

Bill No. 182
2017

By-law No. A.- _____

A by-law to authorize and approve a Confidentiality Agreement between the Association of Municipalities of Ontario and The Corporation of the City of London and to authorize the Mayor and the City Clerk to execute the Confidentiality 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*, 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 Confidentiality Agreement with the Association of Municipalities of Ontario ("AMO") that is designed to protect, as much as possible, the release of information shared in the Waste Technical Working Group meetings from disclosure under a freedom of information request made to a municipality under the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA), attached as Schedule "A" to the by-law;

AND WHEREAS it is deemed appropriate to authorize the Mayor and the City Clerk to execute the Confidentiality Agreement on behalf of the City and naming the Managing Director, Environment, Fleet & Solid Waste, Environmental & Engineering Services, as the designated Receiving Party;

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

1. The Confidentiality Agreement between The Corporation of the City of London and the Association of Municipalities of Ontario, attached as Schedule "A" to this by-law, is hereby authorized and approved.
2. The Mayor and the City Clerk are hereby authorized to execute the Confidentiality Agreement authorized and approved under section 1 of this by-law.
3. The Managing Director, Environment, Fleet & Solid Waste, Environmental & Engineering Services is designated as the Receiving part to the agreement authorized and approved under section 1 of this by-law.
4. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on May 2, 2017.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading – May 2, 2017
Second Reading – May 2, 2017
Third Reading – May 2, 2017

Schedule "A"

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made and entered into as of the date last signed below (the "Effective Date"), by and between

ASSOCIATION OF MUNICIPALITIES OF ONTARIO
(hereinafter referred to as the "AMO")

and

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(hereinafter referred to as "Receiving Party")

IN CONSIDERATION OF, (i) the Receiving Party understands that AMO may disclose or be provided access to the Receiving Party sensitive and confidential information relating to the AMO'S trade secrets or scientific, technical, commercial, financial or labour relations information, and other proprietary and confidential information relating to resource recovery and the transition to the new requirements under the *Resource Recovery and Circular Economy Act, 2016* (collectively referred to as "**Confidential Information**") and (ii) other good and valuable consideration (the receipt and sufficiency of which are hereby irrevocably acknowledged), the undersigned agrees as follows:

NOW, THEREFORE, the parties agree as follows:

1. The undersigned acknowledges that AMO is not obligated to disclose any such information to it. The undersigned agrees to treat all such information confidentially, whether furnished orally or in writing, and whether or not specifically identified as "confidential" or "proprietary", and whether obtained before or after the date of this Agreement. Such information shall include all information, in whatever form or medium (and includes any copies of such information), concerning the AMO and its business and affairs, including, without limitation, trade secrets, proprietary information, confidential information, intellectual property, technical expertise, and scientific, technical, commercial, financial or labour relations information as such information specifically relates to the Confidential Information.
2. The Receiving Party shall use the Confidential Information only for the purpose of achieving the stated mandate of the project or discussion between the parties as it relates to resource recovery and transition to the new requirements under the *Resource Recovery and Circular Economy Act, 2016*; reproduce the Confidential Information only to the extent necessary for the above purpose and as agreed upon by the AMO; and not disclose the Confidential Information to any third party without prior written approval of AMO.
3. The undersigned acknowledges and agrees that the information shall be maintained securely at all times.
4. The undersigned agrees that all of AMO's right, title and interest in and to such information shall remain AMO's exclusive property and shall be held in trust and confidence by the undersigned for AMO. The undersigned acknowledges that, except as expressly set out herein, no interest, licence or any right respecting such information is granted to the undersigned by this Agreement, by implication or otherwise.

5. The undersigned agrees to use all reasonable efforts to protect AMO's interest in such information and keep it confidential using a standard of care no less than the degree of care that the undersigned would be reasonably expected to employ for its own similar confidential information. In particular, the undersigned will not directly or indirectly disclose, allow access to, transmit or transfer any such information to any person (other than to its employees and representatives who have a need to know such information and who are bound by an obligation of confidentiality substantially the same or greater than the obligation created by this Agreement), without AMO's prior written consent or as otherwise required by law. The undersigned agrees to be responsible for any breach of this Agreement by any of such employees and representatives, or any other person to whom such information is disclosed by it to the same extent and in the same manner if such breach were its own under this Agreement. The undersigned agrees to notify AMO in writing of any misuse or misappropriation of such information that may come to the undersigned's attention.
6. Notwithstanding anything herein to the contrary, the restrictions on the use or disclosure of Confidential Information shall not apply to any Confidential Information that is:
 - a. independently developed by or for the Receiving Party or its affiliated companies or agents outside the mandate of the project or discussion, or
 - b. already in the public realm, or
 - c. after it has become generally available to the public without breach of this Agreement by the Receiving Party or its affiliated companies or agents, or
 - d. which at the time of disclosure to the Receiving Party was known to that party or its affiliated companies or agents free of restriction as evidenced by documentation in that party's possession, or
 - e. AMO agrees in writing is free of such restrictions.

The Receiving Party may only disclose the Confidential Information as required by law or court order provided the Receiving Party uses diligent reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order and allows AMO to participate in the proceeding(s) at AMO's expense.

7. The undersigned acknowledges and agrees that AMO is not providing any representation, warranty or guarantee to the undersigned with respect to the accuracy or completeness of such information and that AMO will not be liable or responsible for any errors or omissions in such information or for any costs, losses or damages resulting from the use of such information.
8. This Agreement shall be in full force upon its execution by the undersigned and shall be in effect indefinitely. For greater clarity and certainty, the obligations herein with respect to the disclosure of information as it relates to the Confidential Information continue indefinitely.
9. This Agreement will enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and permitted assigns of the parties.

10. This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario. The undersigned agrees that the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement and hereby irrevocably attorns to the jurisdiction of such courts.

IN WITNESS WHEREOF, the parties have caused their respective duly authorized representatives to execute this Agreement on the respective dates entered below.

Association of Municipalities of Ontario

Receiving Party:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

I/We have the authority to bind the Corporation.

I have the authority to bind the Corporation.