

APPENDIX E – Confidential Disclosure Agreement

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (“NDA”) is given to The Regional Municipality of Niagara (the “Region”) by the undersigned proponent (the “Proponent”), effective as of the date written below.

WHEREAS the Region has issued a Request for Proposals (2021-RFP-209) in respect of the disposition or lease of its Material Recycling Facility and the provision of certain Recycling Processing Services, all as is more particularly set out therein (the “RFP”);

AND WHEREAS the Proponent will require access to certain information contained in an electronic data room (the “Data Room”) in order to participate in the RFP and submit a response;

AND WHEREAS the Proponent acknowledged that it must execute this NDA, as required by the RFP, and abide by its requirements in order to receive access to the Data Room;

AND WHEREAS disclosure of the information contained in the Data Room to the public or unauthorized third parties would reasonably be expected to prejudice the interests of the Region and, as such, maintaining the confidentiality of this information is of paramount importance to the Region;

AND WHEREAS the Region is prepared to provide the Proponent with access to the Data room only on the express condition of the execution and delivery to the Region of this NDA;

NOW THEREFORE, in consideration of participating in the RFP and being eligible to receive the information contained in the Data Room, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Proponent hereby agrees in favour of the Region as follows:

1. The Proponent acknowledges and agrees that all of the content of and information contained in the Data Room, is proprietary and confidential and shall be considered confidential information (“Confidential Information”).
2. The Proponent agrees that the Confidential Information and all of the rights therein or related thereof (whether in whole or in part) are, and shall at all times remain, the property of the Region.
3. All Confidential Information is provided “AS IS”. The Region makes no warranties, express, implied or otherwise, regarding, without limitation, the accuracy, completeness, currency, fitness for a particular purpose, or performance of any of the information in the Data Room. The Region shall not be liable for any damages, loss, expense or claim of loss arising from the use of, or reliance on, the Confidential Information by the Proponent.
4. The Proponent acknowledges and agrees that unauthorized disclosure of use of the Confidential Information will cause the Region substantial and irreparable damage. The Proponent further agrees that it may be impossible or inadequate to measure and calculate the Region’s damages from any breach of the terms and conditions set forth herein. Accordingly, the Proponent agrees that if it breaches or threatens breach of this NDA, the Region will have available, in addition to any other right or remedy available, the right to obtain an injunction against it, from a court of competent jurisdiction retaining such breach or threatened breach and to specific performance of any such provisions of this NDA, and the Proponent hereby consents to the issuance of such an injunction and to the ordering of specific performance under such circumstances.

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5. The Proponent shall at all times strictly adhere to the terms and conditions of this NDA.
6. The Proponent agrees:
 - a. To keep and maintain the Confidential Information as strictly confidential;
 - b. To take all reasonable, necessary and appropriate precautions to safeguard and protect the Confidential Information to prevent the unauthorized disclosure of the Confidential Information to third parties. The Proponent shall maintain the physical security of the Confidential Information notwithstanding the medium in which the Confidential Information is received or stored. The Proponent shall advise the Region immediately in the event of a security breach;
 - c. Not to disclose the Confidential Information or any part thereof to any third party except as expressly permitted by this NDA;
 - d. Not to use the Confidential Information for any purpose other than preparing a response to the RFP;
 - e. That title to the Confidential Information is and at all times shall be held by the Region and shall not, under any circumstances, pass from the Region to the Proponent;
 - f. To not copy or reproduce the Confidential Information in any manner whatsoever except for the sole purpose of the RFP; and
 - g. To immediately return the Confidential Information and any copies thereof to the Region upon request by the Region and to destroy all electronic versions of the Confidential Information in its possession and to certify to the Region that this has been done; and, in this event, to cease all use of the Confidential Information.
7. The Proponent may only disclosure the Confidential Information to its directors, officers, employees and any professional consultant(s) and/or subcontractors the Proponent may retain for the purpose of the RFP (“Representatives”), provided that such disclosure shall be on a strictly need-to-know basis to only those Representatives directly involved in, and solely for the purpose of, assisting in the preparation of a response to the RFP and then only on the basis of a clear understanding by such Representatives of their obligation to maintain the confidential status of the Confidential Information.
8. The Proponent assumes full responsibility and liability for ensuring that all of its Representatives are made aware of and comply with the obligations set out in this NDA. The Proponent shall be liable for any breach of this NDA by any of its Representatives.
9. The above obligations shall not apply to Confidential Information which is or which becomes generally known to the public by means other than a breach of this NDA by the Proponent, or which is independently developed by the Proponent without use of, or access to, the Confidential Information.

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10. In the event that any disclosure of Confidential Information is required by law, the Proponent will immediately notify the Region in writing of such requirement prior to the disclosure or release of any of the Confidential Information.
11. The provisions of this NDA will remain in effect regardless of whether the RFP process proceeds or an agreement is reached with a selected proponent or any other party. For greater clarity, the NDA and the Proponent's obligations hereunder shall survive the suspension, cancellation, completion or expiry of the RFP process, the RFP, any ensuing agreement and/or the provision of any services thereunder.
12. This NDA shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada in force therein. The Proponent irrevocably submits to the jurisdiction of the Province of Ontario and the venue of Niagara Region in any action brought by the Region concerning this NDA or the performance thereof.
13. If any portion of this NDA is found to be invalid or unenforceable by law then that portion of the NDA will be served and the remaining portion will remain in full force and effect.
14. Unless a written agreement(s) between the Region and the Proponent with respect the award of RFP is executed (in accordance with the process set out therein), and except for the matters specifically agreed to herein pertaining to the confidentiality of the Confidential Information, neither the Region nor the Proponent shall be under any legal obligation of any kind whatsoever by virtue of this Confidentiality Agreement. Nothing in this Agreement shall imply or create any exclusive relationship between the Region and the Proponent and the parties are free to pursue discussions, negotiations, potential business relationships with any other person(s).
15. This NDA will enure to the benefit of the Region and its successors and assigns and shall be binding upon the Proponent and its successors. Any assignment by the Proponent of this NDA is prohibited and shall be void.

[Signature page follows]

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The Proponent, as properly named below, hereby executes this NDA by the signature of its duly authorized signatory.

Legal Name of Proponent: _____

Proponent Contact and Title: _____

Proponent Business Address: _____

Proponent Telephone No: _____

Proponent Email Address: _____

Date: _____

Signature of Authorized Signatory on behalf of the Proponent:

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the Proponent.