

# Island View Drive and Area Ratepayers' Association



-- SINCE 1975 --

Celebrating  
40 years in 2015  
of volunteer service  
to our community

*Bringing permanent and seasonal residents together in an informal, social, mutually beneficial union  
Founded on the principles of value retention, enhancement, and joy of ownership*

## CONSIDERATIONS FOR THE CONTRACT BEING NEGOTIATED BETWEEN SUSGLOBAL AND THE TOWNSHIPS OF GEORGIAN BLUFFS AND CHATSWORTH

The Island View Drive and Area Ratepayers' Association supports the desire of the BioGrid Joint Board to expand the operation of the BioGrid facility to include processing of source separated organics and to improve the long term financial viability of the BioGrid facility by moving it from a taxpayer expense to a source of Municipal revenue.

At the December 18, 2015 meeting of the BioGrid Joint Board, direction was given for Management to negotiate with SusGlobal for the long term operation of the BioGrid and for SusGlobal to invest in the expansion in the facility to improve financial performance and to accommodate source separated organics.

To ensure that the Townships of Georgian Bluffs and Chatsworth negotiate a favourable contract with SusGlobal and recognizing that the response by SusGlobal to the RFP which closed August 20<sup>th</sup>, 2015 was found to be deficient receiving a score of 26 out of 50 and below the threshold of 37.5 stipulated in the RFP and that SusGlobal has no track record in operating a BioGrid facility, we urge the BioGrid Joint Board to engage competent Legal, Financial, and Technical expertise to support the Negotiating Committee.

Additionally, we recommend that if an agreement with SusGlobal is concluded that the Agreement address the following items:

- 1) The Agreement reflect a commitment by SusGlobal
  - to invest capital in the facility,
  - to operate the facility in strict adherence to federal and provincial environmental regulations and municipal by-laws
  - to assume responsibility for all costs of operation
  - to share a portion of the operating profits with the Townships
  - to care for the existing BioGrid capital

and by the Townships

- to permit SusGlobal to operate the existing BioGrid
  - to provide SusGlobal a revocable licence to operate the facility
    - i) licence to be revocable for any breach of contract not remedied within 90 days
- 2) With respect to Capital additions to the facility by SusGlobal
    - installation of capital to be authorised by the Townships prior to installation;
    - SusGlobal to be responsible for obtaining any permits required
    - removal of any capital equipment requires consent of the Townships

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- capital equipment may not be hypothecated or otherwise encumbered without approval of the Townships
  - capital to be conveyed to the Townships without cost at the conclusion of the Agreement
- 3) With respect to the existing BioGrid Facility
- the Townships permit SusGlobal to access and make use of the existing BioGrid, effluent disposal tanks, motors, pumps, electrical connections, etc.,
  - SusGlobal must accept all septage and fats, oils, grease generated by residents and businesses located within the Townships of Chatsworth and Georgian Bluffs
  - access to and use of the existing sewage lagoons are not part of the Agreement and may not be used by SusGlobal for any purpose
  - the Townships will continue to have access to and make use of the existing sewage lagoons
- 4) With respect to the ongoing operation of the facility
- apart from specific process trade secrets, no aspect of the operations shall be deemed confidential and information shall be available to the Townships and the Public
  - the names and addresses of all suppliers of material, haulers, employees, purchasers of by-products, and all other businesses and individuals involved in the operation of the facility shall be available to the Townships and the Public
  - SusGlobal shall provide a monthly report detailing all activities at the facility including amounts and descriptions of material received, prices paid, material processed, waste material disposed of, expenses incurred, and revenues generated from the sale of by-products, electricity, and other activities related to the operation of the facility
  - SusGlobal shall be responsible for preparation and timely filing of all information required by federal, provincial, and municipal regulatory bodies and provide copies of all filings to the Townships which shall be available to the Public
  - SusGlobal will report all workplace injuries, equipment malfunctions, and environmental spills and discharges and take appropriate remedial actions as determined by regulatory authorities and the Townships
- 5) With respect to permitted material to be processed
- it should be explicit that hazardous materials and nuclear waste are not to be processed at the facility
- 6) With respect to tipping and other fees
- SusGlobal should be permitted to establish and modify a fee schedule based solely on its assessment of market conditions subject to the following limitations
    - i) there shall be no increase to fees in place January 1, 2016 for septage and fats, oils, grease generated by residents and businesses located in the Townships of Georgian Bluffs and Chatsworth
    - ii) the fees for disposal of waste generated by a business or resident of the Townships of Georgian Bluffs and Chatsworth shall not exceed the fee (net of all rebates) imposed for receipt and processing similar waste material originating from outside the Townships of Georgian Bluffs and Chatsworth
- 7) With respect to patents, licences, and proprietary information
- it should be clear that the Townships are provided at no cost rights to patents, access to all operating manuals, and licences to operate all equipment in place at the facility prior to the termination of the Agreement,

