

**CORPORATION OF THE CITY OF PETERBOROUGH**

**BY-LAW NUMBER 08-114**

**BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND URBAN & ENVIRONMENTAL MANAGEMENT INC. (P-17-08) FOR THE PROVISION OF ENGINEERING AND REPORTING SERVICES FOR THE DESIGN AND OPERATION OF THE PETERBOROUGH WASTE MANAGEMENT FACILITY FOR FIVE YEARS WITH POSSIBLE RENEWAL FOR TWO YEARS**

THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

1. That the Mayor and Clerk be hereby authorized to execute an agreement between the Corporation of the City of Peterborough and Urban & Environmental Management Inc. to provide engineering and reporting services for the design and operation at the Peterborough Waste Management Facility, in the form attached hereby as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first, second and third time this 16<sup>th</sup> day of June, 2008

(Sgd.) D. Paul Ayotte, Mayor

(Sgd.) John Kennedy, Deputy Clerk

**AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES**

**AGREEMENT** dated the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2008

**BETWEEN**

**THE CORPORATION OF THE CITY OF PETEBOROUGH**  
(the "Client")

**- AND -**

**URBAN & ENVIRONMENTAL MANAGEMENT INC.**  
(the "Consultant")

**WHEREAS** the Client has awarded P-17-08 Engineering and Reporting Services for the Peterborough Waste Management Facility (the "Project") to the Consultant;

**AND WHEREAS** the Consultant has agreed to provide its professional services to complete the Project in accordance with P-17-08;

**NOW THEREFORE WITNESSETH** that in consideration of the covenants contained herein, the Client and the Consultant mutually agree as follows:

**ARTICLE 1 – GENERAL CONDITIONS**

1.1 Retainer

The Client hereby retains the services of the Consultant in connection with the Project and the Consultant hereby agrees to provide the services described herein and as described in Report USWM08-011 and in P-17-08 under the general direction and control of the Client.

In this Agreement, the word Consultant means Urban & Environmental Management Inc. and any other professionals and other specialists as engaged by the Client directly and whose names are party to this Agreement.

1.2 Services

The services to be provided by the Consultant and the Client for the Project are set forth in Article 2, as supplemented by Article 1.26, Report USWM08-011 and by P-17-08 as such services are or may be changed, altered or added to under Article 1.9 are hereinafter called the "Services". The general purpose of the Consultant's Services

1.3 Compensation

The Client shall pay the Consultant in accordance with the provisions set forth in Article 3.

1.4 Staff and Methods

The Consultant shall use current state of the art principles and shall skilfully and competently perform the Services and shall employ only skilled and competent staff who will be under the supervision of a senior member of the Consultant's staff with the approval of the Client. The Consultant shall have the prior agreement of the Client before making any changes to the staff list after commencement of the Project.

## 1.5 Drawings and Documents

Drawings and documents or copies thereof required for the Project shall be exchanged between the parties on a reciprocal basis. Documents, including any "as built" records, prepared by the Consultant for the Client shall be prepared in a paper and electronic form acceptable to the Client and may be used by the Client, for the Project herein described. The Client shall have ownership and full rights of use concerning such drawings and documents.

## 1.6 Survey Data and Plans

The survey data and plan(s) collected and produced as a part of this assignment may be incorporated into the City's Geographical Information System and this data will be made available to all users of the City's Geographical Information System.

## 1.7 Intellectual Property

All concepts, products or processes produced by or resulting from the Services rendered by the Consultant in connection with the Project, or which are otherwise developed or first reduced to practice by the Consultant in the performance of their services, and which are patentable, capable of trademark or otherwise, shall be and remain the property of the Client.

## 1.8 Records and Audit

- a. In order to provide data for the calculation of fees on a time basis, the Consultant shall keep a detailed record of the hours worked by and salaries paid to their staff employed for the Project.
- b. The Client may inspect and audit the books, payrolls, accounts and records of the Consultant during regular office hours with respect to any item which the Client is required to pay on a time scale or disbursement basis as a result of this Agreement.
- c. The Consultant, when requested by the Client, shall provide copies of receipts with respect to any disbursement for which the Consultant claims payment under this Agreement.

