

Bill No. 211  
2015

By-law No. A.- \_\_\_\_\_

A By-law to approve an Alternate Locate Agreement between the Corporation of the City of London and London Hydro Inc. 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 Alternate Locate Agreement with London Hydro Inc. ("London Hydro");

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 Appendix "A" to this By-law, being an Alternate Locate Agreement between the City and London Hydro Inc. is hereby AUTHORIZED AND APPROVED in substantially the form attached hereto.
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 on May 26, 2015.

Matt Brown  
Mayor

Catharine Saunders  
City Clerk

First Reading – May 26, 2015  
Second Reading – May 26, 2015  
Third Reading – May 26, 2015



## TERMS AND CONDITIONS

1. The term of this Agreement is for two (2) years, commencing on the Effective Date, subject to earlier termination in accordance with the terms of this Agreement. At London Hydro's sole option, the term of this Agreement may be renewed for an additional one (1) year term by London Hydro by providing Contractor with written notification of such renewal.
2. This Agreement may be terminated at any time by either party upon written notice to the other party with no liability for any incurred costs to either party as a result of the termination. Upon termination or expiration of this Agreement, the Contractor shall immediately cease any excavation related to the Allowable Work and shall immediately cease, and cause all of its personnel to cease, any use of the Contractor Alternate Locate ID.
3. The Contractor represents and warrants that the Allowable Work will not have a negative impact on the underground plant or equipment owned by London Hydro (the "**London Hydro Underground Plant**"). This Agreement pertains only to the London Hydro Underground Plant, and Contractor will be required to obtain locates of all other underground plant.
4. The following terms and conditions apply to the use of the Ontario One Call Contractor Alternate Locate ID:
  - a. Locate requests shall be made to Ontario One Call for all excavations by the Contractor.
  - b. The Contractor will be issued a contractor alternate locate ID number (the "**Contractor Alternate Locate ID**") by Ontario One Call which shall be referenced by the Contractor for locate requests for Allowable Work made through Ontario One Call.
  - c. Contractor will only use a Contractor Alternate Locate ID when making locate requests to Ontario One Call for Allowable Work.
  - d. Contractor shall keep and maintain and have readily available at the job site a copy of this Agreement and the applicable Ontario One Call Ticket Number from the "Notice of Intent to Excavate" form issued by Ontario One Call pertaining to Allowable Work at the job site for which Contractor has used the Contractor Alternate Locate ID.
  - e. Contractor shall ensure that all of its on-site employees and subcontractors are aware of the terms and requirements of this Agreement.
  - f. An Ontario One Call alternate locate confirmation is valid for the lesser of thirty (30) days from the date the request was made to Ontario One Call or as noted on the alternate locate confirmation form. If excavation work is not completed within such timeframe, the Contractor must contact Ontario One Call to register a new alternate locate request.
  - g. London Hydro retains the right to refuse to honour the alternate locate at any time for any reason, and may also cancel the London Hydro Contractor Alternate Locate ID at any time upon notice.
5. The Contractor shall request individual regular locates through Ontario One Call for all excavation work done outside the scope of the Allowable Work, or whenever requested by London Hydro (either directly or through Ontario One Call).
6. The Contractor Alternate Locate ID applies to the Contractor only and not to any of its subcontractors. The Contractor shall not disclose the Contractor Alternate Locate ID to any individual except for its authorized employees who require the Contractor Alternate Locate ID for the purposes of executing the Allowable Work in accordance with the terms of this Agreement.
7. All Allowable Work shall be conducted in accordance with all laws, standards, codes and guidelines applicable to the Contractor and the Allowable Work, including, without limitation, the most recent versions of each of the following as amended from time to time:

- a. Electrical Safety Authority and Technical Standards & Safety Authority *Guideline for Excavation in the Vicinity of Utility Lines* For detailed procedures on using hydro-excavation in the vicinity of pipelines see Appendix 5 of the foregoing guideline;
- b. *The Occupational Health and Safety Act* (Ontario) and all regulations made thereunder including, without limitation, O. Regulation 213/91 (Construction Projects) (the “OHSA”); and
- c. The Technical Standards and Safety Authority Act 2000 and reg.210/01.

