



City of Port Colborne
Regular Meeting of Council 36-20
Monday, December 14, 2020
Following Special Council Meeting
Council Chambers, 3rd Floor, 66 Charlotte Street

Addendum

Additional Item(s) for Consideration:

| Notes | Item | Description / Recommendation |
|-----------|------|--|
| WCS MB EB | 13. | By-law No. 6851/101/20, Being a By-law to Authorize Entering into an Agreement with Nyon Oil Inc. Re: Fire Safety & Risk Management <hr/> <p>That the following by-law be enacted and passed.</p> |
| RB GB FD | | |
| AD DK HW | | |

The Corporation of the City of Port Colborne

By-law No. 6851/101/20

Being a By-law to Authorize Entering into an Agreement with
Nyon Oil Inc. Re: Fire Safety & Risk Management

Whereas at its meeting of December 14, 2020 the Council of The Corporation of the City of Port Colborne approved the recommendation of Planning and Development Department, Planning Division, Report No. 2020-184, Subject: Recommendation Report for the Removal of Holding Symbol, Nyon Oil Inc.;

Whereas the Council of The Corporation of the City of Port Colborne is desirous of entering into an agreement with Nyon Oil Inc. regarding Fire Safety & Risk Management;

Now therefore the Council of The Corporation of the City of Port Colborne enacts as follows:

1. That The Corporation of the City of Port Colborne enter into an agreement with Nyon Oil Inc. regarding Fire Safety & Risk Management.
2. That the Mayor and the Clerk be and each of them is hereby authorized and directed to sign said agreement, attached hereto as Schedule "A", together with any documents necessary to complete the conditions of said agreement, and the Clerk is hereby authorized to affix the Corporate Seal thereto.

Enacted and passed this 14th day of December, 2020.

William C. Steele
Mayor

Amber LaPointe
City Clerk

FIRE SAFETY & RISK MANAGEMENT AGREEMENT

THIS AGREEMENT made as of the _____ day of _____, 2020.

BETWEEN:

NYON OIL INC.

(hereinafter collectively referred to as “**Nyon**”)

OF THE FIRST PART

- and -

THE CORPORATION OF THE CITY OF PORT COLBORNE

(hereinafter referred to as the “**City**”)

OF THE SECOND PART

WHEREAS Nyon is working towards developing an energy park on the lands described in Schedule “A” attached hereto in the City of Port Colborne (the “**Tank Farm Lands**”),

AND WHEREAS in contemplation of the commencement of development of the energy park, and in compliance with the Site-Specific Zoning By-law, Nyon has prepared a Risk Assessment Plan (attached hereto as Schedule “B”) and Fire Emergency Plan (attached hereto as Schedule “C”) (the Risk Assessment Plan and the Fire Emergency Plan are collectively referred to herein as the “**Safety Reports**”),

AND WHEREAS the City and Nyon wish to agree on certain matters regarding the implementation, and the cost of implementing the recommendations set out in the Safety Reports

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration and the sum of Two Dollars (\$2.00) of lawful money now paid by each of the parties to the other (the receipt and sufficiency of which is hereby expressly acknowledged), the parties hereby confirm that the above recitals are true and correct and hereby covenant and agree to and with each other as follows:

IMPLEMENTATION

1. Nyon acknowledges that it is responsible for implementing the recommendations that are contained in the Risk Assessment Plan in order to mitigate risk, to improve safety, and to prevent the unwanted release of hazardous materials.
2. Nyon acknowledges that it is responsible to implement the recommendations that are contained in the Fire Emergency Plan in order to mitigate risk and respond to fire and other emergencies on the Tank Farm Lands.

3. The parties acknowledge that the Safety Reports are living documents, and as the detailed plans and engineered drawings are developed for the Tank Farm Lands, accordingly there may be amendments to the Safety Reports, as appropriate.

