

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 09-025

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND THE MINISTRY OF THE ENVIRONMENT FOR A GRANT FUNDING AGREEMENT UNDER THE LANDFILL GAS FUNDING PROGRAM

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 the Ministry of the Environment 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 23rd day of March 2009.

(Sgd.) D. Paul Ayotte, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

GRANT FUNDING AGREEMENT
Under the Landfill Gas Funding Program

THE AGREEMENT made in duplicate as of the 24th day of March, 2009,

BETWEEN :

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
as represented by the Minister of the Environment

(the "Ministry")

- and -

THE CORPORATION OF THE CITY OF PETERBOROUGH

(the "Recipient")

WHEREAS the Ministry has established the Landfill Gas Funding Program for the purpose of providing funding support to municipalities for smaller landfills that are required to capture landfill gas as a result of the new landfill gas capture requirements of Ontario Regulation 232/98 or Regulation 347 under the *Environmental Protection Act*;

AND WHEREAS the Recipient has applied to the Ministry for funding under the Landfill Gas Funding Program;

AND WHEREAS the Ministry desires to fund the Recipient;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, the Parties agree as follows:

Article 1
Definitions

1.1 **Number, Gender and Headings.** In the Agreement, words in the singular include the plural and vice-versa and words in one gender include all genders. The headings in the Agreement are for convenience of reference only and do not form part of the Agreement and in no manner modify, interpret or construe the Agreement.

1.2 **Definitions.** In the Agreement the following words shall have the following meanings:

"Agreement" means this agreement entered into between the Ministry and the Recipient and all schedules and attachments to the Agreement and any instrument amending the Agreement.

"Budget" means the eligible expenditures set out in section B1 of Schedule "B" (Budget).

"Effective Date" means the date first written at the top of the Agreement.

"Funding Year" means:

- (a) in the case of the first Funding Year, the period commencing on the date of the Agreement and ending on the first day that is March 31 following the date of the Agreement; and
- (b) in the case of Funding Years subsequent to the first Funding Year, the period commencing on the date that is April 1 following the end of the previous Funding Year and ending on the following March 31.

"Funds" means the money provided by the Ministry to the Recipient pursuant to the Agreement.

"GST" means goods and services tax pursuant to the Excise Tax Act (Canada).

"Indemnified Parties" means her Majesty the Queen in Right of Ontario, her Ministers, appointees and employees.

"Notice" means any notice or communication required or permitted to be made in the form set out in Article 17 (Notices).

"Party" means either the Ministry or the Recipient as applicable and **"Parties"** means both of them collectively.

"Person" is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, a joint venture, an unincorporated or incorporated organization, an unincorporated or incorporated association, the government of a country or any political subdivision thereof, or any agency or department of any such government, the Workplace Safety and Insurance Board, or the executors, administrators or other legal representatives of an individual in any capacity.

“Project” means the undertaking described in Schedule “A” (Project Description and Timelines).

“Reports” means the reports described in Schedule “C” (Financial/Progress Reports).

“Timelines” means the Project schedule set out in Schedule “A” (Project Description and Timelines).

Article 2 Governance

- 2.1 **Execution of Agreement.** The Recipient represents and warrants that it has the full power and authority to enter into the Agreement and has taken all necessary actions to authorize the execution of the Agreement.
- 2.2 **Governance.** The Recipient has established, and shall maintain for the period during which the Agreement is in effect, by-laws or other legally appropriate instruments to:
- (a) establish decision-making mechanisms;
 - (b) provide for the prudent and effective management of the Funds;
and
 - (c) establish procedures to enable the preparation and delivery of all Reports required pursuant to Article 8 (Reporting, Accounting and Review).
- 2.3 **Bank Account.** The Recipient shall have established, and shall hold the Funds in, a Canadian bank account and shall manage the Funds within that account so that they are discernable from any other funding source.

Article 3 Term of the Agreement

- 3.1 **Term.** The term of the Agreement shall commence on the Effective Date and shall expire on July 31, 2011 unless terminated earlier pursuant to either Article 13 or Article 14 of the Agreement.

