

Bill No. 223  
2017

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

A By-law to authorize an Agreement between The Corporation of the City of London and The University of Waterloo; 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 the University of Waterloo (“Waterloo”) as led by the Southern Ontario Water Consortium (“SOWC”) manage the Advanced Water Technologies Program (“AWT”);

AND WHEREAS The City of London (the “City”) may agree to collaborate on sub-projects from time to time, as part of the Southwestern Ontario Water Consortium (“SOWC”);

AND WHEREAS sub-projects may be located on premises owned and operated by the City;

AND WHEREAS the City and Waterloo wish to enter into an Agreement to set out the terms and conditions under which the parties may collaborate in the performance of AWT;

AND WHEREAS it is deemed expedient for the City to enter into an Agreement with The University of Waterloo (the “Agreement”);

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 Schedule “A” to this By-law, being an Agreement between the City and The University of Waterloo is hereby AUTHORIZED AND APPROVED.
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 May 30, 2017.

Matt Brown  
Mayor

Catharine Saunders  
City Clerk

First Reading – May 30, 2017  
Second Reading – May 30, 2017  
Third Reading – May 30, 2017

## Schedule "A"

### COLLABORATOR AGREEMENT

**THIS COLLABORATOR AGREEMENT (THE "AGREEMENT") ENTERED INTO ON THE [X] DAY OF [MONTH], [YEAR] (THE "EFFECTIVE DATE") IS MADE BETWEEN THE UNIVERSITY OF WATERLOO, THE OFFICE OF RESEARCH, 200 UNIVERSITY AVENUE WEST, WATERLOO, ONTARIO N2L 3G1 ("WATERLOO") AND THE CORPORATION OF THE CITY OF LONDON, HAVING ITS OFFICES AT 300 DUFFERIN AVENUE, LONDON, ONTARIO N2L 3G1 ("COLLABORATOR")**

**WHEREAS** the University of Waterloo ("Waterloo") is the recipient of a non-repayable contribution ("Contribution") from the Federal Economic Development Agency for Southern Ontario ("Agency") for a project to support southern Ontario companies in the development and demonstration of water technologies ("Project") including the administration of a funding program known as Advancing Water Technologies ("AWT") that is led by the Southern Ontario Water Consortium ("SOWC");

**WHEREAS** Waterloo and the Collaborator wish to enter into this Agreement to set out the terms and conditions under which the parties will collaborate in the performance of the Project;

**NOW THEREFORE** in consideration of the premises and the mutual covenants, terms, conditions and agreements contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

#### ARTICLE 1 – DEFINITIONS

- 1.1 **"Agreement"** means this Collaborator Agreement including all attached schedules as the same may be supplemented, amended, restated or replaced in writing from time to time;
- 1.2 **"Change of Control"** means a proposed change in the identity of the individual or legal entity or group of individuals or legal entities that owns 50.1% or more of the outstanding voting shares of the Collaborator;
- 1.3 **"Completion Date"** means December 31, 2018;
- 1.4 **"Confidential Information"** means the specific terms and conditions set forth in this Agreement, and any information that is disclosed by one party to the other party for the purpose of the Project provided that tangible materials are clearly marked as "Confidential" and any information provided orally or visually is identified as confidential at the time of disclosure, and confirmed as confidential in writing within fifteen (15) days of such disclosure, but shall not include information that:
  - (a) is or becomes generally available to the public other than as a result of any act by a receiving party to this Agreement;
  - (b) is rightfully received from a third party without similar restriction or without breach of this Agreement;
  - (c) a receiving party is able to demonstrate, in writing, was known to it on a non-confidential basis; or
  - (d) was independently developed by a receiving party without the use of any of the Confidential Information.
- 1.5 **"Effective Date"** shall mean the date first shown in this Agreement;
- 1.6 **"Foreground Intellectual Property"** includes, without limitation, all technical data, designs, specifications, software, data, drawings, plans, reports, patterns, models, prototypes, demonstration units, practices, inventions, methods and related technology, processes or other information conceived, produced, developed or reduced to practice in carrying out a Sub-Project hereunder, and all rights therein, including, without limitation, patents, copyrights, industrial designs, trade-marks and any registrations or applications for the same and all other rights of intellectual

property therein, including any rights which arise from the above items being treated by the Institution as trade secrets or Confidential Information;

