

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

**BY-LAW NUMBER 08-204**

**BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AGREEMENT WITH BARRY ELECTRICAL CONTRACTORS LTD.**

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 Barry Electrical Contractors Ltd. 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 15<sup>th</sup> day of December, 2008

(Sgd.) D. Paul Ayotte, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

## SCHEDULE "A"

**THIS AGREEMENT** made in triplicate this 15th day of December 2008.

B E T W E E N:

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

- and -

**BARRY ELECTRICAL CONTRACTORS LTD.**  
(hereinafter the "Contractor")

**WHEREAS** the Peterborough Municipal Airport (the "Airport") is a capital asset owned by the City;

**AND WHEREAS** the City desires to retain the Contractor to provide grounds maintenance and operational services (the "Services") at the Airport;

**AND WHEREAS** the City, by an Agreement dated 10 January 2008 retained the Contractor to provide the Services at the Airport;

**AND WHEREAS** the City and the Contractor now wish to extend the term and amend the terms and conditions under which the Contractor provides the Services in this Agreement;

**AND WHEREAS** the Contractor agrees to perform the Services in accordance with this Agreement;

**NOW WITNESSETH THAT** in consideration of the mutual covenants and agreements contained herein, and subject to the terms and conditions set out below, the parties agree as follows:

### **ARTICLE 1 – RETAINER AND TERM**

- 1.01 The City retains the Contractor to perform and to complete all the Services, as specified herein and as set out on the attached Schedule "A", with all reasonable care, skill and diligence as specified herein for a nine (9) month period, subject to the early termination of this Agreement by either party, as hereinafter provided.
- 1.02 The City agrees that the Contractor shall not be obligated to have any of its agents, servants or employees provide any service pursuant to this Agreement for which they are not duly qualified and the Contractor hereby warrants that it shall at all times ensure that where such agents, servant or employees have such qualifications and experience in their respective fields of expertise, and have the knowledge, resources and skills required to provide the Services, they shall do so in a competent manner.
- 1.03 This Agreement shall commence on 1 January 2009 and continue in full force until the earlier of 30 September 2009 (the "Term") or until terminated in accordance with the provisions of this Agreement.
- 1.04 The City shall have the option of renewing this Agreement for two (2) additional terms of six (6) months each (the "Renewal Terms") by providing the Contractor with ninety (90) days prior written notice of its intention of doing so.
- 1.05 Notwithstanding the Article 1.04, the City may, in its sole and unfettered discretion, given notice for the first (1<sup>st</sup>) Renewal Term, or a portion thereof, by giving written notice to the Contractor on or before the 31<sup>st</sup> day of July 2009.
- 1.06 In the event the City exercises its right to extend this agreement under Article 1.04 or 1.05, all the terms and conditions of this agreement shall continue in full force and effect save and except for fee specified in Article 2.10(a), which may be

adjusted by the City in accordance with the Consumer Price Index, all items, for the Province of Ontario.

