



STAFF REPORT

To: Board of Management

From: Robin D. Hale
Chief Operating Officer

Subject: **BIOGAS FACILITY: PROPOSED OPERATING AND GROUND LEASE AMENDMENTS**

Date: 2016-11-21

Summary:

This report updates the Board on developments related to proposed amendments to the Operating and Ground Lease agreements with ZooShare Biogas Co-operative Inc. (ZooShare) and presents the revised dates and timeline requested by ZooShare for the anticipated completion and commissioning of the facility, for approval by the Board.

Recommendation:

It is recommended that the Board approve:

- 1. The amendments presented in Schedule I related to the Operating and Ground Lease Agreements with ZooShare Biogas Co-operative Inc. to ensure financial viability of the project for ZooShare and the Board; and**
- 2. The revised milestone dates proposed in Schedule II for the ZooShare initiative, and any necessary amendments to the Operating and Ground Lease Agreements related to the revised dates.**

Background:

The Board of Management committed its support of the concept of the Biogas facility since initially proposed, and has continued to do so throughout the regulatory approval process endured by ZooShare. The ground lease and operating agreements were executed on 2012-08-16. The Board approved further adjustments to the key milestone dates, on 2014-05-01 and 2015-02-18, primarily due to delays in receiving regulatory approvals.

Throughout the process, ZooShare has proactively pursued and gained community support for the project as evidenced by the successful issuance of community bonds, leading up to the ground breaking ceremony in the spring of 2016. From a positive perspective, ZooShare has now reached agreement with Miller Waste Systems, who will be engaged to design, build, provide additional financing, and operate an anaerobic digester to meet the needs of ZooShare

and the biogas facility. However, the prolonged due diligence process in securing the appropriate contractor to construct the facility has impacted the deadline for achieving the Commercial Start Date (CSD).

Combined with previously referenced factors that have affected the timing of the project for the biogas facility, changes in planned economic factors have continued to impact ZooShare. Perhaps most notable is that anticipated tipping fees have fallen off considerably in the past few years, impacting the original profitability projections for the project. This has now resulted in the need for the ZooShare submission, requesting the Board adjust certain terms of the Operating and Ground Lease Agreements and the key dates noted in Schedules I and II respectively.

Financial Impact:

There is no impact on the current or proposed 2017 Operating Budget. If the recommendations are adopted, future years revenues will be impacted as follows:

- A reduction of Development fund contributions to \$35.0 thousand in the first year of operations, increased by \$3.0 thousand annually until the original threshold of \$50.0 thousand is reached. However, the 10% income share is maintained and should result in income greater than the annual base rent amount depending on the ZooShare's success. The \$15.0 thousand annual recovery of the Base Rent owing (Item 3) ensures a neutral cash flow position on an annual basis.
- Base rent, due previously from ZooShare, would be paid to the Board on a prorated basis over the first 10 years of the contracted term commencing with the CSD amounting to an inflow of \$15.0 annually.

Comments/Discussion:

In reviewing the request from ZooShare to amend certain terms of the Operating and Ground Lease Agreements, it was important that the management team of the Toronto Zoo consider the many changes that have occurred in the alternative energy market. The organic waste market is no longer as favourable as projected and prices have declined in comparison to original budget projections. Specifically, projected tipping fees have declined by 50% versus the original expectations, thereby impacting the long-term profitability of the project. In response to this, ZooShare has cut all non-essential office, administrative, and staffing costs, retaining only the costs that are absolutely necessary to ensure the project continues to move forward. They are also in negotiations with Bullfrog Power (their educational sponsor) to increase their contribution towards covering the costs associated with the educational mission.

The management team of the Toronto Zoo met with the ZooShare representatives on several occasions to negotiate and revise the amendments proposed by ZooShare. While it is clearly recognized that several concessions have been proposed jointly, the summary of the recommended revisions to the Operating and Ground Lease Agreements and the respective key dates outlined in Schedules I and II respectively, reflect the input and support of the project by Toronto Zoo management, while maintaining the original intent of the relationship. The Toronto

Zoo team also had the opportunity to meet the team from Miller Waste Systems and supports their involvement in the project.

