

DECOMMISSIONING SERVICES AGREEMENT

THIS DECOMMISSIONING SERVICES AGREEMENT (“Agreement”) made this day of 2021

BETWEEN:

(hereinafter called the “**Contractor**”)
OF THE FIRST PART

- and -

THE CITY OF BRANDON

(hereinafter called the “**City**”)
OF THE SECOND PART

Referred to individually as a “**Party**” and collectively as the “**Parties**”

WHEREAS the City is the owner and manager of the premises known as the Eastview Landfill located at 765 33rd Street East, Brandon, Manitoba (hereinafter call the “**Landfill**”); and

WHEREAS the Landfill requires proper decommissioning and disposal of refrigeration and air conditioning equipment (hereinafter call the “**Work**”); and

WHEREAS the Contractor has submitted a proposal for the Work and which proposal has been accepted by the City;

NOW THEREFORE the City and the Contractor covenant and agree each with the other as follows:

1.0 The Contract Documents consist of all the documents listed as follows:

- A. This Agreement
- B. Specifications to RFP Item #L-23
- C. RFP Item #L-23
- D. Contractor’s Response (Schedule “A”)

- 1.1 Any provisions in this Agreement which may appear to give the City the right to direct the Contractor as to the details of doing the Work covered herein or to exercise a measure of control over the Work shall be deemed to mean that the Contractor shall follow the desires of the City in the results of the Work only. Any portion of the Work involving the dismantlement or removal of property (including the purposeful or inadvertent removal or release of materials) shall also include the disposal by the Contractor of such property including any waste materials used, generated or released by the Contractor or anyone for whom the Contractor is responsible and clean up and restoration (if specified by the City) by the Contractor of that portion of the property which is dismantled or removed.
- 1.2 In the event of conflict in the Contract Documents or a discrepancy between them and existing conditions at the job site or a discrepancy with applicable laws, the Contractor shall immediately bring this to the attention of the City and the City shall determine the appropriate course of action.
- 1.3 Any Work performed by the Contractor prior to the City's said determination shall be done at the Contractor's sole risk and expense and the Contractor shall at its sole expense make all corrections required by the City as a result of such Work.
- 1.4 The Contractor shall perform the Work required by the Contract Documents in accordance with the terms of this Agreement and the Contract Documents. The Contractor will provide all expertise, supervision, labor, materials, tools, equipment, machinery, vehicles, surplus materials, temporary structures, protective fences, scaffolding, staging's, towers, and structures, unloading, hauling, taxes, insurance, subcontracted items and all other things used or necessary, unless herein provided, to perform and complete the Work in conformance with this Agreement.

2.0 TERM

- 2.1 This Agreement is valid for a term commencing _____, 2021 (the "**Effective Date**") and expires December 31st, 2023 (the "**Initial Term**").
- 2.2 Subject to the provisions of Clause 10.0, upon the expiration of the Initial Term, this Agreement shall renew for another term ending December 31st, 2024 on the same terms and conditions as herein contained upon written request of the City and written acceptance of the Contractor.
- 2.3 In the event of the prior termination of this Agreement under Clause 10.0, there shall be no further renewal under sub-clause 2.2.

3.0 DESCRIPTION OF WORK – TIME FOR PERFORMANCE

- 3.1 The Contractor shall attend the Landfill to perform the Work within forty-eight (48) hours notice from the City. Work performed on site by the Contractor shall be between the hours of 8:00 a.m.

and 5:00 p.m., Monday to Friday, excluding holidays in Manitoba. Alternative times must be arranged with the Manager of Solid Waste or his designate.

3.2 The Contractor shall:

- A. safely extract and destroy the refrigerants in the stockpiled refrigeration and A/C equipment in accordance with the regulatory requirements for the Province of Manitoba;
- B. provide the City with the documentation necessary to demonstrate that the refrigerants were safely extracted and destroyed from these devices; and
- C. dispose of the equipment once the refrigerants have been removed and provide details regarding the actual rate of recycling achieved.

4.0 PERFORMANCE OF WORK

4.1 The Contractor agrees to have at the Landfill at all times during the course of the Work the following:

- A. a competent and qualified representative having the responsibility for the general supervision of the Work and full authority to represent the Contractor in all matters pertaining to this Agreement; and
- B. such number of technical, supervisory and administrative personnel as are required to ensure the efficient prosecution and completion of the Work in accordance with this Agreement.

