

Bill No. 423
2011

By-law No. A.-

A by-law to authorize and approve a Non-Disclosure Agreement between The Corporation of the City of London and the Insurance Bureau of Canada for the purposes of participating in a Municipal Flooding Risk Assessment initiative; and to authorize the Mayor and the 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;

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

1. The Agreement attached as Appendix "A" to this by-law between The Corporation of the City of London and the Insurance Bureau of Canada for the purposes of participating in a Municipal Flooding Risk Assessment initiative, is authorized and approved.
2. The Mayor and the 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 October 24, 2011.

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First reading – October 24, 2011
Second reading – October 24, 2011
Third reading – October 24, 2011

Appendix "A": Non-Disclosure Agreement

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (the "**Agreement**") is made as of September 30, 2011 (the "**Effective Date**"), and governs the disclosure of information

B E T W E E N:

INSURANCE BUREAU OF CANADA
(**"IBC"**)

- and -

THE CORPORATION OF THE CITY OF LONDON
(**"Municipality"**)

1. RECITALS

- 1.1 IBC is developing a Municipal Risk Assessment Tool ("**MRAT**") for the use of municipalities and insurers, which is based on infrastructure and climatic data, and may have disclosed and may wish to further disclose certain information, including Confidential Information, to the Municipality during the course of its development, and wishes to protect such Confidential Information on the following terms.
- 1.2 The Municipality wishes to provide IBC with the listed data sets ("**Data**"), attached as Schedule A, for the purpose of the development and validation of the Municipal Risk Assessment Tool (the "**Purpose**"), and wishes to protect such Data on the following terms.

NOW, THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound, the parties hereby agree as follows:

2. DEFINITIONS

- 2.1 In this Agreement, unless the subject matter or context requires a different meaning, capitalized terms used in this Agreement will have the following meanings:

"Confidential Information" means all unpatented inventions, ideas, know-how, concepts, trade secrets, processes, techniques, software, products and all other intellectual property, and for greater certainty, intellectual property related to the MRAT, financial and business information and all other commercially valuable information of IBC, which IBC regards as confidential to it and all copies, notes and records and all related information generated by the Municipality based on or arising out of any such disclosure. For greater certainty, the output generated by the MRAT, including risk maps, shall be considered Confidential Information. Confidential Information excludes, or as the case requires, ceases to include information which is, or becomes:

- (a) available to the public at the date of its disclosure to the Municipality;
- (b) at the date of its disclosure to the Municipality, already properly in the possession of the Municipality in written form otherwise than by prior confidential disclosure from IBC;
- (c) after the date of its disclosure to the Municipality, available to the public from sources other than the Municipality;
- (d) after the date of its disclosure to the Municipality, properly available to the Municipality from a third party having no obligation of confidentiality to IBC; or

- (e) demonstrated by the Municipality to be independently developed, without use of or reference to the Confidential Information.

“Data” means the listed data sets, attached as Schedule A, which may be amended from time to time.

3. DISCLOSURE OF INFORMATION

3.1 IBC may disclose to the Municipality as much of its information, including Confidential Information, as IBC, in its sole discretion, considers is necessary for the Purpose.

3.2 Municipality shall disclose the Data to IBC for the Purpose.

4. CONFIDENTIALITY OBLIGATIONS

4.1 The Municipality shall:

- (a) not use any Confidential Information in any way other than for the Purpose or as otherwise contemplated by this Agreement without the prior written permission of IBC;
- (b) not disclose any Confidential Information to any person or entity, unless strictly required otherwise by law, including any employee or independent contractor, except to the extent required for the Purpose, subject to such person or entity first entering a written confidentiality agreement with the Municipality, which contains obligations substantially similar to those set out in this Agreement;
- (c) not use the Confidential Information in any way which would be harmful to the best interests of IBC;
- (d) immediately notify IBC in the event of any disclosure which is strictly required by law;
- (e) protect the Confidential Information in the same manner it protects the confidentiality of its own information of similar sensitivity, and at all times exercising at least a reasonable degree of care.