In the event of any conflict among any of the foregoing, or any other applicable laws, standards, codes or guidelines, the most stringent standard shall apply. The Contractor shall obtain any necessary licenses, permits or consents of such governmental authorities or of any applicable third parties, in respect of their respective obligations and conduct pursuant to or in respect of this Agreement

8. In the event any London Hydro Underground Plant is discovered or encountered but where there has been no damage to London Hydro Underground Plant or to property of any third party and no personal injury as described in Section 9, the Contractor will contact London Hydro immediately at the telephone number set out on the first page of this Agreement and ensure that, if required by London Hydro, the excavation is left open in a safe and secure manner until it has been inspected by London Hydro.
9. If any excavation by the Contractor results in any damage (including but not limited to cable jacket damage or damage to grounding wires) to London Hydro’s Underground Plant or to property of any third party or any personal injury, the Contractor shall immediately:
  - a. Cease all work within the excavation;
  - b. Exclude all people and barricade the area; and
  - c. Contact London Hydro immediately.

The Contractor shall comply with the Ontario Regional Common Ground Alliance Best Practices, 4-22: Facility Damage Notification and 4-23: Notification of Emergency Personnel, as same may be changed or amended from time to time. In the event of any conflict between the Ontario Regional Common Ground Alliance Best Practices and the terms of this Agreement, the terms of this Agreement shall be paramount.

10. This Agreement shall not release the Contractor of any liability for damage to London Hydro Underground Plant or property of any third party or any related personal injury arising from any excavation by the Contractor or its subcontractor. The Contractor shall be liable for and shall indemnify, defend and hold harmless London Hydro, and its Affiliates (as defined under the *Business Corporations Act* (Ontario)) and their respective shareholders, directors, officers, employees, contractors, agents and other representatives (collectively, “**Representatives**”) from all actions, claims, penalties, damages, losses, judgments, settlements, cost and expenses (including legal costs) arising out of or resulting from any breach of this Agreement, negligence, or any act or omission or willful misconduct of the Contractor, its subcontractors, agents, representatives and for those whom they are responsible in law. For certainty, in the event of any damage to London Hydro Underground Plant, London Hydro has the right to complete a damage investigation into the nature and cause of the damage. The conclusions arising out of London Hydro’s investigation are final and not contestable. If London Hydro determines that the damage arose out of or resulted from any breach of this Agreement or any act or omission or willful misconduct of the Contractor or any of its Representatives, then the Contractor shall indemnify, defend and hold harmless London Hydro as provided herein. Without limiting the generality of the foregoing, the Contractor shall be liable to pay for any costs and expenses to repair damages to any London Hydro Underground Plant caused directly or indirectly by excavation by the Contractor and shall pay any invoices for such costs or expenses within thirty (30) days from receipt thereof.
11. Any notice or other communication to be given under or pursuant to the provisions hereof or in any way concerning this Agreement shall be sufficiently given if reduced in writing and delivered to the person to whom such communication is to be given, or sent by facsimile transmission, or mailed to such person by prepaid mail addressed to such person at the address set out on the first page of this Agreement, or at such other address as may be specified therefor by proper notice hereunder. Any communication mailed as aforesaid shall

be deemed to have been given and received on the fifth (5th) business day following the date on which it was so mailed, where such communication is sent by facsimile transmission it shall be deemed to have been given and received on the next business day following transmittal provided the facsimile is received as confirmed by the issuance of a confirmation receipt, and where such communication is personally delivered it shall be deemed to have been given and received when so delivered.

12. Unless London Hydro specifies otherwise in writing, the Contractor shall at its expense maintain and keep in full force and effect until this Agreement is fully performed Commercial General Liability insurance having a minimum inclusive coverage limit, including personal injury and property damage, of at least Two Million Dollars (\$2,000,000.00). London Hydro must be added as an additional insured in the insurance policy, which should be extended to cover Contractual liability, products/completed operations liability, owners'/Contractors' protective liability and should also contain a cross liability clause.

The Contractor shall forthwith after entering into this Agreement, and from time to time at the request of London Hydro, furnish to London Hydro a memorandum of insurance or an insurance certificate setting out the terms and conditions of each policy of insurance (all such policies of insurance being hereinafter called "**Insurance Policies**") maintained by the Contractor in order to satisfy the requirements of this Section. At any time and from time to time at the request of London Hydro, the Contractor shall furnish London Hydro with one or more duly completed insurance certificates in the form requested by London Hydro to evidence the details of all Insurance Policies. The Contractor shall not cancel, terminate or materially alter the terms of any of the Insurance Policies without giving prior written notice to London Hydro. The Contractor shall cause or arrange for any of its insurers under any one or more of the Insurance Policies to contractually obligate itself in writing to London Hydro to provide thirty (30) days prior written notice to London Hydro before canceling, terminating or materially altering the Insurance Policies under which it is an insurer.

