

THIS AGREEMENT made in duplicate as of the 26th day of November, 2021.

BETWEEN:

THE CITY OF FREDERICTON, a local government under and by virtue of the *Local Governance Act*, SNB 2017, c.18 , located at 397 Queen Street, Fredericton, New Brunswick (hereinafter called the “Local Government”)

OF THE FIRST PART

AND

ENVIREM ORGANICS INC., incorporated under the laws of New Brunswick, with offices at 274 Route 148, Killarney Road, New Brunswick E3G 9E2 (hereinafter called the “Supplier”)

OF THE SECOND PART

(each a “Party”, collectively the “Parties”)

WHEREAS the Local Government issued a Request for Proposal P14-06, For the Disposal of Biosolids for the City of Fredericton, dated January 29, 2014, with a closing date of February 12, 2014; (the “RFP”), inviting submission of proposals to provide the Services, as hereinafter defined;

AND WHEREAS the Supplier provides services for the disposal of wastewater biosolids and submitted a proposal to the Local Government dated February 10, 2014, (the “Proposal”) in response to the RFP;

AND WHEREAS the Parties wish to enter into this Agreement pursuant to the RFP, the RFP Response, and the terms and conditions set forth herein;

NOW THEREFORE in consideration of the terms and conditions and mutual covenants and agreements set out herein, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Supplier and the Local Government agree as follows:

1. SERVICES AND TERM

1.1. The Supplier shall provide and deliver the services/scope of work and/or products and perform the work (collectively the “Services”) described in Schedule A hereto, in accordance with the terms and conditions of this Agreement, notwithstanding the date signed, for a period of five (5) years commencing on January 1, 2020 and expiring on December 31, 2024 (the “Term”), unless extended in accordance with Section 1.2 or terminated earlier in accordance with this Agreement.

1.2. At the sole discretion and option of the Local Government, the Term may be extended for one (1), five (5) year extension (being a “Term Extension”) provided the Local Government provides the Supplier written notice of its exercise of this option at least thirty (30) calendar days prior to the end of the Term or Term Extension. The Parties acknowledge and agree that the terms and conditions of this Agreement will continue to apply without modification during a subsequent Term Extension.

1.3. The Supplier recognizes that the Services required under this Agreement are vital and of paramount importance to the Local Government, as such, the Supplier shall ensure that the Services are provided to the Local Government on a continuous and disruption-free basis. In the event the Supplier's Services are disrupted for environmental or a Force Majeure Event, it is of corresponding importance to the Local Government that they be restored rapidly and in a manner that minimizes the impact on the Local Government's operations and business. Any additional services to be provided by the Supplier under this Agreement, other than the Services, must be approved in writing in advance by both Parties in a Statement of Work before the Supplier may perform such services. In the event that any such additional services are performed by the Supplier without written agreement by the Parties, the Local Government shall not be required to pay the Supplier any fees or other amounts in respect thereof and Supplier will not be obligated to continue to perform such additional services.

2. PRICE AND PAYMENT

2.1. Pricing is F.O.B. the Supplier's location being 274 Route 148, Killarney Road, NB E3G 9E2 (the "Primary"). Pricing is in Canadian funds and includes all taxes, rates and charges which are applicable. The Pricing constitutes the full and complete amount which shall be paid to the Supplier for the purpose of this agreement.

2.2. Pricing is to be adjusted annually based on the Consumer Price Index as published in October of the previous year as set by Statistics Canada, ("CPI")

2.3. Initial Term of Agreement (March 1, 2014 to December 31, 2019)

Pricing as follows HST Extra:

March 1, 2014 to February 28, 2015	\$20.00 per tonne
March 1, 2015 to February 29, 2016	\$20.40 per tonne
March 1, 2016 to February 28, 2017	\$20.62 per tonne
March 1, 2017 to February 28, 2018	\$20.91 per tonne
March 1, 2018 to December 31, 2019	\$21.24 per tonne

2.4. Optional Extension Term of Agreement (January 1, 2020 to December 31, 2024)

Pricing as follows HST Extra:

January 1, 2020 to December 31, 2020	\$30.00 per tonne
January 1, 2021 to December 31, 2021	\$30.60 per tonne
January 1, 2022 to December 31, 2022	\$50.00 per tonne
January 1, 2023 to December 31, 2023	2022 Rate + CPI
January 1, 2024 to December 31, 2024	2023 Rate + CPI

2.5. The Supplier acknowledges and agrees that any extension beyond the Term of this Agreement would follow the similar pricing structure with any increases solely based on CPI. Consideration will be given by the City to changes in environmental laws or regulations that directly impact the Services. Consideration may also be given if there are demonstrated increases to costs above inflation for carbon-based composting materials such as sawdust and bark.

- 2.6. Subject to the terms and conditions of this Agreement, in consideration for the Services requested by and performed to the satisfaction of the Local Government, the Local Government shall pay the Supplier a fixed rate per tonne of biosolids delivered to the Supplier, in accordance with this Section 2.
- (a) The Local Government shall weigh the material at the Barker Street Treatment Facilities certified truck scale and advise Supplier of the amount of biosolids delivered.
- 2.7. Each invoice submitted by the Supplier for payment shall contain a detailed description of the Services including the weight(s) of biosolids delivered to the Supplier in respect of which it is being remitted, and all such other information as specified by the Local Government from time to time for inclusion therein. Subject to verification by the Local Government, invoices will be paid thirty (30) days following receipt. Payments will be administered through the Local Government's electronic payment process. Following the execution of this Agreement, the Supplier shall send Proper Invoices in proportion to the progress made with each phase of the Services, if applicable, electronically to invoices@fredericton.ca, unless the Local Government advises otherwise. Invoices received after 4:30 p.m. (AST) will be considered to be received on the next business day.
- 2.8. "Proper Invoices" mean a written bill or other request for payment for services or materials made pursuant to this Agreement and shall contain the following information, and any other requirements that this Agreement specifies: (a) Supplier's name, telephone number, mailing address and shipping address (if different than the mailing address); (b) the Supplier's invoice number; (c) the date and the period during which the Services or materials were supplied; (d) a description, including quantity (itemized list of services being invoiced for, time spent by each employee and expenses incurred on the project in the billing period, where appropriate), of the Services or materials supplied; (e) the amount payable for the services or materials that were supplied including a total showing how much money has been billed previously and a total billed to date, (i.e. current plus previous invoices) as applicable and the payment terms; (f) the name, title, telephone number and mailing address of the person to whom payment is to be sent; (g) the name or title of the project; (h) HST must also be shown as a separate line item; and (i) any other information that the Local Government may require.
- 2.9. The Parties acknowledge and agree that the Local Government shall not be considered to be in default if the payment process for a Proper Invoice is delayed due to the Supplier's failure to complete with the requirements of Section 2.
- 2.10. No payment by the Local Government to the Supplier hereunder shall be or construed to be an acceptance or approval by the Local Government of incomplete, defective or improper performance by the Supplier of any of its obligations under this Agreement or operate to relieve the Supplier from the performance of any of its obligations hereunder that have not been performed in accordance with the requirements set out in this Agreement.
- 2.11. The Supplier is responsible for paying its own costs and expenses incurred in connection with its performance of the Services. For greater certainty, such costs may include but are not limited to telephone, copying, courier, travel, parking, fuel surcharge and pandemic costs shall not be reimbursed by the Local Government.
- 2.12. The Local Government may set-off any amount due or owing to the Supplier, or any subcontractor, pursuant to this Agreement against any amounts the Supplier owes to the

Local Government.

3 SUSPENSION AND TERMINATION OF AGREEMENT

3.1 The Local Government shall be entitled to immediately suspend and/or terminate this Agreement for cause, upon the occurrence of any of the following events, each of which shall constitute an "Event of Default":

- (a) The Supplier breaches or fails to comply with any of the terms and conditions of this Agreement, and such breach or failure is not remedied by the Supplier to the reasonable satisfaction of the Local Government within ten (10) days after written notice from the Local Government to remedy the breach or failure;
- (b) The Supplier becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of creditors, or otherwise acknowledges its insolvency, or a receiver or receiver manager is appointed for any property of the Supplier; or
- (c) Any statement, representation or warranty made by the Supplier (in its Proposal) or in this Agreement is untrue or incorrect.

3.2 If this Agreement is suspended or terminated for cause pursuant to Section 3.1 as a result of an Event of Default, the Supplier shall be responsible for and shall reimburse the Local Government for all loss, costs and damages incurred by the Local Government as a result of or arising from the Event of Default, including any costs incurred by the Local Government to correct any defects or deficiencies in any of the Services, and any costs incurred by the Local Government to procure the Services or any part thereof from another provider.

3.3 Notwithstanding Section 3.1, the Local Government may, at its sole discretion, at no cost, terminate this Agreement without cause at any time prior to the expiration of the Term, except for redirecting product to a new Local Government facility that is being examined for potential feasibility, upon giving thirty (30) days prior written notice of termination to the Supplier. In such an event, the Supplier shall be entitled to receive payment for the Services it has satisfactorily performed up to the date of termination, and where applicable, to the payment of any holdback which the Local Government is then holding at such time. Payments to the Supplier of the foregoing amounts shall constitute full and final satisfaction of the Local Government's obligations to the Supplier under this Agreement. In the event this Agreement is terminated by the Local Government pursuant to this Section 3.3, the Supplier shall not be reimbursed for any profits that may have been anticipated but not earned up to the termination date, and the Supplier shall not have any claim or entitlement to any additional compensation or damages arising from such termination.

