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TO:	CHAIR AND MEMBERS PLANNING AND ENVIRONMENT COMMITTEE
FROM:	GEORGE KOTSIFAS, P. Eng. MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL
SUBJECT:	PROPOSED AGREEMENT FOR THE CONTINUATION OF THE USE OF THE BOULEVARD AND PROPOSED AMENDEMENT TO THE FEES BY- LAW PUBLIC PARTICIPATION MEETING AUGUST 26, 2014

RECOMMENDATION

On the recommendation of the Manager of Development Services & Engineering Liaison, the following actions **BE TAKEN**:

- a) The form of the agreement attached as **Appendix A BE USED** for the purpose of authorizing the continued use of lands dedicated for road widening by the Owner at the time of redevelopment.
- b) That the Mayor and Clerk **BE AUTHORIZED** to execute these modified boulevard agreements as prepared by Development Services for the use of the lands deeded to the City as a result of development on the abutting lands, including consents, all under the authority of the A1 By-law.
- c) That the proposed amendment to the Various Fees & Charges By-law A-47 attached as **Appendix B BE INTRODUCED** at the Council meeting on September 2, 2014.

PREVIOUS PERTINENT REPORTS

July 22, 2014 - Report to P.E.C. for a proposed boulevard agreement specific to 1365 Dundas Street, Highbury Ford.

PURPOSE

Develop a modified boulevard agreement to permit the use of lands dedicated to the City for the purpose of road widening and amend the Various Fees & Charges By-law so owners in these cases would dedicate the land but not be charged an annual boulevard rental fee.

DISCUSSION

Background

On July 24 and 25, 2012, Municipal Council resolved that civic administration be directed to review the by-laws relating to boulevard rental fee. The resolution was the result of a discussion pertaining to a proposed site development at Highbury Ford where lands were being taken as road widening dedications. In this case, the applicant wished to continue their use of these lands until such time as the City needs the lands to undertake road works.

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In July 2014, P.E.C. and Council approved a modified boulevard agreement for Highbury Ford that supported the principle of allowing the continued use of widened lands dedicated as a requirement of a development application.

There have been a number of situations similar to Highbury Ford and the proposed form of agreement and bylaw amendment will extend similar opportunity for continued use of road widening dedication to other applicable sites.

Boulevard Agreement, Continuation of Use

The proposed Continuation of Use Boulevard Agreement is attached as Appendix A.

The lands dedicated to the City will be shown on a schedule of the modified boulevard agreement and the agreement clauses will outline the “use” of the lands dedicated to the City, provision of standard insurance by the applicant to indemnify and save the City harmless from actions, notice to terminate the use of the lands, notice to remove any structures (such as fencing, lights, signs) and/or surface works such as paving, curbs, and landscaping. The agreements will be automatically renewed unless the insurance is not maintained or one party terminates the agreement. In cases where the City will need the lands within five (5) years or there are works in association with the development, staff will not recommend this type of agreement.

Various Fees & Charges By-law Amendment

The proposed Various Fees & Charges By-law Amendment is attached as Appendix B.

The Various Fees & Charges By-law requires owners to pay an annual “Non-Residential Boulevard Parking Rental Fee” in order to make use of City Owned Boulevard lands. The current by-law does not recognize where lands already being used by a business are dedicated through road widening as a condition of site development. In these cases, the owner is required to give up the land at no cost to the City and then needs to pay a rental fee if they wish to continue using these lands in the interim.

Staff have prepared an amendment to the Various Fees & Charges By-law so as not to require an annual fee in lieu of the property owner dedicating the land for the road widening.

Notice of Public Meeting for the amendment to the Various Fees & Charges By-law was placed in the Londoner on August 7, 2014. To date there have been no inquires for this Notice.

This report has been prepared in consultation with the City Solicitors’ Office, the Division Manager & Chief Surveyor’s Office, Development Services, and the City Clerk’s Office.

