

Bill No. 249
2012

By-law No. A.-

A by-law to authorize and approve a Purchase of Service Agreement between The Corporation of the City of London and The London Economic Development Corporation for economic development services and to authorize the Mayor and the City 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 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 Corporation of the City of London (the "City") and the London Economic Development Corporation ("LEDC") wish to enter into a Purchase of Service Agreement for economic development services, commencing July 1, 2012

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

1. The Purchase of Service Agreement to be entered into between the City and the LEDC, attached as Schedule A to this by-law, is hereby authorized and approved.
2. The Mayor and the City Clerk are hereby authorized to execute the Purchase of Service Agreement authorized and approved under section 1 of this by-law.
3. This by-law shall come into force and effect on the date it is passed.

PASSED in Open Council on June 12, 2012.

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First Reading – June 12, 2012
Second Reading – June 12, 2012
Third Reading – June 12, 2012

SCHEDULE "A"

PURCHASE OF SERVICES AGREEMENT

This agreement made as of the day of , 2012

B E T W E E N:

THE CORPORATION OF THE CITY OF LONDON

(hereinafter referred to as the "Corporation")

LONDON ECONOMIC DEVELOPMENT CORPORATION

(hereinafter referred to as the "LEDC")

IN CONSIDERATION OF their respective covenants and agreements herein contained and subject to the terms and conditions herein set out, the Corporation and the LEDC covenant and agree each with the other as follows:

1. **Duration of agreement.** The term of this Agreement (herein referred to as "the **Term**") commences on July 1, 2012 and continues until June 30, 2015, subject to renewal by agreement of both parties.
2. **Termination of Agreement.** The Purchase of Service Agreement between the Corporation and the LEDC dated April 1, 2008 expressed to be in force until June 30, 2012 is terminated upon this Agreement coming into effect.
3. **Services Being Purchased and Provided.** The Corporation agrees to purchase from the LEDC and the LEDC agrees to provide to the Corporation the following broadly described economic development services and, in order to provide such services, the LEDC shall:
 - a) act as the primary economic development body on behalf of the Corporation;
 - b) assist local businesses with expansions and relocation within the City of London (the "**City**"), and retaining their existing operations within the City;
 - c) attract new business investment to the City;
 - d) provide site location assistance and analysis for potential new businesses;
 - e) market and promote the City to existing and potential new business ventures;
 - f) identify and establish suitable partnerships throughout the community and wherever necessary in order to meet the economic development objectives of the Corporation;
 - g) provide guidance and leadership in the development of the local and regional workforce;
 - h) prepare and submit to the Municipal Council at least annually a report setting out:
 - i. the State of the Local Economy, including, but not limited to: statistics on employment by type and sector (growth, shrinkage, net), GDP for London, average annual salary, multipliers on investments, return on investment
 - ii. an Overview by sector of strengths and weaknesses
 - iii. emerging Opportunities, and
 - iv. a Competitive Advantage Update
 - i) coordinate the business plans and efforts of other organizations that work in conjunction with the LEDC and currently receive annual funding from the Corporation. The LEDC will on behalf of the Corporation administer grants to those organizations in order to provide additional ability to coordinate efforts and glean efficiencies between the various organizations. These organizations include:
 - i. Stiller Centre – noting that there is a separate agreement between The University of Western Ontario – Research and Development Park and the City of London.
 - ii. Small Business Centre
 - iii. Tech Alliance

