

**Winnipeg's
Sewage Treatment Plant Upgrade and Expansion
Program**

**Summary Document
Of the
Program Agreement Signed on April 20, 2011**

**By the City of Winnipeg
And
Veolia**

Executive Summary

As directed by City Council on May 19, 2010 the City has entered into a multi-year agreement with Veolia for the provision of advice to assist the City with its delivery of sewage treatment services.

The contract fully complies with the mandatory terms set out by City Council, namely:

- The City of Winnipeg (City) will retain complete ownership of all the sewage system assets.
- No other City services or assets are involved in this contract.
- Our drinking water system is not a part of this sewage services Agreement.
- The City will continue to exercise control over the sewage treatment systems by means of City Council budget approvals, rate setting and by the setting of service quality standards that will be reported publicly on a regular basis.
- Decisions for the sewage treatment system will be made by the City based upon the best advice of City management and Veolia experts working together in the spirit of partnership to provide service excellence and best possible cost of service for citizens.
- City retains full accountability for compliance with regulatory permits and licenses.
- City staff will continue their work with sewage treatment system operations and maintenance under the supervision of City managers.

The Director of the Water and Waste Department continues to exercise control over all aspects of the sewage treatment system, managers and staff. Decisions of the Director will be informed by the best advice of Veolia experts working in a team atmosphere with City managers who will prepare plans for capital project design and construction and optimization of sewage treatment system operations.

Veolia can earn compensation in three ways. Firstly it can earn margins that were competitively bid that applied to costs of our construction and operations.

Secondly and where the vast majority of its compensation can be earned is by a share of savings where construction projects or plant operations are delivered below target costs. All such work must always meet quality specifications set by the City before any savings can be recognized. If actual costs are below the target cost then Veolia and the City share savings equally. If the savings grow over the 30 years beyond certain threshold levels then the City share of savings grows. The target costs will be verified by an independent third party for the City to ensure accuracy.

And finally Veolia can earn financial incentives for meeting quality excellence targets on an annual basis as set by the City for areas of not purely financial outcomes like health, safety and environmental performance.

All compensation earned by Veolia is a risk of complete forfeiture throughout the 30 year contract. In such cases where City costs are more than the target costs, Veolia will share these cost overruns with the City. Their share of such costs will be calculated on the same basis as their share of savings for successful work.

The only costs guaranteed to be paid to Veolia are their actual direct costs they are out of pocket for in provision of services to the City. Salaries to its employees working on the Program is an example of such a cost.

In order to protect City interests, Veolia earnings will be withheld to offset any cost overruns or repairs until such time as the earnings grow above a level agreed to that covers future Program risk of losses or where Veolia requests such a draw on its earnings and posts a letter of credit to cover its share of any future extra costs incurred by the City. The City will also hold performance security and a parental guarantee.

Each party has a right to terminate the contract for cause or without cause. The fee for the City to terminate without cause is \$5 million and if Veolia exercise its very limited right to terminate without cause it must pay the City a minimum \$10 million fee.

Public reporting will be in place for full disclosure of all performance aspects of the sewage treatment operations including environmental compliance, financial performance and compensation earned by Veolia on an annual basis.

The City retains the unfettered right to determine future changes to the sewage treatment system so that any potential changes to environmental licenses or voluntary adoption of new technology is allowed to be directed by the City at its sole discretion and without financial penalty.

1. Introduction

The contract with Veolia is intended to provide expert advice to the City to assist with construction and operating improvements to the City's sewage treatment system over the next 30 years (referred to as the Program in the Agreement).

City Council directed on May 19, 2010 that a Letter of Notification be signed authorizing work to begin immediately with Veolia's assistance on the three major construction projects (South and North End sewage treatment plants as well as a new Bio-Solid handling plant) as mandated by provincial licensing. These three projects are now estimated to cost \$751 million to construct and have strict deadlines established by the province. This is a revised estimate from the original \$661 million with the increased amount owing to the revised cost of the Bio-solid facility to meet Provincial licensing standards

Council further directed that a contract be prepared and signed by the Chief Administrative Officer that followed the terms set by Council in the same decision. This Council direction states without limitation that, "*Decisions for the sewage treatment system will be made by the City based upon the best advice of City managers and Veolia experts working together in the spirit of partnership to provide service excellence and best possible cost of service for citizens.*"

As such, all matters related to operations of the three sewage treatment plants as well as the future Bio-Solid handling facility and the annual maintenance work for the plants will all benefit from Veolia's assistance. The 30 years of sewage plant operations is estimated to cost \$1.6 billion and no work plan or cost estimate yet exists for the 30 years of annual maintenance projects.

