



**ENERGY FROM WASTE (“EFW”)
MEMORANDUM OF UNDERSTANDING**



This Memorandum of Agreement dated the __th, day of

2006 is made

B E T W E E N:

THE REGIONAL MUNICIPALITY OF DURHAM

(“Durham”)

-and-

THE REGIONAL MUNICIPALITY OF YORK

(“York”)

RECITALS

WHEREAS:

- (a) Durham and York have jointly agreed to participate in an individual environmental assessment (the “EA”) to identify a preferred method or methods of processing the waste that remains after the application of Durham’s and York’s at-source waste diversion programs in order to recover resources and to minimize the amount of waste requiring landfill; and
- (b) Durham and York have entered into an Agreement regarding the conduct of the Durham/York Residual Waste Environmental Assessment Study; and
- (c) The EA process is at a stage where the preferred technologies have now been identified as being the Thermal Treatment of Mixed Solid Waste and Recovery of Energy followed by the recovery of material from the ash or char; and,
- (d) The EA process is now at a stage where additional matters are required to be evaluated by the Regions in order to assess the merits in proceeding with the EFW project; and,
- (e) Durham and York wish to enter into a new agreement governing the processes by which the two Regions will undertake the next steps in the EFW project including the (i) preparation and issuance of a request for qualifications and subsequent request for proposals designed to select a technology provider to implement the preferred technologies/systems identified in the EA; (ii) to define the processes

through which the two Regions will obtain the necessary legislative approvals to result in a functioning EFW facility in one of the two Regions; (iii) to identify the proposed site for the EFW facility; and, (iv) to determine the optimal business and/or ownership model and for the EFW facility.

NOW THEREFORE Durham and York agree as follows:

INTERPRETATION

Definitions

1. In this Memorandum of Understanding and in the recitals above,
 - (a) **“Agreement”** means the Residual Waste Management Environmental Assessment Study Agreement previously executed by the parties;
 - (b) **“Durham”** means The Regional Municipality of Durham acting as a body corporate and, where the context requires, includes all employees, officers, servants and agents of The Regional Municipality of Durham;
 - (c) **“Energy From Waste”** means the thermal treatment of mixed solid waste and the subsequent recovery of energy followed by the recovery of materials from the ash or char for processing;
 - (d) **“Fairness Commissioner”** means the fairness commissioner appointed pursuant to sections 14 and 15 hereof;
 - (e) **“Host Community Agreement”** means an agreement with the lower tier municipality which is the proposed location of the EFW initiative which is designed to address their concerns, as further described in sections 10 and 13;
 - (f) **“Host Region”** means the Region within which the Project is determined to be sited;
 - (g) **“Management Committee”** means the Management Committee as further described in section 18;
 - (h) **“MOU”** means this Memorandum of Understanding;
 - (i) **“Milestone”** means a project milestone set out in Section 16;
 - (j) **“Operating Agreement”** means the agreement between York and Durham governing all aspects of the operations of the EFW facility as set out in section 18(8);

- (k) **“Project”** means all processes leading up to, and including, the construction and operation of a facility for the Durham/York Thermal Treatment of Mixed Solid Waste and Recovery of Energy followed by the recovery of Materials from the ash or char initiative for processing the waste that remains after the application of the Regions’ at-source waste diversion programs;
- (l) **“Study”** means the Durham/York Residual Waste Environmental Assessment Study or such other environmental screening process as may be undertaken by the parties hereto; and
- (m) **“York”** means The Regional Municipality of York acting as a body corporate and, where the context requires, includes all employees, officers, servants and agents of The Regional Municipality of York.

Schedules

- 2. The following Schedules are attached to and form part of this MOU:

Schedule “A” Timetable of Relevant Events

References

- 3. Unless otherwise specified, references in this MOU to Sections and Schedules are to Sections and Schedules in this MOU.
- 4. Reference to any statute or statutory provision includes reference to that statute or statutory provision as from time to time amended, extended or re-enacted.

