

Bill No. 284
2015

By-law No. A.- _____

A by-law to approve the Occupancy Agreement With London Hydro For An Electric Vehicle Charger With Battery Storage System at the Canada Games Aquatic Centre; and to authorize the Mayor and City Clerk to act on behalf the City of London and 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*, S.O. 2001, c. 25, 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 it is deemed appropriate for The Corporation of the City of London (the "City") to enter into an Occupancy Agreement With London Hydro For An Electric Vehicle Charger With Battery Storage System (the "Agreement") with London Hydro Inc., whereby the City agrees to permit London Hydro Inc. to install a Combined Storage and Electric Vehicle Charging System ("Equipment") owned or controlled by London Hydro Inc. on land owned by the City;

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. Occupancy Agreement With London Hydro For An Electric Vehicle Charger With Battery Storage System to be entered into between The Corporation of the City of London and London Hydro Inc., attached 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 September 1, 2015.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading – September 1, 2015
Second Reading – September 1, 2015
Third Reading – September 1, 2015

SCHEDULE A

OCCUPANCY AGREEMENT FOR AN ELECTRIC VEHICLE CHARGER WITH BATTERY STORAGE SYSTEM

This agreement made as of

Between

LONDON HYDRO INC (“London Hydro”)

And

THE CORPORATION OF THE CITY OF LONDON (“the Land Owner”)

Whereas:

- Ontario Bill 150, *The Green Energy and Green Economy Act, 2009*, is complemented by the Minister’s Directive to the Ontario Energy Board dated November 23, 2010 that outlines a set of objectives to guide LDCs in establishing smart grid plans and investments such as the installation of intelligent electric vehicle charging systems with associated battery storage;
- The parties have agreed that London Hydro and its agents may install a pad-mounted level 2 electric vehicle charging system with associated battery storage (“EV Charger Equipment”) controlled and operated by London Hydro and its agents on lands (the “Lands”) owned by the Land Owner and more particularly described and shown in Figure 1. A level 2 charger is typically capable of charging an average electric vehicle within four hours. Illustrative examples are provided in Figures 2 and 3.

NOW THEREFORE, in consideration of the premises, the mutual covenants contained herein and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

Article 1

TERM, RENEWAL and TERMINATION

1.1 This agreement shall commence upon execution of this agreement and will end on March 31, 2017 (collectively the “Term”).

1.2 If the Term is extended by mutual agreement, the Land Owner may terminate this agreement at its discretion effective at any time following the end of the initial Term by giving at least six (6) months written notice to London Hydro.

1.3 London Hydro may terminate this agreement at any time during the Term with ninety (90) calendar day’s prior written notice for any reason in its sole discretion.

1.4 The Land Owner may terminate this agreement if London Hydro is in breach of its material obligations hereunder, which has not been cured within thirty (30) days after receipt of written notice of such breach from the Land Owner.

1.5 Upon termination of this agreement, the Land Owner may choose one of the following options:

(a) London Hydro shall remove the EV Charger Equipment and restore the Lands to the condition it was in before the installation of the EV Charger Equipment within a reasonable time following the end of the Term, or

(b) If London Hydro and the Land Owner are able to reach agreement on terms of transfer of ownership to the Land Owner, then London Hydro shall arrange for the transfer of ownership of the EV Charger Equipment to the Land Owner.

Article 2

OCCUPANCY FEES

2.1 London Hydro will pay the Land Owner the sum of \$2.00 for the Term on a gross basis. No other fees of any kind are payable, including, without limitation, any real estate taxes, occupancy costs, or common costs.

Article 3

ACCESS TO THE LANDS

3.1 The Land Owner shall provide London Hydro, its employees, agents and contractors reasonable access to the Lands for the purposes of installing, inspecting, maintaining, and upgrading the EV Charger Equipment and any such acts as may be reasonably necessary or

incidental to the business of London Hydro.

3.2 London Hydro, so long as it performs and observes the conditions of this agreement shall peacefully hold and enjoy the use of the Lands for the purposes of EV Charger Equipment without hindrance.

3.3 London Hydro's right of access to the Lands shall be exercised at the sole risk of London Hydro and its agents. London Hydro shall indemnify the Land Owner from all loss, claims, actions, damages, and/or liability in connection with the loss of life, personal injury, or damage to property for any occurrence upon the Lands caused by the EV Charger Equipment or London Hydro's use of same, except to the extent caused by the negligence of the Land Owner or those for whom it is in law responsible, and except for any lost profit or revenue, or for special, indirect, consequential, incidental, or punitive damages however caused, whether in contract, tort, negligence, strict liability, operation of law or otherwise.