3.4 Neither the expiration nor the earlier suspension or termination of this Agreement shall relieve, or be deemed to relieve, the Supplier from any duties, obligations or liabilities hereunder that accrued prior to such expiration or termination, or which by their nature are intended to survive the expiration or earlier termination of this Agreement, including but not limited to all warranties given by the Supplier in respect of the Services, and those duties and obligations of the Supplier set out in Section 4 (Confidentiality), Section 7 (Insurance, Liability and Indemnity) and Section 13 (Accounts and Audit).

4 CONFIDENTIALITY

- 4.1 The Supplier acknowledges and confirms that all information provided to it by the Local Government hereunder or to which the Supplier has access as a result of providing the Services to the Local Government is confidential information (“Confidential Information”). Unless required by law or an order of a court of competent jurisdiction, such Confidential Information shall not, either during the Term or at any time thereafter, be disclosed by the Supplier, to any third party or to any employees of the Supplier, other than its employees who are directly involved in providing the Services, without the prior written consent of the Local Government.
- 4.2 The Supplier acknowledges that the Local Government is subject to the *Right to Information and Protection of Privacy Act*, SNB 2009, c. R-10.6 (“RTIPPA”), as amended, with respect to the personal information, as defined thereunder, in its custody and control. The Supplier agrees that the Local Government may disclose this Agreement or portions thereof as may be required pursuant to RTIPPA or a City Council approval process, if required, and that no such disclosure constitutes a breach of confidentiality.

5 INDEPENDENT CONTRACTOR

- 5.1 This Agreement is a contract for the performance of the Services. The Supplier is engaged by the Local Government hereunder as an independent contractor and shall not at any time hold itself out as an employee, servant or agent of the Local Government. No partnership, joint venture, agency or other legal relationship is created or deemed to be created by this Agreement or any actions of the Parties hereunder. The Supplier shall not have authority under this Agreement to bind the Local Government, or to commit the Local Government to the payment of money to any third party.

6 COMPLIANCE WITH LAWS

- 6.1 The Supplier shall comply with all applicable laws governing the conduct of its business and the provision of the Services to the Local Government.
- 6.2 The Supplier agrees to maintain in good standing all licences, permits, registrations or authorizations it is required to obtain in order to lawfully provide the Services in the Province of New Brunswick. Without limiting the foregoing, professional personnel performing any part of the Services on behalf of the Supplier shall be required to comply with all applicable professional registration or licensing requirements in effect in the Province of New Brunswick at the time such Services are being performed.
- 6.3 Neither the execution of this Agreement by the Local Government or the acceptance of the Supplier’s Proposal shall be or deemed to be approval or authorization by the Local Government to anything related to the business or operations of the Supplier or the provision of the Services that requires any permit or licence or approval pursuant to federal, provincial or municipal legislation, regulations or by-laws.
- 6.4 The Supplier shall promptly provide to the Local Government, upon request (unless specified otherwise in the request for proposal), copies of all permits, licences, authorizations and registrations that it is required to obtain in order to provide the Services, as well as evidence of the Supplier’s compliance with laws applicable to the performance of the Services.

7 INSURANCE, LIABILITY AND INDEMNITY

- 7.1 The Supplier shall, at its own expense obtain and maintain for the Term and for an additional

period of two (2) years thereafter the following insurance coverage:

(a) Commercial General Liability

- (i) The policy shall provide a policy limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence for all claims arising out of bodily injury (including death), personal injury, and damage to property of others. Such policy shall not contain any exclusion that conflict with the Services required to be delivered or performed under this Agreement. The Supplier shall list the Local Government and any other party required by the Local Government as an additional insured. The policy shall also contain cross liability and severability of interest.
- (ii) The policy shall have policy limits not less than two million dollars (\$2,000,000.00) per claim or occurrence, aggregate limits not less than two million dollars (\$2,000,000.00) within any policy year.

7.3 The insurance to be maintained by the Supplier hereunder shall:

- (a) be issued by financially sound insurers acceptable to the Local Government and licensed to carry on business in the Province of New Brunswick or Canada;
- (b) require the insurer to provide the Local Government with at least thirty (30) days' prior written notice of a material change in the policy or termination or cancellation of the policy;
- (c) provide coverage for liability arising out of property damage, loss, personal injury (including death), or any other damage resulting from any act or omission of the Supplier, its officers, directors, employees, servants, and agents; and
- (d) be primary insurance without right of contribution of any other insurance carried by the Supplier or by the Local Government.

7.4 Prior to the award of any contract for service or the signing of this Agreement, the Supplier shall deliver to the Local Government certificates of insurance evidencing the insurance required under this Agreement is in effect. Thereafter and throughout the Term or Term Extension of this Agreement, the Supplier shall, provide the Local Government any and all renewal certificates of insurance evidencing that the insurance required under this Agreement continues in effect. The Supplier shall also provide a certificate of insurance upon request of the Local Government.

