



Regular Council Meeting

To:	Mayor and Council
Date:	July 6, 2020
From:	Wayne Hancock, Director of Public Works
Report Number:	Public Works 2020-15
Subject:	Contract Extension – Wither's Waste Management

Recommendation:

That Council approve the extension of the Curbside Solid Waste Collection contract with 2337700 Ontario Ltd., o/a Wither's Waste Management for an additional two (2) years as per the original tender for the annual amount of \$201,102.84 plus H.S.T. in the amount of \$26,143.36 for the total amount of \$227,246.20. This total tender amount with the H.S.T. rebate will be \$204, 642.25.

Overview:

In Report-Public Works-2017-13 - T-PW-17-04 Curbside Solid Waste Collection, presented at the June 19, 2017 Regular Council Meeting, Council approved 2337700 Ontario Ltd., o/a Withers Waste Management as the curbside solid waste collection contractor for a period of three years and this tender allowed for two-one-year extensions of this contract. The recommendation before Council is in accordance to the Purchasing of Goods and Services By-law No. 2020-22 section 7.2. Staff have contacted the Contractor and they are willing to continue with this contract as per the tender and associated costs (Attachment Schedule A). As noted, the tender price remains the same for this extension and the contract includes curbside collection of household garbage and organic waste, leaf & year waste in Cavan ward, and bin lifts at the Township Transfer Station. The number of collection stops has increased due to growth specifically in the Millbrook area, and this will be reflected on billings which are summarized by cost per stop.

The three-year contract is complete as of August 2020. In view of the issues around the pandemic and the changes that may be forthcoming, Staff felt it was important to extend the present contract for the two years which should provide more stable times for everyone. If approved, this extension will commence on August 6, 2020 and end on August 6, 2022.

On August 4th, 2020 Staff will be bringing forward a separate detailed report on the Pilot Organic Waste Project, which was reported on August 6, 2019. This report will outline participation, tonnage diverted and costs associated with the pilot program.

The recommended extension to the contract with Wither's for regular garbage collection has no impact on the kitchen waste collection as it is covered under a separate agreement with Withers.

Financial Impact:

In the 2020 budget, the Township included the amount of \$ 156,000.00 for curbside collection, the amount of \$ 8,100.00 for leaf and yard waste collection, and the amount of \$ 20,000.00 for Transfer Station bin pick up. Any increase in the number of stops due to growth, particularly in the Millbrook area, are billed individually and projected to be covered by the overall budget. The approved budget for 2020 amount is \$ 184,100.00. It is expected that the approved budgeted amount will come under the original tender amount. This has been the case over the past three years and the cost savings reflect the cost savings seen through waste management initiatives and the increase revenues received at the Transfer Station.

Attachment:

1. By-law No. 2020-35 being a by-law to extend the waste management agreement between the Township of Cavan Monaghan and 2337700 Ontario Ltd. for curbside collection and disposal services.

Respectfully Submitted by,

Reviewed by,

Wayne Hancock
Director of Public Works

Yvette Hurley
Chief Administrative Officer

The Township of Cavan Monaghan

By-law No. 2020-35

Being a by-law to execute a Waste Management Agreement between the Township of Cavan Monaghan and 2337700 Ontario Ltd., o/a Withers Waste Management, for the curbside collection and disposal services.

Whereas the Municipal Act, 2001, S.O. c.25, s.11(3) as amended, provides that a lower tier and upper tier municipality may pass a by-law authorizing the approval of by-laws regarding matters within the spheres of jurisdiction;

And Whereas the Township of Cavan Monaghan deems it desirable to enter into and execute an Agreement with 2337700 Ontario Ltd., o/a Withers Waste Management, for curbside collection and disposal of waste and yard waste from the Millbrook, Cavan, and North Monaghan Wards and execute an Agreement with 2337700 Ontario Ltd., o/a Withers Waste Management, for the transportation of household (domestic) waste from the Township of Cavan Monaghan Transfer Station;

Now Therefore the Council of the Township of Cavan Monaghan hereby enacts as follows:

1. That the Mayor and Clerk are hereby authorized and directed to execute the Agreement with Withers Waste Management.
2. That the Agreement is attached as Schedule 'A' to this By-law.

