

Report to Civic Works Committee

To: Chair and Members
Civic Works Committee

From: Kelly Scherr, P.Eng., MBA, FEC
Deputy City Manager, Environment & Infrastructure

Subject: Delegation of Authority to Approve Work at the Westminster
Wastewater Treatment Plant

Date: August 31, 2021

Recommendation

That, on the recommendation of the Deputy City Manager, Environment and Infrastructure, the following actions **BE TAKEN** with respect to the current agreement with Trojan Technologies to use the Westminster Wastewater Treatment Plant:

- (a) The proposed By-law (attached) **BE INTRODUCED** at the Municipal Council Meeting of September 14, 2021 to delegate the authority to approve work within the Westminster Wastewater Treatment Plant site under an existing agreement with Trojan Technologies to the Deputy City Manager, Environment and Infrastructure or their delegate.

Executive Summary

Purpose

This report seeks a delegation of the authority to approve site modifications at the Westminster Wastewater Treatment Plant, considered under an existing agreement with Trojan Technologies, from City Council to the Deputy City Manager, Environment and Infrastructure, or their delegate.

Context

The City has entered into an agreement with Trojan Technologies for the use of the decommissioned Westminster Wastewater Treatment Plant facility, including their absolute discretion to modify as they see fit, subject to certain limitations and City approval. The agreement currently does not assign the authority to approve modifications to Civic Administration. By delegating the authority to the Deputy City Manager, Environment and Infrastructure, or her delegate, administrative burden on Council will be reduced.

Linkage to the Corporate Strategic Plan

The Agreement with Trojan Technologies supports the Corporate Strategic Plan through Growing our Economy - Increase partnerships that promote collaboration, innovation, and investment; and, Increase efficiency and consistency for administrative and regulatory processes.

Analysis

1.0 Background Information

1.1 Previous Reports Related to this Matter

Civic Works Committee, February 20, 2019 – Agreement Extension with Trojan Technologies for the use of the Decommissioned Westminster Wastewater Treatment Plant;

Civic Works Committee, April 17, 2018 - Southern Ontario Water Consortium London Wastewater Facility: Support for Local Water Research and Development

Civic Works Committee, September 22, 2014 - UV Disinfection Equipment Parts & Service-Single Source

Built and Natural Environment Committee Meeting, July 18, 2011 – An Agreement to Use the Decommissioned Westminster Wastewater Treatment Plant for Research and Development and Testing

2.0 Discussion and Considerations

The City's Westminster WWTP was acquired as part of the 1993 annexation and has since been decommissioned. The Westminster WWTP has been used by Trojan through an agreement with the City since 2011. The site provides them with a local facility they can modify as needed to test prototype equipment. The City retains ownership of the facility and Trojan is responsible for maintaining the site and buildings, with the City retaining the option to terminate the agreement with one year's notice. The City's interests are also protected through liability and insurance requirements already contained in the Agreement.

The agreement with Trojan was recently extended by Council to 2038 to allow them to justify making a larger investment in the site. Civic Administration recently received a request from Trojan to allow the construction of a structure within which to conduct testing throughout the winter. Upon review it was discovered that the wording of the Agreement did not specifically address the ownership, removal requirements or other practical considerations of the construction of a new building and while it does allow Trojan to make modifications to the site with written approval, the parties with the authority to issue that approval are not clearly identified, and so this authority is assumed to rest with London City Council.

To address this gap and avoid future burden to Council resulting from multiple requests for approval to modify the site, staff are requesting that Council, through the attached bylaw, delegate this authority to the Deputy Manager, Environment and Infrastructure, or their delegate. Civic Administration has a clear understanding of the City's use of that property both in the short and long term and are in a position to understand what is required of any proposed site modifications in order to ensure that the City's interests are not compromised.

Any written approval provided will also include any other conditions deemed appropriate, such as establishing ownership, requirements for removal, additional insurance, etc... to suit the specific request, and those additional requirements would be reviewed through the appropriate City Division prior to issuing any approvals.

3.0 Financial Impact/Considerations

There are no financial impacts to this delegation of authority.

Conclusion

The City's agreement with Trojan Technologies for the continued use of the Westminster Wastewater Treatment Plant site is intended to provide Trojan Technologies with the access and flexibility necessary to create a testing facility on the site that suits their needs on an ongoing basis. Civic Administration has a clear understanding of the potential uses of that facility, as well as legal and risk management requirements. Accordingly, Administration requests that the authority to approve proposed construction or other modifications at the Westminster Wastewater Treatment Plant site be delegated to the Deputy City Manager, Environment and Infrastructure, or their delegate, per the appended bylaw.