4.2 The Work shall be executed in the best workmanlike manner by qualified, careful and efficient workers in strict conformity with the best practices of the industry and in accordance with the safety rules and regulations in effect at the Landfill.

4.3 All Work shall be performed in accordance with plans and specifications approved by the City provided that the City shall assume no responsibility by reason of such approval and the Contractor shall remain solely responsible for the accuracy and completeness of all such plans and specifications. The City shall, however, be responsible for the accuracy and completeness of all plans and specifications prepared by the City (or its authorized representatives) and furnished to the Contractor hereunder.

4.4 Upon award, the Contractor shall commence the decommissioning of the refrigeration and A/C equipment stockpiled at the Landfill. Decommissioning shall include the extraction and destruction of refrigerants from the equipment in accordance with regulatory requirements of

the Province of Manitoba. Following removal of the refrigerants, the Contractor shall dispose of or recycle the unit.

- 4.5 The quantity of units to be decommissioned shall be determined by the unit price provided by the Contractor as shown on the attached Schedule "A".
- 4.6 The Contractor shall:
- A. Submit to the City written reports of the progress of the Work at such intervals as may be requested.
 - B. In performing the Work, the Contractor shall take necessary precautions for the safety of its employees and shall comply with all applicable laws, orders, rules and regulations including without limitation all applicable provisions of federal, provincial and municipal safety laws.
- 4.7 The Contractor acknowledges that it will, prior to commencement of Work, make a thorough inspection of the Landfill.
- 4.8 By executing this Agreement, the Contractor acknowledges that it has been informed of the possibility that discharges, releases or emissions of hazardous substances may occur on the Landfill during the progress of the Work and that chemical contamination and/or residues may be encountered during the performance of the Work.
- 4.9 The Contractor recognizes and assumes the risk and agrees to inform its employees, sub-contractors and invitees of such risk and of the potential safety, health and environmental hazards involved in the performance of the Work and to properly protect them against such risk and hazards.
- 4.10 The Contractor hereby fully releases and hereafter will fully release the City from any and all claims or liabilities, known or unknown, arising directly or indirectly at any time from conditions actually encountered by the Contractor in the course of the Work or because of any variance between such actual conditions and those believed to exist by the Contractor prior to commencement of the Work. The indemnification of the City by the Contractor set forth in Clause 8.0 includes claims and liabilities involving the existence of any hazardous substances at the project site whether suffered by the Contractor, its officers, employees or agents or any third party (including sub-contractors).
- 4.11 The City may from time to time by written order change any, specifications, issue additional instructions, require the performance of additional Work or reduce the scope or amount of Work.

- 4.12 At the completion of the Work, final acceptance and approval of the Work shall be at the sole discretion of the City and the Contractor shall correct any remedial Work that may be required at his/her own cost.
- 4.13 The Contractor's trucks shall notify the scale operator upon arrival and on the number of units leaving the Landfill prior to departure.

5.0 COMPENSATION AND PAYMENT

- 5.1 The City may decline to approve the Contractor's request for any payment in whole or in part and/or may decline to make a payment because of evidence of:
- A. defective work or material;
 - B. claims filed or evidence indicating probable filing or making of claims;
 - C. failure of the Contractor to make payments to its sub-contractors or to suppliers for labor, services, materials or equipment;
 - D. unrepaired damage by the Contractor to the Work of other sub-contractors;
 - E. unsatisfactory prosecution of the Work;
 - F. erroneous estimates by the Contractor of the value of the Work performed;
 - G. unauthorized deviations from the Contract Documents;
 - H. any other failure of the Contractor to perform pursuant to the Agreement; or
 - I. incorrect invoice or lack of supporting documentation.

When, as and if all the above grounds for declining approval are removed, payment shall be made for amounts withheld.

6.0 INSURANCE

- 6.1 As of the Effective Date and prior to the Contractor or any of its employees or anyone for whose acts it may be liable entering onto the Landfill, the Contractor shall purchase and maintain insurance policies, and shall provide limits of liability of not less than the following:

A. Workers' Compensation, disability benefits and other similar employee benefit acts that are applicable to the Work performed and in conformance with the statutory requirements of the Province of Manitoba.

i. The Contractor's Worker's Compensation Number (_____) must be kept in good standing.

6.2 *Employer's Liability* insurance for claims for bodily injury, occupational sickness or disease or death of the Contractor's employees:

A. two million dollars (\$2,000,000.00) each accident for bodily injury by accident;

B. two million dollars (\$2,000,000.00) each employee for bodily injury by disease; and

C. two million dollars (\$2,000,000.00) policy limit for bodily injury by disease.

6.3 *Commercial General Liability* insurance for claims or damages for bodily injury or death of any person other than the Contractor's employees; damage or destruction of tangible property other than to the Work performed; Independent Contractor's Liability; and Contractual Liability coverage:

A. Bodily injury, property damage, and personal injury: two million dollars (\$2,000,000.00) each occurrence.

6.4 *Commercial Automobile Liability* insurance for all owned, hired, leased and non-owned automobiles for claims or damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle:

A. Bodily injury and property damage; two million dollars (\$2,000,000.00) each person and two million dollars (\$2,000,000.00) each occurrence.

The Contractor's automobile liability insurance policy must include coverage for contractual liability.

6.5 Pollution Liability or Environmental Liability with limits of liability of not less than two million dollars (\$2,000,000.00) per occurrence covering liability for bodily injury and property damage arising from the release, discharge, escape, dispersal or emission of pollutants, whether gradual or sudden, and includes coverage for the costs and expense associated with clean-up, testing, monitoring and treatment of the pollutants.

6.6 The Contractor shall keep the policies required by sub-clauses 6.1, 6.2, and 6.3 in effect until after final completion of the Work, Professional Errors and Omissions Liability insurance, Pollution

Liability and any other claims-made coverage shall be kept in effect either through renewal of the insurance policy, for at least one (1) year after final completion of the Work or the expiration of the applicable statute of limitations for tort actions or defect claims, whichever is later. Coverage afforded under the policies shall not be canceled, be materially altered or be allowed to expire without being renewed until at least thirty (30) days written notice has been given to the City.

- 6.7 Except to the extent precluded by applicable law, the Contractor agrees that the policies required by sub-clauses 6.1, 6.2, 6.3, and 6.4 (with the exception of Workers' Compensation, Employer's Liability and Professional Errors and Omissions) shall name the City as an additional insured.
- 6.8 The terms of coverage required by sub-clauses 6.1, 6.2, 6.3, and 6.4 shall be evidenced by certificates of insurance reflecting the required insurance coverages, which shall be made available to the City and subject to audit and verification by the City upon demand during normal business hours.

7.0 GUARANTEE

- 7.1 The Contractor guarantees that all Work performed hereunder by the Contractor and its sub-contractors shall be in accordance with this Agreement.
- 7.2 The Contractor, at its sole expense, shall re-perform all Work that fails to meet this guarantee and shall remedy all such defects, which appear prior to the end of a one (1) year period. If the Contractor fails to replace such Work or materials or correct such defects within a fair and reasonable period following the City's notice thereof to the Contractor, the City shall have the right to replace and correct the same at the Contractor's sole expense. In addition, any cost or damage incurred by the City in connection with the foregoing may be deducted from the Contractor's compensation then or thereafter to become due.
- 7.3 Neither the failure of the City during the progress of the Work or at its completion to discover or reject Work or materials which are not in accordance with this Agreement, nor any payment made hereunder, nor any occupancy of the premises by the City or use by the City of any or all of the Work shall constitute a waiver of any of the City's rights under this Clause 7.0.

8.0 INDEMNIFICATION

- 8.1 Except to the extent precluded by applicable law, the Contractor shall be responsible for and shall indemnify, defend, save and hold harmless the City, its officers, agents and employees and successors and assigns from and against:
 - A. Any and all claims, demands, suits, actions, liabilities, liens, losses, fines or penalties whether civil or criminal, damages and expenses of every kind and character whatsoever,

actual or asserted, including without limitation the amount of any judgment, penalty, interest, court costs and legal fees incurred in connection with same, or the defense thereof (collectively “**Claims**”), for or in connection with, directly or indirectly, the Contractor’s, its sub-contractors’ or any of their respective officers, employees, agents or representatives actual or asserted violation of laws, regulations, by-laws or other rules.

B. Any and all claims arising out of or in any way occurring directly or indirectly in connection with:

- i. The Contractor’s or its agents, invitees to the site or sub-contractors negligence or intentional conduct in the performance of the Work; and/or
- ii. The Contractor’s breach of this Agreement.