- 1.7 “**Sub-Project**” means an industry-led collaboration that has been approved by the SOWC under the AWT and is a component of the Project that is exclusive from the other components of the Project and any other Sub-Project;

## **ARTICLE 2 – FOREGROUND INTELLECTUAL PROPERTY**

- 2.1 The Collaborator represents and warrants that no Foreground Intellectual Property will be generated as a result of this Agreement.
- 2.2 In the event that the Collaborator participates in a Sub-Project, the Collaborator represents and warrants that they will enter into an agreement governing intellectual property matters relating to or arising from the Sub-Project. Title to any Foreground Intellectual Property developed as the result of a Sub-Project for which the amount of the Contribution was less than or equal to one hundred thousand dollars (\$100,000.00 CDN) may be vested as agreed upon by the Institution and the Collaborator(s) of the Sub-Project Agreement subject to Article 10.

## **ARTICLE 3 - FEES**

INTENTIONALLY OMITTED

## **ARTICLE 4 – REPORTING & AUDITS**

- 4.1 The Collaborator shall submit claims to document its eligible costs incurred in a form satisfactory to Waterloo. Each claim will include the following information:
- (a) an itemized summary by cost category of costs incurred substantially in the form prescribed by Waterloo;
  - (b) a certification of the claim by a director or officer of the Institution, confirming the accuracy of the claim and all supporting information provided;
  - (d) any other substantiating documentation (including without limitation, any invoice or proof of payment), as may be required by Waterloo.
- 4.2 The parties shall maintain proper and accurate accounts and records in relation to the Agreement for at least six (6) years following the Completion Date and shall supply promptly, on request, and at its own expense, these accounts and records and such other reports or data in respect of the Agreement and its results, as may be required by Waterloo or by the Government of Canada or its representatives.
- 4.3 The Government of Canada shall have the right, at its own expense, and as and when it determines necessary, to perform audits of the Agreement’s costs and a party’s books, accounts, records, financial statements and claims for reimbursement of any costs incurred as part of this Agreement, for the purposes of verifying the costs incurred as part of this Agreement, wherever such books, accounts and records may be located.
- 4.4 Any audits performed hereunder will be carried out by auditors selected by the Government of Canada, which may include any of the following: Government of Canada officials, an independent auditing firm, and/or the applicable party’s external auditors. The Government of Canada will provide the party with a description of the scope and criteria of the audit and the expected time frames for completion of the audit and public release of the related reports.
- 4.5 Each party agrees that the Government of Canada, at the Government of Canada’s own expense, may engage outside firms or individuals, unrelated to the Government of Canada, with the required expertise to evaluate and monitor the Agreement and its implementation or review any documents submitted by a party. Each party agrees to provide access to any site, meeting or to any document in relation to the Agreement to such firms or individuals.

- 4.6 **Auditor General of Canada.** Each party acknowledges that the Auditor General of Canada may, at the Auditor General's cost, after consultation with the applicable party, conduct an inquiry under the authority of Subsection 7.1(1) of the *Auditor General Act* in relation to any funding agreement (as defined in Subsection 42(4) of the *Financial Administration Act*) with respect to the use of funds received. For purposes of any such inquiry undertaken by the Auditor General, each party shall provide, upon request and in a timely manner, to the Auditor General or anyone acting on behalf of the Auditor General:
- (a) all records held by the party or by agents or contractors of the party, relating to this Agreement and the use of the Contribution; and
  - (b) such further information and explanations as the Auditor General, or anyone acting on behalf of the Auditor General, may request relating to this Agreement and/or the Contribution.

## **ARTICLE 5 - EQUIPMENT**

- 5.1 Each party shall retain title to and ownership of any existing assets prior to entering into this Agreement.