As is the standard practice, an annual budget and capital plan will be recommended to City Council by the Director each year for debate and vote in order to obtain proper authorization for all expenditures.

The City's sewage treatment system treats and handles wastewater and resulting residuals at its existing three major sewage treatment facilities (the South End, West End and North End Water Pollution Control Centres – they are referred to as the Facilities throughout the Program Agreement).

As a result of the term of the Program, it also includes any alterations or additions to those Facilities or any new facilities.

The Program specifically excludes the City's supply, treatment and distribution of drinking water, sewage collection and stormwater drainage system.

This summary sets out the material terms of the Program Agreement and is intended to provide the public with a detailed understanding of the key terms in clear language.

2. Program Principles and objectives

The following Program Principles are integral to the execution of the Program.

2.1 Ownership

Ownership of the Facilities and, without limitation, ownership of each Capital Project, and any part of the permanent Works for such Capital Project, all other improvements on a Site, actual sewage and related by-products, bio-solids, off gases and any present or future property rights or interests which are directly or indirectly related thereto, vest absolutely at all times in the City, free of encumbrances or any claim by any person, including Veolia.

2.2 City Employees

The City and Veolia agree that, throughout the Term, the City shall continue to manage and operate the Facilities and the subject matter of the Program, with the best advice and recommendations from Veolia. In doing so, the City retains responsibility and control over its employees.

2.3 Whole-life Costs

The Parties agree that, subject to the specific terms of this Agreement, their objective for the Program is to find and implement efficiencies that reduce the Whole-life Costs of the Facilities. Notwithstanding the foregoing, the Parties also acknowledge and agree that, in making capital investment recommendations, their objective is to find the optimum combination of costs and quality to meet the City's and the City's rate payers' best interests in the context and having regard to the whole of the City's operations.

2.4 Best-for-Job and Best-for-Program

The City and Veolia acknowledge that successful implementation of the Program will require representatives who are committed to the Program Principles and have the necessary authority to discharge their responsibilities under the Program. Each Party will make such representatives available to participate in the Program.

The criteria required to meet the Best-for-Program objectives will be developed by the Management Team for recommendation to the Leadership Team and approval by the Director on an annual basis or upon the request of either Party.

2.5 Open Book Accounting

All records developed and maintained by each Party in connection with the Program will be available to the other Party and be subject to review and audit by each Party in accordance with the terms of this Agreement.

2.6 Collaboration

Subject always to the ultimate approval rights of the Director, the Parties intend that the Program Team established by this Agreement will create and pursue a fully collaborative approach to the delivery of the Program.

2.7 No Fault/No Blame Culture

In proceeding with the Program in a collaborative manner, the Parties confirm their commitment to a no fault/no blame culture, but subject always to the prescribed insurance provisions.

2.8 Open and Honest Communication

The Parties are committed to open, honest and bi-directional communication. As a result, the Parties commit to one another that they will give notice of and communicate with the Management Team and, as applicable, the Leadership Team and Director with respect to any matter, circumstance or fact known, encountered by, or communicated to either of the Parties that has or could potentially have any influence on the Program.

2.9 Performance-Based Compensation

The compensation payable under this Agreement shall be based upon the performance of the Program.

3. Program Governance

The Director continues to be responsible for all decisions within the Department and the newly created sewage program. The contract confirms the Director's responsibility for the development and implementation of the Program, the coordination and direction of program activities, and the management of the day to day operations of the sewage treatment facilities.

