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TO:	CHAIR AND MEMBERS CIVIC WORKS COMMITTEE MEETING ON MONDAY OCTOBER 6, 2014
FROM:	JOHN BRAAM, P.ENG MANAGING DIRECTOR ENVIRONMENTAL AND ENGINEERING SERVICES AND CITY ENGINEER
SUBJECT:	LONDON WASTEWATER FACILITY UPDATE, OPERATING AGREEMENT AND NEXT STEPS

RECOMMENDATION

That, on the recommendation of the Managing Director, Environmental and Engineering Services & City Engineer, the following actions **BE TAKEN** with respect to the Southwestern Ontario Water Consortium – London Wastewater Facility:

- a) the attached proposed by-law attached as Appendix A **BE INTRODUCED** at the Municipal Council meeting of October 14, 2014, to approve an Agreement with the University of Western Ontario for the operation of the Southwestern Ontario Water Consortium – London Wastewater Facility, and authorize the Mayor and City Clerk to sign the Agreement; and
- b) the Civic Administration **BE DIRECTED** to report back on a review of the mandate and business plan of the International Water Centre of Excellence.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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January 21, 2013 Civic Works Committee – Southern Ontario Water Consortium – London Wastewater Facility

April 23, 2012 -- Civic Works Committee – Water Technology Centre Pre-Design and Design Consultant Appointment.

August 15, 2011 -- Built and Natural Environment Committee -- Water Technology Centre Initiative Update

January 25, 2010 -- Committee of the Whole --, London Economic Development Corporation -- Key Initiatives

November 18, 2009 -- Board of Control -- Joint Venture to Secure FedDevl SODP Funding for a Wastewater Technology Centre

October 7, 2009 -- Committee of the Whole -- London Strategic Economic initiatives

July 22, 2009 -- Board of Control -- Waste Water Technology Centre

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BACKGROUND

Purpose:

The purpose of this report is to provide an update on the development and operations of the London Wastewater Facility, and to recommend next steps.

Discussion:

The Recent Past

The London Wastewater Facility has resulted from a Business Case to: maintain and attract water industry business to London; serve as a centre of excellence, stimulate the development of water/wastewater technology by facilitating advancement from bench scale testing to market; and, act as an economic generator for southwestern Ontario.

In the fall of 2009, Council approved the advancement of efforts by staff to work with the University of Western Ontario (UWO), Trojan Technologies and others to seek funding to support the development of an education, research and testing facility to be at the Greenway Pollution Control Plant. Such a facility and program would advance the City's knowledge with respect to innovative water and wastewater treatment technologies, assist the University in advancing training and academic research in related areas and support industry seeking to move water solutions of the future, from the test bench through full scale testing to the marketplace. The City, LEDC, UWO and an industrial representative created the International Water Centre of Excellence (IWCE) to pursue mutual benefits. This arm's length entity to deliver the service was important to the City for liability and Municipal Act compliance. The original FedDev application that the parties submitted in late 2009 for a \$20M proposed facility was not successful.

At that time, the City was not alone in proposing this kind of facility; several universities in Southwestern Ontario were creating a consortium to deliver a similar, but larger project involving several aspects of water innovation. FedDev agreed to consider the testing infrastructure component of the City's proposal only if it was part of this larger, regional project. In 2011 the City, along with others, submitted a proposal to FedDev to create a comprehensive platform across Southern Ontario to advance drinking water and wastewater technologies, groundwater and stormwater technologies, sensor technologies and various software techniques. Within the consortium, the London Facility was proposed as a full-scale, pre-commercial R&D and validation facility for the development of best-in-class water/wastewater technologies for domestic and global markets. The Facility would be based out of the City's existing Greenway Pollution Control Plant and provide companies access to various municipal effluent streams to test new wastewater technologies. This FedDev application was successful.

Council continued to financially support the initiative with its economic development objectives. It was hoped that companies using the testing facility might choose to locate in London permanently. Another goal was to accelerate the introduction of new technologies to deliver clean, cost-effective, environmentally sustainable wastewater treatment.

The facility has been built, not as a free standing building near the plant as originally contemplated, but within an existing building. This opportunity arose when space became available through another construction project. Council approved the construction tender last year at \$7.4M, with approximately equal sharing of costs between the City and FedDev, and an agreement with UWO to access the funding. Through that agreement, UWO became the gatekeeper for SOWC clients to access the facility. Appendix A provides a recommended agreement between the City and UWO to operationalize the facility.

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Background on SOWC

The Southern Ontario Water Consortium (SOWC) is a platform that creates unique capacity for research, development, testing and demonstration of water and wastewater technologies and services for local, national, and global markets. It includes state-of-the-art facilities, instrumentation and technical support for research and development related to watershed management, wastewater treatment, ecotoxicology, drinking water treatment, and sensor development, as well as the development of analytical techniques for detection of emerging contaminants. SOWC enables collaborations between the private and public sector with leading academic researchers from eight partner universities, and promotes integration across these research areas. London will be host to a large scale wastewater testing facility as a part of this platform. The London Wastewater Facility creates capacity for compliance testing and demonstration of technologies that is unprecedented, enabling access up to full scale municipal flows (to 4500 m³/day).

SOWC facilities are distributed over a wide area and managed through partner universities. The SOWC provides a single point of contact for users recognizing that some will require access to single facilities, while others will require access to multiple facilities over varying periods of time. Since SOWC has been created, the consortium has gained the attention of federal and provincial governments and is recognized on the international stage. It is also actively involved in networks of companies and researchers specializing in water. London has benefited and will continue to benefit from this reach and breadth of exposure.

The Present Situation

The London Wastewater Facility is now ready to become operational. This report seeks Council approval to ratify the agreement between UWO and the City to allow clients to begin to access the facility. Trojan Technologies will be the City's first client and proposes to lease two of the four facility bays. The City is confident that additional clients will follow from SOWC's outreach and LEDC connections.

The original vision for IWCE was to create a testing facility at Greenway and also to consider offering other sites in London to companies to test new wastewater, storm water and water purification technology. Through SOWC along with City investment the Facility at Greenway has been built and the broader vision for expanded to other City sites has not been lost. The London Wastewater Facility and other facilities across the SOWC are now just operational.

Next Steps for London

Given the changed landscape since the creation of the IWCE as a London centric initiative, the City should explore the opportunities its other facilities can offer, and adjust its business plan for the IWCE in order to further the economic development objective originally contemplated: London to be a leader in water innovation to attract investment in London. It is recommended that LEDC lead a review of the IWCE, its mandate and business plan with a goal to continuing the original economic development objectives within a new framework.

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Conclusions:

The London Wastewater Facility is ready to receive clients. UWO will be the gatekeeper for clients to access the facility and requires an Agreement with the City that covers mutual responsibilities. The attached proposed Agreement is recommended.

The IWCE had been contemplated as have certain roles and functions related to the facility operations and economic development. The framework for its functions has changed through FedDev funding and the creation of the SOWC. It is recommended that a review of the IWCE be undertaken to adapt its role, while maintaining its original economic development objects.

PREPARED BY:	RECOMMENDED BY:
JOHN LUCAS, P.ENG. DIRECTOR, WATER AND WASTEWATER	JOHN BRAAM, P.ENG MANAGING DIRECTOR AND CITY ENGINEER, CAO REGIONAL WATER SUPPLY ENVIRONMENTAL AND ENGINEERING SERVICES

October 1, 2014

Attach:

Appendix A – By-law to authorize and approve an operating Agreement with Western University, including Operating Agreement with the University of Western Ontario

cc. LEDC – Kapil Lakhotia

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Appendix “A”

Bill No.

By-law No.

A By-law to authorize an Agreement between The Corporation of the City of London and The University of Western Ontario with respect to the Southwestern Ontario Water Consortium – London Wastewater Facility and to authorize the Mayor and City Clerk to execute the Agreement.