Article 4 INSURANCE

4.1 London Hydro shall at their own expense obtain and maintain until the termination of the contract, and provide the City with evidence of:

a) Comprehensive general liability insurance on an occurrence basis for an amount not less than Five Million (\$5,000,000.) dollars and shall include the City as an additional insured with respect to their 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 contractors' protective products and completed operations, contingent employers liability, cross liability and severability of interest clauses;

b) All risk property coverage, covering the full replacement cost value of the EV Charger Equipment

c) London Hydro shall not commence work until such time as the evidence of insurance (City Form No. 0788) has been filed with and approved by Risk Management for the City. London Hydro shall further provide that evidence of the continuance of said insurance is filed at each policy renewal date for the duration of the contract.

d) London Hydro 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 whether willful or otherwise by the proponent, its agents, officers, employees or other persons for whom the proponent is legally responsible.

Article 5 ASSIGNMENT OF RIGHTS

5.1 London Hydro may assign, sublease or transfer its interest in this agreement in whole or in part without obtaining consent of the Land Owner. London Hydro will be relieved from liability under its obligations hereunder to the extent the purchaser or assignee agrees in writing to perform same.

5.2 If the Land Owner sells or transfers its interest in the Lands or this agreement, the Land Owner will be relieved from liability under its obligations hereunder to the extent that the purchaser or assignee agrees in writing to perform same. The Land Owner will obtain from any successor a covenant to London Hydro in writing acknowledging this agreement and agreeing that London Hydro shall be entitled to possession pursuant to the terms contained herein.

Article 6 MISCELLANEOUS

6.1 London Hydro will ensure that the EV Charger Equipment installation is made in accordance with all applicable laws and codes, and to good engineering practice.

6.2 London Hydro shall maintain EV Charger Equipment in a good and safe state of repair and in a clean and orderly condition and co-operate with the Land Owner in preserving the lands and other facilities used in common in a clean and safe condition.

6.3 London Hydro shall bear all costs related to the procurement, installation, maintenance, change, modification, or upgrade of EV Charger Equipment. London Hydro shall obtain any and all licences and permits as may be required by any competent authority having jurisdiction with respect to its use and operations, work, installations or modifications, in connection with the EV

Charger Equipment.

6.4 London Hydro will connect the EV Charger Equipment to the electrical distribution system.

6.5 London Hydro may include signage on the Lands, which will be subject to applicable municipal approvals, and the approval of the Land Owner to educate the public about the EV Charger Equipment.

6.6 The Land Owner will not, in the sole opinion of London Hydro, do anything to degrade the performance of the EV Charger Equipment, except where permission has been granted by London Hydro, which shall not be unreasonably withheld. The Land Owner will not do anything to jeopardize compliance with the terms of the Smart Grid Fund.

6.7 London Hydro will be responsible for all electrical costs associated with the operation of the EV Charger Equipment.

6.8 London Hydro will provide the Land Owner with consumption data related to the electric vehicle charger.

6.9 The parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this agreement.

6.10 This agreement contains the complete and exclusive statement of the agreement between the parties and supersedes all prior and contemporaneous agreements, understandings, proposals, negotiations, representations or warranties of any kind whether written or oral. No oral or written representation that is not expressly contained in this agreement is binding on either party. This agreement cannot be amended or modified, other than by a change made in writing, dated and executed by the parties.

Article 7 NOTICES

7.1 Any notice required or permitted to be given under this Agreement shall be sufficiently given if sent by registered mail, postage prepaid, by personal delivery, or sent by facsimile, addressed as follows:

- to London Hydro at:
London Hydro Inc.
111 Horton Street
P.O. Box 2700
London, Ontario
N6A 4H6
Attention: Executive Offices
Facsimile: (519) 661-5052
- to the Land Owner at:
City of London
300 Dufferin Ave.
P.O. Box 5035
London, Ontario
N6A 4L9
Attention: Corporate Energy Management Group
Facsimile: (519) 661-2354

Any notice delivered personally shall be deemed to have been received on the date of actual delivery. Any notice sent by facsimile shall be deemed to have been received on the next business day following the date of transmission. Any notice sent by registered mail shall be deemed to have been received five (5) business days after the date it was mailed. A business day as used herein shall mean any day other than a Saturday, Sunday, statutory holiday or a Civic Holiday.