## **ARTICLE 2 – MAINTENANCE AND OPERATIONAL SERVICES**

- 2.01 The Contractor shall hire all necessary personnel as it deems necessary or as is required by the Airport Manager to fulfill its obligations under this Agreement.
- 2.02 The Contractor shall employ an “Operations Coordinator” who shall be under the direction of the Contractor during the term of this Agreement and any renewal thereof.
- 2.03 The Contractor shall, through the Operations Coordinator:
- a. Maintain the City’s capital assets essential in a reasonable and prudent manner;
  - b. Provide all necessary maintenance to the grounds, buildings and other Airport facilities required for the day-to-day operation of the Airport, as outlined in Schedule “A”, attached hereto and forming part of this Agreement; and
  - c. Provide operational services to the public in a professional and prudent manner.
- 2.04 Where the Contractor requires or seeks the direction of the City concerning its obligations under this Agreement, the direction given by the Airport Manager or Acting Airport Manager shall be good and sufficient authority to bind the City.
- 2.05 The City recognizes that the Services being provided by the Contractor may require the Contractor to respond to unforeseeable or emergency situations which arise outside the normal business hours of the City or during the absence of the Airport Manager, and, in that regard, the City hereby gives the Contractor the authority to act as if it were a careful and prudent owner and the Contractor shall use its judgment and best efforts to protect the people and property at the Airport, from harm, injury, and damage.
- 2.06 The Contractor shall instruct the Operations Coordinator to use his or her best efforts to:
- a. Ensure that the Airport is continually in compliance with all regulations governing airport certification, operation and safety;
  - b. Ensure that all Airport operational and emergency procedures documents are maintained and up-to-date, and identify changes, as required, to ensure that all appropriate parties at the Airport are kept informed of changes and new operational and safety information;
  - c. Fulfill all administrative functions, including budget administration, compilation of records of landings, leases, taxes and monthly billings;
  - d. Maintain a current record of accounts receivable so that any arrears may be monitored and collected as required;
  - e. Allocate aircraft tie-down spaces and calculate, prepare and submit related billing reports to the Airport Manager;
  - f. Prepare and maintain all government reports and returns;
  - g. Accumulate and maintain accurate statistical data so that the City can continue to:
    - i. Plan the Airport’s development;
    - ii. Identifying opportunities for the Airport expansion; and
    - iii. Identify opportunities for the reduction, optimization or elimination of services or physical plant requirements.

- h. Track and maintain records of all private and commercial aircraft, whose owners utilize Airport services;
  - i. Liaise with response agencies for airport accidents and prepare and submit reports for final approval to the Airport Manager, or his designate;
  - j. Provide Airport visitors with Airport and community service information.
  - k. Provide Airport businesses and Airport customers with a link to City administration by delivering Airport administrative services and by acting as the liaison to the Airport Manager.
  - l. Liaise with community interest groups regarding Airport issues as required.
  - m. Collect and remit to the City as appropriate, all landing fees as prescribed by the City. The Contractor agrees to employ sufficient staff and take all reasonable steps concerning the diligent collection of such landing fees. The Operations Coordinator shall keep and maintain all appropriate financial and operating statements concerning the collection of landing fees.
- 2.07 The Operations Coordinator shall supervise the work of any plumber, electrician or other specialty tradesperson, administer the payment and inform the City's Airport Manager of the outcome. Emergency repairs or servicing shall be carried out by the Operations Coordinator, and the Airport Manager shall be informed of the outcome.

#### **Operation of Unicom Radio System**

- 2.08 The Contractor shall operate the existing Unicom Radio System at all times during the hours of fuel service operations. It shall provide such service in accordance with the instructions provided by the Airport Manager, and shall appropriately document and provide statistics of all landings to Statistics Canada and provide the City with copies of such statements.

#### **Service to Tenants**

- 2.09 The Contractor shall provide tenants with such services as are explicitly provided for in each tenant's lease.

#### **Compensation**

- 2.10 Provided the Contractor is not in breach of its obligations as contained herein:
- a. The City agrees to pay to the Contractor during the Term of this Agreement, a fee of THREE HUNDRED AND TWENTY-EIGHT THOUSAND, FOUR HUNDRED AND ONE DOLLARS (\$328,401.00 CAD.) CANADIAN, excluding GST, which shall be paid in monthly installments, not in advance, within thirty (30) days of receipt of the Contractor's itemized monthly invoice; and
  - b. In the event the City requires additional services, such additional services shall be billed on a time and materials basis and thereafter paid within (30) days of receipt of the Contractor's invoice.

#### **Vehicles, Equipment and Leases of Same**

- 2.11 The Contractor shall ensure that all vehicles used in relation to the provision of Services to the City are licensed, adequately maintained and insured and that all documentation concerning ownership, lease payments, maintenance records and any other matter relating to such vehicle is kept current and otherwise in compliance with applicable law.
- 2.12 If required, the Contractor may purchase or lease additional vehicles and equipment as are required for the safe and efficient operation of the Airport. The City covenants and agrees that upon the expiration of this Agreement and upon the request of the Contractor, it shall purchase or assume the lease for any additional vehicles or equipment acquired by the Contractor during the term of this Agreement for a minimum of such equipment or vehicles fair market value.

