

TO:	CHAIR AND MEMBERS STRATEGIC PRIORITIES AND POLICY COMMITTEE MEETING ON AUGUST 27, 2014
FROM:	MARTIN HAYWARD MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER
SUBJECT:	LONDON HYDRO PROMISSORY NOTE - AGREEMENTS

RECOMMENDATIONS

That, on the recommendation of the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer, the following actions be taken regarding the Agreements related to the London Hydro Promissory Note:

- a) the attached proposed by-law (Appendix A) **BE INTRODUCED** at Municipal Council on September 2, 2014, to authorize the Tri-Party Payment Agreement between the Corporation of the City of London, London Hydro Inc. and the Public Utility Commission of the City of London;
- b) the attached proposed by-law (Appendix B) **BE INTRODUCED** at Municipal Council on September 2, 2014, to authorize the Fund Agreement between The Corporation of the City of London and the Public Utility Commission; and
- c) the Mayor and City Clerk **BE AUTHORIZED** to execute the Agreements (Appendix A, Schedule 1 and Appendix B, Schedule 2).

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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- London Hydro Inc. - Reduction of Promissory Note (August 1, 2001 – Board of Control)
- Promissory Note (January 29, 2003 – Board of Control)
- London Hydro Inc. – Promissory Note (September 30, 2009 – Board of Control)
- London Hydro Promissory Note To The City of London (July 28, 2014 – Strategic Priorities and Policy Committee)

BACKGROUND

On July 29, 2014, Council resolved the following:

- a) *the Civic Administration **BE AUTHORIZED** to call the \$70 million promissory note on November 30, 2014, prior to the maturity date of October 31, 2015, subject to the mutual agreement of The Corporation of the City of London and London Hydro Inc., noting that action should be taken prior to year end to ensure that the promissory note is not reclassified as a short-term liability on London Hydro Inc. financial statements which may cause financial challenges for London Hydro Inc. because it would change liquidity ratios resulting in covenants being breached and may ultimately negatively impact London Hydro Inc.'s credit rating;*
- b) *the Civic Administration **BE AUTHORIZED** to invest the proceeds from the payment of the \$70 million promissory note into a professionally-managed investment portfolio that is in compliance with the City of London Investment Policy and Ontario Regulation 438/97 Eligible Investments and Related Financial Agreements, with the \$70 million principal to be held for The Public Utility Commission of the City of London for the purposes of investigation, remediation, restoration, and any other related costs with respect to the coal*

tar affected lands held by The Public Utility Commission of the City of London;

- c) *the London Hydro Inc. **BE REQUESTED** to increase the dividend payable to The Corporation of the City of London to \$5 million annually, subject to LHI Board approval, with the dividend to be used to offset the reduction of interest anticipated to be received on the \$70 million reinvested funds;*
- d) *the Civic Administration **BE DIRECTED** to apply the interest earned on the \$70 million principal held by The Public Utility Commission to the City of London's general fund to mitigate the impact to the tax levy to ensure that the total annual dividend and interest earned are maintained at \$7.2 million, which is in keeping with current revenue, and any additional interest earned be contributed to the Economic Development Reserve Fund;*
- e) *the London Hydro Inc. **BE REQUESTED** to pay The Corporation of the City of London a one-time special dividend of \$10 million resulting from the \$70 million promissory note being called prior to the maturity date, subject to LHI Board approval;*
- f) *the Civic Administration **BE DIRECTED** to apply the one-time special dividend, should it arise, to the Economic Development Reserve Fund to be used to support initiatives that best accelerate London's economy; and*
- g) *the Civic Administration **BE DIRECTED** to report back to the Strategic Priorities and Policy Committee at its meeting on August, 27th, 2014 with a form of agreement between The Corporation of the City of London, London Hydro Inc. and the Public Utilities Commission of the City of London to address and implement the matters set out in clauses a), b) and d) above.*

The purpose of this report is to outline the necessary agreements that establish the terms and conditions for payment of the \$70 million promissory note payable by London Hydro Inc. ("London Hydro") on November 30, 2014, which is prior to the maturity date of October 31, 2015.

Tri-Party Payment Agreement

Appendix A, Schedule 1, is the Tri-Party Payment Agreement between The Corporation of the City of London ("City"), London Hydro, and the Public Utility Commission of the City of London ("PUC"). This agreement acknowledges that London Hydro has waived the 367 day demand notice period and will be fully and finally discharged from any and all of its obligations under the promissory note by paying the promissory note in full on November 30, 2014.