COSTS

4. Nyon acknowledges that it is wholly responsible for the cost of the implementation and the ongoing performance of all recommendations contained in the Risk Assessment Plan (collectively, the “**Risk Assessment Plan Obligations**”). The City shall not bear any of the cost of risk mitigation set out in the Risk Assessment Plan. Nyon hereby indemnifies and saves harmless the City, its employees, contractors and agents from any and all costs, losses, actions and other liabilities that the City may incur in connection with, or resulting from, Nyon’s failure to comply with or carry out the Risk Assessment Plan Obligations.
5. Nyon acknowledges that it is wholly responsible for the cost of the implementation and the ongoing performance of all recommendations contained in the Fire Emergency Plan (collectively, the “**Fire Emergency Plan Obligations**”). The City shall not bear any of the cost of risk mitigation set out in the Fire Emergency Plan. Nyon hereby indemnifies and saves harmless the City, its employees, contractors and agents from any and all costs, losses, actions and other liabilities that the City may incur in connection with, or resulting from, Nyon’s failure to comply with or carry out the Fire Emergency Plan Obligations.
6. Without limiting the obligations set out in paragraphs 4 and 5 above, Nyon agrees to pay the training costs for municipal employees as required by the Safety Plans, currently estimated to be \$408,770, in accordance with the following schedule:
 - (a) \$204,335 on application to the City for site plan approval; and
 - (b) \$204,335 on application to the City for a building permit related to the Tank Farm Lands.
7. Upon receipt of payment from Nyon, as stated in section 6 above, the City shall be responsible for administering the training of municipal employees in accordance with the Risk Assessment Plan and the Fire Emergency Plan.

DEFAULT

8. The occurrence of any one or more of the following events is an “**Even of Default**” within the meaning of this Agreement:
 - (a) Nyon is not in compliance with the Risk Assessment Plan Obligations;
 - (b) Nyon is not in compliance with the Fire Emergency Plan Obligations;
 - (c) Nyon is not in compliance with any covenant, term or provision of this Agreement;
and

- (d) Nyon makes an assignment for the benefit of creditors, or assigns in bankruptcy or takes the advantage in respect of its own affairs of any statute for relief in bankruptcy, moratorium, settlement with creditors, or similar relief of bankrupt or insolvent debtors, or if a receiving order is made against Nyon, or if Nyon is adjudged bankrupt or insolvent, or if a liquidator or receiver is appointed by reason of any actual or alleged insolvency, or any default of Nyon under any mortgage or other obligation, or if the Tank Farm Lands or interest of Nyon in the Tank Farm Lands becomes liable to be taken or sold by any creditors or under any writ of execution or other like process

Upon the occurrence of an Event of Default, the City will provide written notice of the Event of Default to Nyon (a “**Default Notice**”). If the Event of Default has not been cured in its entirety on or before the date which is five (5) days after the Default Notice has been delivered to Nyon, then the City may, in addition to such other remedies as the City may have under this Agreement, in law or otherwise, send a notice to Nyon ordering it to immediately cease all operations on the Tank Farm Lands or to impose such other restrictions and conditions on the use of the Tank Farm Lands as the City may, in its absolute discretion, acting reasonably, impose for purposes of protection of the public (a “**Default Order**”).

9. Nyon acknowledges that an occurrence of an Event of Default would result in damages and harm to the City that the City may not be adequately compensated for such damages by monetary award alone. Accordingly, Nyon agrees that in the event of any such breach, and in addition to any other remedies available under this Agreement, in law or otherwise, the City shall be entitled as a matter of right to apply to a court of competent jurisdiction for relief by way of injunction, restraining order, decree or otherwise as may be appropriate to ensure compliance by Nyon with the provisions of this Agreement, including without limitation, any Default Order that may be issued by the City. Any remedy expressly set out in this Agreement shall be in addition to and not inclusive of or dependent upon the exercise of any other remedy available at law or otherwise.

SITE PLAN APPROVAL AUTHORITY

10. Nyon acknowledges and agrees that the implementation, cost, and performance of the recommendations set out in the Safety Reports are properly the subject matter of a site plan agreement and Nyon covenants that it will not raise any jurisdictional issues with respect to these matters being incorporated into a site plan agreement under s. 41 of the *Planning Act*, RSO 1990, c P.13, and therefore site plan approval is contingent upon the City being satisfied with the proposed method of implementation of the recommendations set out in the Safety Reports by Nyon.
11. Nyon acknowledges that the Risk Assessment Plan obligations and the Fire Emergency Plan obligations will be incorporated into a site plan agreement and, in addition to any other remedies that the City may have under this Agreement, in law or otherwise, can be enforced under the site plan agreement and that these obligations will bind the registered owners of the land.

BUILDING PERMITS and DEVELOPMENT

12. No petroleum or petroleum product shall be sold, stored, supplied, distributed, shipped or otherwise received or removed from the Tank Farm Lands by any means of transportation or shipment, including without limitation, by ship, rail, truck or pipe prior to the implementation of the recommendations set out in the Safety Reports, or otherwise agreed to in writing between the parties.
13. Development of the Tank Farm Lands shall comply with the provisions set out in the *Fire Protection and Prevention Act, 1997*, SO 1997, c. 4, the *Building Code Act, 1992*, SO 1992 c. 23, as those acts are applicable, and all other provincial and federal legislation that is applicable with respect to fire safety and risk management of petroleum and petroleum products.

