

<b>TO:</b>	<b>CHAIR AND MEMBERS STRATEGIC PRIORITIES AND POLICY COMMITTEE MEETING JULY 29, 2013</b>
<b>FROM:</b>	<b>MARTIN HAYWARD MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER</b>
<b>SUBJECT:</b>	<b>DEVELOPMENT CHARGES POLICY REVIEW: MAJOR POLICIES COVERING REPORT</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer, with the concurrence of the Managing Director, Environmental and Engineering Services and City Engineer and the Managing Director, Development and Compliance Services and Chief Building Official, the following actions **BE TAKEN**:

1. The following policies with respect to the retirement of the Urban Works Reserve Fund **BE APPROVED**; it being noted that a number of the recommendations in the May 13, 2013 report have been refined or redesigned in comparison to the May 13, 2013 report, based on discussions with the London Development Institute, the London Home Builders' Association and the Urban League:
  - a) funding of all Urban Works Reserve Fund works **BE CONSOLIDATED** under the City Services Reserve Fund (CSRF); it being noted that suitable transitional provisions with respect to works currently included in draft plan conditions or under agreements will be addressed in the draft 2014 Development Charges(DC) By-law and Background Study;
  - b) the enhancements to the Growth Management Implementation Strategy Update Process as generally summarized in Appendix 'A' **BE ENDORSED**;
  - c) the new processes for Design and Construction of Storm Water Management Facilities (SWMF's), as amended, and as generally summarized in Appendix 'B' **BE ENDORSED**;
  - d) the Municipal Service and Financing Agreements Policy as outlined in Appendix "D" to be enacted as part of the 2014 Development Charges By-law **BE ENDORSED** for accepting, assessing and administering applications for the acceleration of DC-funded works through Front-Ending Agreements under the Development Charges Act following the adoption of the 2014 Development Charges By-law;
  - e) the draft front-ending agreement prepared by external legal counsel as outlined in Appendix "E" **BE RECEIVED** for information, it being noted that final agreements will be prepared at the time of Council approval of an application for a Municipal Service and Financing Agreement based on issues specific to the subject infrastructure project;
  - f) the Civic Administration **BE DIRECTED** to further develop the procedures governing construction of infrastructure undertaken by developers through development agreements; and
  - g) the Civic Administration **BE DIRECTED** to prepare by-law amendments and further refine administrative processes necessary to effect the above-noted changes coincident with the effective date of the 2014 DC By-law.
2. Comments from the London Development Institute, the Urban League and Lyn Townsend, LLB, included in Appendix 'H': "Stakeholder Comments" of this report with respect to the above-noted policy, **BE RECEIVED** for information; and

3. That the following changes to the City's "local service" definitions **BE APPROVED**:

- a) Watermain oversized be a claimable work;
- b) Stormwater Open Channel Oversizing be a claimable work;
- c) The definition of Sanitary Sewer Oversizing be redefined subject to information to be provided by the Master Servicing Study consultants; and
- d) The definition of storm water management works be more broadly defined as all works required to provide stormwater management servicing that satisfy the requirements of a Class Environmental Assessment process.

### **PREVIOUS REPORTS PERTINENT TO THIS MATTER**

Finance and Administration Committee, November 16, 2011, - Municipal Servicing and Financing Framework Policy

Strategic Priorities and Policy Committee – May 13, 2013 - Development Charges Policy Review - Local Services Policy

Strategic Priorities and Policy Committee – May 13, 2013 - Development Charge Policy - DC Area Specific Charges

Strategic Priorities and Policy Committee – May 13, 2013 - Development Charges Policy Review - UWRF Framework and Timing of DC Payment - SWM Component

### **INTRODUCTION**

Over the last several months City Staff and London's leading Development Charge Stakeholders have invested a large amount of time to come to a shared perspective on various Development Charges Policies. The purpose of this work was to develop improved Development Charges policy framework and align London's policies with those of Ontario's other major cities. With the help of mediator Lyn Townsend and Development Charges expert Gary Scandlan, the various sessions with members of the development industry and the Urban League were very successful and have provided an excellent model for future engagement with stakeholders. The following report summarizes the resulting consensus built between the various parties engaged in the policy review process.

### **BACKGROUND**

At the May 13<sup>th</sup>, 2013 meeting of the Strategic Priorities and Policy Committee, Administration tabled three (3) reports related to proposed changes to the Development Charge Funding Policies:

- DC Area Specific Charges;
- Local Services Policy;
- UWRF Framework & Timing Of DC Payment – SWM Component;

The three reports were referred back to Administration for further dialogue with stakeholders on the proposals. Discussions have been held over the weeks since May 13<sup>th</sup> with progress made on a number of fronts. Lyn Townsend, a lawyer with substantial experience in the areas under discussion, and past chair of the Blue Ribbon Panel (2006), acted as a mediator for the discussions.

The discussions included three all day mediation sessions and numerous offline meetings were held which included senior City Staff, members of the London Development Institute (LDI) Executive and the London Home Builders' Association (LHBA). Feedback was also sought from the Urban League regarding the items under discussion with the development community. Throughout the discussions all parties acted in good faith towards establishing a new Development Charges Policy framework. It was concluded from these discussions that:

- The “Local Services Policy” recommendation be brought back to committee as revised;
- DC Area Specific Charges report be deferred to the August meeting of the Strategic Policy and Priorities Committee to be considered at the same time as the City’s Development Charge exemption policies.
- A report summarizing principles of the new framework defined through the dialogue sessions with industry stakeholders be submitted to the July 29, 2013 meeting of the Strategic Policy and Priorities Committee.

The following covering report lays out the main principles of the policy framework which is proposed to be incorporated into the 2014 Development Charges By-law and Background Study based on the various dialogue sessions. Further details related to each of the components of the new framework are included as separate appendices to this report.

It should be noted that these principles have also been circulated for comment to non-LDI development industry members with the request to submit any comments to the attention of the Strategic Priorities and Policy Committee.

<b>DISCUSSION</b>
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### **2014 Development Charges Major Policy Changes**

Discussions related to the future of the Urban Works Reserve Fund framework and the timing of DC SWM payments consumed the vast majority of time during the various mediation sessions. What follows is a summary of the policy principles that will be incorporated into the 2014 Development Charges Background Study that resulted from these sessions.

#### **1) Retirement of the Urban Works Reserve Fund**

One of the most active points of discussion was the consolidation of the funding of all future SWM works under the City Services Reserve Fund (CSRF) – SWM component and the elimination of the stormwater management portion of the Urban Works Reserve Fund (UWRF). The final consensus on the matter expanded the overall scope of the discussion to consider the funding source for all claimable works currently funded by the Urban Works Reserve Fund as a whole. The following principles outline the negotiated agreement related to the retirement of the Urban Works Reserve Fund:

- Funding of all Urban Works Reserve Fund works will be consolidated under the City Services Reserve Fund (CSRF) and suitable transitional provisions with respect to works currently included in draft plan conditions or under agreements will be addressed in the draft 2014 Development Charges DC By-law and Background Study.
- All transitional UWRF works obligations will be treated as debt and included in the CSRF charge.
- Repayment of “existing claims” (Approved, Authorized, Claimed/Unauthorized, Completed, Under Construction, or Under Agreement [not yet constructed]) will be based on the current UWRF repayment program including claim caps, order of claim payment, and limitations on payment based on a notional balance in the fund. In a word, claims under existing agreements would continue to be liquidated in the manner in which the fund currently operates. These rules will be included in the 2014 Development Charges By-law. These rules will form the basis for what is repaid to the developers as settlement of the current \$33 million claims at various stages of completion.

- In order to apply the existing fund rules to the remaining claims (\$33 million, as of July 2013) being liquidated, the UWRF repayment program will be the object of a separate cash flow and rate calculation in the 2014 Development Charges calculation.
- Based on calculations provided by Gary Scandlan of CN Watson, it is anticipated that the remaining claims (\$33 million, as of July 2013) will be retired in the next 5-7 years, based on forecasted growth rates and calculated charge attributed to the retirement will be included in the 2014 Development Charges By-law.

Going forward, works currently financed under the UWRF (ponds with tributary areas less than 50ha, sewer oversizing, turning lanes, etc.) will be financed by the City Services Reserve Fund. There will be a need to establish annual programs for the claimable works. The timing of these projects will be assigned as part of the City's annual Growth Management Implementation Strategy Update process.

## **2) Enhancements to the City's Growth Management Implementation Strategy Update Process (GMIS)**

With the increased reliance on the City's annual Growth Management Implementation Strategy (GMIS) Update process (which assigns timing to projects owing to the retirement of the UWRF), the topic of the stakeholder engagement process related to the GMIS was also discussed in detail. A summary of the proposed enhancements to the stakeholder engagement process has been attached as Appendix 'A' "Enhancements to the City's Growth Management Implementation Strategy Update Process". The major enhancements include:

- Alignment of the GMIS consultation with the Capital Budget processes.
- Fixed dates for the various critical GMIS meetings and milestones.
- Opportunity for Developer Stakeholders to present up-to-date market information to senior City Staff.
- One and a half month lead time between the last Development Community Stakeholder Meeting and the date scheduled to bring the final report to Committee.
- When the final report is brought to Committee, a public participation meeting will also be added to the agenda to provide the public and industry stakeholders an opportunity to provide comments on the GMIS update report.

The above noted enhancements provide improved transparency regarding the timing of the GMIS process and provide increased opportunities for dialogue with both the public and the development community.

## **3) Improvements to the Stormwater Management Reserve Fund Cash Flow**

One of the May 13<sup>th</sup>, 2013 reports dealt specifically with the accelerated timing of the SWM Component of the DC payment. As noted in that report, the advantages of such a policy include ensuring that all developers make a direct cash contribution towards the infrastructure servicing their development, and improving the cash flow to the SWM reserve fund. After a substantial amount of dialogue and problem solving, a different solution that meets these same objectives was developed. These principles, summarized below, are incorporated into Appendix 'B': "Stormwater Management Design and Construction Process Diagrams".

