

Bill No. 153
2015

By-law No. A.- _____

A by-law to approve an Agreement for Access to the City of London's Household Special Waste Depot extended to The Oneida Nation of the Thames; and to authorize the Mayor and City Clerk to execute the Agreement.

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*, as amended, 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 subsection 10 of the *Municipal Act, 2001*, as amended provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public, and may pass by-laws respecting same, and respecting economic, social and environmental well-being of the City, and the health, safety and well-being of persons;

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

1. An Agreement to be entered into between The Corporation of the City of London and The Oneida Nation of the Thames regarding Access to the City of London's Household Special Waste Depot, attached hereto as Schedule 'A' to this By-law, is hereby approved.
2. The Mayor and City Clerk are authorized to execute the Agreement 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 on April 14, 2015.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading – April 14, 2015
Second Reading – April 14, 2015
Third Reading – April 14, 2015

SCHEDULE 'A'

Agreement with ONEIDA NATION OF THE THAMES

THIS AGREEMENT made the _____ day of _____, YYYY

Between:

Oneida Nation of the Thames
(hereinafter referred to as "Oneida")

-And-

THE CORPORATION OF THE CITY OF LONDON
(hereinafter referred to as "the City")

WHEREAS Oneida would like its residents to have access to the City's Household Special Waste Depot located at the W12A Landfill Site (3502 Manning Drive, in the City of London);

AND WHEREAS Council for the City resolved at its April 14, 2015 meeting to permit residents of Oneida Nation of the Thames located at RR 2, Southwold Township, ON to access the City's Household Special Waste Depot;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the mutual covenants and agreements hereafter and the payment of two dollars (\$2.00) to each other, the receipt and sufficiency of which is acknowledged, the City and Oneida hereto agree as follows:

1. Definitions

"Oneida user": means a resident of Oneida or a small quantity generator located in Oneida who utilizes the City's Household Special Waste Depot for the purpose of disposing of their own household special waste. "Oneida users" shall have a corresponding meaning.

"Household Special Waste (HSW)": shall include corrosive, flammable or toxic products by reference to Consumer Chemicals and Containers Regulations, 2001 made under the *Hazardous Products Act* (Canada); flammable, corrosive or toxicity hazards by reference to CSA Standard Z752-03; corrosive, ignitable, leachate toxic, reactive waste by reference to *Environmental Protection Act* R.R.O. 1990, Regulation 347; batteries; pressurized & aerosol containers; portable fire extinguishers; fertilizers; fungicides; herbicides; insecticides; pesticides; paints & coatings; oil bottles & filters; fluorescent light bulbs or tubes; pharmaceuticals; switches, thermostats, thermometers, barometers & measuring devices containing mercury; antifreeze and solvents used for household purposes by the resident (hereinafter referred to as "HSW").

"Small Quantity Generator": means a business that is not required to submit a Generator Registration Report with respect to HSW under subsection 18(1) of Regulation 347, made under the *Environmental Protection Act* (Ontario), as amended from time to time, and generates HSW and does not generate more than 100 kilograms per month of HSW.

2. Term

2.1. The term of the agreement shall be for 12 months, commencing May 1, 2015 and terminating April 30, 2016.

3. Renewal

3.1. This agreement may be renewed for further one year terms upon Oneida providing notice to the City at least 30 days prior to the expiration of the agreement that it wishes to renew the agreement, and upon the City's Managing Director of Environmental & Engineering Services & City Engineer's subsequent notice to Oneida of its wish to renew the agreement.

4. Termination

4.1. This Agreement may be terminated:

- (i) by either party upon 30 days' written notice to the other party; or
- (ii) by the City, on 7 days' written notice to Oneida, upon default of payment by Oneida.

5. City Covenants

5.1. The City covenants:

- (a) to provide Oneida users with access to the W12A Landfill site, located at 3502 Manning Drive, and any facilities established in the future (as determined by the City) for the purpose of managing their HSW, for a fee as hereinafter set out;
- (b) to keep a record of the number of Oneida users.

6. Oneida Covenants

6.1. Oneida covenants:

- (a) for the first twelve month term of this Agreement, to pay to the City the sum of one thousand ninety dollars (\$1,090.00);
- (b) in the event that this Agreement is renewed for a further term, to pay to the City an amount per year, as determined by the City, after it conducts an assessment of fees;
- (c) throughout the term of this Agreement, Oneida shall obtain and maintain at its own expense, in a form satisfactory to the Managing Director, Legal and Corporate Services and that includes the City as an additional insured with respect to Oneida's use of the HSW Depot located at the W12A Landfill Site and all its obligations under this Agreement general liability insurance on an occurrence basis in an amount not less than Five Million (\$5,000,000.00) dollars for the entire term of this Agreement. Such insurance policy shall include non-owned automobile liability, personal injury, broad form property damage, contractual liability, owners' and contractors' protective, completed operations, contingent employer's liability, cross liability and severability of interest clauses.
- (d) Oneida agrees that the above-mentioned insurance will not be cancelled or permitted to lapse unless the insurer provides the City at least thirty (30) days advance notice in writing. Evidence of this insurance shall be delivered to the City at the inception of this Agreement and thereafter promptly on the insurance renewal date. The City reserves the right to request such higher limits of insurance or other types of insurance as it may reasonably require; failure to satisfactorily meet these conditions relating to insurance shall be deemed a breach of this Agreement.
- (e) Oneida shall indemnify and hold the City harmless from and against any liability, loss, claims, demands, costs and expenses, of every nature and kind whatsoever, including reasonable legal fees, occasioned wholly or in part whether willful or otherwise by reason of or on account of Oneida's use of the City's HSW Depot located at the W12A Landfill Site, or arising out of any breach, violation or non-performance on the part of Oneida of any covenant or provision in this Agreement, whether arising from actions of Oneida or by its employees, servants, agents, subcontractors or others Oneida is responsible for at law. Such indemnification shall continue in effect after expiry of this Agreement with respect to any matter arising during the use of the City's HSW Depot located at the W12A Landfill Site by Oneida.

7. Terms and Conditions

- 7.1. The City shall invoice Oneida within 90 days after the commencement of this Agreement, and Oneida shall pay this amount within 30 days of the sending of the invoice.
- 7.2. Oneida users may have access to the HSW Depot only during its regular hours of operation and only on those days that it is open to the public.
- 7.3. This Agreement and the privileges contained herein shall not be assigned by Oneida without the prior written consent of the City, which consent may be unreasonably withheld.

8. Notice

8.1. Any notice delivery or payment to the City may be delivered personally or sent by prepaid regular letter mail at the following addresses:

To the City at:

City Clerk
The Corporation of the City of London
300 Dufferin Avenue
P.O. Box 5035
London, Ontario
N6A 4L9
Fax: (519) 661-5793

To Oneida at:

Stacey Phillips, CEO
Oneida Nation of the Thames
2212 Elm Ave
Southwold, ON
N0L 2G0
Fax: (519) 652-9287

8.2. Any such notice, delivery or payment so delivered or sent shall be deemed to be sufficiently given or made and received upon delivery or the next business day following such mailing of the same as the case may be *or the date of transmission if sent by fax.*

IN WITNESS WHEREOF

THE CORPORATION OF THE CITY OF LONDON

Matt Brown
Mayor

Catharine Saunders
City Clerk

I/We have authority to bind the City

ONEIDA NATION OF THE THAMES

Sheri Doxtato
Chief

Stacey Phillips
CEO

I/We have authority to bind the Band.