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TO:	CHAIR AND MEMBERS PLANNING AND ENVIRONMENT COMMITTEE MEETING ON JULY 17, 2017
FROM:	GEORGE KOTSIFAS MANAGING DIRECTOR, DEVELOPMENT AND COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL
SUBJECT:	DEVELOPMENT CHARGES (DC) CLAIMABLE WORK FOR WESTBURY SUBDIVISION M-641

RECOMMENDATION

That, on the recommendation of the Managing Director, Development and Compliance Services and Chief Building Official the following actions **BE TAKEN** with respect to the construction of street lights along Wharncliffe Rd fronting subdivision plan M-641:

- (a) the attached proposed By-law **BE INTRODUCED** at the Municipal Council meeting of July 25, 2017 to approve an amendment to the subdivision agreement between The Corporation of the City of London and Westbury International (1991) Corporation, registered on the 30th day of April, 2012 as instrument number ER820910 in the form set out in Appendix 'A' and to authorize the Mayor and Clerk to execute the Amending Agreement; and
- (b) the financing for this project **BE APPROVED** as set out in the Source of Financing Report attached as Appendix 'B'

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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- Built and Natural Environment Committee, August 15, 2011; Special Provisions, Westbury International (1991) Corporation, Westbury Subdivision 39T-05509

DISCUSSION

When a developer's engineer submits a claim to seek reimbursement from the Development Charges (DC) reserve fund for growth related work, Development Finance Unit staff undertake a detailed review of the submission. As outlined in the DC By-law, the eligibility of engineering fees, adherence to the City's procurement policy, and a review of the final constructed values are undertaken to ensure that the City is receiving good value for the works claimed. The purpose of this report is to seek the budget approval and to amend the development agreement to enable the claim payment to be made from the City Services Reserve Fund – Roads for the street lights installed along Wharncliffe Road fronting the registered subdivision M-641.

Under terms of the agreement the Owner shall coordinate the work associated with this Plan of Subdivision with the City's proposed construction of street lights on Wharncliffe Road South, adjacent to this Plan. Following the execution of the subdivision agreement transportation had correspondence with the developer and their engineer to install the street lights along Wharncliffe Road satisfying the terms of the agreement. Due to economies of scale and coordination of works, it was advisable for the developer to complete these works. The work was certifiably completed on or prior to March, 2016 as provided by the developers engineer in the claim submission.

The street lights along Wharncliffe Road fronting the above noted subdivision were identified to be funded from a 100% growth source in the 2014 DC Background Study. To be compliant with

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the DC By-law, payment of the submitted claim requires an amendment to the subdivision agreement stating the expected liability on the Fund through a source of financing.

The cost for reimbursement of these works has implications on the City Services Reserve Fund, project number TS1654. This account is sourced solely from development charges and is setup as an annual program to pay for the requirement of street lights triggered by development. Currently there has been no activity to pay a claim from this source so the account is sufficient to cover the costs of the claim. Based on the documentation submitted from Darryl Hern, P. Eng. at Stantec the amount of the claim is estimated at \$263,625 including HST. Final claim payment will be in accordance with full claim review and provisions of Schedule 8 of the Development Charges By-law.

CONCLUSION

Staff are recommending that Council approve the attached By-law to amend agreement ER820910 outlined in Appendix 'A' and subsequently to approve the Source of Financing report in Appendix 'B'.

Acknowledgments: This report was prepared with contributions from Matt Feldberg in the Development Finance Unit of Development and Compliance Services.

<p>PREPARED BY:</p> <hr/> <p>ADAM LANGMUIR COORDINATOR, FINANCIAL INFORMATION, DEVELOPMENT FINANCE</p>	<p>SUBMITTED BY:</p> <hr/> <p>PAUL YEOMAN, RPP, PLE DIRECTOR, DEVELOPMENT FINANCE</p>
<p>RECOMMENDED BY:</p> <hr/> <p>GEORGE KOTSIFAS, P.ENG MANAGING DIRECTOR, DEVELOPMENT AND COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL</p>	
<p>CONCURRED BY:</p> <hr/> <p>ANNA LISA BARBON, CPA, CGA MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER</p>	

July 17, 2017

cc.: Jason Senese, Manager, Financial Planning & Policy
 David Mounteer, Assistant City Solicitor, City Solicitor's Office
 Doug MacRae, Division Manager, Transportation Planning & Design

Appendix 'A': Amending By-law & Subdivision Agreement
 Appendix 'B': Source of Financing

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APPENDIX 'A'

Bill No.

By-law No.

