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YORK DURHAM ENERGY FROM WASTE MEMORANDUM OF UNDERSTANDING

The Solid Waste Management Committee recommends the adoption of the recommendations contained in the following report, February 2, 2007, from the Commissioner of Transportation and Works:

1. RECOMMENDATIONS

It is recommended that:

1. The Region enter into a Memorandum of Understanding with the Regional Municipality of Durham, governing the process by which the two Regions will undertake the next steps in the joint energy from waste project, in the form generally set out in *Attachment 1*.
2. The Regional Chair and Clerk be authorized to execute the Memorandum of Understanding, subject to review by Legal Services.

2. PURPOSE

The purpose of this report is to obtain authorization to enter into an agreement with the Regional Municipality of Durham (Durham) through a Memorandum of Understanding in order to identify the processes and guiding principles, by which the two Regions will proceed to establish and operate an energy from waste facility to service the waste disposal needs of the two Regions and possibly other communities.

3. BACKGROUND

Regional Council adopted Clause 1 of Report No. 3 of the Solid Waste Management Committee on April 21, 2005 to initiate a partnership with Durham to jointly undertake a residual waste management Environmental Assessment Study. In addition, Regional Council adopted Clause 1 of Report No. 4 of the Solid Waste Management Committee on June 23, 2005 authorizing staff to enter into an agreement with Durham for the Durham/York residual waste Environmental Assessment Study.

The preferred technology for the study has been identified as being thermal treatment of mixed solid waste and recovery of energy followed by the recovery of materials from the ash or char. The Environmental Assessment process is now at the stage where additional matters are required to be evaluated by the Regions in order to assess the merits in proceeding with the energy from waste project. Accordingly, Durham and York need to

enter into an agreement to govern the processes by which the two Regions will undertake the next steps in the energy from waste project.

4. ANALYSIS AND OPTIONS

Durham and York staff believe there is merit in proceeding with the next phase of the energy from waste project at this time and require a Memorandum of Understanding in order to add structure, expediency and guiding principles to the process and have drafted a Memorandum of Understanding for consideration by Council (*see Attachment 1*).

It is proposed that the Memorandum of Understanding will govern the project until the end of the study and environmental approval process are completed. A formal operating agreement for the facility will replace the Memorandum of Understanding when the Region's approve the financing and construction of a facility.

4.1 Roles and Responsibilities

The Memorandum of Understanding identifies the roles and responsibilities of both Regions. Durham Region will initiate a formal Request for Qualifications for the purpose of identifying a short list of interested and capable third party vendors to participate in a Request for Proposals process to identify the preferred vendor to develop the energy from waste facility. Once the site selection for the energy from waste facility is determined, the host Region will issue and conduct the Request for Proposal as well as execute a host community agreement with the lower tier municipality in which the energy from waste facility will be sited.

York and Durham will jointly participate in the following:

- i) The Preparation of the Request for Qualifications and Request for Proposal documents.
- ii) The approval of the terms of reference for the appointment of a Fairness Commissioner for the project.
- iii) The evaluation of submissions to the Request for Qualifications and Request for Proposal.
- iv) The preparation of a Host Community agreement.

4.2 Project Milestones and Opportunity to Terminate Memorandum of Understanding

The Memorandum of Understanding identifies the significant milestones for the project wherein representatives from each Region will seek direction from their respective Councils.

The significant milestones are identified as follows:

- i) Selection of the business and ownership model for the energy from waste facility.

- ii) Selection of the preferred site to construct the energy from waste facility.
- iii) The recommendation of the preferred bidder to construct and/or operate the energy from waste facility.

The Memorandum of Understanding contemplates that each milestone represents an opportunity for each of the two Regions to decide whether to continue with the joint venture or to terminate the Memorandum of Understanding and proceed otherwise.

4.3 Project Management

The requirements of the Memorandum of Understanding include the establishment of a Management Committee comprised of the Commissioners of Transportation and Works, Finance and the Regional Solicitors for the respective Regions, or their designates. The Memorandum of Understanding identifies a set timetable to proceed with the energy from waste project and the terms and conditions under which the Management Committee will conduct its affairs.

4.4 Long Term Operating Agreement

One of the major tasks of the Management Committee will be to develop the fundamental principles upon which a formal operating agreement between York and Durham for an energy from waste facility will be based. This agreement will include the establishment of a similar management committee as has been created for the Memorandum of Understanding process, to oversee and manage the development and operation of the energy from waste facility. It is expected that this agreement will be presented to Committee and Council in early 2008 when a final decision is required on financing and construction of the facility.

4.5 Relationship to Vision 2026

The York Durham Residual Waste Environmental Assessment Study seeks to provide a long-term waste management solution consistent with the “Managing and Minimizing Waste” actions to meet the “Infrastructure for a Growing Region” goal in Vision 2026. In addition, developing an energy from waste solution will contribute to the goal of “Enhanced Environment, Heritage and Culture” by reducing air emissions resulting from the transportation and landfilling waste.

5. FINANCIAL IMPLICATIONS

A fundamental principle of the Memorandum of Understanding is that all costs incurred by either Region related to the joint undertaking of the energy from waste project will be shared equally between the parties. Each Region will pay for its own staff’s time and any funding received for any other level of government will be used to reduce the financial cost of the project for both parties equally. 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.

6. LOCAL MUNICIPAL IMPACT

The success of the energy from waste project will require active public participation for citizens and local municipalities across the Region. Staff and elected officials will be notified of all public meetings and are invited to attend. As the project proceeds, there may be the need for specific input and involvement from one or more local municipalities.

7. CONCLUSION

Staff is recommending that York Region enter into an agreement with the Regional Municipality of Durham, governing the process by which the two Regions will undertake the next steps in the joint energy from waste project, according to the terms and conditions established by a Memorandum of Understanding.

For more information on this report contact Angelos Bacopoulos, Senior Project Manager of the Solid Waste Management Branch at 905-806-5544 in the Transportation and Works Department.

The Senior Management Group has reviewed this report.

(The attachment referred to in this clause is attached to this report.)