PURPOSE OF THE MOU

- 5. Durham and York jointly share the belief that there is the interest, ability and capacity with the two Regions sufficient to establish and operate an EFW facility to service the waste generation needs of said Regions and other communities.
- 6. Durham and York have entered into this MOU in order to identify the processes, and guiding principles, by which the Regions will undertake those actions set out in Schedule “A”.
- 7. Durham and York agree that this MOU is contemporaneous with, and does not derogate from, the provisions of the Agreement which addresses the conduct of the Study. In the event of conflict between this MOU and the Agreement, then the provisions of the Agreement shall be deemed to be paramount.

ROLES AND RESPONSIBILITIES

- 8. Durham will initiate a formal Request for Qualifications in early 2007 for the purpose of identifying a shortlist of interested third party vendors who are (a)

- capable; and (b) willing to participate in a Request for Proposal process (the “Request for Proposals”) to identify a preferred provider of the EFW project, and to carry out the process of obtaining all required legislated approvals.
9. The parties hereto agree that the Host Region will be responsible for the issuance and conduct of the Request for Proposals.
 10. The parties hereto agree that the Host Region will be responsible for executing a Host Community Agreement with the lower tier municipality in which the Project is to be sited.
 11. York and Durham shall jointly participate in the preparation of the Request for Qualifications and the Request for Proposals, including evaluation criteria, and will agree on the content of both documents prior to their issuance.
 12. York and Durham shall have equal representation upon the evaluation committee charged with evaluating the submissions to the Request for Qualifications and the Request for Proposals.
 13. York and Durham shall jointly participate in the preparation of the Host Community Agreement, and will agree on its content, to be executed with the lower tier municipality in which the Project is sited.
 14. York and Durham shall jointly approve terms of reference for the appointment and activities of a Fairness Commissioner for the Project.
 15. York and Durham shall jointly evaluate and approve the appointment of a Fairness Commissioner who will oversee the Request for Qualifications and the Request for Proposals processes pursuant to the terms of reference described in section 14.

PROJECT MILESTONES

16. Set forth below are those significant Project Milestones wherein representatives from each Region will seek direction from their respective Council’s:
 - (1) Selection of business model/ownership model addressing the issues of ownership, governance, and operations of the EFW initiative;
 - (2) Selection of a preferred site(s) for implementation of the preferred technologies/systems for the EFW initiative; and
 - (3) The recommendation of a preferred bidder to construct and/or operate the EFW initiative from amongst the bidders to the Request for Proposals conducted by the Regions.
17. Contemporaneous with the reports to the respective Regional Councils triggered by the achieved of a Project Milestone set forth above, the Management

Committee representatives of each respective Region will identify to their Councils that said Milestone represents an opportunity to decide whether to continue with the joint venture envisioned herein or to terminate the MOU and proceed otherwise.

PROJECT MANAGEMENT

18. (1) The requirements of this MOU include taking active steps to meet the timetable set forth in schedule “A” hereto, as said timetable may be amended from time to time by the Management Committee. The Management Committee shall be comprised of the Commissioners of Works, Finance and the Regional Solicitors for the respective Regions, or their designates.
- (2) The Management Committee is empowered to establish, such working groups, or sub-committees, as deemed necessary to address specific issues. All such working groups, or sub-committees, will report back to the Management Committee.
- (3) The quorum for meetings of the Management Committee shall be four, with a minimum of two members of each Region being present.
- (4) Meetings of the Management Committee shall take place no less than every second month from the date of execution of this MOU. The location of the meetings of the Management Committee shall be alternated between the two Regions.
- (5) As the Project is a joint venture by York and Durham, the Management Committee shall act solely by consensus.
- (6) Any decision made by the Management Committee having financial ramifications, will require approval by York and Durham pursuant to their own budget management policies and procedures.
- (7) The Management Committee shall develop such principles as are required to guide the development and issuance of the Request for Qualification, and the Request for Proposals including, without limitation, such concepts as capacity, waste generation, surplus capacity, excess waste, haulage costs, ash disposal, revenue generation and distribution.
- (8) The Management Committee will work to develop the fundamental principles upon which a formal Operating Agreement between York and Durham for an EFW facility will be based.