CONCLUSION

In certain cases, staff would agree that it is reasonable for property owners to continue to use lands given to the City for the purpose of road widening or use the widened lands for features to enhance their development until such time as the City requires the land for Municipal purposes. In these cases, property owners would enter into an agreement (modified boulevard agreement) to provide for the use of lands dedicated to the City provided the Owner provides insurance which indemnifies and saves the City harmless. The City Clerk and the Mayor will be authorized to execute the agreements prepared by Development Services under the A1 By-law.

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PREPARED BY:	
B. HENRY MANAGER, DEVELOPMENT PLANNING	
RECOMMENDED BY:	SUBMITTED BY:
J. RAMSAY, P. Eng. MANAGER, DEVELOPMENT SERVICES & ENGINEERING LIAISON	GEORGE KOTSIFAS, P. Eng. MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL

c: John Braam, Managing Director - Environmental & Engineering Services & City Engineer

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Appendix A – “Continuation of Use Boulevard Agreement”

This Agreement made in duplicate this insert day of insert, 2014.

BETWEEN:

THE CORPORATION OF THE CITY OF LONDON,
hereinafter called "the Corporation" OF THE FIRST PART;

- and -

Company Name
hereinafter called "the Licensee" OF THE SECOND PART;

WHEREAS by Section 11 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, the Corporation is authorized and empowered to pass by-laws and to license the untraveled portions of certain highways;

AND WHEREAS the Licensee has applied to the Corporation for permission to use, for the purpose of displaying motor vehicles, the land and premises, hereinafter called “the licensed premises”, as shown on the site plan which is attached to and forms part of this Agreement, being an untraveled portion of highway adjacent to address, in the City of London, upon the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the mutual covenants herein contained, the parties hereto covenant and agree each with the other as follows:

1. The Corporation licenses to the Licensee the licensed premises provided the existing conditions on the licensed premises are maintained in accordance with the attached site plan, until further notice.
2. The Licensee shall at his own expense maintain during the said term the licensed premises in accordance with the said Plan and shall make no alteration or additions to the arrangement on the licensed premises without the approval of the Corporation.
3. The Licensee covenants:
 - a) to use the licensed premises solely for the purpose of identify in the areas shown on Schedule B.
4. The Licensee shall not assign or sublet without the consent in writing of the Corporation, which consent may be unreasonably withheld.
5. a) The Licensee shall, at all times, indemnify and save harmless the Corporation of and

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from all loss, costs and damages which the Corporation may suffer, be at or be put to, for or by reason or on account of any matter or thing which may occur, be done or arise by reason of the use of the licensed premises or of any other property of the Corporation to gain ingress to or egress from the licensed premises or anything which may be done thereon or which may be neglected to be done thereon by the Licensee, his agents, servants, or others for whom the Licensee is in law responsible.

- b) The Licensee shall at their own expense obtain and maintain and provide the Corporation with evidence of comprehensive general liability insurance for an amount not less than Five Million (\$5,000,000.00) Dollars and shall include the Corporation as an additional insured with respect to the Licensee's use and operations on the dedicated lands; such policy to include non-owned automobile liability, personal injury, broad form property damage, contractual liability, owners' and contractors' protective, completed operations, contingent employers liability, cross liability and severability of interest clauses. The aforementioned policy will not be cancelled or permitted to lapse unless the insurer notifies the Corporation in writing at least thirty (30) days prior to the date of cancellation or expiry. The Licensee will provide that evidence of such insurance shall be delivered to the Corporation promptly at inception of this Agreement and thereafter on the insurance renewal date. (See Schedule 'C')

- 6. If at any time after the date of Council's approval the Corporation shall require possession of all or part of the licensed premises, the Corporation may terminate this agreement upon giving the Licensee sixty (60) days notice in writing and such notice having been given, this agreement and all of the conditions, covenants and provisos herein shall cease and determine on the day set out in the said notice, and rent shall be rebated prorata.

- 7. On the expiration of the said term or on the termination of this agreement as provided for in paragraph 7, the Licensee shall, within ninety (90) days there from, weather permitting, remove the parking arrangement and any works associated therewith or forming part of it from the licensed premises, and shall restore the boulevard to grass including the construction of curbs to prevent ingress to or egress from the licensed premises at his own expense and all to the satisfaction of the City Engineer, or alternatively, shall at his own expense, restore the licensed premises in a manner and to a condition satisfactory to the City Engineer.