The Fund Agreement

The Fund Agreement (Appendix B, Schedule 2) between the City and the PUC ensures that the \$70 million will be held by the City on terms consistent with the earlier pledge of undertaking/assignment of the promissory note from the City to the PUC.

This agreement acknowledges that the PUC has retained ownership of and responsibility for lands contaminated by prior owners with coal tar and that the full \$70 million payment received from London Hydro under the promissory note will be held by the City for the PUC for the following purposes:

1. the investigation, remediation, and restoration of the affected lands;
2. any related legal proceedings, including proceedings before any court or administrative tribunal; and
3. the Commission's actual and reasonable administrative and incidental costs related thereto.

The Fund Agreement provides that the City will maintain the principal amount of \$70 million in a properly managed portfolio in compliance with the City's Investment Policy and the *Municipal Act 2001*. The City will be entitled to use the interest on the funds for its own purposes. The

Fund Agreement provides the mechanism where the PUC may request and the City will provide to it funds for remediation works.

PREPARED BY:	REVIEWED BY:
JASON SENESE MANAGER OF FINANCIAL PLANNING & POLICY	MIKE TURNER DEPUTY CITY TREASURER
CONCURRED:	CONCURRED:
LARRY PALARCHIO DIRECTOR OF FINANCIAL PLANNING & POLICY	JOHN BRAAM, P. ENG. MANAGING DIRECTOR ENVIRONMENTAL & ENGINEERING SERVICES AND CITY ENGINEER CHIEF ADMINISTRATIVE OFFICER OF THE PUBLIC UTILITY COMMISSION
	RECOMMENDED BY:
	MARTIN HAYWARD MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER

Cc: John Lucas, Director – Water and Wastewater
Jennifer Smout, Solicitor

APPENDIX A

Bill No.
2014

By-law No.

A By-law to approve an agreement between The Corporation of the City of London, London Hydro Inc. and the Public Utility Commission of the City of London; and to authorize the Mayor and City Clerk to execute the agreement.

WHEREAS subsection 5(3) of the *Municipal Act, 2001* provides that a municipal power shall be exercised by by-law;

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, London Hydro Inc. and the Public Utility Commission of the City of London regarding discharging London Hydro Inc. from the \$70 million promissory note, attached as Schedule 1 to this by-law, is approved.
2. The Mayor and the City Clerk are 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 , 2014.

Joni Baechler
Mayor

Catharine Saunders
City Clerk

First reading -
Second reading -
Third reading -

SCHEDULE 1

THIS AGREEMENT MADE AS OF THE DAY OF AUGUST, 2014

Between:

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

and

THE PUBLIC UTILITY COMMISSION OF THE CITY OF LONDON ("PUC")

and

LONDON HYDRO INC. ("London Hydro")

WHEREAS:

- A. On November 1, 2000, London Hydro issued a promissory note in the principal amount of \$95.0 million, without interest, due December 31, 2000, (the "Promissory Note") to the City in consideration of the transfer of electricity distribution assets by the City to London Hydro;
- B. On November 6, 2000, the City, in writing by a document titled "Undertaking", assigned the Promissory Note to the PUC (the "Assignment");
- C. In 2001, the City, with the consent of the PUC, agreed to a reduction in the principal amount of the Promissory Note from \$95.0 million \$70.0 million;
- D. In 2003 the City and London Hydro agreed that the debt evidenced by the Promissory Note would commence to accrue interest at the rate of 6% per year beginning July 1, 2003;
- E. Periodically, the term of Promissory Note was extended such that the Promissory Note is currently due on the earlier of 367 days after demand or on October 31, 2015;

THIS AGREEMENT WITNESSES THAT in consideration of the mutual covenants contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, 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 part of this agreement.
2. London Hydro shall pay to the City the principal of the Promissory Note, together with all accrued interest on the debt evidenced by the Promissory Note, on November 30, 2014 (the "Payment").
3. The Payment shall fully and finally discharge London Hydro from any and all of its obligations under the Promissory Note, whether to the City or to the PUC, and the City and the PUC each hereby release London Hydro from any obligations under the Promissory Note following the Payment.
4. Other than a separate agreement of even date between the PUC and the City, which forms part of the consideration for this agreement as between the City and the PUC only, and to which London Hydro is not a party, this agreement contains the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral or written agreements and representations. Any amendments shall be in writing and signed by all parties.
5. This agreement shall not be assigned without the written consent of the parties.
6. This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

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 PUBLIC UTILITY COMMISSION OF THE CITY OF LONDON

Per: _____

LONDON HYDRO INC.

Per:
I have authority to bind the Corporation

APPENDIX B

Bill No.
2014

By-law No.

