

Bill No. 441
2013

By-law No. A.-_____

A by-law to approve and authorize the execution of a Confidentiality Agreement with respect to open discussions of business opportunities in the area of landfill gas emissions management, including potential greenhouse gas emission offset or credit opportunities between NOVA Chemicals Corporation 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 Confidentiality Agreement with NOVA Chemicals Corporation with respect to open discussions of business opportunities in the area of landfill gas emissions management, including potential greenhouse gas emission offset or credit opportunities available to NOVA Chemicals Corporation;

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 Confidentiality Agreement with NOVA Chemicals Corporation with respect to open discussions of business opportunities in the area of landfill gas emissions management, including potential offset or credit opportunities available to NOVA Chemicals Corporation, attached as Schedule "A" to this By-law, is hereby approved.
2. The Mayor and City Clerk are authorized to execute the Agreement attached as Schedule "A" to this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council November 5, 2013.

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First reading – November 5, 2013
Second reading – November 5, 2013
Third reading – November 5, 2013

SCHEDULE A

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT dated and effective the ____ day of November 2013, by and between NOVA Chemicals Corporation, a corporation incorporated under the laws of the Province of New Brunswick and having an office at 1000 - 7th Avenue SW, Calgary, Alberta, Canada, T2P 5L5 (hereinafter "NCC") and The Corporation of the City of London having an office at 300 Dufferin Avenue, PO Box 5035, London, Ontario, N6A 4L9 (hereinafter "City of London").

WHEREAS City of London has certain confidential information relating to environmental offset and credit components and suppliers and all information relating to this is proprietary and confidential to City of London (hereinafter "City of London Confidential Information");

WHEREAS NCC is in the business of manufacturing and selling petrochemicals, related co-products and polyethylene and polystyrene resins and has certain confidential information relating to landfill gas emissions and all information relating to this is proprietary and confidential to NCC (hereinafter "NCC Confidential Information");

WHEREAS "City of London Confidential Information" and "NCC Confidential Information" are collectively and severally hereinafter referred to as "Confidential Information";

AND WHEREAS a party disclosing its Confidential Information (hereinafter "Disclosing Party") to the party receiving the Confidential Information (hereinafter "Receiving Party") and the representatives of the Receiving Party, desires that its Confidential Information will be used only for the purposes of open discussions of business opportunities in the area of landfill gas emissions management, including potential offset or credit opportunities available to NCC ("Purpose"), provided that the Disclosing Party is free to disclose its Confidential Information to any third party without the consent of the Receiving Party;

NOW THEREFORE, for and in consideration of the mutual promises set forth herein below, the parties hereto agree as follows:

1. Subject to all the terms and conditions of this Agreement, the Disclosing Party agrees to disclose Confidential Information to the Receiving Party and its representatives only for the Purpose, provided that the Disclosing Party is free to disclose its Confidential Information to any third party without the consent of the Receiving Party.
2. During the five (5) year period from the date of this Agreement (the "Disclosure Period") the Disclosing Party may disclose such Confidential Information as it, in its sole discretion deems relevant to the Purpose, to the Receiving Party.
3. Any information disclosed by the Disclosing Party to the Receiving Party pursuant to this Agreement whether visual, oral, written, or in the form of samples shall be deemed to be confidential and secret unless it is information which:
 - (i) has been, or is currently part of the public domain, or becomes part of the public domain through no breach of this Agreement on the part of the Receiving Party; or
 - (ii) prior to the date of this Agreement was in the possession of the Receiving Party as evidenced by written records then in the possession of the Receiving Party; or

- (iii) is disclosed to the Receiving Party without binder of secrecy by a third party having the legal right to make such disclosure and who did not acquire the information directly or indirectly from the Disclosing Party; or
 - (iv) is independently developed by an employee of the Receiving Party or an Affiliate thereof who did not have access to Confidential Information.
- 4. The foregoing exceptions to the obligation of confidence shall not apply to specific information merely because it is embraced by more general information within such exceptions, nor shall it apply to a combination of features merely because the individual features are within such exceptions unless the combination itself or its nexus or principle of operation is within the exception.
- 5. In the event the Receiving Party is required (by oral questions, interrogatories, requests for information, or subpoena of documents, by civil, judicial or administrative investigative demand or similar process) to disclose any Confidential Information provided by the Disclosing Party pursuant to this Agreement, the Receiving Party will provide the Disclosing Party with prompt notice of such request so that the Disclosing Party may seek an appropriate protective order and/or waive the Receiving Party's compliance with the provisions of this Agreement. It is further agreed that if, in the absence of a protective order or the receipt of a waiver hereunder the Receiving Party is nonetheless in the opinion of its counsel compelled to disclose such Confidential Information to any tribunal or else stand liable for contempt or suffer other censure or penalty, the Receiving Party may disclose such Confidential Information to such tribunal without liability hereunder.
- 6. The Receiving Party shall treat the Disclosing Party's Confidential Information in the same manner as it treats its own confidential information and shall not, without the prior written consent of the Disclosing Party, use the Disclosing Party's Confidential Information for any purpose other than the Purpose. The Receiving Party shall only disclose Confidential Information to those of its officers, employees and agents who have a need to know it for the Purpose, who have been informed of the obligations of confidence and non-use under this Agreement, and who are bound to the Receiving Party by obligations of non-use and secrecy no less stringent than those contained in this Agreement.
- 7. Upon expiration of the five (5) year Disclosure Period pursuant to this Agreement, the Receiving Party shall at the Disclosing Party's direction either return to the Disclosing Party or destroy all Confidential Information in the Receiving Party's possession except for one copy which shall be retained in the Receiving Party's vault files for recording and dispute resolution purposes only.
- 8. The obligations of confidence and non-use shall expire five (5) years from the end of the Disclosure Period.
- 9. By this Agreement the Disclosing Party does not grant the Receiving Party any license, express or implied, or any right, title or interest in or to its Confidential Information or any other rights or assets of the Disclosing Party by furnishing Confidential Information to the Receiving Party hereunder, nor does the Receiving Party hereby acknowledge or admit the validity of any of the Disclosing Party's patents or other proprietary rights.
- 10. This Agreement may be assigned without the prior written consent of the other party to this Agreement only in the event of the sale or reorganization of the business of a party hereto to which this Agreement relates. In all other cases the prior written consent of the other party, which consent shall not be unreasonably withheld, shall be required before this Agreement can be assigned.
- 11. This Agreement shall be binding upon and enure to the benefit of the successors or the parties hereto.

12. This Agreement shall be governed and construed in accordance with the Laws of the Province of Alberta, Canada without regard to choice of law principles. For the purposes of this Agreement only, the Parties attorn to the jurisdiction of the courts of the Province of Alberta.
13. This Agreement does not and shall not create any duty or obligation upon either party to enter into any further agreements of any kind with the other party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized officers.

NOVA Chemicals Corporation

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

The Corporation of the City of London

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____