## **ARTICLE 6 - CONFIDENTIALITY**

- 6.1 All Confidential Information will remain the property of its owner or the party that furnished it as the case may be.
- 6.2 Subject to the *Access to Information Act* (Canada), the *Privacy Act*, the *Library and Archives Act* of Canada, and the *Municipal Freedom of Information and Protection of Privacy Act* a party receiving Confidential Information from a disclosing other party shall keep confidential and shall not disclose such Confidential Information or the transactions contemplated hereby, without the consent of the disclosing other party (including Waterloo on behalf of the Government of Canada).
- 6.3 The receiving party may only disclose Confidential Information to persons with a "need to know" who shall be made aware of, and be required to observe and comply with the covenants and obligations contained herein, and the Confidential Information shall only be used for the purpose of the Agreement.
- 6.4 A receiving party may disclose Confidential Information pursuant to the requirements of a government agency or pursuant to a court order, provided that the receiving party gives the disclosing party sufficient notice to enable it to seek an order limiting or precluding such disclosure.

## **ARTICLE 7 - INDEMNITY**

- 7.1 Each party agrees to indemnify and save harmless the other parties, including their respective directors, officers, employees, agents and students from and against all claims, demands, loss, costs, damages, actions, suits, or other proceedings (individually a "**Claim**" and collectively the "**Claims**") by any third party based upon, occasioned by, or attributed to actions, errors, omissions, or negligence of the indemnifying party its directors, officers, employees, agents or representatives during the performance of this Agreement, except to the extent such Claim(s) are attributable to the gross negligence or wilful misconduct of the indemnified party.

## **ARTICLE 8 – REPRESENTATIONS AND WARRANTIES AND LIMITATION OF LIABILITY**

- 8.1 Each party represents and warrants to the other party that it is duly organized, validly existing and in good standing, and it has the right and authority to enter this Agreement and do all acts and things as required or contemplated to be done, observed and performed by it hereunder.
- 8.2 No party shall be liable to the other parties for loss of business or profit or for any special, indirect, punitive or consequential loss or damage, regardless of whether such loss or damage arises under contract, tort, or based upon strict liability or other theory of law or equity, where such loss or damage arose in connection with

the Agreement. Except as expressly provided herein, Waterloo or Collaborator, including their respective directors, trustees, officers, employees, students and agents, make no representations, warranties, undertakings, promises, inducements or agreements of any kind, whether direct, indirect, express or implied, including, without limitation, the merchantability or fitness for a particular purpose of any research results or intellectual property; and except as expressly provided herein, Waterloo or Collaborator assume no responsibility whatsoever with respect to design, development, manufacture, use, sale or other disposition of research results or intellectual property by any party.

## **ARTICLE 9 – TERM & TERMINATION**

- 9.1 This Agreement shall come into effect upon the Effective Date, and shall terminate upon Completion Date unless earlier terminated by either party. Either party may terminate this Agreement at any time by giving the other party at least thirty (30) days written notice of termination.
- 9.2 Any provision of this Agreement which expressly states it is to continue in effect after termination or expiration of this Agreement, or which by its nature would survive the termination or expiration of this Agreement, shall do so.

## **ARTICLE 10 – CONFLICT OF INTEREST**

- 10.1 **In the event there exists a real, apparent or potential conflict of interest:**
- (a) **The Collaborator agrees to disclose any real, apparent or potential conflict of interest to Waterloo in writing as soon as any such conflict has been identified. A real, apparent or potential conflict of interest exists when the Collaborator, or any of its employees, is or may be in a position to use research, knowledge, authority and/or influence for personal or family gain or to benefit others to the detriment of Waterloo, the Southern Ontario Water Consortium and/or applicants to the AWT.**

