



**STAFF REPORT
ACTION REQUIRED**
with Confidential Attachment

**CONFORMITY WITH THE CONDITIONS OF CLOSING
FOR THE PURCHASE OF THE GREEN LANE LANDFILL**

Date:	March 26, 2007
To:	City Council
From:	Acting General Manager, Solid Waste Management Services Deputy City Manager and Chief Financial Officer City Solicitor
Wards:	All
Reference Number:	p:/2007/swm/march/011CC.doc

SUMMARY

The purpose of the report is to provide information to Council on the status of the due diligence in relation to the Green Lane Landfill and to seek authority for the settlement of a Judicial Review, related to the Green Lane Landfill Certificate of Approval, filed by the Oneida Nation of the Thames.

The report also provides information regarding conformity with the Conditions of Closing as described in the Attachment A – Term Sheet, of the September 18, 2006, Council report entitled “Long Term Waste Disposal Capacity” and seeks authority for revised limits on legal and professional consultant fees associated with the transaction.

RECOMMENDATIONS

Solid Waste Management Services, Finance and Legal Services recommend:

1. That Council adopt the Confidential instructions to staff in Attachment 1.
2. That the sole source limit for the legal services of Stikeman Elliott LLP be set at a maximum of \$1,200,000, including disbursements and excluding GST, funded from the Solid Waste Management Reserve for the provision of legal services and due diligence related to the Green Lane Landfill purchase.
3. That the sole source limit for the professional services of Gartner Lee Ltd. and Jason Price Chartered Accountants be set at a maximum of \$345,000, including disbursements and excluding GST, funded from the Solid Waste Management Reserve for the provision of environmental and financial due diligence of the Green Lane Landfill.
4. That Council authorize the public release of the confidential recommendations and related information provided in Attachment 1 (except those that are to remain confidential as described in Attachment 1) once the purchase of the Green Lane Landfill has been completed.

FINANCIAL IMPACT

As a result of the financial due diligence and the associated security of long-term disposal capacity for Toronto's residual solid waste, the purchase of the Green Lane Landfill has been confirmed to be the preferred strategy from a financial perspective.

Analysis of the operating and capital financing costs of the landfill is provided in the Confidential Attachment 1.

DECISION HISTORY

To address the need for contingency disposal capacity in the event of disruption or closure of the U.S.-Canada border to the shipment of solid waste, or in the event of the application of fees by the State of Michigan, City Council authorized the issuance of RFP

No. 6033-06-3218 at its meeting of May 23, 24, 25, 2006, Notice of Motion J (22), for Contingency Disposal Capacity. Notice of Motion J (22) is found at:

[http://www.toronto.ca/legdocs/2006/agendas/council/cc060523/nomj\(22\).pdf](http://www.toronto.ca/legdocs/2006/agendas/council/cc060523/nomj(22).pdf)

Council considered the results of this RFP at a Special Meeting of Council held on September 19, 2006, in a staff report entitled “Request for Proposal (RFP) 6033-06-3218 for Contingency Waste Disposal Capacity.” At its Special Meeting, Council also considered a report entitled “Long Term Waste Disposal Capacity.” This report recommended the purchase of the Green Lane Landfill in Elgin County.

At the September 19, 2006 meeting, City Council issued instructions to staff, and in doing so, adopted, as amended, the confidential report (September 18, 2006) from the General Manager, Solid Waste Management Services, and the Deputy City Manager and Chief Financial Officer, entitled “Long Term Waste Disposal Capacity,” and in doing so, authorized the General Manager of Solid Waste Management Services to, in addition to other recommendations, negotiate and execute an agreement of purchase and sale based on the terms and conditions set out in the Term Sheet attached to the staff report on terms and conditions satisfactory to the General Manager of Solid Waste Management Services and the Deputy City Manager and Chief Financial Officer and in a form satisfactory to the City Solicitor. The following is the link to the September 19, 2006 decision document: <http://www.toronto.ca/legdocs/2006/agendas/council/cc060919sp/cofa.pdf>.

Further, that report authorized the purchase of the Green Lane Landfill as follows:

“(3) the Solid Waste Management Services 2006 Capital Budget be increased by \$220.310 million to purchase the Green Lane Landfill Site with cash flow commitments in 2006 for any purchase deposit required, and with cash flow commitments for the balance in 2007, and that this project be financed through the issuance of debenture(s) with a term not exceeding twenty years;”

ISSUE BACKGROUND

The City of Toronto has contracted with Republic Services for the receipt and disposal of solid waste and other City waste streams at its Carleton Farms Landfill in Michigan.

A long term plan to exit Michigan by 2010 and minimize waste to landfill is detailed in the Council approved *2005 Multi-Year Solid Waste Business Plan*, and provincial as well as municipal commitments have been made to stop sending municipal solid waste after

December 31, 2010. Nevertheless, the Michigan State Legislature and the U.S. Congress both have before them Bills that would limit, restrict or ban the shipment of waste from Canada.

In the Michigan Legislature, a Bill has been introduced that would impose a \$7.50US/ton (\$9.50Cdn./tonne) surcharge on waste from Canada. In the U.S. Congress, Bill HR518 *The International Solid Waste Importation and Management Act of 2007* was introduced on January 18, 2007, to the U.S. House of Representatives. The Bill was considered and passed at the House Environment and Hazardous Materials Subcommittee on March 20, 2007. Subsequently, the Bill was passed by the House Energy and Commerce Committee on March 22, 2007. It is anticipated the Bill will be considered on the floor of the House the week of March 26, 2007. If enacted, the legislation would provide individual states with the authority to close their borders to waste from Canada. The Michigan Legislature has already enacted legislation that would close the border 90 days from the passage of HR518.

COMMENTS

On September 19, 2006, City Council authorized staff to negotiate and execute an agreement of purchase and sale based on the terms and conditions set out in the Confidential Term Sheet in Appendix "A" of the September 18 staff report. Other than items which were not anticipated, specifically, the Judicial Review initiated by the Oneida Nation of the Thames as well as the change of closing date, the transaction has proceeded in accordance with the Term Sheet. Specifically, an asset purchase agreement (the "APA") was executed on December 19, 2006. The APA provides for closing the \$220,310,000 transaction on March 29, 2007, an extension of the original contemplated date of February 1, 2007, in order to complete the required due diligence.

Due Diligence

Staff was authorized to retain Gartner Lee Ltd., Jason Price Chartered Accountants and Stikeman Elliott LLP to provide environmental due diligence, financial due diligence and legal assistance, respectively. The specifics and outcome of this due diligence process, including the complexities giving rise to increased costs, is described in Confidential Attachment 1. As discussions of the increase in fees necessarily involve details of the transaction, these discussions must be in camera.

Judicial Review Application by the Oneida Nation of the Thames

On January 19th, 2007, the Oneida Nation of the Thames commenced a Judicial Review application in the Ontario Superior Court of Justice (Divisional Court) naming the

Director of the Environmental Approvals Branch of the Ontario Ministry of the Environment, the City of Toronto and St. Thomas Sanitation Services Ltd. (Green Lane) as respondents. There have been on going discussions among the parties and a proposed resolution of the litigation is contained in Confidential Attachment 1.

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SIGNATURE

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Anna Kinastowski
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ATTACHMENTS

Confidential Attachment 1:
Conformity with the Conditions of Closing for the Purchase of the Green Lane Landfill