

## **Attachment 1 – Confidential Information**

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### **CONFORMITY WITH THE CONDITIONS OF CLOSING FOR THE PURCHASE OF THE GREEN LANE LANDFILL**

<b>Date:</b>	March 26, 2007
<b>To:</b>	City Council
<b>From:</b>	Acting General Manager, Solid Waste Management Services Deputy City Manager and Chief Financial Officer City Solicitor

### **CONFIDENTIAL RECOMMENDATIONS**

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#### **Solid Waste Management Services Division, Finance and Legal Services recommend:**

1. Subject to the closing of the purchase of the Green Lane Landfill, the Acting General Manager of Solid Waste Management Services be authorized to finalize and execute, on behalf of the City of Toronto, a First Nations Community Benefit Agreement and a settlement agreement and full and final releases related to the Judicial Review application commenced by the Oneida Nation of the Thames, based on the terms and conditions set out in the Term Sheets attached as Appendices “A” and “D” of this Confidential Attachment, including the payment of community benefits included therein, and otherwise on terms and conditions satisfactory to the Acting General Manager of Solid Waste Management Services and in a form satisfactory to the City Solicitor.
2. Subject to the adoption of Recommendation (1), Council consent to the establishment, in accordance with conditions of the Green Lane Landfill Certificate of Approval, of a First Nations Liaison Committee substantially in accordance with the Terms of Reference set out in Appendix “B” of this Confidential Attachment, including the payment of the expenses of administration of the Committee and the associated Trust Fund in an amount not to exceed the amounts provided in Appendix “A” of this Confidential Attachment.

3. Subject to the adoption of Recommendation (1), the Acting General Manager be authorized to prepare an application seeking amendments to the Certificate of Approval for the Green Lane Landfill issued September 15, 2006, substantially in accordance with the proposed amendments set out in Appendix “C” of the Confidential Attachment.
4. Any funds received as a credit from the Vendor at closing of the Agreement of Purchase and Sale in relation to certain capital works obligations of the Vendor be deposited into the Solid Waste Management Reserve.
5. The Deputy City Manager and Chief Financial Officer be authorized to make the 2007 payment for the establishment and operating costs of the First Nations Liaison Committee as outlined and subject to the terms and conditions in Section 2 of Appendix “A”, to be funded from the Solid Waste Management Reserve upon closing of the Agreement of Purchase and Sale for the landfill.
6. The Deputy City Manager and Chief Financial Officer be authorized to make the initial payment set out in Appendix “D”, to Olthuis Kler Townshend in Trust for the Oneida Nation as outlined in a settlement agreement in a form satisfactory to the City Solicitor, to be funded from the Solid Waste Management Reserve upon closing of the Agreement of Purchase and Sale for the landfill.
7. Recommendation (6) and Appendix “D” and the related agreement remain confidential.

## **CONFIDENTIAL INFORMATION**

### **Financial Impact**

As a result of the financial due diligence, and the associated security of long-term disposal capacity for Toronto’s residual solid waste, the purchase of the Green Lane Landfill has been confirmed to be the preferred strategy from a financial perspective. In the confidential staff report of September 18, 2006, headed ‘Long Term Waste Disposal Capacity,’ staff estimated the acquisition would result in a haulage and disposal cost for Toronto’s residual solid waste of approximately \$70 - \$72 per tonne, including the cost of financing. The revised estimate as a result of a detailed review of operating costs puts this estimate closer to \$64 - \$69 per tonne, primarily due to a lower landfill unit operating cost of \$16 - \$18 per tonne through economies of scale, verses the \$23 per tonne based on Green Lane’s current costs and tonnages. The revised disposal cost includes the recommended provision for the new First Nations Community Benefit Agreement.

Table 1  
Green Lane Disposal Cost per Tonne (2007)

	Pre Due Diligence(Sept.'06) Estimate	Post Due Diligence Estimate
Haulage	\$23-\$25	\$24
Disposal	\$23	\$16-\$18
Capital Financing	\$24	\$24-\$27
Total	\$70-\$72	\$64-\$69

A further, detailed breakdown of operating, haulage and financing costs is included in Table 3 in the Comments section.

In addition to the security of long-term disposal capacity for Toronto's waste, the City will also receive tipping fee revenue from the existing disposal contracts with several municipalities including Southwold, St. Thomas, Guelph and the Region of York, and spot market tonnages, totalling approximately \$12-\$13 million annually.