Article 4 Funds

- 4.1 **Funds.** The Ministry shall:

- (a) provide up to seven hundred and five thousand, six hundred and fifty Canadian dollars (\$705,650) to the Recipient for the purpose of carrying out the Project;
- (b) flow the Funds to the Recipient in accordance with the Budget.

4.2 Limitation on Payment of Funds. Despite section 4.1, the Ministry:

- (a) may adjust the amount of Funds it provides to the Recipient in any Funding Year based upon the Ministry's assessment of the information contained in the Reports; and
- (b) shall not provide any Funds to the Recipient until the Recipient meets the insurance requirements described in section 12.1.

4.3 Appropriation. Despite sections 4.1 and 4.2 and pursuant to the provisions of the *Financial Administration Act*, R.S.O 1990, c. F.12 as amended, if the Ministry does not receive the necessary appropriation from the Ontario Legislature for any payment the Ministry is obligated to make under the Agreement the Ministry shall not be obligated to make the payment.

4.4 Interest on Funds. If the Recipient earns any interest on the Funds, the interest belongs to the Ministry and shall be an amount owing to the Ministry and paid to the "Ontario Minister of Finance" in accordance with Section 16.3.

4.5 GST. The Recipient shall not use the Funds for any GST costs for which it receives a rebate, tax credits, input tax credits or refunds.

**Article 5
Project**

5.1 Recipient Responsibilities. The Recipient shall:

- (a) carry out the Project in compliance with all federal and provincial laws or regulations, all municipal by-laws, and any other orders, rules or by-laws related to any aspect of the Project;
- (b) use the Funds only for the purpose of carrying out the Project;
- (c) spend the Funds only in accordance with the Budget;
- (d) place the Funds in an interest bearing account and shall, at the request of the Ministry, account to the Ministry on the interest earned on the Funds.

- 5.2 **The Recipient Shall Not.** The Recipient shall not make any changes to the Project, Timelines or Budget without the prior written consent of the Ministry.
- 5.3 **Recipient Undertaking.** The Recipient undertakes to the Ministry that it will complete the Project within the timeframes specified in Schedule A and within the Budget. The Recipient further undertakes to incur all costs associated with the Project should it go over Budget.
- 5.4 **Terms and Conditions on Any Consent.** The Ministry may prescribe any terms and conditions on any consent the Ministry may grant pursuant to section 5.2.
- 5.5 **Moving Funds.** Despite section 5.2, the Recipient may move Funds equalling up to ten percent (10%) of the allocation in one budget category to another budget category without the Ministry's prior written consent.

Article 6

Acquisition of Goods and Services, and Disposal of Assets

- 6.1 **Acquisition.** If the Recipient acquires supplies, equipment or services with the Funds it shall do so through a process that promotes the best value for the Funds it spends.
- 6.2 **Disposition.** The Recipient shall not, without the Ministry's prior written consent, sell, lease or otherwise dispose of any assets purchased with Funds, the cost of which exceeded \$1,000 at the time of purchase.

Article 7

Conflict of Interest

- 7.1 **No Conflict of Interest.** The Recipient shall carry out the Project and use the Funds in a manner that ensures that no Person associated with the Project in any capacity has a potential or actual conflict of interest.
- 7.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any situation or circumstance where, in relation to the performance of the Recipient's contractual obligations under the Agreement, the Recipient's other commitments, relationships or financial interests:
- (a) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of the Recipient's independent judgement in relation to the subject matter of the Agreement; or
 - (b) could or could be seen to compromise, impair or be incompatible

with the Recipient's effective performance of its obligations under the Agreement.

7.3 **Disclosure to Ministry.** The Recipient shall:

- (a) disclose to the Ministry without delay any situation that a reasonable person would interpret as either an actual or potential conflict of interest; and
- (b) comply with any terms and conditions subsequently prescribed by the Ministry resulting from the disclosure.

Article 8 Reporting, Accounting and Review

8.1 **Communication.** The Ministry shall communicate with the Recipient on a regular basis for the purposes of Project oversight.

8.2 **Reports.** The Recipient shall submit to the Ministry the Reports and such other information or documentation to substantiate the Reports or provide other reports as the Ministry may request from time to time.

8.3 **Preparation and Submission.** The Recipient shall:

- (a) prepare its Reports using any forms specified by the Ministry from time to time;
- (b) ensure that all Reports are completed to the satisfaction of the Ministry;
- (c) ensure that all Reports are signed on behalf of the Recipient by the individual(s) named in Schedule C; and,
- (d) submit all Reports to the Ministry on the dates set out in Schedule C and at the address provided in Section 17.1.

8.4 **Record Maintenance.** The Recipient shall for a period of seven (7) years from the date of the expiry or termination of the Agreement:

- (a) keep and maintain all financial records, invoices and other financially-related documents relating to the Funds or otherwise to the Project in a manner consistent with generally accepted accounting principles and clerical practices; and
- (b) keep and maintain all non-financial documents and records relating to the Funds or otherwise to the Project in a confidential manner consistent with all applicable law.

- 8.5 **Inspection.** The Ministry or its authorized representatives including but not limited to independent professionals and the Auditor-General of Ontario may, at its own expense, upon twenty-four (24) hours notice to the Recipient and during normal business hours enter upon the Recipient's premises to review the progress of the Project, the way in which the Recipient is carrying out the Project and the Recipient's expenditure of the Funds and to that end the Ministry may:
- (a) inspect and copy any financial records, invoices and other financially-related documents in the possession or under the control of the Recipient which relate to the Funds or otherwise to the Project;
 - (b) inspect and copy non-financial records in the possession or under the control of the Recipient which relate to the Funds or otherwise to the Project, except that, where such records relate to a third Person, the Ministry shall, if required by law, obtain the consent of the third Person before inspecting or copying such records; and
 - (c) conduct such other investigation or inspection in respect of the Project as is considered necessary.
- 8.6 **Recipient to Provide.** The Recipient shall cooperate with the Ministry in respect of the exercise of the Ministry's rights set out in Section 8.4, and the Recipient shall provide any information in respect of the Funds or the Project that the Ministry may reasonably request.
- 8.7 **No Review of Personal Information.** Nothing in the Agreement shall require the Recipient, except as otherwise permitted or required by law, to disclose any personal information to the Ministry.
- 8.8 **No Control of Records.** No right conferred upon the Ministry under the Agreement nor any provision of the Agreement shall be construed so as to give the Ministry any custody or control whatsoever over the Recipient's Records.

Article 9 Credit

- 9.1 **Acknowledge Support.** Unless otherwise directed by the Ministry, the Recipient shall acknowledge the support of the Ministry in any publication of any kind, written or oral, relating to the Project using the statement provided below:

"This project has received funding support from the Ontario Ministry of the Environment. Such support does not indicate endorsement by the Ministry of the contents of this material."

Article 10 Limitation of Liability

- 10.1 **Limitation of Liability.** The Ministry's officers, employees and agents shall not be liable to the Recipient or any of the Recipient's personnel for costs, losses, claims, liabilities and damages howsoever caused (including any incidental, indirect, special or consequential damages, injury or any loss of use or profit of the Recipient) arising out of or in any way related to the Project or otherwise in connection with the Agreement, unless caused by the negligence or malfeasance of the Ministry's officers, employees and agents.

Article 11 Indemnity

- 11.1 **Indemnification.** The Recipient hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, (collectively "**Claims**"), by whomever made, sustained, brought or prosecuted, including for third party bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Recipient, its subcontractors or their respective directors, officers, agents, employees or independent contractors in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement.

Article 12 Insurance

- 12.1 **Commercial General Liability Insurance.** The Recipient shall put into effect and maintain, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, for the period during which the Agreement is in effect, at its own expense the following insurance:
- (a) commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than two million dollars (\$2,000,000) per occurrence. The policy shall include the following:
 - a. the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Recipient's

obligations under, or otherwise in connection with, the Agreement;

- b. a cross-liability clause;
- c. contractual liability coverage;
- d. A thirty (30) day written notice of cancellation, termination or material change.

12.2 **Proof of Insurance.** The Recipient shall provide the Ministry with certificates of insurance, or other proof as may be requested by the Ministry, that confirms the insurance coverage as provided for in section 12.1. Upon the request of the Ministry, the Recipient shall make available to the Ministry a copy of each insurance policy.

Article 13 Termination by Either Party for Convenience

13.1 **Termination Without Reason.** Either Party may terminate the Agreement at any time, for any reason, upon giving at least thirty (30) days Notice to the other Party.

Article 14 Termination by the Ministry

14.1 **Immediate Termination.** The Ministry may terminate the Agreement immediately upon giving Notice to the Recipient if:

- (a) in the opinion of the Ministry:
 - (i) the Recipient has knowingly provided false or misleading information regarding its funding request or in any other communication with the Ministry;
 - (ii) the Recipient breaches any provision of the Agreement;
 - (iii) the Recipient is unable to complete or has discontinued the Project; or
 - (iv) it is not reasonable for the Recipient to continue to carry out the Project;
- (b) the Recipient makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or is petitioned into bankruptcy, or files for the appointment of a receiver; or,

(c) the Recipient ceases to carry on business.

14.2 **Opportunity to Remedy.** If the Ministry considers that it is appropriate to allow the Recipient the opportunity to remedy a breach of the Agreement, the Ministry may give the Recipient an opportunity to remedy the breach by giving the Recipient Notice:

(a) of the particulars of the breach; and

(b) of the period of time within which the Recipient is required to remedy the breach.

14.3 **Recipient not Remediating.** If the Ministry has provided the Recipient with an opportunity to remedy the breach, and

(a) the Recipient does not remedy the breach within the time period specified in the Notice;

(b) it becomes apparent to the Ministry that the Recipient cannot completely remedy the breach within the time specified in the Notice or such further period of time as the Ministry considers reasonable; or

(c) the Recipient is not proceeding to remedy the breach in a way that is satisfactory to the Ministry,

the Ministry may immediately terminate the Agreement by giving Notice of termination to the Recipient.

14.4 **Effective Date.** The effective date of any termination under this Article shall be the last day of the notice period, the last day of any subsequent notice period or immediately, whichever applies.

Article 15

Funding at the End of a Funding Year, Upon Expiry OR Termination

15.1 **Funding at the End of a Funding Year.** If, in any Funding Year, the Recipient does not spend all of the Funds allocated for a Funding Year as provided for in the Budget, the Recipient may request permission from the Ministry to use the unspent Funds in the next Funding Year and the Ministry may, in writing:

(a) authorize the Recipient to use the unspent Funds in the next Funding Year; or

(b) direct the Recipient to return the unspent Funds to the Ministry in

accordance with Article 16.

- 15.2 **Funding on Termination.** Upon termination of the Agreement pursuant to Article 14 (Termination by the Ministry), the Ministry shall:
- (a) demand the repayment of any unspent Funds remaining in the possession or under the control of the Recipient; and
 - (b) demand the repayment of monies in an amount equal to any Funds the Recipient used for purposes not agreed upon by the Ministry and such monies shall be deemed to be Funds for the purpose of Article 16 and shall be repaid in accordance with Article 16; and
 - (c) cancel all further payment of Funds.
- 15.3 **Winding Down.** If the Agreement is terminated pursuant to Article 13 (Termination by Either Party for Convenience), the Ministry shall:
- (a) determine the Recipient's reasonable costs to wind down the Project and permit the Recipient to use the Funds in its possession or under its control to pay for such reasonable costs; and
 - (b) demand the repayment of all other Funds remaining in the possession or under the control of the Recipient; and
 - (c) demand the payment of monies in an amount equal to any Funds the Recipient used for purposes not agreed upon by the Ministry and such monies shall be deemed to be Funds for the purpose of Article 16 and shall be repaid in accordance with Article 16.
- 15.4 **Funding on Expiry.** Upon expiry of the Agreement, the Ministry shall demand:
- (a) the repayment of any unspent Funds remaining in the possession or under the control of the Recipient; and,
 - (b) the payment of monies in an amount equal to any Funds the Recipient used for purposes not agreed upon by the Ministry and such monies shall be deemed to be Funds for the purpose of Article 16 and shall be repaid in accordance with Article 16.

