

Bill No. 2
2014

By-law No. A.-_____

A by-law to approve and authorize the execution of a Non-Disclosure Agreement with respect to obtaining and utilizing address-level electricity use data for the purposes of creating and updating energy maps and related analytical tools between London Hydro. and The Corporation of the City of London.

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*, S.O. 2001, c. 25, as amended, 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 appropriate for The Corporation of the City of London (the "City") to enter into a Non-Disclosure Agreement with London Hydro with respect to obtaining and utilizing address-level electricity use data for the purposes of creating and updating energy maps and related analytical tools;

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 Non-Disclosure Agreement with London Hydro with respect to obtaining and utilizing address-level electricity use data for the purposes of creating and updating energy maps and related analytical tools, attached as Appendix "B" to this By-law, is hereby approved.
2. The Mayor and City Clerk are authorized to execute the Agreement 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 December 3, 2013

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First reading – December 3, 2013
Second reading – December 3, 2013
Third reading – December 3, 2013

APPENDIX B

NON-DISCLOSURE AGREEMENT

ENERGY MAPPING PROJECT

THIS CONFIDENTIALITY AGREEMENT (this “**Agreement**”) is made as of the January 1, 2014 (the “**Effective Date**”) by and between London Hydro (“LH”) and The Corporation of the City of London (“CoL”). LH and CoL are hereinafter referred to individually as a “**Party**” and collectively, the “**Parties**”.

RECITALS

1. The Parties intend to enter discussions and share information regarding an energy mapping project for the City of London, hereinafter referred to as the “**Business Purpose**”.
2. The Parties recognize that in order to implement the Business Purpose it may be necessary for a Party to disclose certain Confidential Information (as hereinafter defined).
3. The Parties desire to provide for confidential and proprietary treatment of the Confidential Information so disclosed.

NOW THEREFORE, in consideration of these premises and for other good and valuable consideration hereby acknowledged and deemed by each of the Parties to be sufficient, the Parties agree as follows:

1. Definition of Confidential Information

- (i) “**Confidential Information**” means any information provided pursuant to this Agreement by one Party or its Representatives (defined below) to the other Party or its Representatives, whether provided in writing or orally, stored on paper, disk, tape, or other electronic storage device. Without limiting the generality of the foregoing, “**Confidential Information**” shall include:
 - (a) the purpose, nature and provisions of this Agreement;
 - (b) any data, know-how, drawings, reports, specifications, processes, procedures, condition of assets, operating procedures and modes, energy sales information, system integration data, business plans, formulae, methods, financial statements, results of operations, information as to properties, assets, customers, suppliers, cost data, liabilities, future prospects or technical data of either Party or its Representatives;
 - (c) all notes, analyses, compilations, studies or other documents created by either Party or by any of its Representatives which contain or otherwise reflect the information in paragraph (b) above;
 - (d) information regarding the Business Purpose;
 - (e) the fact that information has been disclosed or made available by either Party or its Representatives to the other Party or its Representatives; and
 - (f) the proposed terms of the Business Purpose and the status of any discussions or negotiations under this Agreement.
- (ii) “**Representatives**” means as to any person, such person, its affiliates and their directors, officers, employees, shareholders, partners, agents, representatives, advisers, consultants and controlling persons.

2. Exceptions

Confidential Information does not include information which the receiving Party can clearly demonstrate falls within any of the following categories:

- (a) information that on or after the Effective Date of this Agreement is generally known to the public through no act, omission or breach of this Agreement by the Party receiving the Confidential Information;
- (b) information that, as of the time of disclosure, was already known to and in the lawful possession of the receiving Party, as evidenced by written records; and
- (c) information that is independently developed by the Party receiving the Confidential Information as evidenced by written or electronic records.

The onus of establishing the existence of any of the foregoing exceptions shall be on the Party wishing to rely on any such exception.

3. Permitted Use and Disclosure of Confidential Information

The Parties agree to treat confidentially and not to disclose or use, and to instruct their respective Representatives to treat confidentially, and not to disclose or use, except as provided herein, any Confidential Information of the other Party. The Parties shall be subject to the following requirements with respect to the disclosure and receipt of Confidential Information:

- (i) Each Party may disclose any of the Confidential Information of the other Party only to those of its Representatives who are determined by such Party, acting prudently, to have a definite need to know such Confidential Information for the purposes of implementing the Business Purpose (it being understood that each Party shall inform its Representatives of the confidential nature of such information and direct its Representatives, who shall each agree, to treat such information confidentially and solely for this purposes set out in this Agreement);
- (ii) Each Party will be responsible for any breach of this Agreement by it, or its Representatives, or by the agents, employees, representatives, consultants or advisers of any party associated or affiliated with it or its Representatives. Each Party agrees to take all reasonable measures, including but not limited to court proceedings, at its sole expense, to restrain its Representatives from unauthorized disclosure or use of the Confidential Information of the other Party;
- (iii) Neither Party shall directly or indirectly use any Confidential Information of the other Party for any purpose other than to implement the Business Purpose; and
- (iv) In the event that one of the Parties is required by law to disclose any Confidential Information of the other Party to a court, government department or agency or regulatory body, or any other person, then such Party may so disclose, provided that it shall, to the extent permitted by law, first inform the other Party of the request or requirement for disclosure to allow an opportunity for the other Party to apply for an order to prohibit or restrict such disclosure.

4. No Further Rights

Each Party maintains the exclusive ownership of all right, title and interest in the Confidential Information which it discloses to the other Party, unless such disclosing Party declares otherwise in writing. Nothing contained in this Agreement shall be construed as granting or conferring any right or interest, by license or otherwise, to the receiving Party in the Confidential Information disclosed to such receiving Party. Confidential Information furnished in tangible form shall not be duplicated or reproduced by either Party, except to the extent necessary for the purposes of implementing the Business Purpose.

5. Return of Confidential Information

At any time, the disclosing Party may request the return of all its Confidential Information and all copies thereof, received by the other Party from such disclosing Party, and

the receiving Party agrees to promptly (and in any event not later than ten (10) business days) comply with such requests, or, at the disclosing Party's option, the receiving Party agrees to promptly (and in any event not later than ten (10) business days) destroy or have destroyed all Confidential Information received in written or tangible form, including copies, or reproductions or other material containing such Confidential Information. Compliance with the foregoing shall be certified to the disclosing Party in writing, upon request, by an authorized representative of the receiving Party, provided that, notwithstanding the return or destruction of Confidential Information pursuant hereto, all such Confidential Information (including oral information) shall remain subject to this Agreement and the Parties to this Agreement will continue to be bound by the terms of this Agreement as provided herein.

Notwithstanding the foregoing, the receiving Party may retain one copy of all Confidential Information; provided that any Confidential Information that is so retained shall be used by the receiving Party solely for the purpose of responding to and defending claims, demands, suits or other legal actions or proceedings made against the receiving Party in connection with its use of the Confidential Information.

6. Term and Continuance

Each Party's obligations under this Agreement shall survive for a period of ten (10) years from the date hereof.

7. Absence of Representations and Warranties

Each Party acknowledges and agrees that neither Party or its Representatives makes any warranty or representation, express or implied, as to the suitability, accuracy or completeness of any Confidential Information, and nothing contained herein shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information of the other Party or its Representatives.

8. Equitable Remedies

Each Party acknowledges and agrees that money damages would not be a sufficient remedy for any breach of this Agreement by a Party or its Representatives, and each Party shall be entitled to specific performance and injunctive relief as remedies for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement by either Party or its Representatives but shall be in addition to all other remedies available at law or in equity.

9. Limitation of Liability

Each Party expressly agrees that in no event shall either Party or its Representatives be liable for indirect, special, incidental, contingent or consequential damages (including for loss or damage to data or any other information, loss of goodwill, loss of actual or anticipated revenue or profits, or any other economic loss whatsoever), or any punitive, exemplary or aggravated damages. This provision shall survive the expiration or termination of this Agreement.

10. Entire Agreement

This Agreement represents the entire Agreement among all Parties with respect to the subject matter set forth herein, and may only be amended or modified by mutual agreement in writing of the Parties.

11. No Waiver

No failure or delay by either Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege under this Agreement.

12. Assignment

This Agreement shall not be assigned by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld. This Agreement shall be

binding upon and shall ensure to the benefit of the Parties and their respective successors and permitted assigns.

13. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of Ontario and the federal laws of Canada applicable therein and each Party hereby irrevocably and unconditionally attorns to the exclusive jurisdiction of the courts of Ontario and all courts competent to hear appeals therefrom.

14. Severability

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such provision and such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

15. Counterparts

This Agreement may be signed in counterparts and delivered by facsimile, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and effective as of the date first recited above.

LONDON HYDRO

By: _____

Name: Vinay Sharma

Title: Chief Executive Officer

**THE CORPORATION OF THE CITY OF
LONDON**

By: _____

Name: Joe Fontana

Title: Mayor

By: _____

Name: Catherine Saunders

Title: City Clerk