



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

<b>TO:</b>	Chair and Members Audit, Finance and Administration Committee
<b>COMMITTEE DATE:</b>	April 18 <sup>th</sup> , 2019
<b>SUBJECT/REPORT NO:</b>	Terrapure Environmental - Heritage Green Community Trust Indenture (LS19013/ FCS19034) (Ward 9)
<b>WARD(S) AFFECTED:</b>	Ward 9
<b>PREPARED BY:</b>	Justyna Hidalgo (905) 546-2424, Ext. 2023 Samantha Blackley (905) 546-2424, Ext. 2132
<b>SUBMITTED BY:</b>	Cindy Mercanti Director, Customer Service and POA Acting Director, Financial Planning and Policy Corporate Services Department
<b>SIGNATURES:</b>	
<b>SUBMITTED BY:</b>	Nicole Auty City Solicitor Legal Services
<b>SIGNATURES:</b>	

## RECOMMENDATIONS

That the General Manager of Finance and Corporate Services, or his designate, be authorized and directed to negotiate and execute, on behalf of the City of Hamilton, an Amended and Restated Heritage Green Community Trust Indenture with Revolution Landfill LP (known as Terrapure Environmental), the owner and operator of the Stoney Creek Regional Facility, and the current trustees of the Heritage Green Community Trust, on such other terms and conditions as are satisfactory to the General Manager of Finance and Corporate Services, and in a form satisfactory to City Solicitor.

## EXECUTIVE SUMMARY

This Report seeks authority to negotiate and enter into an Amended and Restated Heritage Green Community Trust Indenture with Revolution Landfill LP (known as Terrapure Environmental), the owner and operator 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), and the current trustees of the Heritage Green Community Trust.

SCRF is a landfill that receives solid, non-hazardous residual materials from commercial, industrial and institutional sources pursuant to an Environmental Compliance Approval (ECA) issued by the Ministry of Environment, Conservation and Parks. 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 study 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.

Heritage Green Community Trust was created pursuant to a Trust Indenture dated May 29, 1997 entered into between Taro, the trustees, and the former Corporation of the City of Stoney Creek, for the purpose of receiving, holding and disbursing the annual compensation payments received by the Community Trust. The current trustees of the Heritage Green Community Trust are seeking to amend and restate the existing Trust Indenture to update the names of and contact information for the parties, to expand the definition of the “Beneficial Uses” for which the compensation payments can be used so to increase the scope of the projects which could be funded by the Trust while maintaining the approved geographic location for those projects, and to allow the number of community trustees to be increased from 3 to 5.

The proposed Amended and Restated Heritage Green Community Trust Indenture will be substantially in the form appended to as Appendix A.

***Alternatives for Consideration – See Page 5***

**FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial: There is no financial impact related to the recommendation seeking authorization to negotiate and execute the Amended and Restated Heritage Green Community Trust Indenture.

Staffing: There are no impacts to current staffing levels.

Legal: The Amended and Restated Heritage Green Community Trust Indenture updates the names and contact information for the parties, allows for an increased representation of community members as trustees (from 3 to 5), as well as broadens the definition of beneficial uses on which the compensation payments received by the Community Trust may be spent (now includes

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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.*

operational costs), while maintaining the geographic limits where the funds can be spent.

The execution of the Amended and Restated Heritage Green Community Trust Indenture will not have any effect on the amounts of compensation received under the existing Compensation Agreements but will broaden how the compensation received by the Community Trust may be spent.

## **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 conditions of approval of the 1996 Environmental Assessment 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 Community Compensation Agreement was signed in 1996. City as well as Heritage Green Community Trust each receive annual payments of compensation/royalties pursuant to their respective Compensation Agreements, for the life of the waste disposal site (as defined in the agreement), 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:

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 of Hamilton].

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.

Heritage Green Community Trust was created pursuant to a Trust Indenture dated May 29, 1997 entered into between Taro (predecessor to Terrapure), the trustees, and the former Corporation of the City of Stoney Creek, for the purpose of receiving, holding and disbursing the annual compensation payments received by the Community Trust. The current trustees of the Heritage Green Community Trust are seeking to amend and restate the existing Trust Indenture to update the names of and contact information for the parties, to expand the definition of the “Beneficial Uses” for which the compensation payments can be used so to increase the scope of the projects which could be funded by the Trust while maintaining the approved geographic location for those projects, and to allow the number of community trustees to be increased from 3 to 5.

The proposed Amended and Restated Heritage Green Community Trust Indenture will be substantially in the form appended to as Appendix A.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

The updated terms of the Amended and Restated Trust Indenture will increase the trustees’ discretion to spend funds on matters such as operating costs related to the beneficial uses allowed under the agreement, and will update the current parties, including the inclusion of the City of Hamilton, as the successor to Stoney Creek.

## **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 and enter into an Amended and Restated Heritage Green Community Trust Indenture with the intent of expending the beneficial uses on which the Community Trust can expend its funds, increasing participation of community members as trustees of the Community Trust from 3 to 5, and updating the names of and contact information for the parties to the Agreement. The current terms of the Trust Indenture have not been reviewed or updated since the execution of the agreement on May 29, 1997.

The execution of the Amended and Restated Heritage Green Community Trust Indenture will not have any effect on the amounts of compensation received under the existing Compensation Agreements but will broaden how the compensation received by the Community Trust may be spent.

## **ALTERNATIVES FOR CONSIDERATION**

Staff may be directed not to proceed with the negotiation and execution of the Amended and Restated Heritage Green Community Trust Indenture which is not recommended as it will maintain the more restrictive ability to spend the funds by the trustees and leave outdated names and contact information for the parties.

## **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.*

### **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**

Appendix A of Report LS19013/FCS19034 – Draft Amended and Restated Heritage Green Community Trust Indenture.