

Bill No. 628
2017

By-law No. A.-_____

A by-law to authorize and approve an Agreement between The Corporation of the City of London and Her Majesty the Queen in Right of Ontario represented by the Minister of Transportation (MTO) for the Highway 401 Overpass Structure construction at Pond Mills Road; 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 it is deemed expedient for The Corporation of the City of London (the "City") to enter into an Agreement with Her Majesty the Queen in Right of Ontario represented by the Minister of Transportation (MTO) for the construction of Highway 401 interchanges. (the "Agreement");

AND WHEREAS it is appropriate to authorize the Mayor and the 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 Corporation of the City of London and Her Majesty the Queen in Right of Ontario represented by the Minister of Transportation (MTO) for the Highway 401 Overpass Construction at Pond Mills Road is hereby AUTHORIZED AND APPROVED substantially in the form of and as approved by the City Solicitor.
2. The Mayor and the City Clerk are hereby 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 October 30, 2017.

Matt Brown
Mayor

Catharine Saunders
City Clerk

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

SCHEDULE "A"
OVERPASS STRUCTURE LEGAL AGREEMENT

THIS AGREEMENT is made this _____ day of _____
201

BETWEEN: **THE CORPORATION OF THE CITY OF LONDON (the**
 "City")

and

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO,
REPRESENTED BY THE MINISTER OF TRANSPORTATION FOR THE
PROVINCE OF ONTARIO (the "MTO")

WHEREAS:

- A. Attached Schedule "A" illustrates:
- the crossing of Highway 401 over the City's road known as Pond Mills Road (the "Highway 401 Overpass Structure"); and
 - the future lane configuration of Highway 401 and Pond Mills Road.
- B. The City and MTO are desirous to complete the replacement of the Highway 401 Overpass Structure.
- C. It is deemed expedient to enter into this Agreement to address the following:
- replacement of the Highway 401 Overpass Structure to accommodate six through lanes and two auxiliary lanes on Highway 401; and
 - the new structure will be built to have sufficient span to accommodate four lanes of traffic, two bike lanes and two sidewalks on Pond Mills Road.
- D. The replacement of the Highway 401 Overpass Structure over Pond Mills Road will accommodate future widening of Highway 401 and future widening of Pond Mills Road.
- E. Highway 401, in the City of London, is a controlled access highway under the jurisdiction and control of the MTO and therefore development comes within the scope of the permit provisions of sections 2, 38(2)(a), (b), (c), (d), (e), (f), (g), and 38(11), of the *Public Transportation and Highway Improvement Act* (the "PTHIA" as defined in paragraph 1.6).
- F. It is deemed necessary that the City and the MTO enter into this Agreement to further the construction and incidentals of the Work, as specified herein, inside and incidental to the corridor of Highway 401.

NOW THEREFORE in consideration for the terms of this Agreement and the sum of Ten Dollars (\$10.00) of lawful money of Canada paid by each of the parties of this Agreement to the other, the receipt whereof is hereby acknowledged, and other good and valuable consideration, the City and the MTO agree as follows:

1. Definitions

In this Agreement:

- 1.1 **"construction"** includes installation.
- 1.2 **"cost"** shall mean all the items of cost all howsoever styled inclusive of interest, inclusive of a cost sum or sums, and inclusive, but not limited to, out of pocket expenses,

consultants, contractors, environmental remediation, surveyors, solicitor and his client costs. And includes the concept of expense and all the items of expense all howsoever styled, inclusive of an expense sum or sums, unless specified otherwise. The staff time of neither the City nor MTO shall be included as a cost and each party shall be responsible for the cost of their own staff time related to the Work.

- 1.3 **“costs”** shall mean the same as “cost”, but in plural.
- 1.4 **“cost of construction”** shall mean those costs payable for the construction of the Work, being all related hard costs, including without limitation costs for environmental remediation, surveys, utility relocations, placement of fill, granular lifts, asphalt, diesel fuel index, Performance Graded Asphalt Cement (PGAC) index, material testing, material bonuses, material price adjustments, signals, illumination, pavement marking, signing, and contract administration.
- 1.5 **“Design”** shall mean the detail design of the Work for Highway 401 Overpass Structure, and also means the design is pursuant to the criteria and standards of the MTO and is approved by the MTO.
- 1.6 **“PTHIA”** shall mean the *Public Transportation and Highway Improvement Act*, R.S.O. 1990, c.P.50 and amendments thereto from time to time.
- 1.7 **“terms of this Agreement”** shall mean all the provisions in each respective recital, article, paragraph, and schedule of this Agreement; includes the singular and the plural jointly and severally; and includes the concepts of condition, covenant, provision, matter, and item.
- 1.8 **“Work”** shall mean the replacement of the Highway 401 Overpass Structure with a new structure of sufficient span to accommodate four lanes of traffic, two bike lanes and two sidewalks on Pond Mills Road and of sufficient width to accommodate six lanes of traffic and two auxiliary lanes on Highway 401 and includes the following:
- (a) the design-build contractor will provide project management, engineering design, and project construction for the Work;
 - (b) installation of temporary traffic signals and illumination, as necessary;
 - (c) zone painting and signing as deemed necessary by the MTO;
 - (d) all incidentals all howsoever styled to all the above; and

all the above Work according to the warrants, criteria, standards, and incidentals of the MTO pursuant to the Design.

2. MTO Responsibilities

- 2.1 MTO will; at the cost and expense of the parties as set out in article 6:
- (a) undertake an environmental assessment in accordance with the MTO Class Environmental Assessment for Provincial Transportation Facilities, obtain the necessary environmental approvals, undertake utility relocations as necessary, obtain necessary property acquisitions and complete the pre-engineering work;
 - (b) subject to the MTO receiving the required appropriations from the Legislature of Ontario, arrange for the commencement of the Work for the Highway 401 Overpass Structure, in coordination with the Highbury Avenue interchange, and CNR overpass and all associated work at such time as the design, pre-engineering work, all necessary environmental approvals and permits, utility relocations, and property acquisition are complete for all locations, expecting to commence the design-build

Design and construction in the year 2018 and with a target completion date of beyond 2021;

- (c) include a clause in its contract with its design-build contractor to have the contractor obtain a “Permit of Approved Works” from the City; and
- (d) effect and administer the Work including all required contract procurement and contract administration in accordance with MTO standard specifications, the Design and construction criteria for design-build contracts.

3. City Responsibilities

3.1 The City will, at the cost and expense of the parties as set out in article 6:

- (a) provide any municipal approvals or authorizations required for the closure of Pond Mills Road during construction, up to 18 months, in the context that the timing of construction will be co-ordinated with the Highbury Avenue interchange reconstruction to reduce traffic impacts;
- (b) transfer to MTO for One Dollar (\$1.00) any City owned lands (lands already owned but not already established as public roads) required for the Works;
- (c) be responsible for the costs specified in article 6 in respect of the structure associated with the increased span for the Pond Mills Road expansion; and
- (d) cooperate with the MTO to ensure the passing of all City bylaws, provide all City permits required for the completion of the Work and to provide timely feedback during the design and construction phases related to the design-build.

4. Maintenance and Repair

- 4.1 The City, under the terms of this Agreement, is hereby deemed to be under an obligation to effect, and shall effect at no cost to the MTO, all required maintenance and repair to Pond Mills Road upon completion of the Work.
- 4.2 Upon the completion of the Works, the MTO will provide a standard one (1) year warranty period applicable to MTO construction projects for the work completed on Pond Mills Road.

5. Future Work

- 5.1 The MTO by administering and cost sharing the Work under this Agreement, in accordance with article 6, shall not be construed as being responsible for any aspects of future works to Pond Mills Road that is under the City’s jurisdiction.

6. Financial Contributions and Conditions for Payment

- 6.1 The City shall pay a fixed sum of Nine Hundred Sixty-Five Thousand Dollars (\$965,000) towards the cost of the Work. MTO shall be responsible for any and all costs in excess of Nine Hundred Sixty-Five Thousand Dollars (\$965,000) to complete the Work.
- 6.2 After completion of the Work by MTO, MTO may at that time invoice the City at the paragraph 7.2 address, the amount stated in paragraph 6.1. The City shall pay within 60 calendar days after receipt of the said invoice, the sum set forth as payable in that invoice, by cheque made payable to the “Minister of Finance”.

7. Addresses

7.1 The address of the MTO under this Agreement, unless otherwise advised, is:

Regional Director, West Region
Ministry of Transportation
659 Exeter Road
London, Ontario, N6E 1L3
Telephone: (519) 873-4333, fax: (519) 873-4236

7.2 The address of the City under this Agreement, unless otherwise advised is:

Managing Director, Environmental & Engineering Services and City Engineer
The Corporation of the City of London
City Hall, 300 Dufferin Avenue
PO Box 5035
London, Ontario, N6A 4L9
Telephone: (519) 661-2489 ext. 2391, fax: (519) 661-5931

7.3 Notices under this Agreement shall be in writing and sent by personal delivery, facsimile transmission (“Fax”) or by registered mail. Notices by registered mail shall be deemed to have been received on the fourth business date after the date of mailing. Notices by personal delivery or by Fax shall be deemed to have been received at the time of the delivery or transmission unless delivered or transmitted on a weekend or holiday, in which case such notice shall be deemed to have been received on the next business day. In the event of an interruption in postal service, notice shall be given by personal delivery or Fax.

8. Dispute Resolution

8.1 In the event of any dispute between the City and MTO as to any matter under this Agreement, the dispute shall be dealt with in the following manner and sequence:

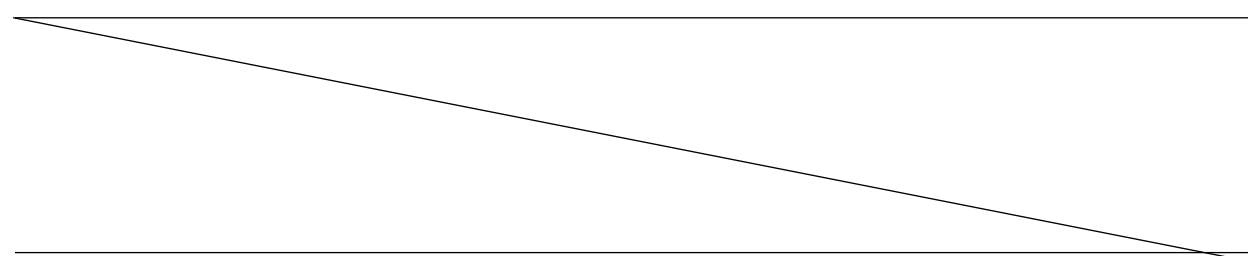
- (a) the parties will meet to discuss the dispute in good faith and use reasonable efforts to resolve the matter by negotiation;
- (b) if the dispute cannot be resolved by negotiation within a reasonable period of time, then the parties shall submit the matter to non-binding arbitration and the provisions of the *Arbitrations Act, 1991*, S.O. 1991, c.17 as amended, shall apply; and
- (c) if the dispute is not resolved through non-binding arbitration, then the parties may pursue their strict legal rights available at law.

9. Warranty

9.1 The City warrants that it has taken all necessary steps, done all acts, passed all by-laws, and obtained all approvals required to give it the authority to enter into this Agreement.

10. Entire Agreement

10.1 This Agreement, including any schedules attached hereto, constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof and there are no representations, understandings or agreements, oral or written, with respect to the subject matter hereof which are not included herein.



11. Binding Agreement

11.1 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors, and permitted assigns. The City shall not assign this Agreement without the prior written consent of the MTO.