4. **Changes to Services.** The Corporation and the LEDC may agree in writing from time to time to add, eliminate, transfer or vary the economic development services purchased by the Corporation from the LEDC and supplied by the LEDC to the Corporation hereunder, recognizing that the annual fee paid by the Corporation to the LEDC may be adjusted to reflect such changes in purchased services.
5. **Consistent Strategies.** The LEDC shall ensure that its marketing and promotional efforts are consistent with the communications and brand strategies of the Corporation.
6. **Economic Development Policies.** The LEDC will liaise with the Corporation where the Council of the Corporation (the "**Municipal Council**") has a policy or a position on community issues which have economic development implications.
7. **Annual Business Plan for the Approval of Municipal Council.** The LEDC shall prepare and submit to the Municipal Council an annual business plan (the "**Business Plan**") by such date and in such form as the Corporation may prescribe, containing details of the services contemplated by this Agreement and sufficient to enable the Municipal Council to give reasonable consideration of the Business Plan.
8. **Third Party Agreements.**
 - (a) The LEDC may enter into agreements with other parties which are consistent with the Business Plan. The Corporation may enter into agreements with other parties which are consistent with the Corporation's objective of strengthening and expanding the local economy.
 - (b) Nothing contained in this Agreement shall constitute the LEDC as the agent, partner, employee or joint venturer of the Corporation. The LEDC shall not act to:
 - i. Incur any expense, liability or obligation on behalf of or in the name of the Corporation;
 - ii. enter into or engage in any negotiations on behalf of or in the name of the Corporation concerning a proposed acquisition or disposition of land by the Corporation;
 - iii. make any representation, inducement or enter into or engage in any negotiations on the basis that the Corporation would assist directly or indirectly any manufacturing business or other industrial or commercial enterprise through the granting of bonuses for that purpose by the Corporation giving or lending any property of the municipality, including money, guaranteeing borrowing, leasing or selling any property of the municipality at below fair market value, or giving a total or partial exemption from any levy, charge or fee contrary to s. 106 of the *Municipal Act, 2001*.
9. **Consideration.** For the services purchased and provided, the Corporation shall pay the LEDC a fee (the "**Fee**") of \$2,196,000 for each twelve month period ending June 30, 2013, 2014, and 2015 subject to the following:
 - a) The LEDC shall on or before September 1st of each year submit a Business Plan to the Corporation for concurrence by the Municipal Council.
 - b) The actual amount paid by the Corporation to the LEDC for services rendered during the period covered by such Business Plan is subject to the Municipal Council's approval of the Corporation's budget.
 - c) One-twelfth of the amount mentioned thereafter, or such other proportion as may be agreed upon, shall be paid monthly based on an invoice for payment submitted by the LEDC to the Corporation containing such particulars or accompanied by such supporting information as the Corporation may require.
 - d) Amounts paid by the Corporation shall be for the services specifically purchased by the Corporation consistent with the Business Plan recognizing that the LEDC may, as circumstances arise, expend funds in a manner determined by the LEDC to be consistent with the Business Plan and within its annual budget but not as may have been particularized within such budget at the time of submission of the Business Plan to the Corporation.
 - e) The amounts mentioned above shall be adjusted to reflect the addition, elimination, transfer or variance to the economic development services agreed upon from time to time by the Corporation and the LEDC.

10. **Refund of Payment.** The LEDC shall refund to the Corporation any amount requested by the Corporation should the Corporation, during its inspection of monthly invoices or audited financial statements, determine that any payment by the Corporation to the LEDC has been used by the LEDC for any purpose other than that for which the payment was made.
11. **Illegality.** The LEDC shall forthwith refund any payment by the Corporation to the LEDC upon demand by the Corporation in the event that the Corporation is at any time adjudged by a court to have assisted directly or indirectly any commercial enterprise by reason of the payment being a bonus in aid thereof contrary to the *Municipal Act, 2001*.
12. **Code of Conduct.** The LEDC shall adopt a Code of Conduct similar to the Code of Conduct for Members of the Municipal Council.
13. **Governance.** The LEDC agrees and undertakes to do the following:
 - a) Maintain the Mayor as a member of the LEDC's Nominating Committee;
 - b) Give notice of, and invite the Corporation's City Manager to attend, meetings of the LEDC's Executive Committee;
 - c) Obtain the concurrence of the Municipal Council to the appointment or replacement of the President and Chief Executive Officer of the LEDC; and
 - d) Ensure that a review of the LEDC's President and Chief Executive Officer's performance is conducted annually by the Board of Directors of the LEDC, and that the view of the Corporation is sought in the preparation of such performance review.
14. **Prospective Directors.** The LEDC's Board of Directors shall ensure that its Nominating Committee guidelines include seeking out representatives of the London business and educational communities who are committed to the growth of the community and who can provide non-conflicted guidance to the board and management of the LEDC.
15. **Ongoing Liaison.** For the purpose of discussing with the Corporation and keeping it informed on a timely basis of the success of the LEDC in providing the services set out in this Agreement and to maintain good working relationships, the LEDC and the Corporation shall maintain ongoing liaison as follows:
 - a) The President and Chief Executive Officer of the LEDC shall meet at least monthly with the Corporation's City Manager and shall report to the Municipal Council with respect to the LEDC's activities on a semi-annual basis; and
 - b) Representatives of the LEDC's Board of Directors shall meet annually with the Investment and Economic Prosperity Committee at the Municipal Council's direction and at the Municipal Council's option.

