident.
- (c) The comprehensive general liability insurance policy shall contain a provision whereby the insurers will provide the Town with sixty (60) days' notice of cancellation.
- (d) Upon execution of this Agreement and upon the placement, renewal, amendment, or extension of all or any part of the insurance, Bell shall promptly provide the Town with a certificate of insurance applicable to this Agreement. Failure to maintain the insurance policies as required by this Agreement is a material breach of contract.
- (e) Excess (umbrella) liability insurance may be used to achieve the required insured limits.

27. **Notice:** Any notice to be given under the terms of this Agreement shall be in writing and shall be sufficiently given if delivered personally or by courier to the party for whom it is intended, sent by facsimile to the party for whom it is intended, or, if mailed, postage prepaid, by registered mail addressed to the party for whom it is intended. The facsimile numbers and the addresses for notice are set forth for each party below.

To the Town: **THE TOWN OF FORT ERIE**  
1 Municipal Centre Drive  
Fort Erie, ON, L2A 2S6  
Attention: Director, Infrastructure Services  
Fax Number: (905) 871-6411

To Bell: **BELL MOBILITY INC.**  
Real Estate Department  
5099 Creekbank Rd., Building D, Floor 6N  
Mississauga, ON, L4W 5N2  
Attention: Real Estate Services  
Fax Number: (905) 282-3102

Either party to this Agreement may change its address for notices or facsimile number by notice to the other party in accordance with the provisions of this Section. Any notice delivered personally, by courier or registered mail shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a business day such notice or other communication shall be deemed to have been given and received on the next following business day. Any notice sent by facsimile, shall be deemed to have been given upon the date receipt by facsimile is confirmed, provided, however, if receipt is confirmed after 5:00 p.m. or on a Saturday, Sunday or statutory holiday, such notice shall be deemed to have been given on the next business day.

28. **Assignment:** The Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Bell shall not assign or transfer any rights or privileges granted herein without prior written consent of the Town, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Bell may assign this Agreement, the Equipment, or any rights or privileges granted herein, without the consent of the Town, to: (i) a purchaser of a material portion of its assets; (ii) an Affiliate; (iii) a principal lender to Bell; (iv) a corporation or other person with which Bell is merged or consolidated; (v) a corporation or other person who is an “associate” (as that term is defined in the Canada Business Corporations Act or any successor legislation in force) of Bell; or (vi) a corporation or other person that “controls” or “is controlled by” (as those terms are defined in the Canada Business Corporations Act or any successor legislation in force) Bell. In the event that the Town’s written consent is required by virtue of this provision, such consent shall be deemed granted if the Town does not deliver a written response to Bell’s written request for consent within fifteen (15) days of Bell delivering its written request for consent to the Town.

29. **Transfer by Town**

In the event the Town intends, proposes or plans to assign, transfer or sell a Facility, the Town covenants and agrees that it shall provide Bell with written notice of such assignment, transfer or sale one hundred and twenty (120) days prior the effective date of such assignment, transfer or sale, and, in such written notice, the Town shall request that Bell relocate its Equipment to another facility location owned by the Town. The Town

and Bell agree that the process for such relocation shall be made in accordance with the terms set out in Section 7 herein.

30. **Contractual Rights:** The relationship between the Town and Bell and established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed:
  - (a) to create or confer any real property interests to Bell;
  - (b) to constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; or
  - (c) to allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever (other than as set out in this Agreement).
31. **Non-exclusivity:** Nothing in this Agreement shall be construed as affecting any rights or otherwise of others not a party to this Agreement to use any of the Facilities in accordance with the Town's lawful authority, provided such use will not interfere with Bell's operation of the Equipment.
32. **No Derogation:** Nothing contained or implied in this Agreement will derogate from the obligations of Bell under any other agreement with the Town, or prejudice or affect the Town's rights, powers, duties or obligations in the exercise of its functions under all public and private statutes, by-laws, orders and regulations, which may be as fully and effectively exercised in relation to the Facilities as if this Agreement had not been executed by Bell and the Town.
33. **Bell's Representation and Warranty:** Bell represents and warrants to and in favour of the Town that it has the good right, full power and absolute authority to enter into this Agreement.
34. **Town's Representations and Warranties:** The Town represents and warrants to and in favour of Bell that: (i) neither the entering into nor the delivery of this Agreement nor the completion by the Town or Bell of the transactions contemplated under this Agreement will conflict with or constitute a default under or result in a violation of, or require a consent of anyone under any agreement to which the Town is a party or by which the Town or the Facilities are bound; and (ii) the Town has the good right, full power and absolute authority to enter into this Agreement and grant this License and all of the rights hereunder to Bell. The Town shall indemnify Bell with respect to all claims, actions, damages, liabilities and expenses in the connection with any breach of the representations or warranties in this Section, and the Town agrees to be liable for and to pay all costs, claims, damages and expenses to Bell associated with any breach of the representations or warranties in this Section.
35. **Force Majeure:** Except for the obligation to make payments or advance funds when due hereunder, which may not be claimed as force majeure by any party, the obligations of the parties shall be suspended to the extent and for the period that performance is prevented by any cause, whether foreseeable or unforeseeable, beyond its reasonable

control, including, without limitation: (i) labour disputes (however arising and whether or not employee demands are reasonable or within the power of the party to grant); (ii) acts of God; (iii) laws, regulations, orders, proclamations, instructions or requests of any government or governmental entity; (iv) judgments or orders of any court; (v) inability to obtain on reasonably acceptable terms, or unreasonable delays in obtaining, any public or private license, permit or other authorization; (vi) acts of war or conditions arising out of or attributable to war, whether declared or undeclared; (vii) riots, acts of terrorism, civil strife, insurrection or rebellion; (viii) fire, explosion, earthquake, storm, flood, sink holes, drought or other adverse weather condition; (ix) delay of failure by suppliers or transporters of materials, parts, supplies, services or equipment or by contractors' or subcontractors' shortage of, or inability to obtain, labour, transportation, materials, machinery, equipment, supplies, utilities or services; (x) accidents; (xi) power failure; (xii) breakdown of equipment, machinery or facilities; (xiii) actions by native rights groups, environmental groups or other similar special interest groups; or (xiv) any other cause, whether similar or dissimilar to the foregoing that is beyond the reasonable control of the affected party. The time for performance of all obligations hereunder (except for the obligation to make payments or to provide funds when due) shall be extended for a period equivalent to any period(s) of force majeure, as described above. A party that claims force majeure shall promptly notify the other party and shall: (a) take all reasonable steps to remove or remedy the cause of the prevention or delay insofar as the party claiming force majeure is reasonably able to do so and as soon as reasonably possible; and (b) use commercially reasonable efforts to mitigate any effect which an occurrence of an event of force majeure might have on the performance of such party's obligations under this Agreement.

36. **Entire Agreement:** This Agreement contains the entire agreement between the parties with respect to the Facilities and there are no prior representations, either oral or written, between them other than those set forth in this Agreement. The parties agree to execute such further and other agreements from time to time as may be reasonably necessary in order to give effect to this Agreement. For clarification purposes, the parties agree that Schedule "A" attached hereto may be amended from time to time by written agreement between the parties, and that such amended Schedule "A" shall form part of this Agreement and shall supersede any prior Schedule "A".
37. **Schedules:** The Schedules attached to this Agreement form a part of this Agreement and any obligation imposed on Bell in a Schedule will be deemed to be a covenant of Bell in this Agreement.
38. **Severability:** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision, but shall be deemed to be severable.
39. **Other Payments:** Bell's obligations to pay money under this Agreement are additional to, and not in substitution for, all other amounts payable by Bell to the Town by separate agreement or by-law.

40. **Governing Law:** This Agreement will be governed by the laws of the Province in which the Facilities are located, and the parties agree to submit to the jurisdiction of the courts of such Province.
41. **Time of the Essence:** Time shall be of the essence in this Agreement.
42. **Waiver:** No alleged waiver or breach of this Agreement is effective unless it is an express waiver in writing of the breach in respect of which it is asserted against the party alleged to have given the waiver. No waiver by a party of any breach of this Agreement operates as a waiver of any other breach of this Agreement.
43. **Gender:** In this Agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.
44. **Ownership:** The Town acknowledges that, notwithstanding any rule of law or equity to the contrary, the Equipment will remain the property of Bell even though it is attached to the Facilities.

**IN WITNESS WHEREOF** the parties have duly executed this Agreement as of the date first above written.

**THE CORPORATION OF THE TOWN OF FORT  
ERIE**

Per: \_\_\_\_\_  
Wayne H. Redekop, Mayor

Per: \_\_\_\_\_  
Laura Bubanko, Clerk

We have authority to bind the corporation.

**BELL MOBILITY INC.**

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

I have authority to bind the corporation.

TOR01: 5682770: v3

## **SCHEDULE “A”**

### **LOCATIONS**

Proposed Pico/Small Cell In-Building Systems:

Municipal Campus, 42.903627 N, 78.973830 W

Crystal Ridge Complex 42.872945 N, 79.052795 W

Stevensville Community Hall/Library 42.942848 N, 79.53540 W

Proposed Small Cell locations:

Bay Beach 42.863100 N, 79.069625 W

Waterfront Park 42.895798 N, 79.057588 W

Jarvis Street 42.929742 N, 78.916595 W

Ridge Road South/Downtown Ridgeway 42.882288 N, 79.051989 W

Waverly Beach – Helena Street at Lake Erie 42.883603 N, 78.939239 W

Crescent Beach – Crescent Road at Lake Erie 42.884100 N, 78.960203 W

Friendship Festival at Mathers Arch 42.906391 N, 78.911727 W

Friendship Festival at Mathers Arch 42.906391 N, 78.911727 W

Sugar Bowl Park/Oakes Park/Library/Pool 42.921210 N, 78.918894 W



## **SCHEDULE “B”**

### **HYRDO FEES**

#### Hydro Consumption Surcharge

Per Outdoor small cell antennas: Two Hundred and Fifty Dollars (\$250.00) per year, payable annually upon construction, and increasing by a minimum of five (5) percent each year, or in accordance Hydro One rate increases, should they be higher.

## **SCHEDULE 'C'**

### **FEE'S**

Annual Fee: On the Commencement Date (as defined herein), and on each anniversary thereafter during the Term, Bell shall pay to the Town an annual fee of:

- Seven Hundred and Fifty Dollars (\$750.00) per Facility for any approved Equipment installation (Pico & Small Cell In-Building System) placed within the interior of a Municipal property; (interior installation fee, per facility) and/or
- Two Hundred and Fifty Dollars (\$250.00) per exterior Small Cell location for any installations on approved Municipal property or infrastructure, (exterior installations fee, per small cell);