In consideration of all the factors presented, it is evident that the ZooShare initiative remains a financially viable and publicly recognized project that fits with the Toronto Zoo's vision. It is also consistent with the Toronto Zoo Strategic Plan, the Zoo Green Plan and the Zoo Wildlife Conservation and Sustainable Living Plan (2011) and will ultimately provide funding to the Zoo once the facility is in commercial operation.

ZooShare and Miller Waste representatives will be in attendance at the Board of Management meeting to address questions from the Board and provide a presentation, if necessary.

R. D. Hale
Chief Operating Officer

List of Attachments:

Schedule I - Summary of Proposed Operating and Ground Lease Amendments

Schedule II- Revised Milestone Dates

PROPOSED AMENDMENTS TO THE OPERATING AGREEMENT AND GROUND LEASE

<i>Item</i>	<i>Section</i>	<i>Amendment</i>
1	11.0 Operating Agreement/ 10.2 Ground Lease	<p>The assignment of the Ground Lease and Operating Agreement to ZooShare Biogas Limited Partnership (LP) is approved.</p> <p>Implication: As it is a stipulation of lending institution that they will not lend directly to the co-operative entity, this assignment to the LP is a formality to facilitate the transaction.</p>
2	1.17 Operating Agreement	<p>The Board consents to ZooShare subcontracting to Miller Waste System as the Operator of the Facility.</p> <p>Implication: Ensures operation of the facility by a recognized leader in the industry.</p>
3	3.18 Operating Agreement	<p>The Base Rent owing from 2014-12-31 to the Commercial Start Date of 2017-09-30 will be amortized over the first 10 years of the Operating Agreement, amounting to \$15.0 thousand annually.</p> <p>Implication: Requiring the payment of Base Rent previously due in one lump sum would significantly increase the financial burden to ZooShare.</p>
4	3.18 Operating Agreement	<p>The minimum annual Base Rent will be reduced to start at \$35.0 thousand with annual increases of \$3.0 thousand in each of the next 5 years.</p> <p>Implication: Although this change results in a decrease from the initial Base Rent (\$50.0 thousand) the 10% income share is maintained. The \$15.0 thousand annual recovery of the Base Rent owing (Item 3) ensures a neutral cash flow position on an annual basis.</p>

5	<p>2.3 Operating Agreement/</p> <p>2.7 Ground Lease</p>	<p>Reflects that current terms as written will apply to Transfer of Ownership in the event of a default by ZooShare within the term of the Agreement and, a transfer of ownership at end of term will be at fair value as determined by a mutually-agreed upon third party, subject to the approval of the Board at that time.</p> <p>Amendment to include a possibility for two additional 5-year extension periods on the same terms and conditions, upon mutual agreement by the parties.</p> <p>Implication: Current Transfer of Ownership is at no cost or site closure; this penalizes a well-performing facility at the end of the contract term. Option to extend currently at the discretion of the Board.</p>
6	3.4.1 e) Operating Agreement	<p>Section amended to remove wording requiring ZooShare to provide thermal energy to the Zoo when the Biogas Facility is not operating.</p> <p>Implication: This amendment is due to restrictions imposed by the financial lending institution related to contingent liabilities. Without the prospect of related financing, ZooShare could not move forward with the project.</p>
7	4.3 Operating Agreement	<p>Section update to provide ZooShare with naming rights and to solicit sponsorship revenues for the facility, subject to the approval of the CEO, with a royalty of 20% paid to the Zoo for all sponsorship revenues generated.</p> <p>Implication: Results in ZooShare receiving 80% of sponsorship revenues, previously 0%. This is appropriate as most sponsorships will be raised in their name.</p>
8	<p>3.1 Operating Agreement/ 4.1 a), 5.2 a) and 6.2 j) Ground Lease</p>	<p>Regarding the remediation of the existing site it was agreed that ZooShare would test the soil before construction.</p> <p>No implications as the responsibility for remediation, if necessary, would remain with ZooShare.</p>
9	3.5 b) Operating Agreement	<p>Includes necessary modifications to comply with insurance requirements and adequately protect visitors through supervised tours and the delivery of Educational Programs.</p> <p>Implication: No open access to facility for general visitors, as such access to facility by the public was deemed to be a risk by the insurer.</p>

