

Bill No. 35
2016

By-law No. A.-_____

A By-law to approve the Trade-Mark License Agreement for “Canada’s Clean50 Top 15 Project” Award Honourees for the purpose of the City of London being granted license to use the Canada’s Clean50 Award word-mark and logo; and to authorize the Mayor and City Clerk to act on behalf of the City of London and to execute the Agreement.

WHEREAS section 2 of the Municipal Act, 2001, S.O. 2001, c.25, as amended, provides that municipalities are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction and each municipality is given powers and duties under this Act and many other Acts for the purpose of providing good government with respect to those matters;

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 section 10 of the Municipal Act, 2001 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 economic, social and environmental well-being of the municipality, and may pass by-laws respecting services and ‘things the municipality is authorized to provide’;

AND WHEREAS subsection 5(3) of the Municipal Act, 2001 provides that a municipal power shall be exercised by by-law:

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

1. Trade-Mark License Agreement for “Canada’s Clean50 Top 15 Project” Award Honourees, attached as Schedule A, to be entered into between The Corporation of the City of London and Delta Management Group for the purpose of the City of London being granted license to use the Canada’s Clean50 Award word-mark and logo, this By-law, is approved.
2. The Mayor and the City Clerk are authorized to execute the agreement approved under section 1 above.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on January 4, 2016.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First reading - January 4, 2016
Second reading - January 4, 2016
Third reading – January 4, 2016

SCHEDULE A

TRADE-MARK LICENSE AGREEMENT FOR

“CANADA’S CLEAN50 TOP 15 PROJECT” AWARD HONOUREES

THIS AGREEMENT made as of the 9th day of the month of September, 2015.

BETWEEN:

DELTA MANAGEMENT GROUP CORPORATION, a body corporate existing under the laws of the Province of Ontario (referred to in this Agreement as “Delta”)

and

The Corporation of the City of London (referred to in this Agreement as the “Licensee”)

WHEREAS:

- a. Award: “Canada’s Clean50 Top Project Award” which recognizes the contributions of its recipient Honourees towards clean capitalism and sustainable development in Canada. The Licensee is awarded the “Canada’s Clean50 Top 15 Project” Award and may be awarded further related designation(s) by Delta, and has become a member of a group who are the recipients of such awards; and
- b. The Licensee desires to obtain a license from Delta to use the trade-marks, names, designs, symbols, and designations in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and premises set forth in this Agreement, the parties hereby agree as follows:

1. Definitions

In this Agreement the following terms shall have the meaning indicated below:

- a. Award: Canada’s Clean50 Top Project Award which recognize the contributions of its recipient honourees and the members of their teams as identified in their submissions towards clean capitalism and sustainable development.
- b. Award Term: From the moment Delta announces the recipient of an Award up until December 31st of the following year;
- c. Advisory Committee: A committee comprised of at least 4 and no more than 10 individuals, named by Delta; each of which has exceptional knowledge in at least one of the 16 categories in which Delta has selected a member of the Clean16;
- d. Causes: the advancement of sustainable development, and the practice of clean capitalism in Canada;
- e. Expulsion Hearing: A meeting for the purpose of the revocation of the Award and/or termination of a licensing agreement decided by the Advisory Committee;
- f. Items: Any items of wares, goods or products other than as defined elsewhere;
- g. License: The grant of a license by Delta to a Licensee to display the Award Word-mark or Logo on biographical materials associated with the Licensee;
- h. Licensee: The organization named above as a recipient of the Award and license holder from Delta;
- i. Logo: Delta has caused to be created a “Clean50” logo for which it has applied for a trademark featuring a stylized Clean50, a green Canadian maple leaf, and the year of the award grant and used in conjunction with the word (or words) referring to “Project(s)” also a similar logo to denote membership in the Clean50 and Clean16. These collectively, or individually are referred to as the Logo;

- j. **Private Promotional Materials:** materials printed or produced on or in media of any sort that are accessible only to employees of the Licensee and not accessible to any persons not employees of the Licensee
- k. **Public Promotional Materials:** Anything disclosed, on or in, media of any sort, by the Licensee or its Agents, not Private Promotional Materials
- l. **Word-Mark:** The typography and not the Logo of “Canada’s Clean50” in conjunction with word(s) referring to “Project(s)” (including the year when appropriate)
- m. **Permitted Advertising:** any content appearing in or on media of any sort, the primary purpose of which is to advertise or promote the Licensee and / or the Licensee’s commitment to the Causes and achievements resulting therefrom and not on any items for sale
- n. **Project(s):** activities or work completed by individual(s) that has a specific targeted goal(s) clustered around desired results of a related nature, undertaken within the period between January 1st, 2 years ago, and up to March 31st of the present year, that has resulted in advancements of the Causes

2. The “Canada’s Clean 50” Award

- a. Delta has created the concept of annually identifying and recognizing fifty individual or small teams of Canadians who have done much to advance the “Causes” of sustainable development and clean capitalism in Canada, said individuals to be collectively known as “Canada’s Clean50” and further to identify 15 specific “Projects” that are either innovative or have achieved exemplary results, and which will inform or will inspire others
- b. The primary purposes of such recognition is to honour worthy contributions in the past and encourage other individuals to continually and actively pursue the Causes to the benefit of Canada and Canadians.
- c. Delta and the recipient and all other recipients of the Award have a mutual interest in ensuring that the Awards are perceived by Canadians to have value and to have been bestowed upon individuals whose contribution to the Causes is worthy of the honour.

3. Administration of the Award

- 1) The ongoing governance of the honours shall be at the discretion of Delta, who shall appoint at least one of its executives to sit on and Chair the Advisory Committee.
- 2) The Advisory Committee shall name no more than fifteen projects so that each can receive one of the fifteen Project Awards in any one year.
- 3) The Award recipients shall be named in the last 4 months of any year, for appointment to the Clean50 Top Projects for the following year and shall be known as Award recipients of the Clean50 Top Projects for the subsequent year to that in which they were named.

4. Grant of License

- a. Delta hereby grants to the Licensee, a limited, revocable, non-exclusive and non-transferable License to place the Word-Mark on **Private Promotional Material** and to identify the Licensee on Private Promotional Material without a charge as a recipient of the Award in accordance with, and subject to the terms and conditions of this Agreement.
- b. In addition Delta hereby grants to the Licensee, upon the award being made public by Delta, the right on that same day or immediately thereafter to announce that the Licensee has received the award provided that such announcement is not placed upon public promotional material other than the release, nor accessible on the Licensee’s website.
- c.. Delta hereby grants to the Licensee, a limited, revocable, non-exclusive and non-transferable License to place the Word-Mark or the Logo on Permitted Advertising and / or Public Promotional Material, subject to the terms of this agreement and on the following conditions:
 - i. receipt of payment by Delta from the Licensee of a one-time licensing fee, as prescribed below, which payment which shall include the one-time fee for use in perpetuity of the Clean50 Projects Logo set out in Section 4(c) above, (and, when having already purchased one ticket for the Clean50 Summit for a project team member, the right to send a second team member at no additional charge);

- ii. the Logo shall only be reproduced from material supplied by Delta and shall not be modified in any shape or format;
 - iii. nothing about the use or placement of the Word-Mark or the Logo would reasonably be perceived by the public to refer to a product or service, or suggest any endorsement of a product or service by Delta; and
 - iv. the size of the date embedded in the Logo after the Award Term shall always be at least 7 points and reasonably clear enough to be readily discerned by anyone with 20:20 vision.
- 4) The grant of the Award or License is not to endorse, promote or approve of any specific products, services or any other commercial activities of the Licensee.
 - 5) The License fee shall be \$1,250.00 unless the organization is one of the following types of organizations, in which case the lower fee shall be as shown:
 - i) If a Certified B Corp, \$575.00
 - ii) If an ENGO, registered charity, or similar NFP advocacy group, \$200.00
 - iii) If there are 2 organizations partnered in winning the award, and both elect to license the logo and word mark for promotional use, then the second (less expensive) logo shall be available at 50% of the usual cost to the second party

5. Permitted Use and Display of the Word-Mark

- a) The Word-Mark shall only appear within reasonable proximity of the Licensee's name (for example, "ABC Company recipient of the Canada's Clean50 Project award"), and in the same sized type, or larger. Nothing about its placement should cause confusion as to whom or to what it refers.
- b) Written manifestations shall only state that the Licensee is a current recipient of the Award within the Award Term, thereafter the Licensee must reference the year as described in c).
- c) Subsequent to the Award Term, the Award must be referenced in any written manifestation together with the year in which the Licensee received the Award. For example, a Licensee receiving the Award in late 2015 must refer to the Award itself after the Award Term in the following format "Canada's 2016 Clean50 Top Project" wherein the year represents the year for which the Licensee was a recipient of the Award. During the Award Term, the Award may also be referenced with the year.
- d) Prior to the conclusion of the Award Term, the Licensee shall update all written and digital material where the Award appears to conform to the format described in clause c above.
- e) Any reference to the Award in digital format or in a format likely to be accessible by internet viewers (including press releases) shall include, immediately beside it, in the same size and font, an executable link to the "www.clean50.com" website in the following format: www.clean50.com. Any subsequent reference to the Award in the same document appearing within 5 paragraphs of the executable link may omit reference to the www.clean50.com website.
- f) In the first instance that the Award appears in written or digital media it shall be referred to by the Award's complete and full name, "Canada's Clean50 Top Project Award" or according to clause c above following the Award Term. Thereafter, in the same written or digital media the Licensee may reference the Award as "the 2016 Clean50 Project" or, during the Award Term, as "the Clean50 Project". However, in all publicly accessible media, the Award shall always contain the word "Clean" with the "C" capitalized and the "lean" in lower case, followed immediately with no space between the numerals and the word "Clean", such as "Clean50".
- g) Recipients of Canada's Clean50 Top Project Awards who are not recipients of the Clean50 or Clean16 Awards for individuals or small teams may not refer to themselves as Recipients of Canada's Clean16 Award, nor the Clean50 award – unless also using the words "Top Project".
- h) The Licensee is not permitted to use the Award, the Word-Mark or Logo, nor make any reference to the "Clean16", "Clean50" or "Clean50 Top Project" in any fashion that might

reasonably be anticipated to reduce the inherent value or goodwill of the Award, the Word-Mark or Logo.

- i) The Licensee will not publicly criticize the Clean50, or any recipient of any Clean50 Award for their inclusion on the list.
- j) The Licensee acknowledges that Award recipients may later be classified, by way of vote by the public as either the People's Choice –Top Project (or Top 5 Project) or by a separate vote by Clean50 Summit participants as either “*The 2016 Clean50 Project of the Year*” (or “*Top 5 Project of the Year*”). Beyond those rankings none other is implied nor may be made, and Honourees will be listed alphabetically. The Licensee will not do or say anything that would suggest anything to the contrary.

6. Rights Retained by Delta and Assignment

- a. The Licensee acknowledges and agrees that Delta possesses the absolute and exclusive proprietary rights to the Award, the Word-Mark and the Logo, which all shall remain the sole property of Delta. The Licensee shall acquire no right, title or interest in and to the Award, the Word-Mark or the Logo, except the right to use the Award, the Word-Mark and the Logo in accordance with the terms of this Agreement and subject to the payment of any fees. The Licensee shall not use the Award, the Word-Mark or the Logo in any manner calculated to represent that the Licensee is the owner of the Award, the Word-Mark or the Logo.
- b. The Licensee recognizes the value of the publicity and goodwill associated with the Award, the Word-Mark and the Logo and acknowledges that such goodwill belongs exclusively to Delta. The Licensee shall not, when using the Logo or the Word-Mark, dispute or contest directly or indirectly, the validity, ownership or enforceability of the Award, the Word-Mark or the Logo, directly or indirectly attempt to dilute the value of the goodwill attaching to the Award, the Word-Mark or the Logo, neither alter, modify, dilute or otherwise misuse the Award, the Word-Mark or the Logo or bring them into disrepute, nor counsel, procure or assist anyone else to do any such acts.
- c. The Licensee may not assign or transfer the Award, the Word-Mark or the Logo or any of its rights hereunder, including by way of merger or amalgamation.
- d. The Licensee acknowledges that it has no expectation of receiving the Award in future years, or to profit financially from any advertising that may appear on websites or publications on which the various Clean50 Award recipients are identified.
- e. Delta will have the right to identify the Licensee as a licensee of Delta, a recipient of the Award or user of the Word-Mark in the marketing, sales and other similar literature and material of Delta without having to obtain the prior consent of the Licensee or Award recipient.
- f. Delta has the right to transfer this agreement to a successor company including by way of merger or amalgamation, or to a separate entity formed with the intent of managing the Clean50 Awards at its sole discretion without prior notice to the Licensee.

