

APPENDIX A: PROPOSED BY-LAW

Bill No.
2013

By-law No.

A By-law to authorize and approve a Non-Disclosure and Confidentiality Agreement with London Hydro Inc. and Kilmer Brownfield Management Limited.

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 10 of the *Municipal Act, 2001* provides that the City may provide any service or thing that the City considers necessary or desirable for the public, and may pass by-laws respecting same, and respecting economic, social and environmental well-being of the City, and the health, safety and well-being of persons;

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

1. The Non-Disclosure and Confidentiality Agreement attached as Schedule "A" to this by-law between The Corporation of the City of London, London Hydro Inc., and Kilmer Brownfield Management Limited with respect to the proposal for the redevelopment of lands located at 111 Horton Street, London, Ontario, is hereby authorized and approved.
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 , 2013

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First reading -
Second reading –
Third reading –

SCHEDULE A: PROPOSED NON-DISCLOSURE AGREEMENT
NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT
DATED June 12, 2013

BETWEEN:

The Corporation of the City of London (“the City”)

AND:

London Hydro Inc. (“LHI”)

(collectively “London Parties”)

AND:

Kilmer Brownfield Management Limited (“the Recipient”)

WHEREAS lands located at 111 Horton Street, London, Ontario (the “Lands”) appear to be owned by the City and the Public Utility Commission;

AND WHEREAS LHI offices are currently located on the Lands;

AND WHEREAS in January of 2012, the Recipient approached the City’s then Chief Administrative Officer with a proposal for the ultimate redevelopment of the Lands;

AND WHEREAS the City subsequently issued a public request for ideas calling for “Investment and Economic Prosperity Proposals” through its Investment and Economic Prosperity Committee;

AND WHEREAS the Recipient responded to the City’s public request, and appeared as a delegation before the June 9, 2012 Investment and Economic Prosperity Committee with respect to a proposal re Remediation and Rezoning to Facilitate the Redevelopment of the Lands (the “Proposal”);

AND WHEREAS the Recipient has requested that the London Parties provide it with various information with respect to the Lands, including but not limited to environmental assessments, environmental reports, and third-party confidential information;

AND WHEREAS the London Parties do not wish to provide any such information that is confidential, non-public, or proprietary in nature, unless the Recipient agrees to keep such information confidential;

AND WHEREAS the Recipient and the London Parties wish to define their respective rights with respect to Confidential Information as hereinafter defined and to protect the rights of the London Parties to such Confidential Information;

AND WHEREAS the Recipient acknowledges that the *Municipal Freedom of Information and Protection of Privacy Act* applies to the London Parties’ Confidential Information;

IN CONSIDERATION of the covenants and agreements contained in this agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. Commencement and Termination

This Agreement shall commence upon any of the London Parties providing Confidential Information to the Recipient.

The Agreement shall be at an end upon the earlier of the Recipient’s decision not to

pursue the Proposal, or the London Parties requesting the return of their Confidential Information.

2. Definitions

Confidential Information

“Confidential Information” means any information in any form in the custody, control or possession of one or more of the London Parties but does not include information that:

- (a) is now or subsequently becomes generally available to the public through no fault or breach on the part of the Recipient;
- (b) the Recipient can demonstrate to have had rightfully in its possession prior to disclosure to the Recipient by one or more of the London Parties; or
- (c) the Recipient rightfully obtains from a third party who has the right to transfer or disclose it.

Representatives

“Representatives” means the directors, officers, employees, councillors, agents, solicitors, accountants, consultants, financial or legal advisors and all other representatives of the party being referred to.

3. No Obligation on London Parties to provide Confidential Information

The Recipient acknowledges that the London Parties have no obligation to provide to the Recipient with any or all of the London Parties’ Confidential Information.

4. Confidentiality Obligations

The Recipient shall:

- (a) keep confidential all Confidential Information;
- (b) not use any Confidential Information in any way detrimental to the London Parties;
- (c) not use the Confidential Information, directly or indirectly, for any purpose other than to evaluate, advise on, or further the Proposal;
- (d) keep confidential any negotiations with respect to the Proposal;
- (e) ensure that the Recipient’s Representatives observe and perform all of the covenants the Recipient has agreed to observe and perform in this Agreement as if the Representatives had signed the Agreement.

The Recipient agrees that any Confidential Information that was disclosed or provided to the Recipient prior to the execution of this Agreement shall be deemed to be included and covered by the terms of this Agreement.

If the Recipient is in doubt as to whether any information it receives or otherwise discovers is Confidential Information under this Agreement, the Recipient shall obtain written approval from the applicable London Parties before proceeding with disclosure.

Subject to the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, and to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, other applicable law, and except as otherwise provided in this agreement, the London Parties agree to keep confidential all Confidential Information which may be shared amongst them, unless the disclosing party provides written approval to release such Confidential Information.

5. Limited Disclosures

The Recipient may disclose the Confidential Information to its Representatives, only on the following conditions:

- (a) such Representatives need to know the Confidential Information for the

- purpose of evaluating or advising on the Proposal; and
- (b) such Representatives are informed by the Recipient of the confidential nature of the Confidential Information; and
- (c) the Recipient agrees to take all reasonable precautions to prevent any unauthorized use, disclosure, publication or dissemination of Confidential Information.

