

Memo



Date: January 26, 2011
To: City Manager
From: Utility Services Manager
Subject: Curbside Solid Waste Cart Collection Contract Amendment

Recommendation

THAT Council receive, for information, the report from the Utility Services Manager, dated January 26, 2011 on the proposed amendments to the Residential Garbage, Recyclables and Yard Waste Collection Agreement;

AND THAT Council approve the amendment to the Curbside Solid Waste Cart Collection contract as attached to the report of the Utility Services Manager dated January 26, 2011 that allows provisions for the inclusion of the RFID (Radio Frequency Identification), for the balance of the contract period;

AND FURTHER THAT Council authorize the Mayor and City Clerk to execute on behalf of the City of Kelowna, the Contract Amendment No. 1 Agreement to the Curbside Solid Waste Cart Collection contract to include the RFID system.

Purpose

To have Council approve the proposed amendments to the Residential Garbage, Recyclables and Yard Waste Collection Agreement that will include provisions for the RFID system. Council is also being asked to execute the amended contract on behalf of the City.

Background:

At the November 5th, 2010 regular meeting, Council approved the implementation of the RFID (Radio Frequency Identification System) for Kelowna's curb side cart collection system. Each member municipality has now approved the implementation of the RFID system, which is expected to be up and running April 1st of this year. The existing Residential Garbage, Recyclables and Yard Waste Collection Contract must now be amended to include the specific provisions for the RFID system within the contract that will set the contractual requirements for the existing contractor, Okanagan Environmental Waste Systems (OKEWS). OKEWS has signed the amendment (attached) and with Councils approval, will proceed with finalizing all arrangements for the installation and implementation of the RFID system.

A handwritten signature in the bottom right corner of the page.

Internal Circulation: Karen Needham, Council Services Supervisor, Legislative Services
Maureen MacGillivray, Purchasing Manager

Considerations not applicable to this report:

Legal/Statutory Authority N/A
Legal/statutory Procedural Requirements N/A
Existing Policy N/A
Financial/Budgetary Considerations N/A
Personnel Implications N/A
External Agency/Public Comments N/A
Community & Media Relations N/A
Alternate Recommendation N/A

Report prepared by:



Don Degen
Utility Services Manager

Approved for Inclusion:



Joe Creron, Director Civic Operations

Cc John Vos, General Manager, Community Services
Carla Stephens, Director, Community and Media Relations

CONTRACT AMENDMENT NO. 1 AGREEMENT
COLLECTION SERVICES FOR WASTE, RECYCLABLES AND YARD WASTE T07-116

This Amendment Agreement is dated for reference the 28th day of January, 2011

BETWEEN:

O.K. ENVIRONMENTAL WASTE SYSTEMS LTD.
2975 Acland Road
Kelowna, British Columbia, V1X 7X2
(hereinafter called "the Contractor")

OF THE FIRST PART

AND:

CITY OF KELOWNA
1435 Water Street
Kelowna, British Columbia,
(hereinafter called "the City of Kelowna")

OF THE SECOND PART

WHEREAS the parties entered into an agreement dated for reference April 22, 2008 (the "Agreement"), pursuant to which the Contractor provides certain waste, recyclables and yard waste collection services for and on behalf of the City of Kelowna;

AND WHEREAS there is a desire by the Contractor and the City of Kelowna to set out in writing their rights, duties and obligations with respect to the implementation and use of a radio frequency identification system as part of the services to be performed by the Contractor under this contract amendment;

NOW THEREFORE in consideration of the payments and promises of this Amendment Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby expressly acknowledged by both parties), the Contractor and the City of Kelowna covenant and agree as follows:

1. Unless otherwise defined herein, the terms and phrases defined in the Agreement shall have the same meaning in this Amendment Agreement.

2. The Agreement is amended by deleting subsection (g), and replacing them with the following:

"RFID System" means a radio frequency identification tag system, together with an electronic photographic and videotape system, by which individually tagged waste, recycling and yard waste carts are monitored for compliance with the City of Kelowna Solid Waste Management Regulation Bylaw No. 10106 as amended from time to time;

"Work" means the provision of all materials, tools and equipment (including all repairs, maintenance and replacement of pre-existing materials, tools and equipment), labour, training and supervision necessary or convenient for the provision of the waste, recyclables and yard waste collection services outlined in the RFP and the Proposal and the RFID System.