4.2 IBC shall:

- (a) not use any Data in any way other than for the Purpose or as otherwise contemplated by this Agreement without the prior written permission of the Municipality;
- (b) not disclose, provide or otherwise make available in whole or in part, the Data, to any person or entity, unless strictly required otherwise by law, including any employee or independent contractor, except to the extent required for the Purpose, subject to such person or entity first entering a written confidentiality agreement with IBC, which contains obligations substantially similar to those set out in this Agreement;
- (c) immediately notify the Municipality in the event of any disclosure which is strictly required by law;
- (d) protect the Data in the same manner it protects the confidentiality of its own information of similar sensitivity, and at all times exercising at least a reasonable degree of care.

5. RETURN OF INFORMATION

- 5.1 At any time upon the written request of IBC, the Municipality must return to IBC or destroy (as directed by IBC) any documents originating from IBC which embody Confidential Information, and must not keep any copies, notes, records or other related information in any form. In the event that the Municipality is directed by IBC to destroy IBC's Confidential Information, the Municipality shall, promptly upon such destruction, certify in writing to IBC that all IBC's Confidential Information has been destroyed.
- 5.2 At any time upon the written request of the Municipality, IBC must return to the Municipality or destroy (as directed by the Municipality) any documents originating from the Municipality which embody the Data, and must not keep any copies, notes, records or other related information in any form. In the event that IBC is directed by the Municipality to destroy the Municipality's Data, IBC shall, promptly upon such destruction, certify in writing to the Municipality that all of the Municipality's Data has been destroyed.

6. GENERAL

- 6.1 The Municipality obtains no proprietary rights of any kind to any Confidential Information, and IBC obtains no proprietary rights of any kind to the Data, as a result of a disclosure to it under this Agreement. No licenses or rights under any patent, copyright, or trademark are granted or are to be implied by this Agreement. All rights of IBC heretofore and hereafter acquired under the patent and copyright laws of Canada and all foreign countries are hereby expressly reserved to IBC.
- 6.2 The obligations in this Agreement apply irrespective of the method of disclosure whether in writing, in computer software, orally, by demonstration, description, inspection or otherwise.
- 6.3 The parties acknowledges that the Confidential Information is a unique and valuable asset of IBC and the Data is a unique and valuable asset of the Municipality, and that disclosure or use in breach of this Agreement would result in irreparable injury to the disclosing party which could not be remedied by monetary damages. Therefore, the parties agree that, in the event of a breach or threatened breach of the terms of this Agreement, the disclosing party shall be entitled to an injunction prohibiting any such breach, specific performance and/or any other equitable remedy available to the disclosing party. Any such equitable relief shall be in addition to and not in lieu of any other appropriate relief at law to which the disclosing may be entitled.
- 6.4 A party's failure to exercise or delay in exercising a right or power does not operate as a waiver of that right or power and does not preclude the future exercise of that right or power.
- 6.5 This Agreement is governed by and construed in accordance with the law of the Province of Ontario and the law of Canada applicable in such province. The parties attorn to the exclusive jurisdiction of the courts of Ontario.
- 6.6 This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.
- 6.7 This Agreement may not be amended or modified except in writing and executed by both parties. This Agreement constitutes the entire understanding between the parties regarding their mutual obligations of confidentiality.
- 6.8 If any provision of this Agreement is held to be invalid, illegal or unenforceable, such provision will be limited or severed only to the extent necessary to make it legally valid and enforceable and such limitation or severance shall not affect any other provisions of this Agreement.

6.9 This Agreement may be executed in one or more counterparts, each of which will constitute an original and which together will constitute one Agreement. Faxed signatures of this Agreement will be considered to be originals.

IN WITNESS OF THE FOREGOING, each of the parties have duly executed and delivered this Agreement as of the date first above written.

INSURANCE BUREAU OF CANADA

THE CORPORATION OF THE CITY OF LONDON

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: Joe Fontana
Title: Mayor
Date: _____

By: _____
Name: Catharine Saunders
Title: City Clerk
Date: _____