This reflects the duties of the Director set out in the Sewer Bylaw and the City of Winnipeg *Charter*. The Director will make decisions based upon the advice and recommendations from a Management Team and Leadership Team consisting of senior management representatives of both the City and Veolia. In order to realize a more collaborative decision-making process, recommendations from the Management Team must be by consensus and by unanimity from the Leadership Team. A chart is attached that sets out the governance structure and how advice and recommendations from the Management Team and Leadership Team flow to the Director for decisions.

The Management Team meets on a regular basis and implements the Director's decisions. It will provide advice and recommendations to the Leadership Team and the Director on a broad number of issues. Some of the most important include: preparation and revision of the Annual Program Plan and Facilities Master Plan; meeting target dates,

costs and performance criteria for achieving completion of Program milestones; development of budget plans and schedules to ensure the successful management of the Program; and establishing, monitoring and evaluating key performance indicators for the Program.

The Leadership Team will meet regularly and provide advice and recommendations to the Director on a broad range of oversight issues. Some of the most important include: establishing the policy and strategic direction for the Program and Program activities; reviewing and revising the Annual Program Plan and ensuring compliance of the Program with the Annual Program Plan; establishing clearly defined objectives, outcomes and deliverables for all aspects of the Program, according to Best-for-Program objectives; the evaluation and monitoring of program performance and performance of the Management Team and the Program Leader.

The Program Leader is appointed by Veolia and approved by the Leadership Team. The Program Leader chairs Management Team meetings and reports to and is accountable to the Leadership Team for advice and recommendations to ensure the Program meets or exceeds the objectives set out in the Program Agreement. The Program Leader will engage in the day to day coordination of the Management Team and Task Groups, consisting of both City and Veolia staff (with City staff continuing to manage and operate the Facilities.) The members of the Management Team, Leadership Team and Task Groups constitute the Program Team.

4. Veolia's Role

Its obligations include the following:

- (a) provide assistance to improve Operations;
- (b) provide engineering, design, construction management and operations and maintenance expertise to identify and recommend opportunities to optimize the Whole-life Cost of the Facilities;
- (c) provide knowledge and expertise on project management, quality and cost control and system for major capital implementation;
- (d) use commercially reasonable efforts to access and obtain the benefits of the world wide purchasing power, market knowledge and resources of its affiliates, in each case where appropriate and reasonably practicable and where permitted by applicable Laws;
- (e) make available appropriate personnel and other resources as may be requested by the Director and the City in order to carry out the Program;
- (f) provide the City with all cooperation and assistance reasonably required to enable the City to apply for the applicable Permits and Approvals in accordance with this Agreement;
- (g) provide knowledge and expertise in long term asset management policies, practices and systems to identify and recommend opportunities for improvement;

- (h) provide knowledge and expertise in wastewater treatment operational activities and practices to identify and recommend opportunities for improvements;
- (i) provide knowledge and expertise in bio-solids management activities and practices to identify and recommend opportunities for improvements;
- (j) provide knowledge and expertise in maintenance planning and implementation activities and practices to identify and recommend opportunities for improvements;
- (k) provide knowledge and expertise in wastewater treatment process design and operation to identify and recommend opportunities for optimization of operation treatment processes;
- (l) provide knowledge of and facilitate access to relevant technologies of Veolia and other members of its family of companies;
- (m) provide knowledge and expertise to identify and recommend improvement opportunities in energy management;
- (n) provide knowledge and expertise to identify and recommend improvement opportunities for management of the carbon footprint of the Facilities;
- (o) provide knowledge and expertise experience to seek and recommend opportunities for improvement in implementation of procurement activities;
- (p) provide knowledge and expertise in identifying and recommending improvement opportunities for management of Capital Projects;
- (q) provide knowledge and expertise as a wastewater treatment process operator to add value throughout the Capital Project lifecycle by identifying and providing recommendations for optimum process selection, efficient design and delivery and effective commissioning of each Capital Project;
- (r) provide expertise and experience in value engineering of wastewater treatment design;
- (s) provide knowledge and expertise in seeking and recommending opportunities for improvement in health and safety management of operational, maintenance, engineering and capital delivery;
- (t) contribute to such reports, documentation and information related to the Program that are developed by the Program Team as required by the terms of this Agreement and as may be requested by the Director and the City in order to carry out the Program;
- (u) provide knowledge and expertise in seeking and recommending opportunities for improvement in the design and implementation of quality management systems;
- (v) provide knowledge and expertise to help analyze and plan for regulatory changes and permitting requirements impacting the Facilities;
- (w) provide knowledge and expertise to identify and recommend improvement opportunities for septage and leachate treatment and management;
- (x) provide knowledge and expertise in finance and accounting;