7.5 The Supplier shall provide the Local Government with a certificate of renewal for each insurance policy no later than fifteen (15) days prior to the expiry date of the applicable policy.

7.6 When requested by the Local Government, the Supplier shall provide copies of its insurance policies to the Local Government for their review and inspection during the Term of this Agreement or prior to the Parties signing this Agreement.

7.7 The Parties acknowledge and agree that any other valid or collectible insurance that may be available to the Local Government shall not apply to any loss until the coverage and

limits available under the insurance policies maintained by the Supplier in accordance with this Agreement have been exhausted.

7.8 The Supplier shall at all times indemnify and save harmless the Local Government, its officers, directors, employees, councillors, agents, representatives, officials, successors and assigns (hereinafter the "Indemnified Parties"), from and against any and all claims, actions, suits, executions, demands, or other proceedings of any kind or nature, and all loss, liability, judgments, costs, charges, damages, liens and expenses of any nature whatsoever and howsoever caused ("Losses") resulting from:

- (a) an Event of Default;
- (b) any act, omission or negligence of the Supplier, or any of its employees, servants, agents, or subcontractors, in the performance of this Agreement, including without limitation, any injury or death to persons, or loss of or damage to property;
- (c) the death of or bodily injury to any employee, customer, agent, business invitee, visitor or other person, to the extent caused by the negligence or willful misconduct of the Supplier or any Supplier personnel or Supplier affiliate;
- (d) the damage, loss or destruction of any real or tangible personal property (excluding data) to the extent caused by the negligence or willful misconduct of the Supplier or any Supplier personnel;
- (e) the unauthorized disclosure or breach by the Supplier or any Supplier personnel of any Confidential Information and/or personal information;
- (f) any acts performed by or on behalf of the Supplier beyond the authority of the Supplier under the terms of this Agreement;
- (g) any illness, injury or death of any employee of the Supplier;
- (h) any breach or resulting expenses incurred by the Supplier attributable to the Supplier's responsibilities pursuant to applicable environmental or health and safety legislation;
- (i) any infringement or alleged infringement of any patent, trade secret, service mark, trade name, copyright, official mark, moral right, trade-mark, industrial design or other propriety rights conferred by contract, common law, statute or otherwise in respect to the Services or any matter provided to the Local Government or performed by the Supplier, or anyone else for whom at law the Supplier is responsible, except to the extent any such alleged infringement is attributable to the actions or omissions of the Indemnified Parties; or
- (j) a security breach caused by or attributable to the negligence, actions, omissions or delays in the performance of this Agreement by the Supplier.

7.9 The Local Government shall not be liable for any damages or injury (including death) to any person or to any property of the Supplier as a result of or arising out of this Agreement or the provision of the Services by the Supplier under this Agreement, unless such damages are direct damages and are caused solely and directly by or as a result of the negligence of

the Local Government. In no event shall the Local Government be liable for any indirect or consequential damages that are sustained by the Supplier, howsoever caused, as a result of or arising out of this Agreement or the provision by the Supplier of any Services hereunder.

- 7.10 If the Supplier or its workers are employed in an industry prescribed by legislation where coverage is required under the *Worker's Compensation Act* (New Brunswick) the Supplier shall verify prior to signing this Agreement that they are registered and in good standing by obtaining a clearance certificate from WorkSafe NB. The Supplier shall also provide a copy of the clearance certificate to the Local Government prior to the Parties signing the Agreement.
- 7.11 If at any time during the Term of this Agreement the Supplier's WorkSafe NB coverage lapses, the Supplier, upon receipt of an invoice, shall pay the Local Government for any charges that the Local Government incurs.

8 TITLE AND ACCEPTANCE

- 8.1 The biosolids removed from the treatment facility and delivered to the Supplier, become the property of the Supplier.

Biosolids Analysis (2021)

2021 Biosolids Analysis				
Date		March 5, 2021	June 2, 2021	September 1, 2021
pH		5.9	5.9	5.7
Ammonia	(as N) mg/Kg	3530	2600	1900
Nitrate +	Nitrite (N) mg/Kg	<10	<5	<5
Kjeldahl	Nitrogen mg/Kg	41200	34000	45900
Chloride	mg/Kg	750	340	350
Total Phosphorus	mg/Kg	6280	5260	5980
Neutralizing	Value% of CaCO ₃	9.2	0.8	10.6
Aluminum	mg/Kg	2360	4330	1560
Antimony	mg/Kg	0.9	0.8	0.9
Arsenic	mg/Kg	2	3	2
Barium	mg/Kg	149	158	121
Beryllium	mg/Kg	0.1	0.2	< 0.1
Bismuth	mg/Kg	11	14	15
Boron	mg/Kg	5	8	10
Cadmium	mg/Kg	0.33	0.40	0.33
Calcium	mg/Kg	10700	9220	8120
Chromium	mg/Kg	11	14	9
Cobalt	mg/Kg	2.1	3.2	1.6
Copper	mg/Kg	232	234	260
Iron	mg/Kg	5790	9040	5150
Lead	mg/Kg	7.7	13.1	9.7
Lithium	mg/Kg	3.1	5.7	1.7
Magnesium	mg/Kg	1830	2410	1200
Manganese	mg/Kg	2540	434	422

