



**STAFF REPORT
ACTION REQUIRED**
With Confidential Attachment

Assignment of Transportation Component of the Wastewater System By-Products Transportation and Disposal Agreement

Date:	October 24, 2008
To:	Public Works and Infrastructure Committee
From:	Lou Di Gironimo, General Manager of Toronto Water
Wards:	All Wards
Reason for Confidential Information:	This report involves the security of property belonging to the City and is subject to mandatory confidentiality obligations under the Municipal Freedom of Information and Protection of Privacy Act.
Reference Number:	P:\2008\Cluster B\TW\pw08019

SUMMARY

This report recommends that City Council consent to the assignment of the transportation component of the current Wastewater System By-Products Transportation and Disposal Agreement (the “Current Agreement”), from Trailcon Leasing Inc., formerly Wilson Logistics Inc. (“Trailcon”) to 1416720 Ontario Limited operating as Triwaste Services (2002) (“Triwaste”) and that authority be delegated to the General Manager, Toronto Water to negotiate and execute the related assignment and assumption agreement.

RECOMMENDATIONS

The General Manager of Toronto Water recommends that:

1. City Council consent to the assignment of the transportation component of the current Wastewater System By-Products Transportation and Disposal Agreement between the City of Toronto (the “City”), Republic Services Inc., Republic Services of Canada Inc. and Republic Services of Michigan I, LLC, doing business as Carleton Farms (collectively the “Republic Services Companies”) and Wilson Logistics Inc., now known as Trailcon Leasing Inc. (“Trailcon”), dated May 2003 (the “Current Agreement”) from Trailcon to 1416720 Ontario Limited operating as Triwaste Services (2002) (“Triwaste”) subject to the following conditions:
 - (a) the Current Agreement shall be assumed by Triwaste; and

- (b) Trailcon, Triwaste and the Republic Services Companies shall enter into an assignment and assumption agreement on such terms as may be required by the General Manager, Toronto Water including, without limitation, any necessary financial security and any release of Trailcon's existing obligations under the Current Agreement, and in a form satisfactory to the City Solicitor.
2. Subject to the adoption of Recommendation (1), the General Manager, Toronto Water be authorized on behalf of the City to negotiate, enter into and execute the assignment and assumption agreement referred to in Recommendation 1(b) above and any necessary related agreement which may be required to either facilitate or give effect to the assignment on such terms as may be required by the General Manager, Toronto Water and in a form satisfactory to the City Solicitor.
3. The confidential information contained within Attachment 1 remain confidential and is not to be disclosed as Attachment 1 contains third party commercial, financial and economic information that is subject to the mandatory confidentiality provisions of MFIPPA.

FINANCIAL IMPACT

No financial impact is anticipated. The assignment of the Current Agreement from Trailcon to Triwaste will have no impact on the Service Fees. Funds to cover the cost of services provided in 2008 under the Current Agreement are included in the Toronto Water 2008 Operating Budget in Cost Centre WW100 (Wastewater), Cost Element 4416.

DECISION HISTORY

At its meeting on April 14, 15 and 16th, 2003, City Council authorized the execution of the Current Agreement.

[http://www.toronto.ca/legdocs/2003/agendas/council/cc030414/nomj\(24\).pdf](http://www.toronto.ca/legdocs/2003/agendas/council/cc030414/nomj(24).pdf)

<http://www.toronto.ca/legdocs/2003/agendas/council/cc030414/cofa.pdf>

ISSUE BACKGROUND

Pursuant to the Current Agreement, Trailcon provides the necessary transportation services related to the disposal of the City's four types of wastewater system by-products while the Republic Services Companies provide the necessary landfill capacity for disposal. The City pays Service Fees comprised of per tonne Disposal Price to Republic, and a Transport Price to Trailcon, each adjusted annually for CPI. The term of the Current Agreement is 10 years for Types 1, 2 and 4 wastes and 5 years for Type 3 waste, which term, as elaborated on below, has now expired. Payments to Trailcon in 2007 totalled \$1,379,302.

The by-products are categorized as follows:

- Type 1 - grit and screenings
- Type 2 - catch basin & sewer debris

- Type 3 - Highland Creek Treatment Plant ash
- Type 4 - contaminated/organic soils, spoils, sludges & slurries

From time to time, Waste Type 1 (grit and screenings) also includes the residuals material from the R.C. Harris and R.L. Clark Water Treatment Plants and is co-mingled with the grit and screenings material from the wastewater treatment plants to maximize loads. This well established practice has been agreed to by all parties and would be formally acknowledged in the assignment and assumption agreement referred to in Recommendation 1 (b) above.

