



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

Street Sweepings Contract Dispute and Proposed Settlement

Date:	August 21, 2012
To:	Public Works and Infrastructure Committee
From:	Acting General Manager, Transportation Services
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.
Reference Number:	P:\2012\Cluster B\TRA\Toronto&EastYorkDistrict\TOP\PW2012162te.top

SUMMARY

The transportation and disposal of the City's street sweepings are currently governed by an agreement between the City and two companies: "Republic" for the disposal of the street sweepings at a landfill site and "Triwaste" for the transportation of the street sweepings to the landfill site.

The purpose of this report is to advise of a contractual dispute between the City and Republic and Triwaste and a proposed settlement of the dispute in relation to the transportation and disposal of the City's street sweepings during the period January to June 2011 and to receive direction in that regard from Council as set out in Attachment 1 – Confidential Information.

RECOMMENDATIONS

The General Manager of Transportation Services recommends that:

1. City Council adopt the confidential recommendations and instructions to staff in Attachment 1 – Confidential Information.
2. City Council authorize the public release of the confidential recommendations and instructions to staff in Attachment 1 – Confidential Information, if any settlement

is finalized to the satisfaction of the General Manager, Transportation Services, in consultation with the City Solicitor, and that the balance of the information remain confidential.

Financial Impact

The financial implications resulting from the adoption of this report are set out in Attachment 1 – Confidential Information.

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

DECISION HISTORY

At its meeting on April 14, 15 and 16, 2003, City Council authorized the execution by the City of the Wastewater System By-Products Transportation and Disposal Agreement dated May 2003 between the City, Republic Services Inc., Republic Services of Canada Inc. and Republic Services of Michigan I, LLC, doing business as Carleton Farms (collectively "Republic") and Wilson Logistics Inc., subsequently known as Trailcon Leasing Inc. ("Trailcon"), This agreement is referred to as the "Original 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)

At its meeting on November 29, 2009, City Council authorized the assignment of the transportation component of the Original Agreement from Trailcon to 1416720 Ontario Limited operating as Triwaste Services (2002) ("Triwaste"). This amended agreement is referred to as the "Agreement".

<http://www.toronto.ca/legdocs/mmis/2008/pw/reports/2008-11-12-pw20-cr.pdf>

Recently, at its meeting on February 16, 2012, the Public Works and Infrastructure Committee authorized the amendment of Blanket Contract No. 47008035, issued under the assigned Agreement, for the disposal component of the Agreement, by an additional amount of \$808,764.00 net of all taxes (\$822,998.25 net of HST recoveries) revising the contract value from \$4,990,000.00 to \$5,798,764.00 net of all taxes (\$5,900,822.25 net of HST recoveries), to reflect the increased disposal costs of the City's street sweepings and process wastes.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.PW12.1>

ISSUE BACKGROUND

The transportation and disposal of the City's street sweepings are currently governed by the Wastewater System By-Products Transportation and Disposal Agreement between the City of Toronto, Republic and Triwaste (the "Agreement"). The Agreement in relation to street sweepings will terminate on December 31, 2012.

Street sweepings are a Type 2 waste under the Agreement. Street sweepings are generated seasonally as a result of a maintenance program to reduce the possibility of surface flooding and the quantity of contaminants associated with surface runoff discharged to receiving waters. Transportation Services generates this Type 2 waste from street sweeping on all road classifications and for catchbasin cleaning on expressways.

Under the Agreement, Triwaste provides the transportation services related to the disposal of the City's street sweepings and Republic provides the landfill capacity for disposal at its licensed facility in Michigan. However, during the period January to June of 2011, a pilot program was instituted, as an inter-divisional efficiency and cost saving measure by Transportation Services and Solid Waste Management, whereby the City's street sweepings were sent to the City's transfer stations and disposed of at the Green Lane Landfill Site (the "Pilot Program Street Sweepings").

Subsequently, Republic and Triwaste notified Transportation Services of contract claims under the Agreement whereby they alleged that the City breached its obligations under the Agreement by failing to deliver the Pilot Program Street Sweepings to them for transportation and disposal on the basis that they had an exclusive right to the work. As a consequence, several communications were exchanged and meetings held between Transportation staff and representatives of Republic and Triwaste in an effort to understand the claims advanced and to resolve, if possible, the contract dispute.

COMMENTS

In an effort to finally resolve the matter and to avoid any further potential costs associated with additional staff investigations, further meetings and any subsequent legal process, negotiations between the parties have resulted in a proposed settlement of the contractual dispute subject to City Council approval. Attachment 1 – Confidential Information details the proposed settlement and related issues.

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

CONTACT

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SIGNATURE

John Mende, P. Eng.
Acting General Manager, Transportation Services

ATTACHMENT

Attachment 1 – Confidential Information