

Bill No. 398
2014

By-law No. A.- _____

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 2 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 on September 2, 2014.

J. Baechler
Mayor

Catharine Saunders
City Clerk

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

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