A By-law to authorize an Amending Agreement between The Corporation of the City of London and Westbury International (1991) Corporation; 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 Section 51(25)(d) of the *Planning Act*, R.S.O. 1990, c. P. 13 as amended authorizes the City to enter into agreements for the provision of municipal and other services;

AND WHEREAS The Corporation of the City of London (the "City") entered into a subdivision agreement with Westbury International (1991) Corporation dated the 30th day of August, 2011 and registered in the Land Registry Office for the Land Titles Division of Middlesex East (No. 33) on the 30th day of April, 2012 as Instrument ER820910 (the "Agreement");

AND WHEREAS it is deemed expedient to amend the Agreement;

AND WHEREAS it is appropriate to authorize the Mayor and City Clerk to execute the Amending Agreement on behalf of the City;

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

1. The Amending Agreement attached as Schedule "A" to this By-law, being an Agreement to amend a subdivision agreement between The Corporation of the City of London and Westbury International (1991) Corporation is hereby AUTHORIZED AND APPROVED.
2. The Mayor and City Clerk are authorized to execute the Amending 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 , 2017

Matt Brown
Mayor

Catharine Saunders
City Clerk

First reading -
Second reading -
Third reading -

Agenda Item #	Page #

THIS AGREEMENT made, in triplicate, this xx day of July, 2017.

BETWEEN:

THE CORPORATION OF THE CITY OF LONDON
(hereinafter called the City)

OF THE FIRST PART

AND

WESTBURY INTERNATIONAL (1991) CORPORATION
a Company incorporated
under the laws of the Province of Ontario
(hereinafter called the Owner)

OF THE SECOND PART

WHEREAS the Parties hereto have entered into a certain Subdivision Agreement dated the 30th day of August, 2011, and registered in the Land Registry Office for the Land Titles Division of Middlesex East (No. 33) on the 30th day of April, 2012, as Instrument Number ER820910, respecting the lands more particularly described in Schedule "A" attached hereto and other lands;

AND WHEREAS it is deemed expedient to amend the said Agreement dated the 30th day of August, 2011 as hereinafter set out;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the sum of ONE DOLLAR (\$1.00) of lawful money of Canada now paid by the Owner to the City, the receipt whereof is hereby acknowledged, the City and the Owner covenant and agree that the Subdivision Agreement dated the 30th day of August, 2011 and registered in the Land Registry Office for the Land Titles Division of Middlesex East (No. 33) as Instrument Number ER820910, be and the same is hereby amended as follows:

1. That Part II – Special Provisions, Section 28, Clause (b) be amended to read as follows:
 - (b) For any works where the Owner undertakes works at their entire expense as a capital cost incurred on behalf of the City and as authorized by the City subject to a claim and the claim is made from the Urban Works Reserve Fund, the City Services Reserve Fund or the Capital Works Budget, the Owner must conform with the By-law and policies governing the administration thereof as included in the requirement of City of London By-law C.P.-1496-244 as amended (the "Development Charges By-law"). For any claim from any fund, the Owner must comply with the rules of eligibility applied under Schedule 8 of the above by-law including requirements for tendering and completeness of claims.

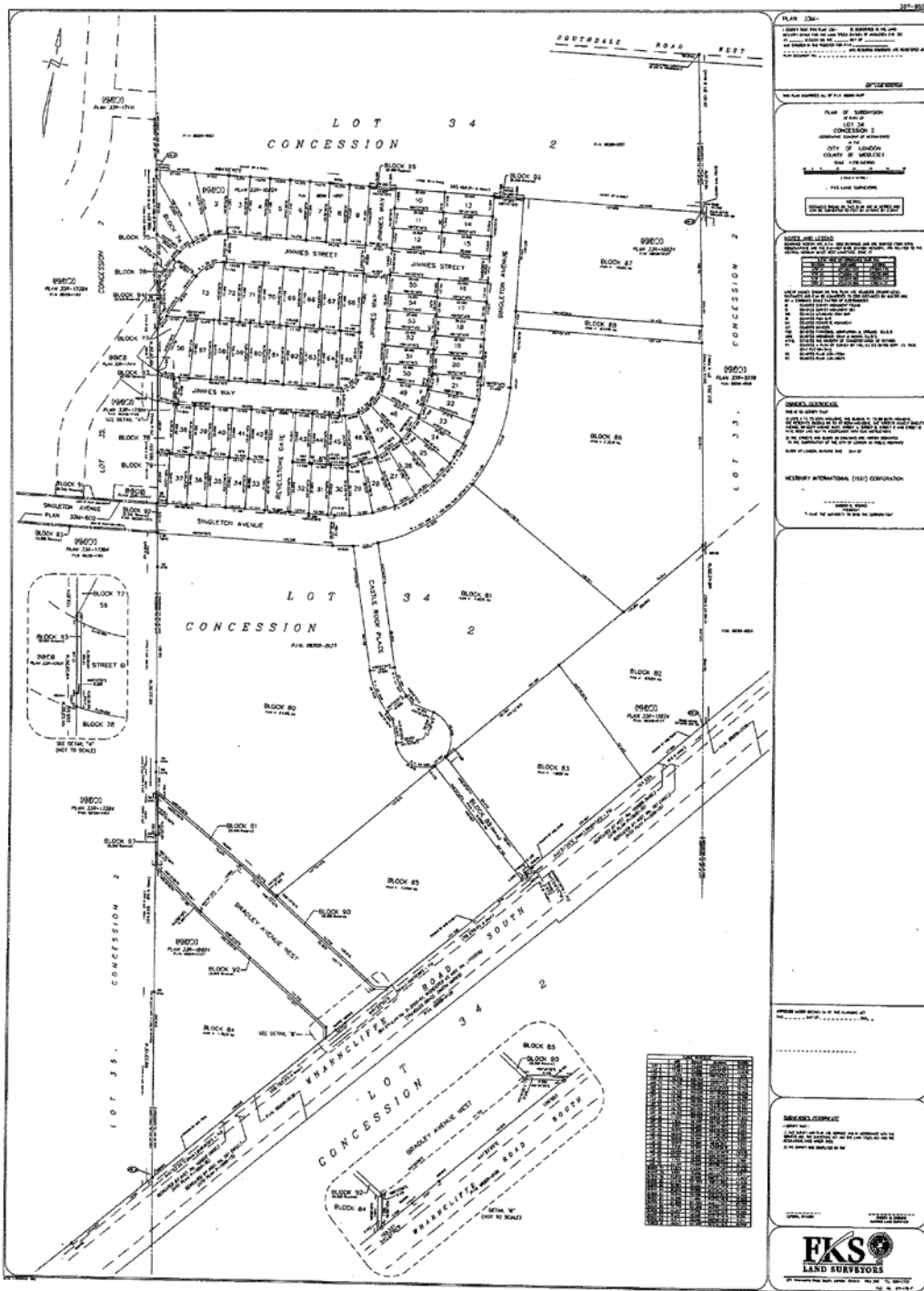
If the Owner alleges an entitlement to any reimbursement or payment from a development charge Reserve Fund as a result of the terms hereof, the Owner may, upon approval of this Agreement and completion of the works, make application to the Director — Development Finance for payment of the sum alleged to be owing, and as confirmed by the City Engineer (or designate) and the Director — Development Finance and the payment will be made pursuant to any policy established by Council to govern the administration of the said development charge Reserve Fund.

