Business Item

Item: 2008 – 239

E

Environment Committee

Meeting date: August 26, 2008

For the Metropolitan Council Meeting of September 10, 2008

ADVISORY INFORMATION	
Date:	August 20, 2008
Subject:	Authorization to Enter into Lease Agreement with Tiller Corporation for Aggregate Mining on New Hastings Wastewater Treatment Plant Site
District(s), Member(s):	16 – Brian McDaniel
Policy/Legal Reference:	Council Policy 3-2
Staff Prepared/Presented:	Jason Willett 651-602-1196; Dale Ulrich 651-602-1020
Division/Department:	MCES c/o William G. Moore 651-602-1162

Proposed Action

That the Metropolitan Council authorize the Regional Administrator to enter into a revenue producing lease of Council-owned property with the Tiller Corporation consistent with the proposed lease terms included as Attachment A.

Background

The Metropolitan Council owns approximately 208 acres of land lying in the southeastern corner of the City of Hastings, Minnesota, and in adjacent Ravenna Township. The site was acquired in 2005 for the eventual relocation of the Metropolitan Council Environmental Services' (MCES) wastewater treatment plant now located in downtown Hastings. Some 150 acres of the property has been leased to Tiller Corporation since 1988 (by the former owner of the land). Tiller mines aggregate on the property, stores both mined and imported aggregates, and operates a bituminous batch plant under the name of Barton Sand & Gravel. The 20-year lease agreement ended May 31, 2008.

Given the housing slow-down, no target date for the MCES treatment plant relocation has been established, nor has a final decision regarding the specific location of the future plant on the site been made. However, it is important that MCES have the flexibility to terminate the lease with a one-year notice when a decision is made to build the new plant.

The Environment Committee discussed this matter at its April 8, 2008 meeting, and instructed staff to meet with Tiller Corporation to explore the possibility of a new agreement. The parties met and several months of negotiation occurred. Tiller Corporation has since outlined the terms of a proposal which staff believes to be in the best interests of the Council. It is described on Attachment A.

Legal staff and bond counsel were consulted in regard to the private activity restrictions on the use of bond funds (which were used to purchase the land) and in regard to the negotiations approach. Neither issue constrains this proposal. A comparison of the prior lease and the proposal is Attachment B.

Rationale

Establishing a new lease arrangement with anyone other than Tiller Corporation is complicated by clause 4.3 of the existing lease dealing with termination. It allows Tiller 120 days (after May 31, 2008) to remove its mining and bituminous equipment, and two years to remove the processed aggregate and related scales and equipment. This means Tiller has all of the 2008 bituminous season (to October 1) and until May 31, 2010 to remain present on the property. Moreover, a replacement mining company would incur substantial costs to mobilize at the site and thus would need to recover those costs, perhaps reducing the royalties they would offer. Bringing in a replacement company is further complicated because MCES needs the flexibility to terminate the lease with a one-year notice.

Known Support / Opposition

Staff is not aware of outside support or opposition.

Attachment A

PROPOSED TILLER LEASE SUMMARY

1. Tiller to have the right to mine, process and stockpile aggregate, and operate the Hot Mix Asphalt Plant.

2. Term: 10 years initial to 12/31/18, with two 5-year extensions if requested by Tiller and accepted by MCES.

3. Consideration to MCES:
   - Annual payment of $20,000 for lease of approximately 18 acres under the asphalt plant and field office. This is not an offset to royalty payments.
   - Royalty rate initially at $1.00/ton as taken off the property.
   - Annual escalation of royalty rate and land lease based on growth in Consumer Price Index.
   - Prior Lease: Tiller pre-paid royalties of $103,465. Tiller now proposing those pre-paids be available to Tiller for the 42,467 tons of fully processed aggregate on hand June 1. At $1.00 ton royalty rate, this would value pre-paid at $42,467.

4. Taxes: Tiller to pay all property and personal property taxes on the portion of property Tiller occupies.

5. Termination:
   - Tiller may terminate if it loses permits or rights to operate, or if they determine it is no longer economically feasible to operate on MCES property.
   - "MCES shall have the right at any time to terminate this agreement, in the exercise of its sole discretion, upon no less than one (1) year written notice to Tiller."

6. Tiller Termination Obligations:
   - Tiller has 12 months following expiration or termination to remove all property, improvements and stockpiles.
   - Tiller has 12 months following expiration or termination to satisfy site reclamation requirements.
   - Annual payment and royalty payments continue during this time.

7. Default: Describes consequences of Lessee bankruptcy.

8. Improvements: Tiller can make improvements and they belong to Tiller.

9. Environmental: Tiller may only bring hazardous materials as required for their processes on MCES property.

10. Insurance: Tiller to insure MCES against claims arising from Tiller performance under the Agreement.

11. Proposed mining areas restricted so it's not in conflict with MCES planning for eventual treatment plant and outfall construction.

Attachment B

Consideration Summary – Initial Year

	Prior Lease	Proposed		
Land Rental	$ -	$ 20,000.00	*	For approximately 18 acres under batch plant, office
Royalty	50,000.00	50,000.00	*	Estimated 50,000 tons annual removal**
Taxes	(18,000.00)	-		Tiller to pay property, personal property taxes
MCES' position	$ 32,000.00	$ 70,000.00		

* Indexed to Consumer Price Index.
** Estimated, no guaranteed removal. Historical removals 36,000 to 100,000+ tons/year.