*Prior to the construction of the SWM pond the developer will enter into a subdivision agreement which includes the following requirements and provisions:*

- *The land for the SWM pond will initially be transferred to the City at no cost.*
- *Repayment of the SWM pond's land cost will be made when 25% of the building permits have been pulled within the storm catchment area.*
- *The City will tender the SWM pond at the same time as the Developer's servicing contract.*
- *The City will not execute the SWM Pond contract until the developer has their provincial Environmental Compliance Approval and their contract for the site servicing is executed.*

The above noted provisions will ensure that the following two key objectives are met:

1. Cash flow to the Stormwater City Services Reserve Fund is modestly improved by withholding payment for the land (approximately 25% of the value of the pond) until 25% of the building permits have been pulled within the storm catchment area, and
2. The requirement that the developer has made a substantial investment in development providing the City with the confidence that they can be reasonably expected to proceed in a timely fashion.

It is Staff's opinion that the above noted agreement provisions will improve the position of the Stormwater City Services Reserve Fund and ensure that SWM ponds are constructed on a "Just in Time" basis.

#### **4) Municipal Servicing and Financing Agreements (MSFA)**

Municipal Servicing and Financing Agreements (MSFA) are a means to accelerate infrastructure projects from GMIS timing on a limited basis. The use of MSFA aligns with both the *Development Charges Act* and the practices of municipalities throughout Ontario. The framework for MSFA's was approved by Council in December 2011. Appendix 'C' "Comparison of UWRF to MSFA" provides a high-level comparison between the current UWRF framework versus the CSRF framework, noting the differences between the two financing policies. Discussions with the development industry focused on key aspects of a workable policy, in the event of the dissolution of the UWRF.

Key elements of discussions included:

- Consensus that GMIS is the City's development staging strategy and that MSFAs would be used in limited circumstances;
- The project must be included in the current Development Charge Background Study to be eligible;
- Generally, the City will budget, design and construct all CSRF funded projects with the timing of the project in accordance with GMIS schedule;
- Acceleration of the project by the City will be accomplished via a loan from the developer;
- Only projects within the 0-5 year time frame in the GMIS Schedule/Capital Budget at the time of an application are eligible for acceleration using a MSFA;
- Ten Million dollar (\$10,000,000) cap on total funding through FEA's at any one time;
- Ensure that MSFAs do not result in the City exceeding its overall debt ceiling;
- No single MSFA project shall exceed three million dollars (\$3,000,000); and
- Cap to be reviewed in 2019.

The "Municipal Service and Financing Agreements Policy" (Appendix 'D') provides the principles, parameters and criteria for MSFA applications and will be included as a schedule in the 2014 Development Charges By-law.

As noted in the November 2011 report, MSFAs are intended to be used sparingly as they could adversely affect timing of infrastructure for other developers. As a result, the MSFA Policy includes criteria to limit the use of MSFAs and the "cap" on total obligations is considered a key component of those criteria, especially in the early years of transitioning away from the 'UWRF based approach'.

A "Draft Typical Front Ending Agreement" (Appendix 'E') has been included as appendices to this report that reflects the policy and the key parameters associated with a typical front-ending agreement. Upon Council approval of an application for an MSFA, the draft front-ending agreement will be finalized based on the specific issues associated with the works being accelerated. As such, the agreements remain in draft form until this time.

## CONCLUSION

The development charges policy framework discussed above reflects a collaborative effort between multiple stakeholders undertaken over several months of collective effort. It is staff's opinion that the agreed upon Development Charges policy principles are a substantial improvement over London's previous Development Charges framework and aligns London's policies with those of Ontario's other major cities. The letters of endorsement provided by several of the stakeholders involved in the consultation process (Appendix 'F': "Stakeholder Endorsement Letters") also affirm that the facilitated sessions were both positive and constructive. With the help of mediator Lyn Townsend and Development Charges expert Gary Scandlan, the various sessions with the Development Industry were very successful and have provided an excellent model for future engagement with development industry stakeholders.

## ACKNOWLEDGEMENT

This report has been completed with the input of the members of the Development Charges Stakeholder Committee and the assistance of the entire Internal (Administrative) Steering Committee of the 2014 DC Study process, Lyn Townsend and Development Charges Consultant Gary Scandlan.

<b>SUBMITTED BY:</b>	<b>CONCURRED IN:</b>
<b>PETER CHRISTIAANS</b> Director, Development Finance	<b>GEORGE KOTSIFAS</b> Managing Director, Development & Compliance Services & Chief Building Official
<b>CONCURRED IN:</b>	<b>RECOMMENDED BY:</b>
<b>JOHN BRAAM,</b> Managing Director, Environmental and Engineering Services & City Engineer	<b>MARTIN HAYWARD,</b> Managing Director, Corporate Services and City Treasurer, Chief Financial Officer

July 22, 2013

### Attachments

Appendix 'A': "Enhancements to the City's Growth Management Implementation Strategy Update Process"

Appendix 'B': "Stormwater Management Design and Construction Process Diagrams" as revised

Appendix 'C' "Comparison of UWRF to MSFA"

Appendix 'D': "Municipal Service and Financing Agreements Policy"

Appendix 'E': "Draft Typical Front Ending Agreements"

Appendix 'F': "Stakeholder Endorsement Letters"

c.c. John Fleming, Managing Director, Planning and City Planner  
James Barber, City Solicitor  
Scott Mathers, Manager, Development Finance  
Paul Yeoman, Manager, Development Finance  
Terry Grawey, Manager, Development Services & Planning Liaison

## **Appendix 'A'**

### **Enhancements to the City's Growth Management Implementation Strategy Update Process**

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# MEMO

**DATE:** July 17, 2013

**TO:** Development Charges Stakeholders

**FROM:** Scott Mathers

**RE:** **Growth Management Implementation Strategy  
Proposed Process Enhancements  
Draft for Discussion Purposes**

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#### **Purpose**

Based on the outputs of the facilitation sessions between City Staff and the London Development Institute executive June 12<sup>th</sup> and 13<sup>th</sup> 2013, the following memo discusses proposed process improvements related to the annual Growth Management Implementation Strategy Update (GMIS).

#### **Background**

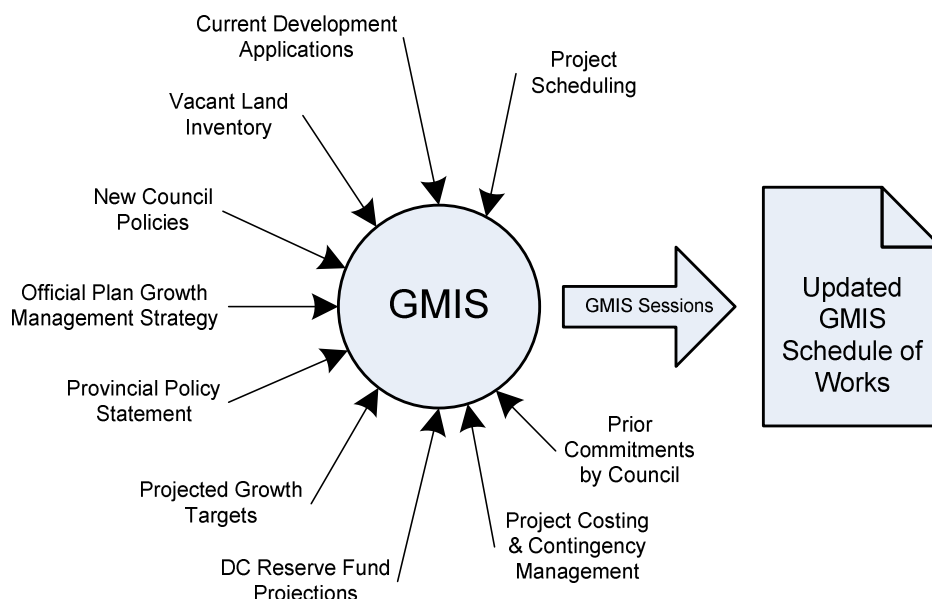
The GMIS was created to guide London's growth in an orderly manner by balancing the needs of growth with the costs of extending major new servicing. It acts as a confluence for growth management efforts by combining the overall Growth Management Strategy, developer plans, available and planned servicing, master servicing plans, available lot supply, development revenues and servicing costs. The annual GMIS update allows for adjustments to reflect the pace of growth by considering vacant land inventories, current development activity, developer priorities, recent approvals, the status of upcoming capital projects and affordability.

Significant effort has been invested in the previous GMIS updates to create a process that is clear and repeatable. Staff are committed to manage the GMIS to a high level to maintain its currency and usefulness to managing London's growth.



## **GMIS Inputs and Principles**

The GMIS update involves the integration and assessment of multiple inputs (Figure 1). Typically, each GMIS update assesses the collected information against the eight Council approved principles of GMIS to make appropriate adjustments to the schedule of works.



**Figure 1:** Inputs to the GMIS.

As part of building the first GMIS in 2008, staff and industry representatives participating in the DC Implementation Team helped develop core principles for the implementation of the City's growth management policies. These core principles guided the considerations and analysis for the original GMIS as well as future annual updates. The eight core principles set out by Council in 2008 include:

1. Provide direction for timely and cost efficient extension of municipal services both from an efficiency and municipal affordability perspective.
2. Support growth costs that are affordable within our financial capacity, having regard for both the capital and operating costs of services to support growth.
3. Allocate growth in a manner that optimizes the utilization of existing services and facilities.
4. Support the development of sufficient land to meet the City's growth needs and economic development objectives.
5. Support the implementation of Official Plan growth management policies.
6. Support the completion of existing development approvals.
7. Maintain lot and land supply that is consistent with provincial policies and conducive to a healthy housing market.
8. Co-ordinate the phasing of development approvals and the scheduling/funding of works through the capital budget.

## **Past GMIS Consultation Process**

The following section summarizes the general format for industry stakeholder engagement used during the previous GMIS processes:

<p><b>Session 1: Development Community Rep Interviews</b></p> <p>One on one interviews with each developer in the City. The purpose of the interview is to discuss each developer’s plans for bringing forward lands for development in upcoming years.</p>
<p><b>Session 2: City Development Management Team</b></p> <p>Growth Needs Assessment by the various development related groups. These groups currently include Engineering, Development Services, and Finance. Using updated VLI, growth targets/forecast.</p>
<p><b>Session 3: Internal Divisions Project Managers</b></p> <p>Groups within the engineering servicing groups responsible for the construction City Service Reserve funded Projects.</p>
<p><b>Session 4: City Development Management Team</b></p> <p>An internal session to discuss the City’s strategy for servicing lands over the next 5 year period.</p>
<p><b>Session 5: Development Community Stakeholder Session</b></p> <p>City Staff presents a draft version of the GMIS Update to the industry stakeholders. The City receives comments from the development community, makes changes as seen appropriate, and brings forward a GMIS update report to Council.</p>

**Moving Forward**

During the recent development charges policy facilitation sessions the topic of reform to the GMIS process was introduced. Maintaining the GMIS principles accepted by Council will be paramount to any modification of the GMIS update process. The following revised consultation process outlines a new and stream lined process that also maintains the original principles of the GMIS update process. The various meetings related to the Milestones outlined below will be scheduled in December of the year prior to the update.

<b>Timing</b>	<b>Milestone</b>
<b>Second Thursday in February</b>	<p><b>Milestone 1: GMIS Update Kickoff Meeting including Industry Stakeholders and Urban League</b></p> <ul style="list-style-type: none"> <li>• Presentation will be provided by LDI on the “State of the Market”. The presentation will summarize the overall housing trends for the previous year and provide a projection of the trends for the following year. Commentary would be provided on a City-wide basis.</li> <li>• Presentation will be provided by the City on the following subjects: <ul style="list-style-type: none"> <li>○ Summary and figure displaying land serviced during the previous GMIS year.</li> <li>○ Vacant Land Inventory Update</li> <li>○ Summary of Development Charge Cash Flow and Debt position.</li> </ul> </li> </ul>
<b>Last Week of February (All week)</b>	<p><b>Milestone 2: Development Community Rep Interviews</b></p> <ul style="list-style-type: none"> <li>• One on one interviews each developer in the City. The purpose of the interview is to discuss each developer’s plans for bringing forward lands for development in upcoming years.</li> </ul>
<b>Second Thursday of March</b>	<p><b>Milestone 3: City Development Management Team</b></p> <ul style="list-style-type: none"> <li>• An internal session to discuss the information provided in the Developer Interviews and with senior managers of the various development related groups. These groups include Engineering, Development Services, and Finance.</li> </ul>
<b>Last week in March</b>	<p><b>Milestone 4: Internal Divisions Project Managers</b></p> <p>Discussion with the various engineering division head to provide direction on the timing and need of growth related infrastructure.</p>
<b>Second Thursday in April</b>	<p><b>Milestone 5: Development Community Stakeholder Session</b></p> <p>City Staff presents a draft version of the GMIS Update to the industry stakeholders and Urban League. The City receives comments from the development community, makes changes as seen appropriate, and brings forward a GMIS update report to Council.</p>
<b>Last SP&amp;P Committee Meeting in May</b>	<p><b>Milestone 6: City Staff GMIS Update Presentation to the Strategic Priorities and Policy Committee Public Meeting</b></p> <p>Presentation of the proposed GMIS update (including all written development stakeholder comments) and a related Public meeting to allow comments from individual development community members.</p>

### **Summary of Proposed Changes**

The following significant changes to the GMIS Update and Consultation process have been proposed:

- Annual fixed dates for key GMIS Update milestone which align to the various City capital budget cycles:

- The following information will be compiled at the start of the GMIS update process:
  - Summary of Development Charge Cash Flow and Debt position
  - An update of the City's Vacant Land Inventory
  - Summary and figure displaying land serviced during the previous GMIS year.
- LDI will be given the opportunity to present on the "State of the Market" and summarize the overall housing trends for the previous year and projection of the trends for the next year.

In the City's opinion the above noted GIMS Process enhancements aligns with the original GMIS principles adopted by Council and strengthens the ability for dialog with the Development Stakeholder community.

**GMIS Update 2014 and 2015**

The 2014 Development Charges By-law Update is currently underway and includes Development Stakeholder Community dialog as a major component. In late 2013 a joint report will be forwarded to Council that will consider both the timing of the future development charges funded projects and the 2014 GMIS Update. In the event that the recommendations in this report are approved in 2013 or early 2014 the 2015 GMIS will proceed as outlined above in April 2014. In the event that there is a lack of consensus on Council related to the proposed project timing the 2015 GMIS may be delayed or rolled into the 2014 Development Charges By-law Update. The 2016 GMIS Update will be scheduled to initiate in April 2015 based on the table included above.

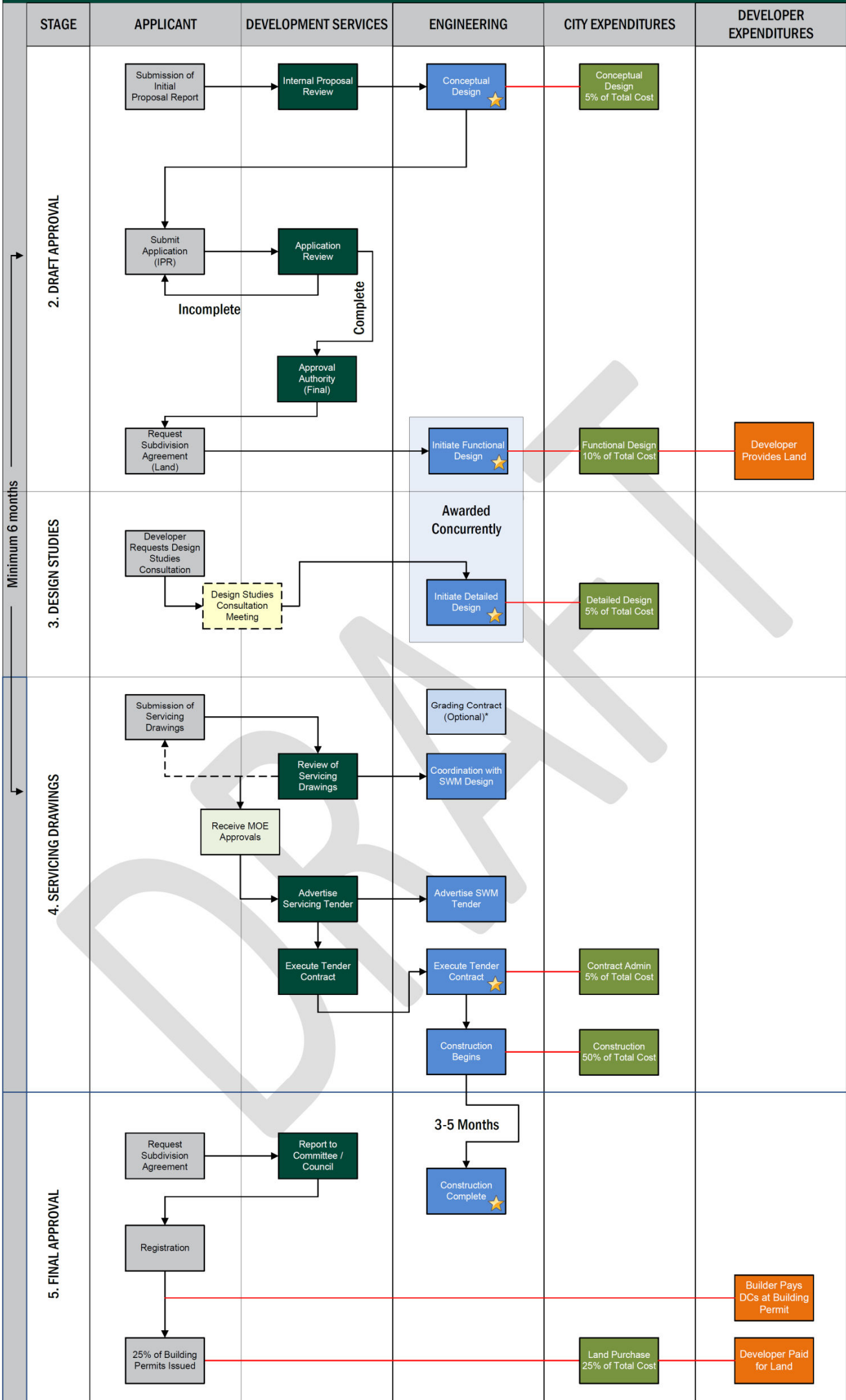
<b>Prepared by:</b>
S. Mathers, MPA, P. Eng. Manager, Development Finance

- CC: Martin Hayward  
 Peter Christiaans  
 George Kotsifas  
 John Fleming  
 John Braam  
 Edward Soldo  
 John Lucas

**Appendix 'B'**  
**Stormwater Management Design and Construction Process Diagrams**  
**- As revised since May 13, 2013 SP&P Committee Report**