### **ARTICLE 3 – CONFIDENTIAL DATA**

- 3.01 Neither the Contractor, nor any member of its staff, either during the course of their services or after the completion thereof, shall divulge any Confidential Information communicated to, or acquired by them, in the course of providing its Services to the City, other than to an associated consultant or company in regard to the performance of this Agreement or unless such disclosure is required by law. For the purposes of this Article, "Confidential Information" shall not include any information in the public domain.

#### **ARTICLE 4 – STANDARD OF SERVICE TO BE PROVIDED TO THE CITY**

- 4.01 The Operations Coordinator shall be responsible for the day-to-day performance of the Contractor's staff during the term of this agreement.

#### **ARTICLE 5 – PURE ECONOMIC LOSS**

- 5.01 Notwithstanding anything to the contrary on this Agreement, the neither party shall be liable to the other for any indirect or consequential damages or damages for pure economic loss.

#### **ARTICLE 6 – RELATIONSHIP OF THE PARTIES**

- 6.01 It is acknowledged and agreed that nothing in this agreement creates the relationship of principal and agent, employer and employee, partnership or joint venture between the parties. The parties agree that they are and will at all times remain independent and are not and shall not represent themselves to be the agent, employee, partner of the other, or in joint venture with the other. No representations will be made or acts taken by either party which could establish any apparent relationship of agency, employment, partnership or joint venture and no party shall be bound in any manner whatsoever by any licenses, warranties or representations made by the other party to any other person nor with respect to any other action of the other party.

#### **ARTICLE 7 – APPLICABILITY OF PREVIOUS AGREEMENTS**

- 7.01 The parties acknowledge and agree that the agreement, dated 10 January 2008 and any other agreements, whether written or oral, between the parties is terminated upon execution of this Agreement by all parties.

#### **ARTICLE 8 – CITY'S RIGHTS AND RESPONSIBILITIES**

- 8.01 The City acknowledges that it will continue to be responsible for all utility charges and other reasonable expenses associated with to the Services being provided by the Contractor with respect to the terminal building and the maintenance garage. In addition, the City shall be responsible for the cost of any necessary maintenance to the terminal building or the maintenance garage which is not specified in Article 2 above, as being part of the maintenance to be performed by the Contractor pursuant to this Agreement.
- 8.02 The City shall manage the development and marketing of the Airport (including but not limited to the continued creation of serviced industrial lots, recreational taxi-ways, placing clean fill at the Airport and negotiating leases with the Airport's tenants).

#### **ARTICLE 9 – CITY CONTACT**

- 9.01 For the purposes of obtaining day-to-day direction concerning this Agreement, the Operations Coordinator shall work under the supervision of the Airport Manager, or designate, but shall at all times remain an employee of and responsible to the Contractor.

#### **ARTICLE 10 – CONFLICT OF INTEREST**

- 10.01 The Contractor shall use its best efforts to ensure that it does not undertake any work outside of this Agreement which could reasonably be considered to create a conflict with its duties under this Agreement without first obtaining the written consent of the City.

#### **ARTICLE 11 – INDEMNIFICATION OF THE CONTRACTOR**

- 11.01 The City covenants and agrees to fully indemnify and save harmless the Contractor, its officers, directors and employees (including legal costs on a full indemnity basis) in respect of;
- a. any liabilities, claims, causes of action or law suits brought by any third party arising from the provision of Services under this Agreement or any repair or maintenance activities carried out by the Contractor or its employees at the Airport pursuant to this Agreement; or
  - b. any liabilities, claims or law suits brought by any of the Contractor's employees arising from death or injuries suffered during the provision of the Services at the Airport pursuant to this Agreement (unless the employee is otherwise covered by WSIB); or
  - c. any employment related claims including claims related to the termination of any of the Contractor's employees, including, without limiting the foregoing, all claims or complaints arising by Statute or common law and including any claims under the *Human Rights Code*, R.S.O. 1990, Chap. H.19 the *Workplace Safety and Insurance Act*, the *Occupational Health and Safety Act* and the *Employment Standards Act, 2000*, S.O. 2000 Chap. 41.

