



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

Reasons for confidentiality

This report contains advice or communications related to litigation or potential litigation.

Settlement Proposal for the Contractual Issues with the Eucan Litter/Recycling Bin Contract

Date:	January 3, 2007
To:	Public Works and Infrastructure Committee
From:	Geoff Rathbone Acting General Manager, Solid Waste Management Services
Wards:	All
Reason for Confidential Information:	Litigation or potential litigation.
Reference Number:	p:/2007/swms/jan/002PW.doc

SUMMARY

The Purpose of this report is to provide an update on the negotiations with Eucan Urban Equipment of Canada Inc. (Eucan) regarding the contractual issues with the litter/recycling bin contract and to disclose the recent settlement offer by Eucan; and to inform the Committee and Council of the change in control of this contract.

At the direction of Council Solid Waste Management Services (SWMS) has been negotiating with Eucan to resolve the outstanding contractual issues. These negotiations have resulted in Eucan recently proposing a settlement offer. Upon careful review of this settlement offer from Eucan and taking into consideration the implications of not accepting this proposal, SWMS is of the opinion that this proposal is in the best interest of the City and recommends acceptance.

RECOMMENDATIONS

Solid Waste Management Services recommends that:

1. the City accept the litter/recycling bin contract settlement proposal from Eucan and that Council adopt the terms of the confidential settlement as described in the Attachment 1 - Confidential Information;
2. the City amend the recycling/litter bin contract to reflect the settlement terms; and
3. Council authorize the public release of the recommendations in Attachment 1 once the settlement and appropriate documentation are finalized to the satisfaction of the City Solicitor.

FINANCIAL IMPACT

The proposed settlement from Eucan will have a financial impact on the Solid Waste Management 2006 Operating Budget and on future Operating Budgets through to the end of its term in October 2009. Attachment 1 - Confidential Information outlines the financial implications of the proposal from Eucan.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

City Council on July 25, 26 and 27, 2006, adopted the In-Camera Report #5 from the Works Committee titled "Contractual Issues with the Eucan Recycling/Litter Bin Contract." This report described the contractual issues and outstanding payment issues with Eucan and requested authority for the General Manager of SWMS to conduct formal settlement negotiations with Eucan or to take the necessary legal action to resolve this matter.

ISSUE BACKGROUND

Formal negotiations between SWMS and Eucan have been ongoing since Council approved authority to do so in July 2006. These negotiations have resulted in a settlement proposal from Eucan. This report describes Eucan's settlement proposal including the financial implications to the City of accepting this proposal and the potential implications if the City decides not to accept this proposal.

COMMENTS

Current Contractual Agreement

Under the current recycling/litter bin contract, now in the eighth year of a ten year contract, Eucan pays the City guaranteed revenue of \$20 per installed bin per month plus 10% of their gross advertising revenue. Eucan supplies, installs and maintains the bins at their cost. The City collects and processes the material from the bins. The bins are owned by Eucan and are to be removed by Eucan, with each site returned to its original condition at the end of the contract term (October 14, 2009).

Under the terms of this contract, it was agreed that the City's share of advertising revenue for Years 1 through 5 of the contract would be accrued and then paid starting in the fifth year of the contract in six instalment payments from years five through ten. The contract states that the yearly revenue sharing payments are to be paid to the City no later than the last day of each applicable year during the term (October 14).

Eucan Position is the current litter/recycling bin contract signed on October 15, 1999, is not financially viable, consequently Eucan is in arrears in the payment of revenues to the City under the terms of the existing contract.

Settlement Proposal

Eucan has put together a settlement proposal that allows the litter/recycling bin program to continue to remain in place for the term of the contract and contains a revised revenue sharing arrangement.

The proposal is described in the confidential attachment.

Consequences of Not Accepting the Proposal

The consequences of not accepting the settlement proposal are discussed in the Confidential Attachment.

Change in Control

At the time this report was being written, Eucan informed the City that all of the shares of Eucan have been purchased by Pro-Kyoto International Inc (PKI) effective December 31, 2006. Accordingly commencing at the beginning of 2007 Eucan will be a wholly-owned subsidiary of PKI.

CONTACT

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SIGNATURE

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ATTACHMENT:

Attachment 1: Settlement Proposal for the Contractual Issues with the Eucan
Litter/Recycling Bin Contract