

Bill No. 157
2017

By-law No. A.-_____

A By-law to authorize and approve Amending Agreement No. 2 with the Government of Ontario for the HELP Clean Water initiative, and to authorize the Mayor and 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 on March 3, 2010, The Corporation of the City of London and Her Majesty the Queen in Right of Ontario entered into an Agreement for Capital Project Comprised of Nine Components to Ensure Sustainable Regional Water Supply System ("Original Agreement"), also known as the Huron Elgin London Clean Water Project, also known as the HELP Clean Water initiative;

AND WHEREAS on August 28, 2014, the Parties to the Original Agreement entered into an agreement to amend the Original Agreement ("Amending Agreement No. 1");

AND WHEREAS the Parties to the Original Agreement as amended by Amending Agreement No. 1 wish to further amend the Original Agreement, to extend the Final Claim Date and Agreement End Date, by entering into a further amending agreement ("Amending Agreement No. 2");

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

1. The Amending Agreement No. 2, to the Original Agreement entered into between Her Majesty the Queen in Right of Ontario and The Corporation of the City of London, substantially in the form attached as Schedule "A" to this by-law, is authorized and approved.
2. The Mayor and Clerk are hereby authorized to execute the Amending Agreement No. 2, as 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 April 18, 2017.

Matt Brown
Mayor

Catharine Saunders
City Clerk

The amendments within this amending agreement are effective as of March 31, 2017.

AMENDING AGREEMENT 2

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,
as represented by the Minister of Agriculture, Food and Rural Affairs**

(the "Province")

AND

THE CORPORATION OF THE CITY OF LONDON

on its own behalf and in its capacity as Administering Municipality for the Lake Huron Primary Water Supply System and the Elgin Area Primary Water Supply System

(the "Recipient")

Whereas the Province and the Recipient entered into an agreement, effective March 3, 2010, under the Building Canada Fund – Major Infrastructure Component;

And whereas section 12.15 of the agreement allows the Parties to make amendments to the Agreement, provided such amendments are in writing agreed upon and signed by the Parties;

And whereas the agreement was amended on July 10, 2014 (together with the amendments in Amending Agreement 1, cumulatively "the **Agreement**"); and

And whereas the Parties wish to further amend the Agreement.

Therefore, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree to amend the Agreement under this second amending agreement (the "**Amending Agreement 2**") as follows:

1. **Components.** Each reference to the term "Nine Components" in the Agreement is replaced with the term "Project Components".

2. **Agreement End Date.** The definition of "Agreement End Date" in section 1.1 of the Agreement is revoked and replaced with the following:

"**Agreement End Date**" means March 31, 2019.

3. **Completion.** The definition of "Substantial Completion" in section 1.1 of the Agreement is revoked and replaced with the following:

"**Completion**" means the action or process of finishing the Project Components so that they may be utilized for the purposes for which they were intended.

4. **Completion Date.** The following definition is added as section 1.1 of the Agreement:

Schedule "A"

"Completion Date" means the date of Completion in an executed Schedule E (Solemn Declaration of Completion).

5. ***Duration of Agreement.*** Section 1.3 of the Agreement is revoked and replaced with the following:

This Agreement will be effective as of the date of this Agreement is signed by all Parties (the "Effective Date") and will expire on the Agreement End Date, unless terminated earlier pursuant to the terms and conditions of this Agreement.

6. **Insurance.** Section 14.1 of the Agreement is revoked and replaced with the following:

Insurance. The Recipient represents and warrants that it has, and shall maintain in full force and effect until the Completion Date, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person carrying out a project similar to the Project would maintain, including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than five million dollars (\$5,000,000.00) per occurrence. The commercial general liability insurance policy shall include the following:

- (i) the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement;
- (ii) a cross liability clause;
- (iii) contractual liability coverage; and
- (iv) a 30 day written notice of cancellation, termination or material change.

7. ***Schedule A.2. Ineligible Costs.*** Paragraph A.2. a) of Schedule A (Eligible and Ineligible Costs) to the Agreement is revoked and replaced with the following:

a) costs incurred before April 1, 2009 or after January 31, 2019.

8. ***Schedule B.*** Schedule B (Project Components and Cost Breakdown) of the Agreement is revoked in its entirety and replaced with the Schedule B (Project Components) attached hereto.

9. ***Estimates within Schedule B.*** For the sake of clarity, any estimated costs within Schedule B (Project Components) for each Project Component are not limits for reimbursement to the Recipient. Section 3.1 a), as set out in Amending Agreement 1, provides for the limit upon Ontario's contribution to the Recipient.

10. ***Schedule E.*** Schedule E (Solemn Declaration of Substantial Completion) of the Agreement is revoked in its entirety and replaced with the Schedule E (Solemn Declaration of Completion) attached hereto.