#### **ARTICLE 12 – INSURANCE**

- 12.01 During the term of this Agreement and any renewal thereof, the City agrees to name and maintain the Contractor as an additional named Insured party on the City's comprehensive property and liability insurance policy to ensure that the Contractor is protected and adequately insured against public liability claims and any and all property claims which may be brought against it, its officers, directors or any employees during the term or any Renewal of this Agreement. The City shall, upon request, provide particulars of its insurance to the Contractor and proof satisfactory to the Contractor that it has fulfilled its obligations under this Article. The City confirms that it will continue to maintain adequate liability insurance in respect of all activities carried out at the Airport.
- 12.02 The Contractor shall obtain and maintain in full force and effect during the term of this Agreement public liability and property damage insurance in the minimum amount of \$2,000,000.00 (TWO MILLION DOLLARS). The insurance shall contain a cross-liability provision, and add "The Corporation of the City of Peterborough" as an additional named insured party. The Contractor shall, upon request, provide particulars of its insurance to the City. The City confirms that it will continue to carry liability insurance in respect of the Airport.

#### **ARTICLE 13 – WORKER'S COMPENSATION/EMPLOYMENT STANDARDS**

- 13.01 It is the sole responsibility of the Contractor to provide appropriate Workers Compensation and all other employment standard benefits required by law to its employees.

#### **ARTICLE 14 – ARBITRATION/DISPUTES**

- 14.01 The parties hereby undertake to use their best efforts to resolve in an amicable and expeditious manner any dispute or difference that may arise between them under this Agreement.
- 14.02 Any dispute or difference between the parties with respect to the validity, construction, meaning, performance or effect of this Agreement or the rights and liabilities of the parties hereto or any matter arising out of or connected with this

Agreement which has not been resolved in the manner described in Article 14.01 above may then be referred to an arbitration tribunal for an award and determination by written submission signed by the parties to the dispute. The costs of the arbitration shall be in the discretion of the arbitration tribunal.

14.03 The parties agree that the award and determination of the arbitration tribunal shall be final and binding on both parties and shall not be subject to appeal.

14.04 The arbitration shall be governed by the Arbitrations Act (Ontario).

14.05 The arbitration tribunal shall:

- a. consist of three arbitrators, one appointed by each of the parties to the dispute and the third appointed by the first two arbitrators if the parties do not agree on the third arbitrator within 30 days of the second arbitrator being appointed; and
- b. decide the dispute or difference in accordance with the laws in force in the Province of Ontario. Notwithstanding the foregoing any arbitration under this Article 14 may be carried out by a single arbitrator if the parties so agree, in which event the provisions of this Article shall apply mutatis mutandis.
- c. The proceedings shall take place in the City of Peterborough, Province of Ontario, unless the parties agree otherwise.

14.06 Submission to arbitration pursuant to the provisions of this Article shall be a condition precedent to the bringing of any other form of proceeding with respect to this Agreement.

14.07 All documents, reports, exhibits and information disclosed by either party and its experts in the arbitration shall be treated by the other party and the arbitration tribunal as confidential, except to the extent required to be disclosed by law, and shall not be used for any purpose other than the arbitration. The arbitration award and the reasons therefore shall be treated by both parties and the arbitration tribunal as confidential and shall not be used for any purpose other than the arbitration or a proceeding of a kind described in Article 14.06.

14.08 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 Services or in the business or other affairs of either the City or the Contractor.