FINANCIAL

19. It is a fundamental principle of this MOU that, for its duration, all costs incurred by either Region related to the joint undertaking of the Project shall be shared equally between the parties.
20. Durham and York staff time and in-house resources spent on the Project are not a shared cost and are the sole responsibility of each respective Region except as otherwise agreed.
21. If the Regions obtain funding from some source, such as from senior levels of government, other than the parties themselves, such funding shall be used to reduce the financial contributions towards the project of both parties equally.
22. Each party shall indemnify the other against and save it harmless from and against all claims, demands or proceedings for loss, damage or injury, including death and from and against all costs and expenses which it may sustain, suffer or incur, resulting from or arising directly or indirectly out of the actions or omissions of such party pursuant, or purportedly pursuant to this MOU or resulting therefrom in any way whatsoever.

GENERAL MATTERS

Term

23. This MOU shall commence on the date that it is last signed by one of the parties hereto.
24. This MOU shall terminate upon the happening of one of the following:
 - (a) the completion of the Project resulting in the establishment and operation of a functioning EFW facility;
 - (b) the execution of a formal Operating Agreement between the Regions which specifically indicates that it governs the relationship between them in connection with the Project and that it supersedes this MOU; or,
 - (c) upon either party providing written notice to the other within 60 days after the achievement of a Milestone indicating their intention to terminate provided however that said notice of termination may not be given subsequent to the award by the respective Regional Councils of the contract to the preferred bidder to the Request for Proposals and the approval of the fundamental principles to be enshrined in the formal Operating Agreement.
25. Notwithstanding the foregoing, nothing herein shall change the obligation imposed in the Agreement upon the terminating party to be responsible for all

costs incurred in amending the EA's Terms of Reference in order to permit the environmental assessment to continue post termination. In the event that this MOU is terminated and both Regions choose to continue with an individual EA process or other screening process, then both Regions shall bear their own costs related thereto.

26. Subject to section 22, neither Region shall be liable to the other for any other costs or damages resulting from a termination.

General

27. This MOU shall not be assigned by either party without the prior approval of the other.
28. This MOU enures to the benefit of and binds the parties and their respective successors and permitted assigns.
29. No amendment to this MOU shall be effective unless it is in writing and signed by both parties.
30. Any collection, use, disclosure, retention and destruction of personal information under this MOU will be in conformity with the requirements of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56 and the *Personal Information and Protection of Electronic Documents Act*, S.C. 2000, c.5.

Dispute Resolution

31. Any disputes or differences of opinion arising between the parties which concerns or touches upon the validity, construction, meaning, performance or effect of this MOU, shall be resolved amicably by consultation and negotiation and will not be referred to any third party for adjudication unless all reasonable efforts at resolution have been exhausted.

Notices

32. (1) Any notice required herein shall be in writing and shall be delivered to the following addresses:

The Regional Municipality of Durham
605 Rossland Road East
Whitby, Ontario
L1N 6A3

Attention: Regional Clerk
Fax No. (905) 668-9963

The Regional Municipality of York
17250 Yonge St.
Newmarket, Ontario
L3Y 6Z1

Attention: Regional Clerk
Fax No. (905) 895-3031

IN WITNESS WHEREOF Durham and York have executed this MOU.