A By-law to approve an agreement between The Corporation of the City of London and the Public Utility Commission of the City of London; and to authorize the Mayor and City Clerk to execute the agreement.

WHEREAS subsection 5(3) of the *Municipal Act, 2001* provides that a municipal power shall be exercised by by-law;

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

1. The Fund Agreement to be entered into between The Corporation of the City of London and the Public Utility Commission of the City of London (PUC) regarding the terms and conditions of the \$70 million proceeds from the discharged London Hydro Inc. liability pledged to the PUC, attached as Schedule 1 to this by-law, is approved.
2. The Mayor and the City Clerk are 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 , 2014.

Joni Baechler
Mayor

Catharine Saunders
City Clerk

First reading -
Second reading -
Third reading -

SCHEDULE 2

THIS FUND AGREEMENT MADE AS OF THE DAY OF AUGUST, 2014

Between:

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

and

THE PUBLIC UTILITY COMMISSION OF THE CITY OF LONDON ("PUC")

WHEREAS:

- A. On November 1, 2000, London Hydro Inc. ("London Hydro") issued a promissory note in the principal amount of \$95.0 million, without interest, due December 31, 2000, (the "Promissory Note") to the City in consideration of the transfer of electricity distribution assets by the City to London Hydro;
- B. On November 6, 2000, the City, in writing, assigned the Promissory Note to the PUC for a restricted purpose (the "Assignment");
- C. The Assignment provided that the PUC would retain the Promissory Note only for so long as the remediation of the contaminated lands continued, after which the PUC would reassign the Promissory Note to the City;
- D. Remediation of the contaminated lands owned by the PUC continues as of the date of this agreement;
- E. In 2001, the City, with the consent of the PUC, agreed to a reduction in the principal amount of the Promissory Note from \$95.0 million to \$70.0 million;
- F. In 2003 the City and London Hydro agreed that the debt evidenced by the Promissory Note would commence to accrue interest at the rate of 6% per year beginning July 1, 2003;
- G. The interest on the Promissory Note was not pledged to the PUC in that Undertaking. The interest on the Promissory Note was paid to the City;
- H. Periodically, the term of Promissory Note was extended such that the Promissory Note is currently due on the earlier of 367 days after demand or on October 31, 2015;

- I. By agreement between London Hydro, the City and the PUC, of even date (the "Third Party Agreement"), a copy of which is attached as Schedule "A", London Hydro shall pay the City the principal, and all accrued interest on the debt evidenced by the Promissory Note, on November 30, 2014 (the "Payment");
- J. The PUC agreed to become party to the Third Party Agreement in consideration of the City's covenants in this agreement, including the City's covenant to identify and maintain the principal amount of the Payment such that the principal amount is available to the PUC as set out in this agreement;

THIS AGREEMENT WITNESSES THAT in consideration of the mutual covenants contained herein, and the PUC becoming party to the Third Party Agreement, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, 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 part of this agreement.
2. The City shall maintain the principal amount of \$70.0 million of the Payment in a professionally managed investment portfolio in compliance with the City of London Investment Policy and the *Municipal Act, 2001* as amended and any regulations made thereunder, (the "Fund").
3. The City shall be entitled to and may use for its own purpose, without any approval from the PUC, any interest or other investment return on the principal of the Fund.
4. The principal amount of the Fund only, exclusive of interest or other investment return on the principal of the Fund, shall be maintained by the City to be applied only toward the investigation, remediation and restoration of any contaminated lands owned by the PUC, including any related legal proceedings, including proceedings before any court or administrative tribunal and the PUC's actual and reasonable administrative and incidental costs related thereto (collectively called the "Remediation Costs").
5. The City shall, from the Fund, pay the Remediation Costs to the PUC provided the PUC, in support of its requirement for payment, shall submit an estimate to the City, in reasonable detail, of all sums required over a specified period of time for the Remediation Costs.

6. This agreement shall terminate upon completion of the remediation of any contaminated lands by the PUC, as assessed reasonably have regard to requirements of law associated with standard of remediation of contaminated lands, or upon the happening of an intervening event by which liability for the remediation of any contaminated lands is transferred to a third party on conditions that reasonably eliminate or otherwise reasonably indemnify the PUC from liability for remediation of any contaminated lands.
7. Upon termination of this agreement, the City's obligations to the PUC with respect to the Fund are terminated.
8. 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.
9. This agreement shall not be assigned without the written consent of the parties.
10. This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

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 PUBLIC UTILITY COMMISSION OF THE CITY OF LONDON

Per: _____, Chair

Per: _____, Secretary