Read a first, second and third time and finally passed this 6th of July, 2020.

Scott McFadden
Mayor

Elana Arthurs
Clerk

This Agreement made the 6th day of July, 2020

Between:

The Township of Cavan Monaghan

And

**2337700 Ontario Ltd.
Operating as Withers Waste Management**

Cavan Monaghan owns and operates a municipal waste transfer station within its municipal boundaries (hereinafter called “the transfer station”);

Cavan Monaghan wishes to enter into a contract for the collection and transportation of household domestic waste from properties (“curbside collection”) within the Millbrook, Cavan, and North Monaghan Wards of the Township;

Withers carries on the business of waste collection and transportation and was awarded the contract to conduct curbside collection within the Millbrook, Cavan, and North Monaghan Wards of the Township;

Cavan Monaghan has jurisdiction over waste management and collection pursuant to Section 11 of the Municipal Act, 2001;

In consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt whereof is hereby acknowledged, the parties agree as follows:

1. Term

1.1. This Agreement shall be for a period commencing on the 6th day of August, 2020 and ending on the 6th day of August, 2022.

1.2. This Agreement may be terminated by either party, without penalty, upon giving notice a minimum of 90 days prior to the proposed date of termination.

2. Services

Withers

2.1. Withers shall collect household (domestic) waste from the properties (“curbside collection”) in the Millbrook, Cavan, and North Monaghan Wards once every week for the term of the agreement.

2.2. Withers shall transport the household (domestic) waste to the Bensfort Landfill Site.

2.3. Withers shall maintain a system of identifying all loads referenced delivered to the Bensfort Landfill Site.

2.4. Withers shall transport the leaf and yard waste (Cavan Ward) to the Woodleigh Farms locate within the Township.

2.5. Withers shall supply and maintain all equipment for curbside collection and disposal to the satisfaction of the Township of Cavan Monaghan.

2.6. Withers shall provide a schedule of collection routes to the Township of Cavan Monaghan for publication. Changes to the curbside collection schedule and routes shall only be made by Withers upon providing 30 days written notice to the Township of Cavan Monaghan.

2.7. Withers shall not mix any waste from any source with waste collected under the terms of this agreement.

3. Ownership and Liability of the Waste

3.1. Upon the commencement by Withers of curbside collection, Withers shall assume full ownership, responsibility and liability for all waste collected and transported to the Bensfort Landfill Site.

3.2. Withers agrees to accept all waste materials, under this Agreement, in an "as is, no warranty" condition.

4. Authorizations and Obligations

Withers

4.1. Withers warrants, and it's a condition precedent to the obligations of the Township of Cavan Monaghan under this Agreement, that it has all authorizations, including any required permits and certificates, to collect, transport and process the recyclable materials obtained at the landfill site and shall provide copies of all permits and certificates.

4.2. Withers officers, employees or agents shall at all times comply with the provisions of the Occupational Health and Safety Act, R.S.O. 1990, c O.1 and regulations as may be amended from time to time, and take every precaution reasonable in the circumstances for the protection of workers.

4.3. At any time during the term of this Agreement Withers shall provide annually at its own expense, proper evidence of compliance with the Workplace Safety and Insurance Act, 1997, S.O. 1997, c 16 Sch. A (including payments thereunder) by Withers or any subsidiary corporation.

Township of Cavan Monaghan

4.4. Township of Cavan Monaghan has jurisdiction to authorize the curbside collection of household domestic waste and has the authority to direct Withers to deliver waste to the Bensfort Landfill Site.

5. Administration and Payment for Services

5.1. Township of Cavan Monaghan agrees to pay Withers in accordance with Schedule 'A', in compliance with the provisions of section 5.2.

5.2. Withers shall submit invoices for services rendered in connection with curbside collection and transportation to and from the transfer station on a bi-weekly.

5.3. Township of Cavan Monaghan shall pay the full amount of invoices within 30 days of receipt.

5.4. Withers shall submit receipts to Township of Cavan Monaghan on a bi-weekly basis, from the Bensfort Landfill Site confirming the delivery of each load of household (domestic) waste.

