

**CORPORATION OF THE TOWN OF AMHERSTBURG**

**BY-LAW NO. 2004-18**

Being a by-law to authorize the signing of a Memorandum of Agreement  
For Professional Consulting Services with CH2M Hill Limited

**WHEREAS** Council of the Corporation of the Town of Amherstburg intends to complete a Class Environmental Assessment for the Upgrade and Expansion of the Amherstburg Pollution Control Plant; and

**WHEREAS** CH2M Hill has been selected to complete the process; and

**WHEREAS** CH2M Hill has prepared documents titled Technical Proposal and fee Proposal for Consulting Engineering Services – Class Environmental Assessment for the Upgrade and Expansion of the Amherstburg Pollution Control Plant dated November 2003; and

**WHEREAS** the parties are desirous of having the terms of the contract outlined in the form of an agreement.


**NOW THEREFORE THAT THE COUNCIL OF THE TOWN  
OF AMHERSTBURG HEREBY ENACTS AS FOLLOWS:**

1. That the Mayor and Clerk be authorized to sign the agreement dated Feb. 23, 2004 attached to and forming part of this by-law for Professional Consulting services in relation to the Class Environmental Assessment for the Upgrade and Expansion of the Amherstburg Pollution Control Plant.
2. That this by-law come into force upon the final passing thereof.

1<sup>st</sup> Reading – March 8, 2004

2<sup>nd</sup> Reading – March 8, 2004

3<sup>rd</sup> Reading – March 8, 2004

  
\_\_\_\_\_  
MAYOR

  
\_\_\_\_\_  
CLERK

AGREEMENT  
FOR  
PROFESSIONAL CONSULTING SERVICES

MEMORANDUM OF AGREEMENT dated the 23<sup>rd</sup> day of February

A.D. 2004

-BETWEEN-

THE CORPORATION OF THE TOWN OF AMHERSTBURG

Hereinafter called the 'Client'

THE PARTY OF THE FIRST PART

-AND-

CH2M HILL CANADA LIMITED

Hereinafter called the 'Consultant'

THE PARTY OF THE SECOND PART

**WHEREAS** the Client intends to complete a Class Environmental Assessment for the Upgrade and Expansion of the Amherstburg Pollution Control Plant as detailed in the documents titled *Technical Proposal and Fee Proposal for Consulting Engineering Services - Class Environmental Assessment for the Upgrade and Expansion of the Amherstburg Pollution Control Plant* prepared by CH2M HILL Canada Limited dated November, 2003 hereinafter called the 'Project' and has requested the Consultant to furnish professional services in connection therewith;

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

## **ARTICLE 1 - GENERAL CONDITIONS**

### **1.01 Retainer**

The Client hereby retains the services of the Consultant in connection with the Project and the Consultant hereby agrees to provide the services described herein under the general direction and control of the Client.

In this Agreement the word Consultant shall mean professionals and other specialists engaged by the Client directly and whose names are party to this Agreement.

### **1.02 Services**

The services to be provided by the Consultant and by the Client for the Project are set forth in Article 2 and such services as changed, altered or added to under Section 1.08 are hereinafter called the 'Services'.

### **1.03 Compensation**

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

### **1.04 Staff and Methods**

The Consultant shall use current state of the art principles and shall skillfully and competently perform the Services and shall employ only skilled and competent staff who will be under the supervision of a senior member of the Consultant's staff.

### **1.05 Drawings and Documents**

Subject to Section 3.2.4 of Article 3, drawings and documents or copies thereof required for the Project shall be exchanged between the parties on a reciprocal basis. Documents prepared by the Consultant for the Client may be used by the Client, for the Project herein described, including "as built" records. The Client has ownership of the drawings.

### **1.06 Patents**

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

The Client shall have permanent non-exclusive royalty-free license to use any concept, product or process, which is patentable, capable of trademark or otherwise produced by or resulting from the Services rendered by the Consultant in connection with the Project and for no other purpose or project.

### **1.07 Records and Audit**

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

### **1.08 Changes and Alterations and Additional Services**

With the consent of the Consultant the Client may in writing at any time after the execution of the Agreement or the commencement of the Services delete, extend, increase, vary or otherwise alter the

Services forming the subject of the Agreement, and if such action by the Client necessitates additional staff or services, the Consultant shall be paid in accordance with Section 3.2.1 for such additional staff employed directly thereon, together with such expenses and disbursements as allowed under Section 3.2.4.

**1.09 Suspension or Termination**

The Client may at any time by notice in writing to the Consultant suspend or terminate the Services or any portion thereof at any stage of the undertaking. Upon receipt of such written notice, the Consultant shall perform no further Services other than those reasonably necessary to close out his Services. In such an event, the Consultant shall be entitled to payment in accordance with Section 3.2.1 for any of the Consultant's staff employed directly thereon together with such expenses and disbursements allowed under Section 3.2.4.

If the Consultant is practising as an individual and dies before his Services have been completed, this Agreement shall terminate as of the date of his death, and the Client shall pay for the Services rendered and disbursements incurred by the Consultant to the date of such termination.

**1.10 Indemnification**

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

The Client agrees to hold harmless, indemnify and defend the Consultant from and against any and all claim, losses, damages, liability and costs of defense arising out of or in any way connected with the presence, discharge, release or escape of contaminants of any kind, excluding only such liability as may arise out of the negligence of the Consultant in the performance of consulting services to the Client within this project.

**1.11 Insurance and Limit of Liability**

The Client will accept the insurance coverage specified in this clause as the limit of liability of the Consultant.

(a) Comprehensive General Liability and Automobile Insurance

The Insurance Coverage shall be \$2,000,000 for general liability and \$1,000,000 for automobile insurance. When requested the Consultant shall provide the Client with proof of Comprehensive General Liability and Automobile Insurance (Inclusive Limits) for both owned and non-owned vehicles.

(b) Professional Liability Insurance

The Insurance Coverage shall be in the amount of \$5,000,000. When requested the Consultant shall provide to the Client proof of Professional Liability Insurance carried by the Consultant, and in accordance with APEO Act, 1984 and Regulations therein.

(c) Change in Coverage

If the Client requests to have the amount of coverage increased or to obtain other special insurance for this Project then the Consultant shall endeavour forthwith to obtain such increased or special insurance at the Client's expense as a disbursement allowed under Section 3.2.4.

It is understood and agreed that the coverage provided by these policies will not be cancelled by the Consultant until sixty (60) days after written notice of such cancellation has been delivered to the Client.

**1.12 Contracting for Construction**

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

**1.13 Assignment**

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

**1.14 Previous Agreements**

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

**1.15 Approval by Other Authorities**

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

**1.16 Principals and Executives**

The use of Principals and Executives on a time basis by the Consultant, will be in accordance with Section 1.23.1 (c).

**1.17 Specialized Services**

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

**1.18 Inspection**

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

**1.19 Publication**

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

**1.20 Confidential Data**

The Consultant shall not divulge any specific information identified as confidential, communicated to or acquired by him, or disclosed by the Client in the course of carrying out the Services provided for herein. No such information shall be used by the Consultant on any other project without the approval in writing of the Client.

**1.21 Arbitration**

- (a) Any dispute, difference or disagreement between the parties hereto in relation to the Agreement may, with the consent of both parties, be referred to arbitration.
- (b) No person shall be appointed to act as arbitrator who is in any way interested, financially or

otherwise, in the conduct of the work on the Project or in the business or other affairs of either the Client or the Consultant.

- (c) The award of the arbitrator shall be final and binding upon the parties.
- (d) The provisions of The Arbitrations Act, R.S.O., 1980, Chapter 25, as amended shall apply.

**1.22 Time**

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

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

**1.23 Estimates, Schedules and Staff List**

**1.23.1 Preparation of Estimate of Fees, Schedule of Progress and Staff List**

When requested by the Client, the Consultant shall within fourteen days of the execution of this Agreement provide, for approval by the Client:

- (a) An estimate of the total fees to be paid for the Services.
- (b) A Schedule showing an estimate of the portion of the Services to be completed in each month and an estimate of the portion of the fee which will be payable for each such month.
- (c) A Staff list showing the number, classifications and salary ranges of staff and/or hourly rate ranges for Principals and Executives, for which the Consultant will seek payment on a time basis. The Consultant shall relate such information to the particular type of work that such staff is to perform, while employed on the Project. Such list shall designate the member of the Consultant's staff who is to be the liaison person between the Consultant and the Client.

**1.23.2 Subsequent Changes in the Estimate of Fees, Schedule of Progress and Staff List**

The Consultant will require written approval, from the Client for any of the following changes:

- (a) Any increase in the estimated fees beyond those approved under Subsection 1.23.1 (a).
- (b) Any change in the schedule of progress which results in a longer period than provided in Subsection 1.23.1 (b).
- (c) Any change in the number, classification and salary ranges of the staff provided under Subsection 1.23.1 (c).

**1.23.3 Monthly Reporting of Progress**

When requested by the Client, the Consultant shall provide the Client with a written report showing the portion of the Services completed in the preceding month.

**1.24 Additional Conditions**

## **ARTICLE 2 - SERVICES**

### **2.01 Services to be Provided by the Consultant**

Services to be provided by the consultant shall be those defined in the Consultant's **Technical Proposal and Fee Proposal for Consulting Engineering Services - Class Environmental Assessment for the Upgrade and Expansion of the Amherstburg Pollution Control Plant** prepared by CH2M HILL Canada Limited dated November, 2003

### **2.02 Services to be Provided by the Client**

The Client shall provide the Consultant with the following Services, notwithstanding that, should the Client be unable to provide any of the Services hereunder, services under (1) may be assigned to the Consultant under Section 1.08.

- 1 Access to and, where necessary, copies of existing plans, profiles or other topographic information showing or pertaining to existing conditions within the Project area.
- 2 General direction of the Consultant in the provision of the Services and approvals from time to time as necessary during the currency of this Agreement.
- 3 Any information, Functional Study or Predesign Investigation undertaken for the Project or any adjoining property.
- 4 Arrange and make provision for the Consultant's entry and ready access to property (public and private) as well as to the site of the Project, as necessary to enable him to perform his services.
- 5 Designate in writing an individual to act as his Representative who will transmit instructions to and receive information from the Consultant.

The Consultant shall be entitled to rely upon the information, direction and approvals provided by the Client pursuant to clauses 1 through 3 hereof, inclusive, as being accurate in the performance of the Consultant's Services under this Agreement.

## **ARTICLE 3 - FEES AND DISBURSEMENTS**

### **3.1 Definitions**

For the purpose of this Agreement, the following definitions shall apply:

#### **(a) Payroll Cost:**

Payroll Cost is defined as hourly salary plus payroll burden.

- i) The following formula shall be used to calculate the hourly salary for billing purposes. Hourly salary equals:

$$\frac{\text{Annual Salary}}{\text{Hours Per Week} \times 52 \times .85}$$

- ii) Payroll burden equals fringe benefits expressed as a percentage of salary that provides for health and medical insurance, group life and disability insurance, company and Canada pension employer contributions, Workers' Compensation and Unemployment Insurance, but excludes bonuses or profit sharing. For the purposes of this agreement payroll burden in 2004 is 34.18%.

#### **(b) Cost of the Work**

- i) The "Cost of the Work" shall mean the total cost of the Project including all materials, equipment, sales taxes, labour and contractor's overhead and profit, necessary to complete the work for which the Consultant prepares designs, drawings or specifications, for which he is responsible.

Where sales taxes are not included in the cost of the work, the fee shall be adjusted upwards by the factor equivalent to the sales taxes. The adjusted fee may be computed to the nearest one-tenth of one percent (1/10%).

- ii) Wherever the Client furnishes labour or any other service which is incorporated in the work, the current price of labour or other service when the work was executed shall be used to compute the Cost of the Work.
- iii) Whenever used material or equipment is furnished by or on behalf of the Client, the fair market value of such material or equipment, as though it was purchased new, shall be used to compute the Cost of the Work.
- iv) In computing the Cost of the Work, no deductions shall be made on account of any penalties or damages claimed by the Client from any contractor or on account of any other sum withheld from any contractor.
- v) The Cost of the Work shall not include any fees and disbursements due to the Consultant, the Client's engineering and office expenses, or cost of land.

(c) **Site**

Site includes the actual work site and other locations where the checking of materials, equipment and workmanship is carried out.

**3.2 Basis of Payment**

**3.2.1 Fees Calculated on a Time Basis**

**3.2.1.1** The Client shall pay the Consultant a fee, calculated on a time basis, for that part of the Services described in Article 2. Fees on a time basis for all staff shall be hourly rates based on job classification as follows:

Grade		Hourly Rate
P8	Professional Staff Grade 8	\$ 152.00
P7	Professional Staff Grade 7	\$ 142.00
P6	Professional Staff Grade 6	\$ 128.00
P5	Professional Staff Grade 5	\$ 114.00
P4	Professional Staff Grade 4	\$ 103.00
P3	Professional Staff Grade 3	\$ 93.00
P2	Professional Staff Grade 2	\$ 83.00
P1	Professional Staff Grade 1	\$ 72.00
T8	Technical Staff Grade 8	\$ 124.00
T7	Technical Staff Grade 7	\$ 113.00
T6	Technical Staff Grade 6	\$ 103.00
T5	Technical Staff Grade 5	\$ 93.00
T4	Technical Staff Grade 4	\$ 83.00
T3	Technical Staff Grade 3	\$ 73.00
T2	Technical Staff Grade 2	\$ 68.00
T1	Technical Staff Grade 1	\$ 63.00
Clerical		\$ 58.00

These rates will be reviewed annually and adjusted accordingly.

The upset limit for services including reimbursable expenses shall be \$154,540 as per the proposal unless the Town of Amherstburg substantially changes the scope of the work.



**3.2.1.2 Time Expended**

All time expended on the assignment, whether in the Consultant's office, at the Client's premises, or elsewhere, and including travel time, shall be chargeable. This also includes, but is not limited to, stenographic and clerical staff engaged in the preparation of documents such as reports and specifications.

**3.2.2 Deleted**

**3.2.3 Deleted**

**3.2.4 Reimbursable Expenses**

In addition to the fee, the Consultant shall be reimbursed at cost plus an administrative charge of 5%, plus the cost of the additional insurance incurred by the Consultant, for all expenses properly incurred by him in connection with the project, including but not limited to: vehicle use charges, travelling and living expenses, outside printing and reproduction services, progress photography, advertising for tenders, special delivery and express charges, overtime premium costs, and the cost of providing and maintaining site offices, supplies and equipment, chemical and physical tests.

**3.2.4.1** Information Technology and Reprographic (ITR) costs incurred by the Consultant shall be reimbursed at a standard charge rate of \$4.70 per labour hour expended. The assessment shall include all information technology resources, including; computer equipment/systems, computer software, computer supplies, networking (local and wide area), and labour associated with computer management, administration and support. Computer systems include all types of computers, such as: general-purpose microcomputers, PC-CADD microcomputers, graphic design workstations, and notebooks. The ITR charge shall also include all regular in-house convenience copying and printing. Costs for reproducing specifications and drawing sets shall not be included in this rate.

**3.2.4.2** Telecommunication costs (COM) other than video-conferencing incurred by the Consultant shall be reimbursed at a standard charge rate of \$2.30 per labour hour expended. The assessment shall include in-house costs for use of telephone/telecommunication services (including maintenance and support), and facsimile transmissions.

**3.2.4.3** Health and Safety (H&S) costs incurred by the Consultant shall be reimbursed at a standard charge rate of \$0.65 per labour hour expended, and are applied only to employees who may be exposed to hazardous wastes or asbestos, or where respiratory protective equipment is required. Due to the additional risks involved with working around chemical contamination, additional management costs are incurred by CH2M HILL. Our health and safety charges are an attempt to fairly allocate the costs of our health and safety programs to those clients who receive the benefit. The need for enhanced management is not present for the other services CH2M HILL provides, therefore the charge rate is not applied to other staff.

The health and safety charges directly pay for:

- training employees in the health and safety risks encountered while performing hazardous waste operations;
- providing medical monitoring to ensure our employees' health is not adversely effected by exposure to hazardous chemical and physical agents;
- administering the programs unique to providing a safe and healthful work environment for our employees who serve our clients' environmental services needs.

3.3 **Payment**

3.3.1 **Fees Calculated on a Time Basis**

The Consultant shall submit an invoice to the Client for all Services completed in the immediately preceding month. Interest at the annual rate of 18 percent (1.5 percent monthly) will be paid on the total outstanding unpaid balance commencing 30 days after the Client has received the Consultant's invoice.

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

SIGNED, SEALED AND DELIVERED

In the presence of: ) T.E. Heald  
) \_\_\_\_\_  
) \_\_\_\_\_  
) \_\_\_\_\_  
) \_\_\_\_\_

CONSULTANT

CH2M HILL CANADA LIMITED

[Signature]  
Vice President  
Feb 25/2004

THE CORPORATION OF THE TOWN OF AMHERSTBURG

[Signature]  
MAYOR  
[Signature]  
CLERK