

Bill No. 486
2014

By-law No. A.-_____

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 October 14, 2014.

J. Baechler
Mayor

Catharine Saunders
City Clerk

First reading – October 14, 2014
Second reading – October 14, 2014
Third reading – October 14, 2014

SCHEDULE “A”

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.
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.

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 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: