

Bill No. 184
2016

By-law No. A.-_____

A By-law governing the form and approving authority for Alternate Locate Agreements.

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 subsection 8 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that the powers of a municipality under that Act shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their own affairs as they consider appropriate and enhance their ability to respond to municipal issues;

AND WHEREAS subsection 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 the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;

AND WHEREAS subsection 23.2(1)(c) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may delegate legislative and quasi-judicial powers under any Act only to an individual who is an officer, employee or agent of the municipality;

AND WHEREAS subsection 23.2(4) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may delegate legislative and quasi-judicial powers under any Act only to an individual who is an officer, employee or agent of the municipality if the power being delegated is of a minor nature, with Council having regard to the number of people, the size of geographic area and the time period affected by an exercise of the power;

AND WHEREAS it is deemed expedient for the Municipal Council to adopt a standard form of agreement for Alternate Locate Agreements.

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

1. The Alternate Locate Agreement attached as Schedule 'A' that establishes the terms and conditions of the alternate locate process to be used by contractors excavating in the City in lieu of obtaining a locate of the City's underground services is hereby adopted.
2. The City Engineer is delegated the authority to make minor amendments to the approved Alternate Locate Agreement from time to time, and is fully responsible for determining the approved excavation procedures in the Agreement's "Allowable Work Schedule", and has the authority to approve and reject applications and execute and terminate Alternate Locate Agreements on behalf of The Corporation of The City of London.
3. This by-law comes into force and effect on the day it is passed.

PASSED in Open Council on May 17, 2016.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First reading – May 17, 2016
Second reading – May 17, 2016
Third Reading - May 17, 2016

SCHEDULE 'A'

Standard Form Alternate Locate Agreement

THIS AGREEMENT made in duplicate this ____ day of _____ 2016.

B E T W E E N:

THE CORPORATION OF THE CITY OF LONDON

(hereinafter called the "City")

OF THE FIRST PART

A N D

(hereinafter called the "Contractor")

OF THE SECOND PART

WHEREAS the Contractor plans to undertake excavation work from time to time within the limits of the City of London;

AND WHEREAS The Contractor has requested the City to provide an Alternate Locate Agreement for such work;

AND WHEREAS the City has agreed to grant an alternate locate only under the specific provisions in this Agreement;

NOW THEREFORE in consideration of the premises, the mutual covenants contained in this Agreement and other consideration (the receipt and sufficiency of which are acknowledged), the City and the Contractor agree as follows:

1. The term of this Agreement is for five (5) years, commencing on the date set out on the first page of this Agreement, subject to earlier termination in accordance with the terms of this Agreement. At the City's sole option, the term of this Agreement may be renewed by the City for an additional one (5) year term by the City 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 the City (the "City Underground Plant"). This Agreement pertains only to the City 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 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 are aware of the terms and requirements of this Agreement.
- f) An Ontario One Call alternate locate confirmation is valid for the lesser of sixty (60) 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) the City retains the right to refuse to honour the alternate locate at any time for any reason, and may also cancel the City 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 the City.

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:

- a) Electrical Safety Authority and Technical Standards & Safety Authority *Guideline for Excavation in the Vicinity of Utility Lines*;
- b) *The Occupational Health and Safety Act* (Ontario) and all regulations made thereunder including, without limitation, O. Regulation 213/91 (Construction Projects) (as each of the foregoing is amended from time to time, the "OHSA"); and
- c) **ANY OTHER APPLICABLE LEGISLATION.**

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 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 the City Underground Plant is discovered or encountered but where there has been no damage to the City Underground Plant or to property of any third party and no personal injury as described in Section 9, the Contractor will contact the City immediately at the telephone number set out on the first page of this Agreement and ensure that, if required by the City, the excavation is left open in a safe and secure manner until it has been inspected by the City.

9. If any excavation by the Contractor results in any damage to the City 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 the City 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 the City Underground Plant or property of any third party or any related personal injury arising from any excavation by the Contractor. The Contractor shall be liable for and shall indemnify and hold harmless the City, and its Affiliates (as defined under the *Business Corporations Act* (Ontario)) and their respective 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 or any act or omission or willful misconduct of the Contractor or any of its Representatives. For certainty, in the event of any damage to the City Underground Plant, the City reserves the right to complete a damage investigation into the nature and cause of the damage. The conclusions arising out of the City's investigation are final and not contestable. If the City 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 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 the City 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 the City 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). The City 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 the City, furnish to the City 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 the City, the Contractor shall furnish the City with one or more duly completed insurance certificates in the form requested by the City 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 the City. 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 the City to provide fifteen (15) days prior written notice to the City 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 the City, 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 "the City" and any names, symbols, signs, trademarks and marks denoting and identifying the City, its subsidiaries and affiliates, presently in use or acquired from time to time are the property of the City and shall not be used or displayed by the Contractor in any manner whatsoever without the prior written authorization of the City. 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 the City for any purpose other than in furtherance of the Contract Work and shall cease such usage upon completion of the Contract Work or upon request of the City. Further, the Contractor shall return to the City forthwith any documents, identity cards, signs, forms or records provided to it by the City or acquired by the Contractor in furtherance of this Agreement and the Contract Work, upon completion of the Contract Work or upon the request of the City. 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 the "Allowable Work Schedule" 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.

IN WITNESS WHEREOF the Contractor has hereunto set their hand and seal.

THE CORPORATION OF THE CITY
OF LONDON

Name:
Title:
I have authority to bind the corporation

(OWNER)

Name:
Title:
I have authority to bind the corporation

ALLOWABLE WORK SCHEDULE

“**Allowable Work**” means excavation meeting the following criteria within the Corporation of the City of London:

Hydro-excavation:

All hydro-excavation work is to be completed with the conditions outlined in the “Guideline for Excavation in the Vicinity of Utility Lines” (jointly-published by the Electrical Safety Authority and the Technical Standards & Safety Authority).

Maintenance, repair and removal of existing roadside features not to exceed 1.50m x 1.50m x 1.50m (exceptions apply if shoring is in place in accordance with the guidelines). Above ground maintenance, repair and removal of existing roadside features conducted through a circular hole with a diameter not to exceed 1.0m (Type 1 and Type 2 soil only).

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.

Slot trenching for the daylighting, or installation of underground services (for example, cable, gas, electrical).