

Bill No. 96
2013

By-law No. A.-_____

A By-law to authorize 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 construction of Highway 401 interchanges; 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 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 draft Agreement attached as Appendix "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 construction of Highway 401 Interchanges is hereby AUTHORIZED AND APPROVED substantially in the form attached and as approved by the City Solicitor.
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 February 12, 2013.

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First reading – February 12, 2013
Second reading – February 12, 2013
Third reading – February 12, 2013

interchange improvements (the "Interchange Works" as defined in paragraph 1.12) jointly by the City and MTO and at the cost of the City and MTO, unless otherwise specified, inside and incidental to the corridor of Highway 401.

- L. The formal name style of the MTO is set forth in section 33(7) of the PTHIA.
- M. It is deemed expedient to enter into this Agreement as the City and MTO are desirous of proceeding with the Interchange Works. As listed in MTO's Southern Highways Program 2012-2016, the Interchange Works are targeted for completion in 2016.
- N. It is deemed necessary that the City and the MTO enter into this Agreement to further the construction and incidentals of the Interchange Works, as specified herein, inside and incidental to the corridor of Highway 401.
- O. Attached Schedule "A" illustrates:
 - the lands in the City in the area of Highway 401 within the City's Urban Growth Boundary as defined in the City's Official Plan; and,
 - the lands within MTO's permit control area.

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

- 1.1 "City" shall mean The Corporation of the City of London.
- 1.2 "City Lands" shall mean the parcels of land owned by the City within Innovation Park, Forest City Industrial Park and any future lands acquired by the City proximate to the Highway 401 on which the City proposes to effect servicing to facilitate Development with vehicular access to Highway 401 via its interchanges.
- 1.3 "construction" includes installation.
- 1.4 "construction costs" shall mean those costs for the construction of the Interchange Works and the Veterans Memorial Parkway Extension Works, being all related hard costs, including without limitation, costs for environmental remediation, surveys, utility relocations, geotechnical investigation, placement of fill, granular lifts, asphalt, zone painting and signing, and the cost for design and contract administration.
- 1.5 "Contributing Lands" shall mean those lands located on the north and south sides of Highway 401 within MTO's permit control area as defined under the PTHIA for controlled access highways as illustrated on Schedule 'A'.
- 1.6 "Contributing Lands Development" shall mean development of lands within the Contributing Lands located on the north and south sides of Highway.
- 1.7 "cost" shall mean the items of cost all howsoever styled inclusive of interest, inclusive of a cost sum or sums, and inclusive, but not limited to, consultant, contractor, construction costs environmental remediation, real property, and 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, but not including staff time of MTO or the City.
- 1.8 "costs" shall mean the same as "cost", but in plural.
- 1.9 "Developer" shall mean any individual, company or corporation proposing to construct on

any portion of the City Lands or Contributing Lands.

- 1.10 "Development" shall mean the construction of any building or structure on the City Lands or Contributing Lands, which is proposed to be constructed by the City or a Developer.
- 1.11 "Design" shall mean the engineering designs as referred to in article 3, Design of the Interchange Works, and also means those designs are pursuant to the criteria and standards of the MTO and are approved by the MTO.
- 1.12 "Interchange Works" shall mean with respect to Highway 401:
- (a) obtaining the necessary environmental approvals, acquiring engineering surveys, acquiring geotechnical surveys, undertaking utility relocations, completing property acquisition and completing the engineering design and contract administration;
 - (b) as per the Transportation Environmental Study Report, May 2012, construction of a new Parclo A-2 type interchange at the intersection of Wonderland Road and Highway 401 including, but not limited to, a structure spanning Wonderland Road, loop and directional ramps in the southwest and northeast quadrants of the intersection, the realignment of Morrison Road and Manning Drive, the reconstruction of a two-lane Wonderland Road from Decker Drive southerly 1230m and the reconstruction of 1800m of Highway 401 (the "Wonderland Interchange Works") as illustrated in Schedule "B";
 - (c) as per the approved Transportation Environmental Study Report Addendum, October 2012, reconstruction of the Parclo A-4 type interchange at the intersection of Highbury Avenue and Highway 401 including, but not limited to, replacement of the structure spanning Highway 401 to accommodate six lanes on Highbury and a future ten-lane Highway 401, reconstruction of 1000m of Highbury Avenue to six-lanes, reconstruction of the ramps as necessary (the "Highbury Interchange Works") as illustrated in Schedule "C";
 - (d) subject to EA approvals, reconstruction of the cloverleaf type interchange with a Parclo A-4 type interchange at the intersection of Colonel Talbot Road (Highway 4) and Highway 401 including, but not limited to, replacement of the structure spanning Highway 401 to accommodate four lanes on Colonel Talbot and a future eight-lane Highway 401, loop and directional ramps in the northeast and southwest quadrants of the intersection, directional ramps in the northwest and southwest quadrant, reconstruction of 1750m of Colonel Talbot Road, realignment of Glanworth Drive including a new structure spanning Highway 401 and realignment of Littlewood Drive, Tempo Road and Burtwhistle Lane (the "Colonel Talbot Interchange Works") as illustrated in Schedule "D";
 - (e) subject to EA approvals, reconstruction of the trumpet type interchange with a Parclo A-3 type interchange at the intersection of Veterans Memorial Parkway (VMP) and Highway 401 including, but not limited to, replacement of the structure spanning Highway 401 to accommodate four lanes on VMP and a future ten-lane Highway 401, loop and directional ramps in the northeast and southwest quadrants of the intersection, directional ramp in the northwest quadrant and reconstruction of 325m of VMP within the interchange (the "VMP Interchange Works") as illustrated in Schedule "E";
 - (f) installation of traffic signals and illumination, as necessary in conjunction with the subparagraphs 1.12(b)(c)(d) and (e) construction;
 - (g) zone painting and signing as deemed necessary by the MTO;

