

Bill No. 364
By-law No. A.- _____

A By-law to authorize an Agreement between The Corporation of the City of London and Her Majesty the Queen in Right of Ontario represented by the Minister of Transportation (MTO) for the relocation of watermain around the Westminster Road Bridge; and to authorize the Mayor and City Clerk to execute the Agreement.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25 as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS it is deemed expedient for the Corporation of the City of London (the "City") to enter into an Agreement with Her Majesty the Queen in Right of Ontario represented by the Minister of Transportation (MTO) for the relocation of watermain around the Westminster Road Bridge. (the "Agreement");

AND WHEREAS it is appropriate to authorize the Mayor and City Clerk to execute the Agreement on behalf of the City;

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

1. The draft Agreement attached as Schedule "A" to this By-law, being an Agreement between the Corporation of the City of London and Her Majesty the Queen in Right of Ontario represented by the Minister of Transportation (MTO) for the relocation of watermain around the Westminster Road Bridge is hereby AUTHORIZED AND APPROVED substantially in the form attached and as approved by the City Solicitor.
2. The Mayor and City Clerk are authorized to execute the Agreement authorized and approved under section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on August 27, 2013

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First reading – August 27, 2013
Second reading – August 27, 2013
Third reading – August 27, 2013

Schedule "A" – Draft Watermain Realignment Cost Sharing Agreement with MTO

Ministry of Transportation

Engineering Office
Planning and Design Section
West Region

659 Exeter Road
London, Ontario N6E 1L3
Telephone: (519) 873-4550
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Ministère des Transports

Bureau du génie
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July 10, 2013

John Lucas
Director of Water and Wastewater and Treatment
Water Engineering Division
The Corporation of the City of London
300 Dufferin Avenue
P.O. Box 5035
London, Ontario
N6A 4L9

Dear Mr. Lucas,

RE: Letter of Agreement between **Her Majesty the Queen in right of the Province of Ontario, represented by the Minister of Transportation for the Province of Ontario** (the "Ministry") and **The Corporation of the City of London** (the "City") for the Relocation of the City Watermain under Westminster Drive (the "Watermain") at Highway 401

Whereas:

- A. Both the City and the Ministry are desirous to have the Watermain rehabilitated;
- B. The City is considering two options for the replacement of the Watermain:
 - Option A (replace the Watermain "in kind" in the part of the bridge embankment owned by the City); or
 - Option B (relocate the Watermain within the City's Westminster Drive right of way along the Hydro Service Road);
- C. The Ministry would typically have cost-shared on the basis of Option A;
- D. The City's preference is Option B; and
- E. Given the equality of estimated costs the Ministry is prepared to cost-share on the basis of actual costs for Option B.

This signed Letter of Agreement (this "Agreement") will constitute mutual agreement between the Ministry and the City on the following:

1. The City agrees to carry out the engineering design and construction for the relocation of the Watermain from crossing under Westminster Drive to align within the City's Westminster Drive right of way along the Hydro Service Road, in accordance with "Option B" as described in Appendix A (as denoted by the solid yellow line).
2. The City agrees to have the work specified in Paragraph 1 (the "Work") completed prior to May 30, 2014.

3. The Ministry agrees to compensate the City for fifty percent (50%) of actual costs for labour and labour-saving devices directly relating to the Work, but not including any such costs for the design. In the event that the Ministry requests any design changes beyond those identified to date, then the Ministry will pay the actual cost of such additional work as calculated by the City acting reasonably.

In the event the City identifies any design changes or the City identifies the need for any change orders during construction, the City agrees to provide these changes to the Ministry for review.

4. The City agrees to provide the Ministry with a copy of the as-constructed drawings within a reasonable time following completion of the Work.
5. The Ministry agrees to provide the City with a cheque for each progress payment made by the City in respect of the Work, on the basis of Paragraph 4. The Ministry shall pay the amount set out in the invoice by a cheque made payable to "The Corporation of the City of London" and is to be delivered to the City within 90 days of receipt of a satisfactory invoice from the City.
6. The Ministry may upon reasonable notice audit the records of the City with respect to the sums invoiced to the Ministry under this Agreement, during the term of this Agreement, or within two years of the termination of this Agreement.
7. The City acknowledges and agrees that it is not an agent or contractor for the Ministry, and shall not represent itself and its activities under this Agreement as an agent or contractor of the Ministry.
8. The City shall save harmless and indemnify the Ministry from all claims, demands, proceedings, obligations, costs that are inclusive of solicitor and client costs, and interest, all howsoever styled, that the Ministry may suffer or incur because of the effecting or not effecting by the City of any term or matter of this Agreement.
9. The City warrants that it has taken all necessary steps, complied with all laws and obtained all approvals legally required to give it the authority to enter into this Agreement.
10. The term of this Agreement is from the date of execution of this Agreement by both parties to the date that the City receives payment in full for all sums owed by the Ministry to the City under this Agreement.
11. The address of the City under this Agreement for service, unless otherwise advised, is:

The Corporation of the City of London
Water Engineering Division
300 Dufferin Avenue
P.O. Box 5035
London, Ontario N6A 4L9