- (y) provide assistance with Program administrative functions;
- (z) provide assistance with public outreach related to wastewater, environmental, and sustainability education initiatives; and
- (aa) facilitate, to the extent possible, “sister city” opportunities for exchanges of information and building of relationships.

The vast majority of engineering, construction and procurement of equipment and supplies for the sewage system will be competitively bid to third party suppliers as per the usual City materials management process. Under very strict circumstance, however, Veolia or one of its corporate affiliates can declare a desire to seek work either as a contractor or sub-contractor.

The City would have to enter into a separate contract following its standard procurement procedure and the City may, in its sole and unfettered discretion, determine that it will not enter into such a contract with Veolia. Any such interest by Veolia is subject to several strict controls to ensure the interest is disclosed to the market and that Veolia officials will not participate in any of the bid preparation, evaluation or oversight of work on any work so awarded as a general contractor.

5. Carrying Out the Program

The Program starts with development of an Asset Management Plan which documents the maintenance, rehabilitation and replacement requirements at the Facilities which is updated on an annual basis. In addition, there is a Facilities Master Plan which is a 30 year development plan for the Facilities that will be updated on the direction of the Director of the Department of Water and Waste. The Facilities Master Plan and the Asset Management Plan provide the basis to the Leadership Team to review and recommend the Annual Program Plan to the Director. Approval of the Annual Program is the trigger for future capital projects and the operations at the Facilities. Any Capital Project must be carried out in accordance with the Annual Program Plan. The Program Team then implements the directions of the Director. In so doing, the members of the Program Team rely upon Program Delivery Documents which include the drawings, specifications, reports, plans, flowcharts and other documents that are created, whether in written, printed, electronic or other form for the works to be carried out in operations or capital projects, target cost development for the different planning and implementation activities, as well as compensation measurement for the services that are provided. All of the activities are recorded in City Reports which are used internally and also to meet the ongoing reporting requirements of the City.

Any resulting project will require a Procurement Plan that is prepared by the Management Team, submitted to the Leadership team for recommendation to the Director. The Procurement Plan will not be approved by the Director unless, at a minimum, it complies with City Council approved administrative directives regarding procurement and it sets out any prescribed details that are to be included in every contract. In addition, the Management Team must submit a Performance Testing and

Commissioning Completion Plan for the approval of the Director in relation to all work to be carried on any improvement or upgrade at a Facility and such work must meet specified performance criteria. Once approved by the Director, the Program Team is responsible for the performance testing and commissioning and the issuance of a completion certificate.

6. Establishing Target Costs

The target costs are established to serve as a baseline of performance that the City might have expected under the traditional mode of delivering construction projects or operational improvements. If an actual cost is below a target cost, then the savings are shared between taxpayers and Veolia but if costs exceed the target, then Veolia must also share these added costs to protect taxpayers.

The Management Team establishes the baseline target costs for the operations for the entire term. It then provides a report for review by the Leadership Team and approval of the Director. These become the target costs for operations and they may be modified as the Program is changed due to new construction projects, changes in law, etc. The target costs for operations will be re-set after 15 years to ensure that there is not a perpetual financial benefit for savings earned early in the Program and also to serve as an incentive for finding new improvements.

A similar process is followed for developing target costs for each capital project. An important aspect of taxpayer protection includes the involvement of an independent expert to review and develop target costs to ensure what has been drafted by the City-Veolia team is reasonable.

The Program Agreement contemplates there may be major changes required during the 30 year term. The City has the right to make such changes. If such a change or a series of smaller changes materially impacts the ability of Veolia to work to improve the sewage treatment system in the Program then the target cost and key performance indicators (KPIs) will be adjusted as they are key factors in the compensation Veolia will receive for its services. At the time of the Program Agreement being signed, the City is continuing its efforts to have terms of its provincial licenses amended. If this effort is successful, no contract amendment will be necessary and Veolia will not receive any fees or penalties for those license amendments that impact the Program.