C. Except to the extent of the City’s gross negligence or legal fault, any and all claims whether in negligence, strict liability, other tort, contract or otherwise, for or in connection with loss of life, bodily or personal injury (including property of the Contractor, the City or any third party), and without limitation by enumeration all other claims or demands of every character whatsoever directly or indirectly arising out of or incident to or in connection with or resulting from:

- i. The activities of the Contractor, its agents, servants and employees or its sub-contractors and their agents, servants and employees or the Contractor’s invitees to the site or in connection with the Work to be performed, services to be rendered or materials to be furnished under this Agreement; and
- ii. The Contractors’, its agents, servants and employees or its sub-contractors and their agents, servants and employees or the invitees to the site by the Contractor, sole or concurrent negligent acts or omissions, wrongful acts or omissions or breach of this Agreement.

8.2 To the fullest extent allowed by applicable law, in addition to the indemnities otherwise provided herein, the Contractor shall be responsible for and shall indemnify, defend, save and hold harmless the City, its officers, agents and employees, successors and assigns, sub-contractors and any other third party at the Landfill, from and against any and all claims related to any injury including death of any employee of the Contractor or any employee of the Contractor’s agents or sub-contractor arising out of or in any way occurring directly or indirectly in connection with the Work including any such claims caused by the gross negligence of the City or its respective officers, employees agents or representatives, sub-contractors or any third party located at the Landfill.

- 8.3 The Contractor agrees that upon notice by the City it will immediately investigate, handle, respond to, provide defense for and defend any claim, demand or action at its sole expense and will bear all other costs and expenses related thereto.
- 8.4 The City's entitlement under the foregoing indemnification may be deducted from the Contractor's compensation then due or thereafter to become due, in addition to any other remedies that the City may have.
- 8.5 To the fullest extent allowed by applicable law, the Contractor hereby releases the City from any and all Claims related to any cause incurred in any way related to this Agreement or the use of or access to the Landfill or any condition of the City's premises including without limitation any and all claims caused by the sole negligence or willful misconduct of the City or its officers, agents or employees. All property of the Contractor kept or stored at the site shall be so kept and stored at the risk of the Contractor only and the Contractor shall hold the City harmless from any claim arising out of damage to such property.
- 8.6 Notwithstanding anything to the contrary contained in this Clause 8.0, the Contractor will not be required to indemnify, hold harmless or defend a party including a third party against a claim caused by the negligence or fault, the breach or violation of a statute, by-law, governmental regulation, standard or rule or the breach of contract of the indemnitee, its agent or employee or any third party under the control or supervision of the indemnitee other than the indemnitor or its agent, employee or sub-contractor.

9.0 DEFAULT

- 9.1 If Contractor at any time:
- A. fails to supply the labor, materials, equipment, supervision and other things required of it in sufficient quantities and of required quality to perform the Work with the skill, conformity, promptness and diligence required hereunder; or
 - B. causes interference, stoppage or delay to the project or any activity necessary to complete the project; or
 - C. becomes insolvent; or
 - D. fails to properly pay sub-contractors and/or suppliers; or
 - E. fails in the performance or observance of any of the covenants, conditions, or other terms of the Contract Documents, then in any such event, each of which shall constitute a default hereunder, the City shall, after giving the Contractor notice of default and forty-

eight (48) hours within which to remedy, have the right to exercise any one or more of the following remedies:

- i. require that the Contractor utilize at its own expense overtime labor (including Saturday and Sunday Work) and additional shifts as necessary to overcome the consequences of any delay attributable to the Contractor's default;
- ii. attempt to remedy the default by whatever means the City may deem necessary or appropriate including but not limited to correcting, furnishing, performing or otherwise completing the Work or any part thereof by itself or through others (utilizing where appropriate any materials and equipment previously purchased for that purpose by the Contractor) from any monies due or to become due to the Contractor;
- iii. after giving the Contractor an additional forty-eight (48) hours' notice (at any time following the expiration of the initial forty-eight (48) hours' notice and remediation period), terminate his Agreement in accordance with Clause 10.0; or
- iv. recover from the Contractor all losses, damages, expenses, penalties and fines and all reasonable attorneys' fees suffered or incurred by the City by reason of or as a result of the Contractor's default.

9.2 The foregoing remedies shall be considered separate and cumulative and shall be in addition to every other remedy given hereunder or under the Contract Documents, or now or hereafter existing at law or in equity.

