

Bill No. 380
2014

By-law No. A.- _____

A By-law to authorize and approve a grant agreement between The Corporation of the City of London, The London Health Sciences Foundation and the St. Joseph's Healthcare Foundation as it relates to the London Medical Innovation & Commercialization Network; and to authorize the Mayor and the City Clerk to execute the Agreement.

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;

AND WHEREAS the Municipal Council wishes to enter into an Agreement with The London Health Sciences Foundation and the St. Joseph's Healthcare Foundation as it relates to the granting of monies to assist in the establishment of the London Medical Innovation & Commercialization Network

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

1. The Agreement to be entered into between The Corporation of the City of London and The London Health Sciences Foundation and the St. Joseph's Healthcare Foundation for a grant towards the establishment of the London Medical Innovation & Commercialization Network, attached as Schedule "A" to this By-law, is hereby authorized and approved.
2. The Mayor and the City Clerk are hereby authorized to execute the Agreement approved under section 1 above.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on July 29, 2014.

J. Baechler
Mayor

Catharine Saunders
City Clerk

First Reading - July 29, 2014
Second Reading - July 29, 2014
Third Reading - July 29, 2014

Schedule "A"

THIS AGREEMENT MADE AS OF THE DAY OF JULY, 2014

Between:

THE CORPORATION OF THE CITY OF LONDON (the "City")

and

THE LONDON HEALTH SCIENCES FOUNDATION ("LHSF")

and

ST. JOSEPH'S HEALTHCARE FOUNDATION ("SJHCF")

WHEREAS:

- Western University, Lawson Health Research Institute, London Health Sciences Centre, St. Joseph's Health Care London, LHSF and SJHCF have created the London Medical Innovation & Commercialization Network, a collaborative and cooperative initiative among them, intended to materially advance innovation and industry in London's healthcare sector, (the preceding entities and this endeavour are referred to below as "LMICN").
- By resolution of Council of the City made July 30, 2013, Council resolved to support, in principle, the vision for LMICN. That vision included investing by way of grant the sum of \$10.0 million from the City's Economic Development Reserve Fund for the LMICN (the "Grant"). The support was subject to the preparation of a governance structure for LMICN, which structure would include the structure to control financial activity and transactions associated with LMICN, including the disbursement of any grant from the City.
- By resolution of Council of the City made October 22, 2013, Council endorsed terms of reference for LMICN, including proposed governance, and directed City administration to undertake administrative acts to formalize the terms of reference and develop applications for additional project funding.
- This agreement is intended to describe the structure to control the financial activity associated with the Grant and to assist with the applications for additional project funding by reflecting the financial commitment of the City to the LMICN.
- LMICN has prepared a strategic plan, which has been reviewed by the City, describing its strategy to promote and fund the creation of a network that will initiate and commercialize medical research and discoveries into healthcare solutions that will generate economic development in London, including employment and investment (the "Strategic Plan"). The Strategic Plan envisages a cluster of three complementary medical innovation centres, intended to be developed at the Western Discovery Park at Western University, as follows:

