



**Office of the Auditor General: Follow-up to the  
2011 Audit of Contract Management Practices –  
Springhill Landfill Site Contract and Additional  
2018 Audit Procedures, Tabled at Audit  
Committee – June 14, 2018**



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## Executive summary

### **Purpose**

The original 2011 Audit of Contract Management Practices – Springhill Landfill Site Contract was not tabled by the Auditor General because of arbitration and subsequent legal matters at the time. In 2017/2018, a follow-up to the 2011 audit was performed along with additional audit procedures to assess whether the City is effectively and efficiently managing the Springhill Landfill Site Agreement to date. Included in the audit procedures was an examination of the financial impact of the environmental contamination, closure and post-closure costs on the City.

This executive summary for Part A of the report covers the findings from the additional audit procedures performed in 2017/2018. A separate executive summary for Part B of the report covers the follow-up to the 2011 Audit of Contract Management Practices – Springhill Landfill Site Contract.

### **Background and rationale**

The objective of the follow-up was to evaluate the adequacy, effectiveness, and timeliness of actions taken by management on the recommendations in the 2011 Audit of Contract Management Practices – Springhill Landfill Site Contract. Due to the significant amount of time since the original audit, additional procedures were required. These procedures included assessing the City's management of the agreement, and the financial impact of the environmental contamination, closure, and post-closure cost to the City.

The scope of the follow-up and additional audit procedures focused on the City's management of the Springhill Landfill Site Agreement. The period in scope spans the agreement start date of December 1996 through to February 2018.

The Springhill Landfill is a 100-acre natural attenuation<sup>1</sup> landfill site located within the City of Ottawa, and former Township of Osgoode, on Springhill Road just west of Regional Road 31, north of the Village of Vernon.

On December 23, 1996, a public private partnership Management Agreement (the Agreement) was entered into between the former Township of Osgoode and R.W. Tomlinson (RWT).

On January 23, 1998, a separate lease was entered into between the former Township of Osgoode and RWT. The lease allowed RWT to operate a construction and demolition waste recycling facility (C&D facility) on the landfill site. RWT operates their C&D facility under a separate Environmental Compliance Approval (ECA) and is accountable for compliance at the facility.

Upon amalgamation in 2001, the City of Ottawa assumed the Agreement from the former Township of Osgoode. RWT operates the Springhill Landfill on behalf of the City. The City owns the Environmental Compliance Approval (ECA) that is registered with the Ontario Ministry of Environment and Climate Change (MOECC) and is accountable for compliance at the landfill site.

Relations between the City and RWT had been difficult almost since the Agreement was assumed. The situation necessitated a formal arbitration process in the fall of 2009. The arbitration has been concluded. The arbitrator's report was issued on May 2010 and a payment amount was later determined on September 2, 2016. The City received payment on May 1, 2018.

## **Highlights of the Springhill Landfill Site Management Agreement**

An Agreement was entered into between the Corporation of the former Township of Osgoode and RWT (the Manager) on December 23, 1996, and assumed by the City of Ottawa (the Owner) since 2001.

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<sup>1</sup> In Natural Attenuation, the pollution level in the soil (soil, ground water, and soil air) is reduced by natural processes, without human intervention, within a reasonable timeframe compared to other more active approaches.

The Agreement is effective until the landfill reaches capacity. The Owner is entitled to dump all residential waste generated by the Municipal collection system sourced in the geographic area of the former Township of Osgoode free of charge.

The Manager, in its discretion is to set, maintain and revise the dumping fees at the then prevailing rate<sup>2</sup>. The Owner will receive forty percent (40%) of the net profit generated from operations (the royalty payment) and the Manager retains the remaining profit. The Manager is obligated to establish and maintain an approved accounting system, provide the Owner with quarterly reports<sup>3</sup>, and annual financial statements audited by an auditor approved by both parties.

The Manager is responsible for policy decisions related to the daily operation of the landfill site. This includes decisions around managing and operating the landfill site for the purpose of receiving and processing qualifying waste. The Manager is also responsible for maintaining insurance at all times during the term of the Agreement. Additionally, the Manager is obligated to make annual contributions to the “Project Reserve Fund”. The Project Reserve Fund is to be maintained by the Owner and used for payment of costs incurred on and after the date the capacity of the landfill site is exhausted, to comply with the conditions of the Certificate of Approval and/or the requirements of the prevailing laws or regulations relating to closure of such sites. The Agreement specifies that the fund is to total \$1 million at the expiration of 30 years from the commencement of payments in the fourth year.

## **Highlights of the C&D Lease Agreement**

A Lease Agreement was entered into between the Corporation of the former Township of Osgoode and RWT (the Manager/the Tenant) on January 23, 1998 and assumed by the City of Ottawa (the Owner/the Landlord) since 2001.

The purpose of the lease is to outline the Tenant/Owner rights while RWT is operating a Construction and Demolition (C&D) Material Recycling Facility on the Springhill Landfill site. The C&D facility collects, processes and recycles construction materials. Residual

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<sup>2</sup> The “then prevailing rate” is understood to be a reasonable market rate most commonly charged at the time that is relevant in the area that is relevant.

<sup>3</sup> Quarterly reports are to include revenue, chargeable costs and non-chargeable costs related to the project.

waste and unrecyclable material produced from the C&D facility is disposed of in Springhill landfill.

The Lease Agreement had a term of the earlier of twenty years from the date of the Certificate of Approval for the C&D Facility or the termination of the Management Agreement outlined above. Any income generated by the C&D facility is to be included in the Management Agreement's royalty payment.

The Tenant agreed not to conduct any activity that may constitute damage to the lands and premises or breach the regulations of any prevailing authority<sup>4</sup>. The tenant must carry Public Liability and Property Damage Insurance. Furthermore, the Landlord is indemnified against all claims and demands arising from the use and occupancy of the premises.

The original agreement was signed with R.W. Tomlinson Ltd. (RWT). On April 18, 2006, the name of the operating company was officially changed to Tomlinson Waste Management Inc. (TWM). Going forward, this report will refer to Tomlinson as Tomlinson Waste Management Inc. (TWM).

## Findings

The audit focused on the City's contract management practices, corporate governance and oversight, and the financial impact of environmental contamination, closure and post-closure costs.

The key findings associated with each area are as follows:

### 1. Corporate Governance and Contract Management

Over the last 17 years, there has been a high turnover of City staff managing the Springhill file. There were three different City staff in the role of contract manager from 2006 to September 2014. Since 2001, there have been eight City staff in the position as manager/director/general manager. In addition, there was poor handover during periods of staff transition.

Prior to 2014, there is no evidence of documented regular meeting minutes between the City and TWM. The City has not been able to monitor TWM's compliance to key

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<sup>4</sup> Prevailing authorities can include, but are not limited to City of Ottawa By-Laws, or order of regulations from the Municipal, Provincial or any other competent authority.

conditions of the Agreement including whether all costs included in the royalty calculation are in fact eligible direct operating costs and whether non-chargeable costs have been excluded. Additionally, questions posed to TWM often went unanswered for a long period of time, and some remain unanswered. Greater senior management and legal involvement may have been more effective in compelling TWM to provide the necessary information for the City to monitor key aspects of the Agreement.

Review of the 2015 and 2017 Public Works and Environmental Services department risk registers showed that there was no mention of City landfills, including Springhill. Given the significant environmental contamination at Springhill identified since 2012 and the ongoing difficulties in the City's dealings with TWM, it is expected that matters with this level of financial and legal risk would be identified on the department's risk register. The effective management and maintenance of risk registers requires that significant risks are identified and monitored regularly, with mitigating actions developed and implemented.

Due to the significant environmental contamination identified by the Ontario Ministry of Environment and Climate Change (MOECC), the City was required to come up with a remediation plan. In an effort not to exacerbate the contamination, on January 31, 2018 and February 6, 2018, the City made two formal requests of TWM to temporarily suspend further placement of waste in the landfill. TWM disregarded both requests and continued operations at the landfill. The City went on to amend the landfill ECA to compel TWM to stop placing waste in Springhill landfill. The amended ECA will allow the MOECC to regulate this issue.

The inherited Agreement from the former Township of Osgoode contains a number of terms that are unfavourable to the City. The Agreement has provided and continues to provide considerable financial benefits to TWM. Terms of the Agreement allow TWM to make all policy decisions in respect of the daily operations of the landfill site and discretion in setting dumping fee rates. Meanwhile, the City must "co-operate wherever reasonably required".

Reliance cannot be placed on the financial audit to determine whether the royalty amount has been correctly calculated by TWM. The audit of TWM's financial statements is in accordance with Canadian accounting standards for private enterprises and not in accordance with the terms of the Agreement. Financial statement auditors do not provide an opinion on management's discretion to provide customer discounts, whether

intercompany charges are at the market rate, or whether “non-chargeable” costs as per the Agreement have been excluded.

Over the last 21 years (1997 to 2017), the City has received \$6.3 million in royalty payments, or on average \$300,744 per year. Significant City resources have been required to manage the Springhill contract, including contract managers, senior management, Finance, and Legal Services. In addition, external resources required include legal counsel, forensic accounting and engineering consulting services. The arbitration in 2009/2010 was also a costly undertaking. All of these expenses likely far exceeded the royalties received by the City.

TWM’s related parties<sup>5</sup> are benefiting from disposing of C&D materials at preferential tipping rates while having Springhill Landfill accept the C&D facility’s residual waste at no charge and having the City share in all the related costs. TWM is able to do this because the Agreement allows them to set tipping fees and to dispose of waste generated by the C&D facility in the landfill at no cost.

Out of the total tonnages dumped in the landfill in 2015, 23% came from C&D residual waste; 24% came from “rubble”, a by-product of C&D waste processing that TWM indicated will be used to build roads inside the landfill; and 33% came from “fines<sup>6</sup>”, another by-product of C&D waste processing that TWM used as a daily landfill cover. Only 6% came from municipal waste generated in the geographic area of the former Township of Osgoode and another 13% came from waste deposited by other customers.

In 2015, 76% of the total material tonnage received at the C&D facility came from TWM’s related companies. This material could have come from anywhere within Eastern Ontario and the Outaouais. While the City has identified that related parties are charged discounted tipping fees, they have not questioned TWM on how these rates were set and assessed whether the 30% discounted rate is reasonable.

The City has not obtained enough information from TWM to gain reasonable assurance over the eligibility of the expenses that TWM has reported over the last 21 years. The

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<sup>5</sup> *International Accounting Standards* defines a related party as a person, including management and close family members, or entity that is related to the entity that is preparing its financial statements via control (direct or indirect), joint control or significant influence.

<sup>6</sup> Fines are by-product remains after C&D material is sorted, screened, and crushed.



City has made requests for financial information from TWM; however, very few satisfactory responses have been received. For example, the City has been unable to determine the specific expenses that make up summary expense categories such as; “corporate charges” and “consulting & professional fees” on the financial statements.

The Agreement gives the City the right to access accounting information and records related to the Springhill project. The City, however, has never obtained full access to TWM’s accounting information and has only recently considered hiring an external auditor to examine TWM’s accounting records and conduct a review on whether reported expenditures are in fact chargeable.

There are at least five related companies that do business with TWM at Springhill. A significant amount of revenues and expenses are from and to TWM’s related parties. While these types of transactions could be in the normal course of business, they may disproportionately benefit the related parties at the expense of the City. The risk of understating revenue and overstating expenses is much higher when TWM has conducted a significant amount of business with related parties.

The Project Reserve Fund is currently being funded as per the terms of the Agreement. However, since the landfill will reach capacity sooner than the initially anticipated date of 2029, it will likely be significantly underfunded when it reaches capacity. TWM has refused the City’s request to increase their contribution given the reduced life of the landfill. The City will therefore likely receive less than the expected \$1 million from TWM upon closure of the landfill.

The Manager is required to maintain insurance coverage throughout the Agreement. The minimum insurance requirements were set out in “Schedule E” of the Agreement. However, the City has been unable to locate or obtain a copy of Schedule E. The Schedule was not on file at the City and even after the OAG requested a copy of the insurance policy, it was not provided. The City has not been monitoring the insurance provisions required in the Agreement. Furthermore, there is no clear understanding among staff as to who is responsible to monitor insurance provisions in agreements with third parties who provide services to the City.

## **2. Financial impact of the environmental contamination, closure and post-closure costs on the City**

As of December 2017, the Springhill Landfill was approximately 75% filled. Additionally, the MOECC has determined that the landfill is out of compliance with its ECA due to groundwater and surface water issues. Leachate<sup>7</sup> impacted groundwater is migrating to neighbouring properties as well as interacting with surface waters outside of the landfill footprint. The environmental contamination is impacting a Provincially Significant Wetland (PSW) adjacent to the landfill. According to the MOECC, the conditions at the PSW are one of the worst in the Eastern Region of the province.

On January 30, 2018, as the site owner, the City of Ottawa submitted a medium-long term (MLT) remediation plan to the MOECC. The Plan includes a remedial action plan comprised of four major components:

- i. The removal of leachate by truck for off-site disposal.
- ii. The installation of a low permeability cover over the existing phases of the landfill (Phases 1 through 4<sup>8</sup>). If Phase 5 were developed, a similar final cover system would later be implemented there as well.
- iii. The implementation of a storm water management system to manage increased storm water flows from the landfill after the installation of the low permeability cover.
- iv. The monitoring and review of the cover system performance and water quality trends, coupled with a contingency plan.

On April 4, 2018 the MOECC agreed in principle with the course of action proposed by the City and requested that a more detailed plan be provided no later than August 31, 2018.

TWM disagrees with the City's proposed medium-long term remediation plan. TWM would like to install a purge well system that potentially will provide hydraulic control of the contaminated groundwater away from the wetland and onto surrounding property

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<sup>7</sup> Leachate is the liquid that drains or 'leaches' from a landfill. It varies widely in composition regarding the age of the landfill and the type of waste that it contains. It usually contains both dissolved and suspended material. Leaching occurs when water percolates through any permeable material.

<sup>8</sup> The Springhill landfill footprint is separated into five different "phases" or areas. At the time of our audit report, phases 1 to 4 have been filled to capacity. Phase 5 has not yet been filled.

owned by TWM<sup>9</sup>. Having the City purchase land or groundwater rights from Tomlinson for properties Tomlinson owns adjacent to the landfill to extend the contamination attenuation zone is part of the solution proposed by TWM. The City has stated it has no interest in being required to purchase these assets at a cost to be determined by TWM. In addition, this solution has significant long-term operating cost impacts that the City will have to assume once the landfill is closed.

In December 2017, the City hired Dillon Consulting (Dillon) to perform an estimate of the cost of the City's proposed remediation plan. Dillon's total estimated capital cost is in the range of \$7-8 million. This is comprised of \$5-6 million for the cover solution, and a further \$2 million to address storm water management. In addition, Dillon is working on estimating future operating costs associated with the City's proposed solution.

The Agreement contains an indemnification clause whereby the Owner is not held responsible for the consequences of the operation and management of the landfill site and its related activities. Therefore, the question thus arises as to whether or not the contamination is "as a consequence of [TWM's] operation and management of the landfill site and its related activities." The City is of the opinion that the environmental contamination has resulted from the C&D waste that TWM has managed and deposited into the landfill site.

TWM's use of fines as daily cover material has been a longstanding practice. TWM has been treating fines as "beneficial reuse" and reporting significant recycling targets for the C&D facility, while dumping it into the landfill for free as a daily cover. As stated previously, in 2015, fines accounted for 33% of the tonnage dumped in the landfill. In September 2015, the MOECC carried out a site inspection of Springhill Landfill and determined that TWM's use of fines as a daily cover was a violation of the landfill's ECA. The MOECC identified high concentrations of certain compounds in the leachate (e.g. boron – a fire suppressant contained in commercial drywall material). This determination has led the City to suspect that the use of fines from the C&D facility may have contributed to landfill contamination.

A site-closing plan has not yet been drafted. Once the MLT plan is approved by the MOECC, a consultant will be engaged to provide a cost estimate of the remediation

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<sup>9</sup> The Matchett property is a 50-acre parcel of land directly to the north of the Springhill Landfill site. As part of the Agreement, TWM purchased this property. Over the years, TWM bought up additional property surrounding the landfill.

work, the environmental liability and the closure and post closure costs. Once all the costs are determined, the City will need to reassess closure and post-closure liabilities to ensure they are reasonable and sufficiently funded.

The C&D Lease Agreement expires on October 6, 2018. On January 31, 2018, the City informed Tomlinson that the City does not intend to renew the lease.

## **Conclusion**

Overall, we found that the City inherited an Agreement with unfavourable terms from the former Township of Osgoode. While the landfill is in use, TWM has full control over the operations and can make policy decisions to their benefit. However, once the landfill capacity is exhausted, the City assumes all the risks and costs of the landfill's post-closure activities.

The City's management of the Springhill Landfill Agreement needs to be strengthened to ensure fulfillment of all contractual obligations. The City has not been able to verify the accuracy and completeness of its royalty payments because documentation and information has not been provided by TWM despite numerous requests. The City is contractually entitled to this information and greater management and legal involvement is required to compel TWM to provide the needed information. Given the lack of information provided by TWM throughout the course of the Agreement, the City should give consideration as to whether Tomlinson is a good business partner for this project and for other endeavours.

The City also needs to ensure that good contract management practices, such as timely escalation, strong record keeping of non-compliance issues, and communications are consistently applied by contract managers. Key terms in the Agreement, like monitoring the insurance requirements had not been fulfilled.

Significant environmental remediation is required at the Springhill landfill. The City will need to budget adequately for remediation, closure and post closure costs once they are fully determined.

## Potential savings

Potential savings identified in this audit include the opportunity to engage an external auditor to assess the expenditures claimed by TWM over the term of the Agreement to date. This assessment would identify whether any non-chargeable expenditures have been deducted against revenues to reduce the royalty payments to the City.

## Recommendations and responses

### Recommendation #1

That the Director have regular meetings with the direct reports to discuss contract management issues. That the City ensure there is timely and documented senior management engagement and continued follow up to compel TWM to provide the requested information in the action register and by the FSU Coordinator.

### Management response:

Management agrees with this recommendation and it has been partially implemented.

The Director has scheduled monthly one-on-one meetings (or more frequently, if and where required) with direct reports to review and provide input on any operational or contractual issues that may arise.

Specific to the Springhill Landfill, senior management has escalated the information request to the City's Chief Procurement Officer and Deputy City Treasurer for their review and action. On May 1, 2018, the Chief Procurement Officer requested specific information from TWM. As of May 22nd, TWM has indicated they have provided the responsive information. Corporate Finance is currently reviewing and analyzing the information received to ensure that the request has been fully satisfied, and will provide an update to management by Q3 2018. Subject to verification of compliance by Corporate Finance, the City will take action pursuant to the Management Agreement or the City's *Procurement By-law* where warranted.

## **Recommendation #2**

That the City develop corporate wide contract management policies and procedures and make these available to contract managers. Included in these policies and procedures should be direction to establish responsibility and accountability for the monitoring of insurance certificates.

### **Management response:**

Management agrees with this recommendation.

The existing Contract Administration and Reporting on Supplier Performance Procedures will be updated into a formal policy by Q4 2018. The policy will identify the responsibility and accountability for monitoring insurance certificates related to contracts awarded under the *Procurement Bylaw*.

## **Recommendation #3**

That PWESD review their risk register and ensure that significant risks are identified, along with action plans and owners. The risks at Springhill Landfill should be clearly described and monitored.

### **Management response:**

Management agrees with this recommendation and it has been partially implemented.

The risks for the Springhill Landfill have been included in the current departmental risk register, and PWESD is in the process of completing the remaining updates.

This recommendation will be fully implemented by Q3 2018.

## **Recommendation #4**

That the City provide an annual report to Council on the Springhill Landfill P3 agreements until closure of the landfill or end of all agreements in accordance with the City's P3 Policy.

### **Management response:**

Management agrees with this recommendation.

The Public Works & Environmental Services Department will work in conjunction with Supply Services to provide an update to Council on the P3 partner's financial and service level performance for the Springhill Landfill as part of the annual

Procurement Year in Review report (typically tabled in May of the following year) to the Finance and Economic Development Committee (FEDCO) and Council.

This recommendation will be considered implemented by Q2 2019.

**Recommendation #5**

That the City question how the tipping rate that TWM is charging its related parties was set. The City should then assess whether the discount offered to related parties is reasonable and representative of the “prevailing rate”.

**Management response:**

Management agrees with this recommendation.

Senior management will work with staff from Solid Waste Services and the Corporate Finance branch, as well as any external experts/consultants (as and if required), to determine whether Tomlinson has been charging the required “prevailing rate” to any related parties.

This recommendation is expected to be complete by Q4 2018.

**Recommendation #6**

That as long as TWM is a partner in this Agreement, the City continue to pursue direct access to a TWM accounting manager contact. If necessary, the City should go through legal means and escalate to senior City management (i.e. General Manager, Public Works and Environmental Services and/or City Manager).

Regular meetings need to be held to discuss financial questions to ensure that the City has a full understanding of the performance of Springhill. History has shown that it is inefficient and ineffective to go through TWM’s senior management to get answers to financial questions.

**Management response:**

Management agrees with this recommendation and it has been partially implemented.

Senior management has escalated the information request to the City’s Chief Procurement Officer and Deputy City Treasurer for their review and action. On May 1, 2018, the Chief Procurement Officer requested specific information from TWM. As of May 22<sup>nd</sup>, TWM has indicated they have provided the responsive information and identified an accounting manager contact. Corporate Finance is

currently reviewing and analyzing the information received to ensure that the request has been fully satisfied, and will provide an update to management by Q3 2018. Subject to verification of compliance by Corporate Finance, the City will take action pursuant to the Management Agreement or the City's *Procurement By-law* where warranted. Semi-annual meetings with the TWM accounting manager will be established going forward.

**Recommendation #7**

That the City, with legal support, request TWM to provide a detailed breakdown of each of the expense line items on the financial statements. It is likely that this was provided annually to the financial auditor, KPMG, and can be provided to the City. The City needs to ensure that non-chargeable costs have been excluded from their royalty calculation.

**Management response:**

Management agrees with this recommendation, and it has been partially implemented.

Senior management has escalated the information request to the City's Chief Procurement Officer and Deputy City Treasurer for their review and action. On May 1, 2018, the Chief Procurement Officer requested specific information from TWM. As of May 22nd, TWM has indicated they have provided the responsive information. Corporate Finance is currently reviewing and analyzing the information received to ensure that the request has been fully satisfied, and will provide an update to management by Q3 2018. Subject to verification of compliance by Corporate Finance, the City will take action pursuant to the Management Agreement or the City's *Procurement By-law* where warranted.

This recommendation is expected to be complete by Q4 2019.

**Recommendation #8**

That the City should refer to the *Procurement By-law Section 37 and 47* and consider whether Tomlinson is a good business partner for this project and for future endeavours.



**Management response:**

Management agrees with this recommendation.

Senior management has already engaged the Chief Procurement Officer, City Treasurer, and Deputy City Solicitor to review all available mechanisms to obtain the requested financial information and responses to outstanding financial questions. Subject to verification of compliance by Corporate Finance, the City will take action pursuant to the Management Agreement or the City's *Procurement By-law* where warranted, and will determine whether an external auditor should be engaged to review information received.

This recommendation is expected to be complete by Q4 2019. However, staff will be conducting an ongoing review and analysis of information provided by Tomlinson, as well as any further information provided, in the context of the applicability of *Procurement By-law Section 37 and 47*.

**Recommendation #9**

That going forward, the City identify all the related parties that conduct business with TWM and assess the reasonability of related party transactions at Springhill.

**Management response:**

Management agrees with this recommendation.

Currently, notes disclosed in the annual financial statements include a list of related party transactions; however, reasonability and appropriateness need to be verified. While operations at the landfill have been temporarily suspended, PWESD and Corporate Finance staff will work together to review these transactions and will address any questions concerning the reasonability of related party transactions with the TWM accounting contact, once identified and should operations resume at the landfill.

This recommendation is expected to be implemented by Q4 2018.

**Recommendation #10**

That the City ensure they have received the contractually agreed upon reserve amount to date and continue to monitor that the right amounts are being received each year.

**Management response:**

Management agrees with this recommendation.

The City has been receiving the annual contribution as per the Management Agreement and will continue to monitor that the right amounts are being received each year.

**Recommendation #11**

That the City locate Schedule E and verify that insurance terms as outlined in the Springhill Landfill Site Agreement Schedule E are in place.

**Management response:**

Management agrees with this recommendation.

Should Management continue to be unable to locate “Schedule E”, the City will assess the existing insurance in place as against current industry best practices. Should any deficiencies be identified, recognizing the status of operations at the site, these will be addressed with TWM.

This recommendation is expected to be implemented by Q4 2018.

**Recommendation #12**

That in all future public private partnership contracts, the City include an explicit right-to-audit clause.

**Management response:**

Management agrees with this recommendation.

The Public Private Partnership (P3) Policy will be updated to include the requirement for an explicit right-to-audit provision be included in P3 agreements.

This recommendation is expected to be complete by Q4 2018.

**Recommendation #13**

That the City weigh the cost of engaging an external auditor with the possible benefits of examining the expenses in the allowable period.

**Management response:**

Management agrees with this recommendation.

Senior management has escalated the information request to the City's Chief Procurement Officer and Deputy City Treasurer for their review and action. On May 1, 2018, the Chief Procurement Officer requested specific information from TWM. As of May 22nd, TWM has indicated they have provided the responsive information. Corporate Finance is currently reviewing and analyzing the information received to ensure that the request has been fully satisfied, and will provide an update to management by Q3 2018. Subject to verification of compliance by Corporate Finance, the City will review the cost/benefit of engaging an external auditor to review this information and details on expenditures over the past five years.

This recommendation is expected to be completed by Q4 2019.

**Recommendation #14**

That the City establish a site-closing plan in advance of the end of the Management Agreement in the event the site closing occurs earlier than expected.

**Management response:**

Management agrees with this recommendation, and it has been partially implemented.

Solid Waste staff are currently working with Dillon Consulting to develop a closure plan for Phases 1 to 4 of the Springhill Landfill (Phase 5 has not yet been developed, and therefore does not require a closure plan at this point in time).

This recommendation is expected to be complete by Q4 2019 (subject to the timing of MOECC approval).

**Recommendation #15**

That the estimate of the site closure costs and post-closure costs are updated upon receiving approval from MOECC for the medium-long term plan.

**Management response:**

Management agrees with this recommendation.

Upon receiving approval of the medium-long term plan from the MOECC, staff will work with Dillon Consulting to ensure that estimates are updated for site closure costs and post-closure costs.