- 8. Notwithstanding anything contained herein, the Corporation shall have the right of free, uninterrupted and unobstructed access at all times to the licensed premises for the purpose of installing and maintaining services and utilities and the Corporation shall only be liable to restore the licensed premises to the approximate condition in which it existed at the time of each and every entry upon the licensed premises.

- 9. Wherever the singular and masculine are used throughout this agreement they shall be

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construed as meaning the plural, neuter, or the feminine where the context of the parties hereunto so required, and the Licensee, its heirs, executors, administrators, successors and assigns, are and shall be bound by the covenants herein and all covenants herein shall be construed as both joint and several.

- 10. Any notices required or permitted to be given pursuant to the terms of this agreement shall be given in writing sent by prepaid registered post, addressed in the case by the City to: insert owner and in the case of the owner, addressed to: The City Clerk, P.O. Box 5035, London ON N6A 4L9.
- 11. This agreement shall ensure to be binding upon and for the benefit of the parties and the respective successors and authorized assigns.
- 12. It is the responsibility of the applicant to ensure that there are no encroachments onto adjacent properties.

IN WITNESS WHEREOF the Licensee has hereunto set its hand and seal, or caused to be affixed its corporate seal duly attested by the hands of its proper signing officers, as the case may be, and SIGNED, SEALED AND DELIVERED in the presence of (witness):

Company name

(authorized officer)

I have the authority to bind the Corporation.

THE CORPORATION OF THE CITY OF LONDON

J. Baechler, Mayor

Catharine Saunders, City Clerk

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Description of Schedules

Schedule "A"

Title: **Legal Description**

Schedule "B" Page 1 of 2

Drawing Title: **Site Plan**
Drawing Author:
Drawing Number:
Date of Drawing:
Drawing Latest Revision Date:
Items Amended by Hand:
Date Amended by Hand:
Municipal Address:
Drawing Sealed by:
City File Number:

Schedule "B" Page 2 of 2

Drawing Title: **Survey Plan**
Drawing Author:
Drawing Number:
Date of Drawing:
Drawing Latest Revision Date:
Items Amended by Hand:
Date Amended by Hand:
Municipal Address:
Drawing Sealed by:
City File Number:

Schedule "C" – Certificate of Insurance

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Appendix B

Bill No.
2014

By-law No. A-47-_____

A by-law to provide for Various Fees and Charges and to amend By-law A-47 being “A by-law to provide for Various Fees and Charges” being “A by-law to provide for the Tariff of Fees for the processing of applications under the *Planning Act*, R.S.O. 1990, c.P.13, as amended.”

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 Section 10(1) of the *Municipal Act*, 2001 provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS Section 10(2) of the *Municipal Act*, 2001 provides that a municipality may pass by-laws respecting: in paragraph 7, Services and things that the municipality is authorized to provide under subsection (1):

AND WHEREAS Section 391(1) of the *Municipal Act*, 2001 provides that a municipality may impose fees or charges on persons:

- (a) for services and activities provided or done by or on behalf of it;
- (b) for costs payable by it for services and activities provided or done by or on behalf of any other municipality or any local board; and
- (c) for the use of its property including property under its control;

AND WHEREAS Section 69 of the *Planning Act*, R.S.O. 1990, c.P.13, as amended, provides that council of municipality may by by-law, establish a tariff of fees for the processing of application made in respect of planning matters;

AND WHEREAS it is deemed expedient to pass this by-law;

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

1. Amend “Schedule 1 – Legal & Corporate Services” by amending the fees for Non-Residential Boulevard Parking Rentals by adding subsection iv as follows:

Service Activity	Effective Date	Fee
iv) Redevelopment Commercial – Site Plan	October 1, 2014	No Fee per calendar year or part there of

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2. The by-law comes into force and effect on October 1, 2014.

PASSED in Open Council on September 2, 2014.

J. Baechler
Mayor

Catherine Saunders
City Clerk

First Reading – September 2, 2014
Second Reading – September 2, 2014
Third Reading – September 2, 2014