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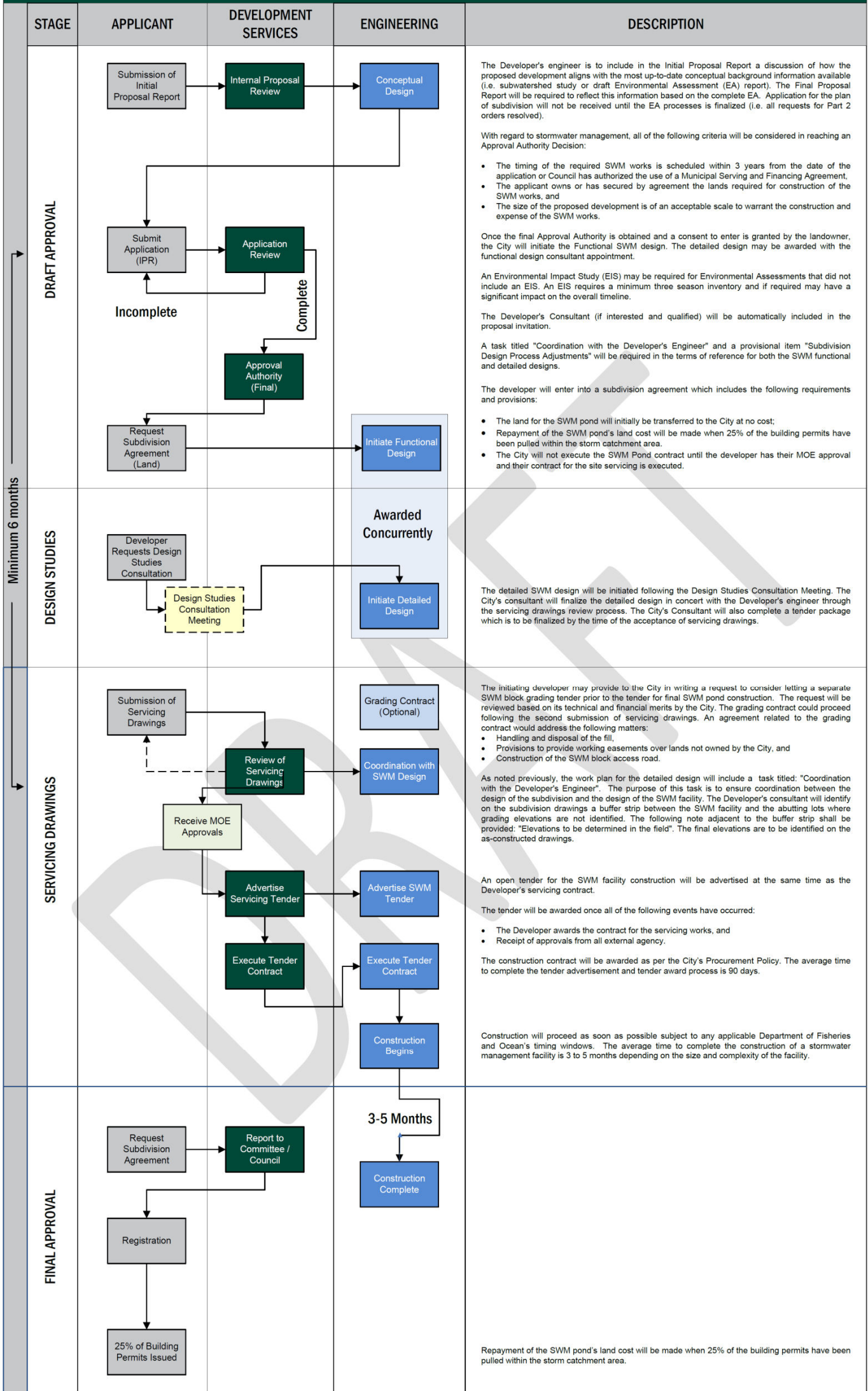
# Appendix 'B-1': Stormwater Management Facility "Just in Time" Design and Construction Process



★ Key Cost Monitoring Points

\* Optional after second submission of servicing drawings

## Appendix 'B-2': Stormwater Management Facility "Just in Time" Design and Construction Process



## Appendix 'C'

### Comparison of UWRF to MSFA

	<b>UWRF Framework</b>	<b>MSFA Framework</b>
<i>Financial Obligations and Controls</i>	<ul style="list-style-type: none"> <li>No "ceiling" on the amount of total UWRF claims permissible.</li> <li>Queued re-payment with per claim caps of \$250,000 (SWM) and \$1 million (General). Re-queue until full re-payment received.</li> </ul>	<ul style="list-style-type: none"> <li>Cap of \$10 million for all MSFAs at any time; \$3 million cap per service component.</li> <li>Re-payment fixed in capital budgeted and scheduled on the GMIS date as of the signing of the agreement.</li> </ul>
<i>Who Constructs?</i>	<ul style="list-style-type: none"> <li>Developer designs and constructs works.</li> </ul>	<ul style="list-style-type: none"> <li>City designs and constructs works unless otherwise determined by the City Engineer.</li> </ul>
<i>Control of Timing</i>	<ul style="list-style-type: none"> <li>Construction timing of UWRF project at the discretion of the developer</li> </ul>	<ul style="list-style-type: none"> <li>Construction of works at the discretion of Council.</li> </ul>
<i>Approvals</i>	<ul style="list-style-type: none"> <li>No previous approval required to initiate engineering of works.</li> <li>Approval of claimability outlined in agreement under the <i>Planning Act</i>.</li> </ul>	<ul style="list-style-type: none"> <li>Council approves projects supported by Staff reports evaluating the merits of accelerating the project.</li> <li>Council provided implications of accelerating the project outside of regular GMIS timing.</li> </ul>
<i>Frequency</i>	<ul style="list-style-type: none"> <li>Almost every subdivision includes Urban Works Reserve Fund recoverable works.</li> </ul>	<ul style="list-style-type: none"> <li>MSFAs to be used on an infrequent basis.</li> </ul>
<i>Financial Impact</i>	<ul style="list-style-type: none"> <li>Council has limited information about the anticipated costs of the UWRF project at the time of approving the works in a subdivision agreement</li> </ul>	<ul style="list-style-type: none"> <li>Council approval of MSFAs specifying the financial costs associated with the accelerated project</li> </ul>
<i>Claim Documentation</i>	<ul style="list-style-type: none"> <li>Submission of cost documentation for a claim after the work has been constructed.</li> </ul>	<ul style="list-style-type: none"> <li>Work completed under MSFAs will align with the City's Procurement Policy</li> </ul>
<i>Claim Repayment</i>	<ul style="list-style-type: none"> <li>Repayment was subject to uncertainties related to market and fund balance.</li> </ul>	<ul style="list-style-type: none"> <li>MSFA specifies terms of financing agreement.</li> </ul>
<i>Administrative Costs</i>	<ul style="list-style-type: none"> <li>City administrative costs associated with reviewing claimable works not recoverable from developer</li> </ul>	<ul style="list-style-type: none"> <li>Administrative costs associated with the preparation, review and administration of MSFAs recovered by the City.</li> </ul>
<i>Industry Best Practices</i>	<ul style="list-style-type: none"> <li>UWRF is the only fund of its kind that exists in Ontario.</li> </ul>	<ul style="list-style-type: none"> <li>Many municipalities use the various forms of MSFAs</li> </ul>
<i>Financial Management</i>	<ul style="list-style-type: none"> <li>Less-than-ideal financial systems management/controls in place to administer UWRF claims as noted by external auditors (spreadsheet based).</li> </ul>	<ul style="list-style-type: none"> <li>All growth projects administered through City's enterprise financial management system.</li> </ul>



# Appendix ‘D’

## MUNICIPAL SERVICE AND FINANCING AGREEMENTS POLICY

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### MUNICIPAL SERVICE AND FINANCING AGREEMENTS POLICY

#### 1. GENERAL

##### 1.1 Purpose and Scope

In order to achieve a logical, affordable and fiscally sustainable installation of infrastructure to service growth and development, the City of London utilizes the Growth Management Implementation Strategy (“GMIS”), which is updated on a yearly basis. There may be circumstances, however, where the annual GMIS process cannot address a pressing need for infrastructure construction and where Municipal Council desires to advance a project ahead of its scheduled GMIS construction date. The Municipal Service and Financing Agreements Policy applies to applications for agreements between the City and a proponent to accelerate the construction an infrastructure project outside of the regular GMIS process.

##### 1.2 Introduction

In this Policy,

“20 Year Servicing Boundary”	means the extent of lands within the Urban Growth Area that are deemed to be required to meet projected 20 year unit and non-residential space demand as identified through the Development Charges Study growth allocations (also known as the “GMIS Boundary”).
“Agreement(s)”	means a form of Municipal Service and Financing Agreements as described in Section 1.3 of this Policy.
“the Act”	means the <i>Development Charges Act</i> , S.O. 1997, c.27, as amended.
“the City”	means the Corporation of the City of London.
“Capital Budget”	means the financial plan adopted by Council. In the context of this policy, the capital budget provides the funding for the capital projects reflected in the adopted GMIS, and is subject to separate Council approval.
“Carrying costs”	means the financial costs associated with funding an accelerated infrastructure project (e.g., interest costs, opportunity costs, application and administration costs), from the time of design to the time of repayment (i.e., “non-reimbursable costs”).
“CSRF”	means the City Services Reserve Fund.
“DC”	means Development Charge or Development Charges.
“DC Study”	means the Development Charges Background Study as prepared to meet the requirements of the Act.
“FEA”	means Front-Ending Agreement.

“GMIS”	means the Growth Management Implementation Strategy, as described in the City’s Official Plan and adopted by Municipal Council on June 23, 2008, as amended from time-to-time.
“IPR”	means Initial Proposal Review, submitted by a proponent developer prior to submitting a formal subdivision application.
“MSFA”	means Municipal Service and Financing Agreements.
“Staff”	means an employee of the Corporation of the City of London.
“Urban Growth Area”	means the extent of permitted urban development for the City of London, as described in the City’s Official Plan.

### 1.3 Types of Agreements

Although the Act provides for several types of MSFAs, there are two types of Part III (“Front-Ending”) Agreements addressed by this Policy:

- i) Single Front-Ending Owner Front-Ending Agreement: where the agreement to accelerate infrastructure under this policy is between the City and a single front-ending owner/consortium; and,
- ii) Future Benefiting Landowners Front-Ending Agreement: where the agreement to accelerate infrastructure under this policy is initially between the City and a single front-ending owner/consortium, with the addition of future front-ending owners that become party to the agreement as their land within the benefiting area develops.

### 1.4 GUIDING PRINCIPLES

The City’s use of MSFA agreements is guided by key principles that inform requests for MSFAs, evaluation of MSFA proposals and agreements prepared to implement this Policy. The MSFA principles are as follows:

- i) The Growth Management Implementation Strategy serves as the City’s development staging strategy for growth infrastructure. The adopted GMIS serves as the basis for the corporate Capital Budget. The GMIS and timing of infrastructure in the DC rate study are intended to provide an adequate supply of serviceable, developable land to meet the growth forecasts.
- ii) Municipal Service and Financing Agreements are tools to be used to advance project timing from planned GMIS and Capital Budget construction schedules. Given the opportunity for developers to request adjustments to the timing of infrastructure through the annual GMIS process, MSFAs are not anticipated to be required on a frequent basis.
- iii) It is critical that the integrity of the Development Charge reserve funds be maintained at all times when using MSFA tools. In order to maintain the integrity of the reserve funds and to avoid undue debt risk, the City will cap the total value of MSFAs that will be undertaken. Development advanced through an MSFA benefits the proponent developer in their attempts to capture a perceived market demand; therefore, the risk and costs associated with an MSFA are to be borne by the proponent developer and not the City.