(h) all incidentals all howsoever styled to all the above; and

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

- 1.13 "MTO" shall mean the short form of the formal name style as set forth in section 33(7) of the PTHIA and includes the applicable person or persons on the staff of the Ontario Ministry of Transportation, as determined at the sole discretion of the MTO, that relate to a respective provision in this Agreement.
- 1.14 "MTO Corridor Management – London" and "MTO Engineering – London" shall mean, save as otherwise advised, those offices, in the area of the West Region of the Ontario Ministry of Transportation having the MTO addresses as set forth in paragraphs 8.2 and 8.3 respectively.
- 1.15 "PTHIA" shall mean the *Public Transportation and Highway Improvement Act*, R.S.O. 1990, c.P.50 and amendments thereto from time to time.
- 1.16 "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.
- 1.17 "VMP Extension Works" shall mean with respect to the extension of VMP from the VMP Interchange Works to Wilton Grove Road:
- (a) obtaining the necessary environmental approvals, acquiring engineering surveys, acquiring geotechnical surveys, undertaking utility relocations, completing property acquisition and completing the engineering design and contract administration; and
 - (b) subject to EA approvals, construction of 800m of a 2-lane rural road including turning lanes at Wilton Grove as illustrated in Schedule "E".

2. Standard MTO short form permit to the City and Developer(s)

- 2.1 The MTO, after completion of the article 3 EA and Design for each of the four paragraph 1.12 Interchange Works, on the application of a Developer to MTO Corridor Management – London, and after the Developer has satisfied all MTO requirements, shall issue to the Developer applicable standard MTO short form Building/Land Use permits under Section 2 and/or Section 38(2) of the PTHIA to construct that Development on the Contributing Lands and/or the City Lands.
- 2.2 Any paragraph 2.1 permit issued prior to the completion of the Interchange Works is subject to the terms printed on that permit and is hereby deemed also to be subject to the terms of this Agreement. In the event of a conflict between the terms of this Agreement and any such permit, the terms of this Agreement shall prevail.
- 2.3 Any MTO permit issued to the City or Developer under paragraph 2.1, and prior to the completion of the Interchange Works, shall have annotated on it:
- This permit is subject to the terms of the Agreement dated the _____ day of, 2013 between The Corporation of the City of London and the MTO.
- 2.4 The City and/or Developer, to accommodate the issuance by the MTO of any paragraph 2.1 permits on a respective date desired by the City and/or Developer, shall give MTO Corridor Management – London reasonable notice of that date. MTO will use reasonable efforts to provide the permits to the City and/or Developer on the date desired by the City and/or Developer.

2.5 Prior to or after the completion of the Interchange Works, MTO may request the City or Developer to submit an updated traffic study, at the City or Developer's cost, to MTO for review if, in MTO's opinion, there is sufficient change to the land uses or the City's Urban Growth Boundary to cause a significant change in traffic accessing Highway 401 than was contemplated in the article 3 EA and Design for the Interchange Works.

3. Environmental Assessment, Design and Pre-Engineering of the Interchange Works

3.1 Wonderland Interchange Works:

(a) The City, at the cost of the City, shall cause the City's Environmental Assessment (EA) to be updated to meet the requirements of MTO's Class Environmental Assessment and cause the initial Design to be effected by a qualified engineering consultant retained by the City. All such EA and Design work being completed to sufficient detail for the procurement by MTO of a Design-Build contractor. The estimated cost of EA and initial Design being \$420,000.

