

**THE CORPORATION OF THE MUNICIPALITY OF SOUTH DUNDAS**

**BY-LAW NO. 2021-16**

**A By-law to execute an Agreement with HGC Management Inc. for the collection and disposal of curbside recycling and garbage.**

**WHEREAS** the *Municipal Act, 2001*, as amended, provides that the powers of the Municipality shall be exercised by By-law;

**AND WHEREAS** the *Municipal Act, 2001*, as amended, authorizes a Municipality to pass by-laws respecting matters within the sphere of waste management;

**AND WHEREAS** the Council of the Municipality of South Dundas desires to enter into an Agreement with HGC Management Inc. for the collection and disposal of waste within the Municipality of South Dundas.

**NOW THEREFORE** the Council of the Corporation of the Municipality of South Dundas enacts as follows:

1. That an Agreement be executed with HGC Management Inc. in accordance with Schedule "A" attached to this By-law.
2. That the Mayor and Clerk are hereby authorized to execute all documents as required to effectively carry out this Agreement.

**READ** and passed in open Council, signed and sealed this 22<sup>nd</sup> day of February 2021.

  
\_\_\_\_\_  
**MAYOR**

  
\_\_\_\_\_  
**CLERK**

## CONTRACT AGREEMENT

This Agreement, made in triplicate on the 22 day of February in the year 2021.

BETWEEN:

The Municipality of South Dundas  
(hereinafter called the "Owner")

- and -

HGC Management Inc  
(hereinafter called the "Contractor")

WITNESSETH

That the Owner and Contractor in consideration of the fulfillment of their respective promise and obligations herein set forth covenant and agree with each other as follows:

### ARTICLE 1

a. A general but not necessarily complete description of the work is as follows:

Waste Management Collection Services:

The Contractor agrees to supply all expertise, labour, materials, equipment and certifications necessary to carry out and complete the following:

- The weekly collection of curbside recycling, with green box material collected one week and blue box material collected the opposite week. (alternating weekly collection)
  - The weekly collection of curbside garbage (excluding bulk items and white goods)
- b. The Contractor shall, for the prices set out in the Form of Proposal and except as otherwise specifically provided, supply at no additional cost to the Owner all and every kind of labour, machinery, plant, structures, materials, appliances, articles and things necessary for the performance of the work as set out in this Agreement and shall forthwith, and in accordance with the instructions of the Municipality of South Dundas, commence the work and shall deliver the work complete in every particular to the Owner within the time specified in this Agreement.

### ARTICLE 2

In the event that the Form of Proposal provides for a Contingency Allowance, it is understood and agreed that such Contingency Allowance is solely for the convenience of accounting by the Owner, and that the Contractor is not entitled to payment thereof except on account of extra work carried out by the Contractor as directed by the Engineer and only to the extent of such extra work.

### ARTICLE 3

In the event of any inconsistency or conflict in the contents of the following documents, such documents shall take precedence and govern in the following descending order:

1. This Agreement
2. Addenda, if any
3. Amendments to General Conditions
4. General Conditions outlined in RFP ES 20-04
5. Special Provisions
6. Form of Proposal

### ARTICLE 4

The Contractor shall not, without the consent in writing of the Municipality of South Dundas, and without restricting in any way the provisions of the Section of the General Conditions headed "Subletting", make any assignment of any part or the whole of any monies due or to become due under the provisions of this Agreement.

### ARTICLE 5

The Owner covenants with the Contractor that the Contractor, having in all respects complied with the provisions of this Agreement, will be paid for and in respect of the work the sum of Six hundred and thirty seven thousand dollars and zero cents/100 Dollars (\$637,000.00) plus HST in May 2021-May 2022 subject to year over year CPI increases as outlined in the proposal, Article 2 hereof and subject to such additions and deductions as may properly be made under the terms hereof. The Owner may make payment of the above sum by way of monthly installments or as otherwise permitted by the General Conditions attached hereto.

### ARTICLE 6

Where any notice, direction or other communication is required to be or may be given or made by one of the parties hereto to the other, such notice shall be deemed sufficiently given or made if mailed or delivered in writing to such party at the following addresses:

The Owner:                      The Municipality of South Dundas  
34 Ottawa Street P.O. Box 740  
Morrisburg, ON K0C 1X0

The Contractor:                HGC Management Inc  
50 Shaver Street  
Brantford, ON N3T 5M1

## **ARTICLE 7**

A copy of each of the Specifications, General Conditions, Special Provisions, Form of Proposal, and general conditions in ES 20-04 is/are hereto annexed and listed in the Specifications made part of this Agreement as fully to all intents and purposes as though recited in full herein.

## **ARTICLE 8**

No contract of any kind by or on behalf of the Owner shall arise, be implied by or inferred from anything contained in this Agreement, nor from any position or situation of the parties at any time, it being understood and acknowledged that the express covenants and agreements herein contained made by the Owner shall be the only covenants and agreements upon which any rights against the Owner may be founded.

## **ARTICLE 9**

Time shall be of the essence of this Agreement.

## **ARTICLE 10**

The Contractor declares that by submitting a proposal for the work and by entering into this Agreement, it has either investigated the character of the work and all local conditions that might affect its tender, acceptance or performance of the work, or that not having so investigated, it acknowledges that its responsibility under this Agreement is in no way reduced or limited thereby. The Contractor further agrees to assume and does hereby assume all risk of conditions arising, developing, or being revealed in the course of the work which might or could make the work, or any part thereof, more expensive to complete, or more onerous to fulfill, than was contemplated or known when the tender was made or this Agreement signed. The Contractor further declares that it did not and does not rely upon information furnished by any methods whatsoever by the Owner or its officers, employees or agents, being aware that any such information was and is approximate and speculative only and was not in any manner warranted or guaranteed by the Owner.



