

Item No. 11.1.9
Halifax Regional Council
June 24, 2014

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY:

Original signed by



Richard Butts, Chief Administrative Officer

Original Signed by Director

Kathleen Llewellyn-Thomas, P.Eng Acting Director, Transportation & Public Works

DATE: June 6, 2014

SUBJECT: **Assignment of Contract - #07-391 – Collection and Transportation of Source-Separated Solid Waste – Collection Areas 1, 2, 4 and 6**

ORIGIN

This report originates from the acquisition by GFL Environmental Inc. of all the assets of Waste Management of Canada Corporation located in the Provinces of Nova Scotia, New Brunswick and Newfoundland.

LEGISLATIVE AUTHORITY

Section 79(1)(q) of the *Halifax Regional Municipality Charter* provides that the Council may expend money required by the Municipality for collecting, removing, managing and disposing of solid waste.

Section 58(5) of the *Halifax Regional Municipality Charter* provides that the Council may make and carry out a contract, perform an act, do any thing or provide a service for which the Municipality or the Council is authorized by an Act of the Legislature to spend or borrow money.

Section 11(1) of the *Halifax Regional Municipality Charter* provides that the powers of the Municipality are exercised by the Council.

Section 58(2) of the *Halifax Regional Municipality Charter* provides that the Council may exercise any of its powers and duties by resolution unless a policy or a by-law is required by an enactment.

RECOMMENDATION

It is recommended that Halifax Regional Council consent to the assignment of contract # 07-391 (as amended) for the Collection and Transportation of Source-Separated Solid Waste – Collection Areas 1, 2, 4 and 6, from Waste Management of Canada Corporation to GFL Environmental Inc., and authorize the Mayor and Clerk to execute HRM's consent to the Assignment & Assumption Agreement attached hereto.

BACKGROUND

In 2008, HRM awarded the contract resulting from RFP # 07-391 for the Collection and Transportation of Source-Separated Solid Waste – Collection Areas 1, 2, 4 and 6 to Waste Management of Canada Corporation. The term of this contract was originally set to expire on June 30, 2013. Through the resolutions of Council, the term was extended and is now set to expire on June 30, 2015. It is anticipated that an RFP will be issued in the fall of 2014 for curbside collection of source-separated solid waste beyond June 30, 2015.

On April 29, 2014, GFL Environmental Inc. ("GFL") entered into an Asset Purchase Agreement with Waste Management of Canada Corporation ("WM") to acquire all of WM's assets in the Provinces of Nova Scotia, New Brunswick and Newfoundland. The proposed closing date for this transaction is July 1, 2014.

DISCUSSION

Section 10.3 in Part 4 of Contract #07-391 states that "The Contractor shall not assign this Contract or any part thereof without the prior written consent of the Municipality." WM is therefore seeking HRM's consent to assign the contract to GFL. Under the proposed Assignment and Assumption Agreement, GFL agrees to assume all covenants, obligations, responsibilities, duties and liabilities of WM arising out of the contract.

GFL has provided assurance that in its performance of the contract it will continue to use the same equipment, staff, safety plans and work plans that WM has been using. GFL has also provided HRM with certain documentation required under the contract, including Certificates of Insurance and a draft performance bond and letter of credit to be executed in the contract required amounts (with the originals to be provided upon closing of the transaction). HRM Legal Services have reviewed this documentation to ensure its appropriateness.

FINANCIAL IMPLICATIONS

None identified. GFL Environmental Inc. will take over the work and services under Contract #07-391 from Waste Management of Canada Corporation under the existing pricing schedules for Collection Areas 1, 2, 4 and 6.

COMMUNITY ENGAGEMENT

There is no change to any services being provided, and therefore no assessed need for consultation on this contract change. Updated contact information where appropriate will be promulgated for residents through PSA and the call centre.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications of this service provider change.

ALTERNATIVES

Regional Council could decide not to consent to the assignment of the contract from WM to GFL. Staff advises against this as it could result in service provision and operational issues for HRM and legal challenges from WM and GFL as there is no identified reasonable issue to prevent this contract assignment.

ATTACHMENTS

1. Assignment & Assumption Agreement between GFL Environmental Inc. and Waste Management of Canada Corporation.

If the report is released to the public, a copy can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Robert Orr, P. Eng., Collection & Processing Coordinator, Solid Waste Resources, 490-6698
Colin Taylor, Solicitor, Legal Services, Risk and Insurance Services, 490-4833

Original Signed by Director

Report Approved by: Gord Helm, Manager, Solid Waste Resources, 490-6606

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS AGREEMENT (the "Agreement") made the ____ day of _____, 2014.

B E T W E E N:

GFL ENVIRONMENTAL INC., an Ontario business corporation and registered to do business in the Province of Nova Scotia and having its registered office at 125 Villarboit Crescent, Suite 2, Vaughan, ON L4K 4K2

(the "Purchaser")

- and -

WASTE MANAGEMENT OF CANADA CORPORATION, a Nova Scotia unlimited liability company having a business address at 117 Wentworth Court, Brampton, ON L6T 5L4

(the "Vendor")

WHEREAS:

1. The Purchaser and the Vendor have entered into an Asset Purchase Agreement dated April 29, 2014 (the "Asset Purchase Agreement") pursuant to which the Vendor has agreed to sell, transfer and assign to the Purchaser inter alia, all of Vendor's right, title and interest in certain assets of the Vendor including an agreement between the Vendor and the Halifax Regional Municipality (the "Municipality") for the collection and transportation of source separated solid waste in Collection Areas 1, 2, 4 and 6 effective July 1, 2008, as amended issued pursuant to a Request for Proposals No. 07-391 (the "HRM Contract") subject to the satisfaction of certain conditions and effective on and from the closing of the purchase and sale of the assets pursuant to the Asset Purchase Agreement (the "Closing").
2. All capitalized terms not otherwise defined in this Agreement have the meaning assigned to such terms in the Asset Purchase Agreement.

NOW THEREFORE in consideration of the closing of the purchase and sale of the transactions described in the Asset Purchase Agreement and other good and valuable consideration and the covenants and agreements hereinafter set forth, the parties agree as follows:

1. Subject to the terms of the Asset Purchase Agreement and conditional upon and effective upon completion of the Closing, the Vendor hereby irrevocably assigns, transfers and sets over to the Purchaser all of the Vendor's right, title and interest in and to the HRM Contract and all benefits to be derived therefrom, all rights of action or other rights accruing to the Vendor which, after this assignment takes effect, accrue to the Vendor in respect of the HRM Contract, subject to the observance and performance by the Purchaser of the covenants, obligations, responsibilities, duties and liabilities on the part of the Vendor contained therein.

2. The Purchaser hereby agrees to assume and to duly and faithfully perform all covenants, obligations, responsibilities, duties and liabilities of the Vendor arising pursuant to the HRM Contract.
3. This Agreement will be interpreted in accordance with the laws of the Province of Nova Scotia and will enure to the benefit of and be binding upon the parties and their respective successors and assigns.
4. The Vendor and the Purchaser, will, whenever requested by the other party, and at their own expense, execute and deliver such further and other documents as the other party may from time to time require to give effect to the provisions of this Agreement.
5. Any notice required or permitted to be given hereunder will be deemed given and received if sent to the other party at the addresses noted on page 1 hereof, by personal delivery to any director or officer of such party or by facsimile or electronic transmission (read receipt requested and received) as follows:

TO: THE VENDOR:

117 Wentworth Court,
Brampton, ON L6T 5L4
Facsimile No.: (866) 374-0955
Attention: President

TO: THE PURCHASER:

125 Villarboit Crescent
Suite 2
Vaughan, ON L4K 4K2
Facsimile No.: (289) 695-2552
Attention: Patrick Dovigi, President and CEO
Email: pdovigi@gflenv.com

Any notice given as set out above will be deemed to be given and received on the date of such personal delivery or the date of such facsimile or electronic transmission. A party may change its address for service by giving notice thereof pursuant to the provisions of this Section 5.

6. This Agreement is delivered pursuant to the Asset Purchase Agreement and will in no way limit or derogate from the rights, obligations, covenants, agreements, representation, warranties or guarantees, which the parties have under the Asset Purchase Agreement. The provisions of this Agreement will not merge with any provision of the Asset Purchase Agreement, nor will they merge with any transfer, assignment, novation agreement or other document or instrument issued pursuant hereto or in connection with the Asset Purchase Agreement.

7. This Agreement may be executed in any number of counterparts (including counterparts by facsimile or electronic transmission) and all such counterparts taken together will be deemed to constitute one and the same instrument. Copies of this Agreement exchanged by facsimile or electronic copies of originally signed documents will be deemed originals for all purposes.

IN WITNESS WHEREOF the parties have duly executed this Agreement on the date first noted above.

Purchaser:

Vendor:

GFL ENVIRONMENTAL INC.

**WASTE MANAGEMENT
CORPORATION OF CANADA**

Per:

Per:

Name: Patrick Dovigi
Title: President and CEO
I have the authority to bind the Corporation.

Name: Brad Muter
Title: President
I have the authority to bind the Corporation.

CONSENT TO ASSIGNMENT

The Municipality hereby recognizes GFL Environmental Inc. ("GFL") as the successor in interest to Waste Management of Canada Corporation ("WM") in and to the HRM Contract as of the Closing and consents to the assignment of the HRM Contract to GFL. As of the Closing, GFL will be entitled to all right, title and interest of WM in and to the HRM that arise after the Closing and will be responsible for all covenants, obligations, responsibilities, duties and liabilities of WM that arise after the Closing.

DATED: _____

HALIFAX REGIONAL MUNICIPALITY

By: _____
Name: Mike Savage
Title: Mayor

By: _____
Name: Cathy Mellett
Title: Municipal Clerk