6. Indemnity

6.1. Withers shall indemnify and hold harmless the Township of Cavan Monaghan, its officers, employees and agents from and against any and all claims, fines, penalties, liabilities, damages, losses and judgements, including costs and expenses against, or be charged to or recoverable from the Township of Cavan Monaghan for any reason arising directly or indirectly out of the entering into of this agreement, or in any way connected with, the furnishing of the services under this Agreement except to the extent they are due to the negligence, fault, or willful act of the Township of Cavan Monaghan or any of its officers, employees or agents.

6.2. Without limiting the generality of paragraph 6.1, Withers shall indemnify and hold harmless the Township of Cavan Monaghan, its officers, employees and agents from and against any and all claims, fines, penalties, liabilities, damages, losses and judgement, including costs and expenses against, or be charged to or recoverable from the Township of Cavan Monaghan for any reason arising out of any injury sustained by Withers' employees while conducting curbside collection or transporting waste to the Bensfort Landfill Site except to the extent that they are due to the negligence, fault, or willful act of Township of Cavan Monaghan or any of its officers, employees or agents.

7. Insurance

7.1. Withers shall lodge with the Township of Cavan Monaghan, confirmation of Public Liability and Property Insurance Damage, insuring for the joint benefit of Withers and the Township of Cavan Monaghan, against any liability that may arise out of any work to be performed pursuant to this Agreement.

7.2. Such policy shall carry limits of liability in the amount to be specified by the Municipality, but in the event shall it be less than \$5,000,000.00 inclusive comprehensive general liability and such policy shall:

1. Contain a cross-liability clause;
2. Include the following names as insureds:
The Township of Cavan Monaghan
3. Contain a provision that the insurance Withers agrees to notify the Township of Cavan Monaghan 15 days prior to any cancellation or expiry of the said insurance policy.

7.3. Any certificate of coverage filed with the Township of Cavan Monaghan shall specifically contain confirmation that the coverage as specified in paragraph 7.2 above is in effect.

7.4. Withers shall, from time to time as required by the Township of Cavan Monaghan provide confirmation that all premiums on such policy or policies of insurance have been paid, and that the insurance is in full force and effect. Withers shall file a copy of the policy with the Municipality.

7.5. The issuance of such policy of insurance shall not be constructed as relieving the Withers form responsibility for other or larger claims, if any, and for which it may be help responsible.

7.6. Withers shall bear the risk and responsibility of any loss, damage or expense to the services provided hereunder or to itself of any nature and kind whatsoever arising from strikes or labour disputes.

8. Deficient Work

8.1. If any services, equipment, materials or workmanship furnished by Withers is defective or any aspect of performance of service is deficient the Township of Cavan Monaghan may in its sole discretion, in writing.

1. Require Withers promptly to remedy the defect or deficiency;
2. Suspend or terminate all or any part of the services effective upon the giving of the notice; or
3. Do both of the foregoing.

8.2. Costs to remedy such defects or deficiencies and any additional costs resulting there from shall be at Withers expense.

9. Suspension and Termination

9.1. The Township of Cavan Monaghan may, at any time, suspend or terminate any part of the service, including all remaining work for any justifiable reason whatsoever effective immediately upon notice to Withers. Withers shall continue to execute any part of the service not suspended or terminated.

9.2. In the event of termination, except for suspension, pursuant to Section 8 Deficient Work, Withers is entitled to full payment for the part of the service provided by it up to the effective date of such termination.

9.3. The Township shall not be liable to Withers for the loss of anticipated profit on the terminated portion or portions of the service.

9.4. If either party is in default of any of its obligations under this Agreement and fails to correct or commence and diligently pursue correction of such default within ten (10) days after having received notice thereof the non-defaulting party shall, in addition to any other rights which it may have at law or equity with respect or such default, be entitled to terminate this Agreement without further notice.

10. Assignment

10.1. Withers may not assign any of its rights or obligations under this Agreement without the prior written consent of the Township of Cavan Monaghan.

