

Agenda Item: Consent Agenda - c.

Meeting Date: April 25, 2022

Subject: Non-Disclosure Agreement with World XChange Inc., et al.

Staff Member: A.J. Euckert, City Manager

c. Resolution 22-33, approving a Non-Disclosure Agreement with World XChange Inc., et al., Platinum Age Merchant Services Inc., World XInternational Trust, Investments and Exchange, KB, Platinum Enterprises

Background: A firm from Loveland, CO contacted us about a unique revenue stream that may be of interest to the City. Before they can present the concept, a non-disclosure agreement (NDA) was requested. This agreement was reviewed and amended by the City Attorney's Office and is presented for approval.

Recommended Action: Consideration and approval of Resolution 22-33, a Non-Disclosure Agreement with World XChange Inc., et al., Platinum Age Merchant Services Inc., World XInternational Trust, Investments and Exchange, KB, Platinum Enterprises

RESOLUTION NO. 22-33

A RESOLUTION APPROVING A NON-DISCLOSURE AGREEMENT WITH WORLD XCHANGE INC., ET AL., PLATINUM AGE MERCHANT SERVICES INC., WORLD XINTERNATIONAL TRUST, INVESTMENTS AND EXCHANGE, KB, PLATINUM ENTERPRISES

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DACONO, COLORADO:

Section 1. The Non-Disclosure Agreement by and between the City of Dacono and World XChange Inc., et al., Platinum Age Merchant Services Inc., World XInternational Trust, Investments and Exchange, KB, Platinum Enterprises is hereby approved in essentially the same form as the copy of such Agreement accompanying this resolution.

Section 2. The Mayor is hereby authorized to sign the Agreement and is further authorized to negotiate and approve on behalf of the City such revisions to the Agreement as the Mayor and City Attorney's Office determines necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Agreement are not altered.

INTRODUCED, READ, and ADOPTED this 25th day of April, 2021.

CITY OF DACONO, COLORADO

Joe Baker, Mayor

ATTEST:

Valerie Taylor, City Clerk



World X Change NON-DISCLOSURE, NON-COMPETITION, NON-CIRCUMVENTION MUTUAL AGREEMENT

This NON-DISCLOSURE, NON-COMPETITION, and NON-CIRCUMVENTION AGREEMENT ("this Mutual Agreement") is made and entered into by the undersigned parties as of the date set forth below.

WHEREAS, in connection with the evaluation of a potential business relationship between the parties (the "Proposed Relationship"), each Party may disclose to the other Party certain Confidential Information (defined below) which the Company (defined below) desires the Confidant (defined below) to treat as confidential per this Mutual Agreement.

NOW, THEREFORE, in consideration of the mutual Agreement contained herein, the parties hereto agree:

PURPOSE The parties to this Agreement (defined as a Mutual Agreement) desire to engage in discussions regarding present and/or potential future business relationships. This Agreement combines a non-disclosure, a non-competition, and a non-circumvention agreement. The parties intend to engage in substantive discussions and share confidential information regarding specific new and valuable business opportunities, trade secrets, business entity formation, structuring, and tax planning. In connection with these discussions, it may be necessary and/or desirable for the Company to provide the Confidant with, or allow access to, proprietary, technical, or business data, and/or other confidential information of the Company (collectively the "Confidential Information"). Therefore, the Confidant, individually and on behalf of those they represent, agree that they are under an obligation of confidentiality. The Company believes that the Company's Confidential Information has significant commercial value that would be diminished by unauthorized disclosure. Accordingly, the confidentiality commitments in this Agreement are a condition of the Confidant's willingness to engage in the contemplated business discussions and planning. The Confidant agrees that they shall **not** use any advantages derivable from such information in their own business or affairs unless the same is done according to a new agreement with all other signatories to this document. Each signing party shall be held responsible and liable in case of a breach of this Agreement.