## 1.9 Changes and Alterations and Additional Services

- a. The Client, in consultation with the Consultant, may in writing, at any time after the execution of this Agreement, delete, extend, increase, vary or otherwise alter the Services required under this Agreement.
- b. In the event that the Client increases the overall Services required, the Client shall either, where appropriate, pay the Consultant for its additional fees and disbursements.
- c. In the event that the Client decreases the overall Services required under this Agreement, the Client may reduce the amounts prescribed, at its sole discretion, under Sub-articles 3.1 and 3.2.

## 1.10 Suspension or Termination

The Client may at any time by notice in writing to the Consultant suspend or terminate the services or any portion thereof at any stage of the Project. Upon receipt of such written notice, the consultant shall perform no further Services other than those reasonably necessary to close out their Services. In such an event, the Consultant shall be entitled to payment for work related to the close out of services in accordance with Sub-article 3.1 for any of the Consultant's staff employed directly thereon together with such expenses and disbursements allowed under Sub-article 3.2.

### 1.11 Indemnification

The Consultant shall indemnify and save harmless the Client, their employees, officers and agents from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever which the Client, their employees, officers or agents may suffer as a result of the negligence of the Consultant, their employees, officers or agents in the performance of this Agreement.

### 1.12 Insurance

#### a. Comprehensive General Liability and Automobile Insurance

The Consultant shall maintain insurance for the duration of the contract. Coverage shall consist of a comprehensive policy of public liability and property damage insurance acceptable to the Client in an amount not less than \$2,000,000.00 and automobile insurance for both owned and non-owned vehicles in an amount not less than \$2,000,000.00. The liability policy shall name the Client as an additional insured thereunder and the Consultant shall forward proof of insurance as the Client may direct. The said policy shall contain a cross-liability clause.

#### b. Professional Liability Insurance

If requested, the Consultant shall provide to the Client proof of Professional Liability Insurance carried by the Consultant in the amount of \$1,000,000.00.

#### c. Change in Coverage

If the Client requests to have the amount of coverage increased or to obtain other special insurance for the Project, then the Consultant shall endeavour forthwith to obtain such increased or special insurance at the Client's expense as a disbursement allowed under Sub-article 3.2.

It is understood and agreed that the coverage provided by these policies shall not be changed or amended in any way nor cancelled by the Consultant until thirty (30) days after written notice of such change or cancellations has been personally delivered to the Client.

### 1.13 Contracting for Construction

Neither the Consultant nor any person, firm or corporation associated or affiliated with or subsidiary to the Consultant shall tender for the construction of the Project, or have an interest either directly or indirectly in the construction of the Project.

### 1.14 Assignment

Neither party may assign this Agreement without the prior consent in writing of the other.

### 1.15 Previous Agreements

This Agreement supersedes all previous agreements, arrangements or understandings between the parties whether written or oral in connection with or incidental to the Project.

1.16 Approval by Other Authorities

Unless otherwise provided in this Agreement, where the work of the Consultant is subject to the approval or review of an authority, department of government, or agency other than the Client, such applications for approval or review shall be the responsibility of the Consultant, but shall be submitted through the offices of the Client and unless authorized by the Client in writing, such applications for approval or review shall not be obtained by direct contact by the Consultant with such other authority, department of government or agency.

1.17 Principals and Executives

The use of Principals and Executives on a time basis by the Consultant, shall be in accordance with Sub-article 3.1(a).

1.18 Specialized Services

The Consultant may engage others for specialized services provided that prior approval is obtained, in writing, from the Client and may add a mark-up of not more than 5% of the cost of such services to cover office administration costs when claiming reimbursement from the Client.

1.19 Inspection

The Client, or persons authorized by the Client, shall have the right, at all reasonable times, to inspect or otherwise review the Services performed, or being performed, under the Project and the premises where they are being performed.

1.20 Publication

The Consultant agrees to obtain the consent in writing of the Client before publishing or issuing any information regarding the Project.

1.21 Confidential Data

The Consultant shall not divulge any confidential information communicated to or acquired by them, or disclosed by the Client in the course of carrying out the services provided for herein and no such information shall be used by the Consultant on any other project without the approval in writing of the Client.

1.22 Time

The Consultant shall perform the Services expeditiously to meet the requirements of the Client and shall complete any portion or portions of the services in such order as the Client may require and the Client shall have the right to take possession of and use any completed or partially completed portions of the Work notwithstanding any provisions expressed or implied to the contrary.

The Client shall give due consideration to all designs, drawings, plans, specifications, reports, tenders, proposals and other information submitted by the Consultant, and shall make any decisions which they are required to make in connection therewith within a reasonable time so as not to delay the work of the Consultant.