13. The Contractor shall not, without the prior written consent of London Hydro, assign this Agreement or any rights of the Contractor under this Agreement.
14. All indemnities provided for in this Agreement shall survive the termination of this Agreement irrespective of the time of or party responsible for such termination, and all such indemnities shall remain in full force and effect and be binding on the Contractor notwithstanding such termination.
15. The Contractor acknowledges that the name "London Hydro", "London Hydro Inc." and any names, symbols, signs, trademarks and marks denoting and identifying London Hydro Inc., its subsidiaries and affiliates, presently in use or acquired from time to time are the property of London Hydro and shall not be used or displayed by the Contractor in any manner whatsoever without the prior written authorization of London Hydro. The Contractor shall not use, display or utilize any name, logo, sign, symbol, trademark or mark denoting or implying a relationship or affiliation between the Contractor and London Hydro for any purpose other than in furtherance of the Allowable Work and shall cease such usage upon completion of the Allowable Work or upon request of London Hydro. Further, the Contractor shall return to London Hydro forthwith any documents, signs, forms or records provided to it by London Hydro or acquired by the Contractor in furtherance of this Agreement and the Allowable Work, upon completion of the Allowable Work or upon the request of London Hydro. The Contractor acknowledges and agrees that this undertaking shall continue in effect subsequent to the termination or expiry of this Agreement.
16. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of Ontario with respect to any matter arising under or related to this Agreement.
17. No failure on the part of any party to this Agreement to exercise, and no delay in exercising any right, power or remedy or partial exercise of any right, power or remedy by any party will preclude any other or further exercise thereof or the exercise of any other right, power of remedy. No waiver will be binding unless executed in writing by the party to be bound thereby.

18. This Agreement, including any schedules attached hereto, constitutes the entire agreement between the parties with respect to the subject matter set out herein and replaces any prior understandings or agreements, whether written or oral, regarding such subject matter.

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## SCHEDULE "A" TO THE ALTERNATE LOCATE AGREEMENT

"Allowable Work" means excavation meeting the following criteria: (Depth is measured from Original Grade)

- (i) Hand excavation to a depth not to exceed **0.25m on private property** and not to exceed **0.30m on municipal property** - no picks or bars are allowed. Use of a tunneling bar is allowed to bore from one side of the sidewalk to the other immediately below the bottom of the sidewalk only after each side of the sidewalk has been exposed by hand excavation. The tunneling bar must be operated to ensure it moves from private property to public property.
- (ii) Use of mechanical equipment only to remove concrete and asphalt pavement, and for stump grinding, to a depth not to exceed **0.25m on private property** and not to exceed **0.30m on municipal property**.
- (iii) Ploughing to a depth not to exceed **0.20m**.
- (iv) Wood and plastic staking to a depth not to exceed **0.25m on private property** and not to exceed **0.30m on municipal property**.
- (v) **For removal of concrete and asphalt:**
  - (a) Raising or repairs made around manholes and sewer grates and not to exceed 0.6 m (24'') beyond edge of manhole or sewer grate and 0.3 m (12'') in depth. Use of jackhammer is approved for asphalt and concrete removal only. Work below asphalt and/or concrete to be done with hand tools only, no picks or bars allowed.
- (vi) **For surveyors only:**
  - (a) Hand excavating to a depth not greater than 1.20m and diameter not greater than 0.60m around existing survey monuments
- (vii) **Hydrovac-excavation is only allowed for the following types of work:**
  - (a) The pre-engineering design for the purpose of infrastructure depth surveys in order to determine the location of existing underground utilities. The purpose is to map out existing infrastructure in order to determine the location of utilities that are presently underground within the future construction site. Standard locates must be requested to facilitate the future construction work.
  - (b) Construction, maintenance, repair and removal of existing roadside features to a depth not to exceed 1.50m x 1.50m x 1.50m. This agreement does not include new installations and is limited to 'replacement type' work only. Any replacement installations must be in the same location.
  - (c) Utility pole replacement at the same offset from street line/property line (in-line with existing pole line) 2.0 m from an existing pole line.
  - (d) Water valve and valve case, maintenance, repair and replacement within a radius of 0.80m of an existing water box.

- (e) Slot trenching for the daylighting, or installation of underground services (for example, cable, gas, water, street lighting, electrical). The following clearances must be maintained between the outside wall of the gas pipeline and other underground structures:
- (i) Horizontal - 0.6 m minimum
  - (ii) Vertical - 0.3 m minimum
  - (iii) Vertical - 0.6 m minimum for pipelines 16 inches in diameter and larger
- (f) Use of hydro-excavation is within 1.0m of any tree to a depth not the exceed 0.30m.