

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 07-148

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AGREEMENTS BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND HGC MANAGEMENT INC.

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

1. That the Mayor and Clerk be hereby authorized to execute an agreement between the Corporation of the City of Peterborough and HGC Management Inc. for a recycling material processing contract as per P-21-07 in the form attached hereby as Schedule "A", and to affix the Seal of the Corporation thereto;
2. And further, that the Mayor and Clerk are hereby authorized to execute an agreement between the Corporation of the City of Peterborough and HGC Management Inc. for the extension of the recycling collection contract in the form attached hereby as Schedule "B", and to affix the Seal of the Corporation thereto.

By-law read a first, second and third time this 22nd day of October, 2007

(Sgd.) D. Paul Ayotte, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

THIS AGREEMENT made in triplicate this ____ day of _____ 200__.

B E T W E E N:

THE CORPORATION OF THE CITY OF PETERBOROUGH

(the "City")

- and -

HGC MANAGEMENT INC.

(the "Contractor")

WHEREAS the City desires the Contractor to provide the labour and services at the City's Material Recycling Facility, located at 390 Pido Road in the City of Peterborough, (the "MRF") for a seven (7) year period pursuant to Request for Proposal No. P-21-07 (the "Proposal"), and the Appendices attached thereto, which are attached hereto as Schedule "A" and forms part of this Agreement (hereinafter referred to as the "Work");

AND WHEREAS the Contractor has the authority to enter into agreements with third parties to obtain Non-program Recyclable Material and, contingent upon paying the requisite fee to the City to process Non-program Recyclable Material at the MRF;

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:

DEFINITIONS

Composition Audit – means an audit conducted from time-to-time by or on behalf of the City, which determines the amount of Contaminated Material contained within the Recyclable Material;

Contaminated Material – means an amount of non-recyclable material, as determined by the Composition Audit, which was received at the MRF, pursuant to this agreement;

Marketable Material – means the end product of processing of Recyclable Material;

Missed Material – means material, which is Recyclable Material, found in the Residue;

MRF – means the City owned Material Recycling Facility, located at 390 Pido Road in the City of Peterborough composed of the building and the land there situate;

Non-program Recyclable Material – means recyclable material obtained by the Contractor pursuant to agreements it has entered into with third parties;

Recyclable Material – means the commingled fibre and commingled containers received at the MRF, pursuant to this agreement, excluding Non-program Recyclable Material;

Residue – means the material, including Contaminated Material, which is disposed of at the Peterborough County-City Waste Management Facility on Bensfort Road (the “Landfill”);

Work (the) – means:

- a. Receiving and processing Recyclable Material to produce Marketable Material;
- b. Marketing the Marketable Material;
- c. Transporting and disposing the Residue at the Landfill; and
- d. Such other responsibilities and obligations as set out in the Proposal and this agreement, including any amendments made thereto.

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 January 2008 and the Work shall end on 31 December 2014 (the “Term”).
- 1.3 The Contractor shall provide and maintain the letters of credit and the performance security as set out in Section 6.5 of the Proposal, which is attached hereto as Schedule “B”.

ARTICLE 2 – THE CONTRACTOR’S SERVICES

The Work

- 2.1 The City retains the Contractor to perform and complete all the services comprising the Work, subject to early termination of this agreement by the City as hereinafter provided.
- 2.2 The Work is as described in the Proposal, save and except where this agreement modifies the Proposal in which case the terms and conditions of this agreement shall bind the parties.
- 2.3 Without limiting the generality of Articles 2.1 and 2.2, the Contractor shall:
 - a. Ensure that all equipment, whether owned by the City or the Contractor, including the weigh scales and the MRF itself, comply with the City’s Certificate of Approval and with all applicable federal, provincial and

municipal acts, regulations and by-laws, as the case may be;

- b. Not initiate any changes to, nor deviate from, the City's Certificate of Approval;
- c. At all times operate, maintain and repair equipment as required for the safe, and lawful operation of the equipment and for the efficient and effective processing of Recyclable Material;
- d. At its sole risk and expense, re-calibrate and certify the weigh scales no less frequently than every six (6) months. Following the completion of each re-calibration and certification, the Contractor shall forthwith provide a copy of its certification to the Manager, Waste Management. Notwithstanding the foregoing, the Manager, Waste Management may require the Contractor to prove the accuracy of the weigh scale at any reasonable time.
- e. Use its best effort to service all collection vehicles delivering Recyclable Material within fifteen (15) minutes of their arrival at the MRF;
- f. At all times, prevent the build up of Recyclable Material and/or Marketable Material in a manner that:
 - i. Negatively affects the health and safety of employees;
 - ii. Negatively affects the value of the Marketable Material;
 - iii. Impedes on-site vehicular traffic;
 - iv. Impedes the Contractor's ability to conduct safe public tours; or
 - v. Contravenes any federal, provincial or municipal act, regulation or by-law, as the case may be.
- g. Monitor the production rates and inventory levels of Marketable Material on a daily basis and arrange for the timely collection of Marketable Material;
- h. Use the City's GEOWARE software to accurately enter data into the appropriate accounts for each of Recyclable Material, Residue and Marketable Material. (Inbound and Outbound Tonnages);
- i. Provide the Manager, Waste Management, with monthly reports on shipped tonnages for each of Residue and Marketable Material, broken down by material type;
- j. Provide the Manager, Waste Management, with monthly reports that confirm the CSR-reported composite index price for the previous month;

- k. Co-operate with the City in carrying out Composition Audits as directed by the Manager, Waste Management;
 - l. Conduct public tours of the MRF as directed by the Manager, Waste Management, acting reasonably; and
 - m. Process Recyclable Material in a manner that optimizes tonnage of Marketable Material, including, where commercially feasible, re-processing any Missed Material to minimize the amount of Residue and maximize the amount of Recyclable Material.
- 2.4 The Contractor shall be responsible for the marketing of all Marketable Material during the Term and shall only market Marketable Material to bona fide markets. The Contractor shall provide details concerning its marketing as set out in Section 9.9 of the Proposal, or such other information as may be reasonable requested, forthwith to the City's Manager of Waste Management or designate.

Residue

- 2.5 The Contractor shall be responsible for the transportation and disposal of all Residue at the Peterborough County-City Waste Management Facility on Bensfort Road (the "Landfill"). Furthermore, the Contractor shall be responsible for the payment of all tipping fees associated with the disposal of the Residue. The City shall invoice the Contractor monthly concerning tipping fees.
- 2.6 The parties agree that the most recent Composition Audit shall determine the actual percentage of Contaminated Material and that the Residue shall not be greater than 5% of the through-put tonnage.

Certain Acknowledgements by Contractor

- 2.7 The Contractor agrees and acknowledges that it is being retained to perform Option B1 as described in the Proposal and that Option B1 requires the processing system at the MRF to be retrofitted at the expense of the Contractor, in accordance with the fixed price cost portion of the Pricing Options as set out in the Proposal.
- 2.8 The Contractor agrees and acknowledges that the City has not conducted a pilot programme concerning the two (2) stream collection of commingled fibre and commingled containers and that it is not possible to accurately predict the size of any increase in the amount of material that will be collected during any period of the Term nor is it possible to predict whether there will be changes to the composition of the material that finds its way into the collection stream. Notwithstanding the foregoing, the Contractor warrants that it shall use all reasonable diligence and dispatch to process Recyclable Material, market the Marketable Material and properly dispose of the Residue.

Revenue

- 2.9 The Contractor shall keep detailed and separate GEOWARE records for:

- a. Recyclable Material received from the City (including commercial drop off);
 - b. Recyclable Material received from the Corporation of the County of Peterborough;
 - c. All Non-programme Recyclable Material and
 - d. The Residue.
- 2.10 The parties agree that the money paid to the City shall be based on the difference, calculated monthly, between the City's inbound Recyclable Material minus the Residue. The price per tonne shall be calculated according to the CSR Composite Index for the month following the month it was received.
- 2.11 The Contractor shall pay the City FIVE DOLLARS (\$5.00) per metric tonne of inbound Non-program Recyclable Material.
- 2.12 The City shall set up such GEOWARE accounts as required to track inbound tonnages of Recyclable Material received from the City and the County and for Non-program Recyclable Material.

The MRF

- 2.13 The Contractor shall lease the MRF from the City in accordance with the following terms and conditions, it shall be solely responsible for:
- a. The prompt and full payment of all utility charges associated with operating the MRF;
 - b. Any applicable federal, provincial and/or municipal fees and charges;
 - c. Obtaining and maintaining appropriate insurance concerning the MRF in a manner, form and amount acceptable to the City; and
 - d. Snow removal, landscaping, and the day-to-day maintenance of the MRF.
- 2.14 The City shall act as a prudent landlord concerning the any required maintenance and repairs to the MRF.
- 2.15 The Contractor shall not alter, expand or change the exterior of the MRF, save and except for the orientation or the location of doors. In the event the Contractor desires to relocate any doors, it shall do so at its sole risk and expense and in based on prior written approval from the City.
- 2.16 Because the Work requires the Contractor to process commingled fibre and commingled containers, the Contractor shall, at its sole risk and expense, redesign and redevelop the existing processing system within the MRF and shall, be responsible for:

- a. Maintaining any and all equipment it purchases during the Term; and
 - b. Developing, and presenting to the Manager, Waste Management, a contingency plan detailing how the on-going processing of Recyclable Material will continue without significant interruption during the redesign and redevelopment. The contingency plan shall also contain a detailed explanation of the steps involved in the redesign and redevelopment and the timeframe the completion of same.
- 2.17 The Contractor warrants that it can achieve an annual throughput of at least 30,000 metric tonnes at the MRF.

Equipment at the MRF

- 2.18 The parties agree that the Contractor has purchased all the equipment at the MRF, on an as-is basis, which, prior to 1 January 2008, was the property of the City, save and except the weigh scale and its related devices and displays for the sum of ONE DOLLAR (\$1.00) the receipt and sufficiency of which is hereby acknowledged.
- 2.19 During the Term, the Contractor shall at its sole risk and expense, maintain in a satisfactory condition and/or repair and/or replace all the equipment required to perform the Work.
- 2.20 At the end of the Term, the Contractor shall be responsible, at its sole risk and expense, for removing all of its equipment, not purchased by the City, from the MRF.
- 2.21 The City has the authority in an emergency to stop the Work whenever, in its opinion, such stoppage may be necessary to ensure the safety of any person or to protect, preserve or conserve property at the MRF or any neighbouring property.
- 2.22 The City may furnish, as necessary for the execution of the Work, additional instruction consistent with this agreement. The Work shall be undertaken and completed in conformity therewith, and the City shall have the authority to make minor changes in the Work which are not inconsistent with this agreement. All additional instructions shall be provided in writing. In this regard, the City shall have the right to furnish to the Contractor such other documents and drawings from time-to-time and the Contractor shall conform to such other documents and drawings as if they were contained in this agreement.
- 2.23 The Contractor shall advise the Manager, Waste Management, of any equipment failures and scheduled equipment maintenance and advise along with its plan to continue performing the Work in an acceptable manner.
- 2.24 In the event, and for whatever reason, during an equipment failure or during the redesign and redevelopment of the MRF, the Contractor is unable to satisfactorily perform the Work at the MRF, it shall, at no additional cost to the City, perform the Work at another Material Recycling Facility operated by the Contractor. For greater

clarity, the Contractor shall be solely responsible for the cost of transporting the Recyclable Material to another Material Recycling Facility.

Hazardous Household Waste

2.25 For the duration of the Term, at no expense or risk to the City, the Household Hazardous Waste operating staff shall continue to have use of the MRF, including their office facilities located therein.

ARTICLE 3 – PRICE FOR PROCESSING RECYCLABLE MATERIAL

3.1 The contract price payable to the Contractor for the services to be performed hereunder shall be based on the combined annual tonnage of Recyclable Material received by the Contractor from both the City and the County:

Annual Tonnage Range	Processing Fee		Revenue
	Fixed Cost per tonne	Variable Cost per tonne	Price per tonne
For all Recyclable Material Received up to 15,000 Tonnes	Not applicable	\$93.29*	To be determined**
For all Recyclable Material Received up to 20,000 Tonnes	Not applicable	\$88.29*	To be determined**
For all Recyclable Material Received up to and beyond 25,000 Tonnes	Not applicable	\$84.29*	To be determined**

* Exclusive of GST

** Based on the CSR Composite index for all recyclables

3.2 The Parties agree that during each year of the Term the Variable Cost per tonne shall be recalculated for all Recyclable Material received as follows:

- a. Upon the Contractor receiving Recyclable Material in excess of 15,000 metric tonnes, then all Recyclable Material, being the 15,000 metric tonnes already received and the next 5,000 metric tonnes received thereafter, shall be processed at a cost of EIGHTY-EIGHT DOLLARS AND TWENTY-NINE CENTS per metric tonne (\$88.29/metric tonne); and

- b. Upon the Contractor receiving Recyclable Material in excess of 20,000 metric tonnes, then all Recyclable Material, being the 20,000 metric tonnes already received, shall be processed at a cost of EIGHTY FOUR DOLLARS AND TWENTY-NINE CENTS per metric tonne (\$84.29/metric tonne). There is no upper limit to the tonnage of Recyclable Material that will be processed at the rate of EIGHTY FOUR DOLLARS AND TWENTY-NINE CENTS per metric tonne (\$84.29/metric tonne).
- 3.3 The City shall pay the Variable Cost per tonne upon receipt of the Contractor's invoice, within thirty (30) days thereof.
- 3.4 As published in January in each year of the Term, the Variable Cost per tonne shall be increased by labour component of the previous year's Consumer Price Index, Ontario Series, composite component.
- 3.5 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.
- 3.6 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.
- 3.7 Unless otherwise expressly agreed by the parties, the Contractor shall be responsible for all disbursements sustained by the Contractor in completing the Work.

ARTICLE 4 – OWNERSHIP AND COMMUNICATION

- 4.1 The Contractor agrees and acknowledges that the Corporation of City of Peterborough owns the MRF and that it is providing its services to the City in accordance with the City's Certificate of Approval, issued by the Ministry of the Environment.
- 4.2 The Contractor agrees and acknowledges that the Corporation of the County of Peterborough (the "County") has a service agreement with the City that results in the County's Recyclable Material being processed at the MRF.
- 4.3 For the purpose of obtaining or receiving direction concerning the delivery of the Contractor's services under this Agreement, the City's contact person is:

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

T: 705.742.7777 Ext. 1724
F: 705.742.4621

The City may require that any complaints, communication and/or deficiencies be submitted in writing to the Manager, Waste Management.

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 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, and upon the anniversary date of executing this agreement, 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. 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).
- 7.2 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 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.
- 7.4 The Contractor shall be responsible for deductible amounts under the policies of insurance.

ARTICLE 8 – RECORDS AND AUDIT

- 8.1 During the Term, 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.
- 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 MRF in a tidy condition and free from the accumulation of waste products and debris, other than those caused by the performing the Work. Without limiting the generality of the foregoing, the Contractor shall:
 - a. Keep all exits, including emergency exits, free and clear of products, debris, equipment, Residue and Recyclable Material;
 - b. Prevent the deposit of products, debris, Residue and Recyclable Material on adjacent properties;
 - c. Maintain the exterior grounds of the MRF in a satisfactory condition; and
 - d. Forthwith comply with any reasonable direction given by the City concerning the tidiness of the MRF.
- 9.4 The Contractor has the sole responsibility for all persons employed in respect of the Work and shall take all reasonable and necessary precautions to protect persons and property in the performance of the Work and the City shall not be responsible in any way for any injury to the Contractor or any other person for any injury (including death) or for any loss of or damage to any property in any way resulting from any act or omission of the Contractor or the servants or subcontractors of the Contractor, including loss of business or profits in connection with or as a result of the Work and the Contractor agrees to indemnify the City and its agents or employees from and against any and all losses, costs, claims and demands whatsoever for or in respect of any such injury, loss or damage and to forthwith advise the City if and whenever any such injury, loss or damage occurs.
- 9.5 The Contractor further warrants that it shall take retain and use administrative 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 MRF, as required, to ensure that the Work is performed in a satisfactory manner. The Contractor shall inform the City's Manager, Waste Management of the supervisor's name and contact information. The supervisor shall not be changed except with written notice to the City's Manager, Waste Management.
- 10.3 The supervisor shall represent the Contractor at the MRF and notices and instructions given to the supervisor by the City's Manager, Waste Management, or designate, shall be deemed to have been received by the Contractor.

