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TO:	CHAIR AND MEMBERS BUILT AND NATURAL ENVIRONMENT COMMITTEE MEETING ON SEPTEMBER 12, 2011
FROM:	PATRICK MCNALLY, P. ENG. EXECUTIVE DIRECTOR-PLANNING, ENVIRONMENTAL & ENGINEERING SERVICES
SUBJECT:	ANAERGIA: NON-DISCLOSURE AGREEMENT

RECOMMENDATION

That, on the recommendation of the Executive Director-Planning, Environmental and Engineering Services, the attached proposed By-law (Appendix 'A') **BE INTRODUCED** at the Municipal Council Meeting of September 19, 2011

- (a) **TO APPROVE** the Non-Disclosure Agreement with Anaergia; and
- (b) **To AUTHORIZE** the Mayor and City Clerk to execute the Agreement in (a) above.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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- BNEC Report August 17, 2011. Water Technology Centre Initiative-Update
- Board of Control Report. Nov. 18, 2009. Request for Endorsement for a Joint Venture to Secure Fed DEV/SODP Funding for a Waste Water Technology Centre located Near the Greenway Pollution Control Centre
- Board of Control- July 22, 2009- Waste Water Technology Centre

BACKGROUND

Purpose:

To seek Council approval of a Non-Disclosure Agreement between the City and Anaergia Incorporated related to pilot testing at various City wastewater facilities.

Discussion:

Anaergia is seeking to be the Global Leader in the Waste to Energy Field and has recently opened their corporate headquarters in Burlington. They anticipate employing 300 people by 2016 and have approached City of London Staff regarding the use of City Wastewater Facilities for pilot testing; this could develop into an ongoing relationship and aligns well with the City's proposed International Water Centre of Excellence (IWCE) in which Anaergia could potentially become a ongoing tenant; Anaergia has allocated \$20 million for a research program over the next five years and would like to begin testing in London in early 2012. The City of London will gain first hand involvement in Anaergia processes with the potential to apply these processes at facilities within the City.

It should be noted that the Chairman and CEO of Anaergia, Dr. Andrew Benedict, was the founder and former CEO & Chairman of Zenon Environmental which was recently bought out by General Electric (GE). Dr Benedict has a proven track record in developing world class companies around new environmental technologies.

The Non-Disclosure Agreement (Schedule 'A') and a letter (Appendix 'B') outlining Anaergia's commitment to developing pilot testing facilities and their interest in doing this testing at the IWCE are attached.

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Anaergia has been advised that they will need to enter into a mutually acceptable Operating Agreement with the City to address direct operational expenses and protocols for working within the City's wastewater treatment plants and they have been advised that there may be indirect expenses and/or in kind contributions that will be required as part of this Operating Agreement that may arise as a result of being under the umbrella of the International Water Centre of Excellence. It is understood that these indirect expenses and/or in kind contributions may be negotiated and will be mutually acceptable to both parties. The terms of this agreement will be developed once the City has a better understanding of the Company's requirements and how best to accommodate them within the City's wastewater treatment plant environment.

Conclusion:

It is recommended that the Non-Disclosure agreement with Anaergia be approved

Acknowledgements:

This report was prepared by Geordie Gauld, Division Manager, Wastewater Treatment Operations.

SUBMITTED BY:	RECOMMENDED BY:
	
GEORDIE GAULD, DIVISION MANAGER, WASTEWATER TREATMENT OPERATIONS	RON STANDISH, P.ENG. DIRECTOR, WASTEWATER AND TREATMENT, PLANNING, ENVIRONMENTAL AND ENGINEERING SERVICES
REVIEWED & CONCURRED BY:	
	
PAT MCNALLY, P.ENG. EXECUTIVE DIRECTOR, PLANNING, ENVIRONMENTAL AND ENGINEERING SERVICES	

August 30, 2011
GG/gg

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Schedule 'A'

NON-DISCLOSURE AGREEMENT

DATE: _____, 2011 ('Effective Date')

BETWEEN:

Anaergia Inc. ("**Company**")
 5338 John Lucas Drive
 Burlington, ON L7L 6A6

-AND-

The Corporation of the City of London ('**City**')
 300 Dufferin Avenue
 London, ON N6A 4L9

In consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the Parties), the Parties agree as follows:

1. DEFINITION OF CONFIDENTIAL INFORMATION

Confidential Information means any information disclosed by one party (the '**Discloser**') to the other (the '**Recipient**') relating directly or indirectly to the following technologies and business information:

- Renewable Energy, including anaerobic digestion and producing biogas
- Business information includes any and all proprietary information of the Discloser, without limitation, any and all technical, financial, or commercial information, know-how and trade secrets of any description or other similar information of the Discloser, as well as any and all data, specifications and technical and other information related to such information, and any and all information relating to the status of investigations being conducted in respect of any products, technologies or processes of or being pursued by the Discloser, whether such information is disclosed in writing, orally, visually, or in the form of magnetic recording or other machine readable form, and any information that is clearly identified by the Discloser in writing as confidential at the time of disclosure.