Mercury	mg/Kg	0.20	1.09	0.28
Molybdenum	mg/Kg	3.9	4.0	4.5
Nickel	mg/Kg	8	12	7
Potassium	mg/Kg	1430	1240	780
Rubidium	mg/Kg	3.2	5.2	1.8
Selenium	mg/Kg	1	< 1	2
Silver	mg/Kg	1.4	1.3	1.0
Sodium	mg/Kg	510	230	210
Strontium	mg/Kg	45	40	36
Tellurium	mg/Kg	< 0.1	< 0.1	< 0.1
Thallium	mg/Kg	< 0.1	< 0.1	< 0.1
Tin	mg/Kg	< 0.1	1.2	4
Uranium	mg/Kg	0.4	0.8	1.1
Vanadium	mg/Kg	6	9	4
Zinc	mg/Kg	294	298	330

8.2 The Supplier shall promptly pay for all labour, services and materials that it requires to provide the Services. The Supplier agrees that it shall not do or permit anything to be done that would result in any liens, charges or encumbrances being placed on or attaching to any materials, parts, work in process, finished work or deliverables comprising the Services to be provided to the Local Government under this Agreement.

9 FORCE MAJEURE

9.1 The Supplier shall not be liable for a failure or delay in performing any of its obligations hereunder that occurs without the fault or negligence of the Supplier and is attributable solely to a cause beyond its reasonable control ("Force Majeure Event"). For the purposes of this Agreement, the following shall be considered to be a Force Majeure Event: flood, fire, explosion, power failure, acts of God, war, terrorism, civil commotion, the enactment of any law, order, regulation or by-law, labour strikes or disputes, slowdowns, picketing, boycotts, stop-work order, injunction, pandemic, epidemic or other causes beyond their reasonable control excluding a non-performing Party's lack of or insufficient financial resources to discharge its duties, liabilities or obligations hereunder.

9.2 Where the Supplier claims that a Force Majeure Event has occurred, the Supplier shall be required to give immediate written notice thereof to the Local Government, which notice shall describe the Force Majeure Event, its cause, the probable duration of the delay resulting therefrom, and the steps being taken by the Supplier to mitigate the impact of the Force Majeure Event on the performance of the Supplier's obligations hereunder.

9.3 Notwithstanding the foregoing provisions of this Section 9, if a delay or failure arising from a Force Majeure Event continues for ten (10) consecutive days, the Local Government may, in its sole discretion, terminate this Agreement upon three (3) days prior written notice to the Supplier. In the case of termination by the Local Government pursuant to this Section 9.3, the Supplier shall be entitled to receive payment only for the Services provided prior to the termination date which have met the requirements of this Agreement, and such payment shall constitute full and final satisfaction of the Local Government's obligations to the Supplier hereunder.

10 REPRESENTATIONS AND WARRANTIES

10.1 The Supplier represents and warrants to the Local Government, with the intention and knowledge that the Local Government is relying on each such representation and warranty in entering into this Agreement, that:

- (a) All statements contained in the Supplier's Proposal, and any certificate or other document delivered to the Local Government as part negotiations between the Parties or under this Agreement or in connection with the Services to be provided hereunder are true and correct;
- (b) The Supplier has no knowledge of any fact that may materially adversely affect the Supplier's business or operations or its financial condition, or its ability to fulfill its obligations to the Local Government under this Agreement;
- (c) The Supplier has the personnel, experience, qualifications and other resources to provide the Services in accordance with the requirements of this Agreement in a timely, efficient and professional manner in accordance with the Required Standard of Care.

