

Litigation Arising from Agreement between Universal Resource Recovery Inc. and City of Toronto for the Processing of Source Separated Organic Materials

Date: September 23, 2021

To: City Council

From: City Solicitor and the General Manager, Solid Waste Management Services

Wards: All

REASON FOR CONFIDENTIAL INFORMATION

This report is about litigation that affects the City of Toronto.

The attachment to this report contains advice or communications that are subject to solicitor-client privilege and litigation privilege.

SUMMARY

By agreement dated October 1, 2008 and amended on May 3, 2011 (the "Agreement"), the City engaged Universal Resource Recovery Inc. ("URRI") to process its green bin material, or source separated organics material ("SSO"), into compost as part of the City's strategy to divert waste from landfill.

In May, 2013, URRI commenced a lawsuit against the City seeking \$50,000,000 in damages plus interest and legal costs for alleged breach of contract and wrongful interference with URRI's contractual relationship with York Region.

The City defended and advanced a counterclaim for breach of contract against URRI.

Confidential Attachment 1 contains legal advice from the City Solicitor regarding the litigation.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff in Confidential Attachment 1.
2. City Council authorize the public release of the confidential recommendations contained in Confidential Attachment 1, at the discretion of the City Solicitor, but that the remainder of Confidential Attachment 1 remain confidential as it contains advice which is subject to solicitor-client and litigation privilege and relates to ongoing litigation against the City.

FINANCIAL IMPACT

The financial implications are discussed in Confidential Attachment 1.

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

DECISION HISTORY

The City Solicitor has not previously reported on the litigation discussed in this report.

COMMENTS

Background

As part of the City's waste diversion strategy, the City entered into partnerships with various companies to process the City's SSO and divert it from landfill. URRI was one of those partners. The City's agreement with URRI provided that the City would deliver some of its SSO to URRI's facility to be turned into compost in exchange for a processing fee. The City was not URRI's only customer.

In or around the end of May, 2011, the City received information from the Ministry of the Environment (the "MOE") that URRI was sending SSO to landfill instead of processing it. Upon receipt of this information from the MOE, the City stopped delivery of further SSO to URRI pending an investigation and stopped payment on pending invoices. URRI did not cooperate with the investigation and eventually, in February 22, 2021, the City declared URRI in default of the Agreement.

In May, 2013, URRI commenced an action against the City alleging that the City had breached the Agreement by stopping deliveries of SSO and withholding payment of outstanding invoices.

In its defence and counterclaim, the City claimed that URRI breached the Agreement by sending the City's SSO to landfill without its knowledge and sought recovery of processing fees paid for processing services not provided.

Confidential legal advice about the litigation is provided in Confidential Attachment 1.

CONTACT

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SIGNATURE

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ATTACHMENTS

Confidential Attachment 1 - Confidential Instructions to Staff