Analysis of the cash flow profile has identified a revenue increase in 2007 and further budget adjustments in 2011 which can be used to mitigate the impact of capital financing. The positive impact in 2007 arises from the assumption of revenues noted above. Further, in 2011, a positive budget impact will arise through a lower disposal cost as all of Toronto's residual solid waste is redirected to Green Lane upon expiry of the Republic contract.

In September 2006, Council authorized the purchase of the Green Lane Landfill through debt financing of \$220.3 million. Based on the above-noted positive cash flow impacts, it is estimated that the Solid Waste Management operating budget should be able to accommodate the debt charges for the capital purchase. Due to the nature of the project and projected cash flow profile, various capital financing strategies and instruments are being considered that would match forecasted operating revenues to debt charges. The Deputy City Manager and Chief Financial Officer will report back on a detailed capital financing recommendation as part of the Solid Waste Management 2007 operating budget consideration in April 2007.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## **COMMENTS**

### Conformity with Terms and Conditions of Term Sheet:

On September 19, 2006, City Council authorized staff to negotiate and execute an agreement of purchase and sale based on the terms and conditions set out in the Confidential Term Sheet in Appendix "A" of the September 18 staff report. Other than items which were not anticipated, specifically, the Judicial Review initiated by the Oneida of the Thames and the subsequent pre-closing negotiations of the First Nations Liaison Committee Terms of Reference, Certificate of Approval terms and conditions, and Community Benefit Agreement, as well as the change of closing date, from February 1 to March 29, 2007, or such other date the parties agree, to complete due diligence matters, the transaction has proceeded in accordance with the Term Sheet.

### First Nations Liaison Committee Terms of Reference and Community Benefit Agreement

The Environmental Assessment Act approval for the Green Lane Landfill Optimization and the Green Lane Certificate of Approval (C of A), both contemplate the establishment of a First Nations Liaison Committee (FNLC) to serve as a forum for the dissemination, review and exchange of information. The C of A requires the owner of the landfill to provide for the costs associated with the operation of the Committee. The FNLC is to be comprised of representatives from the Oneida Nation of the Thames (Oneida Nation), the Chippewas of the Thames First Nation (Chippewas) and the Munsee-Delaware First Nation (Munsee-Delaware).

It was originally anticipated that the Terms of Reference for the FNLC would be negotiated after the closing date for the landfill; hence, it was not included as an item in the Term Sheet.

On January 19<sup>th</sup>, 2007, the Oneida Nation commenced a Judicial Review application in the Ontario Superior Court of Justice (Divisional Court) naming the Director of the Environmental Approvals Branch of the Ontario Ministry of the Environment, the City of Toronto and St. Thomas Sanitation Services Ltd. (Green Lane) as respondents.

[REDACTED]

As noted in Section 6(g) of the September 19, 2006 Term Sheet, with the purchase of the landfill, the City of Toronto will assume responsibility for the Green Lane Community Trust Fund. This fund pays community benefits to communities in the vicinity of the host community of Southwold Township including the County of Elgin and the City of St. Thomas. This community benefit is paid based on 5% of gross landfill revenue. At current tipping fees, this represents approximately \$2.37 per tonne. The First Nation communities currently do not participate in this community benefit nor are they represented on the Public Liaison Committee or Green Lane Community Trust Fund Operating Board despite the fact that the Oneida Nation, in particular, is an adjoining neighbour located only two kilometres from the landfill.

Formal negotiations with the Oneida Nation regarding the proposed amendments to the C of A, the FNLC Terms of Reference and Community Benefits Agreement commenced in February. [REDACTED]

A joint meeting of the First Nations occurred on Tuesday and Wednesday evenings, March 20 and March 21, 2007. Through Chief Randall Phillips of the Oneida Nation, staff have obtained confirmation of the agreement and settlement by the Oneida Nation and the Chippewas but not by the Munsee-Delaware. The Munsee-Delaware are generally agreeable to the compensation package but insist on preferential business treatment by the City in relation to goods and services at the landfill. Staff has advised the First Nations that preferential priority treatment in a commercial relationship would likely be considered 'bonusing', which is prohibited under the City of Toronto Act, and that sole source contracts, if allowed by City policies, must provide fair market value to the City. Also, the City could not give preference to the Landfill lands for future diversion facilities without considering other options.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Certificate of Approval

The following key amendments to the C of A are proposed:

- An annual tonnage limit of 1,100,000 tonnes replaces the current unlimited annual amount;
- Hours of operation have been reduced from 24 hours per weekday to 5:00 a.m. to 8:00 p.m. (Monday to Friday) and 5:00 a.m. to 2:00 p.m. Saturdays;
- The landfill will continue to be permitted to receive biosolids, however, the FNLC must be specifically involved in the review of biosolids handling practices, including monitoring;
- The MOE discretion to dispense with a landfill inspector at the site has been removed and there will be a requirement that an inspector be on site at least one day per week; and,
- The Small Claims Trust Fund annual limit is to be raised from \$25,000 per year to \$100,000 per year, and the maximum annual claim for an individual family is to be raised from \$1,250 to \$5,000.

Further detail is provided in Appendix "C".

## Terms of Reference for the First Nation Liaison Committee

- Purpose of Committee is to serve as a forum for meaningful and bona fide consultation;
- Parties will disseminate, exchange, review information/reports; review complaints regarding the site and provide feedback to MOE;
- Representatives of the Oneida Nation, the Chippewas and the Munsee-Delaware will be members, as well as the City of Toronto and the MOE (non-voting); the First Nations members will choose the chair;
- All meetings will be held in public unless members specifically identify privacy or confidentiality reasons to limit access to a particular meeting or part of a meeting.

Further detail is provided in Appendix “B”.

## First Nations Community Benefits Agreement

Subject to the application for Judicial Review being dismissed and the Oneida Nations and the Chippewas agreeing not to commence any proceedings for the same or similar relief, the following key terms of the First Nation Community Benefits Agreement are proposed:

- A First Nations Community Trust will be established in similar form to the Southwold Community Trust Agreement which would benefit the Oneida Nation, the Munsee–Delaware and the Chippewas as neighbours of the Green Lane Landfill.
- The Trust payments from the City of Toronto would include:
  - Payment of the First Nation Liaison Committee and Trust fund legal and administrative expenses (as required by the C of A) of \$55,000 in 2007 and \$45,000 in subsequent years indexed for inflation.
  - Payment of 4% of Gross Landfill revenue estimated to be approximately \$1.90 per tonne received at the Landfill from all sources including waste from the City of Toronto.
  - A future revenue of \$4.00 per tonne on tonnage going to any new City of Toronto waste diversion facility, indexed for inflation, should the City of Toronto site a waste diversion facility on the Green Lane Landfill property or the buffer lands owned by the City of Toronto.
- The First Nations Community Trust fund shall provide the City of Toronto with audited financial statements of the use and application of the funds.

- The Oneida Nation will utilize the Green Lane Landfill for the disposal of solid waste from their community at a tipping fee of \$48.11 (2007) plus annual increases in CPI. The Chippewas and the Munsee-Delaware will also be offered this disposal rate.

With the addition of the First Nations Community Trust Fund, the City of Toronto would have the following obligations with local communities:

Table 2

	<b>Southwold Community Trust Agreement</b>	<b>First Nation Community Trust Agreement</b>	<b>Total</b>
<b>Signatories</b>	Southwold Township	Oneida Nation of the Thames, Munsee-Delaware, Chippewas of the Thames	-
<b>% Gross Landfill Revenue</b>	5%	4%	<b>9%</b>
<b>Estimated Cost per Tonne</b>	\$2.37	\$1.90	<b>\$4.27</b>

This total community benefit of approximately \$4.27 per tonne compares with a total community benefit of approximately \$6.00 per tonne previously paid to the Region of York/City of Vaughan for the Keele Valley Landfill, approximately \$3.00 per tonne paid as a community benefit by the privately-owned Warwick Landfill near Watford, and approximately \$4.00 per tonne paid as a community benefit by the Ridge Landfill near Chatham.

#### Due Diligence Costs

Staff was authorized to retain Gartner Lee Ltd., Jason Price Chartered Accountants and Stikeman Elliott LLP to provide environmental due diligence, financial due diligence and legal assistance, respectively. The authorized fees for Gartner Lee Ltd. and Jason Price Chartered Accountants was \$50,000; for Stikeman Elliott LLP the authorized amount was \$200,000. The work that was required and the amount of the fees were substantially greater than expected for the reasons set out below.

#### Legal Work and Fees

Many factors increased the amount of the legal fees incurred to date. These include:

- The number of parcels comprising the Landfill lands and Buffer lands;
- The real estate due diligence required for the large number of parcels;
- The difficulty obtaining consolidated and expeditious disclosure from the Vendor;

- The need to properly identify the assets and liabilities of the Vendor and its related entities for purposes of excluding those not related to Landfill;
- The need for more frequent liaison with City's outside financial and environmental advisors;
- The need for greater than anticipated on-site engineering investigations work arising from the initial due diligence;
- The requirement to negotiate and execute separate agreements with local communities and deal with existing contracts between the Vendor and its customers;
- The requirements to negotiate several ancillary agreements with the Vendor;
- Unanticipated issues such as the Oneida Nation's challenge of the C of A for the site, and negotiations related to a settlement of the litigation and negotiation of a community benefits agreement; and
- The number of discussions with regulators to ensure that all approvals were in place.

Direction to Stikeman Elliott LLP at this point, based on budget forecasts, is to keep its fees to a maximum of \$1,200,000, including disbursements and excluding GST.

#### Environmental and Financial Consulting Work and Fees

Many of the factors influencing the legal fees have also increased the engineering, environmental and financial due diligence costs. The work included:

- Confirmation of the assets to be purchased, identification of liabilities to be assumed, operating costs and expenses and historic revenues;
- The requirement to disaggregate the various lines of business of St. Thomas Sanitation in order to undertake a financial due diligence of the freestanding landfill operation;
- Detailed review of Environmental information and performance (groundwater, surface water) and Engineering (design, operations, control systems); and
- Independent on-site drilling and groundwater monitoring.

The updated estimate for fees and disbursements is now approximately \$345,000 in total including disbursements and excluding GST.

#### Additional Benefits Arising from the Due Diligence

As is evident above, the legal, environmental and financial due diligence undertaken was much more extensive and complex than was originally envisioned. The detailed investigations undertaken as a result of the legal and consultant supervision, which included on site surveys and independent monitoring and well drilling, revealed several day-to-day landfill maintenance issues and landfill construction issues that resulted in the City negotiating significant concessions from the Vendor. These off-sets resulted in an aggregate value to the City of over \$5.0 million. These include the following key items:

1. Cleaning and video inspection of leachate collection system between manholes 11-21 and associated laterals
2. Cleaning and video inspection of manholes 11-21
3. Installing manhole #22 and connection to leachate system
4. Extending leachate collection header from manhole 21-22
5. Constructing Cell #3
6. Construction of Cell #5

At the time of finalization of the definitive Purchase and Sale Agreement, the Vendor agreed to complete the above specified work on capital projects, at their expense, in advance of closing. It was also agreed that in the event of delays caused by weather or other factors, the value of any unfinished work would be placed in escrow until such time as that work was complete. For several reasons, including weather, the specified work will not be complete by the anticipated March 29, 2007, closing date. The Vendor has agreed to complete items 1-5 above before closing or escrow the value of the unfinished work. For Item #6, the construction of cell #5 (valued at approx. \$2.5 million), the revised estimated time of completion now extends into 2008.

As an alternative to extending the escrow for such an extended period, the City has requested from the Vendor, a portion of uncompleted capital works in cash. The Vendor has agreed to undertake and complete approximately 40% of the construction of cell #5 and to pay to the City the value of the uncompleted work, amounting to \$1.5 million. This payment will be made by the Vendor to the City at the time of closing. It is recommended that the proceeds of this cash credit be deposited into the Solid Waste Reserve Fund.

#### Financial Analysis - Update:

Since the Council approval of the September 2006 report and signing of the disclosure and confidentiality agreements, Gartner Lee Ltd. and Jason Price Chartered Accountants, in consultation with City staff, conducted a thorough and detailed review of all relevant documents, and performed site investigations to verify and test the information. The results of the due diligence generally confirmed staff's previous estimates of the operating costs of the Green Lane Landfill, and found some of the costs to be lower than the estimates.

A summary of the revised cost estimate for the acquisition of the Green Lane Landfill is shown in Table 3 below. The table shows the range of operating/financing costs based on two future waste diversion scenarios. In the first scenario, it is assumed that no new diversion programs are introduced. Diversion would remain at approximately 42% based on current practices. In the 70% scenario, it is assumed that the City will achieve the 70% diversion goal by 2012 through a series of new source separation and mixed waste process diversion initiatives.

Table 3 - Summary of Operating, Haulage and Financing Costs  
No New Diversion and 70% Diversion Rate Scenarios (2007)

Toronto Tonnages	10,030,500	
	No new Diversion	70% Diversion
Estimated Landfill Life	17 Years (2023)	28 Years (2034)
	Avg. \$ per Tonne	Avg. \$ per Tonne
Operations Contract	\$8.49	\$9.88
Capital Expenditures	\$1.80	\$1.80
Post Closure Provision	\$0.70	\$0.70
Community Trust	\$2.37	\$2.38
1st Nations Trust	\$1.89	\$1.90
Incremental Staffing Cost	\$0.51	\$0.80
Property Taxes + Other Related	\$0.38	\$0.60
<b>Sub-total - Operating</b>	<b>\$16.14</b>	<b>\$18.06</b>
<b>Haulage</b>	<b>\$24.25</b>	<b>\$24.25</b>
Sub-total - Haulage & Disposal	\$40.39	\$42.31
<b>Financing</b>	<b>\$23.96 – \$27.15</b>	<b>\$23.96 – \$27.15</b>
<b>Total</b>	<b>\$64.35 – \$ 67.54</b>	<b>\$66.27 – \$69.46</b>

Approved Disposal Capacity and Estimated Landfill Life:

The recent C of A provides a total landfill capacity of 15.2 million cubic metres. As of the closing date of March 29, 2007, the available capacity is estimated at 15.025 million cubic metres. This roughly translates into 13.8 million tonnes. At the City's current diversion rate of 42%, the life expectancy of the landfill would be 17 years (to the year 2023). At the 70% diversion rate target, the Green Lane Landfill should be able to provide a service life for Toronto's residual solid waste for 28 years (to 2034). Based on the diversion assumptions used in the original staff report (50-55%) the landfill will last 19-21 years (2026-2028) as was estimated in the September report.

#### Landfill Operating Cost:

Staff had previously estimated the direct landfill operating cost at around \$23 per tonne, on the basis of unaudited financial statements provided prior to the signing of the disclosure agreements. Staff thought this to be a conservative estimate for preliminary purposes, given that the City's experience from operating the Keele Valley Landfill was \$16 - \$17 per tonne. Since then, the financial consultants identified a number of one-time charges and inter-company transfers that would not be an ongoing operating cost for the City. The revised estimate of direct operating cost averages \$8.49 - \$9.88 per tonne, given the expected volumes to be handled and economies of scale. This cost was confirmed after review of the operating agreement with the City's contracted operator.

#### Capital Expenditure Provision:

A provision of \$1.80 per tonne has been included for future site capital improvements and cell development. This provision would be a contribution to a capital reserve and contribution and draws would be reported on annually as part of the regular operating and capital budget reporting process.

#### Closure and Post-Closure Provision:

Site investigation by the Environmental consultant has provided an estimate of \$7.1 million net present value for the 100-year recommended post-closure maintenance period of the landfill. This would translate into a provision of \$0.55 per tonne, to be placed in a reserve fund for the post-closure maintenance of the landfill. As required by MOE regulations, these calculations must be recalculated annually to account for the time value of money and any subsequent changes to the cost component. To be conservative, \$0.70 per tonne has been used for the purposes of the financial analysis.

#### Community Trust and First Nations Community Trust Agreements:

The Southwold Community Trust Agreement is a condition precedent to the operation of the Green Lane Landfill. It provides for a trust contribution of 5% of gross revenues. For Toronto's tonnages, a notional rate of \$48.11 per tonne (2007) will to be used. The rate will be indexed for inflation for future years. This is consistent with the inter-company rate used for St. Thomas Sanitation Ltd. Staff estimate this provision at \$2.37.

The recommended First Nations Community Trust Agreement, at 4% of gross revenue, will result in an average cost of approximately \$1.90 per tonne.

#### Incremental Staffing and Property Tax Cost:

This includes three City of Toronto staff for a total of \$400,000 per year annualized including benefits and payments. Also included are payments in lieu of taxes to Southwold Township of \$88,000 per year and an additional provision of \$212,000 for other potential property related expenses.

## Haulage:

Verspeeten Cartage Ltd. is the contracted hauler of waste to Michigan and has right of first refusal to provide waste transport services when waste is re-directed to an Ontario landfill. The Michigan contract expires December 31, 2010. We have a short term contract rate of \$24.25 per tonne which expires April 30, 2007, with a possible six month sole source extension.

## Financing Strategy:

At the September 18, 2006 Council meeting, Council authorized the purchase of the Green Lane Landfill as follows:

“(3) the Solid Waste Management Services 2006 Capital Budget be increased by \$220.310 million to purchase the Green Lane Landfill Site with cash flow commitments in 2006 for any purchase deposit required, and with cash flow commitments for the balance in 2007, and that this project be financed through the issuance of debenture(s) with a term not exceeding twenty years;”

Further to having received Council’s approval to issue debt for the acquisition of Green Lane, a detailed financing strategy report will be submitted to Executive Committee on April 16, 2007 concurrent with the 2007 Solid Waste Green Lane operating and capital budgets. In accordance with the City’s capital financing practices, the acquisition of the site will be initially financed by utilizing working capital funds.