"Required Standard of Care" means: (a) using the Standards, practices, methods and procedures among the highest commercial standards of practice and professionalism as understood in the Province of New Brunswick; (b) conforming to applicable laws and all rules of professional conduct applicable to the Supplier or the Supplier personnel; (c) exercising the degree of skill and care, diligence, prudence and foresight which would be expected from a leading person or professional performing work similar to those called for under this Agreement and (d) using only proper materials and methods as are suited to the function and performance intended;

"Standards" means, at a given time, those specifications, manuals, codes, practices, methods and procedures applicable to the Required Standard of Care;

- (d) The Supplier is validly existing under the laws of the location of its head office and the Supplier has all necessary corporate power, authority and capacity to enter into, meet and perform its obligations under this Agreement;
- (e) The entering into of this Agreement by the Supplier and the performance of its obligations hereunder has been authorized by all necessary corporate action;
- (f) The Supplier is not aware of any legal action instituted, threatened or pending against the Supplier that could have a material adverse effect on its ability to perform its obligations under this Agreement;
- (g) This Agreement has been duly authorized, executed and delivered by the Supplier and constitutes a valid and binding obligation of the Supplier enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency and other similar laws affecting the enforceability of the rights of creditors generally; and
- (h) The Supplier can perform the Services, and the Local Government shall be entitled to utilize the Services, in accordance with the requirements of this Agreement without infringing any trade secret, patent, copyright, industrial design or other intellectual property right enforceable in Canada, and the Supplier has obtained, and

will maintain, at its own expense, all requisite and appropriate authorizations and permissions, including those concerning any licenses, assignments, copyrights, patents and other intellectual property rights that are required by the Supplier to meet its obligations to the Local Government hereunder.

- 10.2 THE PARTIES AGREE THAT, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THERE ARE NO OTHER WARRANTIES (EXPRESS OR IMPLIED) PROVIDED BY THE SUPPLIER WITH RESPECT TO THE PERFORMANCE OF THE SERVICES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

11 CONFLICT OF INTEREST

- 11.1 The Supplier shall not permit an actual or potential conflict of interest to arise between its obligations to the Local Government under this Agreement and its obligations to any third party. The Supplier shall immediately notify the Local Government in writing if any such potential or actual conflict of interest should arise at any time during the Term.

12 ASSIGNMENT AND SUBCONTRACTING

- 12.1 The Supplier shall not assign this Agreement or any of its rights or obligations hereunder or subcontract the performance of any of the Services without the prior written consent of the Local Government, which consent may be withheld by the Local Government in its sole discretion. Any purported assignment or subcontracting by the Supplier without such consent shall be of no force or effect.
- 12.2 The Local Government's consent to an assignment of this Agreement or the subcontracting of the performance of any of the Services to be provided by the Supplier hereunder, shall not relieve the Supplier from any of its obligations under this Agreement and the Supplier shall, notwithstanding any such consent by the Local Government, remain responsible for the performance of the Services and all other obligations of the Supplier set out herein.
- 12.3 Subject to Section 12.1, the Supplier shall only engage subcontractors or personnel that are qualified and competent to perform the Services under this Agreement in a timely, efficient and professional manner.

13 ACCOUNTS AND AUDIT

- 13.1 The Supplier shall keep proper and accurate books and records, including all invoices, receipts and vouchers, relating to the Services and all expenditures and commitments made in connection therewith. The Supplier shall make such books and records available to the Local Government for review or audit within thirty (30) days following receipt of a request from the Local Government to do so. The Supplier agrees that it shall retain all such books and records and make them available for review or audit by the Local Government for a period of three (3) years after the date of final payment by the Local Government hereunder. Any review or audit by the Local Government pursuant to this Section 13.1 shall be carried out by the Local Government at the Local Government's expense.

14 GENERAL

- 14.1 **Local Government's Representative:** All references in this Agreement to the Local

Government, include any person duly authorized to act on behalf of the Local Government thereunder.

- 14.2 **Sections, Headings and Interpretation:** The division of this Agreement into sections and the insertion of headings are for convenience of reference only and do not affect its interpretation. Except where the context requires otherwise, references to the terms “herein,” “hereof,” “hereunder” and similar expressions refer to this Agreement as a whole, and not to any specific Section or Schedule.
- 14.3 **Time of the Essence:** Time shall be of the essence in this Agreement.
- 14.4 **Currency:** All dollar amounts referred to in this Agreement are Canadian dollars, unless expressly provided or stated otherwise.
- 14.5 **Severability / Partial Invalidity:** If any term or provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, it shall be deemed to be severed from this Agreement, and the remaining terms and conditions shall nevertheless remain in full force and effect.
- 14.6 **Agreement and Amendments:** This Agreement constitutes the entire agreement and understanding between the Supplier and the Local Government with respect to the Services, and supersedes all prior negotiations, communications and other agreements, whether written or oral, relating to the subject matter hereof. Any amendment or modification to this Agreement shall have no force or effect unless it is in writing and signed by duly authorized representatives of each of the Local Government and the Supplier.