WHEREAS section 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 it is deemed expedient for The Corporation of the City of London (the “City”) to enter into an agreement with The University of Western Ontario with respect to the Southwestern Ontario Water Consortium – London Wastewater Facility (the “Agreement”);

AND WHEREAS it is appropriate to authorize the Mayor and City Clerk to execute the Agreement on behalf of the City;

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

1. The Agreement attached as Schedule “A” to this By-law, being an agreement with The University of Western Ontario with respect to the Southwestern Ontario Water Consortium – London Wastewater Facility is hereby AUTHORIZED AND APPROVED.
2. The Mayor and City Clerk are authorized to execute the Agreement authorized and approved under section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council , 2014

J. Baechler
Mayor

Catharine Saunders
City Clerk

First reading -
Second reading –
Third reading –

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THIS HOST AGREEMENT MADE AS OF THE DAY OF , 2014

Between:

THE UNIVERSITY OF WESTERN ONTARIO (“Western”)

-and-

THE CORPORATION OF THE CITY OF LONDON (“London”)

Whereas Western and London have signed an agreement dated January 30, 2013 as part of the Southwestern Ontario Water Consortium (“SOWC”), for the construction and completion of the London Wastewater Facility (LWF) at London’s Greenway Pollution Control Centre;

And whereas Western is a party to an agreement with the University of Waterloo whereby funds were provided through the University of Waterloo to Western from the Federal Economic Development Agency for Southern Ontario (“FedDev”) for purchase of the equipment in the SOWC-LWF;

And whereas the LWF will be located on premises owned and operated by London;

And whereas the parties now wish to enter into this Agreement to set out the terms under which the parties shall provide certain services and use of space of the LWF by Western and its clients;

Now therefore in consideration of the mutual promises agreements and covenants herein contained, the receipt and sufficiency whereof is hereby acknowledged, the parties agree as follows:

Provision of Facilities and Services

1. London shall provide access to the facilities at the LWF and certain services to Western and its clients, subject to the terms and conditions of this Agreement. Access and use of the facilities will be for research, testing and demonstration activities. London may deny access if it is not in its best interest or it does not have an ability to support the proposed activities.
2. Prior to access and use of the LWF, an approved statement of work describing but not limited to the technical details of the work, health and safety requirements, electrical, equipment, or hydraulics requirements, and any other information as required by London (hereinafter “Work Program”) will be prepared by Western and its clients. The Work Plan shall be vetted by London and a written confirmation from London stating the Work Program is approved shall be issued prior to activities under the Work Plan being commenced.
3. London shall provide personnel for oversight and approval of the Work Program and Western shall provide personnel to supervise the Work Program, unless otherwise agreed to in an approved Work Program. Western shall report to London on the performance and status of the Work Program, as required by London.

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4. London reserves the right to immediately halt and retract an approval to a Work Program in the case of any emergency, noncompliance with a Work Program, actual or possible threat to its plant operations or health and safety requirements, whether anticipated or not in the Work Program. In such a case, London will work with Western and the client in efforts to remedy any actions or requirements in order to proceed with a Work Program. However London shall not be obligated to proceed if it is determined by its professionals not to be deemed in the best interest of the LWF, its plant operations or health and safety requirements. London will not be held liable for losses incurred by Western due to actions taken by London under this clause.

Insurance and Indemnification

5. Western shall at their own expense obtain and maintain until the termination of the Agreement, and provide the City with evidence of comprehensive general liability insurance on an occurrence basis for an amount not less than Two Million (\$2,000,000.) dollars and shall include the City as an additional insured with respect to Western’s operations, acts and omissions relating to its obligations under this Agreement, such policy to include non-owned automobile liability, personal injury, broad form property damage, contractual liability, owners’ and proponent’s protective, products and completed operations, contingent employers liability, cross liability and severability of interest clauses;

6. The policies shown above will not be cancelled or permitted to lapse unless the insurer notifies the City in writing at least thirty (30) days prior to the effective date of cancellation or expiry. The City reserves the right to request such higher limits of insurance or other types of policies appropriate to the work as the City may reasonably require.

7. Western shall not commence work until such time as evidence of insurance from insurers licensed to operate in Canada have been filed with and approved by Risk Management for the City. Western shall further ensure that evidence of the continuance of said insurance is filed at each policy renewal date for the duration of the contract.

8. Western shall furnish a WSIB Clearance Certificate indicating their WSIB firm number, account number and that their account is in good standing. This form must be furnished prior to commencement of work. Western further agrees to maintain their WSIB account in good standing throughout each approved Work Program.

9. As part of Work Programs, London reserves the right to specify additional insurance coverage that will be required by the client, and the client’s contracted service providers.

10. Western shall indemnify and hold the City harmless from and against any liability, loss, claims, demands, costs and expenses, including reasonable legal fees, occasioned wholly or in part by any acts or omissions either in negligence or in nuisance by Western, their agents, officers, employees or other persons for whom Western is legally responsible.