Due to the nature of the project and projected cash flow profile, various capital financing strategies and instruments are being considered that would match forecasted operating revenues to debt charges. These instruments, permitted under the *City of Toronto Act 2006*, will provide the means to structure the interest and principal payments to coincide with the cash flows by possibly deferring a portion of the initial debt charges until 2011 when the Michigan waste contract ends and the City’s overall cost of waste disposal, including haulage, will decrease. Such a financing strategy will provide the City with the flexibility to achieve the lowest cost of funds, depending upon capital market conditions, as well as the ability to match debt charges to future costs of the operation of the landfill site.

## Summary

Table 4 summarizes the total costs of the *No New Diversion* and *70% Diversion* scenarios and provides an estimated landfill life for each. The landfill life is solely determined by the permitted volume of filling and the rate of fill. There is no other specified date of closure. Table 4 also shows the cost estimates of the original September 2006 staff estimates of costs and landfill life based on a moderate rate of new diversion and the estimated costs and landfill life if a 60% or 70% diversion goal were to be achieved.

Table 4

Acquisition of Green Lane Estimates (2007)

	<b>September 2006 Staff Report Estimates</b> (50-55% diversion)	Post Due Diligence Estimate <i>No New Diversion</i>	<b>Post Due Diligence Estimate</b> <i>60% Diversion</i>	Post Due Diligence Estimate <i>70% Diversion</i>
<b>Hauling to G.L. Disposal</b>	\$23-\$25	\$24	\$24	\$24
<b>Financing</b>	\$23 \$24	\$16 \$24-\$27	\$17 \$24-\$27	\$18 \$24-\$27
<b>Total</b>	\$70 – \$72	\$64-\$67	\$65-\$68	\$66-\$69
<b>Estimated Landfill Life</b>	2026-2028	2024	2028	2034

Table 5 compares the total per tonne cost of acquiring the Green lane Landfill with the cost of shipping waste to Michigan and with the alternative of using the Green Lane Landfill on a contract basis based on prices received in the 2006 Request for Proposals.

Table 5

Waste Disposal Options  
Approximate Cost per Tonne Comparison (2007)

	<b>Current Michigan Contract</b>	<b>Acquire Green Lane</b>	<b>Contract with Green Lane per RFP</b>
Haulage	\$44	\$24	\$24
Disposal	\$20	\$16-\$18	\$62
Financing	Ø	\$24-\$27	Ø
<b>Total</b>	<b>\$64</b>	<b>\$64-\$69</b>	<b>\$86</b>

**ATTACHMENTS**

- Appendix A Term Sheet – First Nations Community Benefits Agreement
- Appendix B Draft Terms of Reference for First Nation Liaison Committee
- Appendix C Proposed Amendments to Green Lane Landfill Certificate of Approval
- Appendix D Confidential Settlement

## Appendix "A"

### **TERM SHEET FIRST NATIONS COMMUNITY BENEFITS AGREEMENT**

#### **in respect of the Green Lane Landfill**

This proposal is subject to Toronto closing the purchase-sale agreement for the Green Lane landfill ("landfill") and taking possession of the landfill and buffer lands, and execution and delivery of full and final releases from the Oneida Nation, a settlement agreement, and a community benefits agreement modeled generally on the agreement between Southwold and the City of Toronto (with waste disposal at one rate of \$48.11 per tonne (2006) as adjusted annually by changes in the Consumer Price Index, and with no contribution to royalties). The finalized documents shall be executed and delivered to the City in escrow prior to closing.

#### **1. Community Benefit Payments**

- a. 4% of gross revenue from the landfill per annum (pro rated for 2007) to the First Nations for as long as the landfill is operated, to be deposited into a trust fund created by the First Nations Liaison Committee ("FNLC") in accordance with the Community Benefits Agreement.
- b. \$4 per tonne of waste that is diverted from landfill into any waste diversion facilities owned or operated by Toronto sited at the Green Lane landfill site or buffer lands ("waste diversion facilities"), to the First Nations, per annum, adjusted upwards in accordance with annual increases in the Consumer Price Index, to be deposited into a trust.
- c. Toronto shall covenant that if it disposes of its interests in the landfill or any of the waste diversion facilities to any future owner or operator of the landfill, the new owner shall agree to be bound to continue to pay the 4% fee or \$4 per tonne fee as in 1(a) and 1(b) above as applicable, as a condition of purchase and sale.

#### **2. First Nations Liaison Committee**

- a. The terms of reference for the FNLC drafted by the MOE and attached hereto shall govern the establishment of the FNLC. These Terms of Reference may, from time to time, be amended upon mutual agreement of the parties.
- b. Until the First Nations and Toronto reach agreement on the terms of reference for the FNLC, the terms of reference drafted by the MOE and attached hereto shall govern the FNLC.