## **ARTICLE 11**

The Contractor shall also ensure that all work is done in compliance with the requirements of each federal, provincial, municipal and other government and each governmental and regulatory authority having jurisdiction over the work and/or the Contractor (collectively, the "Regulatory Authorities") and with all laws, regulations, rules, by-laws, codes, standards, directives, and policies of every nature and kind whatsoever of all Regulatory Authorities (collectively, the "Laws") applicable to the work and/or the Contractor. The Contractor shall, at its own expense, obtain and maintain in good standing all permits and licenses required by the Regulatory Authorities. If the Contractor performs any work contrary to any applicable Laws, then the Contractor shall bear all costs related to that contravention and its correction.

## **ARTICLE 12**

In the event that the performance of the Contractor is not satisfactory, as determined by the Owner in its sole and absolute discretion, then the Owner shall serve written notice upon the Contractor setting out the details of non-performance and will give the Contractor ten (10) calendar days to rectify that non-performance. If the Contractor does not take the required corrective action, this Agreement may be terminated immediately by the Owner without further recourse by the Contractor against the Owner. The Owner may then procure the necessary equipment and services to complete the work, the cost of which shall be deducted from any monies owed to the Contractor. If the expense of completing the work exceeds the unpaid balance of the Agreement price, then the Contractor shall pay the difference to the Owner forthwith on demand.

## **ARTICLE 13**

Prior to the commencement of any work, the Contractor shall obtain and maintain until the termination of this Agreement or otherwise stated, the required insurance coverage as outlined and set out in the Tender Documents, which coverage may include, but is not limited to, commercial general liability, automobile liability, professional liability, and environmental liability insurance. The Contractor shall provide evidence of the foregoing insurance to the Owner upon demand.

## ARTICLE 14

Notwithstanding anything to the contrary contained in this Agreement, the parties shall not be liable for any failure or delay in fulfilling or performing any of their obligations under this Agreement when such performance is prevented or delayed by any cause or condition beyond the reasonable control of the affected party, including without limitation:

- (i) acts of God or natural disasters such as but not limited to fire, explosion, earthquake, volcanic activity, blizzard, epidemic, violent storm, flood or drought;
- (ii) war, act of terrorism, insurrection, rebellion, riot, civil commotion or disorder, strike, lockout or other labour disturbance;
- (iii) act, omission or delays in acting by governmental authority, compliance with any law or government order, rule, regulation or direction, curfew restriction or lockdown, or expropriation; and
- (iv) prolonged breakdown or shortage of transport, telecommunication or electricity (each an "Event of Force Majeure").

A party affected by an Event of Force Majeure shall forthwith notify the other party within seven (7) calendar days of the existence or occurrence of the Event of Force Majeure and shall use commercially reasonable best efforts to avoid, mitigate or remove such Event of Force Majeure and the causes of non-performance or any damage resulting therefrom.

## ARTICLE 16

The contractor shall keep the work site (curbside collection zones) clean and tidy and free of debris and waste materials, failing which the Contractor will be charged a clean-up fee of double to cost of such clean-up to the Owner. The Owner has the right to direct the Contractor with respect to its clean-up activities.

The Contractor shall be responsible for reinstatement of all disturbed areas. The Contractor shall also be responsible for any and all costs associated with the release of hazardous materials caused by or resulting from the acts or omissions of the Contractor or its agents. Those costs include, without limitation, emergency response, investigation, containment, remediation, removal and disposal of hazardous materials in surface and ground water, land surface, subsurface strata, buildings, structures or improvements on the work site or on neighboring properties that originated from a release on the work site.



**ARTICLE 17**


The Contractor agrees to indemnify, hold harmless, and defend the Owner and their respective directors, officers, employees and agents, as applicable (collectively, the "Indemnified Parties"), from and against all claims, demands, losses, costs, damages, actions, suits or proceedings (collectively, the "Liabilities") as a result of (i) accidents or injuries (including death) to persons or property occasioned by acts or omissions of the Contractor or its agents and accidents or injuries (including death) to the Contractor, its agents or their property, whether or not insured and where or not jointly caused by any third party, (ii) violations by the Contractor or its agents of any applicable laws, (iii) any release of hazardous materials caused by or resulting from the acts or omissions of the Contractor or its agents, (iv) any claim, lien or trust claim pursuant to the *Construction Act*, including without limitation, the cost of removing any claim for lien from the title to the work site, and (v) any breach of this Agreement by the Contractor. If any claim or demand is made against the Indemnified Parties on account of any such Liabilities, the Owner may deduct the amount of such Liabilities (and related legal fees) from monies owing to the Contractor.

**ARTICLE 18**

This Agreement shall enure to the benefit of and be binding on the parties hereto and their respective successors, administrators, executors and assigns.

IN WITNESS THEREOF the parties hereto have hereunto set their hands and seals the day and year first above written or caused their corporate seals to be affixed, attested by the signature of their proper officers, duly authorized, as the case may be.

**The Municipality of South Dundas**

Per:   
Mayor - Steven Bywelds

Per:   
Clerk - Brenda Brunt (Seal)

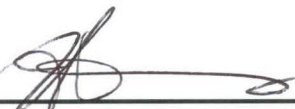
\_\_\_\_\_  
\*Witness as to Signature of Contractor

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Occupation \_\_\_\_\_

\* Not necessary if corporate seal is affixed.

**Contractor**

Per:   
H-LAMBACHER, PRESIDENT

Per: \_\_\_\_\_

(Seal)