3. The Agreement is amended by adding the following heading and provisions:

"RFID SYSTEM

38. The Contractor will implement and use the RFID System, together with the existing cart inventory database, to collect, store and provide the following data in real-time and by request for every scheduled collection and every household registered with the City of Kelowna:
 - Truck ID
 - Cart Serial Number
 - Corresponding Address
 - Cart Type
 - Exceptions (including without limitation, data regarding waste contamination and bin placement)
 - Photo evidence of each recorded exception
 - Date and time of collection
 - Photo/Video evidence reference that shows households that did not require collection that were offered the service (this applies to houses that did not put out a cart for collection)
39. The Contractor will collect and save the video data described in section 38 from a minimum of two view points: one which must capture imagery of cart contents as carts are emptied into the collection truck and one which must capture imagery of the roadside where carts are placed for collection.
40. The parties' obligations with respect to the collection, storage, use, and disclosure of all information collected pursuant to this Agreement including, without limitation, information collected as part of the RFID System, are as set out in the schedule of privacy terms attached as Schedule "D" to this Agreement."
4. The Agreement is amended by adding as Schedule "D" the schedule of privacy terms attached as Appendix "A" to this Amendment Agreement.
5. The Agreement is amended by including the following revised cost structure, which includes a \$1.68 increase to Single Family Dwelling Collection:

6.

	City of Kelowna Rate Per SFD
Single Family Dwelling collection of residential: a) Garbage (weekly) b) Yard Waste (bi-weekly, 9 months); c) Recycling (bi-weekly)	\$6.99/unit/month
d) Cart delivery	\$7.25/unit
e) Cart maintenance (three carts)	\$0.09/unit/month
f) Cart maintenance (each additional cart)	\$0.03/unit/month
g) Cart exchange (beyond one free exchange per year)	\$15.00/unit
h) Additional 360l yard waste cart	\$1.73/unit/month
i) Upgraded yard waste cart from 240l to 360l	\$0.32/unit/month
j) Upgrade recycling cart from 240l to 360l	\$0.32/unit/month
k) Upgrade garbage cart from 120l to 240l	0.65/unit/month

7. All other provisions of the Agreement shall remain the same and be enforceable.

As evidence of their Agreement each party has executed this Amendment Agreement on the dates written below.

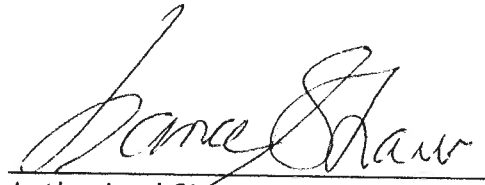
DATED the ____ day of _____, 2011

Executed by the **CITY OF KELOWNA** by)
 its authorized signatories:)
)
)
)
)
)
 _____)
 Authorized Signatory)
)

 Authorized Signatory

DATED the ____ day of _____, 2011

Executed by O.K. ENVIRONMENTAL)
WASTE SYSTEMS LTD. by its)
authorized signatories:)
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)
)
)
)
)
)



Authorized Signatory:

Authorized Signatory:

Appendix "A" to the Amendment No. 1 Agreement

This is Schedule "D" to the Residential Garbage, Recyclables and Yard Waste Collection Agreement between O.K. Environmental Waste Systems Ltd. (the "Contractor") and the City of Kelowna dated for reference the 22nd day of April, 2008 (the "Agreement") as amended in writing from time to time.

Definitions and Interpretation

1. In this Schedule:

- a. "Act" means the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c.165, as amended or replaced from time to time;
- b. "contact information" means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;
- c. "foreign demand for disclosure" means a subpoena, warrant, order, demand or request that is:
 - i. *from a foreign court, an agency of a foreign state or another authority outside of Canada, and*
 - ii. *for the unauthorized disclosure of personal information to which the Act applies;*
- d. "personal information" means recorded information about an identifiable individual other than contact information, which is collected or created by or otherwise provided as part of the RFID System or the Contractor's performance of the Work under the Agreement;
- e. "record" means any physical, electronic or other medium in or on which personal information is recorded or stored, and includes data recorded or stored on the RFID System;
- f. "unauthorized disclosure of personal information" means disclosure of, production of or the provision of access to personal information to which the Act applies, if that disclosure, production or access is not authorized by the Act.

Compliance with the Act

2. The Contractor must:

- a) comply with all requirements of the Act applicable to it as a service provider of the City of Kelowna, including any applicable order of the Information and Privacy Commissioner under the Act; and
 - b) any direction given by the City of Kelowna under this Schedule with respect to personal information in its custody or under its control.
3. The Contractor represents and warrants to the City of Kelowna that it is familiar with the requirements of the Act governing personal information that are applicable to it as the City of Kelowna service provider, and acknowledges that the City of Kelowna entered into the Agreement on the basis of and in reliance upon this representation and warranty.

Collection, Use and Disclosure of Personal Information

4. Unless otherwise directed by the City of Kelowna in writing, the Contractor must:
- a) only collect, create and use personal information that is necessary for the Work;
 - b) collect personal information directly from the individuals about whom the information pertains;
 - c) ensure that all individuals from whom personal information is collected are clearly advised of:
 - i. the purpose for collecting the personal information;*
 - ii. the legal authority for collecting the personal information; and*
 - iii. the title, business address and business telephone number of a person appointed by the City of Kelowna to answer questions about the Contractor's collection of personal information; and*
 - d) only disclose personal information inside Canada to a person other than the City of Kelowna if the disclosure is necessary for the Work.