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- i) access should be available one year prior to the termination of the agreement to facilitate a process to seek a replacement Operator if an agreeable extension to the contract is not negotiated or if the Townships determine to assume operation
  - it should be clear that SusGlobal will authorise without reservation the Townships or an Operator selected by the Townships to operate the facility at the conclusion of the Agreement
- 8) With respect to Shareholders, Officers, and Directors
- For as long as SusGlobal remains a private Company and not publicly traded on a North American exchange, SusGlobal shall provide the names, addresses, and background information for all Officers, Directors, and Owners having an equity interest exceeding 1% in SusGlobal
    - i) The requirement to provide names, addresses, and background information shall extend to any Company having an equity interest exceeding 1%
    - ii) background information to include criminal record, breaches of environmental regulations by any Company with which a named individual has been associated
  - SusGlobal will notify The Townships of any proposed changes to Officers, Directors, and Owners whose holdings exceed 1%
    - i) The Townships shall have the right to require the removal of any Named Individual convicted of criminal charges or breach of environmental regulations by a Company with which that Individual is associated
  - Unless acquired by a publicly traded North American Company, SusGlobal shall not be acquired by another Company without approval by the Townships
- 9) With respect to profit sharing
- SusGlobal will provide annually audited financial statements for the operation of the facility
  - In calculating operating profit, SusGlobal shall exclude from expenses
    - i) Management fees, royalties, licences, and other such fees paid to any Officer, Director, or Individual whose equity interest exceeds 1% of SusGlobal
    - ii) The cost of vehicles
    - iii) Rebates paid to haulers and other suppliers
    - iv) Interest paid on debt
    - v) Depreciation of capital
  - In calculating operating profit, SusGlobal shall include as revenue
    - i) all tipping and related fees received for waste material processed at the facility
    - ii) all rebates paid to haulers and suppliers of material to the facility
    - iii) all revenues received from by-products of the facility including but not limited to fertilizers, electrical generation, carbon and other green energy credits
  - in determining the amount of profit to be shared with the Townships each year, SusGlobal may deduct from Operating Profit, the net cost of capital invested in the facility that year and carry forward negative amounts from prior years.
- 10) In the event that SusGlobal becomes bankrupt, insolvent, or otherwise incapable of continuing to operate the facility, or there is a breach of contract not remedied within 90 days
- the Agreement should terminate immediately, all capital on site should be transferred without recourse to the Townships, and licences to patents and proprietary processes required to operate the facility should be transferred to the Townships without payment of fees or royalties.
- 11) A provision to terminate the Agreement should be available
- to SusGlobal provided that one year's notice is given and terms of the Agreement regarding transfer of capital, technology, use of patents, etc. is enforced

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- to the Townships for breaches of the Agreement which are not remediated within 90 days, failure to invest in the facility, and for failure to operate the facility safely and in acceptable manner (e.g., ongoing breaches of environmental regulations, repeated discharges of waste material to the air or land, ongoing workplace safety issues, etc)
- 12) With respect to disputes and disagreements, it should be clear that disputes will be settled through arbitration

**submitted to the BioGrid Joint Board January 22, 2016**

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