1.23 Estimates, Schedules and Staff List

### 1.23.1 Preparation of Schedule of Fees, Schedule of Progress and Staff List

When requested by the Client, the Consultant shall provide for approval by the Client:

- a. A Schedule of the fees and disbursements to be paid for the Services described in Article 2.
- b. A Schedule showing an estimate of the portion of the services to be completed in each month and an estimate of the portion of the fee which will be payable for each such month.
- c. A staff list showing the number, classifications and salary ranges of staff and/or hourly rate ranges for Principals and Executives that will be providing services for this project. The Consultant shall relate such information to the particular type of work that such staff is to perform, while employed on the Project. Such list shall designate the member of the Consultant's staff who is to be the liaison person between the Consultant and the Client.

### 1.23.2 Subsequent Changes in the Schedule of Fees, Schedule of Progress, Staff List and Expenditure of Contingency Allowance

The Consultant shall require prior written approval, from the Client for any of the following:

- a. Any increase in the fees beyond those approved under Sub-article 3.1.
- b. Any change in the schedule of progress which results in a longer period than provided in the Schedule referred to in Sub-article 1.23.1(b).
- c. Any change in the number, classification and salary ranges of the staff provided in the staff list referred to under Sub-article 1.23.1(c).

### 1.23.3 Monthly Reporting of Progress

When requested by the Client, the Consultant shall provide a monthly report satisfactory in form and content to the Client, acting reasonably, showing:

- a. The portion of the Services completed in the preceding month.
- b. Services completed to date.
- c. Remaining Services to be completed.

### 1.24 Federal and Provincial Requirements

The Consultant shall abide by all applicable Federal and Provincial Legislation and Regulations thereto as these may relate to, but not limited to, the employment of staff, compensation, Workplace Safety & Insurance Board (WSIB), etc.

### 1.25 Term of Project

It is acknowledged and agreed that the Term of the Project shall be for a five-year period commencing on July 1st, 2008 to June 30<sup>th</sup>, 2013 inclusive. The Client and the Consultant agree that this agreement may be extended on the same terms and conditions by two (2) one-year (1) terms, provided the Client and the Consultant can agree to a new Time and Cost Breakdown for each additional year.

1.26 Appendices

**Appendix A** – RFP P-17-08, attached;

**Appendix B** – Proposal Submission, dated 8 May 2008, prepared by Urban & Environmental Management Inc., attached;

The Appendices are intended to supplement Article 2.1 ("Services to be Provided by the Consultant"). If any conflicts exist between the Appendices and Articles 2.1, the Client shall, in first instance and in its sole discretion, act reasonably to resolve each such conflict. Failing agreement between the Client and the Consultant, either party may refer such disagreement for arbitration, subject to the requirements of the **Arbitrations Act**.

1.27 Conflict of Interest

The Consultant shall disclose to the Client prior to accepting an assignment, any potential conflict of interest. If such a conflict of interest does exist, the Client may, at its discretion, withhold the assignment from the Consultant until the matter is suitably resolved, and further

That if during the conduct of an assignment with the Client the Consultant is retained by another client giving rise to a potential conflict of interest, then the Consultant shall so inform the Client. If a significant conflict of interest is deemed to exist, then the Consultant shall refuse the new assignment or shall take such steps as are necessary to remove the conflict of interest.

## **ARTICLE 2 – SERVICES**

2.1 Services to be provided as part of this agreement are outlined in Section 7.2 of RFP P-17-08.

## **ARTICLE 3 – FEES AND DISBURSEMENTS**

3.1 Basis of Payment

- a. The Client shall pay the Consultant in accordance with the Time and Cost Breakdown, located in Appendix "D" of the Proposal Submission.
- b. The Time and Cost Breakdown may be, at the sole discretion of the Client, reviewed annually and adjusted accordingly.
- c. All time expended on this Project, whether in the Consultant's office, at the Client's premises, or elsewhere, and including travel time, is chargeable to the project, subject to the Articles of this agreement. This also includes, but is not limited to, clerical staff engaged in the preparation of documents such as reports, and specifications.
- d. The Consultant must request and receive the written approval of the Client before any additional services, not included in the original scope of work, are carried out.
- e. The Consultant shall submit an invoice to the Client for all services completed in the immediately preceding month. Payment of the invoice by the Client will be made within thirty (30) days after the Client has received the Consultant's invoice.

### 3.2 Reimbursable Expenses

In addition to the fee, the Consultant shall be reimbursed for all reasonable expenses properly incurred by them in connection with the Project. The Client shall act reasonably when acting in its sole discretion to determine whether such expense was properly incurred and whether the cost of such expense was reasonable. To be eligible for reimbursement the Consultant shall provide an invoice for the expense, satisfactory in form and content to the Client, along with any other information reasonably required by the Client.

## ARTICLE 4 – MISCELLANEOUS CLAUSES

### 4.1 Insurance And Workers' Compensation

- a. The Consultant shall provide, maintain, and pay for all insurance coverage and the duration of each insurance policy shall be from the date of commencement of the Project until the date of the final certificate for payment. Prior to commencement of the Project and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the Consultant shall promptly provide the Client with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements.
- b. Without limiting the generality of the foregoing the Consultant, at its expense, shall be responsible for contributions required pursuant to the **Workplace Safety and Insurance Act** and other incidental expenses, and no extras will be allowed for such items.
- c. Without limiting the generality of the foregoing the Consultant, at its expense, shall obtain and file with the Client within thirty (30) days of the commencement of the Project and shall keep in force until the date it ceases to deliver services to the Client under this agreement, comprehensive general liability insurance in respect of the Project, (including all risks insurance for personal injury and property damage in respect of all equipment and all motor vehicles used or to be used in connection with the Work and contractual liabilities) with minimum inclusive limits of TWO MILLION DOLLARS (\$2,000,000.00).
- d. Prior to the commencement of the execution of the Project, the Consultant shall file a copy or certificate of such insurance policy or policies with the Client. If the Consultant fails to provide or maintain the required insurance the Client shall have the right to provide and maintain such insurance and give evidence to the Consultant. The Consultant shall pay the cost thereof to the Client on demand or the Client may deduct the amount which is due or may become due to the Consultant.

### 4.2 Pure Economic Loss

Notwithstanding anything to the contrary in this Agreement, the Client shall not be liable to the Consultant for any indirect or consequential damages or damages for pure economic loss.

### 4.3 Fines

The Consultant shall be liable for all fines and penalties however imposed upon the Consultant or the Client as a result of any error, omission, wrongful act or negligence on the part of the Consultant or its agents, servants or officers, in the performance of the services required to complete the Project.

#### 4.4 Failure to Comply and Late Payments

Failure of either party to enforce or insist upon compliance with any of the terms or provisions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or provisions, but the same shall be and remain at all times in full force and effect.

#### 4.5 Force Majeure

Save and except for the payment of any monies required hereunder, neither party shall be deemed to be in default of this Agreement where the failure to perform or the delay in performing any obligation is due wholly or in part to a cause beyond its reasonable control, including, but not limited to an act of God, an act of any federal, provincial, municipal or government authority, civil commotion, strikes, lockouts and other labour disputes, fires, floods, sabotage, earthquakes, storms, epidemics and an inability to perform due to causes beyond the reasonable control of the party. The party subject to such an event of force majeure shall promptly notify the other party of its inability to perform or of any delay in performing due to an event of force majeure and shall provide an estimate, as soon as practicable, as to when the obligation will be performed. The time for performing the obligation shall be extended for a period equal to the time during which the party was subject to the event of force majeure. Both parties shall explore all reasonable avenues available to avoid or resolve events of force majeure in the shortest time possible, but this requirement shall not oblige the party suffering the strike, lockout or labour dispute to compromise its position in such dispute.

#### 4.6 Relationship of Parties

Nothing in this Agreement creates the relationship of principal and agent, employer and employee, partnership or joint venture between the parties. The parties agree that they are and will at all times remain independent and are not and shall not represent themselves to be the agent, employee, partner of, or in joint venture with, the other. No representations will be made or acts taken by either party which could establish any apparent relationship of agency, employment, partnership or joint venture and no party shall be bound in any manner whatsoever by any licenses, warranties or representations made by the other party to any other person nor with respect to any other action of the other party.