Waste Type 2 (catch basin/sewer debris) also includes the disposal of street sweepings which is managed by the Transportation Services Division.

For Waste Type 3 (ash), the Current Agreement includes two City options to extend for 3 years (January 1, 2008 to December 31, 2010) and 2 years (January 1, 2011 to December 31, 2012), respectively. Given the availability to the City of the Greenlane Landfill site and prior requests by Trailcon to assign the Current Agreement, the City did not exercise its option with respect to Type 3 waste. Instead, Toronto Water is issuing a separate RFP for the transportation of Type 3 waste to Greenlane commencing in the fall of 2008.

On April 10, 2008, Trailcon wrote to the City requesting that its rights and obligations under the Current Agreement be assigned to Triwaste. Following receipt of this request, City staff undertook various due diligence inquiry steps in an effort to assess the viability and suitability of Triwaste as a potential transportation service provider to the City under the Current Agreement including an assessment of its operational capabilities, financial strength and without prejudice meetings with Triwaste's representative.

Under the Current Agreement, Wilson cannot assign any right or obligation under or arising from the Agreement without the prior written consent of the other parties including the City; and, that consent cannot be unreasonably withheld. A previous 2007 request by Wilson to assign the Current Agreement to another proposed corporation, while consented to by the Republic Service Companies, was denied by the City, after the appropriate financial due diligence review was undertaken and revealed concerns with the financial strength of that particular corporation. City staff has been advised that the Republic Services Companies are prepared to consent to the proposed assignment of the Current Agreement to Triwaste.

COMMENTS

On or about November 30, 2007, Wilson Logistics Inc. amalgamated with Trailcon Leasing Inc, and the corporation continues as Trailcon. The amalgamation has not impacted in any way on the Current Agreement and, in particular, the rights and obligations of Trailcon, formerly Wilson Logistics Inc. Trailcon has confirmed that the amalgamation does not derogate from the obligations under the Current Agreement and that it creates no changes to operational aspects of the Current Agreement or to contact information, all of which continue as before. As well, Trailcon has confirmed that the amalgamation has not resulted in a "transfer of controlling interest" under the Current Agreement.

For some time now, Trailcon has expressed an interest in assigning the Current Agreement. As such, it would appear that Trailcon does not wish to continue to provide the transportation Assignment of Wastewater By-Product Transportation Agreement

services under the Current Agreement; although, it has continued to do so to date. In addition, while it has continued to provide the transportation services, despite repeated requests by City staff, Trailcon has failed to maintain a performance bond as required by the Current Agreement. Triwaste, however, appears ready, willing and able to provide the City with the necessary financial security to secure the transportation obligations under the Current Agreement, preferably, in the form of a Letter of Credit.

Based on the information either provided to or obtained by City staff, Triwaste is a private corporation based in Toronto that provides waste and recycling collection, processing and disposal services. The legal name of the company is 1416720 Ontario Limited. The appropriate corporate and business name searches have been conducted to verify certain of the information provided by Triwaste to staff. Triwaste has served the GTA for over 25 years and, currently, operates a fleet of 27 trucks. Triwaste provides front load roll-off container and lugger services to the residential, commercial and institutional sectors.

As a result of its operational assessment, Toronto Water believes Triwaste has the operational capability, the resources and expertise to assume the rights and obligations of Trailcon under the Current Agreement. In addition, based on the financial assessment conducted by Corporate Finance, a summary of which is contained in the Confidential Attachment, it would appear that Triwaste has the financial capability to assume the rights and obligations of Trailcon under the Current Agreement based on the information either provided to or obtained by City staff.

For these reasons, it is recommended that City Council consent to the proposed assignment on the conditions as set out in this report.

Legal Services has been consulted in the preparation of this report.

CONTACT

Frank Quarisa
Director, Wastewater Treatment
Toronto Water
Phone: (416) 392-8230
Fax: (416) 397-0809
Email: fquaris@toronto.ca

Len Brittain
Director Corporate Finance
Phone : (416) 392-5380
Fax : (416) 397- 4555
Email : lbrittai@toronto.ca

SIGNATURE

Lou Di Gironimo
General Manager, Toronto Water

ATTACHMENTS

Financial Information for 1416720 Ontario Limited operating as Triwaste Services (2002) (“Triwaste”)