Responsibility for Representatives

The Recipient shall be responsible for any breach of the provisions of this Agreement by any of its Representatives.

6. Compelled to Disclose

If a party becomes legally compelled to disclose the Confidential Information, that party shall promptly provide the applicable parties with particulars, so the parties may seek a protective order or other appropriate remedy. The parties shall consent to and assist in obtaining any protective order or other appropriate remedy that one or more of the parties may seek for the purpose of preventing disclosure of any of the Confidential Information.

7. Equitable Relief

The parties acknowledge that unauthorized disclosure or use of Confidential Information could cause irreparable harm and significant injury to the parties that may be difficult to ascertain. Accordingly, the parties agree that they shall have the right to seek and obtain immediate injunctive relief or specific performance, without proof of actual damage, to enforce obligations under this Agreement in addition to any other rights and remedies it may have. The parties agree not to plead sufficiency of damages as a defence in the proceeding for such injunctive relief brought by one or more of the parties.

8. Ownership of Confidential Information

The parties agree that no licence or other rights to Confidential Information is granted or implied in this Agreement.

9. Return of Confidential Information

The receiving party shall return to the originating party the Confidential Information on or before any date as may be specified by the originating party in writing even though the receiving party shall not have completed the purpose for which the Confidential Information shall have been disclosed and delivered. Immediately upon receipt of a request to return the Confidential Information, the party who received such Confidential Information shall discontinue and cease all further evaluation and forthwith deliver to the originating party all the Confidential Information of every kind in its possession.

10. Obligations Continue

The obligations of the Recipient under this Agreement shall survive the termination of the Agreement and shall continue indefinitely.

11. Indemnification

The Recipient shall indemnify the London Parties and the London Parties' Representatives and save all of them fully harmless from and against any loss, cost, damage, expense or liability suffered or incurred by any of them arising as a result of or in connection with any breach by the Recipient or the Recipient's Representatives of any provision of this Agreement and which loss, cost, damage, expense or liability is proved to the satisfaction of the Recipient and the applicable London Parties, or determined by a court of law.

12. No Liability

The Recipient acknowledges that the London Parties and its Representatives:

- (1) do not guarantee that any Confidential Information the London Parties or their

- Representatives may provide to the Recipient is current, accurate, complete or free of errors;
- (2) assume no liability or responsibility for errors or omissions in any of the Confidential Information provided to the Recipient;
 - (3) make no representations or warranties of any kind whatsoever with respect to the Confidential Information;
 - (4) do not provide any Confidential Information for other than informational purposes;
 - (5) do not provide specific advice or recommendations in any circumstances.

13. Entire Agreement

This Agreement sets out the entire agreement between the Recipient and the London Parties pertaining to the subject matter and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written.

14. Invalidity

If any provision of this Agreement is determined to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the validity, legality or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired.

15. Notice

Any notice, demand or other communication (a "notice") shall be made in writing and shall be sufficiently given or made if:

- (i) delivered in person (including a commercial courier) during normal business hours at the address set out below;
- (ii) sent by prepaid first class mail; or
- (iii) sent by facsimile transmission (including e-mail);

in the case of notice to the Recipient addressed to it at:

Kilmer Brownfield Management Limited
Suite 2700, Scotia Plaza
40 King Street West, Box 127
Toronto, ON M5H 3Y2
Attention: Pamela Kraft, Managing Director, Planning & Development
Facsimile: (416) 635-7697 E-mail: pkraft@kilmergroup.com

in the case of notice to the City addressed to it at:

City of London
300 Dufferin Avenue, P.O. Box 5035
London, ON N6A 4L9
Attention: Harvey Filger
Facsimile: (519) 661-0082 E-mail: hfilger@london.ca

in the case of notice to the LHI addressed to it at:

London Hydro Inc.
111 Horton Street
P.O. Box 2700
LONDON, ON N6A 4H6
Fax: (519) 661-5838

Notice shall be deemed to be received:

- if delivered in person: on the day of delivery;
- if mailed by prepaid first class mail: on the fifth business day after mailing (excluding each day during which there existed any interruption of postal services)
- if sent by facsimile transmission (including e-mail): on the same day it was sent if sent during normal business hours, or the following business day if sent outside of normal business hours,.

16. Governing Law

This Agreement shall be construed in accordance with the laws of the Province of Ontario.

SIGNED, SEALED AND DELIVERED

By the Recipient

Kilmer Brownfield Management Limited:

Signature

Print Name and Position (KBML)

I have the authority to bind the Corporation.

Signature

Print Name and Position (KBML)

I have the authority to bind the Corporation.

By The Corporation of the City of London

Signature

Print Name and Position (City)

I have the authority to bind the Corporation.

Signature

Print Name and Position (City)

I have the authority to bind the Corporation.

By London Hydro Inc.

Signature

Print Name and Position (LHI)

I have the authority to bind the Corporation.

Signature

Print Name and Position (LHI)

I have the authority to bind the Corporation.