2. EXCEPTIONS TO CONFIDENTIAL INFORMATION

This Agreement does not apply to information that:

- i. was available to the public at the time of disclosure, or subsequently became available to the public without fault of Recipient;
- ii. was known to Recipient at the time of disclosure or was independently developed by Recipient, provided there is adequate documentation to confirm such prior knowledge or independent development;
- iii. was received by Recipient from a third party and Recipient was not aware that the third party had a duty of confidentiality to Discloser in respect of the information;
- iv. is used or disclosed by Recipient with Discloser's prior written approval;
- v. is required to be disclosed by law, provided that Recipient gives Discloser prior written notice (where permitted and practicable) of any such disclosure to allow Discloser to contest the disclosure. Any action taken by Discloser to contest the disclosure shall not compromise the obligations of Recipient under the order to disclose or cause Recipient to be subject to any fine, penalty or prosecution; or
- vi. may be disclosed or is required to be disclosed, or is ordered to be disclosed, pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* or other similar legislation.

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3. DESIGNATED REPRESENTATIVES

Each party designates the following representative(s) for coordinating receipt, release and delivery of Confidential Information:

- a. For Company - Michael Theodoulou, Hani Kaissi
- b. For the City - Pat McNally, Ron Standish; (with the exception of requests for records under *MFIPPA*, which are handled by the City Clerk);

or other individual(s) as the party may designate in writing to the other parties.

4. USE OF CONFIDENTIAL INFORMATION

Recipient may only use the Confidential Information for the **purpose of evaluating the technical feasibility of a renewable energy opportunity on lands outside of London's municipal boundary ('Permitted Purpose')**. Recipient shall not use the Confidential Information for any other purpose without the prior written approval of Discloser.

5. NON-DISCLOSURE

Recipient shall keep the Confidential Information in confidence. Recipient may only disclose the Confidential Information to its employees, directors, officers, agents, and consultants who have a need-to-know the Confidential Information for the Permitted Purpose. Such employees, directors, officer, agents, and consultants shall be advised of the confidential nature of the Confidential Information and shall be under an obligation to maintain its confidentiality. Recipient shall not otherwise disclose Confidential Information to any person or third party without the prior written approval of Discloser.

6. STANDARD OF CARE

Recipient shall use at least the same standard of care in protecting the confidentiality of the Confidential Information as it uses in protecting its own information of a similar nature and, in any event, no less than a reasonable standard of care. Recipient shall notify Discloser promptly upon discovery that any Confidential Information has been accessed or otherwise acquired by or disclosed to an unauthorized person.

7. RETURN OF CONFIDENTIAL INFORMATION

If requested in writing by Discloser, Recipient shall cease using, return to Discloser and/or destroy all Confidential Information and any copies of Confidential Information in its possession or control. Recipient may retain one archival copy of such Confidential Information for the sole purpose of establishing the extent of the disclosure of such Confidential Information, provided that such information is not used by Recipient for any other purpose and is subject to the confidentiality requirements set out in this Agreement.

8. NO LICENCE OR OTHER RIGHTS

All Confidential Information remains the property of Discloser and no license or any other rights to the Confidential Information is granted to Recipient under this Agreement. This Agreement does not obligate the Discloser to make any disclosure of Confidential Information to the Recipient or require the parties to enter into any business relationship or further agreement.

9. LIMITED WARRANTY & LIABILITY

Discloser warrants that it has the right to disclose the Confidential Information to Recipient. Discloser makes no other warranties in respect of the Confidential Information and provides all information "AS IS" without any express or implied warranty of any kind, including any warranty as to merchantability, fitness for a particular purpose, accuracy, completeness or violation of third party intellectual property rights. No party shall be liable for any special, incidental or consequential damages of any kind whatsoever resulting from the disclosure, use or receipt of the Confidential Information.

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10. TERM

This Agreement and Recipient's obligation to keep Confidential Information confidential expires the earlier of:

- (i) five (5) years after the Effective Date;
- (ii) such time as may be agreed to in writing by the parties.

11. GENERAL PROVISIONS

11.1 **Notices** - All notices given under this Agreement shall be in writing and delivered by courier or registered mail, return receipt requested, or facsimile, to the address of the party set out on page one of this Agreement.

- a. All notices to the Company must be addressed to Michael Theodoulou
- b. All notice to the City must be addressed to John Braam, City Engineer, Planning, Environmental and Engineering Services (except for notice for an MFIPPA request, which shall be directed to the City Clerk);

or another individual(s) as the party may designate in writing to the other parties.