7. Enforcement of Rights and Revocation by Delta

- a. The Licensee acknowledges that having been awarded the Award is due to the reputation and/or submissions made by them or on their behalf by colleagues, and the review of publicly available information regarding their record as someone whose actions are worthy of the Canada's Clean50 Award. Should it be later determined by Delta that a substantive part of such submissions should have reasonably been known to be false at the time they were made, or should the Licensee's future conduct as it pertains to the Awards be such so as to reasonably be expected to bring demonstrable harm to the reputation or goodwill of the honour, to Award recipients or Delta, then Delta may move to revoke the Award and terminate the License in the manner as described below.
 - i. Delta shall notify the Licensee of its intent and the reason(s) for revocation and termination before calling an Expulsion Hearing, and grant the Licensee 10 business days to make submissions in response to Delta's allegations or concerns.
 - ii. Following the Licensee's response, Delta may elect to withdraw the request for expulsion or proceed at its sole discretion, or ask the Licensee to resign and surrender the License voluntarily.

- iii. If still required, the Advisory Committee shall convene with at least five members which constitute a quorum. The Licensee's submission will be considered by all.
- iv. A vote will be held after the Advisory Committee has had the time and opportunity to consider all submissions. If a majority of the Advisory Committee votes to revoke the Award or the License, the Licensee shall be provided with 15 business days to further appeal, or resign voluntarily.
- v. If a representative of the Licensee wishes to make themselves available for an in-person submission, they shall have the right to do so by participating in a teleconference or conference call arranged at the Licensee's expense.
- vi. In the absence of an appeal or a resignation, the Advisory Committee shall revoke the Award and terminate any licenses granted hereunder.
- vii. If a final appeal is requested, Delta shall present the Member's/Licensee's conduct and the responses before at least five additional members as well as the Advisory committee.
- viii. A majority decision (50% plus.5) will be final and not subject to further appeal.

8. Effect of Revocation:

- a. All rights of the Licensee to claim or to associate themselves with the Award shall cease immediately. The Licensee shall immediately take all necessary steps to remove any references within their control between themselves and the Award. The Licensee will take all reasonable efforts to remove such references within 7 business days.
- b. Delta will remove all references to the Licensee from the websites where such information was posted by Delta.
- c. Unless the issue for which the revocation or termination is made, in the sole and reasonable determination of Delta is so reprehensible that public distancing is required, or unless the Licensee fails to cease and desist from identifying themselves as a recipient of the Award, Delta shall make no public announcement regarding the specific revocation of the Award or termination of the license.
- d. The Licensee shall be entitled to no compensation of any sort from Delta resulting from Revocation.

9. Enforcement Against a Third party

Delta has the sole right and discretion to enforce its rights of the Award, the Word-Mark and the Logo against any third party infringer. The Licensee has no right to initiate an action against a third party to enforce any such rights without prior written consent from Delta.

10. Governing Law

This Agreement will be governed by the laws in force in the Province of Ontario. If any of the provisions or portions of this Agreement are invalid under any applicable statute or rule of law, they are, to that extent, deemed to be severed from this Agreement and the remaining provisions and portions shall remain in full force and effect.

11. Modification and Waiver

The parties agree that this Agreement may be modified from time to time only by an instrument in writing signed by authorized representatives of both parties. No delay or failure of Delta to exercise any right or remedy will operate as a waiver thereof. No assent to or waiver by Delta of any breach of any one or more provisions in this Agreement shall be taken to be a waiver of any succeeding or other breach.

12. Entire Agreement

This Agreement is the complete and exclusive statement of agreement between the parties relating to the subject matter of this Agreement, and supersedes all proposals, written or oral, and all other communications between the parties relating to the subject matter of this Agreement.

IN WITNESS WHEREOF Delta and the Licensee have executed this Agreement as of the date first written above.

**THE CORPORATION OF THE CITY
OF LONDON**

Per: _____
Catharine Saunders, City Clerk

Per: _____
Matt Brown, Mayor

**DELTA MANAGEMENT GROUP
CORPORATION**

Per: _____
Gavin Pitchford, CEO