

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

**THIS AGREEMENT** made as of the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BY AND BETWEEN:           **THE POWER COMMISSION OF THE CITY OF SAINT JOHN**, a  
corporate entity doing business as **SAINT JOHN ENERGY**  
("SJE")

Of the First Part

– and –

**THE CITY OF SAINT JOHN**, a body corporate created by Royal Charter, confirmed and amended by Acts of the Legislative Assembly of the Province of New Brunswick, with its City Hall located at 15 Market Square, in the City of Saint John, New Brunswick (the "**City**")

Of the Second Part

**WHEREAS** The City has engaged Deloitte LLP ("**Deloitte**") to carry out a study of SJE (the "**Study**"), which Study is anticipated to be carried out in three phases with phase 1 being a current state pricing analysis ("**Phase 1**"), phase 2 being a growth agenda assessment ("**Phase 2**") and phase 3 being an updated pricing analysis ("**Phase 3**"); and

**WHEREAS** the Study will result in Deloitte preparing and submitting to the City a separate report on each of Phases 1, 2 and 3 (each a "**Report**"), as referred to in the first recital hereof; and

**WHEREAS** the Study will entail SJE providing Deloitte with information which SJE has provided or will provide on a confidential basis and which it has consistently treated as such; and

**WHEREAS** each of SJE and the City is subject to the provisions of the *Right to Information and Protection of Privacy Act* (SNB 2009 c.r-10.6) ("**RTIPPA**"); and

**WHEREAS** the information which SJE has made available on a confidential basis to Deloitte could, if made public or released to certain third parties, cause irreparable harm to SJE given amongst other things, the nature of such documents and information and the nature of SJE's business.

**NOW THEREFORE**, the parties in consideration of these presents and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree each with the other as follows:

1. **Preamble.** The preamble of this Agreement forms an integral part thereof.
2. **Reports.**
  - i. Within five business days of the City receiving each Report and advising SJE accordingly in writing, SJE shall identify in writing to the City all information contained therein which SJE asserts would, if disclosed, be harmful to SJE's business or financial interests. Such latter identification shall include a sound explanation of the basis for SJE's assertion, articulated in the context of RTIPPA.
  - ii. The City shall not disclose any information identified to the City pursuant to the provisions of paragraph i. without first having received the written consent of SJE, unless: (i) disclosure is required pursuant to the provisions of RTIPPA or (ii) the "head" has exercised, pursuant to the provisions of RTIPPA, the discretion to disclose information and when in each such case the City has encouraged the "head" to exercise the discretion not to disclose.
  - iii. The City shall forthwith upon receiving the identification of information referred to in subparagraph i provide such identification to the Common Clerk of the City or to whichever person or group of persons is designated from time to time by the City to serve as the "head" pursuant to the applicable provisions of RTIPPA. The identification of information aforesaid shall inform any decision which the "head" might be required to take in the event that a request for related information is made to the City.
3. **Non-Disclosure.** The process described in paragraph 2 is in addition to the provisions of RTIPPA respecting the response to a request for information where the disclosure of such information might be harmful to the financial or business interests of either the City or SJE.
4. Subject to paragraph 5, neither the City nor SJE shall disclose information contained in the Reports except (i) with the consent of the other party, which consent shall not be unreasonably withheld, or (ii) in accordance with the applicable law, and (iii) disclosure on a need-to-know basis to their respective employees and the members of Common Council of the City and SJE's Board of Commissioners, as applicable, and who are required to have the information in order to evaluate or engage in discussions regarding or arising from the Study. The City and SJE shall ensure that any such employees and

elected or appointed officials, as applicable, are aware of the obligations respecting confidentiality established herein and that each agrees to comply with those obligations.

5. The foregoing restriction does not apply to any information which:
  - (a) is or becomes generally available to and known by the public, other than as a result of the party's unauthorized disclosure or material breach of this Agreement;
  - (b) was already in SJE's possession or available to SJE before the effective date of the Agreement (including such information that may have been incorporated into and form part of one or more of the Reports);
  - (c) becomes available to SJE on a non-confidential basis from a source not bound by a confidentiality obligation or agreement with the City; or
  - (d) has been or is independently developed or obtained by SJE without violating any of the obligations under this Agreement.
  
6. Any discussion by the Common Council of the City or the Committee of the Whole of the Common Council of the City shall to the fullest extent permissible by the open meeting provisions of the *Local Governance Act* (S.N.B. 2017 c.19) occur at a meeting closed to the public.
  
7. **No Warranty.** All Confidential Information is provided "as is, where is". Except as otherwise stated, SJE makes no warranties, express, implied or otherwise, regarding its accuracy, completeness or performance, non-infringement of third party rights, or fitness for a particular purpose.
  
8. **Access to Information.** SJE expressly authorizes the City to obtain from Deloitte any information provided to it by SJE and which bears directly or indirectly upon the subject of the Study, and this Agreement shall operate as authority for Deloitte to provide if requested by the City, such information as soon as reasonably possible.
  
9. **Remedies.** The parties agree and acknowledge that any breach of this Agreement might cause irreparable harm to the other which might not be compensated by the award of damages. Accordingly, the terms of this Agreement shall be specifically enforced. The parties recognize that in the event of a breach of the obligations set forth in this Agreement either party in addition to any other available rights and remedies, shall be entitled to seek a provisional interlocutory injunction, an interlocutory injunction and any other equitable remedy in order to allow it to enforce the obligations set forth in this Agreement.

10. **Governing Law.** This Agreement shall be governed by the laws of the Province of New Brunswick and the federal laws of Canada applicable therein.
11. **Interpretation.** The parties acknowledge that their respective legal counsel have reviewed and participated in settling the terms of this Agreement, and that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of this Agreement.
12. **Entire Agreement.** This document contains the entire agreement between the parties with respect to the subject matter hereof, and may only be amended or suspended in writing.
13. **Notices.** Any notice, consent or other communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given if delivered by hand or pre-paid registered mail:
  - i. In the case of the City to:

Common Clerk  
The City of Saint John  
8<sup>th</sup> Floor, City Hall  
15 Market Square  
Saint Joh, NB E2L 1E8
  - ii. In the case of SJE to:

Saint John Energy  
PO Box 850 Stn Main  
Saint John NB E2L 4C7
14. **Severability.** The provisions of this Agreement shall be severable. If any of the provisions herein or its application to any specific situation shall be held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect any other provision of this Agreement or its application to any other situation.

[Signature page follows]

**IN WITNESS WHEREOF**, the parties have executed this Agreement through their duly authorized representatives as of the Effective Date.

**THE POWER COMMISSION OF THE  
CITY OF SAINT JOHN, doing business  
as SAINT JOHN ENERGY**

Per: \_\_\_\_\_  
Ray Robinson  
President and CEO

**THE CITY OF SAINT JOHN**

Per: \_\_\_\_\_  
Mayor

Per: \_\_\_\_\_  
Common Clerk

Resolution Date: \_\_\_\_\_