## **ARTICLE 15 – NOTICES**

15.01 Any notice as provided for under this Agreement may be served or given by one party to the other by serving the notice personally, mailing it by prepaid registered mail, or sending it by facsimile transmission to the following addresses:

**a. The Contractor:**

Barry Electrical Contractors Ltd.  
925 Airport Road  
R.R. #5, Peterborough Airport  
Peterborough, ON K9J 6X6

Fax No.: 705.743.4219          Attention: Operations Coordinator

**b. The City:**

The Corporation of the City of Peterborough  
500 George Street North  
Peterborough, ON K9H 3R9  
Attention: City Clerk

Fax No.: 705.742.4138          Attention: City Clerk

Any notice shall be deemed to have been given on the fourth (4<sup>th</sup>) calendar day after the date of mailing, or in the event of a disruption of mail service, on the date of actual personal service of the said notice. Any notices delivered by facsimile transmission, shall be deemed to have been given on the first (1<sup>st</sup>) business day following the date the transmission was successfully completed.

#### **ARTICLE 16 – PERFORMANCE OBLIGATIONS**

- 16.01 The City shall notify the Contractor, in writing whenever it has any concerns or requests regarding the provision of Services under this Agreement. The Contractor shall respond in writing to such concerns or requests within five (5) days of receipt of the same and shall undertake to immediately or within a reasonable period of time, implement any requested changes requested by the City provided that the same improves or maintains the safety or security of the Airport and protects and maintains the safety of any employees, visitors, contractors or invitees of the Airport.
- 16.02 The City shall have the right to terminate this Agreement if, the City, acting reasonably, is of the view that the Contractor is in substantial breach of Article 16.01 above and notwithstanding Article 17, the City shall, if it is alleging a breach of Article 16.01, first provide the Contractor with written notice of the said non-performance and shall grant to the Contractor a period of five (5) days within which to remedy the poor or defective performance. Failing satisfactory rectification of a breach of Article 16.01 within five (5) days and notwithstanding any other Article of this agreement, the City may, without penalty, terminate the contract on the sixth (6<sup>th</sup>) day following the date written notice was given.

#### **ARTICLE 17 – CITY’S RIGHT TO TERMINATE CONTRACT**

17.01 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; or
- b. The Contractor refuses or fails to supply sufficient properly skilled employees or proper materials at all times to perform the Services 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 Services or the conduct of the Contractor's business at the Airport; or
- c. The Contractor fails to institute appropriate corrective action forthwith after verbal notification by the City (which shall be confirmed subsequently in writing) of any failure on the part of the Contractor to comply with the terms and specifications of this Agreement notwithstanding that such failure is the result of any cause beyond the Contractor's control;

then the City shall have the right to terminate the Agreement forthwith and without penalty, upon written notice to the Contractor.

17.02 Either party may terminate this Agreement for any reason without penalty by giving the other party ninety (90) days written notice of its intent to terminate.

17.03 Forthwith, upon the termination of this Agreement, for any reason, the following steps shall be taken by each party:

- a. All collections or unfulfilled orders shall be appropriately adjusted by both parties and all steps shall be taken by both parties to perform all unfiled orders and collect all outstanding accounts.



## **Schedule "A"**

- 1.0 Provided his employees are qualified to do so, the Contractor agrees to provide the materials, labour and equipment, where in the sole opinion of the Contractor, the work does not require the professional services of a third party for:
- a. Tree cutting; and
  - b. Repairing cracks in the runway or any other paved surface used by aircraft movement or storage.

### **Snow Clearing and De-Icing:**

- 2.0 The Contractor shall supply all required snow removal and de-icing services during normal operating hours and when required by after-hour commercial aviation movements or emergency situations.
- 2.1 The City shall provide funding for the annual purchase of de-icing chemicals and engineered sand and the Contractor shall take commercially prudent measures to store de-icing chemicals, engineered sand, urea and other compounds and products used for snow clearing and de-icing.

### **Provision of Vehicles and Equipment:**

- 3.0 The Contractor may lease and utilize existing vehicles and equipment owned by the City or its own equipment and vehicles as required to operate and maintain the Airport in accordance with the terms and conditions of this Agreement.

### **Maintenance of City-Owned Equipment & Facilities:**

- 4.0 The Contractor shall provide basic maintenance to all City owned navigational equipment including the:
- a. Windsocks;
  - b. Runway lighting system;
  - c. Runway identification lights;
  - d. Precision Approach Path Indicators; and
  - e. Airport Rotating Beacon.