7. Compensation

The compensation structure in this Program Agreement is intended to encompass both capital projects and operations. The essence of the compensation structure in the Program Agreement only guarantees payment to Veolia in respect of the direct costs incurred by it in providing services.

All other compensation is dependent upon successful performance of the Program. Performance based compensation remains at risk and is offset by poor performance of the Program.

Veolia will earn a share of savings where capital projects or plant operations meet quality specifications and are brought in below target cost but must also share the expense if projects exceed the agreed upon target cost. Any such over expenditures that must be shared by Veolia are limited to their aggregate total of earnings of margins, key performance incentives and any gains they share from assisting to deliver work under target costs over the 30 years of the Agreement. The share percentage of cost savings that Veolia can earn is calculated on a sliding scale that starts at 50% but reduces their share as savings grow.

Their incentives for meeting or exceeding quality targets on key performance areas are set by the City and intended to reward service excellence in areas not directly related to financial results. Examples could include health, safety, waste reduction and GHG mitigation

An Earnings at Risk Account (“EARA”) is established and this account is adjusted based on the performance of the Program. Veolia shares in the financial gain when quality standards are met and the Program comes in under the target cost and shares in the financial pain when the Program does not.

Veolia will be entitled to withdraw from this account only when the balance is positive and where there is sufficient balance to cover future Program cost risks to the City.

8. Reporting Procedures

All reporting under the Agreement will conform to the City Charter and the existing reporting framework that is set out in the City Charter and in City bylaws and policies. A report that includes the Annual Program Plan will be filed within 120 days of the City’s fiscal year end. It will outline the previous year’s results for capital projects and operations including a breakdown of all capital and operational costs, costs savings and/or overruns on capital projects and operations as well as a breakdown of the amount paid to Veolia in the previous year. It will also include a three year rolling budget/forecast for capital projects and operations. The technical, operational and financial performance that is contained in the report and the Annual Program Plan will be measured and provided on a regular basis to staff of the Water and Waste Department or as required by the Director.

9. City’s Reserved Powers

The Reserved Powers section permits the City to make unilateral decisions in certain areas without incurring financial penalty although it may require an adjustment of the target costs and KPI measurements. In this way, Veolia is not unfairly penalized because of a City decision. The decisions within the City’s sole discretion are: rate-setting; approval of minimum standards for upgrade and operations of the Facilities; annual approval of the operating budget and capital budget for the Facilities; actions and decisions to ensure compliance with necessary permits and approvals to operate the facilities; media communications about the Facilities; employing all City wastewater treatment managers and staff; authorizing capital expenditures under the Program within the approved budget approved annually by City Council; nominating City representatives

for the Management and Leadership teams; establishing approval processes for the Program; and all administrative directives of general application regarding procurement.

10. Managing Risk

Veolia and the City will manage risks under the Program by establishing a detailed risk allocation matrix that determines whether a risk is shared by the parties or a risk of the City. This risk matrix will not change unless agreed to by the parties. In addition, there will be a risk register for each project that will allocate the risks for each project according to the allocation in the risk matrix.

11. Insurance & Liability

Insurance

The City and Veolia will have specified insurance coverage (property, environmental, professional as well as general) throughout the term of the Program. Each will be named as an additional insured on each other's \$10 million general liability policy to ensure protection for the public as well as the City and Veolia. There is a process to update insurance throughout the 30 year term. The City will specify separate insurance coverage that contractors will require on specific projects. The amount that the City or Veolia can claim against each other is capped at the amount of the insurance coverage, except for additional liability of up to \$10 million where the loss arises from a Wilful Default.