- c. Toronto shall pay \$55,000 for the establishment and operating costs of the FNLC for 2007, and this amount shall be deposited into a bank account established for the sole purpose of operating costs of the FNLC (the “bank account”) upon Toronto taking possession of the landfill and the trust having been established by the FNLC.
- d. Toronto shall pay \$45,000 at the beginning of 2008 to the FNLC bank account for the operating costs of the FNLC for 2008, and thereafter shall pay \$45,000 per annum adjusted upwards in accordance with increases in the Consumer Price Index, at the beginning of each subsequent year, to the FNLC bank account for the operating costs of the FNLC for that year.
- e. Within the amounts provided for this purpose in 2(c) and 2(d) above, the FNLC shall determine eligible operating costs for the FNLC which includes administration costs of the trust (“operating costs”), and an annual budget for the operating costs and other expenses as approved by the FNLC.

### **3. Business Relationships**

- a. The City acknowledges that the Oneida Nation of the Thames (and/or in partnership with other First Nations) intends to create a collective business entity for the purpose of engaging in business relationships with Toronto and others in respect of landfill services, waste diversion facilities and related business ventures (“FN business”).
- b. Toronto agrees to notify the FNLC and any FN business established and identified to Toronto by the First Nations, of business opportunities to supply goods or services in respect of the landfill and any waste diversion facilities sited on the landfill or the buffer lands owned by the City, when call documents are issued by Toronto for such opportunities.
- c. Toronto will assist any such FN business with information and seminars or other learning opportunities on how to do business within Toronto’s competitively-based procurement policies and practices, and will provide information about the City’s plans related to waste diversion activities, plans and priorities.
- d. Participation of any such FN business in these competitive proposal/bid processes may lead to service contracts, revenue sharing arrangements, design build arrangements or joint ventures with the City of Toronto.

## Appendix “B”

### **Draft Terms of Reference for First Nations Liaison Committee**

#### **Purpose**

1. The purpose of the First Nations Liaison Committee (FNLC) for the Green Lane landfill is to serve as a forum for meaningful and bona fide consultation among the First Nation members of the committee and the owner of the landfill site.
2. Participation in the FNLC does not lessen or diminish any separate treaty or aboriginal rights of the FNLC members for consultation and accommodation by the Crown, as represented by the Ministry of the Environment (MOE.)

#### **Role**

3. In carrying out its purpose, the FNLC will:
  - a) disseminate, exchange, and review information,
  - b) disseminate, exchange, and review all complaints regarding the site.

In addition, the FNLC will act as an advisory body to the MOE.

4. The FNLC shall have reasonable access to the site and its landfill related facilities.

#### **Membership**

5. The FNLC shall have representation from each of the Oneida Nation of the Thames, the Chippewas of the Thames, and the Munsee-Delaware First Nation, in numbers as determined by members of the three First Nations; the owner; and the London District Manager of MOE on an ex-officio basis.
6. The First Nation members of the FNLC shall choose a chair.

#### **Secretariat Functions**

7. A secretariat shall be established to:
  - a) receive and distribute documents and reports;
  - b) call meetings, with the frequency being determined by consensus;
  - c) record and distribute minutes of the meetings;
  - d) distribute notices and the agenda; and,
  - e) carry out administrative functions.

## **Process**

8. The chair shall:
  - a) call the meetings of the FNLC as required, and
  - b) set the agenda for each meeting.
9. All meetings of the FNLC shall be public, unless the members of the FNLC determine that there are privacy and other *bona fide* reasons to limit access to the meeting.
10. Meetings will be advertised with sufficient advance notice.
11. The frequency and location of meetings will be determined by the chair.
12. The FNLC shall determine the requirements of a quorum.

## **Funding**

The reasonable costs associated with the participation of First Nation members in the FNLC are described in the First Nations Community Benefit Agreement.