- iv) Market choice for new housing is beneficial to Londoners, but the timely build-out of existing serviced lands is also essential to capture revenues to pay for past investments in infrastructure.
- v) Opportunities to positively affect the cash flow of development charges reserve funds are valued by the City.
- vi) All growth opportunities must be assessed based on the debt risk associated with the proposal and the existing DC debt profile.

## **2. MSFA PARAMETERS**

### **2.1 General**

- i) The total value of all obligations under executed MSFA agreements at any point in time from the inception date of this policy to July 31, 2019 shall not exceed ten million dollars (\$10,000,000) (i.e., “the cap”).
- ii) MSFAs shall generally only be used to advance one infrastructure project per development. The City may consider the use of an MSFA to accelerate multiple projects where the secondary projects represent minor extensions of projects that are eligible for DC funding. In addition to the maximum value of MSFA agreements outlined in Section 2.1.i), no infrastructure project accelerated through an MSFA shall exceed three million dollars (\$3,000,000) for any one service component as defined in the DC By-law.
- iii) Municipal Service and Financing Agreements will not be used to accelerate development located outside of the 20 Year Servicing Boundary as indicated in the Development Charges Background Study.
- iv) Only works included in the most recent Development Charges Background Study will be eligible for acceleration through the use of an MSFA. Additionally, only works within the current 5 year GMIS and Capital Budget time periods will be considered for acceleration.
- v) As part of an application for an MSFA, the development proponent shall be provided the opportunity to describe the benefits of accelerating a project from the existing GMIS and Capital Budget timeline, consistent with Section 2.1 iv).
- vi) Lands accelerated for development through an MSFA shall be contiguous to existing developing lands.
- vii) Infrastructure projects proposed for acceleration through an MSFA shall meet the criteria outlined in this policy (Section 4) to the satisfaction of the City. The development proponent will have the opportunity to address the criteria in applying for MSFA approval.
- viii) Costs associated with the preparation and administration of an MSFA (e.g., staff time and consulting fees) shall be recovered from the proponent developer.
- ix) The proponent developer shall pay for the full costs associated with the non-growth share of the accelerated work. The cost of the non-growth share shall be repaid to the proponent developer, unless the developer and the City agree to have the developer pay a portion or all of the non-growth cost without reimbursement as part of the acceleration of the project. Repayment of the non-growth share shall be exclusive of interest and shall be based on the actual non-growth amount for the project, rather than the estimate contained in the Development Charges Background Study. Reimbursement of the non-growth share will occur at the same time as reimbursement of the growth share.
- x) Agreements shall contain provisions for the City to recover cost overruns should the actual cost of an accelerated project exceed the estimated cost identified in an Agreement. Conversely, should the accelerated project produce cost efficiencies resulting in the project being below the anticipated cost identified in an agreement with the City, the agreement shall provide that any excess of the front-end funding that exceeds the revised actual cost of the works be returned to the proponent, without interest.

## 2.2 Front-Ending (Part III) Agreements – s.44

Section 44 of the Act provides for the costs of constructing DC eligible works where the initial financing is to be provided by one or more of the parties to the Agreement. The Agreement may also provide for persons who, in the future, develop land within the area defined in the Agreement to pay an amount to reimburse the initial front-ending developer(s) for some part of the upfront costs of the work.

The Agreement is viewed as a loan arrangement between a developer(s) and the City. The loan to the City facilitates the financing and advancement of construction of infrastructure until it would otherwise have been constructed according to the timing specified in the GMIS.

This form of Agreement will generally be used to accelerate major works such as stormwater management facilities, trunk sanitary and storm sewers and arterial road improvements.

Under such an arrangement, the following minimum provisions will be included in the Agreement:

- i) A description of the work to be done, a definition of the area of the municipality that will benefit from the work and the estimated cost of the work.
- ii) If necessary, the proportion of the cost of the work that will be borne by each party to the Agreement, and the method and timing for depositing the amount with the City.
- iii) If necessary, the method for determining the part of the costs of the work that will be reimbursed by the persons who, in the future, develop land within the area defined in the Agreement; and a description of the way in which amounts collected from persons to reimburse the costs of the work will be allocated.
- iv) If necessary, the method for determining the amount, and the amount of the non-reimbursable share of the costs of the work for the parties and for persons who reimburse parts of the costs of the work.
- v) The applicant(s) will finance all carrying costs associated with the Agreement. Carrying costs will not be eligible for reimbursement.
- vi) The developer will provide the City with cash or an irrevocable indexed Letter of Credit, to the satisfaction of the City Treasurer (or designate), to finance the costs of the works. A Letter of Credit provided in relation to an Agreement will be drawn upon as design and construction of the work proceeds.
- vii) The Agreement will contain provisions related to the repayment for the works. Repayment will be in the form of cash. The City will make repayment, using the appropriate service component, from the City Services Reserve Fund. The repayment may be financed from cash in the City Services Reserve Fund, or through a debenture, at the discretion of the City Treasurer (or designate).
- viii) Redistribution of proportionate share of funding may be accomplished by financial contributions by parties named in the agreement who benefit from the works completed under the Agreement (See subsection 2.2 iii) above).
- ix) Repayment by way of cash reimbursement of funding for front-ended works will commence on the date originally identified in the GMIS for the construction of the work at the time in which an Agreement is entered into. Adverse revenue conditions experienced by the City after entering into an Agreement may result in the deferral of other projects through the annual GMIS process. This may adversely affect the timing of projects not being accelerated.
- x) The entering of an MSFA Agreement will not alter the times at which DC's are collected from the developments which ensue from the construction of infrastructure facilitated by an Agreement.
- xi) The Agreement will provide that the City will recover a sum estimated to be the reasonable cost of preparing and administering the Agreement, including staff time and expected consulting costs.

xii) The FEA will be subject to notification and appeal processes described in sections 46 through 49 of the Act.

### **3. APPLICATION FOR A MUNICIPAL SERVICE AND FINANCING AGREEMENT**

#### **3.1 Application Required**

A request for an Agreement with the City shall require the completion of an application form by the proponent developer(s). The application form will provide the applicant opportunities to demonstrate how the proposed acceleration meets the criteria outlined in Section 4. Consideration of a request for an MSFA will not commence until a completed application has been received by the City and acknowledged in writing by the City Treasurer (or designate) as complete.

#### **3.2 Commissioner Certification**

All applicants submitting MSFA applications shall be required to swear an oath before a Commissioner for the Taking of Affidavits that the contents of the application are true and complete, to the best of their knowledge. A Commissioner's stamped and signed verification of this oath shall be required prior to the commencement of an administrative review of an MSFA application.

### **4. CRITERIA FOR EVALUATION OF MUNICIPAL SERVICE AND FINANCING AGREEMENT APPLICATIONS**

The following is a list of the criteria that will be applied to an application for consideration of an MSFA:

- i) Is the project proposed for acceleration included in the most recent Development Charges Background Study?
- ii) Is the project proposed for acceleration within the current 5 year period of GMIS and the Capital Budget?
- iii) Is the estimated cost of the project within the available MSFA cap room and the available service component MSFA cap room?
- iv) Does the project for proposed acceleration have a minor non-growth share?
- v) Is there a single DC-eligible infrastructure project required to permit the development of the subject lands?
- vi) Are there DC-eligible minor extensions of other non-local services required to permit the development of the subject lands?
- vii) If acceleration of the project produces pressure on timelines for lifecycle renewal projects on previously constructed infrastructure that would be impacted by the proposed development, is there a means of mitigating the pressure through the proponent contributing to the cost of prematurely upgrading previously built infrastructure?
- viii) Are the benefiting lands contiguous to existing developing lands?
- ix) Have all environmental assessments required for the proposed accelerated work been completed and approved?
- x) Will the project require the expropriation of land, and if so, what are the implications of the proposed expropriation?
- xi) Are there any concerns related to the MSFA's impact on the City's debt ceiling?
- xii) Does the financial analysis completed by Staff demonstrate that the acceleration of the project will not have negative impacts on DC cash flow projections and have minimal impact on tax and water/sewer rates funding for non-growth share portions?
- xiii) Are the proposed project and the information contained in the application consistent with the MSFA principles, and parameters as stated herein?

## **5. MSFA REQUEST REVIEW PROCESS**

### **5.1 Initial Assessment**

Proponent submits development proposal through an Initial Proposal Report. If the IPR meeting identifies a DC-funded infrastructure project required for the development that has a construction date within the five year capital budget period, but with a construction timeline currently limiting the subject lands from being developed, the developer may submit an application for acceleration of the capital work.

### **5.2 Application**

Although the application is pre-mature, based on the timing of infrastructure in the GMIS, the proponent desires to proceed by providing the financing necessary to facilitate the construction of the needed infrastructure. This will entail entering into a form of MSFA with the City. The proponent completes an MSFA application and submits the application to Development Finance Staff for review. The application will require the proponent to demonstrate the need for the development and why it would be advantageous for the City to advance the construction timing of the needed infrastructure.

Staff review the completed application based on Council-endorsed MSFA policies and criteria and prepare a report for Council consideration (including an engineering and financial analysis of the implications of the proposal and its effects on the DC reserve funds). The report will be submitted to Corporate Services Committee and will provide a recommendation by the City Treasurer and City Engineer, regarding the City's review of the proponent's application for an MSFA.

### **5.3 Recommendation to Committee re: Application**

If the Staff review deems the application to be in the City's interest based on the criteria and financial analysis, the recommendation to Corporate Services Committee will be to approve the application in principle, with direction to Civic Administration to work out the Agreement details in accordance with the staff report, MSFA policy elements affecting agreements and any further direction arising from Council's consideration of the report.

If the Staff review deems the application to be not in the City's interest based on the criteria and financial analysis, the recommendation will be to refuse the application, with reasons for the recommended refusal. In either case, the results of the staff review will be placed before the Corporate Services Committee of Council for their deliberation.