1. Definitions: except as otherwise indicated in this Agreement

- a) Agents or employees: includes the directors, officers and employees of any of the parties. It also consists of the Confidant, any corporation, partnership, association, business trust, contractual organization, group, or other entity of which the Confidant is a member, officer, director, agent, trustee, beneficiary, or has a position similar to those mentioned above.
- b) Affiliate: any person, partnership, joint venture, corporation, division, or other forms of enterprise, domestic or foreign, including but not limited to subsidiaries that directly or indirectly control, are controlled by, or are under common control with a party to this Agreement.
- c) Representatives of a party: shall mean its respective directors, partners, officers, employees, trustees, agents, consultants, and financial and legal advisors.
- d) Confidential information shall include and shall be deemed to include all information conveyed by the Company to the Confidant orally, in writing, by demonstration, or by other media. Confidential information shall be considered as such at the time of transmittal. Confidential information may include, by way of example but without limitation, data, know-how, contacts, personnel, customers contracts, software, formulas, processes, designs, sketches, photographs, plans, drawings, specifications, pricing, plans, samples, reports,

information obtained from previous or current participants in programs of the Company, information relating to transactional procedures, and intellectual property to include the combination of concepts, portions of which may be public information that has been combined in a non-customary manner. However, Confidential Information shall not include information, which can be clearly demonstrated to be:

- i. Provided to the Confidant by a third-party without any restriction on disclosure and without breach of any obligation of confidentiality, to a party to this Agreement; or
- ii. Independently developed by the Confidant without the use of the Confidential Information.
- iii. Confidential Information of the Confidant shall be deemed to include any derivations of the Confidential Information of the Company, including, without limitation, any notes, analysis, compilations, studies, memoranda, or other documents prepared by or on behalf of the Confidant based on, containing or otherwise reflecting the Confidential Information of the Company.

2. Obligation of Confidentiality

- a) The Confidant agrees that when receipt of any Confidential Information has occurred:
 - i. The Confidant shall not disclose or communicate Confidential Information to any third party, except as herein provided.
 - ii. The Confidant agrees not to use any

Confidential Information of The Company for any purpose except to evaluate, engage in discussions concerning, and perform the Proposed Relationship.

- iii. The Confidant and its Representatives shall protect the Confidential Information of The Company by using at least the same degree of care used by the Confidant to safeguard its confidential information of a similar nature but in no event less than a reasonable degree of care. The Confidant shall promptly notify The Company in the event of a known or suspected misappropriation, unauthorized disclosure, or use of The Company's Confidential Information and shall take all reasonable steps to limit, stop, or otherwise remedy any known or suspected misappropriation, unauthorized use, or disclosure of The Company's Confidential Information. The Confidant shall be responsible for informing The Company if certain of its current or former Representatives no longer should be provided access to Confidential Information. Any copies made of The Company's Confidential Information shall contain The Company's proprietary or confidentiality notices in the same manner in which such notices were outlined in or on the original.
- b) The Company shall permit access to its Confidential information to the Confidant's agents, employees, or third parties only if such disclosure is reasonably believed to be necessary to the purposes of the Confidant evaluating, contemplating, recommending, or engaging in any program or service offered by the Company or to enter into a business relationship with the Company, and only if said agents, employees, or third parties:
 - i. reasonably require access to the Confidential Information for purposes approved by this Agreement, and
 - ii. have been apprised of this Agreement and the Confidant's obligations to maintain the trade-secret status of Confidential Information and
 - iii. to restrict its use as provided by this Agreement
 - iv. The Confidant shall be responsible for and liable to The Company for any breach of this Agreement by its Representatives.
- c) In the event, the Confidant becomes legally compelled to disclose Confidential Information (under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, by a demand or information request from an executive or administrative agency or other governmental authority, or pursuant to a valid request under the Colorado Open Records Act) the Confidant shall unless prohibited, promptly notify the Disclosing Party of such required disclosure of the Confidential Information to permit The Company a reasonable opportunity to seek a protective order or other similar remedies. In addition, the Confidant shall exercise its reasonable best efforts to
 - i. narrow the scope of disclosure,
 - ii. make such disclosure only to the extent so