11. A completed Schedule E shall be delivered to the Province at least 30 days before the Agreement End Date.

12. ***Schedule I (Aboriginal Consultation Protocol).*** Section 8.1 of Schedule I to the Agreement is revoked and replaced with the following:

Schedule "A"

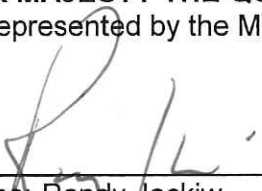
All notices to Ontario pertaining to this Schedule shall be in writing and shall be given by facsimile or other means of electronic transmission or by hand or courier delivery. Any notice to Ontario shall be addressed as follows:

Ontario Ministry of Agriculture, Food and Rural Affairs
Rural Programs Branch
1 Stone Road West, 4th Floor
Guelph, ON N1G 4Y2
Attention: Manager, Infrastructure Renewal Programs Unit

- 13. **Capitalized Terms.** Capitalized terms used but not defined in this Amending Agreement No. 2 have the meanings ascribed to them in the Agreement;
- 14. **Continuing Force and Effect.** Except for the amendments specifically provided for in this Amending Agreement 2, all provisions in the Agreement shall remain in full force and effect *mutatis mutandis*; and
- 15. **Counterparts.** This Amending Agreement 2 may be signed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF the Parties have signed this Amending Agreement 2 as of the dates indicated below:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,
as represented by the Minister of Agriculture, Food and Rural Affairs



March 23rd, 2017

Name: Randy Jackiw
Title: Assistant Deputy Minister, Economic Development Division

I have the authority to bind the Province pursuant to delegated authority.

THE CORPORATION OF THE CITY OF LONDON
on its own behalf and in its capacity as Administering Municipality for the Lake Huron Primary Water Supply System and the Elgin Area Primary Water Supply System

Name:
Title:

Date: _____

Name:
Title:

Date: _____

I/We have the authority to bind the Recipient.

SCHEDULE B**PROJECT COMPONENTS****B.1 Project Component Descriptions:**

Project File #	Ontario Database File #	Project Component	Description
21501	21	Southeast Reservoir (EW3614)	The Southeast Reservoir will increase the capacity of the drinking water and pumping capabilities to the distribution network and back-feed by constructing a reservoir having a storage capacity of at least 114 million litres and associated pumping systems. Existing pumps will also be replaced to accommodate the construction of the new reservoir as well as the installation and replacement of controls between the City of London's supply and pressure zones.
21503	23	Lake Huron Emergency Backup Generators (LH1326)	The work includes increasing the power generation to the site and the installation of backup generators and building modifications.
21504	24	Lake Huron Residuals Management Facility (LH1902)	Work includes the construction of a residuals management facility to handle waste by-products associated with the water treatment facilities.
21506	26	Lake Huron Twinning (LH1305)	Approximately 8 km of pipeline main will be twinned, with associated appurtenances and applicable transmission modifications.
21507	27	Elgin Area Residue Management Facility (EA4023)	Construct a residue management facility to handle the waste by-products associated with water treatment facilities.
21509	29	Elgin Twinning (EA4024)	Twin approximately 8.5 km of pipeline main with higher capacity transmission main.
21510	81	Lake Huron Fibre Optic Monitoring System (LH1368)	Work includes the installation of a fibre optic condition monitoring and leak detection system in approximately 62 km of water transmission pipeline
21511	82	Elgin Filtration System Replacement (EA4082)	Replace the existing water treatment filtration systems with a new efficient and higher capacity system.

SCHEDULE E

SOLEMN DECLARATION OF COMPLETION

In the matter of an Agreement entered into between Her Majesty the Queen in right of Ontario, as represented by the Minister of Agriculture, Food and Rural Affairs ("Ontario") and The Corporation of the City of London, on its own behalf and in its capacity as Administering Municipality for the Lake Huron Primary Water Supply System and Elgin Area Primary Water Supply System (the "Recipient"), as amended, concerning the Huron Elgin London Clean Water Project (the "Agreement");

I, _____ (Name), of the City of _____, in the Province of Ontario, solemnly declare as follows:

1. That I hold the position of _____ with the Recipient and as such have knowledge of the matters set forth in this Declaration.

2. a) I have received the following documents for the Huron Elgin London Clean Water Project:

[LIST TITLE OF ALL RELEVANT DOCUMENT(S) (e.g. Certificate of Completion, Certificate of Performance, Occupancy Permit, etc.)] signed by _____ (Name), a _____ [INSERT ONE OF "professional engineer", OR professional architect" OR title of any other relevant professional] for the Huron Elgin London Clean Water Project, dated [INSERT DATE(S)]

b) That based on the above documents and the representations made to me by the professionals identified in Section 2(a) of this Declaration, and to the best of my knowledge, information and belief, the Project:

i) started on _____ day of _____, 20____; and

ii) was "Completed", within the meaning of this term in the Agreement, on the _____ day of _____, 20____.

3. To the best of my knowledge, information and belief, the Project conformed with all applicable regulatory requirements.

4. To the best of my knowledge, information and belief that all the terms and conditions of the Agreement that were required to be met by the Recipient as of the date of this Declaration have indeed been met.

Solemnly declared at _____, in the Province of Ontario this _____ day of _____, 20____.

Signature: _____

Name: _____

Title: _____

Signature: _____

Witness Name: _____

Title: _____