Prepared by: Kirby Oudekerk, P.Eng, Division Manager, Wastewater Treatment Operations

Submitted by: Scott Mathers, MPA, P. Eng., Director, Water, Wastewater and Stormwater

Recommended by: Kelly Scherr, P. Eng., MBA, FEC
Deputy City Manager, Environment and Infrastructure

CC: Aynsley Anderson, Solicitor II, Legal Services
Jason Wills, Manager III, Risk Management

Bill No. XXX
2021

By-law No. A.-XXXX-XXX

A by-law to amend by-law No. A.-7895-270 being "A by-law to authorize an Amending Agreement between The Corporation of the City of London and Trojan Technologies and to authorize the Mayor and City Clerk to execute the Agreement" to delegate the function of approving future site improvements and construction by Trojan Technologies to the Deputy City Manager, Environment and Infrastructure, or her delegate

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 continue with the current amended agreement with Trojan Technologies Group ULC (the "Agreement");

AND WHEREAS it is desirable to adopt a more efficient means of administering the Agreement on behalf of the City;

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

1. By-Law No. A.-7895-270 being "A by-law to authorize an Amending Agreement between The Corporation of the City of London and Trojan Technologies and to authorize the Mayor and City Clerk to execute the Agreement" is hereby amended by adding the following provision after section 2 and renumbering the remaining sections as appropriate:

The authority to approve site improvements, construction or other modifications to the Westminster Wastewater Treatment Plant site by Trojan Technologies and their appointed contractors or sub-contractors is hereby delegated from Municipal Council to the Deputy City Manager, Environment and Infrastructure for the City of London, or her delegate.

2. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on September 14, 2021

Ed Holder
Mayor

Catharine Saunders

City Clerk

First reading – September 14, 2021
Second reading – September 14, 2021
Third reading – September 14, 2021

Schedule A

THIS AMENDING AGREEMENT made this ____ day of _____.

BETWEEN:

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

-and-

TROJAN TECHNOLOGIES
(hereinafter "Trojan")

WHEREAS the City owns and operates a water pollution control plant at Westminster Pollution Control Plant (the "Westminster PCP") located at 3225 Dingman Drive, London, Ontario.

AND WHEREAS Trojan has requested permission to maintain an ultra-violet testing facility at Westminster PCP (the "W-Facility") for the purposes of conducting research and development projects within the Westminster PCP and the City is agreeable to permitting Trojan to operate the W-Facility as set out herein rent-free, provided Trojan agrees to pay the utility and other costs associated with the operation;

AND WHEREAS the City and Trojan entered into an Agreement on August 31, 2011 ("Agreement") for a term of ten (10) years;

AND WHEREAS the parties wish to amend the Agreement to extend the term of the Agreement;

NOW THEREFORE THE AMENDING AGREEMENT WITNESSETH THAT in consideration of the mutual covenants and agreements set forth, the parties covenant and agree, to and with each other, as follows:

1. Sub article 1(b) of the Agreement is deleted and replaced with the following:

"Permit Trojan to operate the W-Facility at Westminster PCP for a term of twenty (20) years, commencing upon execution of this agreement (the "Term"). Trojan shall have unfettered discretion to cease operating the W-Facility any time prior to the expiration of the Term if it so chooses, in which case this agreement shall be terminated and all rights and obligations relating thereto shall be as if the said term had expired;"

IN WITNESS OF WHICH the parties have executed this agreement the day and year first above written.

The Corporation of the City of London

Trojan Technologies

Mayor

I have the authority to bind the Corporation

City Clerk

THIS AGREEMENT is made the 31st day of August, 2011.

BETWEEN:

The Corporation of the City of London
(hereinafter the "City")

and

Trojan Technologies
(hereinafter "Trojan")

WHEREAS the City owns and operates a water pollution control plant at Westminster Pollution Control Plant (the "Westminster PCP") located at 3225 Dingman Drive, London, Ontario.