10	3.17.2 Operating Agreement	<p>Performance Security is reduced to \$70.0 thousand equating to 2 years of the revised Base Rent.</p> <p>No implications unless there is an issue of non-performance.</p>
11	1.1 e) Operating Agreement	<p>The definition of "Board Material" Zoo is updated to clarify inclusion of animal manure, on-site restaurant fats, oils and greases (FOG) that are free of listed contaminants and to specific exclusions.</p> <p>Implication: Ensures non-feedstock items of leaf and yard waste, tree limbs, rocks, stones, plastics, etc. are not delivered to the site.</p>
12	3.4.1 f) ii) Operating Agreement	<p>This section is updated to reflect a guaranteed average electrical supply of 50,000 kWh per week.</p> <p>Implication: Effectively guarantees that facility will operate at 60% capacity.</p>
13	12.1 c) Ground Lease	<p>Clause is updated to reflect that a partially underground installation is permissible given that installation is in line with MOE requirements for Biogas facilities."</p> <p>Implication: Provides additional option for storage tank installation.</p>
14	3.2 g) / 3.4.1 f) iv) Operating Agreement	<p>Sections updated to specify that design will meet or exceeds MOE minimum standards for biogas facilities and a requirement that odour levels from the facility will not exceed the levels currently produced by the existing compost operation.</p> <p>Implication: Clarifies the guideline and industry standard to be referenced in determining the acceptability of odour levels (versus unachievable 100% odour free operations).</p>
15	3.4.2 Operating Agreement	<p>Additional wording reflects requirement of a contingency plan that at all times ensures an interim solution is in place for odour containment; and outlines timing requirements if enclosure of the digestate storage is required by the CEO.</p> <p>Implication: Provides clear process and timeline for CEO in addressing ZooShare's remediation of the issue.</p>

16	1.1 j) Operating Agreement	<p>Wording is amended to change “Unrestricted Use Product” to “Digestate”.</p> <p>Implication: Clarifies definition of Digestate and addresses vagueness of Unrestricted Use Product term.</p>
17	4.5 a) Ground Lease	<p>Amended wording reflecting that related inspection costs will be shared equally and the Landlord, acting reasonably, may appoint an inspector upon mutual agreement by the parties.</p> <p>Implication: Shares the costs associated from Zoo enforced inspections with both parties.</p>

BIOGAS AGREEMENT KEY MILESTONE DATES - PROPOSED

Ground Lease

	Original Date	Board Revised Dates (as of 2015-02-25)	Proposed Dates (for consideration by the Board)
Base Rent Commencement Date (to be aligned with FIT Term and Commercial Start Date (CSD) in Operating Agreement)	2013-12-31	2017-03-31	2017-12-31
TRCA's Approval and the Ministerial Approval on or before:	2013-12-31	2015-12-31	2017-03-31
MOE approval certificates for air and noise on or before: *	2013-12-31	2016-01-31	2016-01-31
Design and Development period completed on or before:	2013-12-31	2016-04-30	2017-03-31
Final plans and specifications due from ZooShare by:	2014-01-31	2016-04-30	2017-03-31
Construction period completed on or before:	2014-07-30	2016-12-31	2017-12-31

*Completed.

Operating Agreement

	Original Date	Board Revised Dates (as of 2015-02-25)	Proposed Dates (for consideration by the Board)
Obtain all necessary permits and approvals	2013-07-30	2016-01-31	2017-03-31
Completed Design	2013-12-31	2016-04-30	2017-03-31
Completion of Comprehensive Transportation Plan	2013-12-31	2016-04-30	2017-03-31
Commissioning to begin no later than	2014-09-30	2016-12-31	2017-12-31
Completion of Visitor station and interpretive exhibit (on or before,)	2014-12-31	2017-04-30	2018-03-31
"Commercial Start Date" commences (on or before):	2014-12-31	2017-03-31	2018-05-31