11. Entire Agreement

11.1. This Agreement constitutes the entire Agreement between Withers and the Township of Cavan Monaghan with respect to the subject matter hereof. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, expressed, implied or statutory, between the parties other than expressly set forth in the Agreement.

12. Amendments and Waivers

12.1. No amendment to the Agreement will be valid or binding unless it is in writing and duly executed by the parties hereto. No waiver of any breach of any provision of this Agreement will be effective or binding unless it is in writing and signed by the party purporting to give such waiver and, unless otherwise provided, will be limited to the specific breach waived.

13. Further Assurances

13.1. The parties will, from time to time, execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonable require to effectively carry out the provisions of the Agreement.

14. Governing Law

14.1. This Agreement is governed by and will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

15. Notices

15.1. Any notice or other communication which may be given by either of the parties to the Agreement to the other shall be deemed to have been given and received three (3) business days after such notice or communication is mailed by registered addressed in the in the case of:

Withers, to it at; P.O. Box 1667, Peterborough, ON K9J 7S4

Township of Cavan Monaghan, to it at; Municipal Office,
988 County Rd 10
Millbrook, ON L0A 1G0

15.2. The parties may change the above addresses by notice in writing in the manner hereinbefore provided. Any notice or other communication may also be given by delivery at the above addresses and shall be deemed to have been given and received at the time or such delivery.

In Witness Whereof each of the parties has duly executed this Agreement under the hands of its authorized signing officers.

Dated at _____ this ____ of _____, 2020.

2337700 Ontario Ltd. o/a
Withers Waste Management

Dated at _____ this ____ of _____, 2020.

Scott McFadden
Mayor

Elana Arthurs
Clerk

1. For Residential Pickup - 2 bags maximum per household

Item	Estimated Number of Stops	Estimated Route Distance (Total)	Unit Price per Stop	Number of Collections per year	Total Annual Cost (Excluding HST)
Millbrook Ward	580	17 km	\$1.25	52	\$37,700.00
North Monaghan Ward	380	65 km	\$1.31	52	\$25,885.60
Cavan Ward	1350	335 km	\$1.12	52	\$80,371.20

2. For Commercial/Business Pickup – 4 bags maximum per business

Item	Estimated Number of Stops	Estimated Route Distance (Total)	Unit Price per Stop	Number of Collections per year	Total Annual Cost (Excluding HST)
Millbrook Ward	43	17 km	\$1.39	52	\$3,108.04
North Monaghan Ward	56	65 km	\$1.50	52	\$4,368.00

3. For Collection of Leaf and Yard Waste 6 times per year in Cavan Ward only (2 weeks in spring and 4 weeks in fall with dates to be established each year)

Item	Estimated Number of Stops	Estimated Route Distance (Total)	Unit Price per Stop	Number of Collections per year	Total Annual Cost (Excluding HST)
Cavan Ward	1350	100 km	\$1.00	6	\$8,100.00

4. For Bins at Transfer Station

Size of Bin	Number of Bins Required	Price per lift and haul 40km total trip distance (2 pickups/week)	Total Annual Cost (Excluding HST)
40 Yard	8	\$100.00	\$41,600.00

Total Annual Cost for Services: Items 1-4

	Subtotal Cost	HST	Total Annual Cost
Year 1	\$201,102.84	\$26,143.36	227,246.20
Year 2	\$201,102.84	\$26,143.36	227,246.20
Year 3	\$201,102.84	\$26,143.36	227,246.20
Year 4*	\$201,102.84	\$26,143.36	227,246.20
Year 5*	\$201,102.84	\$26,143.36	227,246.20

* This is a provisional item in the event that the contract is extended for up to two (2) years subject to Township approval. Year 4 and 5 pricing must be honoured by the contractor at the completion of the first three years, failure to honour the pricing provided herein, upon the request of the Township, will constitute an incomplete contract and result in all or a portion of the Tender Deposit to be surrendered to the Township. The deposit amount surrendered will equal any amounts paid by the Township to have the services continued for years 4 and 5 above the costs provided herein for years 4 and 5.

Subtotal Cost for Years 1-3: \$603,308.52

HST for Years 1-3: \$78,430.10

Total Cost for Years 1-3: \$681,738.62