



CITY OF HAMILTON
CITY MANAGER'S OFFICE
Legal Services Division

and

PUBLIC WORKS DEPARTMENT
Corporate Assets & Strategic Planning Division

TO:	Chair and Members Public Works Committee
COMMITTEE DATE:	March 2, 2015
SUBJECT/REPORT NO:	Proposed Sale of Industrial Division of Newalta Corporation (LS15007/PW15018) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Debbie Edwards (905) 546-2424, Extension 2628 Robert Norman (905) 546-2424, Extension 2298
SUBMITTED BY:	Janice Atwood-Petkovski City Solicitor City Manager's Office Gerry Davis, CMA General Manager Public Works Department
SIGNATURES:	

RECOMMENDATION

- (a) That the City of Hamilton enter into all necessary agreements with respect to the sale of Newalta Corporation's Industrial Division ("Newalta") to Revolution Acquisition LP to allow for the continued performance of all of Newalta's obligations and liabilities to the City of Hamilton;
- (b) That the Mayor and City Clerk be authorized and directed to execute all necessary agreements and all necessary ancillary documents, in a form satisfactory to the City Solicitor and with content acceptable to the General Manager of Public Works and the General Manager of Finance and Corporate Services.

EXECUTIVE SUMMARY

In late December, 2014, Newalta Corporation ("Newalta") announced the proposed sale of its Industrial Division to Revolution Acquisition LP, a company formed by Birch Hill

Equity Partners. Newalta's Industrial Division includes holdings across Canada. In Hamilton, such holdings include the active Newalta Stoney Creek Landfill, the closed Newalta West Landfill Site and 52 Imperial Street.

Part of proposed sale involves the assignment of various agreements between the City of Hamilton and Newalta Corporation, and their respective predecessors (the "Hamilton Agreements"), to Revolution Landfill LP ("Revolution"), a limited partnership formed by Revolution Acquisition LP.

The purpose of this report is to obtain Committee and Council authorization to enter into all necessary agreements and documents to allow for:

- the assignment of the Hamilton Agreements from Newalta to Revolution;
- the assumption of all obligations and liabilities under the Hamilton Agreements by Revolution;
- the release of Newalta from all obligations and liabilities under the Hamilton Agreements;
- the inclusion of a guarantee for the performance of all of the obligations and liabilities of Revolution.
- any other matters required to ensure that the performance of Newalta Corporation's obligations and liabilities under its agreements with the City of Hamilton are complied with.

Alternatives for Consideration - See Page 3

FINANCIAL - STAFFING - LEGAL IMPLICATIONS

Financial: No impact is anticipated.

Staffing: N/A

Legal: The entering into of all necessary agreements and documents will allow for a clear record of the obligations and liabilities under the Hamilton Agreements that the purchaser of Newalta's Industrial Division will be assuming. The inclusion of a guarantor will provide further protection to the City that those obligations and liabilities will be met.

HISTORICAL BACKGROUND

There are various existing Hamilton Agreements between the City of Hamilton and Newalta Corporation. Most of the obligations and liabilities under the Hamilton Agreements were assumed by Newalta when they purchased Philip Services back in 2006.

The Hamilton Agreements generally relate to the following matters:

1. Minutes of Settlement reached with Philip Services Corporation and Philip Services Inc. (predecessors of Newalta Corporation) in 2001 and all Schedules thereto which

include agreements related to the remediation of contamination at 1579 Burlington Street East and the discharge of leachate to the City's sanitary sewer system;

2. City Compensation Agreement and amendments thereto (originally entered into with the former City of Stoney Creek). In part, this Agreement requires the payment of annual royalties to the City of Hamilton in March of each year as long as the Newalta Stoney Creek Landfill Site is operational;
3. Agreements involving the Heritage Green Community Trust (formerly the Study Group), including the Community Compensation Agreement and amendments thereto and Trust Indenture; and
4. Licence Agreement and amendment thereto for the use by the City of the passive park/dog park as well as a Funding Agreement regarding the Heritage Green Community Trust's financial contribution to the park. Completion of all construction deficiencies related to the passive park/dog park is targeted for the Spring of 2015.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

No policy implications have been identified for the recommendations contained in this report.

RELEVANT CONSULTATION

Consultation has also occurred with staff in both the Planning and Economic Development Department (Growth Management Division) and in the Corporate Services Department (Finance, Administration and Revenue Generation Division and Taxation Division).

ANALYSIS AND RATIONAL FOR RECOMMENDATION

It is recommended that the City enter into all necessary agreements and documents for the following reasons:

- many of the Hamilton Agreements are already registered on title and therefore already bind subsequent owners of the properties;
- the other Hamilton Agreements already provide that they bind successors and assigns;
- the financial capability of the guarantor will be reviewed by Corporate Services prior to the signing of any agreements;
- provides a clear record moving forward.

ALTERNATIVES FOR CONSIDERATION

The alternative is to not enter into any agreements or documents. This alternative is not recommended as it does not provide a clear record of the obligations and liabilities under the Hamilton Agreements that Revolution will be assuming.

ALIGNMENT TO THE 2012 - 2015 STRATEGIC PLAN

Strategic Priority #1

A Prosperous & Healthy Community

WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn

Strategic Priority #3

Leadership & Governance

WE work together to ensure we are a government that is respectful towards each other and that the community has confidence and trust in

APPENDICES AND SCHEDULES ATTACHED

None