**Appendix ‘C’**

**PROPOSED AMENDMENTS TO CERTIFICATE OF APPROVAL  
GREEN LANE LANDFILL**

Issue Identified by Oneida Nation of the Thames	Proposed Amendment
<p>1. Design and Operation Plan for landfill site likely to change under new owner. Oneida needs to be consulted.</p>	<p><u>Section 5</u> of the Certificate of Approval (CofA) provides that the site shall be designed, developed, and operated in accordance with the Design and Operation Plan. To provide for consultation with First nations and the community, three new sub-sections are proposed:</p> <p style="text-align: center;"><i>The Owner and Operator shall provide funding to cover the reasonable expenses of the Oneida First Nation of the Thames, the Chippewa of the Thames First Nation and the Munsee-Delaware First Nation, who comprise the First Nation Liaison Committee(FNLC) for their subsequent participation in, consultation about, and review of any new Design and Operation Plan, including the handling of sewage sludge from municipal sewage treatment plants and monitoring provisions.</i></p> <p style="text-align: center;"><i>The Owner and Operator shall provide funding to cover the reasonable expenses of the Public Liaison Committee (PLC) for their subsequent participation in, consultation about, and review of any new Design and Operation Plan, including the handling of sewage sludge from municipal sewage treatment plants and monitoring provisions.</i></p> <p style="text-align: center;"><i>The Owner and Operator shall identify to the Director how the FNLC and the PLC were consulted during the preparation and finalization of the Design and Operation Plan prior to proceeding with any construction.</i></p>

2. Impacts on water quality by the landfill site and monitoring provisions	The Owner and Operator shall take all reasonable steps to prevent, minimize and ameliorate any adverse effect or impairment of water quality resulting from the operation on the Site, including such accelerated or additional monitoring as may be necessary to determine the effect or impairment.
3. Owner and Operator to notify Oneida and First Nations of a change in ownership	The Owner shall notify the Director, in writing, and forward a copy of <i>the same</i> notification to the District Manager, <i>FNLC and the PLC</i> , within 30 days of the occurrence of any changes in the ownership.
4. Site may not accept sewage sludge	Sludge will be permitted but Section 5 of the CofA has been amended to specifically include participation, consultation, and review of sewage sludge handling, including monitoring.
5. The site shall not be expanded beyond current approved limits	The Director does not have authority to prohibit an application to expand the site. No change is being recommended.
6. Limit on the waste disposed at the site in any given year	<i>The amount of waste that may be disposed of in any year may not exceed 1,100,000 tonnes, with 100,000 tonnes of contingency capacity in case of emergencies or unanticipated or unforeseen events. The owner and operator shall notify the FNLC and PLC on the use of the contingency capacity for waste disposal at the site.</i>
7. Days per week for On-Site Inspector presence on site	<i>The District Manager shall require the MOE On-Site Inspector to be on site one (1) day per week and may require the MOE On-Site Inspector to be on the site up to seven (7) days per week in cases of apparent non-compliance until such non-compliance is resolved.</i>
8. Normal hours of operation	The normal hours of operation for receiving waste at the Site are: <i>a. Monday to Friday: 5 a.m. to 8 p.m.</i> <i>b. Saturday 5 a.m. to 2 p.m.</i>
9. Involvement of and consultation with Oneida and FNLC in the development of various operational plans and access to expert resources	MOE has agreed to provide up to \$24,000 to the Oneida, Chippewa of the Thames, and the Munsee-Delaware to contract for a technical review of CofA background documents.
10. Post closure drainage patterns	The condition could be revised to provide greater clarity by saying: <i>... only in accordance with the prior approval of the Regional Director under the EPA and/or OWRA and, to provide greater certainty, only when the surface</i>

	<i>water flowing to Dodd Creek has met the Ontario drinking water guidelines.</i>
11. Terms of Reference for FNLC	See Appendix 'B' Term Sheet.
12. Small claims trust fund too small	<p><u>Section 71</u> provides for the continuing operation of a small claims trust fund on a no-fault basis.</p> <p>The section could be amended to require the owner to provide up to \$100,000 per year and limit payments to family members in any household to \$5,000 in any calendar year.</p>
13. Financial assurance to apply to the future owner and operator	The future owner and operator to provide the Director with a report on how its long term financial arrangements, which are already in existence for its other closed landfill sites, will be used to provide ongoing funding for costs associated with closure, post closure care, and contingency plans for the site.
14. No reporting and enforcement mechanism for complaints procedure in Section 107	<p>Amended to require:</p> <p><i>b) The Owner, upon notification of the complaint, shall immediately notify the Ministry's Spills Action Centre of the receipt of the complaint, initiate appropriate steps to determine all possible causes of the complaint, proceed to take all reasonable measures to mitigate the causes of the complaint and forward a formal report to the Ministry, the FNLC, and the PLC within 7 days of the complaint; and</i></p> <p><i>c) The Owner shall complete and retain on-site a report written within one (1) week of the complaint date, listing the actions taken to resolve the complaint and any recommendations of remedial measures, any proposed or implemented changes in managerial or operational processes, and measures taken to avoid the recurrence of similar incidents.</i></p>