



STAFF REPORT ACTION REQUIRED

Consent to Transfer of Controlling Interest in the Ownership of Turtle Island Recycling Corporation

Date:	November 21, 2011
To:	City Council
From:	Acting General Manager, Solid Waste Management Services City Solicitor
Wards:	1, 2, 3, 4, 5, 6
Reference Number:	P:/2011/swms/November/011CC

SUMMARY

The purpose of this report is to advise Council that the Contractor (Turtle Island Recycling Corporation) currently collecting curbside waste and recycling materials in District 1 (former Etobicoke area) has entered into an agreement that provides for the sale of all of its shares to GFL Environmental Corporation resulting in a transfer of a controlling interest in the ownership of the company.

Under the City's agreement, such a change requires Council's consent, which consent cannot be unreasonably withheld.

RECOMMENDATIONS

The Acting General Manager, Solid Waste Management Services, and the City Solicitor recommend that:

1. City Council consent to the change of control of Turtle Island Recycling Corporation as a result of the purchase of all of its shares by GFL Environmental Corporation (GFL) and any future amalgamation or merger with GFL or an affiliate of GFL on terms and conditions satisfactory to the Acting General Manager, Solid Waste Management Services that ensure the continued proper performance of the City's collection agreement, including the security obligations under the agreement, and otherwise in a form satisfactory to the City Solicitor.

2. The Acting General Manager, Solid Waste Management Services, be authorized to sign the consent documentation and take any other actions and execute any other documents as may be required to give effect to these recommendations.

Financial Impact

No financial impact is anticipated. Funding for this contract is included in the SWM budget SW1010, which has a 2012 Recommended Operating Budget of \$8.5 million dollars.

DECISION HISTORY

On October 22, 2007 City Council adopted Public Works and Infrastructure Report PW9.4 entitled "Etobicoke Residential Curbside Collection – Request for Quotation 6033-07-3232". The Council decision can be viewed on page 53 at <http://www.toronto.ca/legdocs/mmis/2007/cc/decisions/2007-10-22-cc13-dd.pdf>

ISSUE BACKGROUND

The agreement with Turtle Island Recycling Corporation contains a requirement that the City consent to any transfer of a controlling interest in the beneficial ownership of the contractor, and that such consent may not be unreasonably withheld.

The existing seven (7) year term (plus up to two (2) additional twelve (12) month period extension options or one (1) additional twenty-four (24) month period extension option) RFQ contract was awarded to Turtle Island Recycling Corporation by Council in 2007 and the contract commenced on July 1, 2008. Should all extensions be exercised, the contract will run to June 30, 2017.

On October 26, 2011 the City received a request from Turtle Island Recycling Corporation for the City's consent to a change in control of the company as a result of Turtle Island Recycling Corporation's agreement with GFL Environmental Corporation providing for the sale of all of the shares in the capital of Turtle Island Environmental Corporation to GFL Environmental Corporation.

COMMENTS

The contract with Turtle Island Recycling Corporation for collection of waste/recycling materials in District 1 is valued at approximately \$8.0 million annually. It contains the following financial protections: a letter of credit worth 30% of the value of the yearly contract price (approximately \$2.2 million), and a Performance Bond worth 70% of the value of the yearly price (approximately \$5.2 million). These financial security requirements, along with all the other terms and conditions in the existing agreement, will remain in place despite the change in ownership or any future merger as discussed below.

The City has retained the firm of Ernst and Young LLP to evaluate the purchaser's ability to meet the obligations under Turtle Island's contract with the City for curbside collection in District 1. Ernst and Young LLP's report, which is attached to this report as Attachment 1, confirms that the purchaser is in a sound financial position and Turtle Island (or the new amalgamated entity) will continue to be capable of carrying out its contractual obligations to the City. The Ernst and Young report also confirms the information that the existing operation, including the current supervisory staff, will continue as before.

GFL Environmental Corporation's solicitor has advised that Turtle Island Recycling Corporation and its subsidiaries may later be amalgamated with GFL Environmental Corporation or its Ontario operating subsidiary, GFL Environmental East Corporation. If an amalgamation with GFL Environmental East Corporation occurs, GFL Environmental Corporation is prepared to guarantee the obligations of its subsidiary, GFL Environmental East Corporation and/or the new amalgamated entity (a "parental guarantee"). Recommendation 1 therefore seeks authority to require terms and conditions on the consent satisfactory to the Acting General Manager and in a form satisfactory to the City Solicitor in order to ensure continued security.

The existing contract's terms and conditions will remain in force, including the need to obtain the City's consent to any future assignment or change in control.

The DCM and CFO has reviewed the scope of work and the report of Ernst and Young and is satisfied that it represents an acceptable level of financial due diligence in order to support the recommendations in this report.

CONTACT

Robert Orpin, Director, Solid Waste Collections Operations, Solid Waste Management Services, Telephone: 416-392-8286, Fax: 416-392-4754, E-mail: rorpin@toronto.ca

Grace Patterson, Solicitor, Municipal Law, Legal Services, Telephone: 416-392-8368, Fax: 416-397-5624, E-mail: gpatter@toronto.ca

SIGNATURE

Vincent Sferrazza
Acting General Manager
Solid Waste Management Services

Anna Kinastowski
City Solicitor
Legal Services

ATTACHMENTS

Attachment 1 – Independent Review (Ernst & Young Report)