ARTICLE 11 – MRF SAFETY

- 11.1 The Contractor shall be solely responsible for safety at the MRF 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 and the City's property, and property adjacent to the MRF 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, other City-Contractors, their agents and employees.

ARTICLE 12 – MRF INSPECTIONS

- 12.1 The City shall have access to the MRF 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 MRF, the City shall be given access, forthwith, to information, records or documents at such other location.

- 12.2 If the MRF 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, excluding the Certificate of Approval, 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 Manager, Waste Management 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 MRF; 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.
- 15.2 In the event of Termination in accordance with Article 15.1, the City may, forthwith upon and without further notice to the Contractor, take possession of the MRF and all materials required in connection with the Work and finish the Work by whatever method the City may deem expedient, but without undue delay or expense. In such case, the Contractor shall not be entitled to receive further payment until the Work is finished. Any such action taken by the City hereunder shall be without prejudice to the City's rights against the Contractor or its legal representative for breach of contract, set-off or otherwise.

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 court of competent jurisdiction.
- 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, facsimile transmission, or Email:

To the Contractor at:

HGC Management Inc.
560 Woody Road, Unit 4
Oakville, Ontario L6K 3T6
T: 905.849.0597
F: 905.849.0046
E: hlambacher@bellnet.ca

To the City at:

The Corporation of the City of Peterborough
500 George Street North
Peterborough, Ontario K9H 3R9
Attention: City Clerk
T: 705.742.7777 Ext. 1820
F: 705.742.4138
E: clerk@peterborough.ca

18.1 Any notice shall be sufficiently given if delivered to and left at the address for notice of the party to whom it is given during normal business hours on a business day, or by registered mail, or facsimile transmission, addressed to the party to whom it is to be given as provided above, and, if mailed as aforesaid, such notice shall be deemed to have been received on the third business day following the date of mailing.

18.2 A party may at any time give notice in writing to the other party of a change of address of the party giving notice, and from and after giving of the notice the address therein specified shall be deemed to be the address of the party.

ARTICLE 19 – SCHEDULES

19.1 The following Schedules form part of this Agreement:

SCHEDULE A: Proposal – P-21-07
SCHEDULE B: Contractor's Submission
SCHEDULE C: List of Recyclable Material

SCHEDULE "A"

PROPOSAL – P-21-07

SCHEDULE "B"

CONTRACTOR'S SUBMISSION TO P-21-07

SCHEDULE “C”

LIST OF RECYCLABLE MATERIAL

1. Mixed Fibre

Corrugated Cardboard
Boxboard and paperboard
Newspaper
Magazines
Telephone/soft-covered books
Fine paper

2. Mixed Containers

Aseptic and polycoat containers
Paper coffee cups
Clear glass
Coloured glass
Aluminum cans and foil
Ferrous containers
Empty paint and aerosol cans
HDPE containers
PETE containers
Film plastic
Polystyrene
Expanded polystyrene (Styrofoam)
Plastic flowerpots and trays
Plastic baked-good trays (#6)
Plastic tubs and lids
Boat wrap
Mixed plastics (3-7)

SCHEDULE "D"

CERTIFICATE OF APPROVAL, AS AMENDED

THIS AGREEMENT made in triplicate this ____ day of December 2007.

B E T W E E N:

THE CORPORATION OF THE CITY OF PETERBOROUGH
(the "City")

- and -

HGC MANAGEMENT INC.
(the "Contractor")

WHEREAS the City and the Contractor entered into an agreement dated, 23 May 2000, (the "2000 Agreement") and whereas the parties desire to amend the terms and conditions of the 2000 Agreement concerning the collection of recyclable material;

AND WHEREAS the Contractor agrees to continue to fully perform its obligation to collect recyclable material within the City of Peterborough;

AND WHEREAS the City recognizes that the introduction by the Province of Ontario of a bottle deposit/bottle return system for the Liquor Control Board of Ontario has had consequences, which neither party foresaw in 2000;

AND WHEREAS subsequent to the introduction of the bottle deposit/bottle return system, the parties developed a formula to compensate the Contractor for the metric tonnage of glass which is no longer being collected;

