Financial Statement Non - Disclosure Agreement

**THIS AGREEMENT**

**BETWEEN:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,**

(the "Disclosing Party"),

**OF THE FIRST PART,**

- and -

**THE CITY OF WINNIPEG**

(the "City"),

**OF THE SECOND PART.**

**REFERENCE:** Request for Qualifications No. 810-2024A (the “RFQ”)

**WHEREAS** Disclosing Party, being a Proponent to the RFQ, has delivered its RFQ Submissions to the City in respect of the RFQ;

**AND WHEREAS** Disclosing Party desires, in accordance with Section RFQ, that City retain in confidence the Confidential Information in accordance with this Agreement;

**NOW THEREFORE** in consideration of the mutual covenants and agreements contained in this Agreement, Disclosing Party and City, intending to be legally bound, hereby agree as follows:

**1.** **Definitions**: In this Agreement the following terms shall have the following meanings:

1. “Agreement” means this agreement.
2. “Disclosing Party” means the Person named as such above.
3. “Confidential Information” means: financial statements submitted by the Proponent in its RFQ Submission, details of material off-balance sheet financial arrangements representing a liability in excess of one million Canadian Dollars ($1,000,000 CAD) submitted by the Proponent in its RFQ submission.
4. “Effective Date” means the day and date this Agreement is executed by The City of Winnipeg.
5. “Permitted Use” means evaluation of the Proponent’s RFQ Submission as contemplated in the RFQ.
6. “Person” shall be broadly interpreted to include, without limitation, any corporation, partnership, other entity, or individual.
7. “Proponent” has the meaning given in the RFQ.
8. “Third Party” means any Person other than the City or Disclosing Party.

**2.** **Use of Confidential Information**: Subject to the terms and conditions of this Agreement, City may use the Confidential Information for the Permitted Use and for no other purpose whatsoever.

**3.** **Restrictions**: Subject to the terms and conditions of this Agreement, City agrees that:

1. Confidential Information shall be kept in the strictest confidence, and shall not be disclosed to any Third Party;
2. City shall restrict access to Confidential Information only to its employees, agents, contractors and professional advisors with a need to know to carry out the Permitted Use, and prior to disclosing same, each such Person shall be made aware of the terms and conditions of this Agreement; and
3. City shall cause each such Person to whom Confidential Information is disclosed to observe the terms of this Agreement, and shall be responsible for any breach of the terms of this Agreement by it or any such Person.

**4. Exclusions**: Confidential Information does not include information that:

1. is in or becomes part of the public domain without breach of this Agreement;
2. is previously known by City independently prior to initial disclosure by Disclosing Party or later if independently developed by City without use of Confidential Information;
3. is lawfully received from a Third Party which has no obligation of confidence; or
4. is required to be disclosed under legal process.

**5. Disclosure:** In the event that City or any Person referred to in 3(b) to whom Confidential Information is provided becomes subject to a demand for discovery or disclosure of Confidential Information under legal process, it shall provide Disclosing Party with prompt notice (except where prohibited by law from doing so) so that Disclosing Party may at Disclosing Party’s sole discretion seek a protective order or other appropriate remedy or otherwise waive the requirements of this Agreement. In the event that the requirements of this Agreement are not waived, or such protective order or other remedy is not obtained, or in cases where legal process requires City or such Person to immediately comply, City or such Person shall furnish only that portion of the Confidential Information in respect of which City or Person is required to disclose.

**6. Term and Termination:** This Agreement will be effective as of the Effective Date and shall expire, subject to earlier termination, two (2) years from and after the Effective Date. Either party may, on thirty (30) days’ written notice to the other party, terminate this Agreement. City’s obligations under this Agreement shall continue until the day that is three (3) years after the expiration or earlier termination, as the case may be, of this Agreement.

**7.** **Return of Confidential Information**: City shall promptly, on notice from Disclosing Party, return to Disclosing Party, or destroy, any and all Confidential Information in accordance with Disclosing Party’s direction. Notwithstanding the foregoing, City may retain one (1) copy of the Confidential Information for regulatory and legal purposes.

**8.** **Equitable Remedies**: City acknowledges and agrees that a breach of any term or condition of this Agreement shall cause irreparable harm to Disclosing Party which cannot be adequately compensated for in damages, and accordingly City agrees that Disclosing Party shall be entitled, in addition to any other remedies available to it, to interlocutory and permanent injunction relief to restrain any anticipated, present or continuing breach of this Agreement.

**9.** **Enurement**: This Agreement shall be binding and shall enure to the benefit of the parties hereto, and their respective legal representatives, successors and permitted assigns.

**10. Governing Law and Interpretation**: This Agreement shall be subject to, interpreted, performed and enforced in accordance with the laws of Manitoba and the applicable laws of Canada without regard to Manitoba or Federal Canadian law governing conflicts of law, even if one or more of the parties to this Agreement is resident of or domiciled in any other province or country. Section headings in this Agreement are for the convenience of the parties only, and shall not affect the interpretation of this Agreement. The recitals hereof form an integral part of this Agreement.

**11.** **Severability**: If any provision in this Agreement is illegal, invalid or unenforceable at law, it shall be deemed to be severed from this Agreement and the remaining provisions shall continue in full force and effect. The parties agree that they shall endeavor to replace any such severed provision with a new provision which achieves substantially the same practical effect and which is valid and enforceable.

**12.** **No Waiver**: No waiver of any provision of this Agreement, or a breach thereof, shall be effective unless it is in writing and signed by the party waiving the provision or the breach thereof. No waiver of a breach of this Agreement, whether express or implied, shall constitute a waiver of a subsequent breach thereof.

**13. Amendments**: No amendment or change or modification of this Agreement shall be valid unless it is in writing and signed by both parties.

**14.** **Assignment**: Neither party shall assign this Agreement without first having obtained the prior written consent of the other party. No assignment of this Agreement shall operate so as to relieve the assignor from any obligation of this Agreement.

**15.** **No Authority**: This Agreement shall not create, nor shall it be deemed to create, the relationship of employer and employee, principal and agent, partnership, or joint venture, between City and Disclosing Party. Disclosing Party has no authority whatsoever to make any representation in respect of, enter any commitment on behalf of, or incur any liability for or on behalf of, City, or to bind or purport to bind City to any Third Party in any way whatsoever.

**16.** **Further Acts and Assurances**: Each of the parties shall, from time to time, do all acts and things and execute from time to time all such further documents and assurances as may be necessary to carry out and give effect to the terms and conditions of this Agreement.

**17.** **Opportunity to Negotiate**: Both parties have had the opportunity to negotiate, review and comment upon this Agreement, and obtain independent legal advice with respect to the content, meaning, and legal effect of this Agreement.

**18.** **Counterparts**: This Agreement may be signed in any number of counterparts, each of which is an original, and all of which taken together constitute one single document.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement, in the manner appropriate to each, as of the Effective Date.

Signed and Delivered ) **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (Disclosing Party)

in the presence of: )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*Witness (if no corporate seal)* ) *(signature of authorized officer)*

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) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

) *(Print Name and Title)*

)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*Witness (if no corporate seal)* ) *(signature of authorized officer)*

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) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

) *(Print name and Title)*

**We have authority to bind the Disclosing Party**

**THE CITY OF WINNIPEG**

Per:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Chief Financial Officer

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Effective Date”)

Certified as to Contract Details: Legally Reviewed and Certified as to Form:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Director of Water and Waste *for* Director of Legal Services and City

Solicitor

Reviewed as to Business Terms:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Manager of Solid Waste Services

Water and Waste Department