This recommendation is expected to be complete by Q4 2019 (subject to the timing of MOECC approval).

**Recommendation #16**

That the City reviews its Springhill Landfill closure and post-closure liabilities in the financial statements to ensure they are reasonable and sufficiently funded.

**Management response:**

Management agrees with this recommendation, and it has been implemented.

The City already reviews closure and post-closure liabilities for its landfill sites on an annual basis, as that is a financial reporting requirement under the Canadian Institute of Chartered Accountants (CICA) Public Sector Accounting Board's PSAB 3270 - Solid Waste Landfill Closure & Post-Closure Liability. Furthermore, once the Remedial Action Plan is approved by the MOECC and revised closure and post-closure costs are estimated, the City will review and, if necessary, revise its annual contribution to the landfill liability closure and post-closure reserve fund to ensure the liability is sufficiently funded.

## Part A – 2018 audit procedures for contract management practices – Springhill Landfill Site Contract – Detailed audit report

### Introduction

The Follow-up to the 2011 Audit of Contract Management Practices – Springhill Landfill Site Contract was included in the Auditor General’s 2017 Audit Work Plan.

The original 2011 audit was not tabled by the Auditor General because of the arbitration and subsequent legal matters at the time.

Part A of this report includes additional audit procedures performed in 2017/2018 that bring the audit up to date. Part B of this report encompasses all the findings in the 2011 audit and the follow-up to this audit. We have structured this to provide a single comprehensive report for ease of understanding.

### Objectives and criteria

The objective of this follow-up is to evaluate the adequacy, effectiveness and timeliness of actions taken by management on reported observations and recommendations in the 2011 Audit of Contract Management Practices – Springhill Landfill Site Contract.

Due to the significant amount of time that has passed since the 2011 audit, additional audit procedures were performed to assess the contract management practices to date.

Additional audit procedures focused on two main areas:

- to assess whether the City is effectively and efficiently managing the Springhill Landfill Site Agreement
- to assess the financial impact of the environmental contamination, closure and post-closure costs on the City

Audit criteria were developed and applied to assess the City’s performance of contract management. Please refer to Appendix A for further details of the audit criteria.

## **Scope**

The follow-up and additional audit procedures focused on the City's management of the Springhill Landfill Site Agreement. The period in scope spans the Agreement start date of December 1996 through to February 2018.

## **Approach and methodology**

The additional audit work in this report was conducted in accordance with the OAG Audit Standards. While the OAG adopts these standards as the minimum requirement for our audits, we also draw upon the standards and practices of the Institute of Internal Auditors.

As part of our regular audit process, we obtained management's agreement with the findings in this report.

The audit methodology included the following activities:

- interviews with staff members of:
  - City departments including the City Manager's Office; the Office of the City Clerk and Solicitor (Legal Services); Corporate Services (Finance); Public Works and Environmental Services
  - external legal counsel representing the City
- review of relevant documentation, including the Management Agreement, Lease Agreement, meeting minutes and action register, legal documents, engineering consultant reports, correspondence with landfill Manager, financial statements, etc.

## **Background and context**

The 2011 audit and 2018 additional audit procedures deals with the contract management activities undertaken by the City in relation to the Springhill Landfill site.

The Springhill Landfill is a 100-acre natural attenuation landfill site located within the former Township of Osgoode on Springhill Road just west of Regional Road 31, north of the Village of Vernon. The landfill was owned by the former Township of Osgoode and used by local residents and businesses for many years.

On December 23, 1996, a public private partnership Management Agreement (the Agreement) was entered into between the former Township of Osgoode and R.W. Tomlinson (RWT).

On January 23, 1998, a separate lease was entered into between the former Township of Osgoode and RWT. The lease allowed RWT to operate a construction and demolition waste recycling facility (C&D facility) on the landfill site. The lease is set to expire on October 6, 2018. RWT operates their C&D facility under a separate Environmental Compliance Approval (ECA) No. A710140 and is accountable for compliance at the facility. The C&D facility is located on a leased portion of the landfill footprint that makes up approximately one-half of the remaining landfill space.

Upon amalgamation in 2001, the City of Ottawa inherited the Agreement from the former Township of Osgoode. RWT operates the Springhill Landfill on behalf of the City pursuant to the Management and Lease Agreements approved by the former Township of Osgoode. The City owns the Environmental Compliance Approval (ECA) No. A461402 that is registered with the Ontario Ministry of Environment and Climate Change (MOECC) and is accountable for compliance at the landfill site.

During the course of our audit work, we were advised by management that relations between the City and RWT have been difficult since amalgamation. The situation necessitated a formal arbitration process in the fall of 2009. The arbitrator's report was issued on May 2010. The arbitration has been concluded and the City has received a settlement payment.

## **Highlights of the Springhill Landfill Site Management Agreement**

An Agreement was entered into between the Corporation of the former Township of Osgoode (the Owner) and RWT (the Manager) on December 23, 1996, and assumed by the City of Ottawa since 2001. Key elements of the Agreement are:

- The Agreement is effective until the landfill capacity of the site has been exhausted.
- The provisions of the Agreement are binding upon the respective parties and successors.

- The Owner is compensated at a rate of forty percent (40%) of the net profit generated by the operation, referred to from hereon as the royalty payment, and the Manager retains the residual profit.
- The Manager is obligated to provide the Owner, quarterly reports (including revenue, chargeable costs and non-chargeable costs relating to the project).
- The Manager is obligated to make annual contributions to the “Project Reserve Fund”. The fund should amount to \$1 million at the expiration of 30 years from the commencement of payments in the fourth year.
- The Manager is required to establish and maintain an accounting system approved by the Owner, acting reasonably, for the project, including preparation of reporting and financial statements for the Owner as required by the Agreement.
- The Manager is required to keep and maintain records of the project’s activities and all accounting information. The Owner has the right to access thereto at all reasonable times on reasonable notice.
- Audited annual financial statements by an Auditor approved by both parties are required.
- The Manager is required to provide and permit access to personnel designated by the Owner, to the site at all reasonable times.
- The Manager is tasked with the policy decisions in respect to the daily operation of the landfill site.
- The Manager is to set, maintain and revise dumping fees to the “then prevailing rates”.
- The Manager is to maintain insurance at all times during the term of the Agreement.
- The Owner is entitled to dump all residential waste permitted by the prevailing Certificate of Approval and generated by the municipal collection system, and/or generated by special municipal programs and in every case sourced in the geographic area of the former Township of Osgoode free of charge.
- The Manager shall be entitled to an annual financial credit depending on the total tonnage received at the landfill from the municipal collection system.

The original agreement was signed with R.W. Tomlinson Ltd. (RWT). Starting in 2001, RWT’s subsidiary, Tomlinson Environmental Services Inc. (TES) operated Springhill Landfill. On April 18, 2006, the name of the operating company was officially changed



from TES to Tomlinson Waste Management Inc. (TWM). Going forward, this report will refer to Tomlinson as Tomlinson Waste Management Inc. (TWM).

## **Highlights of the C&D Lease Agreement**

A Lease Agreement was entered into between the Corporation of the former Township of Osgoode (the Owner/the Landlord) and RWT (the Manager/the Tenant) on January 23, 1998 and assumed by the City of Ottawa since 2001. Key elements of the Lease Agreement are:

- The Landlord leases to the Tenant the lands and premises located on Springhill Landfill site.
- The purpose of the lease is to outline the Tenant/Owner rights while the C&D Facility is operating a waste recycling facility on the Springhill Landfill site.
- The Lease Agreement shall terminate at the earlier of 20 years from the date of issuance of a Certificate of Approval for the C&D Facility or termination of the Management Agreement.
- Any determination to suspend recycling activities shall be made by the Tenant in its sole discretion.
- Any money due to the Landlord under the terms of the Management Agreement shall include any consideration payable by the Tenant for the rights granted under the terms of the Lease Agreement.
- Acquisition and set up costs and all operational costs shall be funded and apportioned in accordance with the terms of the Management Agreement.
- The Tenant shall not do any activity that may constitute a damage to the lands and premises, or constitute a breach of any By-Law, Order of Regulation of any Municipal, Provincial or other competent authority, including all requirements of the Landlord's Certificate of Approval.
- The Landlord is indemnified against all claims and demands arising out of use and occupancy of the premises under the terms of this Agreement.
- The Tenant shall carry Public Liability and Property Damage Insurance.

## **Audit observations and recommendations**

### **A. Assessment of whether the City is effectively and efficiently managing the Springhill Landfill Site Agreement**

#### **1. Lack of consistent contract oversight over the term of the Agreement and insufficient senior management involvement in problem resolution**

##### **High staff turnover and lack of continuity on Springhill file**

Since the City inherited the Management Agreement upon amalgamation, there has been a high turnover of staff on the Springhill file. The current contract manager's title is "Program Coordinator of Recycling & Material Diversion". He has been in the position since September 2014. Prior to this, there were three different City staff in the role of contract manager between 2006 – September 2014. In addition, during that period, for various reasons including City-wide reorganizations, there was also high turnover in the management that oversaw the contract. Since 2001, there have been eight City staff in the position as manager/director/general manager, responsible for overseeing the Springhill file.

The audit found that there has been a lack of staff continuity and poor handover during periods of transition. When the current Program Coordinator of Recycling & Material Diversion came into his role, there was no formal handover from the previous contract manager. Besides a few brief discussions with his program manager, there were no notes or files handed over from his predecessor.

##### **Contract management before 2014**

When the audit requested the meeting minutes and notes kept by contract managers, none could be found for the period 2010 – 2014. Prior to 2014, there is no evidence of regular meeting minutes between the City and TWM. Especially in cases where there are issues of contractual non-compliance, minutes must be documented and retained. Corporate wide, the City has developed a guideline in 2011 and most recently updated in August 2017 for contract administration and reporting on supplier performance. However, these guidelines are not formalized policies and procedures that are required to be followed by contract managers. Providing guidance through formalized policies and procedures would prevent the inconsistencies in the quality of contract management seen on the Springhill file.

### **Contract management after 2014**

Since 2014, general administration of the agreement and monitoring of operational aspects of the contract have been delegated to the program coordinator. The current program coordinator understands his role and has detailed knowledge of the contract, MOECC requirements and ECA requirements. Contract administration and regular monitoring of TWM's operational performance have been performed by the program coordinator since late 2014.

Monitoring TWM's compliance to the financial requirements of the Agreement is the responsibility of the program coordinator with the assistance of the Finance Services Unit (FSU) coordinator. The FSU's role is to review the financial statements and financial data provided by TWM and identify issues to the program coordinator and management to action. Due to the lack of cooperation and information provided by TWM, the City has not been able to monitor TWM's compliance to the following conditions in the Agreement:

- chargeable costs are all direct operating costs of on site activities
- non-chargeable costs are excluded from the royalty calculation
- establish and maintain an accounting system approved by the Owner
- ensure that dumping fees have been set at the "prevailing rates"

Greater senior management involvement and likely legal involvement may have been more effective to compel TWM to provide the necessary information for the City to monitor financial aspects of the Agreement.

Since 2014, monthly unannounced site visits were conducted and documented to monitor the operations and compliance of TWM. Furthermore, contract monitoring is evidenced by the documented monthly meeting minutes and action register.

However, the audit found that the communication between the program coordinator and TWM was not always effectual. Often, questions posed to TWM were unanswered and remain so, and requests for information were unfulfilled for a long time. From the 54 issues noted in the action register, more than 57% of the issues took more than six months to resolve.

Table 1: Duration issues outstanding on action register

<b>Duration issue outstanding</b>	<b>Number of issues</b>
0-6 months	23
6-12 months	7
1-2 years	4
2-3 years	13
>3 years	7
<b>Total</b>	<b>54</b>

To date, 21 issues remain “parked” or “in-progress”, meaning that the requested items have not yet been provided. Of these, 17 were first raised in 2015, and four were raised in early-mid 2016. Senior management does not review the action register. Not included in the action register are additional questions raised by the FSU coordinator. These also remain unanswered.

While the director was generally aware of the difficulty in getting TWM to provide financial information, instances where TWM was uncooperative in answering key questions were not always actioned on by management. When a contractor is uncooperative in providing information that the City is contractually entitled to, we would have expected to see more director involvement. Whether that involves meetings with TWM or formal letters from the City, they should serve to compel TWM to provide the requested information.

In one instance where we saw evidence that the director was involved, the original issue was raised by the former program manager on May 25, 2015 (as seen on action register, item #38). Six months after the issue was first identified, on November 24, 2015, the director sent TWM a formal letter requesting the financial information. After much back and forth between the City and TWM, on February 17, 2016, TWM provided a schedule that was not what the City had initially asked for. This only resulted in the FSU coordinator having more questions about what was provided. The program coordinator sent these questions to TWM and has never heard back. There was no

subsequent escalation to and involvement from the director.

Our audit noted that between October 27, 2016 and December 15, 2017, there were five “discussion notes” where the director updated the general manager on Springhill Landfill matters. These discussion notes were to provide the general manager with an understanding of the most significant issues at the landfill and the related recommendations.

### **Recommendation #1**

That the Director have regular meetings with the direct reports to discuss contract management issues. That the City ensure there is timely and documented senior management engagement and continued follow up to compel TWM to provide the requested information in the action register and by the FSU Coordinator.

### **Management response:**

Management agrees with this recommendation and it has been partially implemented.

