



**CITY OF HAMILTON**  
**PUBLIC WORKS DEPARTMENT**  
**Hamilton Water Division**

<b>TO:</b>	Chair and Members Public Works Committee
<b>COMMITTEE DATE:</b>	August 11, 2021
<b>SUBJECT/REPORT NO:</b>	Biosolids Management Project - Approval of Change in Control of Harbour City Solutions (PW11098(h)) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Nick Winters (905) 546-2424 Ext. 1474
<b>SUBMITTED BY:</b>	Nick Winters Director, Water and Wastewater Operations Public Works Department
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That the General Manager of Public Works be authorized to execute a consent authorizing and approving the transfer of control of Bird Capital Hamilton Biosolids Holdings Inc. and Maple Hamilton Biosolids Holdings Inc., as requested by Synagro Hamilton Biosolids LP, in a form approved by the City Solicitor; and,
- (b) That the consent to authorize and approve the transfer of control of Bird Capital Hamilton Biosolids Holdings Inc. and Maple Hamilton Biosolids Holdings Inc. be subject to the issuance of Final Completion Phase 1 and Final Completion certificates by the Independent Certifier as required and defined in the Project Agreement, and such other reasonable conditions as may be specified by the City Solicitor.

**EXECUTIVE SUMMARY**

On March 28, 2017, the City entered into an Agreement to construct a Biosolids processing facility for the City with the Harbour City Solutions General Partnership (HCS). This partnership consists of Synagro Hamilton Biosolids LP (60%), Bird Capital Hamilton Biosolids Holdings Inc. (20%), and Maple Hamilton Biosolids Holdings Inc. (20%). Construction work under the contract is the responsibility of the Bird-Maple Reinders Joint Venture (consisting of companies affiliated with the Bird and Maple

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OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

**SUBJECT: Biosolids Management Project - Approval of Change in Control of Harbour City Solutions (PW11098(h)) (City Wide) - Page 2 of 5**

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Partners of HCS). This construction work is now drawing to a close. The operation, maintenance, and renewal (OMR) work is the responsibility of Synagro Hamilton Operating LP, which is affiliated with the Synagro Partner of HCS. The OMR work has recently begun and has 29 more years to run on a 30-year term.

HCS has requested that the City consent to a transaction under which the Bird and Maple Partners of HCS will become owned by and subsequently amalgamated with companies affiliated with the Synagro Partner of HCS. Although the March 28, 2017 agreement requires City consent before this transaction may occur, the agreement also stipulates that the City cannot unreasonably withhold or delay its consent.

Staff have taken the position that any transfer of the Bird and Maple interests in the HCS partnership should not occur until there has been completion of all of the construction work which is the responsibility of the Bird-Maple Joint Venture, but that once this work has been finally completed Bird and Maple would become passive investors in the General Partnership and would thereafter have no active interest in the project. In such circumstances, it is appropriate that affiliates of the remaining Partner, Synagro, should be allowed to acquire the interests of Bird and Maple in the HCS General Partnership.

**Alternatives for Consideration – Not Applicable**

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: There are no financial implications.

Staffing: There are no staffing implications.

Legal: The Legal Services Division has been involved in the preparation of this report and agrees with both the recommendation and the proposed condition requiring final completion of construction before the City's consent will be granted. None of the changes to the share ownership of Bird and Maple affects any of the City's rights under the project agreement, the performance securities, or against the OMR Guarantor, Synagro Technologies, Inc.

**HISTORICAL BACKGROUND**

As communicated in Report PW11098(f), the Biosolids Management Project (the 'Project') is a Public-Private-Partnership arrangement that was supported through funding from Infrastructure Canada (formerly PPP Canada) for the design, build, finance, operation and maintenance (DBFOM) of a biosolids management facility and management of the City's biosolids for a 30-year term. The Project was initiated in December 2011, and on March 28, 2017 the City awarded and executed the Project

**SUBJECT: Biosolids Management Project - Approval of Change in Control of Harbour City Solutions (PW11098(h)) (City Wide) - Page 3 of 5**

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Agreement with Harbour City Solutions (HCS or Project Co) allowing the Project to move forward. The construction of the new facility reached substantial completion on May 11, 2020, starting the 30-year Operations, Maintenance, and Renewal (OMR) phase with HCS. The new biosolids management facility provides for the drying and pelletization of biosolids to a quality that is pathogen free and can be marketed as a fertilizer and/or sold as an alternate energy source.