Article 16 **Recipient's Repayment of Funds**

- 16.1 **Debt Due.** If the Ministry demands the payment by the Recipient of any Funds or interest on the Funds pursuant to the Agreement, the amount demanded shall be deemed to be a debt owing to the Ministry by the Recipient, and the Recipient shall pay the amount to the Ministry

immediately unless the Ministry directs otherwise.

- 16.2 **Interest Rate.** The Ministry may charge the Recipient interest on any amount owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.
- 16.3 **Cheque Payable To.** The Recipient shall pay any amounts owing to the Ministry by cheque payable to the "Ontario Minister of Finance" and mailed to the Ministry at the address provided in section 17.1.

Article 17 Notices

17.1 **Notice.** Any Notice shall be:

- (a) in writing;
- (b) delivered personally or by pre-paid courier, or sent by facsimile, certified or registered mail or postage pre-paid mail with receipt notification requested; and,
- (c) addressed to the other Party as provided below or as either Party shall later designate to the other in writing:

To the Ministry:

Ministry of the Environment
Waste Management Policy Branch
135 St. Clair Ave. West, 7th Floor
Toronto, Ontario
M4V 1P5

Attention: Larry Wilcox

Fax: (416) 325-4437

Telephone: (416) 314-7876

To the Recipient:

The Corporation of the City of
Peterborough
500 George Street North
Peterborough, Ontario
K9H 3R9

Attention: Wayne Jackson,
Director, Utility Services

Fax: (705) 876-4621

Telephone: (705) 742-7777x1894

17.2 **Notices Effective From.** All Notices shall be effective:

- (a) at the time the delivery is made if the Notice is delivered personally, by pre-paid courier or by facsimile; or
- (b) three (3) days after the day the Notice was deposited in the mail if the Notice is sent by certified, registered or postage prepaid mail, unless the day the Notice is effective falls on a day when the Ministry

is normally closed for business, in which case the Notice shall not be effective until the next day that is a day when the Ministry is normally open for business.

Article 18
Severability of Provisions

- 18.1 **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision of the Agreement and any invalid or unenforceable provision shall be deemed to be severed.

Article 19
Waiver

- 19.1 **Waivers in Writing.** A waiver of any failure to comply with any term of the Agreement shall be in writing and signed by the Party providing the waiver. Any waiver must refer to a specific failure to comply and shall not have the effect of waiving any subsequent failures to comply.

Article 20
Independent Parties

- 20.1 **Parties Independent.** The Parties are and shall at all times remain independent of each other and are not and shall not represent themselves to be the agent, joint venturer, partner or employee of the other. No representations shall be made or acts taken by either Party which could establish or imply any apparent relationship of agency, joint venture, partnership or employment and neither Party shall be bound in any manner whatsoever by any agreements, warranties or representations made by the other Party to any other Person nor with respect to any other action of the other Party.

Article 21
Assignment of Agreement or Funds

- 21.1 **No Assignment.** The Recipient shall not assign the Agreement or the Funds or any part thereof without the prior written consent of the Ministry.

Article 22
Governing Law

- 22.1 **Agreement Governed By.** The Agreement and the rights, obligations and relations of the Parties hereto shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Any litigation or arbitration arising in

connection with the Agreement shall be conducted in Ontario unless the Parties agree in writing otherwise.

**Article 23
Further Assurances**

- 23.1 **Agreement into Effect.** The Parties agree to do or cause to be done all acts or things necessary to implement and carry into effect the Agreement to its full extent.

**Article 24
Circumstances Beyond the Control of Either Party**

- 24.1 **Force Majeure Means.** For the purposes of the Agreement, "Force Majeure" means an event that is:

- (a) beyond the reasonable control of a Party; and
- (b) makes a Party's performance of its obligations under the Agreement impossible or so impracticable as reasonably to be considered impossible in the circumstances.

- 24.2 **Force Majeure Includes.** Force Majeure includes:

- (a) war, riots and civil disorder;
- (b) storm, flood, earthquake or other severely adverse weather conditions;
- (c) confiscation or other similar action by government agencies;
- (d) lawful act by a public authority; and,
- (e) strikes, lockouts and other labour actions,

if such events meet the test set out in Section 24.1.

- 24.3 **Force Majeure Shall Not Include.** Force Majeure shall not include:

- (a) any event that is caused by the negligence or intentional action of a Party or such Party's agents or employees;
- (b) any event that a diligent Party could reasonably have been expected to:
 - (i) take into account at the time of the execution of the Agreement; and

- (ii) avoid or overcome in the carrying out of its obligations under the Agreement; or,
- (c) the insufficiency of funds or failure to make any payment required hereunder, unless such failure is in accordance with section 4.3 (Appropriation).

24.4 **Failure to Fulfil Obligations.** The failure of either Party to fulfil any of its obligations under the Agreement shall not be considered to be a breach of, or default under, the Agreement to the extent that such failure to fulfill the obligation arose from an event of Force Majeure, if the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of the Agreement.

Article 25 Survival

25.1 **Survival.** The provisions in Sections 4.4 and 4.5, Section 6.2, Section 8.2 and 8.3 to the extent that the Recipient has not submitted all the required Reports to the Ministry, sections 8.4, 8.5 and 8.6, Article 9 (Credit), Article 10 (Limitation of Liability), Article 11 (Indemnity), Article 15 (Funding at the End of a Funding Year, Upon Expiry or Termination), Article 16 (Recipient's Repayment of Funds), Article 22 (Governing Law), Article 25 (Survival) and any supporting or crossed referenced provisions survive and shall continue in full force and effect for a period of seven (7) years from the date of expiry or termination of the Agreement.

Article 26 Schedules

26.1 **Schedules.** The following are the schedules attached to and forming part of the Agreement:

- (a) Schedule A (Project Description and Timelines);
- (b) Schedule B (Budget); and,
- (c) Schedule C (Financial/Progress Reports).

Article 27 Entire Agreement

27.1 **Entire Agreement.** The Agreement together with the attached schedules listed in section 26.1 of the Agreement constitutes the entire Agreement between the Parties with respect to the subject matter contained in the

Agreement and supersedes all prior oral or written representations and agreements.

- 27.2 **Modification of Agreement.** The Agreement may only be modified by a written agreement duly executed by the Parties.

**Article 28
Counterparts**

- 28.1 **Counterparts.** The Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF the Parties have executed the Agreement made as of the date first written above.

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO**

as represented by the Minister of the
Environment

per: _____

Name: John Lieou

Title: Assistant Deputy Minister, Integrated
Environmental Policy Branch

Pursuant to delegated authority

**THE CORPORATION OF THE CITY OF
PETERBOROUGH**

per: _____

Name: Paul Ayotte

Position: Mayor

per: _____

Name: Nancy Wright-Laking

Position: Clerk

We have authority to bind the Recipient

Schedule A

PROJECT DESCRIPTION AND TIMELINES

A1. BACKGROUND

In June 2008, amendments to Regulation 347 (General – Waste Management) and Ontario Regulation 232/98 (Landfilling Sites) under the *Environmental Protection Act* (“EPA”) resulted in requirements for landfill gas collection and flaring (burning), or use, for operating, new or expanding landfills larger than 1.5 million cubic metres.

In conjunction with the regulatory amendments, the Ministry is providing up to approximately \$10 million in funding support to municipalities over three years (fiscal years 2008/09, 2009/10 and 2010/11) for smaller landfills that are required to capture landfill gas as a result of these amendments. Funding support is available for the design and construction of the landfill gas facilities for collection and flaring, or use (i.e. electricity generation).

Eligible costs for funding are those costs that were incurred after June 19, 2008 and that are expected to be incurred by March 31, 2011 and include:

1. the costs for materials and equipment for the landfill gas facilities;
2. the costs for professionals, technical personnel and contractors engaged to assess, design, obtain Ministry approval and construct the landfill gas facilities; and,
3. the costs for professionals, technical personnel and contractors engaged for purposes of making the application for funding under this funding program.

A2. PROJECT OBJECTIVE

The Recipient is required as a result of the new regulatory amendments to collect and flare (burn) or use landfill gas at the Peterborough Landfill (the “Site”) operating under Ministry certificate of approval A341508 pursuant to Part V of the EPA.

Funding is being provided to the Recipient for the design and construction of landfill gas facilities for the collection and flaring of landfill gas at the Site.

A3. RECIPIENT OBLIGATIONS

A3.1 Scope of Project

The scope of the landfill gas collection and flaring Project being undertaken by the Recipient at the Site includes the following activities as set out in the

Recipient's proposal:

Engineering and Project Management

Activity 1:

Engineering design for the landfill gas collection and flaring system including conceptual design and funding application, and detailed assessment and design.

Activity 2:

Preparation and submission of approvals applications and obtain approvals (sections 9 and 27 under the EPA) for the landfill gas collection and flaring system.

Activity 3:

Tendering process for the construction of the landfill gas collection and flaring system.

Activity 4:

Project management and construction support.

Construction

Activity 5:

Construction preparation and mobilization.

Activity 6:

Construction of 22 landfill gas extraction wells and wellheads.

Activity 7:

Construction of the 800 metre header pipe including condensate drainage system.

Activity 8:

Construction of the lateral pipes.

Activity 9:

Construction of the landfill gas flare.

A3.2 Timelines

Activity	Completion Date
<u>Engineering and Project Management</u>	
Activity 1: Engineering design for the landfill gas collection and flaring system including conceptual design and funding application, and detailed assessment and design.	January 22, 2009
Activity 2: Preparation and submission of approvals applications and obtain approvals (sections 9 and 27 under the EPA) for the landfill gas collection and flaring system.	July 9, 2009
Activity 3: Tendering process for the construction of the landfill gas collection and flaring system.	August 7, 2009
Activity 4: Project management and construction support.	March 31, 2011
<u>Construction</u>	
Activity 5: Construction preparation and mobilization. Activity 6: Construction of 22 landfill gas extraction wells and wellheads. Activity 7: Construction of the 800 metre header pipe including condensate drainage system. Activity 8: Construction of the lateral pipes. Activity 9: Construction of the landfill gas flare.	March 26, 2010 (Phase 1) February 25, 2011 (Phase 2) (Project completion March 31, 2011)

Schedule B

BUDGET

B1. The Recipient shall expend the Funds in accordance with the following:

Eligible Expenditure	Amount
<u>Engineering and Project Management</u>	
<p>Activity 1: Engineering design for the landfill gas collection and flaring system including conceptual design and funding application, and detailed assessment and design.</p> <p>Activity 2: Preparation and submission of approvals applications and obtain approvals (sections 9 and 27 under the EPA) for the landfill gas collection and flaring system.</p> <p>Activity 3: Tendering process for the construction of the landfill gas collection and flaring system.</p> <p>Activity 4: Project management and construction support.</p>	<p>\$ 165,000 cost \$ 110,000 @2/3 funding (Total of Activities)</p>
<u>Construction</u> <small>Note 1</small>	
<p>Activity 5: Construction preparation and mobilization.</p>	<p>\$ 25,000 (+\$1,019) = \$26,019 cost \$ 17,346 @2/3 funding</p>
<p>Activity 6: Construction of 22 landfill gas extraction wells and wellheads.</p>	<p>\$129,250 (+\$5,270) = \$134,520 cost \$89,680 @2/3 funding</p>
<p>Activity 7: Construction of the 800 metre header pipe including condensate drainage system.</p>	<p>\$225,000 (+\$9,173) = \$234,173 cost \$156,115 @2/3 funding</p>
<p>Activity 8: Construction of the lateral pipes.</p> <p>Activity 9: Construction of the landfill gas flare.</p>	<p>\$479,225 (+\$19,538) = \$498,763 cost \$332,509 @2/3 funding (Total of Activities)</p>
Total	<p>\$1,058,475 cost \$705,650 @2/3 funding</p>

Note 1: The \$35,000 health/safety, insurance and bonding costs have been added proportionately to the construction costs for Activities 5-9.