(b) The MTO, at the cost of the MTO, shall cause pre-engineering work (field surveys, geotechnical and foundation investigations) to be effected by qualified engineering consultants retained by MTO. All such pre-engineering work being completed to sufficient detail for the procurement by MTO of a Design-Build contractor. The estimated cost of the pre-engineering work being \$75,000.

3.2 Highbury Interchange Works:

(a) The MTO, at the cost of the MTO, shall cause the MTO's Class EA to be updated and cause the initial Design and pre-engineering work to be effected by a qualified engineering consultant retained by the MTO. All such work being completed to sufficient detail for the procurement by MTO of a Design-Build contractor. The estimated cost of EA, initial Design and pre-engineering work being \$615,000.

3.3 Colonel Talbot Interchange Works:

(a) The MTO, at the cost of the MTO, shall cause the MTO's Class EA to be updated and cause the initial Design and pre-engineering work to be effected by a qualified engineering consultant retained by the MTO. All such work being completed to sufficient detail for the procurement by MTO of a Design-Build contractor. The estimated cost of EA, initial Design and pre-engineering work being \$850,000.

3.4 VMP Interchange Works and VMP Extension Works:

(a) The City, at the cost of the City, shall cause the planning and City's EA to be effected by a qualified engineering consultant retained by the City. The estimated cost being \$300,000.

(b) The City, at the cost of the City, shall cause the initial Design and pre-engineering work to be effected by a qualified engineering consultant retained by the City. All such EA, initial Design and pre-engineering work being completed to meet the requirements of the MTO Class EA to sufficient detail for the procurement by MTO of a Design-Build contractor. The estimated cost of the initial Design and pre-engineering work being \$317,000.

(c) The MTO, at the cost of the MTO, shall cause the pre-engineering work (field surveys, geotechnical and foundation investigations) to be effected by qualified engineering consultants retained by MTO. All such pre-engineering work being completed to sufficient detail for the procurement by MTO of a Design-Build contractor. The estimated cost of the pre-engineering work being \$35,000.

4. Ministry Responsibilities

- 4.1 The MTO will work with the City to complete the article 3 EA, Design and Pre-engineering work for the Interchange Works.
- 4.2 The MTO will, in respect of the Interchange Works, following completion of the article 3 EA, Design and pre-engineering work, at the cost and expense of the parties as set out in article 7 below:
- (a) obtain the necessary environmental approvals and permits as the proponent under the Environmental Assessment Act and undertake utility relocations as necessary;
 - (b) cause any additional pre-engineering or design work not identified in article 3 and deemed necessary by the MTO, to be effected by qualified engineering consultants retained by MTO;
 - (c) acquire any property required to accommodate the Interchange Works at Wonderland Road, Highbury Avenue, Veterans Memorial Parkway and Colonel Talbot Road interchanges; and
 - (d) effect and administer the Interchange Works and the VMP Extension Works including all required contract procurement and contract administration in accordance with MTO standard specifications, design and construction criteria for Design-Build contracts.
- 4.3 Subject to the MTO receiving the required appropriations from the Legislature of Ontario, the Ministry shall arrange for the phased commencement of the Interchange Works and VMP Extension Works at such time as the EA, Design, Pre-engineering work and property acquisition are complete for each of the four interchange locations, likely commencing in the year 2013 and with a current target completion date of 2016.

5. City Responsibilities

- 5.1 The City will work with the MTO to complete the article 3 EA, initial Design and Pre-Engineering work for the Interchange Works.
- 5.2 The City will, in respect of the Interchange Works and VMP Extension Works, following completion of the paragraphs 3.1, 3.2 and 3.4 EA, initial Design and pre-engineering work, at the cost and expense of the parties as set out in article 7 below:
- (a) set aside sufficient applicable City owned lands (lands already owned but not already designated as public roads) to be dedicated to the MTO for nil consideration as public highway for the applicable Interchange Works;
 - (b) acquire, at the City's cost, any property required to accommodate the VMP Extension Works, and
 - (c) undertake utility relocations as necessary.

6. Utilities, all required relocations

- 6.1 Utility relocations, that are required with respect to the Interchange Works, shall be caused to be relocated by the MTO or the City at the cost of the City and MTO as outlined in paragraph 7.2.