required, and

- iii. obtain an order or other reliable assurance that confidential treatment will be accorded to such Confidential Information
- d) The Confidant acknowledges that Confidential Information of The Company may be deemed material, non-public information, and as such, disclosure and use of the Confidential Information of The Company may be restricted by securities laws. The Confidant agrees to and will use reasonable efforts to cause its Representatives to comply with all applicable securities laws regarding the use or communication of the Confidential Information of The Company.
- e) The Confidant's obligations outlined in this Section 2 shall be referred to as such Confidant's "Confidentiality Obligations." Excluding Confidential Information of The Company, which is personally identifiable information, the Confidant's Confidentiality Obligations shall not apply to any portion of the Confidential Information of The Company which:
 - i. was publicly known before the time of disclosure by the Disclosing Party; or
 - ii. after becomes publicly known and made generally available in the public domain through no act or omission or fault of the Confidant; or
 - iii. at the time of receipt, otherwise already known to the Confidant without restrictions on use or disclosure as evidenced by the Confidant's prior written records;
 - iv. is obtained by the Confidant from a third party without breach of this Agreement or breach of such third Party's obligations of confidentiality; or
 - v. is independently developed by the Confidant without use of or reference to the Disclosing Party's Confidential information, as shown by documents and other competent evidence in the Confidant's possession.
- f) Provided, however, specific Confidential Information shall not be deemed to fall within the above exceptions merely because it is within the scope of more general information within an exception. A combination of information or features shall not be considered to fall within the above exceptions unless the combination itself, including its principles of operation, is within the exceptions.

3. Obligation of Non-Competition

The non-competition provisions of this Agreement are an essential, material part of the total Agreement. The Confidant agrees it shall not use any advantages derivable from such confidential information in its own business or affairs unless the same is done according to a new agreement executed by all signatories to this document.

4. Non-Circumvention

The Confidant hereby agrees for himself or herself, their officers, directors, agents, associates, and any related parties, that they will not, directly or indirectly, contact, deal with, or otherwise become involved with any entity or any other entities or parties introduced, directly or indirectly, by or through the other Party, its officers, directors, agents or associates, for the purpose of avoiding the payment to the Company of profits, fees or

otherwise, without the specific written approval of the Company.

5. No License or Warranty

Nothing in this Agreement is intended to grant or offer any rights to either Party under any patent, trademark, copyright, trade secret, or affect either Party's proprietary rights. Nor shall this Agreement grant Confidant any rights in or to the Confidential Information of The Company except as expressly set forth herein. The Company shall not be deemed to make or have made any representation or warranty, expressed or implied, as to the accuracy or completeness of The Company's Confidential Information or any portion thereof, all of which is provided on an "as is" basis.

6. No Obligation

Nothing herein shall obligate either Party to proceed with any transaction between them. Each Party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the Proposed Relationship.

7. Return of Materials

All documents and other tangible objects (including data on computer hard drives, thumb drives, CD-ROMs, tapes, emails, or other media) containing or representing Confidential Information of a Disclosing Party, and all copies thereof, which are in possession of any Confidant, shall be and remain the property of The Company. Moreover, upon Disclosing Party's request, be promptly returned or destroyed upon the expiration of the term of this Agreement or when otherwise requested by The Company. Notwithstanding anything to the contrary, however, the Receiving Party may retain one (1) copy of the Disclosing Party's Confidential Information if required for regulatory or audit purposes. Upon return or destruction, The Company may request certification, in writing, that all such copies have been returned to The Company or destroyed. The terms of this Agreement shall continue to apply to any Confidential Information remaining in possession of the Confidant, including (but not limited to) Confidential Information, the return or destruction of which is not technically feasible.

8. Term

This Agreement commences on the Effective Date and shall continue until the earlier of (1) the date on which either Party terminates this Agreement by providing thirty (30) days prior written notice of termination to the other Party, or (2) five years from the Effective Date. All of the rights and obligations of each Party hereto that by their nature should survive termination or expiration of this Agreement in order to achieve its purposes shall so survive and remain binding upon and for the benefit of the parties hereto. Notwithstanding anything to the contrary herein,

- a) the Receiving Party's Confidentiality Obligations shall apply to Confidential information of The Company that is not personally identifiable information and does not qualify as a trade secret under applicable law until the earlier of (a) five (5) years following the expiration or termination of this Agreement and (b) five (5) years following the disclosure of such Confidential Information,
- b) the Receiving Party's Confidentiality Obligations shall apply to Confidential Information of The Company that qualifies as a trade secret under applicable law until the information no longer

- c) the Confidant's Confidentiality Obligations shall apply indefinitely with respect to Confidential Information of The Company that is personally identifiable information.

