

## Report to Corporate Services Committee

**To:** Chair and Members  
Corporate Services Committee

**From:** Anna Lisa Barbon, CPA, CGA  
Deputy City Manager, Finance Supports

**Subject:** Budweiser Gardens Expansion Project Memorandum of Understanding

**Date:** May 27, 2024

## Recommendation

That, on the recommendation of the Deputy City Manager, Finance Supports, the following actions **BE TAKEN**:

- a) This report entitled “Budweiser Gardens Expansion Project Memorandum of Understanding” **BE RECEIVED** for information; and,
- b) The attached by-law (Appendix “A”) **BE INTRODUCED** at the Municipal Council meeting on June 4, 2024 to execute the proposed Memorandum of Understanding (MOU) (Schedule “A”) documenting the timing and manner of contributions and disbursements for the previously approved Budweiser Gardens Expansion Project.

## Linkage to the Corporate Strategic Plan

The following report supports the 2023-2027 Strategic Plan through the strategic focus area of Economic Growth, Culture and Prosperity. Specifically, this report contributes to making London a destination of choice, through the strategy: “Use existing assets in creative ways, and evaluate opportunities for new assets, that support London’s profile as a destination for arts, culture, sport and recreation.”

## Analysis

### 1.0 Background Information

#### 1.1 Previous Reports Related to this Matter

2024-2027 Multi-Year Budget, Business Case #P-43 – Budweiser Gardens Expansion Phase 2

<https://london.ca/sites/default/files/2023-12/DRAFT%202024-2027%20Multi-Year%20Budget.pdf>

Corporate Services Committee, October 3, 2023, Budweiser Gardens Proposed Expansion – Additional Information and Proposed Amending Agreement

<https://pub-london.escribemeetings.com/filestream.ashx?DocumentId=103306>

Corporate Services Committee, May 23, 2023, Budweiser Gardens Expansion and Renovation Proposal

<https://pub-london.escribemeetings.com/filestream.ashx?DocumentId=99328>

## **1.2 Budweiser Gardens Expansion Project**

On May 23, 2023, the Corporate Services Committee received a report regarding a proposed expansion and renovation project for Budweiser Gardens that was brought forward by OVG360. This proposal reflected a \$33.3 million project split into two phases. The intention of the project is to enhance the patron and performer experience at the facility, while also expanding back of house space to address current limitations.

On June 6, 2023, Council directed Civic Administration to report back with further information related to the proposal, prepare an amending agreement to the Participatory Occupancy Lease and provide a source of financing for Phase 1 of the proposed Expansion Project. A follow-up report was provided to the Corporate Services Committee on October 3, 2023 providing the requested information. On October 17, 2023, Council approved the source of financing for Phase 1 of the Project as well as the amending agreement to the Participatory Occupancy Lease.

Due to the more significant municipal contribution required for Phase 2 of the Project, a business case to secure funding for this phase was brought forward and approved as part of the City's 2024-2027 Multi-Year Budget process, with deemed approval of the budget on March 1, 2024.

## **2.0 Discussion and Considerations**

### **2.1 Memorandum of Understanding (MOU)**

While amendments to the Participatory Occupancy Lease have been previously approved which outlined the basic terms of the Expansion Project, this Memorandum of Understanding is required to document the manner of contributions by the partners in the Partnership (OVG360, EllisDon) and the City to the Expansion Project as well as the manner of disbursement of such contributions to pay the project costs.

Significant elements of the MOU intended to safeguard the City's contribution to the Project include:

- The ability for the City to approve the form of fixed price construction contracts to be entered into for the Project;
- The requirement for the City to approve disbursements of funds from the Project bank account;
- The requirement to provide the City with supporting documentation (invoices) for any proposed disbursements.

This MOU is ultimately intended to establish clear expectations between all parties as the Project is constructed.

## **3.0 Financial Impact/Considerations**

The City's total contribution to the Budweiser Gardens Expansion project is \$26.7 million, split between Phase 1 (\$9.0 million) and Phase 2 (\$17.7 million). Funding for both phases has been previously approved as follows:

- Phase 1 was approved by Council on October 17, 2023 with the funding source being debt serviced through the Tourism Infrastructure Reserve Fund; and,
- Phase 2 was approved through the 2024-2027 Multi-Year Budget (Business Case P-43), with funding coming from a combination of a drawdown from the Economic Development Reserve Fund (\$2.0 million), a drawdown from the Tourism Infrastructure Reserve Fund (\$3.0 million) and debt serviced through the Tourism Infrastructure Reserve Fund (\$12.7 million).