AND WHEREAS Trojan has requested permission to maintain an ultra-violet testing facility at Westminster PCP (the "W-Facility") for the purpose of conducting research and development projects within the Westminster PCP and the City is agreeable to permitting Trojan to operate the W-Facility as set out herein rent-free, provided Trojan agrees to pay the utility and other costs associated with their operation;

NOW THEREFORE in consideration of the mutual covenants and agreements to be kept and performed on the part of the parties, the City and Trojan covenant and agree as follows:

1. The City hereby grants to Trojan an exclusive licence to occupy the Westminster PCP for the purposes hereinafter described. Subject to the terms and conditions herein, the City shall:
 - a. Permit Trojan in its absolute discretion to modify Westminster PCP for the W-Facility within the boundaries of Westminster PCP as shown in figure 1 on Schedule A; as it sees fit; including without limitation to upgrade the main electrical feed to building; install new electrical distribution service for Trojan's testing requirements; install waterline(s); sewer-line(s) and allow access to the current building for Trojan usage;
 - b. Permit Trojan to operate the W-Facility at Westminster PCP for a term of (10) years, commencing upon execution of this agreement (the "Term"). Trojan shall have unfettered discretion to cease operating the W-Facility any time prior to the expiration of the Term if it so chooses, in which case this agreement shall be terminated and all rights and obligations relating thereto shall be as if the said term had expired;
 - c. Invoice Trojan monthly for actual hydro usage in relation to W-Facility;
 - d. Grant permission for Trojan to access appropriate drainage on City property to dispose of test water, from time to time, as necessary;
 - e. Provide a minimum of 1 year notice to Trojan if the W-Facility needs to be removed from the Westminster PCP for any reason, provided such notice shall not be given before January 1, 2014;
 - f. Permit Trojan to change locks at Westminster so Trojan is the only key holder for the site and grant Trojan an exclusive access to the Westminster PCP; notify Trojan in the event the City requires site access and have Trojan employee to accompany City employee during any such access
 - g. Grant to Trojan the rights and benefits set out above without requiring rent or other compensation other than that which is specifically set out herein.
2. In exercising its rights under the licence hereby granted, Trojan shall:
 - a. Install a new main hydro meter and assume all charges for hydro for Westminster PCP as facility currently operates only using electricity to operate sump pump, 120 volt outlets, overhead lighting and heating;

- b. Promptly pay for actual hydro usage related to the W-Facility (invoiced monthly);
 - c. On expiry of this agreement, remove all of the test equipment and associated infrastructure promptly;
 - d. Respond in timely manner to accommodate City requests to visit site;
 - e. Provide, free of charge, up to \$30,000 worth of personnel hours annually from its service department for maintenance of City's ultra-violet disinfection equipment;
 - f. Permit the City to directly purchase parts at 30% discount off Trojan's list price during the Term of this Agreement;
 - g. At its own expense, obtain and maintain during the term of this Agreement, and promptly provide evidence of:
 - i. Comprehensive general liability (CGL) on an occurrence basis for an amount not less than Five Million (\$5,000,000) dollars and shall include City as an additional insured with respect to Trojan's operations, acts and omissions relating to its obligations under this Agreement, including without limitation the supply, care, handling, use or disposal of any raw material brought by Trojan onto the Westminster PCP site; such CGL insurance policy to include non-owned automobile liability, personal injury, broad form property damage, contractual liability, owners' and contractors' protective, products and completed operations, contingent employers liability, cross liability and severability of interest clauses;
 - ii. Automobile liability insurance for an amount not less than Two Million (\$2,000,000) dollars on forms meeting statutory requirements covering all owned or leased vehicles used in any manner in connection with the performance of the terms of this Agreement.
 - iii. The policies shown above will not be cancelled or permitted to lapse unless the insurer or Trojan notifies the City in writing at least thirty (30) days prior to the effective date of cancellation or expiry. London reserves the right to request such higher limits of insurance or other types of policies appropriate to the work as the City may reasonably require.
 - iv. Trojan agrees to provide evidence of continued insurance from insurer(s) licensed to operate in Canada once annually in a form acceptable to the City at each policy renewal date for the duration of the contract.
3. The Parties covenant and agree that the licence hereby granted shall also be subject to the following terms and conditions
- a. Trojan accepts the Westminster PCP in an "as is" condition as of the date of this Agreement and shall not call upon the City to do or pay for any work or supply any equipment to make the Westminster PCP more suitable for the proposed use by Trojan.
 - b. Trojan shall use the Westminster PCP only for the purposes as set out in the agreement;
 - c. Trojan shall maintain the appearance of the Westminster PCP in a neat, clean and well-kept manner and ensure that no rubbish, refuse or objectionable material accumulates in or about the Westminster PCP;
 - d. Trojan shall not bring onto the Westminster PCP or store on the Westminster PCP dangerous materials, including but not limited to flammable or explosive materials, except in quantities required for the purpose of conducting research and development projects

within the W-Facility, or with the prior written permission of the City;