The Director has scheduled monthly one-on-one meetings (or more frequently, if and where required) with direct reports to review and provide input on any operational or contractual issues that may arise.

Specific to the Springhill Landfill, senior management has escalated the information request to the City’s Chief Procurement Officer and Deputy City Treasurer for their review and action. On May 1, 2018, the Chief Procurement Officer requested specific information from TWM. As of May 22nd, TWM has indicated they have provided the responsive information. Corporate Finance is currently reviewing and analyzing the information received to ensure that the request has been fully satisfied, and will provide an update to management by Q3 2018. Subject to verification of compliance by Corporate Finance, the City will take action pursuant to the Management Agreement or the City’s *Procurement By-law* where warranted.

### **Recommendation #2**

That the City develop corporate wide contract management policies and procedures and make these available to contract managers. Included in these policies and procedures should be direction to establish responsibility and accountability for the monitoring of insurance certificates.

**Management response:**

Management agrees with this recommendation.

The existing Contract Administration and Reporting on Supplier Performance Procedures will be updated into a formal policy by Q4 2018. The policy will identify the responsibility and accountability for monitoring insurance certificates related to contracts awarded under the Procurement Bylaw.

**Springhill not identified on departmental risk assessment**

Our audit also noted that contract management is not aligned with wider governance processes and not included in the Corporate Risk Profile for the Public Works and Environmental Services department (PWESD). Review of the 2015 and 2017 PWESD risk registers showed that there was no mention of City landfills, including Springhill. This is surprising given the significant environmental contamination at Springhill identified since 2012 and the ongoing difficulties in the City's dealings with TWM. These significant risks need to be identified and monitored regularly, with mitigating actions developed and implemented where possible.

**Recommendation #3**

That PWESD review their risk register and ensure that significant risks are identified, along with action plans and owners. The risks at Springhill Landfill should be clearly described and monitored.

**Management response:**

Management agrees with this recommendation and it has been partially implemented.

The risks for the Springhill Landfill have been included in the current departmental risk register, and PWESD is in the process of completing the remaining updates.

This recommendation will be fully implemented by Q3 2018.

**Reporting to Council and Committee**

Our audit found two instances where Council was provided with an update on Springhill. On December 23, 2015, an email update was provided by the City Clerk and Solicitor in response to direction given by the Audit Committee at its meeting on November 26, 2015. The update informed the Mayor and Members of Council of the results of the commercial arbitration. The email indicated that the "Arbitrator found in favour of the

City, agreeing that Tomlinson had breached its agreement for the operation of the landfill. However, the issue of the damages payable to the City was left to be decided at a further hearing.” On February 1, 2018, a memo was sent to the Mayor and Members of Council advising them of the environmental concerns at Springhill.

Although the *Public Private Partnership Policy* was put in place years after the agreements were established, the contract management and on-going monitoring requirement of annual reports to update Council on the P3 partner’s financial and service level performance should be in place regardless of the date the agreements were made. The annual reports on P3’s, as set out in the policy, are elements of good governance that would otherwise take place throughout the life of a P3 agreement. This ensures that there is Council oversight to make certain that the arrangement continues to serve the public interest as intended.

#### **Recommendation #4**

That the City provide an annual report to Council on the Springhill Landfill P3 agreements until closure of the landfill or end of all agreements in accordance with the City’s P3 Policy.

#### **Management response:**

Management agrees with this recommendation.

The Public Works & Environmental Services Department will work in conjunction with Supply Services to provide an update to Council on the P3 partner’s financial and service level performance for the Springhill Landfill as part of the annual Procurement Year in Review report (typically tabled in May of the following year) to the Finance and Economic Development Committee (FEDCO) and Council.

This recommendation will be considered implemented by Q2 2019.

#### **TWM disregards City orders**

On January 31, 2018, the General Manager of Public Works and Environmental Services sent TWM a letter indicating that “the City is, effective immediately, directing TWM to temporarily suspend further placement of any waste in the landfill.”

City management indicated that TWM disregarded the request and on February 5, 2018, City staff observed waste being placed in Springhill Landfill. On February 6, 2018, the General Manager of Public Works and Environmental Services sent another email

to TWM reiterating the City's direction to immediately stop the placement of waste pending further direction.

On February 8, 2018, the program coordinator went to inspect the landfill site again and was informed by TWM's scale ticket operator that they were directed to continue operations. The program coordinator has informed the General Manager of Public Works and Environmental Services of the latest observations. After the City's request was disregarded by TWM, the City went on to amend the landfill ECA to compel TWM to stop placing waste in Springhill landfill. The amended ECA will allow the MOECC to regulate this issue. Since the City is the owner of the ECA, the City may be charged by the MOECC if TWM continues placing waste in the landfill.

### **Management Agreement unfavorable to the City**

Upon amalgamation, the City of Ottawa inherited the Agreement between the former Township of Osgoode and TWM with respect to the management of the Springhill facility. The City's view is that the Agreement is unfavourable to the City and has provided and continues to provide considerable financial benefits to TWM.

Section 3.03 (2) of the Agreement provides that the Owner shall "co-operate wherever reasonably required in application for amendment of the Certificate of Approval." TWM has relied on this clause to contend that the City has no option but to approve such applications requested by TWM, without taking into consideration any public interest issues.

The Agreement also gave TWM full control over the day-to-day operations of Springhill. Section 3.02 (7) (e) indicates that the manager shall "make all policy decisions in respect to the daily operation of the landfill site and desirable amendments to the Certificate of Approval." This has led to TWM making decisions about Springhill without having to consult the City. For instance, a loan was taken out at 4% interest from TWM's parent company when there was a significant amount of cash on the balance sheet. TWM did not consult the City on this financing decision and has not responded to any of the City's questions about this. Another example is when the City disagreed with TWM on the cover system used at Springhill, TWM argued that the City did not have a say in the matter. TWM believes that landfill closure and environmental remediation fall within the day-to-day operations of the project and that decision making should be left up to them. The City believes that decisions related to the long-term environmental remediation and site closure plans go beyond the "daily operations" of the landfill, as



these decisions will have significant financial implications for the City which will far exceed TWM's involvement in the site.

Section 3.05 also gave TWM discretion on setting dumping fees to the then "prevailing rates". What constitutes a fair prevailing rate for related parties<sup>10</sup> is highly subjective. This had led to much disagreement between the City and TWM and remains unresolved to date.

Section 5.01 indicates, "the recycling facility shall be part of the project, and the revenues and costs thereof shall be accounted for in accordance with the provisions of this agreement". As the operations of the landfill and the C&D facility are significantly different, consolidating them both into a "project" and grouping their operational results into one consolidated financial statement would not provide useful information. Instead, presenting the landfill's revenue and expenses separately from the C&D facility's operational results would enable the City to identify whether the C&D facility or the landfill is making money.

Section 5.04 indicates that for the "calculation and payment of net profit entitlement under the terms of this Agreement, the parties shall employ generally accepted accounting principles...Audited financial statements shall be prepared by the Auditor approved by both parties". While TWM's financial statements have been audited by a reputable accounting firm, KPMG, reliance cannot be placed on the financial audit to determine whether the royalty amount has been correctly calculated by TWM. The financial audit performed by TWM is in accordance with Canadian accounting standards for private enterprises and not in accordance with the terms of the Agreement. Financial statement auditors are required to ensure that the transactions are accurately reported as they took place. They do not provide an opinion on management's discretion to provide customer discounts, or whether intercompany charges are at the market rate, or whether "non-chargeable" costs as per the Agreement have been excluded. It was a fault in the Agreement to base the calculation of the City's royalty on the audited financial statements, rather than a special purpose report that would perform an audit in accordance with the terms of the Agreement.

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<sup>10</sup> *International Accounting Standards* defines a related party as a person, including management and close family members, or entity that is related to the entity that is preparing its financial statements via control (direct or indirect), joint control or significant influence.

Overall, many terms of the Agreement are in favour of TWM. While the landfill is open, TWM has full control over the operations and can make policy decisions to their benefit. However, once the landfill capacity is exhausted, the City assumes all the risks and costs of the landfill's post-closure activities.

**2. Royalty payments are paid on a timely basis, but the City has no assurance as to whether the right amounts have been received over the last 21 years.**

The Springhill Landfill has not been a profitable venture for the City of Ottawa. Over the last 21 years (1997 to 2017), the City has received \$6.3 million in royalty payments, or on average \$300,744/year. A significant amount of City resources was required to manage the Springhill contract, including contract managers, senior management, Finance, and Legal Services. In addition, external resources required include legal counsel, forensic accounting and engineering consulting services. The arbitration in 2009/2010 was also a costly undertaking. All of these expenses likely far exceeded the royalties received by the City.

Furthermore, the City has not been able to verify the accuracy and completeness of its royalty payment for the last 21 years.

Section 3.01 of the Agreement defines how the City's royalty payment is to be calculated. It states, "The Manager shall receive Management Fee equal to 60% of the net profit generated by the operations of the project as defined and calculated under the terms of this Agreement. The Owner shall receive revenues equal to 40% of the net profit generated by the operations of the project as calculated under the terms of this Agreement."

In order for the City to have assurance over the accuracy its royalty, it needs to be able to validate TWM's reported revenue and expense figures.

**Springhill revenues**

The revenues reported by TWM for the landfill and the C&D facility are based on monthly scale ticket reports. Scale tickets are generated when shipments of landfill waste and C&D materials are delivered to Springhill. These reports were only provided to the City electronically since the end of 2014. Paper copies were received from 2011.

Without testing the controls of TWM's receiving, billing and accounting system, the City does not have assurance over the accuracy, completeness and existence of the scale ticket reports.

Our audit found that the City made attempts at reconciling the monthly scale ticket reports to the revenues reported on TWM's financial statement. Without having assurance over the accuracy and completeness of the monthly scale ticket reports, attempting a reconciliation would not be a useful exercise. In addition, the KPMG year-end audit would have reconciled the revenue and provided some assurance over the reported revenue. Instead of expending effort on re-reconciling the revenue, more focus should have been on analyzing reported expenses.

From analysis done on 2015 scale ticket reports, the following issues have been identified:

1. In 2015, 50,316 tonnes of C&D facility waste was deposited in the Springhill Landfill at no charge. This is allowed because of the structure of the Agreement. The Agreement restricts the service area to the geographic area of the former Township of Osgoode. Only waste from the area may be dumped in the landfill. The intention of the original Agreement was that Springhill would be a landfill used to service the local area. However, the TWM owned ECA for the C&D facility allows C&D materials from anywhere within Eastern Ontario and the Outaouais. Since the C&D facility's residue waste was generated in the former Township of Osgoode, as per section 3.05 of the Agreement, it can be disposed of in Springhill Landfill. This is contrary to the original intent of the Agreement and is filling up the landfill at a much faster rate than originally anticipated. In addition to using up valuable landfill capacity, the City is not receiving any revenue for the C&D facility waste dumped in the landfill.

The 50,316 tonnes of C&D waste represents 80% of total tonnages received at the Springhill Landfill for the year. According to TWM, this is a revenue to the landfill but an expense to the C&D facility, so on a combined financial statement this nets to zero. No revenue is recorded for the landfill and no equivalent expense is recorded for the C&D Facility. Since TWM does not disclose landfill and C&D results separately, on a consolidated financial statement, this has no effect. However, if TWM were to disclose landfill and C&D results separately, it would be apparent that the landfill is generating a lot more revenue than it would appear to be and the C&D facility is a lot less profitable than it otherwise appears to be.

2. Out of the total tonnages dumped in the landfill in 2015, 23% came from C&D residual waste; 24% came from “rubble”, a by-product of C&D waste processing that TWM claims will be used to build roads inside the landfill; and 33% came from “fines”, another by-product of C&D waste processing that TWM was using as a daily landfill cover. Only 6% came from municipal waste generated in the geographic area of the former Township of Osgoode and another 13% came from waste deposited by customers.
3. 76% of the total material tonnage received at the C&D facility came from TWM related companies (i.e. R.W. Tomlinson, Tomlinson Environmental Services and Tomlinson Industrial Waste Division). The 2015 financial statements disclosed that \$2.6 million of revenues came from transactions with related parties. Related parties were charged a tipping rate of \$63/tonne, while unrelated parties were charged on average \$88-90/tonne. That represents a 28-30% discount. Section 3.05 of the Agreement indicates that, “All other waste material permitted by the prevailing Certificate of Approval received at the landfill site from whatever source shall be subject to dumping fees at then prevailing rates, which shall be set, maintained and revised by the Manager in its discretion.” Therefore, contractually, TWM has the right to set tipping rates; however, they need to be at the “prevailing rate”. While the City has identified that related parties are charged significantly lower rates, they have not questioned TWM on how these rates were set and assessed whether \$63/tonne is reasonable.

In summary, TWM’s related parties are benefiting from disposing of C&D waste at preferential rates while having Springhill Landfill accept the residual waste at no charge and having the City share in all the related costs. TWM is able to do this because the Agreement allows them to set tipping fees and allows them to dispose of waste generated by the C&D facility in the landfill.

#### **Recommendation #5**

That the City question how the tipping rate that TWM is charging its related parties was set. The City should then assess whether the discount offered to related parties is reasonable and representative of the “prevailing rate”.

### Management response:

Management agrees with this recommendation.

Senior management will work with staff from Solid Waste Services and the Corporate Finance branch, as well as any external experts/consultants (as and if required), to determine whether Tomlinson has been charging the required “prevailing rate” to any related parties.