Liability

The parties agree that any claim for liability will be limited to the amount of insurance carried by the other party. While a "no fault-no blame" culture is intended, it was agreed the parties should be in the same position as a third party that files a claim. It was agreed the insurance cap was not appropriate where either party committed an act of Wilful Default. This is defined as "intentional, wanton or reckless", a failure to honour an indemnity or a "fraudulent act or omission" and there should be penalties for such behaviour. In such drastic cases, the liable party could face a penalty of \$10 million. The parties waive a right to claim against each other for indirect losses (punitive damages, loss of profits or consequential damages) except for a claim against the insurance or where one party has claimed the other is in Wilful Default.

12. Resolving Disputes

The Agreement includes an alternative dispute resolution provision and promise to avoid lawsuits in the court system. Nothing in the Agreement takes away authority delegated by City Council to the Director of the Department to make final and binding decisions affecting the sewage treatment system and administration of the Department.

Disputes may arise, however, in interpreting and applying the Agreement especially with respect to provisions directing how compensation is earned by Veolia.

Initially disputes are to be resolved on a consensual basis by the Management Team or by unanimous agreement by the Leadership Team. If either the City or Veolia has a

disagreement they are to notify the other and their City CAO and President of Veolia are also notified to ensure efforts to achieve prompt resolution are supported by the most senior managers in each organization. . They may also agree to seek input from a technical expert to provide information if this might assist investigating the issue underlying the disagreement. If need be, the disagreement can be sent by to mediation and, if necessary either the City of Veolia can request binding arbitration.

13. Termination Rights

The term of the Agreement is 30 years but either party has specific rights to terminate before the end of the term, as follows:

The City's Right to Terminate

The City may terminate *for cause* in certain instances: if Veolia abandons the Agreement, commits a Wilful Default, becomes insolvent, fails to renew its security for performance, becomes uninsurable, or assigns its rights or obligations under the Agreement where there is a change in control without the City's consent. Veolia would have the right to dispute termination for any of those reasons and the matter would move to dispute resolution. There are a broad range of financial adjustments for termination for cause depending upon the specific circumstance. These adjustments include: adjusting the EARA balance and triggering of the Performance Guarantee Security. Veolia would still be reimbursed its actual direct costs that it incurred or to which it was irrevocably committed. If the City terminates *without cause* or for convenience, in addition to its actual direct costs, Veolia would be entitled to any positive EARA balance and the City would have to forego any negative EARA balance. In addition, the City would be required to pay Veolia the sum of \$5 million.

Veolia's Right to Terminate

Veolia may terminate *for cause* in certain instances: if the City commits a Wilful Default, fails to pay money that is due and owing and this is not cured within 70 business days or goes insolvent. The City would have the right to dispute termination for any of those reasons and the matter would move to dispute resolution.

Veolia also has a one-time right to terminate without cause – within 100 business days of the completion of the initial three major capital projects Veolia, as always, would be reimbursed its actual direct costs that it incurred or to which it was irrevocably committed. However, Veolia would be required to pay the City up to \$1 million for reasonable actual transition costs plus a minimum \$10 million fee.

Veolia also has the right to terminate the Agreement if there is a major alteration to the Program that changes its scope and the compensation to be paid to Veolia and the parties are unable to negotiate an amendment to the Agreement to reflect the major alteration – this is a change where the work contemplated by the Program is still undertaken but not under the scope of this agreement. In that case, Veolia would be entitled to the same payments as if the City terminated it without cause or for convenience.

14. Performance Guarantee Security and Parental Guarantee

The Performance Guarantee Security (“PGS”) is a letter of credit and performance bond of equal amount that together provide security to the City to ensure that Veolia will carry out its obligations. The PGS will be set at \$50 million and will remain in place for the first three major capital projects: South End, North End Water Pollution Control Centres and the Bio-Solid facility. At that point, the most significant construction projects will be completed and the PGS will be reduced to an amount between \$20 million – \$50 million and it will be adjusted annually. The security may also be seized by the City upon specific events giving the City cause to terminate the Agreement.

In addition to the PGS, Veolia is providing a Parental Guarantee by its parent company. The ongoing security under the PGS and Parental Guarantee survive the termination of the Agreement until all of the rights and obligations of the parties are determined and the City has been paid in full.

WINNIPEG SEWAGE TREATMENT PROGRAM (WSTP) Governance Structure, Advisory and Decision Flow Chart