#### 4.7 Notice

Any notice or other writing required or permitted to be given under this Agreement or for the purposes of it, to any party, shall be valid only if delivered in writing in accordance with this clause. Notices can be provided to:

##### **In respect of the Consultant:**

Name: \_\_\_\_\_

Address: Urban & Environmental Management Inc.  
5100 Orbitor Drive, Suite 300  
Mississauga, Ontario L4W 4Z4

Fax: \_\_\_\_\_

##### **In respect of the Client:**

Ms. Nancy Wright-Laking  
City Clerk  
City of Peterborough  
500 George Street North  
Peterborough, Ontario K9H 3R9

Fax: 705.742.3947

The Parties may change their respective addresses and addresses for delivery by delivering notices if such changes as provided below. Notice sent accordingly shall be deemed delivered and received:

- a. If delivered by hand, upon receipt;
- b. If delivered by facsimile, 48-hours after the time of transmission, excluding from the calculation weekends and public holidays;
- c. If delivered by overnight courier four (4) days after the couriating thereof; and
- d. If delivered by registered mail, six (6) days after the mailing thereof, provided that if there is a postal strike or lockout such notice shall be delivered by hand, courier or facsimile.

#### 4.8 Severability

If any provision of this Agreement is declared invalid or unenforceable by any competent authority such provision shall be deemed severed and shall not affect the validity or enforceability of the remaining provisions of this Agreement, unless such invalidity or unenforceability renders the operation of this Agreement impossible.

#### 4.9 Other Information

Each party shall at the other's party's request and expense execute and do all such further acts and things as may be necessary to carry out the full intent and meaning of this Agreement and the transactions contemplated thereby.

#### 4.10 Counterparts

This Agreement may be executed in counterparts and the counterparts together shall constitute an original.

#### 4.11 Reasonableness

Each party agrees that it shall at all times act reasonably in the performance of its obligations and the exercise of its rights under this Agreement.

#### 4.12 Entire Agreement

This Agreement and any schedules attached hereto constitutes the entire agreement between the Client and Consultant with respect to the matters herein and supercede any and all prior oral or written representations and agreements. The Client and the Consultant agree that each of them have received and thoroughly reviewed both Schedules "A" and "B" and that such schedules, whether attached hereto or not, form part of this agreement.

#### 4.13 Ambiguities

The Client and the Consultant agree and warrant that they have had the benefit of consultation with legal counsel prior to entering into this Agreement, such that all language herein, and in the Schedules, shall be construed equally against the Parties, and such the Consultant waives any right, claim, argument or defence that any language of this agreement should be construed strictly against the Client.

#### 4.14 Interpretation

Whenever a word importing the singular or plural is used in this Agreement, such word shall include the plural and singular respectively. Where any party is comprised of more than one entity, the obligations of each of such entities shall be joint and several. Words importing persons of either gender or firms or corporations shall include persons of the other gender and firms or corporations as applicable. Subject to the express provisions contained in this Agreement, words such as “hereof”, “herein”, “hereby”, “hereafter” and “hereunder” and all similar words or expressions shall refer to this Agreement as a whole and not to any particular article or portion hereof.

#### 4.15 Headings

The Headings or captions of articles, sections or subsections used in this agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Agreement.

#### 4.16 Consents and Approvals

Consents and approvals required under this agreement to be obtained from the Client shall only be effective if given in writing by persons so authorized.

**THE NEXT ARTICLE IS ARTICLE 4.17**

4.17 Certain Clauses to Survive

The Parties acknowledge and agree that the following articles, being Articles 1.5 to 1.8 inclusive, Article 1.20, Article 1.21, Articles 4.1 to 4.8 inclusive, Articles 4.10 to 4.15 inclusive and 4.17 shall survive the termination or expiry of this Agreement.

**IN WITNESS THEREOF** the parties hereto have caused to be executed those presents by their officers properly authorized in that behalf on the day and year first above written.

**SIGNED, SEALED AND DELIVERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

) **URBAN & ENVIRONMENTAL**  
 ) **MANAGEMENT INC.**  
 ) 5100 Orbitor Drive, Suite 300 Mississauga  
 ) Ontario L4W 4Z4  
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 ) \_\_\_\_\_  
 ) Signature of Authorized  
 ) Official or Principal  
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 ) \_\_\_\_\_  
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 ) Official or Principal  
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 ) (Print Name and State Title)  
 ) I/We have the authority to bind the Consultant  
 )  
 ) **THE CORPORATION OF THE**  
 ) **CITY OF PETERBOROUGH**  
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 )  
 ) \_\_\_\_\_  
 ) D. Paul Ayotte, Mayor  
 )  
 ) \_\_\_\_\_  
 ) Nancy Wright-Laking, City Clerk