### **5.4 Negotiation/Preparation of Agreement**

Pending a Council resolution that favours the pursuit of the MSFA agreement, Staff will initiate the preparation of the Agreement and a report for the Corporate Services Committee providing the Agreement for Council approval.

Upon Council approval of the Agreement, both parties affix signatures and the Agreement comes into force. Based on the terms of the executed Agreement construction of the developer front-end financed work can proceed.

### **5.5 Repayment under a Front-Ending Agreement**

The initiating proponent(s) provides funds to the City to pay for the full costs associated with the construction of an infrastructure project, in accordance with the executed Agreement. The money received is deposited in a dedicated account and is used to pay for the costs of constructing the project. Under the Act provisions, as lands within the benefiting area are developed, the owners of the developing land may become party to

the FEA and may be required to contribute funds to provide a proportional share with the proponent and previous developers, all as set out in the Agreement. Repayment of the funds provided to accelerate the work will be in accordance with MSFA policy and the terms of the FEA. Each year, the City Treasurer will report the amount of outstanding liabilities and credits associated with front-ending agreements in accordance with the Act provisions and regulations governing the annual report of the Treasurer. As outlined in the Act, Part III agreements are subject to notice requirements and are appealable.

## **Appendix 'E'**

### **Draft Typical Front Ending Agreements**

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#### **SINGLE FRONT-ENDING OWNER FRONT-ENDING AGREEMENT**

This AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

B E T W E E N:

\_\_\_\_\_  
(hereinafter referred to as the "Front-Ending Owner")

- and -

**THE CORPORATION OF THE CITY OF LONDON**  
(hereinafter referred to as the "City")

#### RECITALS:

- A. The Front-Ending Owner is the owner of land located in the City of London legally described in Schedule "A" (the "Front-Ending Owner's Lands").
- B. The Municipal Council of the City ("Council") at its meeting on June 23, 2008 adopted a Growth Management Implementation Strategy ("GMIS") for the purpose of aligning the schedule of the construction of infrastructure pursuant to the *Development Charges Act, 1997*, S.O. 1997, c. 27, as amended (the "DCA") with the pace of the development of land permitted for urban development as described in the City of London Official Plan (the "Urban Growth Area").
- C. Council at its meeting on November 21, 2011 resolved to:
- i update the GMIS on a yearly basis in order to ensure the orderly progression of development and construction of infrastructure projects required to accommodate development in the Urban Growth Area, to be funded through the "City Services Reserve Fund" ("CSRF");
  - ii consider the benefit of accelerating infrastructure projects in the current 5 year capital budget to be funded through the CSRF on an exception basis, subject to an evaluation process; and
  - iii implement a Municipal Service and Financing Agreement ("MSFA") with the development industry in order to facilitate the acceleration of such infrastructure, including front-ending agreement(s) pursuant to Part III of the DCA.
- D. Council at its meeting on \_\_\_\_\_ approved the MSFA Policy for inclusion as a schedule to the next development charges by-law.
- E. The City completed a study pursuant to the DCA on \_\_\_\_\_ that relates to the provision of services for which there will be an increased need as a result of development within the Urban Growth Area (the "DC Background Study").
- F. Council at its meeting on \_\_\_\_\_ enacted By-law No \_\_\_\_\_, being a by-law to establish development charges for the Urban Growth Area pursuant to the DCA (the "DC By-law").



- G. The DC Background Study includes the estimated costs of the capital projects necessary in order for development to proceed within the Urban Growth Area. The DC Background Study took into account the costs that are attributable to the portions of the Urban Growth Area that benefit from each of the following services, in conjunction with the costs of all necessary studies and engineering design related to these services including:
- i storm ponds;
  - ii trunk sewers; and
  - iii arterial roads.

which are collectively referred to as the “Front-Ended Works” and are individually referred to as the “Front-Ended Work”..

[NTD: Details of specific project being front-ended to be inserted here]

- H. The portions of the Urban Growth Area that benefit from each of the Front—Ended Works are depicted on Schedule “B” and referred to individually as a “Benefitting Area”.
- I. The Front-Ended Works are capital works to provide for services to which the DC By-law relates, and are required in order to develop the lands of the Front-Ending Owner as well as the balance of the land in each Benefitting Area. The distribution of the costs for each Front-Ended Work within the applicable Benefitting Area is set out in Schedule “C”.
- J. The DC Background Study, as reflected in the development charges that are payable pursuant to the DC By-law, accounted for the costs associated with all of the Front-Ended Works within each of the Benefitting Areas.
- K. The Front-Ended Works are capital projects that have been approved for acceleration as contemplated in Recital C(ii) and pursuant to the City’s MSFA Policy.
- L. The parties have agreed to enter into a front-ending agreement pursuant to Part III of the DCA (the “Agreement”) for the purpose of providing for the front-ended financing, construction and installation of the Front-Ended Works, including the immediate payment to the City of all front-ended costs required to complete the Front-Ended Works as temporary financing before any construction of the Front-Ended Works commences, on the basis that the City may, at its discretion, issue debentures for the Front-Ended Works as set out in this Agreement.
- M. The parties have agreed that the City will temporarily borrow the aforesaid front-ended costs from the Front-Ending Owner to meet expenditures made in connection with the Front-Ended Works and that such temporary borrowing may be ultimately financed in whole or in part by the issue of debentures as set out in this Agreement and in Part XIII of the MA.
- N. Council at its meeting on \_\_\_\_\_ enacted By-law No \_\_\_\_\_, being a by-law to authorize the execution of this Agreement.

NOW THEREFORE in consideration of the covenants expressed in this Agreement and other good and valuable consideration, the sufficiency of which is acknowledged, the parties covenant and agree, one with the other, as follows:

**ARTICLE 1  
INTERPRETATION**

1.1 In this Agreement, unless specifically stated or there is something in the subject matter or context inconsistent therewith, capitalized terms shall have the following meanings ascribed to them:

- (a) "Administrative Costs" shall have the meaning set out in Section 6.8
- (b) "Agreement" means this front-ending agreement entered into pursuant to Part III of the DCA.
- (c) "Approved Reimbursable Cost" shall have the meaning set out in Section 2.3.
- (d) "Benefitting Area" means the lands that will benefit from the Front-Ended Works as depicted in Schedule "B".
- (e) "CSRF" means the City Services Reserve Fund.
- (f) "Certificate of Completion" means a certificate issued by the City Engineer and/or the Engineer, as applicable, certifying the completion of each Front-Ended Works (or a portion thereof) and which, for greater clarity, will not be approved by the City Engineer until the milestones set out in Schedule "D" have been achieved to the satisfaction of the City Engineer for each Front-Ended Work.
- (g) "City" means The Corporation of the City of London.
- (h) "City Clerk", "City Engineer", "City Planner" and "City Treasurer" means the person(s) holding such positions with the City, and his/her designate(s).
- (i) "Council" means the Municipal Council for the City.
- (j) "DCA" means the *Development Charges Act*, 1997, S.O. 1997, c. 27. as amended.
- (k) "DC Background Study" means the study under the DCA described in Recital E.
- (l) "DC By-law" means By-law No. \_\_\_\_\_, being a by-law to establish development charges for the Urban Growth Area pursuant to the DCA, enacted by Council on \_\_\_\_\_.
- (m) "Debt Servicing Costs" has the meaning described in Section 2.5(f).
- (n) "Estimated Reimbursable Costs" shall have the meaning set out in Section 2.3.
- (o) "Front-Ended Works" means those capital projects that have been approved for acceleration pursuant to the City's MSFA Policy, as more particularly described in Schedule "C".
- (p) "Front-Ending Owner" means the owner who supplies the funds necessary to temporarily finance the construction of the Front-Ended Works that are required to enable development of the Front-Ending Owner's Lands and the balance of the Benefitting Areas, as applicable.
- (q) "Front-Ending Owners' Lands" shall have the meaning set out in Recital A.

- (r) “GMIS” means the City’s Growth Management Implementation Strategy, as originally adopted by Council on June 23, 2008 and which is updated on an annual basis.
  - (s) “Letter of Credit” means a letter of credit from a Canadian chartered bank or other lending institution that is acceptable, and in a form that is acceptable, to the City Solicitor and City Treasurer, provided that the City may, in its sole discretion, require that such letter of credit be from a Schedule “1” Canadian chartered bank.
  - (t) “MA” means the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended.
  - (u) “Non-Reimbursable Costs” has the meaning described in Section 2.5.
- “Owner Constructed Front-Ended Works” has the meaning described in Section 5.1.

**ARTICLE 2  
DEVELOPMENT CHARGES ACT**

- 2.1 This Agreement applies to the Front-Ending Owner’s Lands and all lands in the Benefitting Area.
- 2.2 With respect to Section 45(1)(1) of the DCA, a description of the work to be undertaken is set out in Schedule “C” to this Agreement, and each Benefitting Area is defined in Recital H and is depicted in Schedule “B” to this Agreement.
- 2.3 With respect to Section 45(1)(3) of the DCA, the method for determining the front-ended payment by the Front-Ending Owner for costs that are applicable to all landowners in each Benefitting Area shall be the actual costs of such construction and installation of the portions of the Front-Ended Works that are provided for in the DC By-law, as the City deems reasonable and appropriate. Such costs (collectively referred to before final approval by the City Treasurer as the “Estimated Reimbursable Costs” and following final approval by the City Treasurer as the “Approved Reimbursable Costs”) include the following:
  - (a) all payments on contracts entered into for such construction or installation as accepted by the City Engineer;
  - (b) the value of all land transferred to the City for nominal consideration by a Front-Ending Owner, where the subject land is required to be acquired by the City for the completion of the Front-Ended Works;
  - (c) all engineering and legal fees, including fees paid to consultants;
  - (d) the cost of studies and design engineering attributable to the Front-End Work as determined by the City Engineer; and
  - (d) the cost of establishing the readiness of the Front-End Works.
- 2.4 With respect to Section 45(1)(2) of the DCA, the Front-Ending Owner will bear 100% of the front-ended costs pursuant to this Agreement.
- 2.5 With respect to Section 45(1)(4) of the DCA, the non-reimbursable share of the costs of the Front-Ended Works (collectively referred to as the “Non- Reimbursable Costs”) includes the following:
  - (a) any indirect overhead expense of the Front-Ending Owner;

