



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

**Legal Action to Resolve Contract Dispute Between the
City and Metro Municipal Recycling Services Inc.**

Date:	April 6, 2011
To:	Public Works and Infrastructure Committee
From:	City Solicitor
Wards:	All
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City or one of its agencies, boards, and commissions and advice that is subject to solicitor-client privilege.
Reference Number:	

SUMMARY

The City has contracted with Metro Municipal Recycling Services Inc. (“MMRS”) for the processing of single stream recycling material collected by the City (“Recyclable Material”). The contract is administered by Solid Waste Management Services (“Solid Waste”).

Under the contract:

1. the City pays MMRS a processing fee (the “Processing Fee”) to process Recyclable Material; and
2. MMRS pays the City to purchase the Fibre that it extracts from the Recyclable Material, which it then resells.

The City and MMRS dispute:

1. the Processing Fee payable by the City to MMRS; and
2. the calculation of the price payable by MMRS to the City to buy the Fibre extracted from the Recyclable Material.

The contract contains arbitration provisions. On March 14, 2011, MMRS notified the City that they wish to refer the dispute regarding Fibre payments to arbitration.

RECOMMENDATIONS

The City Solicitor recommends that:

1. Council adopt the confidential instructions to staff in Attachment 1.
2. Council direct that the confidential attachment remain confidential indefinitely as it contains advice that is subject to solicitor-client privilege.

Financial Impact

The recommendations will have no negative financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

At its Special Meeting on July 30, 31 and August 1, 2002, Council authorized awarding a contract to Metro Waste Paper Recovery Inc. for the processing of single stream recyclable materials (the "2003 Contract"). This document can be viewed at: <http://www.toronto.ca/legdocs/2002/agendas/council/cc020730/pof12rpt/cl024.pdf>

Subsequently, at its meeting on January 27, 28 and 29, 2004, Council authorized the assignment of the 2003 Contract with Metro Waste Paper Recovery Inc. to MMRS. This document can be viewed at: <http://www.toronto.ca/legdocs/2004/agendas/council/cc040127/wks1rpt/cl004.pdf>

At its meeting on May 23, 24 and 25, 2006, Council authorized the City to enter into a contract with MMRS and Stewardship Ontario for the installation of optical sorting equipment at its facility (the "Optical Sorting MOU"). This document can be viewed at: <http://www.toronto.ca/legdocs/2006/agendas/council/cc060523/wks3rpt/cl015.pdf>

The City and MMRS have also negotiated other amendments to the 2003 Contract to date, which have been approved by Council. These amendments relate to other aspects of the 2003 Contract and have no significant bearing on the contractual issues currently in dispute.

ISSUE BACKGROUND

The City has contracted with MMRS to operate a dedicated facility for processing Recyclable Material at 45 Thornmount Drive (the "Facility") in the City.

Recyclable Material includes all recyclables collected by the City from residences and businesses. MMRS processes in excess of 100,000 tonnes of Recyclable Material annually.

MMRS separates the Recyclable Material it receives at the Facility from the City into various material types, including Fibre. Essentially, the components of "Fibre" are defined as newspaper, corrugated cardboard, and mixed paper.

The City pays MMRS a "Processing Fee" for the sorting of Recyclable Material, calculated as a rate per tonne in accordance with a formula set out in the 2003 Contract and the Optical Sorting MOU (collectively the "Contract").

MMRS pays the City to purchase all of the Fibre extracted from the Recyclable Material. MMRS then resells the Fibre. The price paid by MMRS to the City for the Fibre is a price per tonne that is based on the "Monthly Market Price" plus the "Fibre Premium". The Monthly Market Price is established in accordance with a formula set out in the Contract and the Fibre Premium is a fixed rate.

The original term of the 2003 Contract was for seven years, commencing August 12, 2003. Effective August, 2010, Solid Waste extended the term of the 2003 Contract for an additional year. Provisions in the Contract permit its term to be extended for an additional year on a month-by-month basis.

CONTACT

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SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENTS

Confidential Attachment 1 - Confidential Information