- e. Except as permitted by this Agreement, Trojan shall make no alteration to the Westminster PCP, including structural changes, the removal of trees or grade changes, and not to erect any building or structures on the Westminster PCP without the City's prior written permission:
- f. Trojan shall restore the Westminster PCP at its sole expense at the end of the term to the satisfaction of the City, acting reasonably, normal wear and tear excepted, and in the event such restoration is reasonably required but not made by Trojan, the City may do so at the expense of Trojan and recover the expense by any legal means available;
- g. Trojan shall comply with all federal, provincial and municipal laws, rules, regulations and by-laws:
- h. If Trojan defaults in performing any of its obligations under this Agreement, the City may immediately terminate the licence granted under this Agreement immediately. Any waiver by the City of any breach by Trojan of any provisions of this Agreement shall be without prejudice to the exercise by the City of all or any of its rights or remedies in respect of any continuance or repetition of such breach.
- i. Subject to Section 1(e) hereof, either party may terminate this agreement upon 1 year's written notice for any reason. In the event of termination of this agreement, the City shall have no further obligations to Trojan. Upon expiry or other termination of this Agreement Trojan will no longer be required to pay for hydro or any other charges at W-Facility, upon Trojan's vacating the W-Facility and paying to the City any amounts previously invoiced but unpaid in relation to hydro, Trojan shall owe no further obligations to the City hereunder with respect to the W-Facility.
- j. The City reserves the right to inspect the Westminster PCP during regular business hours to ensure compliance with the terms of this Agreement, any Federal or Provincial Legislation, or municipal by-law. Special Conditions may be attached to this agreement as Schedule "B", and Trojan agrees to those Special Conditions.
- k. Any notice required to be given to the City or Trojan under this Agreement shall be sufficiently given if delivered or mailed postage prepaid to the addresses below. Such notice shall be deemed to have been received on the date of its delivery or in the case of mailing, three (3) business days after it was delivered to the post office.

City's Address:
City Engineer
The Corporation of the City of London
300 Dufferin Avenue
P.O. Box 5035
London, ON N6A 4L9

Trojan's Address:
Vice-President, Engineering
Trojan Technologies
3020 Gore Road
London, ON
N5V 4T7

- i. Amendments to the terms of this agreement must approved by both parties in writing.
- m. The W-Facility together with all associated Trojan infrastructure and equipment, including but not limited to UV disinfection equipment, piping, pumps, flow meters, valves, gates, building covering structure and all electrical wiring and conduits from main plant are the property of Trojan. Trojan shall have the right to remove all of its equipment and infrastructure at any time.
- n. Nothing herein contained shall be deemed or construed as creating a relationship of principal and agent, lessor and lessee, a partnership or a joint venture between the parties, nor shall any other action or provision contained herein be deemed to create any relationship between the parties other than an arm's length business transaction. Trojan is an independent contractor.
- o. Trojan shall defend, indemnify and hold harmless the City and its members of council, officers, employees and agents from and against claims, loss, liability, suits and damages for personal injury or damage to property (the "Loss"), including fees caused in whole or in part by the negligent acts, errors or omissions (hereinafter "Wrongful Act") of Trojan or anyone for whose acts it is responsible at law.
- p. In the event that both Trojan and the City have each committed a Wrongful Act which contributes to the aforementioned Loss, then each party shall be responsible for the Loss in the same proportion as that party's contribution to the Loss.
- q. In the event of legal action brought by either party against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the unsuccessful party shall pay the prevailing party such reasonable amount for fees, costs and expenses, including attorney's fees, as may be set by the court – or the actual costs incurred by the prevailing party if the dispute does not reach final judgment.
- r. This agreement shall enure to the benefit of and be binding upon the parties, their successors and assigns. This is the entire agreement.
- s. This agreement is governed by and will be construed in accordance with the laws of the Province of Ontario, Canada and each party hereby attorns to the non-exclusive jurisdiction of the courts of Ontario with respect to any claims or disputes arising under, out of or in connection with this agreement or the subject matter hereof.

IN WITNESS OF WHICH the parties have executed this agreement the day and year first above written.

The Corporation of the City of London

Trojan Technologies




 Joe Fontana, Mayor



 I have the authority to bind the corporation



 Catharine Saunders, City Clerk

CITY SOLICITOR'S OFFICE CITY OF LONDON	
DATE: <i>Aug 12/2011</i>	
APPROVED AS TO FORM ONLY	

SCHEDULE A



Figure 1. Municipal Address 3225 Dingman DR, London, ON

Roll number 0800040156000000

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