DISPUTE RESOLUTION

14. Save and except when there is an occurrence of an Event of Default, all matters in difference between the parties herein in connection with this Agreement shall be referred to arbitration.
15. No person shall be appointed to arbitrator who is in any way interested financially or otherwise in the conduct of the works or development contemplated by this Agreement, or in the business or the affairs of Nyon or the City.
16. The award of the arbitrator shall be final and binding upon the parties.
17. In the event of a dispute, each party will select an arbitrator of their choosing who will, in turn, select a Chairperson. Each party will be responsible for the costs of their appointee, plus fifty percent of the expense of the Chairperson.
18. The provision of the *Arbitrations Act*, R.S.O. 1990, as amended, or any successor thereto, shall apply to the arbitration.

GENERAL PROVISIONS

19. All communications which may be or are required to be given by either party to the other herein shall be in writing and, in the case of payments, delivered or sent by prepaid registered mail and, in the case of communications, delivered or sent by prepaid registered mail or by facsimile or email (provided sender obtains evidence or verification of transmission) to the parties at their following respective addresses:

If to Nyon at:

600-10 King Street E
 Toronto Ontario
 M5C 1C3
 Attention: Gordon Baker
 Phone: 416-543-5374

Fax: 416-494-9886

If to the City of Port Colborne at:

66 Charlotte Street
Port Colborne, Ontario
L3K 3C8
Attention: City Clerk
Fax: 905-835-2969

and if any such payment or communication is sent by prepaid registered mail, it shall, be conclusively deemed to have been received on the third Business Day following the mailing thereof and, if delivered, telecopied or emailed, it shall be conclusively deemed to have been received at the time of delivery or transmission. Notwithstanding the foregoing provisions with respect to mailing, in the event that it may be reasonably anticipated that, due to any strike, lock-out or similar event involving an interruption in postal service, any payment or communication will not be received by the addressee by no later than the third Business Day following the mailing thereof, then the mailing of any such payment or communication as aforesaid shall not be an effective means of sending the same but rather any payment must then be sent by delivery, and any communication by delivery, email or facsimile. Either party may from time to time change its address hereinbefore set forth by notice to the other of them in accordance with this section. In this Agreement, "**Business Day**" means any day other than Saturday, Sunday or a statutory holiday in the Province of Ontario.

20. This Agreement and the rights and obligations and relations of the parties hereto shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein (but without giving effect to any conflict of laws rules that may require the application of any of the laws of any other jurisdiction). The parties hereto agree that the Courts of Ontario shall have jurisdiction to entertain any action or other legal proceedings based on any provisions of this Agreement. Each party hereto does hereby attorn to the jurisdiction of the Courts of the Province of Ontario.
21. This Agreement constitutes the entire agreement between the parties and there is no representation, warranty, collateral agreement or condition affecting this Agreement except as contained in this Agreement, except as otherwise stated herein. Each party acknowledges that no amendment of this Agreement shall be effective unless the same is in writing and executed by each of the parties hereto.
22. If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law and be independent of every other provision of this Agreement.

23. This Agreement may not be assigned by Nyon. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
24. Nothing in this Agreement derogates from, interferes with or fetters the exercise by the City of its rights and obligations (whether discretionary or mandatory) as a municipality, or imposes any obligations on the City's role as a municipality, and the City shall not be prevented from or prejudiced in carrying out any of its statutory rights and responsibilities including its planning rights and responsibilities (or by the City's officers, employees, agents, representatives, or elected or appointed officials of any of their rights and obligations (whether discretionary or mandatory)) or imposes any obligations on the City's officers, employees, agents, representatives, or elected or appointed officials, other than as expressly set out in this Agreement.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF the Parties hereto have hereunto affixed their corporate seals duly attested to by their proper signing officers in that behalf.

NYON OIL INC.

Per _____
Gordon R. Baker
President

I have the authority to bind the Corporation

**THE CORPORATION OF THE CITY OF
PORT COLBORNE**

Per _____
Mayor

Per _____
Clerk

We have the authority to bind the Corporation

SCHEDULE "A"

SCHEDULE "B"

SCHEDULE "C"