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SCHEDULE "A"

This is Schedule "A" to the Subdivision Agreement dated this 30th day of August, 2011 between The Corporation of the City of London and Westbury International (1991) Corporation to which it is attached and forms a part.

ALL AND SINGULAR that certain parcel or tract of land and premises, lying, being and situate on Lots 1 to 73, both inclusive, Blocks 74 to 89, both inclusive, the streets namely Singleton Avenue, Bradley Avenue West, Jinnies Street, Jinnies Way, Revelstoke Gate and Castle Road Place, According to Plan 33M-641, in the geographic Township of London, now in the City of London, County of Middlesex.



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APPENDIX 'B'

Chair and Members
 Planning and Environment Committee

#17136
 July 17, 2017
 (Approve DC Claim)

**RE: Development Charges (DC) Claimable Work for Westbury Subdivision, M-641
 (WO 2406771)
 Capital Project TS1654 - Minor Road Works-Misc. Streetlights on Arterials
 Streetlights on Wharncliffe Road - \$233,296.46 (excluding H.S.T.)**

FINANCE & CORPORATE SERVICES REPORT ON THE SOURCE OF FINANCING:

Finance & Corporate Services confirms that the cost of this project can be accommodated within the financing available for it in the Capital Works Budget and that, subject to the adoption of the recommendations of the Managing Director, Development and Compliance Services and Chief Building Official, the detailed source of financing for this project is:

<u>ESTIMATED EXPENDITURES</u>	<u>Approved Budget</u>	<u>Revised Budget</u>	<u>This Submission</u>	<u>Balance for Future Work</u>
Engineering	\$36,000	\$36,000		\$36,000
Land Acquisition	325,995			0
Construction		325,995	237,402	88,593
NET ESTIMATED EXPENDITURES	<u>\$361,995</u>	<u>\$361,995</u>	<u>\$237,402</u> 1)	<u>\$124,593</u>
<u>SOURCE OF FINANCING:</u>				
Drawdown from City Services Reserve Fund- Roads Component (Dev. Charges) 2)	\$361,995	\$361,995	\$237,402	\$124,593
TOTAL FINANCING	<u>\$361,995</u>	<u>\$361,995</u>	<u>\$237,402</u>	<u>\$124,593</u>

Financial Note:

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|--------------------------------------|--|------------------|
| 1) Contract Price | | \$233,296 |
| Add: HST @13% | | 30,329 |
| Total Contract Price Including Taxes | | <u>263,625</u> |
| Less: HST Rebate | | 26,223 |
| Net Contract Price | | <u>\$237,402</u> |
- 2) Development charges have been utilized in accordance with the underlying legislation and the Development Charges Background Studies completed in 2014.
 - 3) The 2014 DC Study has identified a 20-year program for streetlights (DC14-RS00070/TS1654) with projected growth needs of \$2,413,300 over the period. There are multiple development agreements that have identified streetlights funded from this program account totalling \$218,454 to be drawn from this account in the future.
 - 4) Due to the period between development agreement approvals and the submission of a claim for DC eligible works, the Balance for Future Work of this Source of Financing represents a variance based on actual expenditures and not the amounts identified in agreements.
 - 5) These DC funded programs are closely monitored and Council will be apprised of pressure on budgets through the annual DC Monitoring process.

EH

 Jason Senese
 Manager of Financial Planning & Policy