## **Conclusion**

This report seeks Council's approval for a Memorandum of Understanding between The Corporation of the City of London, Royal Trust Corporation of Canada as Trustee of the City of London Area Trust, London Civic Centre Limited Partnership, EllisDon Construction Limited and CSLP London LLC (OVG360) outlining the manner of contributions of OVG360, EllisDon and the City to the Budweiser Gardens Expansion Project and the manner of disbursement of such contributions to pay Project costs. This MOU is intended to ensure clear expectations are set between all parties at the outset of the Project.

**Submitted by:** **Kyle Murray, CPA, CA**  
**Director, Financial Planning & Business Support**

**Recommended by:** **Anna Lisa Barbon, CPA, CGA**  
**Deputy City Manager, Finance Supports**

## Appendix A – By-law for Memorandum of Understanding

Bill No.

By-law No.

A by-law to authorize and approve a Memorandum of Understanding with respect to the Budweiser Gardens Expansion Project and to authorize the Mayor and the City Clerk to execute the Memorandum of Understanding.

WHEREAS subsection 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;

WHEREAS the City owns the land on which the Budweiser Gardens was built and leases the land to the Royal Trust Corporation of Canada, as Trustee for The City of London Arena Trust pursuant to a ground lease dated June 18, 2001 (the “Ground Lease”);

AND WHEREAS the Royal Trust Corporation of Canada, as Trustee for The City of London Arena Trust (the “Landlord”) owns the building (“Budweiser Gardens”) for the term of the Ground Lease;

AND WHEREAS the Landlord, the City and the London Civic Centre Limited Partnership (“LCCLP”) entered into a Participatory Occupancy Lease dated June 20, 2011, as amended by an Amendment to Participatory Occupancy Lease dated May 24, 2017 and as further amended by an Amendment to Participatory Occupancy Lease dated February, 2024 (collectively, the “POL”)

AND WHEREAS in May 2023, LCCLP submitted the Budweiser Gardens Proposed Renovation Plan (the “Budweiser Gardens Expansion Project”) to the City, funding for which was subsequently approved by Council in October 2023 and March 2024;

AND WHEREAS the POL Amendment dated February, 2024 set out the basic commercial and financial terms and conditions for the Budweiser Gardens Expansion Project;

AND WHEREAS the parties desired to further document the manner of contributions of OVG360, EllisDon and the City to the Budweiser Gardens Expansion Project and the manner of disbursements of such contributions to pay the Budweiser Gardens Expansion Project Costs;

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

1. The Memorandum of Understanding between The Corporation of the City of London, The Royal Trust Corporation of Canada as Trustee of the City of London Area Trust, London Civic Centre Limited Partnership, EllisDon Construction Ltd. and CSLP London LLC (OVG360), attached hereto as Schedule “A”, is hereby authorized and approved.

2. The Mayor and the City Clerk are authorized to execute the Memorandum of Understanding authorized and approved in section 1.

3. This by-law comes into effect on the day it is passed subject to the provisions of PART VI.1 of the Municipal Act, 2001.

Passed in Open Council on June 4, 2024 subject to the provisions of PART VI.1 of the Municipal Act, 2001.

Josh Morgan  
Mayor

Michael Schulthess  
City Clerk

First Reading -  
Second Reading -  
Third Reading -

## Schedule A – Memorandum of Understanding

### MEMORANDUM OF UNDERSTANDING

**THIS AGREEMENT** (the “**Agreement**”) made as of the 4th day of June, 2024

A M O N G :

**THE ROYAL TRUST CORPORATION OF CANADA, AS TRUSTEE OF THE CITY OF LONDON ARENA TRUST** (the “**Landlord**”)

- and -

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

- and -

**LONDON CIVIC CENTRE LIMITED PARTNERSHIP** (“**LCCLP**”)

- and -

**ELLISDON CONSTRUCTION LTD.** (“**EllisDon**”)

- and -

**CSLP LONDON, LLC** (“**OVG360**”)

each a “**Party**” and collectively the “**Parties**”

**WHEREAS** the Landlord, LCCLP and the City and certain other parties entered into a Participatory Occupancy Lease dated June 20, 2001, as amended by an Amendment to Participatory Occupancy Lease dated May 24, 2017, and as further amended by an Amendment to Participatory Occupancy Lease dated as of February, 2024 (the “**February 2024 POL Amendment**”) (collectively the “**POL**”);