Expenses

11. In the provision of the access and use of the LWF, London may incur expenses to be detailed in each Work Program. Western shall reimburse London for such expenses incurred in the performance of the Work Program. To maintain the LWF for its continued safe use and to administer the facility, London may incur expenses not related to a specific Work Program, however such expense is deemed a facility overhead cost. For such costs, London shall include a reasonable overhead fee in each Work Program, in order for Western to reimburse London.

12. All eligible expenses must be incurred using London’s tendering and procurement policies for the purchase of assets and services.

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Access to LWF

13. Western, and the client, shall have access on reasonable notice to the LWF for the performance of the Work Program. Access shall at all times be subject to operational requirements of London, including such safety and security precautions as London, acting reasonably, shall deem appropriate.

Ownership & Intellectual Property

14. London agrees that Western or a client shall own all experimental data, results, outcomes, discoveries and other intellectual property conceived, produced, developed or reduced to practice or otherwise made from their experimental use of the LWF, as outlined in the Work Program.

Term & Termination

15. The term of this Agreement shall commence on the effective date first set out above and shall terminate on March 31, 2025.

Dispute Resolution

16. In the event of a controversy or dispute between the Parties arising out of or in connection with this Agreement or regarding the interpretation of the provisions thereof, the Party alleging a controversy or dispute (the “Disputing Party”) must notify the other Party (the “Recipient Party”) in writing of such dispute or controversy (“Dispute Notice”) and specify the particulars of such dispute or controversy in the Dispute Notice.

17. Upon receipt of a Dispute Notice by the Recipient Party, the Recipient Party and the Disputing Party must mutually consult in good faith in an attempt to settle amicably and in the spirit of cooperation any such controversy or dispute.

18. If on the date which is fourteen (14) days after the Recipient Party’s receipt of the Dispute Notice the Disputing Party and the Recipient Party have not amicably settled the matter(s) set out in the Dispute Notice then the matter(s) shall be referred to a single arbitrator whose decision shall be final and binding. If the Parties cannot agree on the arbitrator, either party may apply under Section 10 of the Ontario Arbitrations Act for the Court to select an Arbitrator.

General

19. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and of Canada applicable thereto.

20. Each Party must at all times be in compliance with all federal, provincial, territorial, municipal and other applicable laws, regulations, by-laws, rules, decrees and ordinances governing the parties and the Project, including without limitation, environmental legislation and any mitigation measures imposed by the Minister.

21. This Agreement constitutes the entire and sole Agreement between the Parties with respect to the issues and items covered by this Agreement, and supersedes all previous negotiations, communications and other agreements, whether written or oral, relating to it, unless they are incorporated by reference in this Agreement. There are no terms, covenants, representations, statements or conditions binding on the Parties with respect to said issues and items other than those contained in this Agreement.

22. The Parties acknowledge that Western is subject to the *Freedom of Information and Protection of Privacy Act* (Ontario) and London is subject to the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) and the Parties agree to cooperate with one another from time to time with respect to compliance with the statutes and any

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regulations passed thereunder.

23. No interest in the land is being conveyed by this Agreement and no landlord and tenant relationship between Western and its clients and London shall be construed as a result of their occupancy of any space at LWF.

24. This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and assigns.

25. All notices or other communications under this Agreement shall be given in writing by personal delivery, e-mail or by facsimile to the person named below:

To London:

City Clerk
 300 Dufferin St.
 P.O. Box 5035, London, Ontario N6A 4L9
 Facsimile: 519-661-4892
 Email:

To Western:

Associate Vice President (Research)
 SSB 5150
 The University of Western Ontario
 London, Ontario N6G 1G9
 Facsimile: 519-661-3907
 Email: crt@uwo.ca

26. This Agreement and any other writing delivered in connection may be executed in any number of counterparts and any Party may execute any counterpart, each of which when executed and delivered will be deemed to be an original and all of such counterparts of this Agreement or such other writing taken together will be deemed to be one and the same instrument.

In witness whereof the Parties have executed this Agreement by their duly authorized signing officers.

THE CORPORATION OF THE CITY OF LONDON

Per:

Per:

THE UNIVERSITY OF WESTERN ONTARIO

Per: