

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

**BY-LAW NUMBER 07-035**

**BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND SECURITAS CANADA FOR A THREE YEAR CONTRACT FROM APRIL 1, 2007 TO MARCH 31, 2010 (P-02-07)**

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

1. That the Mayor and Clerk be and they are hereby authorized to execute an agreement between the Corporation of the City of Peterborough and Securitas Canada 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 19<sup>th</sup> day of March, 2007

(Sgd.) D. Paul Ayotte, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

THIS AGREEMENT made in duplicate this \_\_\_\_\_ day of April 2007.

B E T W E E N:

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

(the "City")

- and -

**SECURITAS CANADA LIMITED**

(the "Contractor")

**WHEREAS** the City desires the Contractor to provide the labour and services at the Peterborough County/City Waste Management Facility (the "Place of Work") for a three (3) year period pursuant to Request for Proposal No. P-02-07, and the Appendices attached thereto, which is attached hereto as Schedule "A" and forms part of this Agreement (hereinafter referred to as the "Work");

**AND WHEREAS** the Contractor agrees to fully perform the Work;

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT** in consideration of the mutual covenants and agreements herein contained the parties agree as follow:

**ARTICLE 1 – TERM OF PERFORMANCE**

- 1.1 The Contractor agrees to perform the Work, to the satisfaction of the City, in accordance with this agreement and the attached Schedule "A".
- 1.2 Time is of the essence of this Agreement. The Contractor will commence the work on 1 April 2007 and the Work shall end on 31 March 2010, unless extended in accordance with Article 1.3 below.
- 1.3 The term of this agreement may be extended at the sole discretion of the City for up to two one-year periods, in accordance with Article 3.1 below.
- 1.4 The Contractor shall provide the City with a performance security bond in the amount of FIFTY THOUSAND (\$50,000.00) DOLLARS in the form of an irrevocable letter of credit, cash or other acceptable surety. The performance security shall be retained throughout the term of the agreement by the City. If the agreement is extended on a year-to-year basis, in accordance with Article 1.3 above, the Contractor shall renew the performance security bond until such time as the parties cease to contract with each other.

## **ARTICLE 2 – RETAINER AND CONTRACTING SERVICES TO BE PROVIDED**

- 2.1 The City retains the Contractor to perform and, subject to early termination of this agreement by the City as hereinafter provided, to complete all the services comprising the Work.

## **ARTICLE 3 – CONTRACT PRICE**

- 3.1 The contract price payable to the Contractor for the services to be performed hereunder shall not exceed the sum of Eighty-Seven Thousand, Four Hundred and Sixty-Five Dollars (\$87,465.00) (the “Base Amount”), which amount excludes GST during the first year of the Term. Included in the Base Amount are all applicable provincial taxes (save and except GST).
- 3.2 The parties agree that the contract price for the first year of the term, including GST, shall not exceed Ninety-two Thousand, Seven-Hundred and Twelve Dollars and Ninety Cents. (\$92,712.90). As of 1 April, in each year of the agreement, the Base Amount shall be increased by the annual change in the Consumer Price index or three (3%) percent, whichever is lower.
- 3.3 In the event that services are required which are in addition to the Work, the Contractor shall receive as payment for such additional services such amounts as may be negotiated between the Contractor and the City and agreed to in writing in accordance with the remainder of this Article.
- 3.4 The Contractor shall not be entitled to any additional compensation for additional Work, services, disbursements or materials unless such changes are confirmed in writing by the City.
- 3.5 The City reserves the right to delete certain items from the Work, provided that it must so advise the Contractor of the deletion in writing. An adjustment in compensation arising from the deletion shall be reflected in a written agreement or, either party may submit the dispute to Arbitration.
- 3.4 Unless otherwise expressly agreed by the parties, the Contract Price includes all disbursements sustained by the Contractor in completing the project.

## **ARTICLE 4 – OWNERSHIP OF PLACE OF WORK**

- 4.1 The Contractor agrees and acknowledges that the Place of Work is jointly owned by the Corporation of the County of Peterborough (the “County”) and the City.
- 4.2 Notwithstanding Article 4.1, the Contractor shall contact the following person, for the purpose of obtaining or receiving day-to-day direction concerning the delivery of the Contractor’s services under this Agreement:

Manager, Waste Management  
 500 George Street North  
 Peterborough, ON K9H 3R9

T: 705.742.7777 Ext. 1724  
 F: 705.742.4621

## **ARTICLE 5 – DELAYS**

- 5.1 If the Contractor is delayed or prevented in the performance of the Work by an action or omission of the City, or anyone employed or engaged by them directly, contrary to the provisions of this agreement, then the Contractor shall be reimbursed by the City for reasonable costs incurred by the Contractor as a result of such delay.
- 5.2 If the Contractor is delayed in the performance of the Work by a stop work order issued by a court or other public authority and providing that such order was not issued as a result of an act or fault of the Contractor or any person employed or engaged by the Contractor directly or indirectly, then the City reserves the right to extend the term of the agreement for such reasonable time as the City may agree with the Contractor, or failing such agreement, the term of the agreement shall be extended by a period equivalent to the actual stoppage in work.
- 5.3 If the Contractor is delayed in the performance of the Work by:
- a. Labour disputes, strikes, or lock-outs involving its employees; or
  - b. Fire; or
  - c. Without limit to any of the foregoing, by a cause beyond the Contractor's control;

then the Term of Performance shall be extended for such reasonable time as the City may recommend in consultation with the Contractor. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the Contractor agrees to a shorter extension. The Contractor shall not be entitled to payment for costs incurred by such delays unless such delays result from actions or omissions by the City.

- 5.4 No extension shall be made for delay unless notice in writing is given to the City not later than twenty (20) working days after the commencement of delay, providing however, that, in the case of a continuing cause of delay, only one notice shall be necessary.

## **ARTICLE 6 – INDEMNIFICATION**

- 6.1 The Contractor shall indemnify and save the City and the County harmless from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever, whether direct or indirect, which the City, its agents, servants or officers, may suffer as a result of the errors, omissions or the negligence of the Contractor, its agents, servants or officers, in the performance of the services hereunder.

## **ARTICLE 7 – INSURANCE AND WORKERS’ COMPENSATION**

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

## **ARTICLE 8 – RECORDS AND AUDIT**

- 8.1 For the purpose of determining any fees calculated on a time basis, the Contractor shall keep a detailed record of the hours worked by the staff employed to provide the Services.

- 8.2 During the term of this Agreement, and for a period of three (3) years thereafter, the City may inspect and audit the books, payrolls, accounts and records of the Contractor at any time with respect to any item which the City is required to pay, either directly or indirectly pursuant to this Agreement.

## **ARTICLE 9 – COVENANTS OF THE CONTRACTOR**

- 9.1 The Contractor shall skilfully and competently perform the services set forth in the project description and shall employ only skilled, trained, bonded and competent staff who will be under the supervision of the Contractor's supervisor. All security officers shall be licensed under Securitas, pursuant to the provisions of the ***Private Investigators and Security Guards Act***. In addition, each person employed by the Contractor pursuant to this agreement shall be covered by employee dishonesty insurance and the Contractor shall provide proof of such insurance, for each employee, to the City.
- 9.2 The Contractor shall exercise control of the Work and shall effectively direct and supervise the Work so as to ensure conformity with this agreement.
- 9.3 The Contractor shall maintain the Scale House in a tidy condition and free from the accumulation of waste products and debris, other than that caused by the City.
- 9.4 In the event the Contractor fails collect and deposit of all monies from the Scale House, in accordance with Sections 6.2(a)(3) and 6.2(b)(1) of the Schedule "A", the Contractor agrees and acknowledges that the City may withhold the applicable fee(s) for such collection and/or deposit or impose such other penalty upon the Contractor as is reasonable in the circumstances.
- 9.5 The Contractor further warrants that it shall take retain and use employees who are competent and skilled in:
- a. The use of GeoWare software and computers;
  - b. Cash reconciliation, financial reporting; and
  - c. Customer Service.

## **ARTICLE 10 – SUPERVISORS**

- 10.1 The Contractor's supervisor shall be responsible to ensure the full performance of the terms and provisions of this Agreement on behalf of the Contractor. The City relies upon the Contractors' expertise and shall rely upon the Work performed by the Contractor if the same should ever become the subject of any evidence provided to an administrative tribunal, court, private court, or in arbitration.

- 10.2 The Contractor shall employ a competent supervisor and necessary assistants who shall attend the Place of Work as required to ensure that the Work is being performed in a satisfactory manner. The Contractor shall inform the City's Waste Operations Co-ordinator of the supervisor's name and contact information. The supervisor shall not be changed except with written notice to the City's Waste Operations Co-ordinator.
- 10.3 The supervisor shall represent the Contractor at the Place of Work and notices and instructions given to the supervisor by the City's Waste Operations Co-ordinator, or designate, shall be deemed to have been received by the Contractor.

#### **ARTICLE 11 – PLACE OF WORK SAFETY**

- 11.1 The Contractor shall be solely responsible for safety at the Place of Work and for compliance with the rules, regulations, and practices required by the applicable health and safety legislation and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work.
- 11.2 The Contractor shall protect the Work, the County and the City's property, and property adjacent to the Place of Work from damage which may arise as a result of the Contractor's operations under this Agreement, and shall be responsible for such damage, except damage which occurs as a result of acts or omissions by the City, the County other City-Contractors, their agents and employees.

#### **ARTICLE 12 – PLACE OF WORK INSPECTIONS**

- 12.1 The City shall have access to the Place of Work at all times. The Contractor shall provide sufficient, safe, and proper facilities at all times for the review of the Work by the City and the inspection of the Work by authorized agencies. If information, records or documents pertaining to the Work are located at locations other than the Place of Work, the City shall be given access, forthwith, to information, records or documents at such other location.
- 12.2 If the Place of Work is designated for tests, inspections, or approvals in this Agreement or the law or ordinances of the City, the Contractor shall give the City reasonable notice of when the work will be ready for review and inspection. The Contractor shall arrange for and shall give the City reasonable notice of the date and time of inspections by other authorities.
- 12.3 The Contractor shall render all necessary assistance to the City and, if required, shall take and furnish levels, other measurements, or anything necessary to enable the City's review and inspection to be completed.

#### **ARTICLE 13 – UNSATISFACTORY PERFORMANCE**

- 13.1 In the event the City is not satisfied by the Contractor's performance of its obligations under the agreement, it shall:
- a. Provide written notice to the Contractor outlining its concerns with Contractor's performance; and
  - b. Before exercising any remedy under this agreement or at common law, provide the Contractor with ten (10) days to correct its performance.

#### **ARTICLE 14 – PERMITS AND APPROVALS**

- 14.1 The Contractor shall be responsible for obtaining at its expense all necessary governmental or other permits and approvals for the Work. Where the Work is subject to the approval or review of an authority, department, agency, tribunal, or government, other than the City, then any application for approval shall first be submitted to the City for the City's authorization. The City Supervisor shall review the Bid or application and provide such authorization if it:
- a. Conforms to the Agreement; and
  - b. Does not contravene any applicable law or City policy.

#### **ARTICLE 15 – CITY'S RIGHT TO TERMINATE CONTRACT**

- 15.1 Without limiting the City's rights or remedies upon default by the Contractor pursuant to this agreement, the City may terminate this Agreement on written notice to the Contractor in the event that:
- a. The Contractor makes an assignment for the benefit of creditors or becomes bankrupt or insolvent, or an order is made for the winding-up of the Contractor;
  - b. The Contractor refuses or fails to supply sufficient properly skilled workers or proper materials at all times to perform the Work in the manner and to the standards required under this Agreement, or it fails to observe and comply with any provisions of law, including, without limiting the generality of the foregoing, all requirements of all governmental authorities including federal, provincial and municipal legislative enactments, by-laws and other regulations now or hereafter in force which pertain to or affect the Work or the conduct of the Contractor's business at the Place of Work; or
  - c. The Contractor fails to institute appropriate corrective action forthwith 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 this Agreement.

#### **ARTICLE 16 – SUCCESSORS AND ASSIGNMENT**

- 16.1 This Agreement shall enure to the benefit of, and be binding upon, the parties hereto, and except as hereinafter otherwise provided, the executors, administrators, successors and assigns of the parties.
- 16.2 If the Contractor is dissolved before its services hereunder have been completed, this Agreement shall automatically terminate as of the date of its dissolution and the City shall pay for the services rendered and disbursements made to the date of such termination.
- 16.3 Except as aforesaid, neither party shall assign this Agreement without the written consent of the other.

#### **ARTICLE 17 – ARBITRATION/DISPUTES**

- 17.1 All matters in difference between the parties hereto in relation to this Agreement may be referred to arbitration, or to a private court.
- 17.2 No person shall be appointed or act as arbitrator or judge who is in any way interested, financially or otherwise, in the conduct of the Work or in the business or other affairs of either the City or the Contractor.
- 17.3 The award of the arbitrator or judge shall be final and binding upon the parties.
- 17.4 The provisions of the *Arbitrations Act*, R.S.O. 1990, c. A.24, shall apply to the arbitration if this agreement is submitted to arbitration.
- 17.5 The matter in dispute shall be submitted to arbitration unless the parties agree on the terms of submission and hearing in a private court.

#### **ARTICLE 18 - NOTICES**

- 18.1 Any notice provided for under this Agreement shall be served by personal service, registered mail, or facsimile transmission:

**To the Contractor at:**

Securitas Canada Limited  
 349A George Street North  
 Peterborough, Ontario K9H 3P9  
 T: 705.743.8026  
 F: 705.743.3043

**To the City at:**

500 George Street North  
 Peterborough, Ontario K9H 3R9  
 Attention: City Clerk



## **Schedule “A”**

Proposal P-02-07