At least one of the meetings mentioned in subclause (b) above shall address strategic planning issues.
16. **LEDC's Human Resources.** The LEDC shall be the direct employer of its own human resources, with an organizational structure, staff complement, and salaries and benefits determined by the LEDC.
17. **LEDC's Corporate Services.** The LEDC shall be responsible for its own corporate services such as, but not limited to, payroll and benefits administration, banking, accounting and financial management, legal, purchasing, printing, computers and office technology, human resource management, mail/courier, office space, furniture, fixtures and supplies. The Corporation is prepared to provide any of these services to the LEDC at the LEDC's expense.
18. **Registered Mark License Agreement.** The Registered Mark License Agreement dated January 28th, 1999 between the Corporation and the LEDC, which gives the LEDC a non-exclusive, non-assignable License to use the Corporation's registered tree logo is continued for the term of this Agreement.
19. **Release by the LEDC.** The LEDC on behalf of itself, its officers and employees releases the Corporation, its officers and employees and their respective heirs, executors, administrators, successors and assigns (herein called the "Corporation and its Representatives") from and against all claims, actions, causes of action, suits, debts, dues, accounts, contracts, demands, costs, expenses, damages, liabilities or other obligations whatsoever and from and against all liabilities, losses, damages, costs, charges, court costs, legal fees on a solicitor and its own client basis and other expenses of every nature whatsoever which the LEDC, its officers and employees may now have or hereafter can, shall or may have against the Corporation and its

Representatives arising from or pertaining to the making or refunding of the Fee as the case may be.

20. **Indemnification by the LEDC.** The LEDC shall indemnify and save harmless the Corporation and its Representatives from and against all claims, demands, losses, costs, damages, actions, suits or other proceedings by whomsoever made, sustained, brought or prosecuted, in any manner arising from any willful or negligent act, or attributed to anything done or omitted to be done by the LEDC, its directors, officers, employees or agents arising from or pertaining to the receipt, disposition or refunding of the Fee by the LEDC, as the case may be.
21. **Indemnification by Corporation.** The Corporation shall indemnify and save harmless the LEDC, its directors, officers, employees and agents, and their respective heirs, executors, administrators, successors and assigns from and against all claims, demands, losses, costs, damages, actions, suits or other proceedings by whomsoever made, sustained, brought or prosecuted in any manner arising from any willful or negligent act, or attributable to anything done or omitted to be done by the Corporation, its officers, employees or agents, arising from or pertaining to the late payment or nonpayment of any installment of the Fee or other financial obligation of the Corporation to the LEDC except where such late payment or nonpayment is permitted by this Agreement.
22. **Annual Financial Statements.** The LEDC shall file with the Corporation, no later than March 31 in each year, financial statements and an auditor's report for the immediately preceding year, fairly representing the financial position of the LEDC and the results of its operations for the period under review in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period.
23. **Financial Records.** The LEDC shall keep separate financial records for all amounts incurred, claimed, paid and received and shall retain and preserve all documents, contracts, records, claims and accounts that relate thereto for a period of four (4) years.
24. **Inspection of Financial Records and Documents.** If the Corporation has reasonable grounds for believing that any amount included in any preceding installment of a Fee of any year has not been expended in accordance with this Agreement, the LEDC shall, upon reasonable notice from the Corporation, make available at all reasonable times and without expense to the Corporation all such documents, contracts, records, claims and accounts for inspection and audit by Corporation or its auditors as the Corporation may deem necessary to determine whether such is the case.
25. **Provision of Information.** Upon written request from the Corporation, the LEDC shall provide the Corporation, without expense to it, any information which is available to the LEDC with respect to its Business Plan or financial statements and which it is able to provide without breaching any applicable law.
26. **Dispute Resolution.** In the event any claim, dispute or other matter (herein referred to as a "dispute") shall arise between the parties hereto during the term of this Agreement:
 - a) Such dispute shall be referred initially by the party raising the dispute to the other party in writing for decision which the latter shall give in writing within a reasonable time. The initial reference shall be at the level of Chief Executive Officer of the LEDC and the Corporation's City Manager.
 - b) If such dispute is not satisfactorily settled between the parties, it shall be submitted to the Chairman of the LEDC and the Mayor of the Corporation.
 - c) If such dispute is not satisfactorily settled between the parties, it shall be submitted to a single arbitrator to be agreed upon by the parties.
 - d) If a single arbitrator cannot be agreed upon by the parties within ten (10) days after the appointment of the single arbitrator has been requested by one of the parties, then the dispute shall be referred to a board of three arbitrators, one to be appointed by the LEDC, one to be appointed by the Corporation, and a third arbitrator to be appointed by the first two named arbitrators in writing.
 - e) If either the LEDC or the Corporation refuses or neglects to appoint an arbitrator within twenty days (20) after the other party appoints an arbitrator and has served written notice upon the party refusing or neglecting to appoint an arbitrator requiring such party to make such appointment, then the arbitrator first appointed shall, at the request of the party appointing him or her, proceed to hear and determine the dispute as if he or she

were a single arbitrator appointed by both the LEDC and the Corporation for that purpose.