- a. "Phase 1": the Centre for Musculoskeletal and Brain Health, to be located in a two-story addition, of approximately 50,000 ft.², to the Stiller Centre at Western Discovery Park intended to accommodate the LMICN, the Fowler-Kennedy Sport Medicine Clinic and with space for industry partners and developing commercial enterprises associated with the LMICN strategic plan;
 - b. "Phase 2": the Centre for Bio-Medical Devices and Advanced Simulation, to be located in Windermere Manor, a portion of which will be renovated for the purpose and in an addition to Windermere Manor, of approximately 30,000 ft.²; and
 - c. "Phase 3": The Centre for Bio-Medical Imaging, to be located in a new building, of approximately 40,000 ft.², at Western Discovery Park.
- The Grant shall be applied to the capital and equipment costs associated with Phase 1, Phase 2 and Phase 3.
 - The Grant will permit LMICN to secure the commitment of Western University for \$10 million in funding to match the Grant and Western University shall commit to provide an additional \$10.0 million over 10 years (collectively, the "Western Funding Commitment"), for the purposes of:
 - a. Assisting in the attraction and/or retention of recognized research leaders and high quality research personnel who will be responsible for meeting the job creation, commercialization and other objectives outlined in the Strategic Plan. Such leaders and personnel may be designated as Chairs for recruitment and fundraising purposes; and
 - b. Provide such leaders and personnel, over a reasonable and determined period of time, with the financial and human capital necessary to deliver their respective Strategic Plan objectives, and such further and other outcomes as may be reasonably identified in the recruitment and hiring process
 - Western has made an application to FedDev Ontario under its Southern Ontario Prosperity Initiatives Program for a grant of \$20 million to assist in the creation of the physical and business infrastructure contemplated by Phase I of the Strategic Plan. It is anticipated that the Grant will assist the securing of the FedDev funding (the "FedDev funding").
 - The City is given powers by the *Municipal Act, 2001* for the purpose of providing good government and, as part of good government, the City has jurisdiction to promote economic development.
 - The Strategic Plan identifies potential economic benefits (the "Economic Benefits") of the LMICN to the City that include:

- a. The creation of an estimated 550 full-time, sustainable jobs;
 - b. Creation of an estimated annual economic impact of approximately \$56.0 million in the City's economy associated with these new jobs;
 - c. Develop clinical research hubs through the enhancement of recognized clinical research programs and create medical research infrastructure in order to position the City as a significant location for the commercialization of medical technologies;
 - d. Develop business and management expertise for medical research, which will support commercial and business needs, enhancing the development of new business in the health sector.
- The Strategic Plan also identifies benefits to residents of the City, including increasing the level of healthcare and improving patient care.
 - The City intends to assess the Economic Benefits of the Grant through assessment of various indicators (the "Economic Benefits Metrics"), including:
 - a. The number of full-time, sustainable jobs created by the implementation of the Strategic Plan by the LMICN;
 - b. The amount of additional investment in the LMICN, including government, institutional, fundraising and private sector investment;
 - c. The number of new businesses that are established in the Discovery Park and/or London as a result of the access to the LMICN and the physical and human resources created or attracted by the LMICN;
 - d. Increases in assessment in the City for non-institutional properties created or fostered by the LMICN;
 - e. Increases in building permit activity in the City created or fostered by the LMICN.
 - Under section 107(1) of the *Municipal Act, 2001*, and subject to section 106 of the *Municipal Act, 2001*, the City may make a grant for any purpose that it considers to be in the interests of the City, provided such purpose is consistent with its mandate to provide good government.
 - The City has determined that the Grant does not constitute a prohibited provision of assistance, either directly or indirectly, to any manufacturing business or other industrial or commercial enterprise, contrary to section 106 of the *Municipal Act, 2001* and that the Grant, and this

agreement, do not involve a municipal capital facility within the meaning of section 110 of the *Municipal Act, 2001*.

THIS AGREEMENT WITNESSES THAT in consideration of the mutual covenants contained herein, and other good and valuable consideration, the parties agree as follows:

1. The parties represent and warrant to the other that the recitals to this agreement are true and correct to the best of their respective beliefs as of the date of the making of this agreement and agree that the recitals form an integral part of this agreement.
2. The City will pay the Grant of \$10.0 million, in equal parts of \$5.0 million to each of LHSF and SJHCF, in trust, not to be released to anyone, in whole or in part, without the consent in writing of the City Treasurer and Chief Financial Officer (the "City CFO"), or such other person as may be designated, in writing, by the City CFO for that specific purpose.
3. The consent of the City CFO to the disbursement of any part of the Grant (the "Disbursement") will be provided if, in the sole discretion of the City, the following conditions are satisfied:
 - a. The structure and governance of the LMICN has been settled to the satisfaction of the City such that the LMICN is properly and professionally administered and accountable, maintains a bank account in the City at a Canadian chartered bank in compliance with all applicable regulation and proper governance of the LMICN is established such that there will be clearly accountable persons or entities responsible for the receipt, management and disbursements of all funds and assets of the LMICN (collectively, the "Governance");
 - b. The City will be provided with any and all documents and information necessary to satisfy the City that proper Governance of the LMICN has been established. The City shall be entitled, in addition to any documentation or information provided, such additional documents or information as necessary to satisfy the City on the Governance upon request;
 - c. The City will be provided with a budget of the LMICN, as may be amended from time to time, outlining the anticipated funding requirements of the LMICN and the anticipated sources by which those funding requirements will be met (the "Budget");
 - d. The Disbursement shall only be made if it is consistent with the Budget;
 - e. Any Disbursement shall be made to the bank account of the LMICN as established pursuant to the Governance;
 - f. The City has received confirmation, in a form satisfactory to the City, that Western University has made the Western Funding Commitment and that there is a commitment for

- b. Independent of the annual report requirement above, that LMICN provide such information in its possession to the City, as the City may request of the LMICN, acting reasonably, to assist the City assess the achieving of the Economic Benefits Metrics. It is understood that such requests will be made periodically by the City for maximum period of up to 10 years.
7. LHSF and SJHCF shall require the contractual commitment of the LMICN, prior to any Disbursement, to:
 - a. Provide, within 90 days after the LMICN's first fiscal year-end, annual financial and other reporting, in writing, to the City describing the progress of the LMICN in achieving the objects of the Strategic Plan.
 - b. For the purpose of ensuring compliance with the terms of this agreement, the City or its agents may, on reasonable notice and during regular business hours, inspect the accounts, records books and data of the LMICN related to the Grant.
8. LHSF and SJHCF shall provide to the City, at any time, upon request in writing made by the City CFO, an accounting, with full supporting documentation, for the Grant and any Disbursement of the Grant or any part of it.
9. LHSF and SJHCF shall indemnify and save harmless the City from all costs, claims, actions, demands and damages arising from the operations of the LMICN, except to the extent such costs, claims, actions, demands and damages are caused or contributed to by the actions, omissions or negligence of the City, its employees, servants, agents or those persons for whom the City is responsible in law. For the purposes hereof, matters arising from the operation of the LMICN shall extend to any matter, directly or indirectly relating to the LMICN, including, without limitation, injuries suffered by any person while using the facilities of the LMICN. This indemnity shall survive termination of this agreement for a period of five (5) years.
10. No partnership is created by this agreement. Nothing contained in this agreement shall or shall be deemed to constitute the parties partners or agents or any other relationship whereby either could be held liable for any act or omission of the other. None of the parties shall have any authority to act for the other, except as specifically set out above, or incur any obligation or responsibility on behalf of the other.
11. This agreement contains the entire agreement and understanding between the parties and supersedes all prior and contemporaneous oral or written agreements and representations. Any amendments shall be in writing and signed by all parties.
12. This agreement shall not be assigned without the written consent of the parties.

13. This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

14. All notices or other communications under this agreement shall be given in writing by personal delivery or facsimile addressed to the person named below:

To the City:

City Clerk
300 Dufferin Ave.
P.O. Box 5035, London, Ontario, N6A 4L9
Facsimile: 519-

To LHSF:

XXXXXXXXXXXX

To SJHCF:

XXXXXXXXXXXX

IN WITNESS WHEREOF the parties have executed this Agreement by their duly authorized signing officers, as of the above date.

THE CORPORATION OF THE CITY OF LONDON

Per: _____, Mayor

Per: _____, City Clerk

THE LONDON HEALTH SCIENCES FOUNDATION

Per: I have authority to bind the Foundation

ST. JOSEPH'S HEALTHCARE FOUNDATION

Per: I have authority to bind the Foundation