- (b) any financing cost of the Front-Ending Owner;
  - (c) the cost of any Letter of Credit required by this Agreement;
  - (d) any portion of the cost deemed to be a "local service" as defined in Section 2(5) of the DCA;
  - (e) Administrative Costs; and
  - (f) any debt servicing costs incurred by the City for its temporary borrowing pursuant to Sections 6.1(a) and 6.1(b) in respect of the Estimated Reimbursable Costs or Approved Reimbursable Costs for the Front-Ended Works, which temporary borrowing is pursuant to Section 405 of the MA (the "Debt Servicing Costs").
- 2.6 With respect to Section 45(1)(5) of the DCA, the way in which amounts collected from other landowners in the Benefitting Area to reimburse the Front-Ending Owner will be allocated is described in Section 6.4.
- 2.7 The parties agree that none of the Front-Ended Works for reimbursement are local services as defined in Section 2(5) of the DCA.
- 2.8 The parties acknowledge that the Front-Ended Works are capital works that have been approved for acceleration as described in Recital C(ii) pursuant to the Council approved MSFA Policy and constitute capital works for purposes of the MA. The Front-Ending Owner acknowledges that this Agreement is part of the development charge scheme for the Urban Growth Area and it has full knowledge of the development charge by-law(s) applicable to the Benefitting Area enacted by Council. The Front-Ending Owner agrees not to appeal the DC By-law or otherwise contest such by-law before the Ontario Municipal Board or otherwise.
- 2.9 Where the Front-Ended Works benefit the existing community and where, in the DC Background Study, a share of the Front-Ended Works is attributed to non-growth, the Front-Ending Owner shall include the costs associated with the non-growth share in its front-ended payment to the City pursuant to this Agreement. The non-growth share accelerated in this Agreement will be repaid to the Front-Ending Owner on such terms and conditions as agreed to by the parties hereto.

The amount of the non-growth share shall be calculated using the actual cost of the Front-Ended Works approved by the City Treasurer and the non-growth percentage used in the DC Background Study. Where any Front-Ended Work is phased and only a component of the Front-Ended Works is front-ended the non-growth share shall be determined by reference to the shares used in the capital budget approved by Council in relation to each Front-End Work.

### **ARTICLE 3 CONSTRUCTION OF FRONT-ENDED WORKS**

- 3.1 Despite the front-ended payments by the Front-Ending Owner pursuant to this Agreement, the City shall:
- (a) own the Front-Ended Works upon completion of each Front-Ended Work,
  - (b) be responsible for the design, engineering, tender, construction, installation, operation and maintenance of the Front- Ended Works; and
  - (c) be entitled to impose, from time to time and at any time, such fees and charges for the collection, production, treatment, storage, supply, transmission and distribution of water and/or wastewater through the City's water and/or wastewater system as the City considers

necessary or desirable pursuant to Part XII (Fees and Charges) of the MA or any other user fee or charge permitted by law.

3.2 The City shall construct and install the Front-Ended Works provided that the Front-Ending Owner has strictly complied with the requirements of this Agreement. The City covenants and agrees to call tenders and commence construction and installation of the applicable portion or the whole of the Front-Ended Works within \_\_\_\_ days after the receipt of all of the front-ended payments and security described in Section 6.1.

3.3 The City shall draw upon the payment and security provided by the Front-Ending Owner as described in Section 5.1 in its discretion to pay all costs, as construction of the Front-Ended Works progresses. If the amount of the security is at any time determined to be insufficient to pay for the total cost of the Front-Ended Works, the Front-Ending Owner shall immediately pay to the City such deficiency or deliver an additional Letter of Credit upon demand therefor and the City may cease construction of, or prevent connection to the Front-Ended Works until such deficiency is paid, failing which the Front-Ending Owner shall be in default of this Agreement as described in Article 10.

The City will return any unused security when in excess of the amount required to complete the Front-Ended Works and to maintain same for a minimum of at the discretion of the City Engineer.

3.4 Whenever and to the extent that the City shall be unable to fulfil, or shall be delayed or restricted in fulfilling its obligation to construct the Front-Ended Works, for any cause beyond its control, the City shall be relieved from its obligation during the period it is unable to fulfil or is delayed or restricted in fulfilling its obligations. For greater clarity, the Front-Ending Owner shall at all times be liable for the funding of all of its obligations pursuant to this Agreement, including, without limitation, the funding of debt servicing costs as described in Section 2.5(f) incurred by the City, if any, in respect of the temporary borrowing described in Sections 3.3 and 5.1 during such period.

#### **ARTICLE 4 FRONT-ENDING OWNER-CONSTRUCTED SERVICES**

EDITORS NOTE: In some instances as deemed appropriate by the City Engineer works may be constructed by the front-ending owner. Specific conditions for these works will be crafted based on the nature of the works and shall align with the procedures governing construction of infrastructure undertaken by developers as outlined in the *Development Charges By-law*.

#### **ARTICLE 5 FRONT-ENDED PAYMENTS**

5.1 Prior to the construction of any Front-Ended Works pursuant to Article 4, the Front-Ending Owner shall deliver to the City as temporary financing the following amounts as confirmed by the City Treasurer:

- (a) a certified cheque equal to \_\_\_\_\_, being \_\_\_\_\_ % of the up-to-date Estimated Reimbursable Costs;
- (b) a Letter of Credit in the amount of \_\_\_\_\_ plus costs included in the works to be constructed, as described in Section 2.5(d), and Administrative Costs, being the balance of the Estimated Reimbursable Costs; and

- (c) a Letter of Credit in the amount of \_\_\_\_\_, being the estimated Debt Servicing Costs for the temporary borrowing described in subsections (a) and (b).

The Letter of Credit will be held by the City as security for the obligations of the Front-Ending Owner in accordance with this Agreement.

- 5.2 The City will provide financial reporting to the Front-Ending Owner annually and will incorporate a record of all cash payments and Letter of Credit draw-downs, cash payments received and expenditures for each Front-Ended Work. The City will prepare a report on an annual basis summarizing all activity in respect of each of the Front-Ended Works, and, starting when recoveries commence pursuant to Article 6, the status of all reimbursements to the Front-Ending Owner.

## **ARTICLE 6 FINANCIAL IMPLEMENTATION AND RECOVERIES**

- 6.1 Subject to Section 6.6, the Front-Ending Owner shall be entitled to recover the Reimbursable Costs or any portion thereof following the later of the following two dates:
  - (a) [NTD: insert date that the Front-Ended Works are forecast to be constructed in the GMIS] and;
  - (b) the date that a Certificate of Completion for the Front-Ended Works (or applicable portion thereof) is approved by the City Engineer.
- 6.2 The Front-Ending Owner shall ultimately be reimbursed for the Approved Reimbursable Costs. Repayments to the Front-Ending Owner shall be administered by the City in accordance with Section 35 of the DCA and otherwise in accordance with the DCA and regulations published pursuant to the DCA.
- 6.3 Notwithstanding the reimbursement of the Approved Reimbursable Costs hereunder, the Front-Ending Owner shall pay or cause to be paid all of the development charges of the City in the amount and at the time specified in the DC By-law or any successor development charge by-law applicable to the development of the Front-Ending Owner's Lands.
- 6.4 It is acknowledged that all other owners of land in the Benefitting Area who are not the Front-Ending Owner shall not be required to become a party to this Agreement nor participate in the front-ending of the Front-Ended Works as contemplated in this Agreement. Therefore, reimbursements by such other landowners in the Benefitting Area to the Front-Ending Owner as contemplated in Section 44(1)(c) of the DCA shall be facilitated through payment of development charges by such other landowners in the Benefitting Area as a condition to any development approval referred to in Section 2(2) of the DCA.
- 6.5 The City's financial accounting will include a separate record for funds held in the CSRF or other account for each of the Front-Ended Works.
- 6.6 In order to ensure the adequacy of funds in the CSRF or other account at any given time, the City may, in its sole discretion, replace the temporary borrowing funded by the Front-Ending Owner as described in Section 2.3, 2.9, 5.1(a) and 5.1(b), with debenture financing in a principal amount that does not exceed over a maximum term of \_\_\_\_\_ in accordance with Part XIII of the MA, and/or with other available funds of the City.
- 6.7 The Front-Ending Owner shall be entitled to apply for a recovery of the funds advanced under this Agreement to the extent and limit of the Approved Reimbursable Costs or a portion thereof one (1) business day following the date the funds are available to the City pursuant to Section 6.6 by making

an application to the City Treasurer for the recovery alleged to be owing, being the amount of the Approved Reimbursable Costs without interest. Upon receipt of such application, the City Treasurer shall review the request and facilitate the recovery payable to the Front-Ending Owner (pursuant to the MSFA Policy in the DC By-law or any other policy established by Council to administer the CSRF that is in place on the date of this Agreement), as follows:

- (a) Immediately upon such time as a payment to the Front-Ending Owner is available, the City shall:
    - (i) issue notice to the Front-Ending Owner that the reimbursement is available to be paid out; and
    - (ii) request that the Front-Ending Owner provide direction to the
    - (iii) City as to whom the money is to be paid,
  - (b) Upon receipt of a direction in a form satisfactory to the City Solicitor from the Front-Ending Owner, the City shall pay to the person or persons named in the direction the money as set out in the direction; and
  - (c) If, within \_\_\_\_\_ days of issuing the notice under subsection (a)(i), the City has not received a direction from a Front-Ending Owner, the municipality may pay the money owing to that Front-Ending Owner into the Ontario Superior Court of Justice and give notice to such Front-Ending Owner that the money has been paid into court and the Front-Ending Owner must apply to the court for the release of the money. It is understood and agreed that if the Front-Ending Owner has not applied to the court for the release of the money within \_\_\_\_\_ months from the date of the mailing of the notice, the City may apply for release of the money to the City and place it in its general account for its own use absolutely.
- 6.8 The parties confirm that the reasonable cost to the City in processing the collection of the front-ended payment by the Front-Ending Owner and all related accounting and administrative activities while this Agreement remains in force is % of the Approved Reimbursable Costs (the "Administrative Costs").
- 6.9 The City shall reimburse the Front-Ending Owner and/or reduce the Front-Ending Owner's Letter of Credit, as appropriate, if the actual costs that are incurred by the City in respect of the construction of the Front-Ended Works (or any portion thereof) are lower than the estimated cost paid by the Front-Ending Owner to the City for such construction. The reimbursement or reduction of Letter of Credit shall be facilitated by the City Treasurer following the date that a Certificate of Completion for the Front-Ended Works (or applicable portion thereof) is approved by the City Engineer.