This recommendation is expected to be complete by Q4 2018.

### Springhill expenses

Section 1.01 of the Agreement defines “chargeable costs” and “non-chargeable costs”.

- Section 1.01 (k): “**Chargeable Costs**” – all direct operating costs of on site activities including, but not limited to labour, office services, supplies, fuel, maintenance of on site and additional facilities, office and accounting services, insurance, utilities and telephone, equipment rental where required, legal costs, landfill containment costs, interest and bank charges, and any taxes, fee or levies imposed by authorities with jurisdiction, and shall include amortization, and payment to the Owner or Manager as the case may be, of capital costs for on site and additional facilities plus interest charged on unamortized portion of capital costs at bank prime plus 1% over a 15 year period, the direct cost of amending the Certificate of Approval and site plan chargeable over a period of three years from the commencement date, the direct cost of implementation of remedial and rehabilitation measures to address groundwater contamination; and the amortized cost of establishing the project reserve fund. Capital costs of equipment and/or installations in respect to any recycling facility shall not be chargeable unless such facility is part of the project as determined by the provisions of this Agreement.”
- Section 1.01 (l): “**Non-Chargeable Costs**” – costs of ongoing supervision and management by the managers, personnel, direct costs of removal and replacement of contamination located in the northeast quadrant of the site, and the cost of initiating and obtaining professional evaluation, (engineers hydrogeologists and like disciplines as required) reports and recommendations to: (i) finalize plans for remedial and rehabilitation measures to address the ground water contamination and (ii) to finalize the terms of application for amendment to the existing Certificate of Approval.”

- The City has not obtained enough information from TWM to gain reasonable assurance over the eligibility of the expenses that TWM has reported over the last 21 years. The City has made some attempts at requesting financial information from TWM as seen in the timeline below. While questions and requests have been made of TWM, very few satisfactory responses have been received.

Table 2: Timeline of the City's requests to TWM for financial information

Date of request	Request
March 31, 2014	<p>The City sent a formal letter to TWM requesting support for the revenues in the 2013 financial statements and a variance analysis explaining the reasons for the changes in revenue, as compared with the previous year's revenues.</p> <p>The letter also indicated that the City has not received any documentation to support and reconcile the various expenditures listed in the Statement of Earnings for fiscal 2013. Furthermore, the City has not been provided with any explanations for variances with prior year expenses.</p> <p>From the documentation reviewed, there is no evidence that TWM provided the requested financial support.</p>
April 24, 2014	<p>The City's environmental services General Manager sent TWM's project manager a formal letter requesting that TWM provide support to enable the City to reconcile revenues and explain the variances. In addition, he requested support for the expenses to verify that they pertain to the operation of the landfill, explanations for variances with prior year expenses, and a budget. From the documentation reviewed, there is no evidence that Tomlinson responded to this letter and provided the requested financial support.</p>
September 8, 2015	<p>The City's program manager recommended that another letter be sent to TWM requesting revenue and expense breakdown reports and separate monthly and quarterly financial statements for the landfill and the C&amp;D facility.</p>

Date of request	Request
November 24, 2015	The City's Manager of Solid Waste Services then sent out a letter to TWM requesting the information recommended by the program manager.
December 24, 2015	TWM sent the City's Manager of Solid Waste Services a response indicating that they have already provided sufficient detailed information.
January 5, 2016	City's Manager of Solid Waste Services sent a letter back to TWM indicating specifically four City requests related to Springhill financial performance that are still outstanding.
February 17, 2016	<p>TWM indicated that they have now satisfied three out of four of the requests. The fourth request was not possible to provide.</p> <p>The City specifically wanted TWM to produce a separate and detailed revenue and expense breakdown for 1) the landfill and 2) the C&amp;D operations. The City wanted to understand how much profit each of the operations was making. The City suspected that the low tipping fees charged to related parties was causing the C&amp;D facility to be making a loss. The residual waste from C&amp;D processing was dumped in the landfill at no charge, making the landfill appear unprofitable. If TWM were to disclose landfill and C&amp;D results separately, the results may show that the landfill operation is generating a lot more revenue than it appears to be on a consolidated statement.</p> <p>What TWM ultimately provided the City was a revenue and expense breakdown into <b>three</b> categories: 1) landfill, 2) C&amp;D facility and 3) "Corporate". This was not useful as many of the costs were allocated to "Corporate". TWM indicated that corporate charges were unallocated expenses. These expenses were significant and it is unknown as to whether they should be attributed to the C&amp;D facility or the landfill operations. This only resulted in the City having more questions about the amounts captured in the "Corporate" category and what they relate to. These questions remain unanswered.</p>

Date of request	Request
June 14, 2016	The City’s program coordinator sent TWM, a list of seven financial questions. Inquiries about the eligibility of costs, corporate expenses, balance sheet line items and borrowings made by TWM. These questions remain unanswered by TWM. No further escalation has been made by the City to request this information from TWM.
March 2, 2017	<p>TWM’s project manager indicated that he was going to put the City in contact with TWM’s account manager.</p> <p>A few weeks later, he indicated that the account manager was busy working on a new financial system and could not meet with the City.</p> <p>To date, the City does not have an account manager contact at TWM.</p>

In order to assess the accuracy of the City’s royalty, each year, the FSU coordinator does a high-level review of revenues, expenses, royalty payment trends and expense ratios. He has numerous unanswered questions, including the following:

- Are the “corporate charges” TWM has expensed to Springhill appropriate direct operating costs?
- Why is natural gas an expense when to the City’s understanding, Springhill does not use natural gas?
- What are the details behind all line item summaries on the Quarterly and Annual Financial Statements? (e.g. wages and benefits by job title, Consulting and Professional Fees by contractor and job performed)
- What are the details behind the Balance Sheet line items?
- Why is TWM borrowing money from related companies when there is a significant amount of cash on the Balance Sheet? In 2016, there was a loan of \$271,832 outstanding, taken out from the parent company at 4% interest, when there was cash on the Balance Sheet in the amount of \$2.8 million.

Although the Agreement states that with respect to accounting records and information “the Owner shall have access thereto at all reasonable times on reasonable notice”, none of these questions have been answered by TWM. The TWM project manager is the City’s only contact for all financial questions. The City’s FSU coordinator does not



have a direct accounting manager contact at TWM. The above questions were sent to TWM’s project manager, but no answers were provided. The lack of response to these questions have not been escalated to senior management levels within the City. All of the financial issues and questions have been “parked” since March 20, 2017, when the focus has been turned to environmental issues at Springhill.

Our audit also noted that Section 1.01 (I) of the Agreement specifically states that non-chargeable costs include the cost of initiating and obtaining professional evaluation, (engineers hydrogeologists and like disciplines as required) reports and recommendations.

For the years 2014, 2015 and 2017, TWM has reported significant “consulting and professional fees” expenses. These expenses are separate from “audit and legal fees” that are chargeable expenses as per the Agreement. Even after backing out the entire amount added back by TWM when calculating the City’s royalty, which may or may not relate to “consulting and professional fees”, a significant amount of the expense remains as shown in the table below.

Table 3: Consulting and professional fees included in the City’s royalty calculation

<b>Expense</b>	<b>2017</b>	<b>2015</b>	<b>2014</b>
Consulting & professional fees	\$243,497.27	\$153,320.52	\$224,505.42

The City does not know what these “Consulting & Professional Fees” consists of and why they are chargeable for the royalty calculation. The City has no assurance over whether TWM has backed out all non-chargeable professional evaluation fees for the purpose of calculating the City’s royalty.

Furthermore, a lot of the equipment used at Springhill are rented or leased from TWM’s related companies. The Financial Services unit coordinator questioned whether TWM was renting from the lowest rate that could be found in the market or from a related company at a higher price. Through discussions with TWM’s project manager, he was informed that sometimes TWM’s parent company will require TWM to use internal equipment from a related company if it is available. The price could be higher than what can be found in the market. The exact price differential and the frequency of which this happens is unknown as TWM has not been forthcoming with this information.

Given the lack of information provided by TWM throughout the course of the Agreement, the City should give consideration to the *Procurement By-law*, sections 37 and 47. Section 37 states that the “Director shall document evidence and advise Supply Branch in writing where the performance of a supplier has been unsatisfactory in terms of failure to meet contract specifications, terms and conditions. The City Treasurer may, in consultation with the City Clerk & Solicitor, prohibit an unsatisfactory supplier from bidding on future contracts.” Section 47 states that, “the City, acting through the City Treasurer in consultation with the City Clerk and Solicitor, may in its absolute discretion after considering the criteria outlined in subsection (2), reject a quotation, tender, or proposal submitted by a bidder if the City is engaged in legal action against the bidder, or, if the bidder or any officer or director of the bidder is engaged, either directly or indirectly through a corporation or personally, in a legal action against the City.”

#### **Recommendation #6**

That as long as TWM is a partner in this Agreement, the City continue to pursue direct access to a TWM accounting manager contact. If necessary, the City should go through legal means and escalate to senior City management (i.e. General Manager, Public Works and Environmental Services and/or City Manager). Regular meetings need to be held to discuss financial questions to ensure that the City has a full understanding of the performance of Springhill. History has shown that it is inefficient and ineffective to go through TWM’s senior management to get answers to financial questions.

#### **Management response:**

Management agrees with this recommendation and it has been partially implemented.

Senior management has escalated the information request to the City’s Chief Procurement Officer and Deputy City Treasurer for their review and action. On May 1, 2018, the Chief Procurement Officer requested specific information from TWM. As of May 22nd, TWM has indicated they have provided the responsive information and identified an accounting manager contact. Corporate Finance is currently reviewing and analyzing the information received to ensure that the request has been fully satisfied, and will provide an update to management by Q3 2018. Subject to verification of compliance by Corporate Finance, the City will take action pursuant to the Management Agreement or the City’s *Procurement By-law*

where warranted. Semi-annual meetings with the TWM accounting manager will be established going forward.

**Recommendation #7**

That the City, with legal support, request TWM to provide a detailed breakdown of each of the expense line items on the financial statements. It is likely that this was provided annually to the financial auditor, KPMG, and can be provided to the City. The City needs to ensure that non-chargeable costs have been excluded from their royalty calculation.

**Management response:**

Management agrees with this recommendation, and it has been partially implemented.

Senior management has escalated the information request to the City's Chief Procurement Officer and Deputy City Treasurer for their review and action. On May 1, 2018, the Chief Procurement Officer requested specific information from TWM. As of May 22nd, TWM has indicated they have provided the responsive information. Corporate Finance is currently reviewing and analyzing the information received to ensure that the request has been fully satisfied, and will provide an update to management by Q3 2018. Subject to verification of compliance by Corporate Finance, the City will take action pursuant to the Management Agreement or the City's *Procurement By-law* where warranted.

This recommendation is expected to be complete by Q4 2019.

**Recommendation #8**

That the City should refer to the *Procurement By-law Section 37 and 47* and consider whether Tomlinson is a good business partner for this project and for future endeavours.

**Management response:**

Management agrees with this recommendation.

Senior management has already engaged the Chief Procurement Officer, City Treasurer, and Deputy City Solicitor to review all available mechanisms to obtain the requested financial information and responses to outstanding financial questions. Subject to verification of compliance by Corporate Finance, the City will

take action pursuant to the Management Agreement or the City’s Procurement By-law where warranted, and will determine whether an external auditor should be engaged to review information received.

This recommendation is expected to be complete by Q4 2019. However, staff will be conducting an ongoing review and analysis of information provided by Tomlinson, as well as any further information provided, in the context of the applicability of *Procurement By-law Section 37 and 47*.

### Related party transactions

The audit found that there are at least five related companies that do business with TWM at Springhill. The magnitude of related party transactions are shown in the table below.

Table 4: Springhill Landfill site related party transactions

Related party	2016	2015	2014	2013	2012
<b>Revenues</b>	\$1,864,044	\$2,661,077	\$2,783,622	\$2,068,072	\$2,125,183
<b>Expenses</b>	\$451,756	\$206,183	\$643,365	\$438,072	\$389,518

While these types of transactions could be in the normal course of business, the inherent relationship between the related parties creates potential conflicts of interest that could result in actions that benefit the related parties involved as opposed to the Owner of the landfill, the City. The risk of understating revenue and overstating expenses is much higher when TWM is doing so much business with related parties.

A potential conflict of interest arose on account of the fact that TWM-related hauling companies stand to benefit completely from lower tipping fees. In order to determine whether there had been any abuse by TWM in setting tipping fees, external legal counsel retained Deloitte & Touche LLP (Deloitte) to do an extensive review of revenues.

Moreover, expenses can be manipulated in instances where TWM is made to rent equipment and trucking services from a related company at a higher rate than the market rate. Overall, all related party transactions must be transparently reported to the City in order to ensure that all actions are legal and ethical and do not harm the City’s share of the landfill’s profits. Some specific areas to look at for related party transactions

include payment competitiveness, payment terms, monetary transactions and authorized expenses.

**Recommendation #9**

That going forward, the City identify all the related parties that conduct business with TWM and assess the reasonability of related party transactions at Springhill.

**Management response:**

Management agrees with this recommendation.

Currently, notes disclosed in the annual financial statements include a list of related party transactions; however, reasonability and appropriateness need to be verified. While operations at the landfill have been temporarily suspended, PWESD and Corporate Finance staff will work together to review these transactions and will address any questions concerning the reasonability of related party transactions with the TWM accounting contact, once identified and should operations resume at the landfill.