Protection and Accuracy of Personal Information

5. The Contractor shall protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal. The Contractor shall make available to the City of Kelowna, from time to time and upon 10 business days' written notice from the City of Kelowna, a written report about such security arrangements.

6. The Contractor must make every reasonable effort to ensure the accuracy and completeness of all personal information.
7. The Contractor must annotate or correct any personal information within five (5) business days of receiving written direction to do so from the City of Kelowna.
8. If the Contractor receives a request for correction or annotation of personal information from an individual other than the City of Kelowna, the Contractor must, within five (5) business days of receipt of that request, advise the individual to make the request to the City of Kelowna and provide the individual with the information set out in section iii of this Schedule.

Requests for Access to Personal Information

9. If the Contractor receives a request for access to personal information from an individual other than the City of Kelowna, the Contractor must, within five (5) business days of receipt of that request, advise the individual to make the request to the City of Kelowna and provide the individual with the information set out in section iii of this Schedule.

Storage, Access and Disclosure Outside Canada

10. Unless the City of Kelowna otherwise authorizes or directs in writing, the Contractor must not store any personal information outside of Canada.
11. The Contractor shall not permit any person, including without limitation any director, officer, employee, contractor or agent of the Contractor or of any corporate affiliate of the Contractor, to access personal information from outside of Canada unless:
 - a) the Contractor has received the prior written consent of the City of Kelowna, which consent may be withheld by the City of Kelowna for any reason whatsoever; and
 - b) the access is necessary for:
 - i. installing, implementing, maintaining, repairing, trouble shooting, or upgrading any portion of the Work (including the RFID System) containing an electronic system or equipment that includes an electronic system, or
 - ii. data recovery that is being undertaken by the City of Kelowna or the Contractor for the purposes of performing the Work for the City of Kelowna; and
 - c) the access is limited to temporary access and storage for the minimum time necessary for the permitted purpose; and
 - d) in the case of access for data recovery purposes as permitted under subsection (b)(ii), the access and storage occurs only after a system failure has occurred.
12. Unless the City of Kelowna otherwise directs in writing, the Contractor must not disclose personal information outside of Canada.

Foreign Demands for Disclosure and Other Unauthorized Disclosure

13. In addition to the Contractor's obligations under section 30.2 of the Act, if in relation to personal information under its custody or under its control, the Contractor:

- a) receives a foreign demand for disclosure;
- b) receives a request to disclose, produce or provide access that the Contractor knows or has reason to suspect is for the purposes of responding to a foreign demand for disclosure; or
- c) knows or has reasons to suspect that an unauthorized disclosure of personal information has occurred in response to a foreign demand for disclosure,

the Contractor must immediately notify the City of Kelowna and provide it with the information described in subsection 30.2(3) of the Act together with any other information the City of Kelowna may reasonably demand.

14. In addition to the Contractor's obligations under section 30.5 of the Act, if the Contractor knows or has reasons to suspect that an unauthorized disclosure of personal information in its custody or under its control has occurred, the Contractor must immediately notify the City of Kelowna.

Retention and Destruction of Personal Information

15. Except as otherwise set out in the Agreement, the Contractor must retain personal information until directed by the City of Kelowna to dispose of it or deliver it as specified in the direction.

Inspection by the City of Kelowna

16. Notwithstanding any rights of inspection under the Agreement and the Amendment Agreement, in the Act, or otherwise available to the City of Kelowna, the City of Kelowna may, at any reasonable time and upon at least one (1) business day's written notice to the Contractor, enter on or in the Contractor's premises to inspect any personal information or any of the Contractor's policies or practices relevant to its management of personal information or its compliance with this Schedule and the Contractor must permit, and provide reasonable assistance to, any such inspection

Notice of Non-Compliance

17. If for any reason the Contractor does not comply, or anticipates that it will not be able to comply, with a provision of this Schedule, the Contractor must immediately notify the City of Kelowna of the particulars of the non-compliance or anticipated non-compliance, which notice must set out what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

Interpretation

18. The obligations of the Contractor in this Schedule shall survive the termination of the Agreement.
19. If a provision of the Agreement (including any direction given by the City of Kelowna under the Agreement or this Schedule) conflicts with a requirement of the Act or an applicable order of the Information and Privacy Commissioner under the Act, the conflicting provision or direction will be inoperative to the extent of the conflict.
20. The Contractor shall comply with the provisions of this Schedule despite any conflicting provision of this Agreement or of the Contractor's own privacy policies or procedures.
21. Nothing in this Schedule shall operate so as to require the Contractor to contravene the law of any foreign jurisdiction unless such contravention is required to comply with the Act.

END OF AMENDMENT No.1 AGREEMENT