Notices shall be deemed to have been received on the date of delivery, if delivered by courier, on the fifth business day following receipt, if delivered by registered mail or on the first business day following the electronic confirmation of the successful transmission of the facsimile, if sent by facsimile.

11.2 **Remedies** - Recipient agrees that damages may not be an adequate remedy for any breach or threatened breach of the Recipient's obligations under this Agreement. Accordingly, in addition to any and all other available remedies, Discloser shall be entitled to seek a temporary or permanent injunction or any other form of equitable relief to enforce the obligations contained in this Agreement.

11.3 **No waiver** – Failure of a party to enforce its rights on one occasion shall not result in a waiver of those rights on any other occasion.

11.4 **Assignment** - No party may assign any of its rights or obligations under this Agreement without the prior written consent of all of the other parties.

11.5 **Regulatory compliance** – All parties shall comply with all applicable laws, regulations and rules in its jurisdiction, including but not limited to those relating to the export of information and data.

11.6 **Entire Agreement** – This Agreement represents the entire agreement between the parties with regard to the Confidential Information and supersedes any previous understandings, commitments or agreements, whether written or oral. No amendment or modification of this Agreement shall be effective unless made in writing and signed by authorized representatives of both parties.

11.7 **Severability** – If any provision of this Agreement is wholly or partially unenforceable for any reason, all other provisions shall continue in full force and effect.

11.8 **Binding Effect** - This Agreement is binding upon and shall enure to the benefits of the parties and their respective successors and permitted assigns.

11.9 **Execution** - This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. If delivered by facsimile, the party shall also send promptly and without delay an executed original by courier to the other parties.

11.10 **Governing Law** - This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable thereto and the parties hereby agree to submit to the exclusive jurisdiction of the courts of the Province of Ontario, without regard to conflict of laws provisions.

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The parties have duly executed this Agreement by their duly authorized representatives as of the Effective Date.

SIGNED, SEALED AND DELIVERED

ANAERGIA INC.

**THE CORPORATION OF THE CITY
OF LONDON**

Hani Kaissi
Vice President, Finance & Operations
I have the authority to bind the corporation.

Joe Fontana
Mayor

Date

Date

Catharine Saunders
City Clerk

Date

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APPENDIX A

Bill No.
2011

By-law No.

A By-law to authorize and approve a Non-Disclosure Agreement between The Corporation of the City of London and Anaergia Inc.; 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 section 10 of the *Municipal Act, 2001* provides that the City may provide any service or thing that the City considers necessary or desirable for the public, and may pass by-laws respecting same, and respecting economic, social and environmental well-being of the City, and the health, safety and well-being of persons;

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

1. The Non-Disclosure Agreement attached as Schedule "A" to this by-law between The Corporation of the City of London and Anaergia Inc. regarding the use and protection of confidential information, is hereby authorized and approved.
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 , 2011

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First reading -
Second reading -
Third reading -

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APPENDIX 'B'



5338 John Lucas Drive, Unit B
Burlington, Ontario
L7L 6A6 Canada

August 23, 2011

City of London
300 Dufferin Ave. P.O. Box 5035
London, ON N6A 4L9
Attn: Geordie Gauld

Dear Geordie,

Anaergia Inc. is a Canadian Corporation, who is establishing corporate headquarters in Ontario Canada. Anaergia is the parent company to the UTS group of companies, having offices in eight countries worldwide. The focus of Anaergia is develop and provide technology solutions to industrial, agricultural and municipal customers in the fields of wastewater treatment, anaerobic digestion, biogas capture for energy generation, bio-solids handling and waste to value solutions.

As part of the company mandate, Anaergia has established Research and Development capabilities within Ontario, and is currently establishing testing facilities at multiple scales, both at internal company facilities as well as in the field at facilities where Anaergia technologies can be tested and demonstrated in representative applications. As part of the latter, Anaergia is very excited about the prospect to partner with the City of London, and the planned technology centre at the City's wastewater facilities.

As part of the field testing program, Anaergia is prepared to invest in long term piloting and demonstration infrastructure, to which the City's Technology Centre would be an ideal location. Piloting and demonstration facilities will be utilized by Anaergia employees both during product and process development projects as well as to demonstrate at both representative scale and applications, recently commercialized technologies, which are focused on reduced energy solutions for treating wastewater, as well methods to draw value from waste.

Should an agreement be reached between Anaergia, the City, and the Technology Centre, Anaergia is prepared to deploy its first pilot units to one of the City's wastewater facilities in early 2012. This first deployment represents the commitment from Anaergia to perform long term field development operations, and has a tabled research program which stretches many years in the future, and has an allocation of greater than \$20 Million dollars over the next five years.

In summary, Anaergia is very excited over the prospect of establishing a long term development relationship with the City of London, and the upcoming Technology Centre.

Sincerely,

Michael Theodoulou, P. Eng.
R&D Director, Anaergia Inc.