This recommendation is expected to be implemented by Q4 2018.

**3. The Project Reserve Fund is currently being funded as per the Agreement, but will likely be underfunded when the landfill reaches capacity.**

Section 1.01 (m) of the Agreement, defines the “project reserve fund” as “a fund maintained by the Owner to be used for payment of costs incurred on and after the date the capacity of the landfill site is exhausted, to comply with the conditions of the Certificate of Approval and/or the requirements of the prevailing laws or regulations relating to closure of such sites. Annual contributions to the fund shall be made from project revenues, as a chargeable cost, commencing in the fourth year of the term of this agreement, in an amount to be determined on sound accounting and actuarial principals sufficient to create a project reserve fund of \$1,000,000.00 at the expiration of 30 years from the commencement of payments in the fourth year.”

Essentially, TWM was to contribute annually, starting in the fourth year of the Agreement, into a project reserve fund held by the City. The annual payments were allowed as a chargeable cost as per the Agreement, so they would reduce the City’s annual royalty by 40% of the contribution. The contributions over 30 years were supposed to amount to \$1 million. The planned deposit schedule was to commence on

January 13, 2001 and end on January 13, 2029. The annual contribution from TWM was to be \$22,673.13 and the interest accrued was estimated to be 2.5% per annum.

Our audit found that the City has maintained a separate fund for the contributions and interest accrued. The total balance as at January 31, 2018 was \$427,780.30 (i.e. \$363,880.30 in reserve payments and \$63,900 in interest). While the Agreement indicated that TWM was to start making annual contributions to the reserve fund in early 2001, they did not make their first payment until 2007. City staff have indicated that for two years TWM refused to pay into the reserve, subsequently there were disagreements on the annual contribution amount.

In 2007, in one lump sum of \$87,179, TWM paid 60% of the prior six years' reserve fund along with the interest in arrears calculated at 2.5% per annum. TWM paid the City only 60% of the reserve amount because as per the Agreement, the annual contributions are a chargeable cost and would have been deducted against the revenue earned in the year, thereby reducing the City's 40% royalty. This calculation would be accurate if between 2001 and 2006, TWM did not already deduct the annual contribution as a chargeable amount. To verify this, on March 9, 2007, the City's FSU coordinator sent an email to TWM requesting that they provide a letter from their external auditor confirming that TWM's chargeable costs identified in the 2001 to 2006 financial statements did not take into consideration TWM's contribution to the reserve. A response to this request was never received by the City. No further documented follow up was made on this request. This is another example demonstrating the fact that the City does not have the required information to exercise proper oversight of the Agreement and ensure that they are being paid the right amounts. If the annual contributions were already deducted in the financial statements between 2001 to 2006, the City would have received \$54,631 (i.e.  $\$22,763 * 6 \text{ years} * 40\%$ ) less in reserve fund payments than it is contractually entitled to.

The Agreement in Section 2.01 indicates that "the agreement shall remain in force....until the land fill capacity of the site has been exhausted." City staff recognized that the landfill would reach capacity sooner than the initially anticipated date of 2029 and requested TWM to increase their contribution. TWM disagreed and continued to contribute based on the signed Agreement that states that they need to reach \$1 million at the end of 30 years. A formal request was sent in 2007 by the City's external legal counsel to recalculate the annual contribution amount. The City will likely receive less than the expected \$1 million from TWM upon closure of the landfill.

### **Recommendation #10**

That the City ensure they have received the contractually agreed upon reserve amount to date and continue to monitor that the right amounts are being received each year.

#### **Management response:**

Management agrees with this recommendation.

The City has been receiving the annual contribution as per the Management Agreement and will continue to monitor that the right amounts are being received each year.

#### **4. Monitoring of the insurance provisions for the Springhill agreement is not in place.**

Section 5.03 of the Agreement stipulates, “the Manager shall maintain insurance in force at all times during the term of this Agreement, on the minimum terms specified by Schedule “E” attached to and forming part of this Agreement, with Owner and Manager named co-insureds, or on such other terms of insurance as is acceptable to both parties. Either party shall provide proof of insurance to the other on request.”

The audit found that the City did not have a complete copy of the Agreement as it was missing an addendum called “Schedule E”. Without Schedule E, the City does not know what types of insurance the Agreement requires. Legal Services could not find Schedule E in the City’s records and archives so they asked TWM’s legal counsel and the City’s external legal counsel for a copy. Schedule E has not been located to date. The City remains unaware of the insurance compliance requirements at Springhill. Given the significant environmental contamination identified in recent years, it would be important for the City to know if TWM has environmental insurance that would cover the remediation costs.

During the course of the audit, Legal Services was able to obtain a copy of the 2017-18 certificate of liability insurance from TWM. We noted that TWM has commercial general liability insurance including \$5 million of “pollution liability” with Catlin Canada Inc. The City requested a copy of the insurance policy from Catlin Canada Inc., but did not receive it during the course of our audit.

Based on interviews conducted, we found that there is no clear understanding among staff managing the Agreement as to who is responsible to monitor and review insurance

provisions in agreements with third parties who provide services to the City. Starting in 2007, Legal Services assumed the insurance function, but because the Agreement was put into effect by the former Township of Osgoode in 1996, Legal Services indicated that they were not advised of the existence of the certificate and did not include it for tracking purposes. Starting on August 29, 2016, City departments became responsible for tracking insurance requirements and renewals on their own contracts and agreements with third parties.

City staff managing the Springhill contract were not aware that after August 29, 2016, it became their responsibility to track TWM's insurance requirements and never did so. Without ongoing monitoring and review of insurance certificates by City staff, there is a risk that TWM is not maintaining insurance coverage as required, which could have significant financial consequences for the City.

#### **Recommendation #11**

That the City locate Schedule E and verify that insurance terms as outlined in the Springhill Landfill Site Agreement Schedule E are in place.

#### **Management response:**

Management agrees with this recommendation.

Should Management continue to be unable to locate "Schedule E", the City will assess the existing insurance in place as against current industry best practices. Should any deficiencies be identified, recognizing the status of operations at the site, these will be addressed with TWM.

This recommendation is expected to be implemented by Q4 2018.

#### **5. The City has considered exercising the contractual right to access records and accounting information.**

Section 5.04 of the Agreement stipulates, "the Manager shall keep and maintain records of the project's activities and all accounting information and the Owner shall have access thereto at all reasonable times on reasonable notice."

Over the term of the Agreement to date, the City has not received adequate information from TWM to assess the accuracy of the City's royalty payment. The City does not have the documentation to support and reconcile the various expenditures, to understand their purpose, and to determine if they pertain to the operations of the landfill.



While the Agreement does not contain an explicit “right-to-audit” clause, the right to access accounting information and records contained within the Agreement would appear to allow the City to examine TWM’s accounting records. The City did not consider exercising this right until December 2015. Given the lack of information provided by TWM, the City should have considered exercising their contractual rights sooner. During the course of our audit, external legal counsel informed us that prior to the arbitration, the City had questioned the accuracy of TWM’s reported expenditures. However, given the lack of cooperation from TWM in providing information and the aggressive timetable of the arbitration, this issue was not prioritized highly. Ultimately, the focus was on TWM undercharging on their related party transactions.

After the arbitrator’s award, the City hired Deloitte to review the revenues and calculate the possible economic loss to the City resulting from TWM charging related parties less than the prevailing rate. The analysis covered the 15-year period from November 1, 1998 to October 31, 2013.

It is the City’s understanding that since a settlement was agreed upon, the City can no longer revisit the 15-year period and make claims about the revenues during that time. However, since Deloitte’s analysis only looked at revenues, the City would still be allowed to conduct a review of expenditures for that period.

In January 2018, senior management indicated that they are interested in engaging an external auditor to examine TWM’s accounting records.

### **Recommendation #12**

That in all future public private partnership contracts, the City include an explicit right-to-audit clause.

#### **Management response:**

Management agrees with this recommendation.

The Public Private Partnership (P3) Policy will be updated to include the requirement for an explicit right-to-audit provision be included in P3 agreements.

This recommendation is expected to be complete by Q4 2018.

### **Recommendation #13**

That the City weigh the cost of engaging an external auditor with the possible benefits of examining the expenses in the allowable period.

**Management response:**

Management agrees with this recommendation.

Senior management has escalated the information request to the City's Chief Procurement Officer and Deputy City Treasurer for their review and action. On May 1, 2018, the Chief Procurement Officer requested specific information from TWM. As of May 22nd, TWM has indicated they have provided the responsive information. Corporate Finance is currently reviewing and analyzing the information received to ensure that the request has been fully satisfied, and will provide an update to management by Q3 2018. Subject to verification of compliance by Corporate Finance, the City will review the cost/benefit of engaging an external auditor to review this information and details on expenditures over the past five years.

This recommendation is expected to be completed by Q4 2019.

**B. Assessment of the financial impact of the environmental contamination, closure and post-closure costs on the City**

**1. The City has developed a plan to address and remediate the environmental damage identified by the Ministry of Environment**

As of December 2017, Springhill Landfill is approximately 75% filled. The MOECC has determined that the landfill is currently out of compliance with its ECA on groundwater and surface water issues. Leachate<sup>11</sup> impacted groundwater is migrating to neighbouring properties as well as interacting with surface waters outside of the landfill footprint. The environmental contamination is impacting a Provincially Significant Wetland (PSW) adjacent to the landfill. The MOECC has noted that the conditions at the PSW are serious and the contamination is one of the worst in the Eastern Region. On December 2, 2016, the MOECC met with the City and TWM and directed that the Springhill site present a solution that will address the surface and groundwater issues.

Following several meetings, the last one on December 13, 2017, the MOECC issued a list of four action items. The two key items are:

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<sup>11</sup> Leachate is the liquid that drains or 'leaches' from a landfill. It varies widely in composition regarding the age of the landfill and the type of waste that it contains. It usually contains both dissolved and suspended material. Leaching occurs when water percolates through any permeable material. (Source: <https://leachate.co.uk/main/what-is-leachate/>)

1. By no later than December 31, 2017, the City of Ottawa shall submit a plan that focuses on the immediate actions to be taken at the Springhill Landfill to begin to address the surface water and groundwater issues at the site.
  - a. On December 22, 2017, TWM provided MOECC on behalf of the City the short-term contingency plan. The plan includes the installation of a pump in the cleanout access pipe located in the header of the leachate distribution system. In order to drain the liquid from the granular material and drainage layer, TWM would continue to pump leachate from the header pipe. The MOECC concluded that the proposed action plan was reasonable.
2. By no later than January 31, 2018, the City of Ottawa shall submit a plan that will address the medium-long term (MLT) contingency measures (remedial actions) that will address the surface water and groundwater non-compliance at the site.
  - a. On January 30, 2018, the City of Ottawa submitted, as the site owner, the MLT plan (prepared by Dillon Consulting) to the MOECC. The Plan includes a proposed remedial action plan comprised of four major components:
    - i. The removal of leachate by truck for off-site disposal. This leachate is noted to be of fairly high strength. The effectiveness of this leachate removal program would be regularly monitored and assessed and adapted as necessary.
    - ii. The installation of a low permeability cover over the existing phases of the landfill (Phases 1 through 4). If Phase 5 were developed, a similar final cover system would later be implemented there as well.
    - iii. The implementation of a storm water management system to manage increased storm water flows from the landfill after the installation of the low permeability cover. The flows would be directed to a lined perimeter for disbursement and discharged along the western margins of the landfill. Naturalized features would promote the distribution of clean water into the adjacent portions of the wetland.
    - iv. The monitoring and review of the cover system performance and water quality trends, coupled with a contingency plan.

On April 4, 2018 the MOECC agreed in principle with the course of action proposed by the City and requested that a more detailed plan (including technical design details,

supporting documentation and implementation schedule) be provided to the MOECC by no later than August 31, 2018. The City is assessing the MOECC notice and is vetting it through its environmental consultant, Dillon Consulting.

It is important to note that the City and TWM are in general agreement over the short-term plan; however, TWM and the City of Ottawa are in disagreement over the long-term plan. In fact, TWM submitted, as the site Manager, their version of the long-term plan to the MOECC on January 31, 2018. The MOECC later stated that they would only review the Remedial Action Plan submitted by the City, the Owners of the landfill ECA.

TWM's proposed MLT plan is to install a purge well system that potentially will provide hydraulic control of the contaminated groundwater away from the wetland and onto property owned by TWM. Having the City purchase land or groundwater rights from Tomlinson for properties Tomlinson owns adjacent to the landfill to extend the contamination attenuation zone appears to be part of the solution proposed by TWM. The City has stated it has no interest in being required to purchase these assets at a cost to be determined by TWM. In addition, this solution has significant long-term operating cost impacts that the City will have to assume once the landfill is closed.

The City's proposed plan requires a larger upfront capital investment with lower future operating costs while TWM's plan of using of purge wells requires a smaller upfront capital investment but necessitates higher future operating costs. In addition, the City's solution is better for the environment, whereas, TWM's solution proposes to divert the pollution and will likely involve extending the contamination attenuation zone. TWM's solution also assumes that waste will continue to be placed in the landfill in the remaining space without any engineering of Phase 5. Doing so will further exacerbate the groundwater issues at the site.