The following documents form part of this Agreement:

- (a) this Agreement and
 - (b) the attached Schedules.
- 14.7 **Waiver:** No term or provision of this Agreement, and no breach of this Agreement by the Supplier, shall be deemed to be waived or excused by the Local Government unless such waiver is in writing and signed by the Local Government. The waiver by the Local Government of any breach of a term or provision of this Agreement shall not be or be deemed to be a waiver of any continuing or subsequent breach by the Supplier of the same or any other term or provision of this Agreement.
- 14.8 **Remedies Cumulative:** The rights and remedies of the Local Government set out in this Agreement are cumulative and are in addition to and not in substitution for any other rights or remedies available to the Local Government at law or in equity.
- 14.9 **Disputes:** If a dispute arises between the Local Government and the Supplier arising out of or relating to this Agreement, or the subject matter hereof, the Local Government and the Supplier agree that they shall each make all reasonable efforts to resolve any such dispute on a timely basis through amicable negotiations. Disputes shall promptly be referred by each party to their respective senior management representatives who have the authority to resolve and settle any such disputes on their behalf. In the event that such representatives cannot resolve the dispute within ten (10) days or such longer period as the Parties may agree in writing, either party may elect, upon giving prior written notice to the other Party, to resolve the matter through mediation or arbitration by a mutually acceptable mediator or

arbitrator in accordance with the *Arbitration Act*, SNB, 2014, c. 100, as amended or litigation proceedings in the courts of the Province of New Brunswick. Notwithstanding the foregoing, nothing in this Section 14.9 shall prevent the Local Government from exercising its rights of termination set out under this Agreement in the circumstances described therein. It is further agreed by the Parties that they shall pay their own costs of any mediation, arbitration or litigation.

14.10 **Enurement:** This Agreement shall enure to the benefit of and be binding on the Local Government and on the successors and permitted assigns of the Supplier.

14.11 **Notices:** Any notice to be given under this Agreement by the Local Government or the Supplier shall be in writing and delivered by hand, by email transmission or by registered mail, to the other party at the address and to the attention of the contact individual indicated below:

To the Local Government:
The Office of the City Clerk
397 Queen Street
Fredericton, NB E3B 1B5
cityclerk@fredericton.ca

To the Supplier:
Envirem Organics Inc.
274 Route 148
Killarney Road, NB E3G 9E2
bobk@envirem.ca

A notice shall be deemed to be duly given and received upon delivery, if delivered by hand; upon receipt of the email transmission, if the transmission is received by the intended recipient prior to the recipient's close of business (and otherwise on the next business day of the recipient); or three (3) business days after posting, if sent by registered mail with a return receipt. Either party may change its address or contact for receipt of notices, provided that such party gives notice thereof in accordance with this Section 14.11 and confirms the effective date of the change in such notice.

14.12 **Counterparts:** This Agreement may be signed by the Local Government and the Supplier in one or more counterparts (in original or electronic form), each of which when signed and delivered will be deemed an original, but all of which together will constitute one and the same instrument; however, this Agreement will be of no force or effect until executed by all Parties. Executed signature pages delivered by facsimile or electronic mail will be deemed for all purposes to be original counterparts of this Agreement.

14.13 **Further Assurances:** The Supplier and the Local Government agree to execute and deliver all such further documents and instruments, and do or cause to be done all such acts and things, as either party may reasonably consider necessary to evidence the intent and meaning of this Agreement.

14.14 **Words in the Singular:** Where the context so requires in this Agreement, words in the singular include the plural and vice versa.

14.15 **Contra Proferentem Rule Not Applicable:** Should any provision of this Agreement require judicial interpretation, mediation or arbitration, it is agreed that the court, mediator or arbitrator interpreting or construing the same shall not apply a presumption that the terms thereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the Party who itself or through its agent prepared the same, it is agreed that both Parties, directly or through their agents, have participated in the preparation hereof.

14.16 **Costs:** It is acknowledged that each Party shall pay his own costs, charges and expenses

SCHEDULE A SERVICES

This Schedule A incorporates the following documents:

(1) Schedule A.1 Request for Proposals, as attached hereto and forming a part hereof.

RFP P14-06 For the Disposal of Biosolids for The City of Fredericton issued by the Local Government on January 29, 2014, which describes the Services to be delivered by the Supplier to the Local Government.

Addendum #1 for RFP P14-06 For the Disposal of Biosolids for The City of Fredericton issued by the Local Government on January 31, 2014, which changes the initial term of the Services to be delivered by the Supplier to the Local Government.