- f) If two arbitrators are named within the time prescribed and they do not agree within a period of ten (10) days upon the appointment of the third arbitrator, then upon the application of either the LEDC or the Corporation, the third arbitrator shall be appointed by a Judge of the Ontario Supreme Court of Justice.
- g) The determination which shall be made by the said arbitrators or a majority of them, or by the single arbitrator, as the case may be, shall be final and binding upon the parties hereto and the costs of arbitration and the remuneration of the third arbitrator shall be borne equally between the parties hereto, each of the parties bearing the remuneration of the arbitrator appointed by it.

The provisions of this clause shall be deemed to be submission to arbitration within the provisions of the *Arbitrations Act, 1991* and any statutory modification or re-enactment thereof, provided that any limitation on the remuneration of arbitrators imposed by such legislation shall not have application to any arbitration proceeding commenced pursuant to this Agreement.

27. **Events of Default.** The following constitute events of default, the proof of which to the contrary lies upon the LEDC:

- a) The LEDC becomes bankrupt or insolvent, goes into receivership, or takes the benefit of any statute from time to time being enforced relating to bankrupt or insolvent debtors;
- b) An order is made or resolution passed for winding up or for the dissolution of the LEDC or it is dissolved;
- c) The LEDC ceases actual bona fide operation for a period of thirty (30) days;
- d) The LEDC has knowingly submitted false or misleading information to the Corporation; or
- e) The LEDC is in breach of the performance of, or compliance with, any term, condition or obligation on its part to be observed or performed hereunder.

28. **Remedies on Default.**

If,

- a) an event of default specified in subclause 27 (a), (b), (c) or (d) occurs; or
- b) an event of default specified in subclause 27 (e) occurs and is not remedied within ten (10) business days after receipt by the LEDC of notice of default, or a plan satisfactory to the Corporation to remedy such an event of default is not implemented within such period and fully and diligently carried out thereafter,

the Corporation may exercise either or both of the following remedies, in addition to any other remedies otherwise available, namely;

- c) terminate forthwith any obligation by the Corporation to pay the Fee or to continue to pay any instalment, including any unpaid installment outstanding prior to the date of such termination; and
- d) require the LEDC to repay all or part of the Fee forthwith to the Corporation.

29. **Interim Suspension of Payment.** In the event that the Corporation gives the LEDC notice of default and no plan satisfactory to the Corporation to remedy such an event of default is implemented within such period and being fully and diligently carried out as provided in paragraph 28(b), the Corporation shall have no obligation to make any further payments under this Agreement prior to the end of the period given to the LEDC to remedy the event of default.

30. **Waiver of Breaches.** In the event of a breach of any provision of this Agreement by one party, no action or failure to act by the other party shall constitute a waiver of any right or duty afforded by that party under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any such breach, except as may be specifically agreed to in writing.