### **Estimated costs for TWM's proposed solution**

In 2017, TWM commissioned Golder and Associates (Golder) to quantify the costs related to their proposed solution. From the table below, their proposed solution is shown based on capital spend and operating costs over a 25-year period. As there is a wide range in pumping rates for the purge well system due to the variability of shallow bedrock, both the best and worst case scenarios are provided in the table below.

Table 5: Golder's cost estimate of TWM's proposed solution

Cost elements	Purge wells	
	Best case: 20 m <sup>3</sup> /day	Worst case: 80 m <sup>3</sup> /day
Capital	\$900,000	\$1,000,000
Financing	\$302,400	\$336,000
Groundwater disposal	\$759,332	\$3,037,327
Hauling	\$1,443,816	\$5,775,265
Operating/maintenance	\$605,710	\$908,565
<b>Total 25 year cost</b>	<b>\$4,011,258</b>	<b>\$11,057,157</b>

It is important to note that for TWM's proposed solution, the above estimated cost between \$4-11 million, does not include the additional cost to the City of purchasing groundwater rights and TWM's land surrounding the property. These amounts would be significant and should be factored into the estimate.

In October 2017, the City hired Dillon to perform a similar estimate to get an understanding of the long-term costs of TWM's proposed solution. Dillon believed that a 40-year life cycle was a more reasonable timeframe than the 25-year timeframe used by Golder. Dillon's cost estimates for the proposed options are presented below. Dillon's estimates were significantly higher than those made by Golder. Dillon's estimated costs also do not include the possible additional cost of purchasing groundwater rights and TWM's land surrounding the property.

Table 6: Dillon's cost estimate of TWM's proposed solution

<b>Cost elements</b>	<b>Scenario #1: Leachate pumping, pre-treatment, the hauled for offsite management</b>	<b>Scenario #2: Leachate treatment onsite for direct surface water discharge</b>
<b>Capital cost</b> (excluding capital costs associated with purge well infrastructure)	\$4.4 million	\$9.6 million
<b>Operating costs</b> 40 year life cycle (npv)	\$30 million	\$31-48 million
<b>Total 40 year cost</b>	<b>\$34.4 million</b>	<b>\$40.6–57.6 million</b>

### Estimated costs for the City's proposed solution

In 2017, Golder estimated the cost of the City's proposed solution to be \$11.6 million. Dillon believes this estimate is high. For comparison, the final cover for Stage 1 of the Trail Road Landfill (which is similar in footprint to the Springhill Landfill) was installed at a capital cost of approximately \$8 million. Dillon noted that the cover system installed at Trail Road is more complex than would likely be required. A more cost-effective cover could be proposed for the Springhill Landfill and still provide a significant reduction in the leachate generation rate.

In December 2017, the City hired Dillon to perform an estimate of the cost of the City's proposed solution. Dillon's preliminary estimates for a suitable cover solution involving a geocomposite clay liner (GCL) system are in the range of \$5-6 million for Phases 1- 4B. In addition, a storm water solution must be completed as part of the groundwater and surface water remediation. The preliminary estimated cost for this is an additional \$2 million. Therefore, Dillon's total estimated cost is in the range of \$7-8 million. In addition, Dillon is currently working on estimating future operating costs associated with the City's proposed solution. Dillon's estimates will require vetting technical information that is currently in the process of being obtained from TWM. The results of this technical review may change the preliminary estimates.

### **Indemnification Clause**

Once the MLT plan is approved by the MOECC, the next step will be to determine who will pay the costs.

Section 4.01 of the Agreement contains an indemnification clause whereby the Owner agrees to indemnify and hold harmless the Manager for any liability or cost related to the groundwater contamination as exists as of the date of this Agreement (December 23, 1996) and any future conditions as may develop or evolve as a consequence of the groundwater contamination as it influences or affects the Matchett<sup>12</sup> property.

Section 4.02 of the Agreement contains an indemnification clause whereby the Manager agrees to indemnify and hold harmless the Owner in respect to all claims in connection with exercise of its duties as Manager under the terms of this Agreement from and after the commencement date, as a consequence of operation and management of the landfill site and its related activities.

The question thus arises as to whether or not the contamination is “as a consequence of [TWM’s] operation and management of the landfill site and its related activities.”

The City is of the opinion that the environmental contamination has resulted from the C&D waste that TWM has managed and deposited into the landfill site. TWM’s use of fines<sup>13</sup> as a daily cover is also a suspected cause of the environmental contamination.

### **TWM’s use of fines as cover violated ECA**

The City believes that the practice of using C&D fines as cover may have led to the detrimental impact on the Provincially Significant Wetland adjacent to the landfill.

TWM’s use of fines as daily cover material has been a longstanding practice.

TWM has been treating fines as “beneficial reuse” or “cover” and reporting significant recycling targets, while dumping it into the landfill for free as a daily cover. In 2015, when the City’s program coordinator reviewed Condition 56 of the landfill’s ECA A461402, he realized that the ECA defines the use of intermediate cover and states that “...it shall consist of clean soil material and the thickness of the cover shall be a

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<sup>12</sup> The Matchett property is a 50-acre parcel of land directly to the north of the Springhill Landfill site. As part of the Agreement, TWM purchased the property and provided the City with a release of liability for the water contamination issues at the time of purchase.

<sup>13</sup> Fines are the remains after C&D material is sorted, screened, and crushed.

minimum of 300mm...”. The MOECC had previously allowed the use of fines as an interim cover only for a specific development project that had already been completed.

On September 23, 2015, the MOECC carried out a site inspection at Springhill Landfill, which was followed up with a written report sent to TWM on October 22, 2015. The MOECC’s position was that the use of fines in the cover program at the landfill put the site out of compliance with the ECA owned by the City. Therefore, on October 27, 2015, TWM had to suspend the use of recovered C&D fines in their cover material program and start landfilling fines. TWM challenged the decision and sought to apply for an ECA amendment that would allow fines to be used as a cover material. Landfilling fines had a significant negative impact on their reported recycling targets at the C&D facility. In the past, TWM frequently reported that they have recycled between 60%-80% of the C&D waste material brought into the C&D facility. The MOECC concluded for the inspection time period that once C&D fines were excluded from the TWM reported recycling numbers, the percentage of waste disposed of in the landfill increased to 81% while the percent of waste recycled was only 19%.

Furthermore, it is the City’s understanding that TWM’s inability to use fines as cover material in the landfill means that it is no longer in compliance with its own ECA for the C&D facility, which requires it to meet a prescribed diversion target. Should TWM not be able to secure an amendment to the ECA for the landfill, the entire operation may no longer be viable for TWM.

The City suspects that using fines as daily cover may have contributed to landfill contamination because the MOECC has identified high concentrations of certain compounds in the leachate (e.g. boron – a fire suppressant contained in commercial drywall material). A 2006 Dillon Report stated “potential concerns associated with the use of C&D fines as cover material at the site are mainly associated with the presence of sulphates from gypsum drywall in the processed waste.”

The City is not supporting TWM’s application to amend the landfill’s ECA to allow for fines to be used as cover material. On December 11, 2015, the City informed TWM that its position on fines is unchanged until environmental and financial considerations have been addressed.



**2. A site closing plan has not yet been drafted; an updated estimate of the site closure and post-closure costs need to be estimated and validated by a professional engineering consultant**

The program coordinator has indicated that a site-closing plan has not yet been drafted. In 2015, the City hired Dillon to estimate the closing costs and future operating costs. The net present value of the estimated closure and post closure costs was \$2.95 million. However, City staff indicated that since this estimate was provided, there was a significant amount of MOECC activity and requirements because of the environmental contamination, resulting in additional concerns raised and an increase in the uncertainty making it difficult for Dillon to provide revised numbers.

The City's 2015 estimate of closing costs and future operating costs are currently out of date. Revised current estimates are required for the City to understand the magnitude of financial liability at Springhill. On February 7, 2018, senior management indicated that the City intends to engage a consultant as soon as the MLT plan is approved by the MOECC to provide a cost estimate of the remediation work and the environmental liability resulting from the site contamination. The preliminary estimates made by Dillon will be refined as more information is received on what steps for remediation the MOECC will accept.

**3. The City is not yet aware of the potential exposure of the closing costs (including environmental contamination) and will need to budget sufficiently for the closure and post-closure costs when the information becomes available**

In 2015, Dillon performed an estimate of the closing costs and future operating costs. The estimates will be revised once MOECC approves the long-term plan.

Since 2004, municipalities have been following a CICA (Canadian Institute of Chartered Accountants) guideline PS (Public Sector) 3270 Solid Waste Landfill closure and post closure liability. This is a requirement for publicly-owned landfills (Trail Road, Nepean Landfill, Springhill Landfill). This liability is included annually in the City of Ottawa's financial statements.

The 2016 audited Financial Statements included \$11.6 million for landfill closure and post-closure liabilities and a reserve balance of \$4.32 million. The \$11.6 million is for two active sites (Trail and Springhill). Springhill accounts for \$2.6 million of the \$11.6 million. It is Finance's opinion that the \$4.32 million is sufficient at this point in time to

manage the peaks in expenditures. Finance plans on revising the reserve payments for the Springhill Landfill in 2018 so that funding will be in line with Dillon's revised estimates and estimated closure date for Springhill Landfill.

**Recommendation #14**

That the City establish a site-closing plan in advance of the end of the Management Agreement in the event the site closing occurs earlier than expected.

**Management response:**

Management agrees with this recommendation, and it has been partially implemented.

Solid Waste staff are currently working with Dillon Consulting to develop a closure plan for Phases 1 to 4 of the Springhill Landfill (Phase 5 has not yet been developed, and therefore does not require a closure plan at this point in time).

This recommendation is expected to be complete by Q4 2019 (subject to the timing of MOECC approval).

**Recommendation #15**

That the estimate of the site closure costs and post-closure costs are updated upon receiving approval from MOECC for the medium-long term plan.

**Management response:**

Management agrees with this recommendation.

Upon receiving approval of the medium-long term plan from the MOECC, staff will work with Dillon Consulting to ensure that estimates are updated for site closure costs and post-closure costs.

This recommendation is expected to be complete by Q4 2019 (subject to the timing of MOECC approval).

**Recommendation #16**

That the City reviews its Springhill Landfill closure and post-closure liabilities in the financial statements to ensure they are reasonable and sufficiently funded.

**Management response:**

Management agrees with this recommendation, and it has been implemented.

The City already reviews closure and post-closure liabilities for its landfill sites on an annual basis, as that is a financial reporting requirement under the Canadian Institute of Chartered Accountants (CICA) Public Sector Accounting Board's PSAB 3270 - Solid Waste Landfill Closure & Post-Closure Liability. Furthermore, once the Remedial Action Plan is approved by the MOECC and revised closure and post-closure costs are estimated, the City will review and, if necessary, revise its annual contribution to the landfill liability closure and post-closure reserve fund to ensure the liability is sufficiently funded.

**Lease for the C&D facility**

The C&D Lease Agreement was entered into on January 23, 1998. The lease permitted TWM to locate required equipment, installations and structures and use space on the Springhill Landfill site for operation of a recycling facility. The Lease Agreement did not require TWM to pay the City any fee for leasing space in Springhill.

TWM operates the C&D facility under a separate ECA and is accountable to the MOECC for compliance at the facility. The C&D facility is allowed to accept construction waste from outside of the former Township of Osgoode.

The C&D Lease Agreement expires on October 6, 2018. On January 31, 2018, the General Manager of Public Works and Environmental Services sent the President of Tomlinson Group of Companies a letter that said, “the City does not intend to renew” the lease. While the City does not have an obligation to serve formal notice, TWM will require ample time so that operations at Springhill can be dismantled, the C&D stockpile removed and contracts with customers updated.

It is the City's understanding that TWM is obligated by their ECA for the C&D facility to give the MOECC 4 months' notice prior to the closure of the facility.

## Appendix A – Audit objectives and criteria

### Overview of the audit objectives and criteria

Objective #1: To assess the overall progress made by Management to date on audit recommendations made in 2011.	
1.1	Management has completed the implementation of the audit recommendations made in 2011.
Objective #2: To assess whether the City is effectively and efficiently managing the Springhill Landfill contract	
2.1	Management’s oversight of the Springhill contract, including clear definitions of roles and responsibilities and governance, is designed and operating effectively.
2.2	Royalty payments are accurate, complete and paid on a timely basis.
2.3	The Project Reserve Fund is being funded as per contract.
2.4	Insurance is maintained by Tomlinson as per contract.
2.5	The City has considered exercising the audit rights contained within the contract.
Objective #3: To assess the financial impact of the environmental contamination, closure and post-closure costs on the City.	
3.1	The City adequately prepared for the environmental remediation required by the MOE and the closure and post-closure of the landfill.

## Part B – Follow-up to the 2011 Audit of Contract Management Practices – Springhill Landfill Site Contract – Executive summary

The Follow-up to the 2011 Audit of Contract Management Practices – Springhill Landfill Site Contract was included in the Auditor General’s 2017 Audit Work Plan.

Due to the arbitrator’s confidentiality order on the arbitration award and the resulting settlement, the contents in this report have been summarized to only include selective information that will not violate the confidentiality order. The Auditor General’s full report will be provided to Audit Committee in camera.