AND WHEREAS the City has elected to implement, and the Contractor has agreed to provide, two (2) stream collection services for recyclable material as of 1 January 2008;

AND WHEREAS the Contractor was the successful proponent in response to RFP-21-07 being the City's call for proposals regarding processing recyclable material;

AND WHEREAS the City and the Contractor imminently intend to enter into an agreement concerning the processing of recyclable material;

AND WHEREAS the City Council of the City of Peterborough adopted the recommendations contained in Report USWM07-011 concerning the extension of the collection contract with the Contractor for a period of up to one (1) year;

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

ARTICLE 1 – AMENDMENTS TO THE 2000 AGREEMENT

1.1 Article 1.01 of the 2000 Agreement is hereby deleted in its entirety and the following is substituted therefor:

"1.01 The Contractor agrees to perform all services necessary to perform two (2) stream collection of recyclable materials within the City of Peterborough (the "Work") in accordance with the Request for Proposal P-09-00 and the Contractor's Proposal which are attached to the 2000 Agreement as Schedule "A" and the amendments contained herein."

1.2 Article 2.01 of the 2000 Agreement is hereby deleted in its entirety and the following is substituted therefor:

"2.01 The term of this agreement shall commence on 1 January 2008 and continue until 31 December 2008, unless it is terminated by the City in accordance with Article 4.04."

1.3 Article 3.01 of the 2000 Agreement is hereby deleted in its entirety.

1.4 Article 4.01 of the 2000 Agreement is hereby deleted in its entirety and the following is substituted therefor:

"4.01 The City shall pay to the Contractor, for the collection of recyclable material, at the rate of not more than \$154.14 per metric tonne.

- 4.02 The parties agree that the Contractor shall be compensated for the metric tonnage of glass, which is no longer being collected in curb-side blue boxes, due to the introduction by the Province of Ontario of a bottle deposit return system for the Liquor Control Board of Ontario. The Contractor's compensation shall be calculated in accordance with the attached Schedule "B".
 - 4.03 The Contractor agrees and acknowledges that the City may terminate this agreement, without penalty, upon providing ninety (90) days written notice to the Contractor.
 - 4.04 In the event the City gives notice to the Contractor in accordance with Article 4.04 above, the Contractor agrees to work co-operatively with the City in order to minimize any disruption in the collection of recyclable material and its delivery to the Material Recycling Facility located on Pido Road."
- 1.5 The 2000 Agreement is amended by adding the following new Articles:
- "5.02 The Contractor agrees to perform the two (2) stream collection of the recyclable materials identified in Schedule "C", as that Schedule may be amended by the City from time-to-time, commencing on 1 January 2008.
 - 5.03 The Contractor shall, at its sole risk and expense, modify its collection vehicles to accommodate two (2) stream collection of the recyclable material identified in Schedule "C".
- 1.6 Article 11.01 of the 2000 Agreement is hereby deleted in its entirety.
- 1.7 The following Articles from the 2000 Agreement shall remain in full force and effect, namely: Article 5.01; Articles 6.00 to 10.01 inclusive; and Articles 12.00 to 23.01 inclusive.
- 1.8 The following are the Schedules attached to and forming part of this agreement:
- i. **Schedule "A"** – Request for Proposal P-09-00 and the Contractor's Proposal as attached to the 2000 Agreement;
 - ii. **Schedule "B"** – LCBO Glass Tonnage
 - iii. **Schedule "C"** – List of Recyclable Material to be Collected
- 1.9 In the event there are any discrepancies concerning the Work as described herein and the collection of recyclable materials as described in the 2000 Agreement, or any schedule attached thereto, this agreement shall bind the parties.

IN WITNESS WHEREOF the parties hereto have set their respective hands and seals.

SIGNED, SEALED AND DELIVERED)	HGC MANAGEMENT INC.
)	
in the presence of:)	
)	
)	_____
)	Herbert Lambacher
)	President
)	I have authority to bind the Corporation
)	
)	THE CORPORATION OF THE
)	CITY OF PETERBOROUGH
)	
)	
)	_____
)	D. Paul Ayotte, Mayor
)	
)	
)	_____
)	Nancy Wright-Laking, City Clerk