## **ARTICLE 7 RIGHTS OF WAY**

- 7.1 All services constructed under this Agreement shall be located in City owned lands or easements approved by the City Engineer and granted to the City, free and clear of all encumbrances, unless otherwise provided.
- 7.2 No construction under this Agreement shall commence until the City Solicitor is satisfied that all necessary rights in land required by the City Engineer have been conveyed to the City or agreements to convey have been executed.
- 7.3 Upon request from the Front-Ending Owner who desires to construct Front-Ended Works through lands approved by the \_\_\_\_\_, but owned by others, the City

will assist, at the sole cost of the Front-Ending Owner, in obtaining rights to construct and maintain services on such lands. It is understood and agreed that the City will not commence expropriation proceedings for any such lands until the Front-Ending Owner has complied with Section 3.2, and that the Front-Ending Owner shall be responsible for all costs of such expropriation process inclusive of appraisal consulting work, legal costs, and land compensation paid pursuant to the *Expropriations Act*, R.S.O. 1990, c. E. 26, as amended. Council may, by by-law in its sole discretion, refuse to expropriate.

## **ARTICLE 8 COMMENCEMENT AND TERMINATION**

- 8.1 Within 20 days from the date of the execution of this Agreement, the City shall give notice of this Agreement in accordance with the requirements of Section 46 of the DCA by publishing a notice in a newspaper having a general circulation in the City explaining the nature and purpose of this Agreement and indicating that this Agreement can be viewed in the office of the City Clerk during normal office hours, and with an indication that written objections to this Agreement may be filed with the City clerk within 40 days from the date of the giving of the notice of this Agreement. This Agreement shall be effective as of the date that the appeal period ends pursuant to the DCA with no appeals having been filed or the date that the Ontario Municipal Board approves this Agreement.
- 8.2 This Agreement shall remain in force until the Front-Ending Owner is reimbursed for the entire amount of the Approved Owner Costs, inclusive of any indexing entitlement, and thereafter this Agreement shall terminate (except that the release described in Section 10.4 and the indemnity contained in Section 10.5, which shall remain in full force and effect) and no further construction shall be carried out in accordance with its terms.

## **ARTICLE 9 DEFAULT**

- 9.1 Where the Front-Ending Owner has failed to comply with an obligation under this Agreement, the City shall give notice to the Front-Ending Owner in writing specifying the nature of the default, the actions required to cure such default, and the time for curing such default provided the time for curing the default shall not be less than thirty (30) days. If the Front-Ending Owner does not advance the amount owing, the outstanding payment shall bear a rate of interest per annum that is five percent (5%) over the prime commercial lending rate that the Canadian Imperial Bank of Commerce charges to its best commercial customers in Toronto from time to time, compounded semi-annually.
- 9.2 If the Front-Ending Owner has not cured the default in the manner and within the time specified in the notice, then:
- (a) if the default occurs before any development approval referred to in Section 2(2) of the DCA in respect of the defaulting Front-Ending Owner's Lands, then the City shall be entitled to withhold such approval until such time as the default has been cured;
  - (b) if the default occurs after any development approval referred to in Section 2(2) of the DCA in respect of the defaulting Front-Ending Owner's Lands, then the City shall be entitled to withhold the lifting of any holding provision in a zoning by-law applicable to the plan, until the default has been cured; and
  - (c) the City shall be entitled to seek any further remedy which may be available to it at law in order to recover the monetary amount claimed from the



defaulting Front-Ending Owner, in addition to its legal costs on a solicitor and his own client basis.

## **ARTICLE 10 GENERAL**

- 10.1 The parties agree that the above-noted Recitals are true and accurate.
- 10.2 It is acknowledged and agreed that this Agreement is entered into by the City to facilitate the financing of the Front-Ended Works by the Front-Ending Owner in the Benefitting Area and that said owner will be responsible for all of the costs thereof. It is further agreed that the City will not be required to expend money or commit to expend money as a result of entering into this Agreement except in accordance with the DCA.
- 10.3 Regardless of whether the actual costs of the Front-Ended Works exceeds the cost included in the Development Charge By-law, no credit or claim for refund for such excess against the payment of development charges shall be made by any Front-Ending Owner or any person claiming through them. In addition, the excess cost shall not be included in the Approved Reimbursable Costs.
- 10.4 The Front-Ending Owner hereby releases and forever discharges the City from all claims for damages arising out of the City entering into this Agreement and any actions taken by the City pursuant to this Agreement. In addition, the Front-Ending Owner agrees that the City shall not be responsible for any errors or mistakes made in the collection or disbursement of any funds under this Agreement.
- 10.5 The Front-Ending Owner covenants and agrees to indemnify and save harmless and defend the City from all actions, causes of action, suits, claims and demands whatsoever which may arise directly or indirectly, by reason of advancing the timing and/or the construction of the Front-Ended Works, or by reason of the maintenance or lack of maintenance of such services by the Front-ending Owner pursuant to the terms of this Agreement or by reason of any defect in workmanship or material, until the assumption of the Front- Ended Works.
- 10.6 If any notice is required to be given pursuant to this Agreement, such notice shall be mailed, delivered or transmitted by email or facsimile to the address or number set forth in Schedule "E", or, in the case of notice to the Front- Ending Owner, such other address of which the Front-Ending Owner has notified the City Clerk, in writing, and any such notice mailed, delivered transmitted by email or facsimile shall be deemed good and sufficient notice under the terms of this Agreement.
- 10.7 The Front-Ending Owner agrees that this Agreement and the schedules, or any part or parts thereof, shall be registered upon the title of the Front-Ending Owner's Lands. Such registration shall be at the request of the City. Subject to the provisions of the *Registry Act*, R.S.O. 1990, c. R.20, and the *Land Titles Act*, R.S.O. 1990, c. L.5, the City may enforce the provisions of this Agreement against any and all owners of land in the Benefitting Area as permitted in the DCA. The Front-Ending Owner shall pay to the City all costs relating to the registration of this Agreement on title, as well as any further costs incurred by the City, relating to the registration of any other documents pertaining to this Agreement.
- 10.8 The Front-Ending Owner shall not call into question directly or indirectly in any proceeding whatsoever, in law or in equity before any court or before any administrative or other tribunal, the right of the City to enter into this Agreement and to enforce each and every term, covenant and condition thereof. The law of contract applies to this Agreement and the City shall be entitled to all remedies arising therefrom. This provision may be pleaded by the City in any action or proceeding as a complete and conclusive estoppel of any denial of such right.

- 10.9 The failure of any party to this Agreement to enforce at any time any of the provisions of this Agreement or any of its rights in respect to this Agreement or to insist upon strict adherence to any term of this Agreement shall not be considered to be a waiver of such provision, right or term or in any way to affect the validity of this Agreement or deprive the applicable party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. The exercise of any right under this Agreement shall not preclude or prejudice such party from exercising any other right it may have under this Agreement, irrespective of any previous action or proceeding taken by it pursuant to this Agreement. Any waiver by any party of the performance of any of the provisions of this Agreement shall be effective only if it is in writing and signed by both the Front-Ending Owner and the City Treasurer.
- 10.10 No remedy herein conferred upon or reserved in favour of any party shall exclude any other remedy herein or existing at law or in equity or by statute, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing.
- 10.11 The parties agree to execute such other instruments as may from time to time be necessary or desirable to give effect to the provisions of this Agreement.
- 10.12 Time shall be of the essence of this Agreement and each of its provisions.
- 10.13 This Agreement sets forth the entire agreement between the parties and supersedes all prior understandings and communication among the parties or any of them, oral or written, with respect to the subject-matter of this Agreement. Each party acknowledges and represents that this Agreement is entered into after full investigation and that no party is relying upon any statement or representation made by any other party which is not embodied in this Agreement. Each party acknowledges that it shall have no right to rely upon any amendment, promise, modification, statement or representation made or occurring subsequent to the execution of this Agreement unless the same is in writing and executed by each of the parties.
- 10.14 This Agreement may be executed in any number of counterparts and each such counterpart shall for all purposes constitute one agreement, binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.
- 10.15 The parties agree that:
- (a) the part numbers and headings, subheadings and section, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
  - (b) gender as may be required by the context;
  - (c) all references to any statute, regulation or by-law or any provision thereof includes such statute, regulation or by-law or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute, regulation or by-law thereto;
  - (d) all obligations herein contained, although not expressed to be covenants, shall be deemed to be covenants;
  - (e) whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" do not precede such list or reference; and

- (f) that all covenants and conditions contained in this Agreement shall be severable, and that should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of this Agreement shall remain valid and not terminate thereby.

10.16 This Agreement shall apply to and be binding on the parties hereto and its successors, administrators, executors and assigns and each of them.

## **ARTICLE 11 SCHEDULES**

11.1 The following schedules are attached and form an integral part of this Agreement:

Schedule "A"	Front-Ending Owner's Lands
Schedule "B"	Benefitting Area of Each Front-Ended Work
Schedule "C"	Front-Ended Works – Description and Cost Distribution
Schedule "D"	Front-Ended Works Completion Milestones
Schedule "E"	Notice Particulars

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

**IN WITNESS WHEREOF** the parties have executed this agreement as of the date shown on the title to this Agreement.

[FRONT-ENDING OWNER]

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

We have the authority to bind the Corporation.

THE CORPORATION OF THE CITY OF LONDON

Per: \_\_\_\_\_

Name:

Title: **Mayor**

Per: \_\_\_\_\_

Name:

Title: **City Clerk**

We have the authority to bind the Corporation.

**Appendix 'F'**  
**Stakeholder Endorsement Letters**

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