Selective findings of the original 2011 audit included:

- City staff are not presented with sufficient information to assess the landfill operations and consequently, they cannot determine the adequacy of the royalty payment.
- Despite not having sufficient information since amalgamation, the City went to arbitration in 2009. The arbitration was commenced by Tomlinson in respect of other issues in dispute.
- The City should be more proactive in contract oversight and dispute management by monitoring contracts on a regular basis.
- The City did not request information and state reporting requirements to TWM in a timely manner after the arbitration process was completed.
- A number of document requests made of TWM have not been provided. This includes variance analysis explaining the fluctuations in revenues and expenditures, an annual budget and an operational plan.
- The unforeseen impact of the 200 tonne daily limit, or 62,400 tonnes per year (far beyond the projected approximately 7,400 tonnes per year for the former Township of Osgoode) combined with the operation of the C&D facility is leading to a fill rate of approximately seven times what was initially forecasted for the site.

Table 7: Summary of status of completion of recommendations

<b>Recommendations</b>	<b>Total</b>	<b>Complete</b>	<b>Partially complete</b>	<b>Not started</b>	<b>No longer applicable</b>
<b>Number</b>	4	-	4	-	-
<b>Percentage</b>	100%	-	100%	-	-

## Conclusion

Management has made partial progress in implementing all four recommendations.

The original audit recommended that the City needs to document its information and documentation requirements, and submit them to Tomlinson to permit full understanding of landfill operations and the royalty payment.

Our work confirmed that from December 1996 to late 2014, there was no formal documentation of meeting minutes between the City and TWM. As part of good contract management practices, there needs to be a record of meetings and minutes, including any subsequent actions to be carried out by either party. Especially in the case where the City and TWM are in disagreement and there are suspected issues of non-compliance to the terms of the Agreement, minutes must be documented and retained.

Starting in late 2014, City staff recorded monthly meeting minutes and created an action register. Upon review of the action register, it was evident that numerous issues remained outstanding for a long period of time. While some efforts have been made by City staff to request the information from TWM, no consistent management follow up has been made to ensure that the information requested has been received and continues to be received.

The 2011 audit also recommended that the City ensure that it is proactive in contract oversight and dispute management by monitoring contracts on a regular basis. To address this, since late 2014, the Recycling and Material Diversion Program Coordinator has been more proactive in contract oversight by having monthly meetings with TWM and unannounced site inspections.

Over the course of the contract, City staff have identified suspected issues of non-compliance with contract terms and many of the questions they posed to TWM have

gone unanswered. Given that repeated requests made by lower level City employees have been unaddressed by TWM, dispute management should have been escalated and actioned at the senior management level. Escalation needs to be done in a timely manner and document requests need to be pursued until they are resolved.

The original audit also recommended that when the City has won any aspects of an arbitration, it proceeds without delay in order to ensure that the benefits are achieved in a timely fashion.

Our work confirmed that the arbitrator's award was completed on May 14, 2010 and a settlement was mutually agreed upon on September 2, 2016. The payment was received by the City in May 2018. There was a lack of urgency on the part of the City's legal counsel in the negotiation of the release of funds.

Based on our review of 2015, 2016 and 2017 tonnage reports, it is evident that TWM is still charging their related parties a discounted rate, similar to the discount given in the 15-year period from 1999 to 2013. In 2015 and 2016, related party rates were 28-30% less than unrelated party rates. In 2017, related party rates were 14-16% less than unrelated party rates. The City has not questioned TWM on how these rates were set or assessed the reasonability of related party rates.

## **Acknowledgement**

We wish to express our appreciation for the cooperation and assistance afforded the audit team by management.

## Detailed report – Assessment of implementation status

The following information outlines management’s assessment of the implementation status of each recommendation as of January 2018 and the Office of the Auditor General’s (OAG) assessment as of February 2018.



**Recommendation #1**

Table 8: Status

Management update	OAG assessment
Partially complete	Partially complete

**Audit recommendation:**

That the City documents its information and documentation requirements, and submit the comprehensive and consolidated requirement to Tomlinson to permit full understanding of landfill operations and permit the determination and reconciliation of the related royalty payment.

**Original management response:**

Management agrees with this recommendation.

City staff have been working with Tomlinson to reconcile matters of dispute. The City has sought external legal counsel on these matters. A failure to resolve the outstanding issues by Q4 2012 will result in a return to commercial arbitration.

**Management update:**

Implementation of this recommendation is partially complete.

The City and Tomlinson were unable to agree on the amount owing to the City following the conclusion of the first phase of the arbitration. As a result, the parties remitted the issue back to the arbitrator in order to obtain a ruling on the damages question.

Following a number of pre-hearing motions, and on the eve of the recommencement of the arbitration hearing, the parties were able to reach a mutually agreeable, confidential settlement of the damages payable.

In line with the Auditor’s recommendation, staff documented its information and documentation requirements and submitted them to Tomlinson. Since that time, staff has worked with Tomlinson on a number of occasions to fully understand all adjustments, corrections, year-end transfers, etc., that create reconciliation issues. While those efforts have resulted in some minor improvements being made to better understand the financial position of the file, this issue remains an outstanding item on

the Springhill Landfill action register that is reviewed at the monthly operational meetings.

Senior management is currently examining the possibility of retaining an external auditor to examine the project activity records and accounting information on its behalf. The purpose of this approach would be to fully validate and reconcile the royalty payments since the arbitration settlement was reached. This process (if initiated) would be complete by the end of 2018.

**OAG assessment:**

Prior to 2014, there was no formal documentation of meeting minutes between the City and TWM. As part of good contract management practices, there needs to be a record of meetings and minutes, including any subsequent actions to be carried out by either party. Especially in the case where the City and TWM are in disagreement and there are suspected issues of non-compliance to the terms of the Agreement, internal and external correspondence, such as emails, letters, and meeting minutes must be documented and retained. These may prove useful in the event of a future dispute.

Starting in late 2014, the Recycling and Material Diversion Program Coordinator has been meeting monthly with TWM as evidenced by the monthly meeting minutes and the action register. The meeting minutes are sufficiently detailed to document the various requests and discussions. However, as evidenced by the action register, a number of issues remain outstanding for a long time despite repeated requests. The following are four examples from the action register of City requests that remain unanswered to date:

1. On February 9, 2015, the City requested that TWM “provide a high-level 12-month Operational Plan that includes all projected revenues and associated work at Springhill”.
2. On May 25, 2015, the City indicated to TWM that “prior to 2007 the City was presented with annual audited statement of earnings reports where the revenue and expenses were separated for the landfill and C&D Recycling Facility. Now we only see separate revenue and not separate expenses. Why was the reporting changed and can we please revert to the previous approach?”
3. On February 9, 2015, the City requested that TWM provide a “breakdown of revenue (for both landfill and recycling operations) and expenses (e.g. wages

and benefits by role, rentals by type, etc.) on monthly and quarterly reports and annual Statement of Earnings report.”

4. On February 9, 2015, the City requested that TWM provide electronic quarterly reports as outlined in 3.04 of the Management Agreement for Springhill retroactive to 2014 and moving forward on revenue, chargeable costs and non-chargeable costs that indicate how we are tracking to our yearly operational plan and budget. Revenues and chargeable costs must be split between the landfill and C&D facility.”

From March 2017 onwards, due to the environmental contamination issues being viewed as more pressing, all outstanding financial issues on the action register have been set aside. (Refer to action register discussion done in Part A, Section 1, Subheading: Contract management before 2014)

The City has had numerous disputes with TWM over the course of the contract to date regarding many financial issues, including the support for the royalty payment. While some efforts have been made by City staff to request the information from TWM, no consistent senior management follow up has been made to ensure that the information requested has been received and continues to be received. More senior management and legal involvement is required to obligate TWM to provide the long outstanding requests on the action register. TWM should be compelled to abide by the terms of the Agreement where it states that “the Manager shall keep and maintain records of the project’s activities and all accounting information and the Owner shall have access thereto at all reasonable times on reasonable notice”.

**Recommendation #2**

Table 9: Status

Management update	OAG assessment
Complete	Partially complete

**Audit recommendation:**

That the City ensures that it is proactive in contract oversight and dispute management by monitoring contracts on a regular basis.

**Original management response:**

Management agrees with this recommendation.

Following the award of arbitration, the City has clarified its roles and responsibilities. The City has been very involved in contract oversight and has visited the site.

**Management update:**

Implementation of this recommendation is complete.

Staff conduct regular site visits and hold operations meetings with the service provider to ensure compliance with the contractual requirements and to address any issues.

**OAG assessment:**

When the audit requested the meeting minutes and notes kept by contract managers, none could be found for the period 2011 – 2014. Prior to 2014, there is no evidence of contract oversight as there was no documented correspondence with TWM, such as emails, letters, meeting minutes, issues discussed, decisions made, issues unresolved and progress reports on action items.

Since late 2014, the Recycling and Material Diversion Program Coordinator has been exercising contract oversight by having monthly meetings with TWM as evidenced by the monthly meeting minutes and action register. In addition, on a monthly basis, the program coordinator has conducted unannounced site inspections. The purpose of these site visits were mostly operational and environmental in nature. The program coordinator would make observations and notes on the condition of the waste mound cover, condition of groundwater monitoring wells, presence of stockpiles and general condition of the landfill and C&D facility.

As discussed in earlier sections of the report, over the course of the contract, City staff have identified issues of possible non-compliance with contract terms and many of the questions they posed to TWM have gone unanswered. (Refer to Part A, Section 2 for discussion of questions posed to TWM that have gone unanswered)

After the arbitration, on October 25, 2011, external legal counsel representing the City sent the legal counsel representing TWM a letter documenting a list of issues that need to be addressed for the City to be in a position to exercise proper oversight of the landfill. Included in the letter was a request for more financial disclosure. The letter stated:

“With respect to expenses, the City needs to know what each expenditure is for to ensure it relates to operation of the landfill. In this regard, the City is seeking documentation (preferably electronic) to support and reconcile to the various expenditures as we have no idea what they are for and if they pertain to the operation of the landfill.

The City is also seeking variance analysis explaining increases/decreases in revenues and expenditures. Revenues and expenditures have varied significantly over the years, yet the City is never provided any explanation as to why. In this regard, it would also help the City understand the operations if Tomlinson were to provide an annual budget along with an operational plan prior to the start of a fiscal year. This would provide the City with some kind of benchmark against which to measure performance.”

None of the above financial requests made by external legal counsel on October 25, 2011 have been provided by TWM to date. While follow-up requests have been made by the program coordinator and the Financial Services unit coordinator to TWM, they have gone unanswered.

Considering that requests made by lower level City employees have been unaddressed by TWM, dispute management should be escalated and handled at the senior management level and Legal Services should be included as needed. Escalation needs to be done in a timely manner and document requests need to be pursued until they are resolved.

**Recommendation #3**

Table 10: Status

Management update	OAG assessment
Complete	Partially complete

**Audit recommendation:**

That when the City has won any aspects of an arbitration, it proceeds without delay in order to ensure that the benefits are achieved in a timely fashion.

**Original management response:**

Management agrees with this recommendation.

Where the legal issues are discreet, the implementation of an award is straightforward and the City is generally able to quickly realize the benefits of a successful decision. In some cases, such as this one, due consideration of other financial and/or operational issues may delay the implementation of an award, notwithstanding the determination of the strict legal issue(s) in dispute. Additionally, an arbitral award may determine general legal entitlements and then remit the matter back to the parties in the hope that they can agree on remedial issues, such as compensation. Where the parties are unable to come to an agreement, it may be necessary to remit the matter back to the arbitrator, for adjudication, as in the instant case. This process may also delay the realization of the full benefit of an arbitration award.

**Management update:**

Implementation of this recommendation is complete.

Despite the City’s initial success at arbitration, there was no consensus between the City and Tomlinson on the amount of any damages payable. The City therefore remitted the damages issue back to the arbitrator, for determination. Following a lengthy series of pre-hearing challenges by Tomlinson, and on the eve of the recommencement of the arbitration hearing, the parties were able to reach a mutually agreeable, confidential settlement of the damages payable.

**OAG assessment:**

Due to the arbitrator's confidentiality order on the arbitration award and the resulting settlement, OAG's assessment of recommendation #3 will be presented to Council in camera.

**Recommendation #4**

Table 11: Status

<b>Management update</b>	<b>OAG assessment</b>
Partially complete	Partially complete

**Audit recommendation:**

That the City Manager provides a status report (in camera if necessary) on the progress of the negotiations related to the Springhill Landfill site in order for Councillors to have an appreciation of the efforts being made to resolve all outstanding matters.

**Original management response:**

Management agrees with this recommendation.

The City Clerk and Solicitor will provide a status report in camera to Council on the progress of the negotiations related to the Springhill Landfill site arbitration when the Auditor General tables the audit report.

**Management update:**

Implementation of this recommendation is partially complete.

A status report will be presented in camera to Council when the Auditor General tables the audit report in 2018.

**OAG assessment:**

On December 23, 2015, a brief email from Legal Services was sent to the Mayor and Members of Council informing them of the results of the commercial arbitration.

On February 1, 2018, a memo was sent to the Mayor and Members of Council to provide a high level update on the status of Springhill Landfill in relation to the environmental concerns at the site.



Table 12: Status legend

<b>Status</b>	<b>Definition</b>
<b>Not started</b>	No significant progress has been made. Generating informal plans is regarded as insignificant progress.
<b>Partially complete</b>	The City has begun implementation; however, it is not yet complete.
<b>Complete</b>	Action is complete, and/or structures and processes are operating as intended and implemented fully in all intended areas of the City.
<b>No longer applicable</b>	The recommendation is obsolete due to time lapses, new policies, etc.