## **ARTICLE 11 – GENERAL PROVISIONS**

- 11.1 Collaborator acknowledges and agrees that Waterloo shall be responsible for all public communications relating to the Project. Collaborator agree to accommodate any reasonable request of SOWC, on behalf of Waterloo, regarding promotional initiatives, including but not limited to coordination of public announcements, media events outlining Project achievements or initiatives, public events, or other activities that showcase the results or expected results of the Project, including any media or public event upon the completion of the Project. This includes providing access to work sites.
- 11.2 Each party agrees to comply with all federal, provincial, territorial, municipal and other applicable laws governing such party and the Agreement, including without limitation, statutes, regulations, by-laws, rules, ordinances and decrees. This includes: (a) legal requirements and regulations relating to environmental protection and the successful implementation of and adherence to any mitigation measures, monitoring or follow-up program, which may be prescribed by federal, provincial, territorial, municipal bodies; and (b) any environmental legislation and any mitigation measures imposed by the Government of Canada.
- 11.3 The parties are independent parties and nothing in this Agreement shall constitute any party as the employer, principal or partner of or joint venturer with another party(ies). No party has any authority to assume or create any obligation or liability, either express or implied, on behalf of the other(s).
- 11.4 Any notice pursuant to this Agreement shall be in writing and shall be given by hand delivery or sent by registered mail, courier or email addressed to the other party at the address set out below or to such other person or address as the parties may from time-to-time designate in writing delivered pursuant to this notice provision. Any such notices, requests, demands or other communications shall be

received and effective: (a) upon the date of delivery if delivered personally; or (b) on the date of receipt of confirmation by answer-back, in the case of mail or email.

**Waterloo:**

**Brenda Lucas, Executive Director**

Southern Ontario Water Consortium

University of Waterloo

200 University Avenue West

Waterloo, Ontario N2L 3G1

Phone: 519-888-4567 Ext. 31745

E-mail: [Brenda@sowc.ca](mailto:Brenda@sowc.ca)

**Collaborator:**

**Contact:** \_\_\_\_\_

Full Address:

Phone:

E-mail:

- 11.5 For this Agreement, no party shall be liable to the other party(ies) for any failure or delay in performance by circumstances beyond its control, including but not limited to, acts of God, fire, labour difficulties or governmental action.
- 11.6 Unless otherwise specified in this Agreement, this Agreement shall supersede all documents or agreements, whether written or oral, in respect of the subject matter thereof. For greater clarity, no direct or indirect separate arrangement, whether oral or written, involving any component of the work to be performed, is permitted unless prior agreement, in writing, is given by the authorized signing authorities of the parties.
- 11.7 No amendment to this Agreement shall be effective unless it is made in writing and signed by the parties hereto.
- 11.8 Neither this Agreement nor any part thereof shall be assigned by the Collaborator, without the prior written consent of Waterloo.
- 11.9 This Agreement shall be subject to and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein
- 11.10 If a dispute arises concerning the application or interpretation of this Agreement, the parties hereto shall attempt to resolve the matter through good faith negotiation, and may, if necessary and the parties consent in writing, resolve the matter through mediation or by arbitration, by a mutually acceptable mediator or arbitration in accordance with the Commercial Arbitration Code set out in the schedule to the *Commercial Arbitration Act* (Canada), and all regulations made pursuant to that Act.
- 11.11 This Agreement may be executed in two or more identical counterparts, facsimile counterparts or electronic counterparts, each of which when executed by a party shall be deemed to be an original and such counterparts shall together constitute one and the same Agreement.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement in a legally binding manner.

) **For the Corporation of the City of London:**  
)  
)  
) Per  
) : \_\_\_\_\_  
) Name: [Matt Brown](#)  
) Title: Mayor  
)  
) I have the authority to bind the corporation  
)  
) \_\_\_\_\_  
) Date

Per \_\_\_\_\_  
:  
Name: Cathy Saunders  
Title: City Clerk  
I have the authority to bind the corporation  
\_\_\_\_\_  
Date

) **UNIVERSITY OF WATERLOO**  
)  
)  
) Per  
) : \_\_\_\_\_  
) Name: [Andrew Barker](#)  
) Title: Director, Institutional [Research](#)  
) I have the authority to bind the university  
)  
) \_\_\_\_\_  
) Date