As outlined in RFP P14-06, the Terms and Conditions include the following as well as the modifications included as underlined text:

1. This contract is a multi-year Biosolids Disposal agreement. This term will be for five years, with the option by the City of Fredericton to extend the agreement over additional years upon mutual consent and agreement of the City of Fredericton and the Supplier. The City of Fredericton requires uninterrupted service and guaranteed pricing for the term of the agreement. The City of Fredericton reserves the right to cancel this agreement at any time without notice, if the Supplier's services are not acceptable or no longer required by the City, without penalty or action against the City. Failure to meet the Terms and Conditions, or for any other reason the Supplier is deemed not to be a responsive or responsible Supplier, the City of Fredericton reserves the right to terminate this agreement on the grounds of unsatisfactory performance by the Supplier or its employees. The City of Fredericton through its agents and in its sole discretion, maintains the right to determine the level of performance which is satisfactory. The City of Fredericton reserves the right, in the event that the successful Supplier fails to comply with the conditions as listed, to cancel the contract without penalty or action against the City of Fredericton.
2. Supplier must meet the regulatory compliance to treat, (dispose, compost, etc.) biosolids.
3. Supplier is responsible for all regulatory, approvals, permitting, etc.
4. Biosolids generated at the Treatment Facility are delivered by City dump truck with an average load of 13 - 14 tonnes, Monday to Friday, 52 weeks per year. Also, there may be occasions where the Water Resource Recovery Division has to deliver biosolids outside of the normal business hours (or days) due to operational issues.
5. The Treatment Facility generates approximately 6,000 tonnes per year of biosolids (at an average dryness of 27%). The City does not guarantee specific amounts will be delivered. The quantity stated is approximate and may vary depending on the nature of the operation on an as and when required basis.

6. **Safety**

(a) It is the responsibility of the Supplier to ensure a safe work environment for its employees, and Local Government employees who access the work site of the Supplier, at all times during the Initial Term or Optional Extension Term of this Agreement; and to maintain a clean and hazard free site.

(b) Suppliers shall have a written safety program in compliance with New Brunswick legislation.

(c) The Supplier shall comply with the provisions of the *Workers' Compensation Act* and its regulations. The Supplier shall provide the City with a Clearance Certificate from WorkSafe NB to confirm registration and that the account of the Supplier is in good standing. The Supplier shall provide such Clearance Certificate prior to awarding this agreement, and at any time as requested by the City.

(d) The Supplier shall comply with the *Occupational Health and Safety Act*, as amended, and its Regulations, as amended, where applicable to the scope of work. A copy of the Act and the Regulations can be obtained from WorkSafe NB or from the Province of New Brunswick website (https://www2.gnb.ca/content/gnb/en/departments/public-safety/attorney-general/content/acts_regulations.html).

(e) The Supplier shall comply with any federal or provincial legislation or regulation(s) with respect to the handling and storage of hazardous materials.

(f) Supplier employees must abide by the latest City and Provincial fall protection requirements.

(g) Federal and Provincial and Municipal labour regulations, safety regulations, fire prevention regulations and municipal by-laws shall apply to and govern all phases of the work hereinafter specified including all codes/industry standards.

(2) Schedule A.2 The Supplier's Proposal dated February 10, 2014, as attached hereto and forming a part hereof.

(3) The Local Government shall solely and exclusively deliver all Biosolids materials to the Supplier's Killarney Road location for the Term of this Agreement. For clarification: this means that the Local Government will not use another service provider or facility to dispose of Biosolids materials for the Term of this Agreement.

PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

I, Jennifer Lawson, of the City of Fredericton, in the County of York and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS:**

1. THAT I am the City Clerk of the City of Fredericton, one of the parties named in the foregoing instrument and as such I have personal knowledge of the matters herein deposed to.
2. THAT the seal affixed to the foregoing instrument purporting to be the seal of the City of Fredericton is the Corporate Seal of the City of Fredericton and was so affixed by order of the City Council.
3. THAT the signature "Kate Rogers" subscribed to the foregoing instrument is the signature of Kate Rogers, the Mayor of the City of Fredericton, and the signature "Jennifer Lawson" subscribed thereto is my signature.
4. THAT the Mayor and City Clerk are officers of the City of Fredericton duly authorized to execute the foregoing instrument.

SWORN TO BEFORE ME at the)
City of Fredericton, in the County)
of York and Province of New)
Brunswick, this ____ day of)
December, 2021.)

_____)
A Commissioner of Oaths)
Being a Solicitor)

_____)
Jennifer Lawson

PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

I, Robert T Kiely, P.Eng, of the City of Fredericton, in the County of York and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS:**

1. That I hold the office of President and General Manager of Envirem Organics Inc., (hereinafter called the "Corporation") and I am authorized to make this affidavit and have personal knowledge of the matters sworn to herein.
2. That the seal affixed to the foregoing instrument is the seal of the Corporation and was affixed to the instrument by order of the board of directors of the Corporation.
3. That the signature "Robert Kiely" subscribed to the foregoing instrument is my signature.
4. The President is the officer of the Corporation duly authorized to execute the foregoing instrument.

SWORN TO BEFORE ME at the)
City of Fredericton, in the County)
of York and Province of New)
Brunswick, this ____ day of)
_____, 2021.)
)
)
)
_____)
)
A Commissioner of Oaths)
Being a Solicitor)

Robert T. Kiely, P.Eng.