**AND WHEREAS** the City owns the Land and leases the Land to the Landlord pursuant to a Ground Lease dated as of June 18, 2001 (the “**Ground Lease**”). Pursuant to the Ground Lease, the Landlord owns the Building for the term of the Ground Lease;

**AND WHEREAS** pursuant to the POL, the Landlord demised and subleased the Land and leased the Building to LCCLP for a period of forty-nine years and eleven months to facilitate LCCLP’s use, operation and maintenance of the Building, now know as “Budweiser Gardens”;

**AND WHEREAS** the current partners in LCCLP are London Civic Centre Corporation, as general partner, and EllisDon Construction Ltd. (“**EllisDon**”) and CSLP London, LLC (“**OVG360**”) as limited partners;

**AND WHEREAS** in May 2023, LCCLP submitted the “Budweiser Gardens Proposed Renovation Plan” (the “**LCCLP Proposal**”) to the City. The LCCLP Proposal described a multi-phase expansion and renovation of Budweiser Gardens (being the “**Expansion Project**” and “Phase 1” of the Expansion Project as defined in the February 2024 POL

Amendment being hereinafter referred to as “**Phase 1**” or the “**Phase 1 Project**”, and “Phase 2” of the Expansion Project as defined in the February 2024 POL Amendment being hereinafter referred to as “**Phase 2**” or the “**Phase 2 Project**”);

**AND WHEREAS** the February 2024 POL Amendment set out the basic commercial and financial terms and conditions for the Expansion Project;

**AND WHEREAS** the Parties now desire to further document the manner of contributions of OVG360, EllisDon and the City to the Expansion Project and the manner of disbursement of such contributions to pay Expansion Project Costs (as defined in the February 2024 POL Amendment, and hereinafter referred to as the “**Expansion Project Costs**”).

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties hereto, the Parties agree as follows:

#### **SECTION 1.0 - GENERAL PROVISIONS**

- 1.1 Capitalized terms used in this Agreement and not otherwise defined in this Agreement shall have the meaning given to such terms in the POL.
- 1.2 Other than the amendment to the POL which was effected by the February 2024 POL Amendment, to the knowledge of LCCLP and the City, none of the other closing documents entered into on or about June 20, 2001 respecting the lease, sublease, construction, development, use, operation or maintenance of the Building (the “Budweiser Gardens Closing Date Documents”) need to be amended in any material respect in order for the Expansion Project, the Phase 1 Project or the Phase 2 Project to be funded and implemented in the manner contemplated by the February 2024 POL Amendment or this Agreement. In the event that there is any inconsistency or conflict between the terms of this Agreement and the terms of any of the Budweiser Gardens Closing Date Documents, the Parties shall proceed in good faith and reasonably co-operate to amend any of such Budweiser Gardens Closing Date Documents, so that there is no inconsistency or conflict between them and the terms of this Agreement.
- 1.3 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

#### **SECTION 2.0 - PHASE 1 PRIVATE SECTOR CONTRIBUTIONS AND PHASE 1 DISTRIBUTIONS**

- 2.1 The Parties acknowledge and agree that the respective private sector capital contributions of OVG360 and EllisDon to the Expansion Project Costs for Phase 1 are as follows:

- (a) Contribution by OVG360 – CDN \$5,181,363.00
- (b) Contribution by EllisDon - CDN \$965,537.00

The Phase 1 contributions of OVG 360 and EllisDon are collectively referred to as the “**Phase 1 Private Sector Contributions**”. Subject to Section 6(a) and 6(c) of the February 2024 POL Amendment, the contributions by the City to the Expansion Project Costs for Phase I (the “**Phase I City Contributions**”) will not exceed CDN \$9,000,000.00 plus applicable taxes. The Phase 1 Private Sector Contributions and the Phase 1 City Contributions are collectively referred to as the “**Phase 1 Expansion Project Contributions**”.

- 2.2 The Parties have designated a bank account (the “**Bank Account**”) into which the Phase 1 Private Sector Contributions and the Phase 1 City Contributions shall be deposited in accordance with Section 2.3 and 2.4 hereof.
- 2.3 Notwithstanding anything to the contrary in this Agreement, the Parties agree and acknowledge that OVG360 and EllisDon have contributed, or have caused to be contributed, portions of the Phase 1 Private Sector Contributions to the Bank Account prior to the execution of this Agreement. Such contributions have been mutually agreed to between OVG360 and EllisDon and have been made in proportion to their respective total Phase 1 Private Sector Contributions amounts. The advancement of said funds was to account for design and preconstruction costs incurred prior to execution of this Agreement. Where portions of the Phase 1 Private Sector Contributions have been made prior to the execution of this Agreement, such funds shall be applied toward the amount of the Phase 1 Private Sector Contributions as described in Section 2.1 above and were or shall be used in accordance with Sections 2.6 and 2.7 below. The City acknowledges that the Phase 1 Private Sector Contributions may be made through LCCLP and/or by OVG360 or EllisDon directly.
- 2.4 OVG360 and EllisDon shall pay, or cause to be paid, to the Bank Account the entirety of their remaining portions of the Phase 1 Private Sector Contributions as described in Section 2.1 of this Agreement by wire transfer and the City shall pay to the Bank Account the total amount of the Phase 1 City Contribution by wire transfer on or before the execution of this Agreement unless otherwise mutually agreed to by the Parties.
- 2.5 As set out in Section 5 of the February 2024 POL Amendment, any and all construction contracts entered into for the Phase 1 Project shall be entered into by LCCLP and shall be Fixed Price Construction Contracts and shall be in a form approved by the City.



- 2.6** Subject to this Section 2.6, funds in the Bank Account may only be disbursed for the Phase 1 Project upon the written agreement of both LCCLP and the City. At the time of execution of this Agreement, LCCLP and the City shall each designate a representative for it, who shall be the person to approve any disbursement of monies from the Bank Account on behalf of LCCLP or the City, as the case may be. For clarity, no monies can be distributed from the Bank Account without the written approval, evidenced by signatures, of both representatives (or in the case of deemed approval of the City representative under this Section 2.6, by the written approval, evidenced by signatures, of the representative of LCCLP) and the Bank Account documentation shall include this requirement. LCCLP and the City may replace their designated representative from time to time upon written notice to the other party. LCCLP shall provide the City representative supporting evidence of invoices pertaining to the Phase 1 Project for their review and approval at least three (3) business days in advance of the date that the invoices are to be paid. The City representative shall review said invoices and provide a written response to the LCCLP representative within three (3) business days of receipt. During the three (3) business day period, LCCLP shall respond promptly to any questions raised by the City respecting the invoices or the supporting evidence of invoices, so that the City can provide its written response to LCCLP within the said three (3) business day period. Failure by the City to provide a written response by 18:00h EST within the said three (3) business days shall be deemed written approval by the City representative of the invoice amounts contained therein.
- 2.7** Requests for disbursement of funds from the Bank Account for the Phase 1 Project must be accompanied by invoices and/or other backup documentation supporting the request for such disbursement of funds. Funds may only be disbursed from the Bank Account to fund Phase 1 design, pre-construction, construction and consultant costs incurred pursuant to the terms and conditions of contracts approved by the City pursuant to Section 2.5 hereof and otherwise in compliance with Section 2.6 hereof and this Section 2.7.
- 2.8** Upon payment of the Phase 1 Expansion Project Contributions to the Bank Account, disbursements out of the Bank Account, provided Sections 2.6 and 2.7 hereof are complied with, shall be made on a two-to-one (2:1) basis (that is disbursement shall be on the basis of Two Dollars (\$2.00) of Phase 1 City Contributions for every One Dollar (\$1.00) of Phase 1 Private Sector Contributions until the entirety of the Phase 1 City Contributions have been disbursed), following which disbursements for the remaining Expansion Project Costs for Phase 1 will be made on a one hundred (100%) per cent basis from the Phase 1 Private Section Contributions until the entirety of the Phase 1 Private Sector Contributions have been disbursed. Subject to Sections 6(a) and 6(c) of the February 2024 POL

Amendment, any Expansion Project Costs for Phase 1 in excess of CDN \$15,146,900.00 shall be the sole responsibility of OVG 360 and/or EllisDon.

### **SECTION 3.0 - PHASE 2 PRIVATE SECTOR CONTRIBUTIONS AND PHASE 2 DISTRIBUTIONS**

- 3.1 The Parties acknowledge that Section 9 of the February 2024 POL Amendment applies to the terms of this SECTION 3.0. The Parties agree that until City Council authorizes and approves Phase 2, neither the City nor LCCLP has any obligation to proceed with Phase 2 and none of the City, OVG360 or EllisDon has any responsibility to fund the costs of Phase 2 work. If City Council fails to authorize and approve Phase 2, this SECTION 3.0 and any other terms of this Agreement related to Phase 2 shall be null and void.
- 3.2 The Parties acknowledge and agree that the respective private sector capital contributions of OVG360 and EllisDon to the Expansion Project Costs for Phase 2 are as follows:
- (a) Contribution by OVG360 - CDN \$347,137.00
  - (b) Contribution by EllisDon - CDN \$173,543.00

The Phase 2 contributions of OVG360 and EllisDon are collectively referred to as the “**Phase 2 Private Sector Contributions**”. Subject to Sections 6(b) and 6(c) of the February 2024 POL Amendment, the contributions by the City to the Expansion Project Costs for Phase 2 (the “**Phase 2 City Contributions**”) will not exceed CDN \$17,670,320.00 plus applicable taxes. The Phase 2 Private Sector Contributions and the Phase 2 City Contributions are collectively referred to as the “**Phase 2 Expansion Project Contributions**”.

- 3.3 The Phase 2 Private Sector Contributions and the Phase 2 City Contributions shall be deposited by wire transfer into the Bank Account. For clarity, the Bank Account for Phase 2 may be a separate bank account designated by the Parties specifically for Phase 2.
- 3.4 As set out in Section 5 of the February 2024 POL Amendment, any and all construction contracts entered into for the Phase 2 Project shall be entered into by LCCLP and shall be Fixed Price Construction Contracts and shall be in a form approved by the City.
- 3.5 Subject to this Section 3.5, funds in the Bank Account may only be disbursed for the Phase 2 Project upon the written agreement of both LCCLP and the City. The designated representatives under Section 2.6 of this Agreement, as may be replaced from time to time in accordance with Section 2.6, shall be the persons to approve any disbursement of monies from the Bank Account for the Phase 2 Project on behalf of LCCLP or the City, as the case may be. For clarity, as was the

case for Phase 1, no monies can be distributed from the Bank Account without the written approval, evidenced by signatures, of both representatives (or in the case of deemed approval of the City representative under this Section 3.5, by the written approval, evidenced by signatures, of the representative of LCCLP) and the Bank Account documentation shall include this requirement. LCCLP shall provide the City representative supporting evidence of invoices pertaining to the Phase 2 Project for their review and approval at least three (3) business days in advance of the date that the invoices are to be paid. The City representative shall review said invoices and provide a written response to the LCCLP representative within three (3) business days of receipt. During the three (3) business day period, LCCLP shall respond promptly to any questions raised by the City respecting the invoices or the supporting evidence of the invoices, so that the City can provide its written response to LCCLP within the said three (3) business day period. Failure by the City to provide a written response by 18:00h EST within the said three (3) business days shall be deemed written approval by the City representative of the invoice amounts contained therein.

- 3.6** Requests for disbursement of funds from the Bank Account for the Phase 2 Project must be accompanied by invoices and/or other backup documentation supporting the request for such disbursement of funds. Funds may only be disbursed from the Bank Account to fund Phase 2 design, pre-construction, construction and consultant costs incurred pursuant to the terms and conditions of contracts approved by the City pursuant to Section 3.4 hereof and otherwise in compliance with Section 3.5 hereof and this Section 3.6.
- 3.7** Upon payment of the Phase 2 Expansion Project Contributions to the Bank Account, disbursements out of the Bank Account, provided that Sections 3.5 and 3.6 hereof are complied with, shall be made on a two-to-one (2:1) basis (that is disbursement shall be on the basis of Two Dollars (\$2.00) of Phase 2 City Contributions for every One Dollar (\$1.00) of Phase 2 Private Sector Contributions until the entirety of the Phase 2 Private Sector Contributions have been disbursed), following which disbursements for the remaining Expansion Project Costs for Phase 2 will be made on a one hundred (100%) per cent basis from the Phase 2 City Contributions until the entirety of the Phase 2 City Contributions have been disbursed. Subject to Sections 6(b) and 6(c) of the February 2024 POL Amendment, any Expansion Project Costs for Phase 2 in excess of CDN \$18,191,000.00 shall be the sole responsibility of OVG 360 and/or EllisDon.

**IN WITNESS WHEREOF**, the Parties hereto have duly executed this Agreement as of the date first set forth above.

**ROYAL TRUST CORPORATION OF CANADA, AS  
TRUSTEE OF THE CITY OF LONDON ARENA  
TRUST**

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

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

**LONDON CIVIC CENTRE LIMITED PARTNERSHIP  
by its General Partner, LONDON CIVIC CENTRE  
CORPORATION**

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

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

**THE CORPORATION OF THE CITY OF LONDON**

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

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

**ELLISDON CONSTRUCTION LTD.**

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

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

**CSLP LONDON, LLC**

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

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