THE REGIONAL MUNICIPALITY OF DURHAM

Per: _____
Roger Anderson, Regional Chair

Per: _____
Pat Madill, Regional Clerk

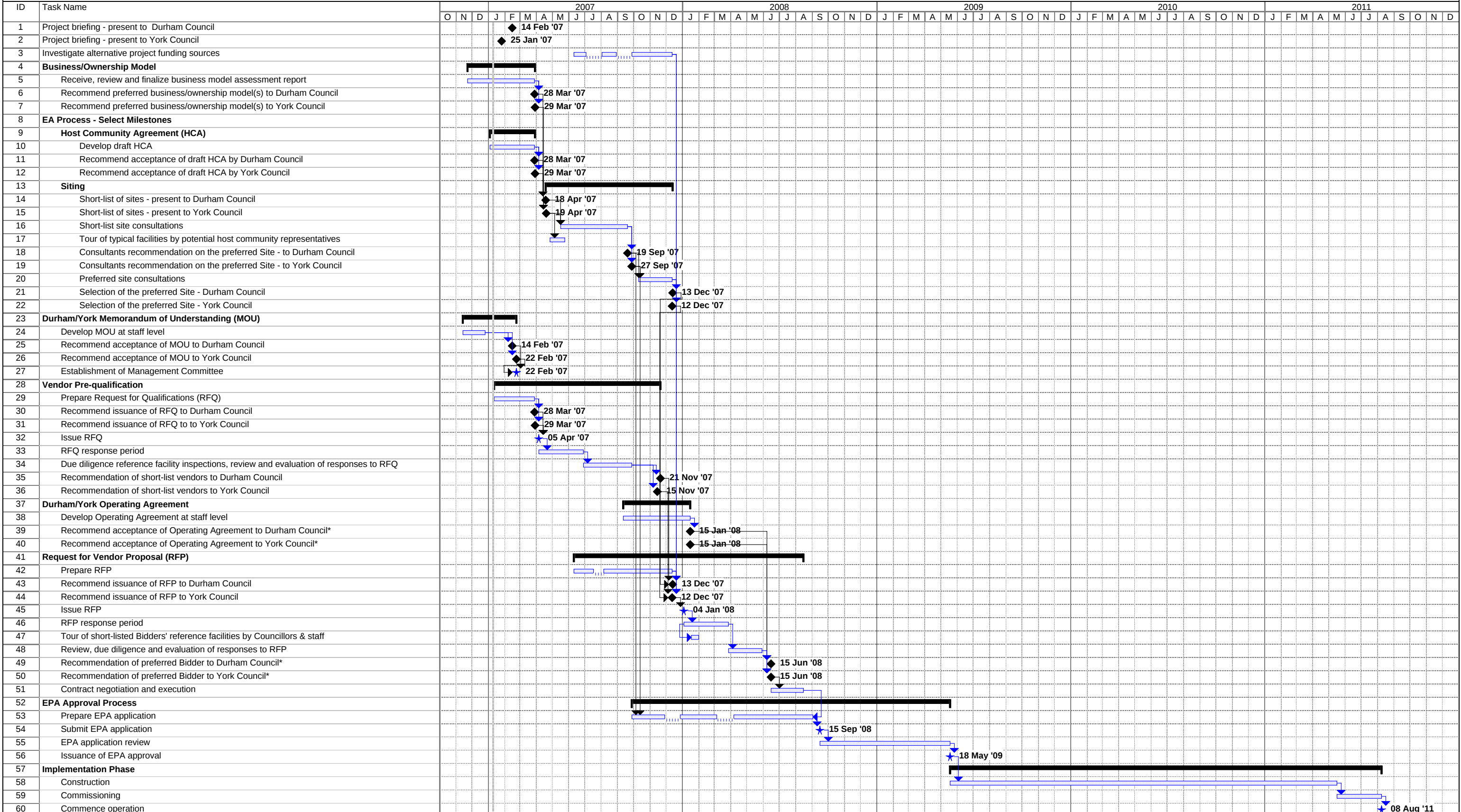
THE REGIONAL MUNICIPALITY OF YORK

Per: _____

Per: _____

Schedule “A”

'Schedule A'
Durham York Energy From Waste Memorandum of Understanding



Task Summary

Task or Activity

Intermittent Activity

Key Council Meetings

Key Project Milestones

File: YORK-#348057-v5-Durham_York_EA - Project_Schedule.MPP