



CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Legal Services Division
 and
Financial Planning, Administration and Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	August 14, 2018
SUBJECT/REPORT NO:	Terrapure Stoney Creek Regional Facility EA – Compensation Agreement (LS18045 / FCS18072) (Ward 9)
WARD(S) AFFECTED:	Ward 9
PREPARED BY:	Justyna Hidalgo (905) 546-2424, Ext. 2023 Samantha Blackley (905) 546-2424, Ext. 2132
SUBMITTED BY:	Nicole Auty City Solicitor, Legal Services
SIGNATURES:	
SUBMITTED BY:	Brian McMullen Director, Financial Planning, Administration and Policy
SIGNATURES:	

RECOMMENDATIONS

- (a) That staff be authorized and directed to negotiate and enter into, on behalf of the City of Hamilton, a compensation agreement with the owner and operator of the Stoney Creek Regional Facility, currently known as Terrapure Environmental Ltd., on such other terms and conditions as deemed appropriate by the General Manager of Finance and Corporate Services, General Manager of Public Works, and General Manager of Planning and Economic Development, as applicable;
- (b) That the Mayor and City Clerk be authorized and directed to execute, on behalf of the City of Hamilton, all necessary documentation to implement recommendation (a) In Report LS18045 / FCS18072, all with content acceptable to the General Manager of Finance and Corporate Services, General Manager of Public Works, and General Manager of Planning and Economic Development, as applicable, and in a form satisfactory to the City Solicitor.

EXECUTIVE SUMMARY

This Report seeks authority to negotiate and enter into an updated compensation agreement with the owner, currently known as Terrapure Environmental Ltd. (Terrapure), of the Stoney Creek Regional Facility (SCRF), a landfill located at the northwest corner of Mud Street and Upper Centennial Parkway (Highway 20) in the former City of Stoney Creek (Ward 9).

SCRF is a landfill approved under the *Environmental Protection Act* (“EPA”), to receive 2,000,000 cubic metres (m³) of industrial fill / soils and 6,320,000 m³ of solid, non-hazardous residual materials from commercial, industrial and institutional sources (that have exhausted all recycling options) for a total approved site capacity of 8,320,000 m³ and an approved maximum annual volume of 750,000 tonnes of fill material per year.

Terrapure is currently undergoing an Environmental Assessment (EA) process with the Ministry of the Environment, Conservation and Parks (MOECP) where it is proposing to increase the approved capacity of non-hazardous industrial residual material by 3,680,000 m³, so that it can receive post-diversion solid, non-hazardous residual material beyond its currently approved capacity. If approved, the SCRF facility would have a total site capacity of 10,000,000 m³ of solid, non-hazardous residual materials.

SCRF operates under Environmental Certificate of Approval No. A181008 (ECA), as amended, initially obtained from the Ministry of Environment (MOE) in 1996 by Terrapure’s predecessor in title, Taro Aggregates Limited (Taro). In accordance with one of the conditions of approval of the ECA, compensation agreements were entered into between Taro (as later assumed by Terrapure), the former City of Stoney Creek (now City of Hamilton), and a community group (now known as the Heritage Green Community Trust) (the “Compensation Agreements”). Royalties are paid annually by Terrapure to each group based upon the tonnages of waste received at the landfill and the formula set out in the respective Compensation Agreements.

Given the proposed reconfiguration and increased capacity of the SCRF landfill being considered by the MOECP under the EA process, and the fact that the compensation payable to the City has not been reviewed or updated since its execution in February of 1997, except for the additional payment negotiated in 2001, staff seek approval from Council to negotiate an updated compensation agreement with Terrapure. If the reconfiguration and increased capacity for the SCRF is approved by MOECP despite Council’s stated opposition, the updated terms of the compensation agreement will be considered by the Ministry as part of the EA process.

Alternatives for Consideration – See Page 5

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FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: By negotiating an updated compensation agreement with Terrapure, the City will ensure that the compensation terms are current and up to date securing revenue for the City's local infrastructure projects and charitable initiatives.

Staffing: There are no impacts to current staffing levels.

Legal: By negotiating an updated compensation agreement with Terrapure, the City will ensure that the compensation terms are current and up to date.

HISTORICAL BACKGROUND

Terrapure SCRF is owned and operated by Terrapure. The facility is located at the northwest corner of Mud Street and Upper Centennial Parkway (Highway 20) in the community of Stoney Creek (Ward 9).