31. **Termination.** This Agreement and the Registered Mark License Agreement made between the Corporation and the LEDC dated January 28, 1999, shall, at the Corporation's option, (with the exception of paragraphs (d), (e) and (f) below in which case this Agreement shall terminate on the date determined in accordance with paragraphs (d), (e) and (f) as applicable) terminate prior to June 30, 2015 or prior to the expiration of any renewal of this Agreement, upon the happening of one of the following events, whichever occurs first:
- a) an event of default specified in subclause 27 (a), (b), (c) or (d);
 - b) an event of default specified in subclause 27 (e) that is not remedied within ten business days of receipt by the LEDC of notice of default, or a plan satisfactory to the Corporation to remedy such an event of default is not implemented within such period and fully and diligently carried out thereafter as provided in subclause 28 (b);
 - c) the enabling statutory authority or the required approvals under which the Corporation has entered into this Agreement being repealed or rescinded so as to substantially limit or deprive the Corporation of the authority to confer any of the rights or assume any of the obligations granted or assumed hereunder, and the Corporation being unable with reasonable diligence within a period of two (2) years to obtain private legislation to remedy the deficiency of authority;
 - d) notice of termination being given to the Corporation by the LEDC stipulating the date of termination, (which date shall be no less than ten days from the date of such notice) on the ground that, despite negotiations in good faith between and reasonable efforts by the LEDC and the Corporation to settle the amount of the Fee or the amount appropriated by the Corporation in its sole discretion for the LEDC is insufficient to enable the LEDC in any substantial way to perform its responsibilities under this Agreement;
 - e) the Corporation giving the LEDC twelve months' written notice of its intent to terminate this Agreement; or
 - f) the Corporation and the LEDC agreeing in writing at any time to the termination of this Agreement.
32. **Benefit.** No member of the Municipal Council shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.
33. **Confidentiality.** For the purposes of the *Municipal Freedom of Information and Protection of Privacy Act*, the Corporation's access to information hereunder is subject to the LEDC's assertion at all material times that all such documents, contracts, records, claims, and accounts are supplied to the Corporation in confidence, recognizing that their disclosure could reasonably be expected to be injurious to the economic and other interests of the LEDC, and the Corporation shall not disclose any such information without the LEDC's consent.
34. **Deemed Amendment of Agreement.** In the event that the enabling statutory authority or the required approvals under which the Corporation has entered into this Agreement are subsequently amended or altered, but not so substantially as to limit or deprive the Corporation of the authority to confer any of the rights or assume any of the obligations hereunder, this Agreement shall be deemed to be amended or altered in accordance therewith. If however, the amendment or alteration to the enabling statutory authority or the required approvals do substantially limit or deprive the Corporation's authority, the Corporation and the LEDC shall forthwith enter into discussions with respect to the amendment or termination of this Agreement, and, if no such discussions are held within a reasonable period of time or such discussions do not result in an amendment of this Agreement, this Agreement shall be deemed to be terminated.
35. **Further Documents.** The LEDC and the Corporation shall, from time to time, execute and deliver all further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.
36. **Notice.** Where in this Agreement any notice, request, direction or other communication is required to be given or made by either party, it shall be in writing and is effective if delivered in person or by recognized courier sent by facsimile transmission addressed to the other party for whom it is intended at the following addresses, and any notice shall be deemed to have been given:

- a) if delivered personally or by recognized courier on the date of such delivery; or
- b) if by facsimile transmission, when transmitted (if received before 4:30 pm local time at the recipient's office or failing which on the next business day).

Any notices intended for the Corporation shall be delivered and addressed to:

City Clerk
The Corporation of the City of London
3rd Floor, 300 Dufferin Avenue
PO Box 5035
London Ontario N6A 4L9

Facsimile: (519) 661-4892

Any notices intended for the LEDC shall be delivered and addressed to:

President
London Economic Development Corporation
Suite 701
380 Wellington Street
London Ontario N6A 5B5

Facsimile: (519) 661-5331

The address or facsimile number of either party may be changed by notice in the manner set out above.

- 37. **Assignment.** Neither party shall assign all or any portion of its rights or obligations under this Agreement to a third party without the other party's prior written consent.
- 38. **Supplementary or Additional Agreements.** If at any time during the continuance of this Agreement, the parties shall deem it necessary or advisable to make any alteration or addition to this Agreement, they may do so by means of a written agreement between them which shall be supplemental or additional hereto and form part hereof.
- 39. **No Merger.** The completion or satisfaction of any part of this Agreement shall not result in the merger or other termination of the remainder of the Agreement, and this Agreement shall continue in full force and effect.
- 40. **Headings for Convenience.** Descriptive headings are inserted solely for convenience of reference, do not form part of this Agreement, and are not to be used as an aid in the interpretation of this Agreement.
- 41. **Severability of Provisions.** If any of the provisions of this Agreement shall be illegal or invalid, such illegality or invalidity shall not render the whole Agreement illegal or invalid, but the Agreement shall be construed as if it did not contain the illegal or invalid provision or provisions, and the rights and obligations of the parties shall be construed and enforced accordingly.

IN WITNESS WHEREOF the Corporation and the LEDC have hereunto affixed their respective corporate seals, attested by the hands of their respective officers duly authorized in that behalf.

THE CORPORATION OF THE CITY OF LONDON

Per: _____
Joe Fontana, Mayor

Per: _____
Catharine Saunders, City Clerk

LONDON ECONOMIC DEVELOPMENT CORPORATION

Per: _____

Peter White, President and Chief Executive Officer

Per: _____
Marty Thrasher, Chair