The HCS General Partnership currently consists of Synagro Hamilton Biosolids LP (60%), Bird Capital Hamilton Biosolids Holdings Inc. (20%), and Maple Hamilton Biosolids Holdings Inc. (20%). Construction work under the contract is the responsibility of the Bird-Maple Reinders Joint Venture (consisting of companies affiliated with the Bird and Maple Partners of HCS). This construction work is now drawing to a close. The OMR work is the responsibility of Synagro Hamilton Operating LP, which is affiliated with the Synagro Partner of HCS. The OMR work has recently begun and has 29 more years to run on a 30-year term.

In May 2021 the City was approached by HCS with a Notice of Proposed Change in Control of Project Co (Notice). The Notice advises that the HCS Synagro Partner proposes that its general partner, Synagro Ontario Biosolids Company Incorporated (the "Purchaser") will incorporate two (2) new wholly-owned subsidiaries in order to purchase the shares of Maple Partner and Bird Partner from Maple Reinders PPP Ltd. ("Maple Parent") and Bird Capital Limited Partnership ("Bird Parent"), respectively, and amalgamated immediately after the transaction is complete. The Notice requests the City's approval of this change in control, which the City cannot unreasonably withhold or delay per provisions of the Project Agreement (PA), given that:

- a) The Purchaser is not a Restricted Person;
- b) The Purchaser is not a person whose standing or activities are inconsistent with the City's reputation or integrity, or a person whose standing or activities may compromise the City's reputation or integrity or the nature of the City's public works system;
- c) The Proposed Transaction will not have a material adverse effect on the performance of the Project Operations or the Woodward Operations;
- d) Since Service Commencement, the OMR Services have been and will be provided by a subsidiary of the OMR Guarantor, and this will not change as a result of the Proposed Change of Control;
- e) The Proposed Transaction and the resulting impact to the Project would not cause Project Co or the City to violate Applicable Law;
- f) The Proposed Transaction is to occur after the third anniversary of the date of Financial Close; and,
- g) The Proposed Transaction will not result in a material change to the level of experience and expertise with biosolids management of the Project Co Group or the marketing of biosolids beneficial products by the Project Co Group.

Staff have taken the position that any transfer of the Bird and Maple interests in the HCS partnership should not occur until there has been completion of all of the construction work which is the responsibility of the Bird-Maple Joint Venture, but that once this work has been finally completed Bird and Maple would become passive investors in the General Partnership and would thereafter have no active interest in the project. In such circumstances, it is appropriate that affiliates of the remaining Partner, Synagro, should be allowed to acquire the interests of Bird and Maple in the HCS General Partnership. This change in control will not impact the OMR relationship between the City and Synagro Ontario Biosolids Company Incorporated, or any provisions of the PA.

### **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

The report recommendation complies with all City Policies and the requirements of the Project Agreement between the City and Harbour City Solutions General Partnership.

### **RELEVANT CONSULTATION**

Staff from the City Manager's Office, Legal Services Division assisted in developing this Report and associated Recommendations.

### **ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)**

Recommendation (a) is made so that signing authority for the consent be delegated to the General Manager of Public Works.

Recommendation (b) results from some remaining construction deficiencies with the Biosolids Management Facility that have yet to be fully rectified by Harbour City Solutions. The recommendation ensures that a change in control cannot proceed until these deficiencies have been rectified to the satisfaction of the City.

### **ALTERNATIVES FOR CONSIDERATION**

Not Applicable.

### **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

#### **Clean and Green**

Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.

**Built Environment and Infrastructure**

Hamilton is supported by state-of-the-art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

**APPENDICES AND SCHEDULES ATTACHED**

None