

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 08-019

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND HGC MANAGEMENT INC. FOR A PERIOD OF ONE YEAR (T-53-07)

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 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 21st day of January 2008.

(Sgd.) D. Paul Ayotte, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

THIS AGREEMENT made in triplicate this _____ day of _____ 2008.

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 Household Hazardous Waste Facility, located at 400 Pido Road in the City of Peterborough, (the "HHWF") for a period of one (1) year period pursuant to the award of Tender No. T-53-07 (the "Tender");

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

Household Hazardous Waste or HHW – means the waste material, excluding the WEEE, identified in Sections 8.1 and 10.1.0 of the Tender;

Household Hazardous Waste Facility or HHWF – means the Household Hazardous Waste Facility located at 400 Pido Road in the City of Peterborough composed of the structures and the land there situate;

Municipal Hazardous or Special Waste (MHSW) – means a type of HHW;

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;

Residue – means the non-recyclable material which can be separated from the HHW;

Waste Electronic and Electrical Equipment or WEEE – has the same meaning as that contained in Schedules 2 and 3 of O. Reg. 393/04 of the *Waste Diversion Act, 2002*, and any amendment thereto;

Work (the) – means:

- a. Receiving and collecting HHW and WEEE;
- b. Processing the WEEE (See Section 8.2.2 of the Tender);
- c. Transporting the Residue to the MRF;
- d. Ensuring the proper disposal of Residue; and

- e. Such other responsibilities and obligations as set out in the Tender and this agreement, including any amendments made thereto, and performing other reasonable instructions as issued by the City in accordance with Article 2.8.

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 shall commence the work on 1 January 2008 and the Work shall end on 31 December 2008 (the “Term”).
- 1.3 The Contractor shall provide and maintain the letters of credit and the performance security as set out in Section 7.3 of the Proposal, which is attached hereto as Schedule “A”.

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 infrastructure, whether owned by the City or the Contractor, 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 infrastructure equipment as required for the safe, and lawful operation of the equipment and for the efficient and effective processing of HHW and WEEE;
 - d. Use its best effort to service all vehicles delivering HHW and/or WEEE as quickly as possible upon their arrival at the HHWF;

- e. At all times, prevent the build up of HHW and WEEE in a manner that:
 - i. Negatively affects the health and safety of employees;
 - ii. Impedes on-site vehicular traffic;
 - iii. Impedes the Contractor's ability to conduct safe public tours; or
 - iv. Contravenes any federal, provincial or municipal act, regulation or by-law, as the case may be.
- f. Monitor the production rates and inventory levels of HHW and WEEE on a daily basis and arrange for the timely collection of HHW and processed WEEE;
- g. Use the City's GEOWARE software to accurately enter data into the appropriate accounts for outbound Residue;
- h. Provide the Manager, Waste Management, with monthly reports on shipped tonnages for each of HHW and WEEE, broken down by material type;
- i. Conduct public tours of the HHWF as directed by the Manager, Waste Management, acting reasonably; and
- j. Transport all Residue to the MRF;
- k. Process WEEE in a manner that optimizes its marketability.

Certain Acknowledgements by Contractor

2.4 The Contractor agrees and acknowledges that it is being retained to perform Work in accordance with the Sections 7 to 10 inclusive of the Tender.

The HHWF

2.5 The Contractor shall use the HHWF 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 HHWF;
- b. Obtaining and maintaining appropriate insurance concerning the HHWF in a manner, form and amount acceptable to the City; and
- c. Snow removal, landscaping, and the day-to-day maintenance of the HHWF.

2.6 The City shall provide any required maintenance and repairs to the HHWF.

- 2.7 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 HHWF or any neighbouring property.
- 2.8 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 that 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.

Hazardous Household Waste Office

- 2.9 For the duration of the Term, at no expense or risk to the City, the Household Hazardous Waste operating staff shall continue to have their offices located at the MRF and have the use of other facilities located therein.

ARTICLE 3 – PRICE FOR PERFORMING THE WORK

- 3.1 The contract price payable to the Contractor for the services to be performed hereunder shall be ONE HUNDRED AND THIRTY THOUSAND DOLLARS (\$130,000.00), exclusive of GST, paid in equal monthly instalments.
- 3.2 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.
- 3.3 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 HHWF and that it is providing its services to the City and to the Corporation of the County of Peterborough (the “County”) 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 City permits HHW and WEEE originating from the County to be received and processed at the HHWF.
- 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 HHWF 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, HHW and WEEE;
 - b. Prevent the deposit of products, debris, HHW and WEEE on adjacent properties;
 - c. Maintain the exterior grounds of the HHWF in a satisfactory condition; and
 - d. Forthwith comply with any reasonable direction given by the City concerning the tidiness of the HHWF.

- 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 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 HHWF, 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 HHWF 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 – HHWF SAFETY

- 11.1 The Contractor shall be solely responsible for safety at the HHWF 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 HHWF 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 – HHWF INSPECTIONS

- 12.1 The City shall have access to the HHWF 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 HHWF or the MRF, the City shall be given access, forthwith, to information, records or documents at such other location.
- 12.2 If the HHWF 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 HHWF; 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 HHWF 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: Tender – T-53-07
SCHEDULE B: Contractor's Submission in Response to T-53-07
SCHEDULE C: Certificate of Approval, as contained in Schedule "A"

ARTICLE 20 – INTERPRETATION & CHOICE OF LAW

- 20.1 The City in the first instance shall decide all questions arising under this agreement. In the event the Contractor considers any such decision to be at variance with the provisions hereof or to be given in error, it shall notify the City before proceeding to carry it out. In the event the City and Contractor fail to agree as to the matter and City elects to have such disputed work carried out, the Contractor shall perform the disputed work. Any question concerning the cost of the performing the disputed work shall, failing agreement, be decided by arbitration in accordance with the *Arbitrations Act* for the Province of Ontario, or as otherwise agreed to by the parties to the dispute.

20.2 The applicable law of this agreement and any agreements subsequent to this agreement is that of the Province of Ontario.

20.3 Headings are included only for the convenience of the reader and the parties agree that the headings shall not be used by any person as aids or references for interpreting this agreement.

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

SIGNED, SEALED AND DELIVERED)

in the presence of:)

HGC MANAGEMENT INC.

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

LIST OF SCHEDULES:

SCHEDULE "A" – TENDER – T-53-07

SCHEDULE "B" - CONTRACTOR'S SUBMISSION TO T-53-07

SCHEDULE "C" - CERTIFICATE OF APPROVAL*

***The parties acknowledge that Schedule "C" is contained in Schedule "A"**