IN WITNESS WHEREOF this agreement has been executed by the parties as of the date first set forth above.

LONDON HYDRO, INC

By:

By:

Name: Vinay Sharma

Title: CEO

Name:

Title:

THE CITY OF LONDON

By:

By:

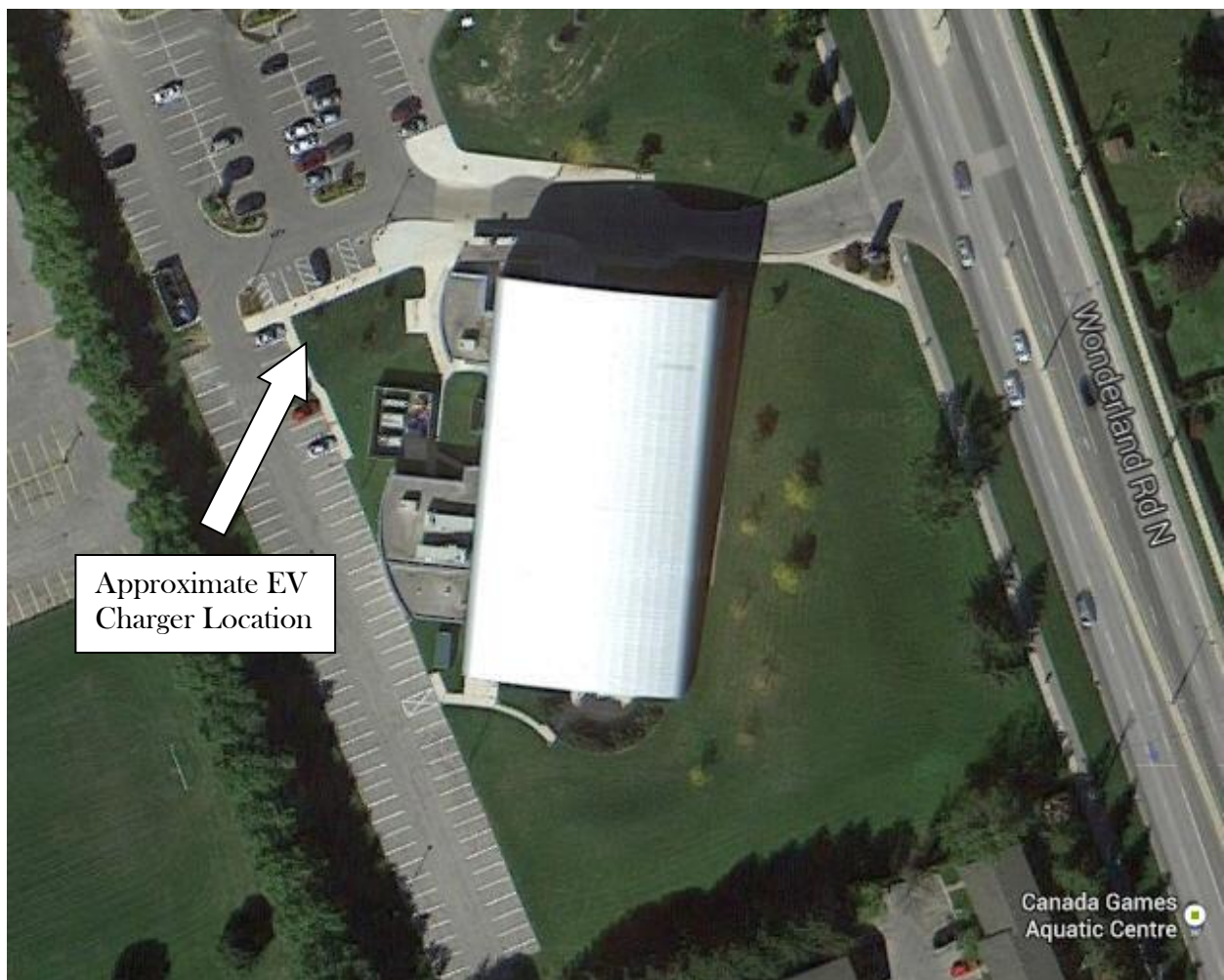
Name: Matt Brown

Title: Mayor

Name: Catharine Saunders

Title: City Clerk

FIGURE 1 – Location of EV Charger Equipment



1045 Wonderland Road North, London, Ontario – Canada Aquatic Games Centre

FIGURE 2 – Example of Level 2 Electric Vehicle Charger



FIGURE 3 – Example of Battery Storage System