IN WITNESS OF ALL contained in this Agreement:

Dated this day of , 201

THE COPORATION OF THE CITY OF LONDON

_____ c.S.

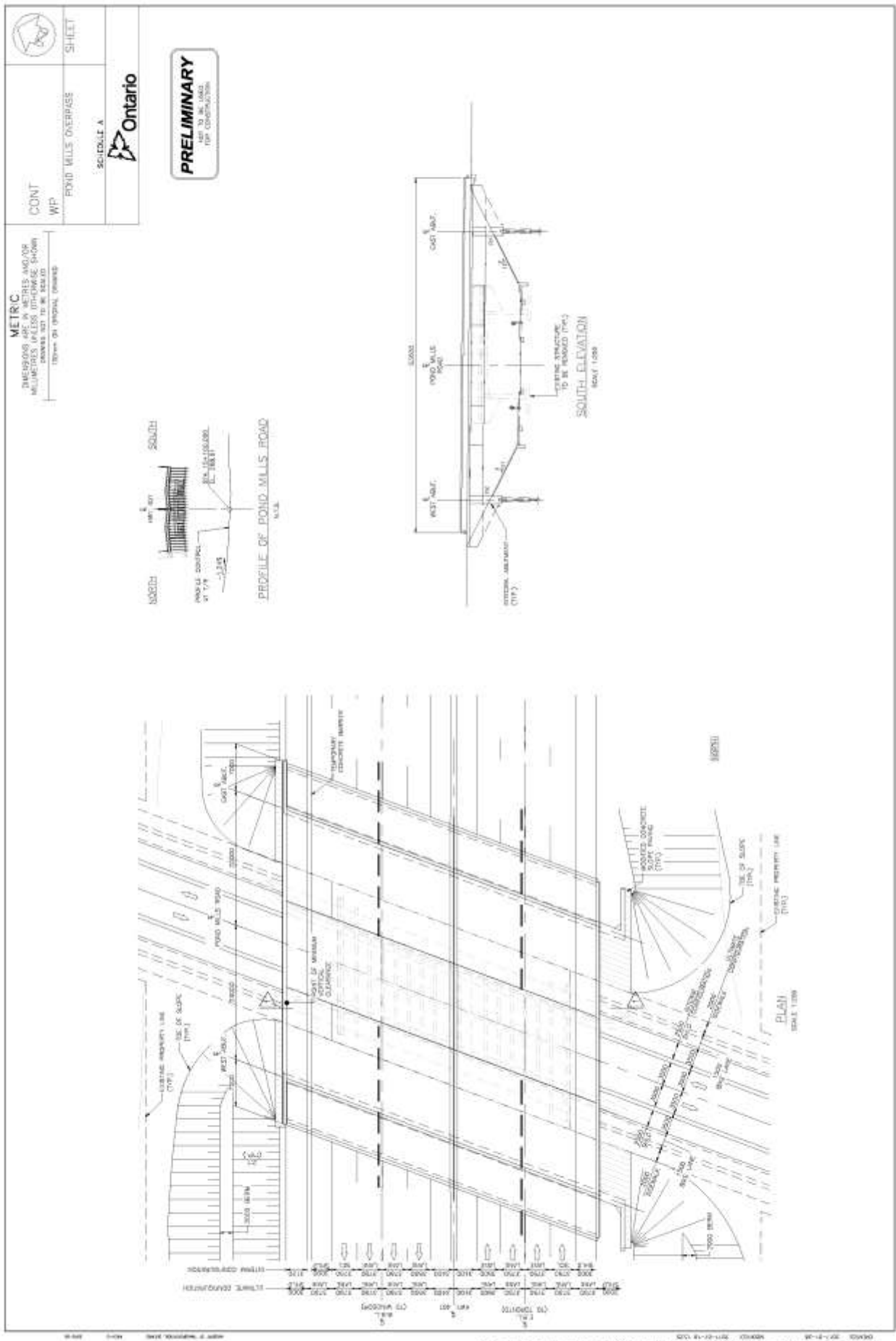
_____ c.S.

Dated this day of , 201

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO,
REPRESENTED BY THE MINISTER OF TRANSPORTATION FOR THE
PROVINCE OF ONTARIO**

Minister of Transportation

SCHEDULE 'A' TO THE AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF LONDON AND THE MINISTRY OF TRANSPORTATION



APPENDIX B PLAN SURVEY FOR LAND REQUIREMENTS