Such maintenance shall include changing light bulbs, checking circuits and conducting other basic daily routines. The Contractor shall not provide technical services or repair services normally provided by a technical tradesperson.

- 4.1 The Contractor shall provide the maintenance for all Airport Fencing and seasonal line-painting services as required to maintain the operational safety of the Airport.

### **Environmental Services:**

- 5.0 The Contractor shall immediately notify the Peterborough Fire Department (the "PFD") and any other required emergency or government regulatory and response agencies of any fuel spill, any other hazardous material spills or escapes. The Contractor shall be responsible for securing the Airport and ensuring that the emergency personnel can access the Airport and the spill site.
- 5.1 Provided the Contractor, in its sole and unfettered discretion is of the view that it is safe and it has properly qualified and trained employees to do so, it may contain, clean-up and remediate minor hazardous material spills at the Contractor's discretion. Having undertaken any such work, the Contractor shall inform the Airport Manager of the outcome and shall have the PFD assess the containment, clean-up and remediation under-taken by the Contractor.

### **Wildlife Control**

- 6.0 As required, the Contractor shall develop and employ procedures to reduce and mitigate the frequency of bird and deer strikes with aircraft. Such procedures shall include:
- a. Grass cutting;

- b. Water-ponding control through grading;
- c. Eliminating wildlife food sources;
- d. Bird scaring and as required;
- e. As permitted, the destruction of wildlife;
- f. Installation and maintenance of appropriate fencing; and
- g. Such other procedures as the Airport Manager may, from time to time, permit or reasonably require.

**Ground Site Maintenance:**

7.0 The ground site maintenance provided by the Contractor shall include:

- a. Maintaining the gravel access roads and associated dust control;
- b. Regular clean out of Airport ditches;
- c. Maintenance of, the renewal of, and the labour associated with the installation of Airport signage;
- d. Grass cutting, grass seeding, fertilizer and topsoil application;
- e. Pest and weed control; and
- f. Such other ground maintenance as the Airport Manager, from time to time, reasonably require.

**Terminal Building Maintenance:**

8.0 The Contractor shall:

- a. Provide or obtain janitorial and basic maintenance services for the entire Terminal Building, save and except those areas that may be occupied by tenants who have contracted for the provision of such services from a third party;
- b. Ensure that the Contractor's janitorial services at the Terminal includes a minimum of two (2) inspections per day. The Contractor shall also provide or obtain professional pest-control services as required;
- c. Ensure that the janitorial service is provided with all materials associated with the maintenance and provision of janitorial services for the Terminal Building;
- d. Inspect or arrange to have inspected all fire protection equipment on a monthly basis. The Contractor shall be responsible for arranging and paying for any necessary re-charging services associated with the fire extinguishers;
- e. Ensure that the fire alarm system is inspected by qualified personnel on a monthly basis, and shall also be responsible for arranging any repairs required to the fire alarm system.

**Exterior Walkways and Parking Lot - Terminal Building**

9.0 The Contractor shall maintain the walkways and parking lot in a condition that is as safe as can be reasonably expected for public use and access to the Terminal Building. In this regard, the Contractor shall be responsible for snow removal and keeping public walkways clear of obstructions such as water hoses, tools and other obstacles.

**Signs and Security – Terminal Building**

10.0 The Contractor shall be responsible for the maintenance and installation of proper and adequate signage through-out the Airport Terminal and grounds in order to restrict public movement into dangerous or restricted-access portions of the Airport. The Contractor shall also be responsible for all other public service signage including, but not limited to, directional signage, handicapped access

signage, "No Smoking" signage and signage concerning other services available at the Airport.

- 10.1 The Operations Coordinator shall assist the Airport Manager to prepare an annual report.

**Maintenance Garage:**

- 11.0 The Contractor shall be permitted to share the use of the Maintenance Garage owned by the City, provided that such use is, in the reasonable opinion of the Airport Manager, solely for the provision of its services to the City under this Agreement.
- 11.1 The Contractor shall keep the Maintenance Garage at a standard appropriate for its own use and provide such basic janitorial services as required.