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MEMORANDUM

TO: Paul Thorkelsson
Chief Administrative Officer

DATE: December 2, 2013

FROM: Dennis Trudeau
General Manager of Solid Waste and Transportation Services

FILE: 5365-72

SUBJECT: Term Sheet to Amend the ICC Organic Waste Processing Contract

PURPOSE

To obtain Board approval for a Term Sheet to amend the Organic Waste Processing Contract between the Regional District of Nanaimo and International Composting Corporation.

BACKGROUND

Current Contract

In 2005, the Board approved the Organics Diversion Strategy, a plan to provide the Board, the general public, and the business community with information on how organic waste will be diverted from disposal. This strategy was developed in accordance with the Regional District of Nanaimo (RDN) Zero Waste Plan, which identifies organics diversion as a key component of diversion of solid waste from the landfill.

The Strategy has two main components: a ban on the disposal of food waste from the commercial sector and the collection of food waste from single-family residences. The Board approved a ban on the disposal of commercial food waste at RDN facilities in 2005. Since 2006, this program has diverted roughly 3,700 tonnes of food waste annually from local businesses such as grocery stores and restaurants to the International Composting Corporation (ICC) facility at Duke Point.

With respect to the collection of food waste from single-family residences the Board in September 2008, directed that food waste be added to the upcoming tender for the RDN Garbage Collection & Recycling Service for implementation in April 2010.

In addition to the collection component of the Organics Diversion Strategy, a transfer station was required plus a facility to process the residential food and yard waste. The Church Road expansion, which was completed in 2010, addressed the transfer requirements required for the food waste and yard waste program. The only infrastructure element remaining was a long-term contract to process residential food waste as well as yard waste delivered to RDN disposal facilities.

At that time, commercial food waste collected by private haulers and yard waste delivered to RDN facilities was processed at the ICC facility at Duke Point. The presence of ICC in Nanaimo has been an integral component to the implementation of the commercial food waste ban. In 2002, ICC decided to locate their composting facility in the RDN based on the Board's 1999 resolution to ban commercial organics from disposal once appropriate composting facilities were in place. Their decision was also predicated on Board policy to establish a licensing system to ensure a level playing field between organics processing facilities.

Since that time ICC, which was licensed in 2006, has invested over \$5 million in their facility in the City of Nanaimo. Because the RDN does not collect food waste from the commercial sector, since implementing the commercial food waste ban in 2006, there has been no formal contractual agreement between the RDN and ICC to process this material. A decision was made in 2009 to negotiate a contract with ICC rather than go out for a Request for Proposals. While there were several other firms with proven technologies to process food and yard waste into compost, none of them had constructed facilities on Vancouver Island. Although a new firm may have been able to offer the service at lower cost than ICC, this could not be determined until an RFP process was completed in six to twelve months. Furthermore, even if the RFP process did result in a lower cost option than ICC, given the time associated with siting, permitting and construction of a new facility, implementation of food waste collection would be delayed considerably. Staff estimates that the delay would have been approximately 24 months' time.

As a result the RDN entered into a contract with ICC to compost the organic waste that is collected by our food waste program. The term of the agreement is for five years beginning April 1, 2010 and ending March 31, 2015 which is the same term as the agreement negotiated with the collection contractor. As in both agreements, the contractor, provided they are not in breach of any term or condition of the agreement, and have performed the work to the reasonable satisfaction of the RDN, may renew the agreement for a further five year term ending March 31, 2020.

Odour Concerns

The Organic Waste Processing Contract stipulates that ICC must accept, store, process and make beneficial use of all RDN organic waste delivered to the facility. ICC may accept organic waste from sources outside of the RDN provided that RDN Organic Waste is given priority over all other organic waste delivered to the facility from other sources. They are supposed to carry out these activities without allowing unacceptable odours beyond property boundaries.

In addition to the contract with ICC, the RDN has issued a Waste Stream Management License (WSML) which authorizes their facility to accept municipal solid waste. The WSML was issued in 2006 and sets out terms and conditions on how the facility should operate.

Recently, as a result of complaints about odour from the ICC facility an odour study has been completed. In summary, the study indicates that ICC is not likely to have been the major source of odours at the complaint locations. Due to the possibility of some unforeseen and not predictable atmospheric mixing, there is the possibility that some of the complainants may have been affected by low concentrations of ICC odours for short periods. The odour study consultants recommended a list of odour sources that could be reduced by facility upgrades and improved practices.

At the November 26, 2013 Board meeting, the Board directed staff to amend the ICC WSML to include the necessary facility improvements identified in this report to reduce odours resulting from their operations.

Much of the upgrades had been promised or was a part of ICC Operation Plan but were not implemented due to a lack of financial funds.

New Contract Proposal

Prospective new owners of ICC were a delegation at the November 26, 2013 Board meeting. They explained the financial difficulties that the ICC company was currently undergoing and the imminent danger of the company going into bankruptcy. The prospective new owners outlined a plan to address the aging infrastructure of the facility and to implement the facility upgrades that would also address odour management issues.

Their proposal to address infrastructure upgrading required an increase to the tipping fee that ICC was currently receiving. They indicated that they would complete the facility upgrades prior to having an increase to the tipping fee but would require an extension to the Organic Waste Processing Contract for a further five year term ending March 31, 2020.

As a result of the delegation the board passed the following motion;

..., that staff be directed to prepare for consideration by the Regional District of Nanaimo Board a staff report outlining options and approach to the request for additional funding in relation to operations and odour mitigation works at the International Composting Corporation facility including a revised agreement with International Composting Corporation.

If ICC was to cease operations, staff would have to immediately find other options to deal with the organic food and yard waste that is currently collected. Staff has researched what capacity there is on the island for dealing with this material. While there are other companies on the island that have composting facilities none currently have capacity to deal with the organic food and yard waste that is generated in the RDN.

Facilities in the Cowichan Valley Regional District such as Fisher Road, and Chemanius composting are at capacity and without significant capital investment and major amendments to their WSML licenses they would not be able to handle the RDN's volumes. In addition, there would likely be political resistance to RDN's material going south due to odour issues that presently exist at these facilities.

Staff estimate that it could take up to 2 years' time to put out a RFP, select a winner, obtain zoning and WSML, and then have a facility constructed and ready to accept organic food and yard waste from the RDN. In the meantime the only solution would be to deposit the material into the landfill. This would not be a desirable outcome as it would take up valuable landfill space and contribute to the production of greenhouse gases.

Currently the ICC facility handles about 17,000 tonnes of food and yard waste which would otherwise be deposited at the landfill. If the RDN decided to go out for an RFP this material would likely end up in the landfill for up to 2 or more years. This would increase the amount of material deposited at the landfill to approximately 70,000 tonnes a year from 52,000 tonnes and over a 2 year period reduce the ultimate capacity of the landfill by over a half a year.

Staff have worked with lawyers for the RDN and have prepared a Term Sheet (Appendix A) to address certain matters of performance under the Organics Waste Processing Service Contract. If everything is done in a manner satisfactory to the RDN the Term Sheet indicates that the RDN would agree to enter

into an amended Service Contract for a Renewal Term until March 31, 2020. The following terms and conditions form the basis for the agreement:

- Upon fulfillment by ICC of all of the conditions set out below the Processing Fee payable under the Service Contract shall be increased to \$122.00/tonne for food waste and \$45/tonne for yard waste and shall thereafter be increased by two percent (2%) per year, including during the Renewal Term.
- The Service Contract shall be renewed for a further 5-year term commencing April 1, 2015 and expiring March 31, 2020, to include the terms and conditions contained herein.
- As a condition of the increase in the Processing Fee payable during the Renewal Term, ICC shall complete at its cost prior to the commencement of the Renewal Term the following:
 - installation of membrane covers (GORE or equivalent) to be placed on aerated outdoor static piles;
 - immediate change for biofilter;
 - improved air channels and ducting for aeration of indoor piles (air management system reviewed by professional and upgraded);
 - design and installation of French drains, sediment traps, oil/water separators and storage tanks;
 - design, construction and completion of building for compost storage;
 - purchase of sweeper for cleaning compost residue on floor surfaces;
 - upgrade from low pressure to high pressure misting at doors;
 - install tall misting towers for misting during screening;
 - expand misting between ICC and Orca Site boundaries;
 - minimize final product storage; and
 - consultant review and approve building air management to address odour issues (the ability of fan and ducting to remove and treat meaningful amounts of indoor air should be confirmed by professional).
- During the remainder of the contract term and the Renewal Term, ICC shall meet the following operational requirements:
 - regular media change for biofilter on a schedule recommended in the Morrison Hershfield Engineering Report; and
 - maximum one overs pile permitted on site which must also be covered.
- Overs in excess of one pile will be removed by RDN at its cost to the Landfill at a rate not to exceed one pile of a maximum of 140 cubic yards per month.
- The Service Contract shall be amended to provide that any net revenue resulting from the sale of the compost shall be shared equally between the RDN and ICC parties.

The Term Sheet conditions have been discussed with the prospective new owners of ICC and they have indicated their approval of the terms.

ALTERNATIVES

1. That the Board approve the Term Sheet to address certain matters of performance with ICC and amend the Organics Waste Processing Service Contract.
2. That the Board not approve the Term Sheet to address certain matters of performance with ICC and amend the Organics Waste Processing Service Contract and provide alternate direction to staff.

FINANCIAL IMPLICATIONS

There are a variety of options available to revise the agreement between the RDN and ICC for fees on food waste/yard & garden waste that will provide for the additional funding ICC is looking for. Staff have reviewed options provided by ICC who are recommending a revised fee structure that would pay ICC \$122.00 per tonne for food waste and \$45 per ton for yard & garden waste. This is a \$32 per tonne increase for food waste and \$3 per tonne for yard & garden waste.

For contract fees that the RDN pays to ICC and based on tonnes processed over the November 2012 to October 2013 period this would increase food waste revenues to ICC by the following approximate amounts:

- 7300 tonnes of food waste annual @ \$32 = \$233,000 (includes the City of Nanaimo)
- 8200 tonnes of yard & garden waste @ \$3 = \$25,000 (includes NRE agreement funded by RDN)
- 2400 tonnes of commercial food waste handled direct by ICC @ \$32 = \$77,000

This totals to an approximate increase in revenues to ICC of \$335,000 which is in line with their request.

In order to offset these additional costs, there would be a need to increase residential garbage & recycling fees to the electoral areas, Parksville, Qualicum Beach and Lantzville as well as implementing an additional tipping fee increase under Bylaw 1531. Garbage & Recycling fees which were recently set to reduce from \$147.00 to \$130.00 under the new Multi-Materials BC (MMBC) agreement to residents would need to increase by approximately \$4.25 per household annually to a rate of \$134.25 (after discount) or \$149.25 before the discount. The tipping fee for food waste under bylaw 1531 would increase to \$142.00 per tonne. The City of Nanaimo manages their own garbage and recycling and would need to establish revised rates as well related to a \$32 per tonne increase in cost.

A direct increase of \$3 per tonne for the yard & garden waste tipping fee under Bylaw 1531 would offset the additional cost to the RDN for the amounts of this waste dropped off at Cedar Road and at the Church Road Transfer Station. However, with regard to the approximately 5300 tonnes of yard & garden waste that is handled through the Nanaimo Recycling Exchange (NRE) at a cost to the RDN with no revenue from NRE to offset it, there would be an additional cost of approximately \$16,000. This is in addition to the \$300,000 to \$325,000 cost incurred by the RDN currently related to this service. Staff are working on a revised agreement with NRE to achieve cost recovery related to the hauling cost but at this time it is difficult to identify whether it is possible to fully recover those costs. Assuming both new agreements begin in July, 2013, it is assumed there will be revenues from to NRE yard & garden waste processing to offset the additional cost. Alternatively, the additional \$16,000 would need to be managed through existing budgets

ENVIRONMENTAL IMPLICATIONS

Organics diversion is one of the cheapest and most effective strategies to address climate change as well as to conserve expensive landfill space. Under Alternative 1, if the Board awards an amended contract to ICC and continues the residential food waste collection service, the production of greenhouse gases at the Regional Landfill will be reduced by 10,000 tonnes.

SUSTAINABILITY IMPLICATIONS

Organics diversion is one of the cheapest and most effective strategies to address climate change as well as to conserve expensive landfill space. A region-wide food waste collection program contributes to the sustainability of the RDN by providing benefits to the environment, economy and residents. Diverting food waste to a composting facility reduces the generation of methane, a potent greenhouse gas. Food

waste diversion also extends the life of the landfill thereby avoiding the cost of additional expensive disposal capacity. Processing food waste and other organic material at ICC also generates local jobs producing fertilizers, soil amendments and potentially biofuels, thereby enhancing the local economy. Finally, food waste collection as well as recycling programs provides residents with the opportunity to make effective and meaningful contributions toward mitigating climate change.

SUMMARY/CONCLUSIONS

Prospective new owners of ICC were a delegation at the November 26, 2013 Board meeting. They explained financial difficulties that the ICC company was currently undergoing and the imminent danger of the company going into bankruptcy. The prospective new owners outlined a plan to address the aging infrastructure of the facility and to implement the facility upgrades that would also address odour management issues.

Their proposal to address infrastructure upgrading required an increase to the tipping fee that ICC was currently receiving. They indicated that they would complete the facility upgrades prior to having an increase to the tipping fee but would require an extension to the Organic Waste Processing Contract for a further five year term ending March 31, 2020.

If ICC was to cease operations staff would have to immediately find other options to deal with the organic food and yard waste that is currently collected. Staff has researched what capacity there is on the island for dealing with this material. While there are other companies on the island that have composting facilities none currently have capacity to deal with the organic food and yard waste that is generated in the RDN.

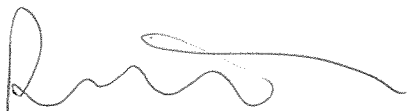
Staff estimate that it could take up to 2 years' time to put out a RFP, select a winner, obtain zoning and WSML, and then have a facility constructed and ready to accept organic food and yard waste from the RDN. In the meantime the only solution would be to deposit the material into the landfill. This would not be a desirable outcome as it would take up valuable landfill space and contribute to the production of greenhouse gases.

Staff have worked with lawyers for the RDN and have prepared a Term Sheet to address certain matters of performance under the Organics Waste Processing Service Contract. If everything is done in a manner satisfactory to the RDN the Term Sheet indicates that the RDN would agree to enter into an amended Service Contract for a Renewal Term until March 31, 2020.


Due to the importance of maintaining the organics diversion program which reduces greenhouse gas emissions and extends the life of the landfill staff are recommending approval of the Term Sheet.

RECOMMENDATION

1. That the Board approve the Term Sheet to address certain matters of performance with ICC and amend the Organics Waste Processing Service Contract.



Report Writer



CAO Concurrence

Term Sheet
**to Amend the Organic Waste Processing Contract between the Regional District
of Nanaimo and International Composting Corporation**

By Agreement dated on or about the 1st day of April, 2010 the Regional District of Nanaimo (the “**RDN**”) contracted with International Composting Corporation (“**ICC**”) for ICC to provide to RDN the service of organic waste processing collected within the RDN (the “**Service Contract**”);

The term of the contract was for 5 years, from April 1, 2010 to March 31, 2015, and contained a right of renewal for a further term of 5 years from April 1, 2015 to March 31, 2020 (the “**Renewal Term**”);

The RDN has raised concerns with ICC regarding certain matters of performance under the Service Contract, and ICC has agreed to address those matters in a manner satisfactory to the RDN and, provided such matters are addressed to the satisfaction of the RDN, the RDN has agreed to enter into an amended Service Contract for the Renewal Term;

Accordingly the following terms and conditions shall form the basis for an agreement to be negotiated by the Parties to amend the Service Contract:

1.Processing Fee, Renewal and Conditions

- 1.1 Upon fulfillment by ICC of all of the conditions set out in section 2 to the satisfaction of the RDN, acting reasonably, the Processing Fee payable under section 5.2 of the Service Contract shall be increased to \$122.00/tonne for food waste and \$45/tonne for yard waste and shall thereafter be increased by two percent (2%) per year, including during the Renewal Term.
- 1.2 Despite section 24.1 of the Service Agreement, the parties agree that the Service Contract shall be renewed for a further 5-year term commencing April 1, 2015 and expiring March 31, 2020, to include the terms and conditions contained herein.

2.Contract Physical Improvements

As a condition of the increase in the Processing Fee payable during the Renewal Term, ICC shall complete at its cost prior to the commencement of the Renewal Term the following:

- 2.1 installation of membrane covers (GORE or equivalent) to be placed on aerated outdoor static piles
- 2.2 immediate change for biofilter;
- 2.3 The building air management system and the air channels and ducting for the aeration of indoor piles will be reviewed and if necessary an upgrading plan completed and submitted to the RDN for approval;
- 2.4 design and installation of French drains, sediment traps, oil/water separators and storage tanks;
- 2.5 design, construction and completion of building for compost storage;
- 2.6 purchase of sweeper for cleaning compost residue on floor surfaces;
- 2.7 upgrade from low pressure to high pressure misting at doors;
- 2.10 install tall misting towers for misting during screening;
- 2.11 expand misting between ICC and Orca Site boundaries;
- 2.12 minimize final product storage; and

all as recommended in the report by Morrison Hershfield dated September 25, 2013 attached as Schedule A to this Term Sheet (the "**Engineering Report**").

3. Contractor Operational Changes

During the remainder of the contract term and the Renewal Term, ICC shall meet the following operational requirements:

- 3.1 regular media change for biofilter on a schedule recommended in the Engineering Report; and
- 3.2 no more than one overs pile that must be covered.

4. Overs

Overs in excess of one pile will be removed by RDN at its cost to the Landfill at a maximum rate of 140 cubic yards per month.

5. Net Revenue Sharing

The Service Contract shall be amended to provide that any net revenue resulting from the sale of the compost shall be shared equally between the RDN and ICC parties.

NOTE:

The foregoing terms and conditions are an outline only of the changes to an amendment to the Service Contract to be prepared and finalized by the parties and are not necessarily exhaustive. They are subject to approval of the Board of the RDN, and to negotiation of an amending agreement satisfactory to RDN and ICC and their respective legal counsel.

REGIONAL DISTRICT OF NANAIMO

ICC