9. Remedies

Each Party agrees that any violation or threatened violation of this Agreement may cause irreparable and immediate injury to the other Party (the amount of which may be difficult to ascertain), entitling the other Party to seek injunctive relief in addition to all legal remedies. The Parties further agree to waive any requirement for the securing or posting any bond in connection with such injunctive or any other equitable relief. The parties understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as from time to time amended, or otherwise available to the City, its officers, or its employees.

10. Notice

All notices hereunder shall be in writing and shall be deemed to have been duly given when delivered by messenger, transmitted by facsimile transmission, one day after being mailed by overnight courier, or five days after being mailed by registered or certified mail, postage prepaid, to the addresses contained below.

11. Jurisdiction

The jurisdiction for this Agreement is global and worldwide. Should the Companies assert that a violation has occurred, the parties agree that the Companies shall be entitled to take action to remedy the violation. This Agreement shall bind and inure to the benefit of the parties hereto and their respective Affiliates and its and their successors and assigns. This Agreement shall be governed by the laws of the State of Colorado, without reference to conflict of laws principles. Both parties hereby consent and submit to the jurisdiction and venue of the state and federal courts in Colorado, and of no other courts, in all questions and controversies arising out of this Agreement. This Agreement contains the entire Agreement between the parties concerning the subject matter hereof. Neither Party shall have any obligation, express or implied by law, with respect to Confidential Information of the other Party except as set forth herein. If any provision herein is held to be illegal, invalid, or unenforceable under present or future laws, active during the term hereof, such provision shall be fully severable, and the remaining provisions hereof shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision. Any such invalid or unenforceable provision shall be subject to partial enforcement to the extent necessary to protect the parties intent. The failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision. This Agreement is the result of both parties' review, discussion and negotiation; therefore, any uncertainties or ambiguities will not be interpreted against a party by virtue of its actual role in preparing this Agreement. This Agreement may not be amended, nor any obligation waived, except by a writing signed by both parties hereto. This Agreement may be signed in one or more counterparts, each of which shall

constitute an original of this Agreement and all of which, taken together, shall constitute the same Agreement. Additionally, a signed copy or scan of this Agreement shall constitute a signed original. Either Party may not assign this Agreement without the prior written consent of the other. No permitted assignment shall relieve the Confidant of its obligations hereunder concerning Confidential Information disclosed before the assignment. Any assignment in violation of this paragraph shall be void.

12. Miscellaneous

- a) Except for the limited right to use granted in section 2 herein, no right or license, either express or implied, under any patent, copyright, trade secret, or other intellectual property right is granted hereunder.

b) No agency or partnership relationship is created between the parties by this Agreement.

c) No party has an obligation under this Agreement to purchase any service or item from any of the other parties or to offer any service or item for sale to any of the other parties and that any agreement to have a business relationship between the parties will exist only when such Agreement is in writing and duly executed by all the parties hereto.

13. Mutuality

To the extent that Confidential Information is disseminated or exchanged by both parties, such information shall be confidential as to both parties, the Companies and the Confidant.

IN WITNESS WHEREOF, the parties hereto have individually and by their duly authorized representatives executed and delivered this Agreement. The agreement is entered into as of the _____ day of _____, 20____ (the "Effective Date").

Agreed to and accepted by:

Confidant: City of Dacono

Disclosing Party

World XChange Inc., et al., Platinum Age Merchant Services Inc., World XInternational Trust, Investments and Exchange, KB, Platinum Enterprises

Colorado, USA Corporation's

Address (for service of notices hereunder):

Address (for service of notices hereunder):

512 Cherry Avenue

2938 Sally Ann Dr.

Dacono, CO 80514

Loveland, Colorado 80537

Attention: Adam Morehead, Mayor

Attention: World XChange Inc., et al., Platinum Age Merchant Services Inc., World XInternational Trust, Investments and Exchange, KB, Platinum Enterprises

By: _____

By: _____

Name: Adam Morehead

Name: Benjamin Cvetkovich

Title: Mayor

Title: President, CEO