

Attachment 6 – Sample Contract

This Agreement made as of this XX day of XXXXXXXX 20XX.

Between:

The Corporation of the City of Peterborough
Or the "Owner"

And

[Insert Name of Contractor]
Or the "Contractor"

Recitals:

- A. The Owner is responsible for the operation, maintenance and management of the Wastewater facility located in Peterborough, Ontario, or, the "Facilities", as more particularly set out in Schedule "A" attached hereto;
- B. The Owner generates Biosolids from the Facilities;
- C. The Owner has retained the services of the Contractor to manage the haulage, processing, storage, use, or disposal of Biosolids in accordance with Applicable Law and the terms and conditions contained in the Contract Documents;
- D. The Contractor is a corporation in the business of supplying services for the management of Biosolids from wastewater treatment facilities;
- E. The Contractor has the corporate capacity and is authorized to enter into this Agreement;

Now therefore in consideration of the mutual covenants and agreements contained herein, the Owner and the Contractor agree as follows:

Article 1 – Definitions and Term of Agreement

- 1.1 As used in this Agreement, words and phrases not otherwise defined herein, have the following meaning:
 - a. "Act" means the **Nutrient Management Act**, as amended, including those protocols incorporated by reference therein and the provisions of any regulation that may be enacted from time to time under the **Nutrient Management Act, 2002**.
 - b. "Applicable Law" means the Act and all law, statutes, regulations, by-laws, codes, guidelines and policies having the force of law, including, but not limited to: the EPA, the **Employment Insurance Act**, as amended, the

Occupational Health and Safety Act, as amended, **the Workplace Safety and Insurance Act**, as d - amended, certificates of approval, waste haulers' certificates and other approvals, now or hereafter in existence having the force of law, that are relevant and applicable to the Work.

- c. "Biosolids" means the primary organic solid product that is produced at the Peterborough Wastewater Treatment Plant that can be beneficially used and complies with all of the standards established in current NMA Guidelines.
- d. "Business Hours" means any time from 7:00 a.m. to 7:00 p.m., Monday to Saturday, which is not a Holiday or a Saturday of a Holiday weekend.
- e. "Certificate of Approval" means the certificate of approval(s) issued from time to time by the MOE.
- f. "Change in Law" means the enactment, adoption, promulgation, modification, repeal or change of any Applicable Law that takes effect after the Start Date which (i) establishes new or different requirements with respect to the management of the Biosolids or (ii) adversely impacts the Contractor's ability or cost to perform its obligations under this Agreement.
- g. "Contract Documents" consist of the executed Agreement between the Owner and the Contractor, Addenda, Information for Proponents, Specifications, Form of Proposal, General Conditions of the Contract, the Contractor's Proposal and any other such documents as provided for in the Contract, including amendments made in writing pursuant to the provisions of the Contract and agreed upon between the parties.
- h. "Contract Year" means the period commencing on the date the Work is started and ending twelve months from that start date during the Term of this Agreement.
- i. "CPI" means the Consumer Price Index for All Items Ontario, as reported by Statistics Canada in December of each year.
- j. "Dewatered Biosolids" means the solid residual portions of liquid Biosolids that have undergone a partial mechanical separation process at the Peterborough Wastewater Treatment Plant and comply with all of the standards established in the current **Nutrient Management Act**, as amended, and Regulations.
- k. "Dry Tonnes" means the mass of Biosolids with zero moisture content.
- l. "EPA" means the Environmental Protection Act and any regulations that may be enacted pursuant to the **Environmental Protection Act**, as amended.

- m. "Equipment" means the equipment, including trucks, trailers and equipment, owned or leased by the Contractor and used by it for the management of the Biosolids.
- n. "HST" means Harmonized Sales Tax.
- o. "Holiday" means any one of the Owner's designated holidays of New Year's Day, Family Day, Good Friday, Easter Monday, Victoria Day, Canada Day, August Civic Holiday, Labour Day and Thanksgiving Day, Christmas Day and Boxing Day.
- p. "MOE" means the Ontario Ministry of the Environment and Climate Change, or such other governmental entity governing the management of residuals and Biosolids, as may be appointed from time to time.
- q. "MOL" means the Ontario Ministry of Labour.
- r. "NMA" means Nutrient Management Act.
- s. "NMP" means Nutrient Management Plan.
- t. "OMAFRA" means the Ontario Ministry of Agriculture, Food, and Rural Affairs.
- u. "Owner Representative" has the meaning set out in Section 13.1.
- v. "Perform" shall include the provision of all labour, equipment and services necessary to perform the Work, unless the context prescribes otherwise.
- w. "Performance Security" has the meaning set out in Section 14.1.
- x. "Prudent Industry Practices" means any of the practices, methods and acts engaged in or approved by a significant portion of the industries providing Biosolids management services in the immediate area surrounding the Facilities during the Term of this Agreement. Prudent Industry Practices are not to be interpreted, construed as or limited to the optimum industry practices, methods or acts, but rather as a range of acceptable practices, methods or acts consistent with the duties and obligations of the Contractor under this Agreement.
- y. "RFT" means Request for Tenders.
- z. "Services" has the meaning set out in Article 2.1.
- aa. "Spread" or "Spreading" when used in relation to Dewatered Biosolids, means land application in accordance with the NMA Guidelines and regulations

- bb. "Spreading Period" means the yearly period of time in which the NMA Guidelines and regulations permit Spreading
 - cc. "Sub-contractor" means a person, partnership or corporation having a direct contract with the Contractor to perform part or parts of the Work or to supply products to the Works
 - dd. "Tender" means the submission by the Bidder to **T-29-15**.
 - ee. "Term" means the current term of this Agreement, of either the Initial Term or any Renewal Term, as such terms have been defined herein.
 - ff. "Wet Tonnes" means the actual weight of Dewatered Biosolids that would register on the Approved weigh scales
 - gg. "WWTP" means Wastewater Treatment Plant located at 425 Kennedy Road, in the City of Peterborough
 - hh. "Work" means the total services including, but not limited to, the supply of materials, vehicle, trailers, labour, facilities, supervision, services, permits, licenses or approvals required to complete the Contractor's obligation under the Agreement including any changes to the Work which may be ordered by the Owner
- 1.2 The Owner shall pay the Contractor \$XXXXXXX in Canadian Dollars, exclusive of applicable taxes, per year during the Initial Term. The XXXXXX payment by the Owner to the Contractor in each successive year of the Initial Term shall be subject to adjustment in accordance with 50% of the Average Annual Consumer Price Index – Ontario, Transportation and 50% of the Average Annual Consumer Price Index Ontario, All Items.
- 1.3 The Initial Term of this Agreement shall be for a period of five years, or the "Initial Term", and the first year of the Initial Term shall commence on DATE, or the "Start Date". The Initial Term shall terminate at midnight on DATE, unless the Contract is terminated earlier or extended, as herein provided.
- 1.4 The parties may enter into negotiations to extend the Initial Term of this Agreement for an additional term of up to five years. The Owner shall notify the Contractor in writing six months prior to the expiration of the then-current Term of its desire to extend the Agreement and the parties shall commence negotiation of the pricing and any other terms during such six month period. In the event the parties are unable to negotiate mutually acceptable pricing and terms for any additional Term prior to the expiration of the then current Term, this Agreement shall expire and become null and void except with respect to any outstanding obligations accruing prior to the date of such expiration.

Article 2 – Services

- 2.1 Throughout the Term of this Agreement, the Contractor shall Perform the Work and the Services related to the management of the Biosolids as more particularly set out in this Agreement, Schedule "B" to this Agreement, and in accordance with Prudent Industry Practices and Applicable Law. In performing the Work and the Services, the Contractor shall comply with the most stringent requirements. The Contractor shall be required to pay for all costs and expenses in performing the Work and the Services, including costs for personnel and any sub-contracted services.
- 2.2 The Contractor may be requested by the Owner or be required to Perform Excluded Services that are not included in the Services; the "Excluded Services". The Excluded Services are to be approved by the Owner prior to being performed or charged to the Owner as an additional cost.

Article 3 – Management of Residuals

- 3.1 The Contractor shall remove those amounts of Biosolids from the Peterborough WWTP, as set out in the RFT, at a frequency that will allow the Owner to maintain continuous, unrestricted operation of the Facilities at all times, in compliance with Applicable Law and in accordance with the schedule developed by the Owner. Haulage of the Biosolids may take place daily from 7:00 a.m. to 7:00 p.m., Monday to Saturday, excluding Holidays. At no additional cost to the Owner, haulage of Biosolids shall also take place as directed by the Owner in response to any emergency and/or any non-scheduled after-hours haulage.
- 3.2 Wherever possible, the Contractor shall transport the Biosolids on provincial highways and regional roads, abiding by all seasonal and half-load restrictions. In the event the Contractor's selected routes become a nuisance to local residents, the Owner reserves the right to determine and instruct the Contractor to use alternate routes for the transportation of the Biosolids.
- 3.3 The Contractor shall ensure that at all times it maintains all necessary and appropriate Certificates of Approval to fulfill their obligations pursuant to this Agreement. The Contractor shall prepare and file, at their own cost, on a timely basis with the MOE all applications and/or renewals for Certificates of Approval, which are required in connection with the management of the Biosolids and in accordance with Schedule "B".

Article 4 – Quantity of Biosolids

- 4.1 The estimated quantities of Biosolids to be removed from the Facilities are as set out in the RFT. The Contractor acknowledges that the quantities of Biosolids as set out in the RFT are approximate only and that the Owner has the sole right to increase or reduce the quantities of Biosolids to be managed by the Contractor during the Term. The Owner is responsible to ensure that the minimum load size is 28 tonnes of Biosolids. The Contractor shall not be entitled to an adjustment to

the Service Fee, including compensation for the loss of anticipated profit, in the event of an increase or decrease in the quantities of Biosolids to be managed by the Contractor.

- 4.2 For the purposes of determining the quantity of the Biosolids that is transported from the Facilities, the Contractor shall fill and weigh their transport Equipment at a provincially, state or federally licensed weigh scale facility in accordance with the regulatory standards in effect in that jurisdiction. The Contractor shall provide the Owner with copies of the weigh scale tickets confirming loads with each invoice.
- 4.3 The Owner reserves the right at any time to stop the Contractor's vehicles anywhere on the Owner's property for inspection.

Article 5 – Quality of Biosolids

- 5.1 Throughout the Term, the Owner shall ensure that the quality of the Biosolids generated at the Facilities and managed by the Contractor meets the requirements of the NMA regulations. As such, the City will collect, analyze, and keep records of Biosolids quality to demonstrate compliance with applicable regulations. The City will provide updated Biosolids quality reports or access to the City's data, as the means for sharing Biosolids quality data with the Contractor.
- 5.2 If at any time during the Term and prior to removal of the Biosolids from the Facilities, the Owner determines that the Biosolids do not comply with Applicable Law, such noncompliant Biosolids shall not be land applied by the Contractor. In the event the Owner determines that the Biosolids do not comply with Applicable Law after they have been land applied by the Contractor, the Owner shall indemnify the Contractor from any claims, fines or penalties issued against the Contractor arising from such non-compliance, provided such claim, fine, or penalty did not arise from the Contractor's own negligence or the negligence of any Subcontractor retained by the Contractor.
- 5.3 The Contractor shall, at their own cost, conduct any additional sampling and testing of the Biosolids beyond the sampling in 5.1 that may be required by Applicable Law for the land application of the Biosolids, or for any other, processing, use or disposal method employed by the Contractor. The Contractor shall provide the Owner with the analytical results of such testing in monthly reports, as required in Schedule "B".

Article 6 – Equipment

- 6.1 The Contractor shall at their own expense supply, maintain, and operate all Equipment necessary for the management of the Biosolids. In the event any of the Equipment breaks down during the Term, the Contractor shall supply alternative equipment to perform the Services.

- 6.2 The Contractor shall ensure that the Equipment used by it for the management of the Biosolids are of an acceptable type, capacity and condition based on Prudent Industry Practices. The Contractor shall keep all Equipment clean and in good mechanical condition and capable of properly containing the Biosolids. In the event the Equipment is used by the Contractor for purposes other than the management of the Biosolids, the Contractor shall ensure that the Equipment is completely cleaned of any residue before and after being used for the management of the Biosolids. The Owner reserves the right to randomly inspect the Equipment to ensure compliance with this provision.
- 6.3 Throughout the Term, all transport vehicles used by the Contractor must be able to pass vehicle safety inspections and emissions tests required by the Ministry of Transportation. The Owner may, at any time during the Term, request that the Contractor provide it with a current Ministry of Transportation vehicle safety inspection report for any vehicle used by the Contractor to provide the Services.
- 6.4 All vehicles used to transport Biosolids shall be covered by a tarp to ensure that no material being hauled can escape the vehicle.

Article 7 – Contingency and Emergency Plans

- 7.1 With this signed contract, the Contractor shall prepare and submit to the Owner for its review, a detailed contingency and emergency plan compliant with Applicable Law. Such plan shall provide the Contractor's solutions and responses for dealing with unplanned events such as: transfer and transportation spills; vehicle accident; over-application of the Biosolids; application within a setback distance or too close to a sensitive feature; detection of Biosolids at a tile drain outlet, breakdown of the Contractor's processing equipment; and inclement weather affecting the transportation.
- 7.2 In the event the Contractor is required to implement the contingency and emergency plan, the Contractor shall notify the Owner and provide it with a written report describing the incident in detail, the actions taken to mitigate the incident and any changes in procedure or operations to be implemented by the Contractor to prevent a reoccurrence of such incident.

Article 8 – Spills and Damages

- 8.1 The Contractor shall manage the Biosolids using Prudent Industry Practices to eliminate or minimize the occurrence of a "spill" as such term is used and defined in Part X of the **Environmental Protection Act**, as amended.
- 8.2 In the event of a spill involving the Contractor, the Contractor shall immediately contact the MOE Spills Action Centre and the Owner and shall exercise all reasonable due diligence necessary to minimize the potential for any violation of Applicable Law. The Contractor shall be responsible for and pay the cost associated with the clean-up of all spills caused by them. Clean-up shall be to the satisfaction of the MOE. In the event the Contractor fails to clean-up any spill

as required by the MOE or Applicable Law, the Owner may conduct such clean-up as it deems necessary and recover the costs associated with such clean-up from the Contractor or from the Performance Security. The Contractor shall provide the Owner with a written report of any spill, including the time, volume, and cause of the spill.

- 8.3 The Contractor shall be liable for any damage or nuisance caused by them or their sub-contractors in performing the Work, including any damage to the Facilities, public or private property, any roadways or land application sites used by the Contractor. The Contractor shall, at their own cost, correct and repair any damage caused by them so that such damage is restored back to the condition it was in prior to the Contractor's or their sub-contractor's action or omission which caused the damage.
- 8.4 The Contractor, or their sub-contractors, shall not be liable for damages caused by the Owner or done at the direction of the Owner or the Owner's Representative and shall only be liable for damages and their rectification to the extent of the Contractor's or their subcontractor's fault.
- 8.5 The Contractor shall take all reasonable measures necessary to prevent dust and mud nuisance during its performance of the Services. The Contractor shall, at its own cost, immediately remove any Biosolids or mud tracked upon roadways as a result of its management of the Biosolids.

Article 9 – Records and Reports

- 9.1 The Contractor shall prepare and maintain records of their daily management of the Biosolids, as more particularly set out in Schedule "B", and shall make such records available to the Owner upon the Owner's reasonable request.
- 9.2 The Contractor shall prepare and provide to the Owner monthly and annual reports, in accordance with those reporting requirements set out in Schedule "B" hereto.
- 9.3 The Contractor shall prepare an annual report on the management of the Biosolids at the end of each Contract Year during the Term of this Agreement, which shall be submitted to the Owner 60 days after the anniversary of the Start Date. The report shall comment on any significant management occurrences during the preceding Contract Year and shall include those items set out in Schedule "B".

Article 10 – Public Relations and Complaints

- 10.1 The Contractor shall respond to any request for information or complaint regarding their management of the Biosolids professionally and in a timely manner. The Contractor shall use their best efforts to resolve any complaint regarding their management of the Biosolids within 24 hours of receiving the complaint and shall report to the Owner all complaints received and actions taken

to rectify the complaints. If the Contractor is unable to remedy the complaint or provide the requested information, the Contractor shall immediately forward such complaint or request to the Owner for its response.

- 10.2 In the event a complaint has the potential to develop into a serious issue, the Contractor and the Owner shall work jointly to respond to and rectify such complaint. The Contractor may be required to discontinue a particular Biosolids management method and may not resume the method until directed by the Owner. If the Contractor is contacted by the media or any organized or special interest groups regarding the Work, the Contractor shall immediately notify the Owner and will work jointly with the Owner to respond to such persons.
- 10.3 Throughout the Term, the Contractor shall keep detailed records of any public communications or complaints received by them, which shall be included as part of the annual report to be provided to the Owner in accordance with Schedule "B".

Article 11 - Compensation and Payment

- 11.1 The Owner shall pay to the Contractor, in legal Canadian currency a service fee for the Services provided during the first Contract Year of the Term, in accordance with Schedule "C" attached hereto, plus applicable, HST; the "Service Fee". The Service Fee, including any costs for Excluded Services provided by the Contractor, shall be invoiced by the Contractor monthly in arrears for the previous month in which the Excluded Services were rendered. The Owner shall issue payment to the Contractor within 30 days of receipt of the invoice and all such necessary supporting documentation.
- 11.2 The Contractor shall remit original invoices to the Owner's Contact as noted in Section 23.7. The invoices shall include a reference to the applicable Owner contract number, the weight of Biosolids hauled on a daily basis and the destination of the Biosolids.
- 11.3 Payment will be in accordance with the terms described in RFT # **T-29-15**.

Article 12 – Safety Measures

- 12.1 In providing the Services, the Contractor shall take all necessary precautions in ensuring:
- a. The safety of and prevention of injury to persons, including their own employees, agents and sub-contractors, the Owner's employees and any third parties;
 - b. The safety of and prevention of damage to the Facilities and the property on which the Facilities are located;

- c. The safety of and prevention of damage to any haulage routes along provincial highways and regional roads; and
 - d. The safety of and prevention of damage to land application sites. The Contractor shall be responsible for any and all damages and/or injury to the foregoing arising from their negligent performance of the Services or failure to take necessary precautions to avoid such damages and/or injuries.
- 12.2 During the Term of this Agreement, the Contractor and their employees shall comply with all applicable requirements of the Canada Labour Code, Part 2, the **Occupational Health and Safety Act**, R.S.O. 1990, c. 0-1 and any other applicable federal, provincial or municipal health and safety standards, orders, rules, regulations and ordinances, including the Owner's health and safety regulations and those related to the Wastewater Treatment Plant's operations. The Contractor shall provide their personnel and any sub-contractors with any personal protective equipment required for the performance of the Services. In the event any of the Contractor's or a sub-contractor's personnel fails to comply with any of the foregoing applicable requirements, the Contractor shall prohibit such personnel from performing the Services until such time as such personnel complies with the foregoing requirements.
- 12.3 The Contractor acknowledges and agrees that they shall be solely liable for the health and safety of their employees in providing the Services hereunder, except to the extent of any injury or death that may arise from the negligence or wilful misconduct of the Owner, or its respective employees, agents or sub-contractors, for which the Owner hereby indemnifies and saves harmless the Contractor, their employees, agents and sub-contractors for any such injury or death.
- 12.4 The Contractor shall ensure that all of their personnel performing the Services are covered by the insurance plan pursuant to the **Workplace Safety and Insurance Act**, as amended. Prior to the Start Date and upon the Owner's request during the Term, the Contractor shall provide the Owner with an original letter of good standing issued from the Workplace Safety and Insurance Board, or the "Board", indicating that the Contractor has made all required payments to the Board. Prior to final payment, the Contractor shall provide the Owner with a Certificate of Clearance issued from the Board, indicating that all payments by the Contractor in connection with this Contract have been made and that the Owner will not be liable to the Board for future payments in connection with the Services provided hereunder.
- 12.5 The Contractor shall report all incidents and accidents to the Board and the MOL, as applicable, and to the Owner, as required, or requested.
- 12.6 All incidents and accidents involving third parties shall be reported to the Owner immediately.

- 12.7 The Contractor shall take all reasonable precautions necessary to ensure the safety of the general public.
- 12.8 The Contractor shall ensure that adequate levels of supervision are provided to ensure all safety aspects are adhered to. There shall be regular monitoring by the Contractor's Supervisor(s) of the employees and the Work under this Contract. The Owner retains the right to require greater levels of supervision, if in the view of the Owner, the levels of supervision are not adequate.
- 12.9 The Contractor shall develop and implement policies and procedures relating to the health and safety of the services and in addition shall carry out training and enforcement to ensure that employees of the Contractor and any sub-contractors know and follow the health and safety policies and procedures.

Article 13 - Owner's Obligations

- 13.1 The Owner's designated contact person, or the "Owner Representative", is the Manager, Environmental Protection, who shall have authority to act as the Owner's legal representative for all purposes under this Agreement, to transmit instructions, receive information, interpret and define the Owner's policies and decisions with respect to the Facilities and the Services provided hereunder and to bind the Owner in respect of the foregoing.
- 13.2 The Owner shall receive and examine all reports, estimates, proposals and other documents, required to be presented by the Contractor to the Owner under this Agreement or at law, presented by the Contractor and render in writing decisions pertaining thereto within a reasonable time so as not to delay the Contractor in the performance of the Services.

Article 14 – Insurance – Specific

- 14.1 For the Term of this Agreement, the Contractor shall at their own expense, purchase and maintain the following insurance:

A. Commercial General Liability

The Contractor shall provide and maintain during the term of the Contract Commercial General Liability insurance subject to limits of not less than \$2,000,000 inclusive per occurrence and with a deductible not to exceed \$5,000, or as agreed to by the City. To achieve the desired limit, umbrella or excess liability insurance may be used. The coverage shall not be less than the insurance required by IBC Form 2100 and IBC Form 2320, or their equivalent, and shall include coverage for but not limited to:

- a. Bodily injury including death;
- b. Coverage must be maintained on an "occurrence" basis;

- c. Damage to property including loss of use thereof;
- d. Premises and operations liability;
- e. Products and completed operations liability;
- f. Blanket contractual liability;
- g. Cross liability clause or severability of interest clause;
- h. Contingent employers' liability;
- i. Personal injury liability;
- j. Owner's and Contractor's protective coverage;
- k. Liability with respect to non-owned licensed motor vehicles;
- l. Contain no materially restrictive language towards the work;
- m. Shall be endorsed to provide the City with not less than 30 Days Notice of Cancellation, change or amendment restricting coverage;
- n. Written with insurers licensed to underwrite insurance in the Province of Ontario with an AM Best rating of no less than A-;
- o. Include the Corporation of the City of Peterborough as Additional Insured; and
- p. Include a waiver of any subrogation rights which the Contractor's insurers may have against the City.

Subject to the approval of the City, there shall be no aggregate limit(s) other than the Products and Completed Operations limit.

B. Automobile Liability Insurance

The Contractor shall provide and maintain insurance during the term of the Contract, Standard OAP 1 Automobile Policy subject to a limit not less than \$2,000,000 with a deductible not to exceed \$5,000, or as agreed to by the City, for all licensed Motor Vehicles owned or leased by the Contractor.

Contractor's use of automobiles is at the discretion of the Contractor and not the City. The City is not responsible for any physical loss or damage to any vehicles used by the Contractor in relation to this Work; and such damage shall not be assessed to the City in any way. The Contractor is responsible for any applicable deductibles.

C. Contractors Pollution Liability Insurance

The Contractor shall provide and maintain during the term of the Contract Environmental Liability Insurance subject to limits of not less than \$5,000,000 inclusive per claim and with a deductible not to exceed \$5,000, or as agreed to by the City, and shall include coverage for, but not limited to, bodily injury, including death, property damage and remediation costs which are reasonable and necessary to investigate, neutralize, remove, remediate, including associated monitoring, or dispose of soil, surface water, groundwater or other contamination. The policy shall remain in force for 12 months following completion of work. The Corporation of the City of Peterborough shall be named as an additional insured.

D. Crime/Fidelity Insurance

The Contractor, or their employee(s), to be working, either on City property, or in other locations on behalf of the City, without supervision.

The Contractor shall provide and maintain Employee Dishonesty Coverage of not less than \$10,000 per claim, including 'third party' or 'client' coverage or equivalent insuring against any infidelity by Contractor against infidelity to the property of the City.

14.2 Insurance – General

If the Owner requests to have the amount of coverage provided by these policies increased, or to obtain other special insurance for this Contract, the Contractor shall endeavour forthwith to obtain such increased or special insurance:

1. Prior to commencement of the Work and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the Contractor shall promptly provide the City with confirmation of coverage and, if required, a certified true copy(s) of the policy(s) certified by an authorized representative of the insurer, together with copies of any amending endorsements applicable to the Work.
2. As determined by City, the Contractor may be required to provide and maintain additional insurance coverage(s) which are related to this Contract, all costs will be borne by the Contractor.
3. All policies shall apply as primary and not as excess of any insurance available to the City.
4. The Contractor covenants and agrees that the insurance requirements will not be construed to and shall in no manner limit or restrict the liability of the Contractor.

5. The Contractor will warrant that any sub-contractors or other entities/parties used in relation to this Work will provide same insurances as required of the Contractor.
6. The Contractor will comply with any reporting requirements of the insurance policies in order to maintain the policies in good standing, to give notice in writing of any incident with may result in a claim or loss covered by the policies and to provide documentation necessary in the defense or settling of claims.
7. Failure for any reason of the Contractor to furnish such insurance shall be considered as a breach of the Agreement, allowing the City to terminate the Agreement at its discretion. In addition, the City has the option, but is not obligated to, procure such insurances on behalf of the Contractor and such related costs will be borne by the Contractor without recovery from the City. Any delays resulting from the matter of the insurance and related costs associated with such delay will be borne by the Contractor without any recovery against the City.
8. If any claims against the Contractor, whether arising from this Agreement or not, effects any aggregate limits evidenced to the City in an amount greater than 20% of the limit requested and evidenced, whether paid or in an insurance claim reserve condition, then the Contractor must report to the City of such limits erosion. The City has the right to request the Contractor to purchase additional limits to comply with the minimum limits requested. If the Contractor does not comply, then the City can, but is not obligated to, procure such additional insurance and the cost will be applied to the Contractor's account without any recovery against the City.
9. The Contractor, and not the City, shall be responsible for any and all insurance premiums and deductibles that may apply in any of the said insurance policies.

Article 15 – Performance Security

- 15.1 The Contractor shall annually provide the Owner with a Performance Bond equal to 100% of the annual value of the Contract, based on the average annual Biosolids production, excluding taxes. The Bond must be issued by a Surety licensed and qualified to function in the Province of Ontario. The Bond must be issued at the expense of the Contractor. In the event the Contractor has failed to perform the Services, or the Owner has incurred any cost for expense that is the responsibility of the Contractor pursuant to this Agreement, which amount remains unpaid 30 days following demand for payment made by the Owner, the Owner shall be entitled to draw upon the Performance Bond to be applied against all costs, damages and expenses incurred by the Owner as a result thereof.

Article 16 – Default and Termination

- 16.1 Either party may terminate this Agreement after having provided 20 days written notice to the other party, or the "defaulting party", outlining the basis for the alleged material breach or default of the defaulting party's obligations under this Agreement, and provided that (a) the defaulting party has not cured such default within 20 days of notice being given to it, or (b) if such breach is capable of being cured or remedied but cannot be cured or remedied within such 20 day period, and the defaulting party either fails to commence such cure or remedy within such 20 day period or fails to complete such cure or remedy as soon as reasonably possible following such 20 day period. This right to terminate shall be in addition to any other remedy available at law for such material breach or default.
- 16.2 For purposes of this Agreement, a material breach or default shall include:
- a. The breach of any representation, warranty or covenant of either party to this Agreement, which is not cured in accordance with Section 16.1;
 - b. Failure by the Contractor to:
 - i. Comply with any reasonable request, instruction or order of the Owner;
 - ii. Comply with or persistently disregard Applicable Law relating to the provision of the Services, which in the case of health and safety and environmental compliance matters shall be cured immediately by the Contractor and shall not be subject to the cure provisions set out in Section 16.1;
 - iii. Perform the Services or the Work with reasonable skill and diligence in accordance with Prudent Industry Practices; and
 - iv. Supply sufficient properly skilled workers, or proper materials, at all times, to perform the Service and the Work in the manner and to the standards required under the Contract; and
 - v. Institute appropriate corrective action within 20 days after written notification by the City of any failure on the part of the Contractor to comply with any of the terms and specifications of the Contract.
 - c. Failure of the Owner to remit payment when due to Contractor, which is not cured within thirty (30) days of notice to the Owner; and or where the Owner fails to make payment arising from cost increases due to the Contractor, provided that in the event of default by the Owner, the Contractor has given the Owner notice of the default, and an opportunity to cure such default within 20 days of notice and the Owner has failed to cure such default.

- d. The appointment of a receiver by the Contractor, the institution of proceedings by or against the Contractor seeking to adjudicate it bankrupt or insolvent or if the Contractor makes a general assignment for the benefit of its creditors, where any such occurrence has not been stayed or dismissed within 30 days.
- 16.3 In the event that the Owner terminates all or part of the Contract, the Owner may take any steps to secure the completion of the Work and any damages or extra expenditures thereby incurred by the Owner may be collected in the manner provided for in the sections related to Right to Retain Monies, and/or Remedies, and/or Performance Security.
- 16.4 In the event the Owner relieves the Contractor of their obligation to fully and satisfactorily perform a portion of the Works or the Services, as set out in the Contract Documents, such relief shall in no way affect the Contractor's remaining obligations to fully and satisfactorily perform the remainder of the Work or Services.
- 16.5 Upon expiry or termination of this Agreement for any reason, the Owner shall pay the Contractor the payment of Service Fee up to the date of expiration or termination. The Contractor shall not be entitled to any monetary compensation of any kind resulting from the Owner's termination of the Contract for any reason.
- 16.6 Any representation or warranty, whether express or implied, given by the Contractor shall survive beyond termination of this Contract.

Article 17 – Limitation of Liability and Indemnification

- 17.1 The Contractor shall indemnify and hold harmless the Owner, its Council, officers, agents, Owner's Representative, and employees from and against all claims, demands, losses, costs, damages, actions, lawsuits or other proceedings whatsoever, including legal expenses, due to or arising from the operations of the Contractor in the underrating of the Work and, without restricting the generality of the foregoing, any fines, penalties or liabilities arising from improper, illegal or inappropriate utilization or disposal of any of the Biosolids, whether agreed to by the Owner or not, will be the responsibility of the Contractor.
- 17.2 The Contractor shall not be responsible for wrongful or negligent acts of the Owner, through their officers, agents, Owner's Representatives, or employees, and wrongful or negligent acts of third parties for whom the Contractor is not responsible, which acts cause damage to the Facilities or to other third parties or properties.
- 17.3 The Owner shall indemnify and hold the Contractor, their employees, officers, directors, agents and representatives harmless from and against all liability for all damages of any nature whatsoever, including any bodily injury or personal damage claim and any damage to or loss of use or loss of any personal or real property for any negligent or wrongful act of the Owner, their employees, officers,

directors, agents and representatives for which they may be responsible, but only to the extent and in proportion to the negligence or fault of the Owner.

- 17.4 The Contractor agrees to indemnify and hold the Owner harmless from any claims of patent infringement for any Equipment, systems or methods used in the management of the Biosolids and shall be solely responsible for any claim or damages due to such infringement.
- 17.5 Provided that the Biosolids are in compliance with currently applicable regulations and as generally described in the RFT, the Contractor hereby releases the Owner from and waives any or all claims relating to the quality of the Biosolids supplied to the Contractor under this Contract based on the existing constituents of the Biosolids.

Article 18 – Waiver of Certain Types of Damages

- 18.1 In the event a party wishes to sue the other party, the plaintiff shall only be entitled to seek its actual damages and its reasonable legal fees and disbursements and in no event shall the parties be liable to each other, and each party specifically waives as against the other, any and all claims for consequential, or punitive damages resulting in any way from performance or non-performance of this Agreement, whether such damages are characterized as arising under warranty, tort, including negligence, fault, or indemnity.

Article 19 – Fines

- 19.1 The Contractor shall be liable for all fines and penalties imposed upon the Contractor or Owner as a result of any error, omission, wrongful act or negligence on the part of the Contractor or those for whom they are, in law, responsible in performing the Services. However, the Contractor shall not be liable for those fines and penalties imposed upon the Contractor or the Owner arising from the Owner's failure to ensure the quality of the Biosolids comply with Applicable Law. In the event the fine or penalty imposed upon the Contractor relates to the quality of the Biosolids, the Owner agrees to indemnify the Contractor for such fines, penalties and any legal costs related thereto.

Article 20 – Force Majeure

- 20.1 Delays or failure in the performance of either party under the Contract shall not constitute default hereunder or give rise to any claim or damages if and to the extent caused by occurrences beyond the control of the party affected, including but not limited to decrees of federal or provincial government, acts of God, fires, floods, explosions, riots, war, rebellion, sabotage and atomic or nuclear incidents; "force majeure"; but lack of finances, strikes or other concerted acts by workers, delay or failure arising out of the nature of the Work to be done, or from the normal action of the elements or from any normal difficulties which may be encountered in the performance of the Work, having regard to the nature thereof, shall in no event be deemed to be a cause beyond a party's control.

- 20.2 In the event that the performance of this Contract in the reasonable opinion of either party is made impossible by force majeure, then either party shall notify the other in writing and the Owner shall either;
- a. Terminate this Contract forthwith and without any further payments being made; or
 - b. Authorize the Contractor to continue the performance of the Contract with such adjustments as required by the existence of the force majeure and agreed upon by both parties. In the event that the parties cannot agree upon the aforementioned adjustments, it is agreed by the parties that this Contract shall be terminated.

Article 21 – Changes in Circumstances

- 21.1 In the event that there is a change in circumstance or condition, which is not covered under the terms of this Agreement, including, without limitation, a Change in Law; hereinafter referred to as a "Change", then the party asserting the occurrence of such Change shall give written notice to the other party, which written notice shall contain:
- a. Details of the Change;
 - b. Details of the inadequacy of this Agreement; and
 - c. A proposal for a collateral agreement to remedy the Change
- 21.2 The parties shall negotiate any amendments to the Agreement necessary to give effect to or comply with the Change, including any adjustments to the Service Fee or the Services to be provided, which shall be effected as of the date of the Change. If the parties dispute the existence of a Change, or the recommendation proposed to rectify the Change or the terms and provisions of any amendment to the Agreement, either party may refer the matter to dispute resolution under Section 22.1.

Article 22 – Dispute Resolution

- 22.1 Any dispute or disagreement of any kind whatsoever arising out of the Contract or Work shall not be grounds for delay in the completion of the Work, but shall be referred by the Contractor in writing to the Owner, not later than 10 working days after the Contractor becomes aware of the circumstances giving rise to such dispute or disagreement. The Owner will not settle a claim with respect to any dispute until such time as the party has submitted a written claim, containing a concise statement of the relevant facts, including the extent and value of the claim, any impact in the Contract, and the relevant sections of the Contract
- 22.2 If a dispute arises between the parties, which the parties are unable to resolve within 30 days of the dispute, the parties may utilize the services of an

independent third party mediator, or expert, who shall be mutually agreed upon by the parties. The mediator or expert shall be knowledgeable of the issues related to the dispute. The mediator or expert shall meet with the parties together and separately, as necessary. The mediator or expert shall provide, without prejudice, a non-binding recommendation for settlement. Each party shall bear its own costs of mediation, and the cost of the mediator or expert shall be shared equally by the parties. Except as otherwise provided herein, the arbitration shall be conducted in accordance with the provisions of the **Arbitration Act** of Ontario and any amendments thereto or successors to such statute which provisions shall apply mutatis mutandis.

- 22.3 Notwithstanding the existence of a dispute between the parties, the Contractor shall continue to perform the Services during any dispute resolution proceedings, except where the dispute arises as a result of the Owner's failure to pay the Contractor as required under this Agreement. Where the Owner has failed to pay the Contractor, the Contractor may suspend their performance of the Services.

Article 23 – General Provisions

23.1 Strikes

In the event that labour interruption, work slowdown or work stoppage by Facilities employees, or other labour groups, other than the Contractor's employees, within or outside the Facilities, prevents the Contractor's employees from entering upon or interferes with the management of the Biosolids, the Owner, with the Contractor's assistance, or the Contractor at their own option, shall seek appropriate legal injunctions or court orders to cease and desist such labour disruption, or to allow the Contractor access to the Facilities to perform the Services.

23.2 Entire Agreement

- a. No oral agreement or conversation with any officer, agent or employee of the Owner or the Contractor, either before or after the execution of this Agreement, shall affect or modify any of its terms or obligations herein contained. This Agreement constitutes the entire agreement between the parties hereto and supersedes all previous or contemporaneous communications, representations or agreements. No changes, alterations or modifications Biosolids Management Agreement to this Agreement shall be effective unless in writing and signed by both parties hereto. Any changes, alternations or modifications to this Agreement, including agreed upon interpretation of meaning, and other mutually agreed upon conditions provided for in this Agreement, shall be covered by a written amendment signed by both parties.
- b. If any provision hereof or the application thereof to any person or circumstances shall be invalid, illegal or unenforceable, the remaining

provisions or the application of each provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall continue to be valid and enforceable.

23.3 Relationship of Contractor to Owner

It is understood that the relationship of the Contractor to the Owner is that of an independent contractor and that none of the employees or agents of the Contractor shall be considered employees or agents of the Owner. The Contractor shall be solely responsible for the acts of their employees, agents or sub-contractors. Except as stated otherwise in this Agreement, the Contractor shall control how the Services that are specified as the Contractor's obligations in this Agreement are performed.

23.4 Waiver

The failure on the part of either party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provision in the future.

23.5 Assignment or Subcontract

The Contractor may assign or sub-contract this Agreement with the prior written consent of the Owner, which consent may be unreasonably withheld by the Owner. Notwithstanding the foregoing, the Contractor shall not require the consent of the Owner in the event of assignment to an affiliate, subsidiary or related entity of the Contractor.

23.6 Applicable Law

This Agreement and its interpretation shall be governed by the laws of the Province of Ontario and any applicable federal law.

23.7 Addresses for Notices

Where any notice, direction or other communication is required to be or may be given or made by one of the parties hereto to the other, it shall be in writing and shall be mailed or actually delivered to the respective addresses of the parties hereto:

The Owner at:

City Of Peterborough
City Hall, 500 George Street North
Peterborough, ON K9H 3R9

Attention Patrick Devlin, Manager, Environmental Protection
P: 705-742-7777 x 2624
F: 705-743-0991
E: pdevlin@peterborough.ca

The Contractor at:

[Insert Information Here]

Service shall be effective, if delivered in person, on the date thereof, and if mailed, five days after the date upon which such notice, directive or communication was posted.

23.8 Confidentiality

The Contractor shall hold all information provided to them by the Owner, whether confidential or not, in the strictest confidence. The Contractor shall not disclose, nor permit by any act or failure to act, the disclosure of any information to any third party at any time during or after the Term. The Contractor shall not use any information they obtain as a result of providing the Services for their own commercial, financial or personal advantage. The Contractor shall be liable for any breach of confidentiality as permitted by law.

23.9 Headings and Captions

The headings and captions appearing in this Agreement have been inserted for convenience of reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision hereof.

23.10 Binding Effect

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective administrators, successors and permitted assigns.

23.11 Right to Retain Monies

The Owner may retain monies due to the Contractor under this or any other contract with the Contractor, as may be necessary to protect the Owner from any claims, including claims by third parties, arising out of the Contractor's performance or non-performance of this Contract.

23.12 Remedies

The rights and remedies of the Owner, as set out in the Contract, shall not be exclusive, and are, in addition to any other rights or remedies provided by law or in equity. The Owner may pursue any rights or remedies available to them upon the termination of the Contract.

The Exercise of any remedy provided under the Contract does not relieve the Contractor of any liability remaining under the Contract.

The Owner may take such steps as deemed necessary to remedy non-performance of the Works set out in the Contract and the Owner may collect from the Contractor any expenditures thereby incurred by the Owner, plus a reasonable allowance for administration, as provided for Right to Retain Monies, and/or Performance Security.

Article 24 – Schedules

24.1 All Schedules referred to below, whether attached to this Agreement or not, form part of this Agreement and any term or condition, representation or warranty contained in such Schedule shall bind the parties.

Schedule A – The Facilities;
Schedule B – Scope of Services;
Schedule C – Fee Table; and
Schedule D – Request for Tenders Document **T-29-15**.
[Insert Other Schedules as Necessary]

The parties covenant and warrant to each other that each has reviewed and retained a copy of each Schedule, whether attached hereto or not.

24.2 In the event of any discrepancy or conflict between the terms and conditions of this Agreement and the terms and conditions of any schedule, the City, acting reasonably, shall resolve such discrepancy or conflict and the Contractor shall perform the Work or Services in accordance with the City's direction, subject to its rights under Article 22.

In witness whereof the Owner and the Contractor have executed this Agreement under their respective corporate seals, and by the hands of their proper officers duly authorized as of the day and year first written above.

The Corporation of the City of Peterborough

Per: _____
Brian Horton
CAO

Per: _____
John Kennedy
City Clerk

[Insert Contractor's Name]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

Schedule "A"
The Facilities

Part 1 Description of the Facilities

Peterborough Waster Water Treatment Plant, located at:
425 Kennedy Road
Peterborough ON K9J 6X7
Canada

Schedule "B"

Scope of Services

Part 1 – Operating Objectives

In providing the Services, the Contractor shall be required to meet the following operating objectives:

- a. Have and provide all necessary approvals and certifications, and be in compliance of the approvals, certificates, laws and regulations governing the Work prior to execution of the Contract;
- b. Ensure that the Services provided are performed in a professional manner and with good workmanship, consistent with Prudent Industry Practices and in accordance with Applicable Law; and
- c. Ensure that any Equipment used in the transportation and land application of the Biosolids is compliant with all Applicable Law as determined by the Ontario Ministry of Transportation.

Part 2 – Services

To meet the operating objectives outlined above, the Contractor shall be required to perform the following Services in taking full responsibility for the management of the Biosolids generated at the Facilities:

- a. Transportation of Dewatered Biosolids from the Peterborough WWTP to the Contractor's storage facility, in preparation for Spreading on agricultural lands during the Spreading Period, or for further use, or processing, under the Contractor's control and in accordance with applicable regulations;
- b. Supply of all vehicles and approvals, equipment, labour and materials necessary for the proper completion of the Work and the Services.
- c. Employ best management practices in the management of the Biosolids,;
- d. Prepare and submit to the Owner, monthly reports, which include the following:
 - i. Total amounts of Dewatered Biosolids hauled from the facility;
 - ii. Total amounts land applied, if applicable;
 - iii. Total amounts processed/treated by other methods, i.e. incineration, composting, pelletizing, if applicable;
 - iv. Total amounts hauled to landfill and/or storage, if applicable;
 - v. Instances where weather and/or rainfall affected land application, if applicable;

- vi. Details of other events or incidents affecting land application, if applicable;
 - vii. Available storage capacity at the Contractor's Dewatered Biosolids storage facility; and
 - viii. Other information that the City may reasonably request and within the knowledge of the Contractor
- e. Within three days of an incident, including a spill, prepare and provide a report to the Owner setting out the details of the incident;
 - f. Supply qualified personnel, who are competent and experienced in the management of Biosolids, including its transportation, handling, land application, etc;
 - g. Notify the Owner and obtain the Owner's advance written approval for any change to key personnel performing the Services;
 - h. Provide all necessary training and continuing education for their personnel to ensure the continued safe and efficient management of the Biosolids, in conformity with all Applicable Law; and
 - i. Take all required action to promptly comply with Applicable Law and any Change in Law and shall notify the Owner of any modifications or changes to the Services required to comply with any Change in Law.

Schedule "C"
Fee Table

Biosolids Management Table and Service Fee

Row	Description	Price per Wet Tonne
A	Cost for Complete Service for Management of Biosolids from the Peterborough WWTP, excluding HST. Based on a minimum load of 28 tonnes of Biosolids	
B	HST - currently, 13% of Row A	
C	Total Cost per Wet Tonne, including HST	\$

Schedule "D"
Request for Tenders Document T-29-15