B2. The Ministry shall provide the Funds to the Recipient in accordance with the following schedule:

Date or Activity that Triggers Payment	Amount
For 2008/09, following Ministry approval of Recipient project application and signing of the Agreement.	\$ 235,216
For 2009/10, after April 1, 2009 and following Ministry approval of the first interim progress report and first financial progress report.	\$ 235,216
For 2010/11, after April 1, 2010 and following Ministry approval of the fourth interim progress report and fourth financial progress report.	\$ 235,218
	\$ 705,650 (Total)

B3. Actual Project Expenditures

The Budget set out in section B1 of Schedule B is the maximum amount of Funds available for the Project and is based on 2/3 of the estimated eligible costs for the Project. The Recipient may only use the Funds for 2/3 of the actual Project expenditures incurred by the Recipient to third parties, up to the maximum amount provided for in the Budget.

Schedule C

FINANCIAL/PROGRESS REPORTS

Reports	Date Due
<p>Consultant and contractor services Acquisition Report(s) setting out:</p> <ul style="list-style-type: none"> (i) a description of the competitive process followed; (ii) a summary of the bids submitted; (iii) justification for the selection of the preferred proponent which evidences value for money; (iv) the preferred proponent's price. 	<p>Within 30 days after acquisition of consultant or contractor services</p>
<p>Interim progress report(s) setting out:</p> <ul style="list-style-type: none"> (i) actions undertaken to the date of the report and how they relate to the objectives of the Project; (ii) any Project milestones achieved within the reporting period and show how Project objectives / expectations have been met; (iii) set out any variances from the Project schedule, the reasons for such variances and the strategy used to correct the variances and achieve the Project objectives; and (iv) a statement confirming Recipient compliance with the terms and conditions of the Agreement signed by the Chief Operating Officer, Board chair or equivalent unless otherwise agreed to by the Ministry. 	<p>Within 30 days after:</p> <ol style="list-style-type: none"> 1. Obtain Ministry environmental approvals (Report estimated to be due by August 10, 2009) 2. Completion of construction tendering process (Report estimated to be due by September 8, 2009) 3. Two months after completion of construction tendering process (Report estimated to be due by November 9, 2009) 4. Completion of Phase 1 construction (Report estimated to be due by April 26, 2010) 5. Two months before start of Phase 2 construction (Report estimated to be due by November

	<p>8, 2010)</p> <p>6. Completion of Phase 2 construction (Report estimated to be due by March 25, 2011)</p>
<p>Financial progress report(s) setting out:</p> <p>(i) an interim accounting of all Project expenditures to date signed by the Chief Financial Officer, Board chair or equivalent, if applicable, or as otherwise agreed to by the Ministry, confirming actual Project expenditures, evidencing the Recipient's 1/3 cost share and the Ministry's 2/3 cost share, and providing an explanation for any variances from the Budget as provided for in section 5.5;</p> <p>(ii) a forecast of Project spending to Project completion; and</p> <p>(iii) whether or not the Project as described in the Agreement can be completed.</p>	<p>Within 30 days after:</p> <p>1. Obtain Ministry environmental approvals (Report estimated to be due by August 10, 2009)</p> <p>2. Completion of construction tendering process (Report estimated to be due by September 8, 2009)</p> <p>3. Two months after completion of construction tendering process (Report estimated to be due by November 9, 2009)</p> <p>4. Completion of Phase 1 construction (Report estimated to be due by April 26, 2010)</p> <p>5. Two months before start of Phase 2 construction (Report estimated to be due by November 8, 2010)</p> <p>6. Completion of Phase 2 construction (Report estimated to be due by March 25, 2011)</p>

<p>Final report:</p> <ul style="list-style-type: none"> (i) discussing Project objectives / expectations, confirming that Project objectives / expectations were met, setting out lessons learned; (ii) including a final accounting of all Project expenditures signed by the Chief Financial Officer, and the Board of Directors if applicable, or as otherwise agreed to by the Ministry, confirming actual Project expenditures, evidencing the Recipient's 1/3 cost share and the Ministry's 2/3 cost share, and providing an explanation for any variances as provided for in section 5.5; (iii) including an accounting of any unspent Funds and an explanation as to why there are remaining Funds; and (iv) including a statement signed by the Chief Operating Officer, Board chair or equivalent unless otherwise agreed to by the Ministry confirming Recipient compliance with the terms and conditions of the Agreement. 	<p>Within 90 days after: Project completion (Report estimated to be due by June 30, 2011)</p>
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