Terrapure currently operates the SCRF under ECA No. A181008, as amended, initially obtained from the MOE in 1996 by Terrapure's predecessor in title, Taro. The ECA allows the facility to have a total disposal capacity of 6,320,000 m³ for residual materials, with an additional allowance for acceptance of 2,000,000 m³ of industrial fill / soils, for a site total of 8,320,000 m³. The annual maximum approved fill rate for the site is 750,000 tonnes per year.

The conditions of approval of the 1996 Environmental Assessment approval required Taro to enter into Compensation Agreements with the former City of Stoney Creek (now City of Hamilton) and Heritage Green Community Trust. The City's Compensation Agreement with Taro was signed in February of 1997, which was later assumed by Philip Services Corporation, Newalta Corporation and now, by the current operator, Terrapure. The key elements of the City's Compensation Agreement included:

- A payment to the City totalling \$3M in three instalments which were used for the purchase of lands, which are now part of the Heritage Green Sports Park;
- Annual payments to the City, for the life of the waste disposal site (as defined in the agreement), of compensation/royalties calculated on the following basis:
 - Royalties based on tipping fees charged per tonne of waste received on the site in the preceding calendar year based on the following formula:

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Tipping Fee	Royalty
\$0-\$35	\$1.00
\$35.01-\$40	\$1.50
\$40.01-\$50	\$2.00
\$50.01 & above	\$3.00

- Tipping fees are to be calculated based on the weighted average for the year for which royalties are calculated for wastes generated within the Region of Hamilton-Wentworth [now City of Hamilton] and moved directly to the waste site for disposal and, according to the agreement, are exclusive of those wastes which pass through Philip Environmental [now Terrapure] processing facilities elsewhere in the Region [City]
- As part of Minutes of Settlement reached with Philip Services and approved by Council, the City Compensation Agreement was amended in December 2001 (LS01031 / TOE01215)
 - The amending agreement stated that Philip would pay the City an additional royalty of \$.50 per tonne on the first 2.8 million tonnes of waste deposited to a value of \$1.4M, which was fulfilled in 2007.

Royalties are paid annually by Terrapure to the City and to the Heritage Green Community Trust based upon the tonnages of waste received at the landfill and the formula set out in the respective Compensation Agreements. Terrapure has provided over \$11M to the City for local infrastructure projects and charitable initiatives over the history of the SCRF.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Environmental Assessment Act

Changes to the Terrapure SCRF footprint require the preparation of an individual EA. The Terms of Reference filed by Terrapure and approved by the MOECP (first step of a two-step approval process) set out the proposed framework that will be followed during the preparation of the SCRF EA. Terrapure is currently preparing a draft EA which is expected to be released publically by September 2018 for comment. Final EA is expected to be filed in the period of January 4 to February 22, 2019.

RELEVANT CONSULTATION

Planning and Economic Development – Community Planning and GIS has been consulted and supports the recommendations.

ANALYSIS AND RATIONALE FOR RECOMMENDATIONS

Staff are seeking authority from Council to negotiate an updated compensation agreement with the intent of reviewing the existing compensation terms outlined in the City's February 1997 Compensation Agreement. The current terms have not been reviewed or updated since the execution of the Agreement, apart from the additional payment negotiated in 2001. Staff proposes that the negotiations commence immediately, with the intent of reaching an agreement on the compensation terms with Terrapure during the allotted commenting period to ensure the terms can be considered by the MOECP under the EA process currently under way.

A separate report will be brought to Committee and Council in September, 2018 by Planning and Economic Development Department staff with an update on all steps taken by Terrapure since the Terms of Reference was approved by MOECC on November 9, 2017 and a review of the next steps. The City and other stakeholders, including the public, will be provided an opportunity to comment on the EA submission material at the following upcoming milestone points:

- Pre-Submission of the Draft EA Report
- Final EA submission to MOECC
- Public Inspection of the Ministry Review

ALTERNATIVES FOR CONSIDERATION

The negotiation of the compensation agreement between Terrapure and the City of Hamilton may be delayed until after the completion of the EA process. If the negotiations are delayed, the terms of compensation will not be considered by the MOECP as part of the EA process.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Healthy and Safe Communities

Hamilton is a safe and supportive city where people are active, healthy, and have a high quality of life.

Clean and Green

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

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Built Environment and Infrastructure

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

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

Community Engagement & Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

APPENDICES AND SCHEDULES ATTACHED

N/A

JH/SB/dt