7. Financial Contributions and Payment

- 7.1 The actual costs and expenses of the EA, Design and Pre-engineering work shall be paid by the City or MTO as specifically outlined in article 3.
- 7.2 Subject to a credit in favour of the City for any paragraph 5.2(c) utility relocation costs or any other Construction Costs incurred by the City, and in addition to the costs payable by the City under paragraph 7.1, the City shall pay a lump sum of twenty-five million dollars (\$25,000,000). Should the actual costs and expenses of the Interchange Works and VMP Extension Works be more than or less than one hundred fifteen million dollars (\$115,000,000), the City's contribution shall be adjusted proportionately to reflect any such increase or decrease provided that such an increase or decrease does not exceed a maximum of two million dollars (\$2,000,000). For example, if the actual costs and expenses of the Interchange Works and VMP Extension Works are less by an amount of 10%, then the City's contribution will be decreased by 10%, provided that the City's contribution is not less than twenty-three million dollars (\$23,000,000).
- 7.3 After completion of portions of the Interchange Works by MTO, MTO may at that time invoice the City at the paragraph 8.1 address, as per the payment schedule set out below. The City shall pay within 60 calendar days after receipt of an invoice, the sum set forth as payable in that invoice, by cheque made payable to the "Minister of Finance":
- (a) completion of Wonderland Interchange Works, ten million dollars (\$10,000,000);
 - (b) completion of Highbury Interchange works, five million dollars (\$5,000,000);
 - (c) completion of VMP Interchange Works and VMP Extension Works, five million dollars (\$5,000,000); and
 - (d) completion of the Colonel Talbot Interchange Works, five million dollars (\$5,000,000) subject to any paragraph 7.2 credits and adjustments.

The above payments shall be subject to interest if, after 60 days, the invoice remains unpaid.

8. Addresses of the City and the MTO, Facsimile Service, Schedules, and Captioned Paragraphs

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

Mr. Edward Soldo, P.Eng.
Director, Roads and Transportation
The Corporation of the City of London
City Hall, 300 Dufferin Avenue
PO Box 5035
London, Ontario
N6A 4L9
Tel. (519) 661-2500 ext 4936, Fax (519) 661-5931

- 8.2 For service under article 2 of this Agreement shall be to the MTO Corridor Management – London whose address, unless otherwise advised, is:

Ms. Tanya Cross, P. Eng.
Head, Corridor Management
Corridor Management – London
Ministry of Transportation
659 Exeter Road
London, Ontario
N6E 1L3
Tel. (519) 873-4578, Fax (519) 873-4228

8.3 Except as provided in paragraph 8.2, service under this Agreement shall be to the MTO Engineering Office – London whose address, unless otherwise advised, is:

Mr. Kevin Bentley, P. Eng.
Manager of Engineering
Engineering Office – London
Ministry of Transportation
659 Exeter Road
London, Ontario
N6E 1L3
Tel. (519) 873-4373, Fax (519) 873-4388

8.4 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.

8.5 Further to paragraph 8.4 the MTO under paragraph 8.4 may serve the City via facsimile to the respective retained consulting engineer of the City.

8.6 All schedules to this Agreement, and all the provisions contained in those schedules, are hereby deemed to be terms of this Agreement.

8.7 The captioned paragraphs throughout this Agreement are for ease of reference and the specific provisions of the paragraphs of this Agreement are hereby deemed to govern.

9. Title

9.1 The City (both before and after the completion of the construction of the Interchange Works) is hereby deemed to have no right, title, or interest in the portion of the Interchange Works located inside the right-of-way of Highway 401. All that right, title, and interest (both before and after the completion of construction) of the portion of the Interchange Works located inside the right-of-way of Highway 401 is hereby deemed in the MTO.

9.2 The MTO (both before and after the completion of the construction of the VMP Extension Works) is hereby deemed to have no right, title, or interest in the portion of the VMP Extension located outside the right-of-way of Highway 401. All that right, title, and interest (both before and after the completion of construction) of the portion of the VMP Extension located outside the right-of-way of Highway 401 is hereby deemed in the City.

9.3 The MTO by contributing to the VMP Extension Works under this Agreement shall not be construed as being responsible for any future expansion to VMP.

10. Assignment

10.1 The City shall not assign this Agreement without the written consent of the MTO.

11. Warranty

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

12. Dispute Resolution

- 12.1 In the event of any dispute between the City and the 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 all 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.

13. Entire Agreement

- 13.1 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.

IN WITNESS OF ALL contained in this Agreement:

SIGNED AND SEALED this _____ day of _____, 20

THE CORPORATION OF THE CITY OF LONDON

Mayor

C.S.

Clerk

SIGNED this _____ day of _____, 20

**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