10.0 TERMINATION

10.1 If the Contractor at any time defaults in the discharge or performance of any of the obligations or conditions as provided in Clause 9.0, the City may at its option terminate all Work and without thereby waiving any rights or remedies against the Contractor, enter upon the Work site and take possession of the Work, all materials, tools, equipment, facilities and supplies of the Contractor, for the purpose of completing the Work and securing to the City payment of its costs and other damages.

10.2 In case of such termination the Contractor shall not be entitled to receive any further payments under this Agreement until the Work is completed at which time the Contractor shall be paid for all Work completed to the City's satisfaction prior to the date of such termination less any excess cost to the City of completing the Work. To the extent that the cost to the City of completing the Work exceeds the compensation due to the Contractor under this Agreement, the Contractor shall reimburse the City for such cost.

10.3 The City may at any time terminate this Agreement without cause upon thirty (30) days written notice to the Contractor, and in such event the City shall pay to the Contractor in full settlement of all claims by it hereunder that proportion of the total compensation determined pursuant to Clause 5.0 which the then completed Work bears to the entire Work to be performed under this Agreement as mutually determined by the City and the Contractor less all payments previously made to the Contractor and less all amounts withheld by the City or paid by the City to third parties pursuant to the provisions of this Agreement.

A. The Contractor reserves the right to cancel this Agreement at any time upon sixty (60) days written notice to the City.

10.4 Termination shall be effective upon receipt of written notice of termination by the Contractor (unless a different effective date of termination is stated in such written notice) and the Contractor shall promptly thereafter discontinue the Work.

11.0 COMPLIANCE WITH LAWS

11.1 The Contractor shall procure all necessary permits, licenses and approvals not required to be in the name of the City. The Contractor shall comply with all applicable federal, provincial and by-laws, rules, regulations and orders.

11.2 The Contractor shall not assign this Agreement in whole or in part or any monies to become due hereunder without the prior written consent thereto of the City. Any purported assignment without such prior consent shall be void and of no effect.

11.3 Except as otherwise provided, this Agreement shall enure to and be binding upon the heirs, executors, administrators, successors and assigns of the Parties hereto.

A. The City may assign or otherwise transfer all or part of its rights, duties and/or obligations under this Agreement to any person or entity controlling the City, controlled by the City or under common control with the City at any time during the Initial Term; provided the City furnishes the Contractor with advance written notice thereof.

12.0 NOTICES

12.1 For the purpose of this Agreement, any notice to the City by the Contractor shall be addressed to:

Civic Services Complex
900 Richmond East
Brandon, Manitoba R7A 7M1
Attention: Manager of Solid Waste

And any notice to the Contractor shall be addressed to:

13.0 MISCELLANEOUS

- 13.1 This Agreement constitutes the entire agreement between the Contractor and the City relating to the subject matter hereof, and there are no previous or contemporary representations or warranties of the City or the Contractor not set forth herein.
- 13.2 Except as specifically provided herein, no modification or waiver of this Agreement or any term hereof shall be binding on either party unless made in writing and executed by an authorized representative of the City and the Contractor.
- 13.3 No waiver of any right under this Agreement shall affect the right of the party waiving the same to thereafter exercise such right or any other right similar thereto.
- 13.4 No modification, waiver, termination, discharge or cancellation of this Agreement or any term hereof shall impair the right of either party hereto with respect to any liability whether or not liquidated of the other party therefor accrued.
- 13.5 All rights and remedies of the City specified in this Agreement are in addition to the City's other rights and remedies under the law, whether in contract or in tort.
- 13.6 The Contractor shall remain an independent and shall have no power, nor shall the Contractor represent that the Contractor has any power to bind the City or to assume or to create any obligation expressed or implied on behalf of the City.
- 13.7 This Agreement shall be interpreted, performed and enforced in accordance with the laws of Manitoba.
- 13.8 This Agreement shall enure to the benefit of and be binding upon the Parties hereto, their heirs, executors, and administrators.

IN WITNESS WHEREOF the Parties have signed this Agreement by their duly authorized representatives, on the day and year first above written.

THE CITY OF BRANDON

PER:

"I am authorized to bind the City"

Name:

Position:

Date:

CONTRACTOR

PER:

"I am authorized to bind the Contractor"

Name:

Position:

Date: