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PROPOSED REVISIONS TO MEMORANDUM OF UNDERSTANDING WITH DURHAM REGION AND STATUS OF PROJECT AGREEMENT FOR ENERGY FROM WASTE FACILITY

The Solid Waste Management Committee recommends the adoption of the recommendations contained in the following report dated June 12, 2009, from the Commissioner of Environmental Services subject to amending clauses (b) and (c) in recommendation 1 to read as follows:

- (b) York Region and Durham Region acknowledge that they shall not *deliver* waste pellets or waste derived fuel for processing at the energy from waste facility *unless both parties shall otherwise agree*.**
- (c) *The following* capital costs shall be shared equally between the Regions, including: oversizing of water and sewer connections; installing a tip floor/storage pit; constructing a watermain loop; costs related to a storm water management pond and the cost to construct the private laneway on the site.**

1. RECOMMENDATIONS

It is recommended that:

1. Regional Council approve the execution of a revised Memorandum of Understanding with The Regional Municipality of Durham governing the design, construction and operation of the Energy from Waste facility, incorporating the following provisions:
 - (a) York and Durham shall pay a proportionate share of annual operating costs based on their respective ownership of the processing capacity (30,000 tonnes and 110,000 tonnes respectively) and corresponding to their respective capital contributions of 21.4% and 78.6%.
 - (b) York Region acknowledges that it shall not permit waste pellets or waste derived fuel to be delivered for processing at the energy from waste facility.
 - (c) Certain capital costs shall be shared equally between the Regions, including: oversizing of water and sewer connections; installing a tip floor/storage pit; constructing a watermain loop; costs related to a storm water management pond and the cost to construct the private laneway on the site.
 - (d) If either party elects to proceed with an expansion of the facility, the other party may be required to contribute to the cost of upgrades if the required upgrades would have otherwise been required within a five (5) year period.

2. The Regional Chair and Regional Clerk be authorized to execute the Memorandum of Understanding incorporating these revised terms.
3. Staff be directed to negotiate the detailed terms of a co-ownership agreement with Durham Region with respect to construction and operation of the facility and report back to Council for approval of the principles of such agreement.
4. Staff be directed to conclude negotiations with Covanta Energy Corporation (“Covanta”) on the terms of the Design/Build/Operate project agreement and report back to Council on the detailed terms of the proposed project agreement.

2. PURPOSE

The purpose of this report is to obtain authorization to execute a Memorandum of Understanding with Durham Region governing the respective roles and responsibilities of the Regions for the design, construction and operation of the energy from waste facility. This report outlines the additional provisions requested by Durham Region which have not previously been submitted to Council for approval. The report also provides an update on the status of negotiations with Covanta and recommends that staff be directed to develop more detailed provisions for a co-owners’ agreement with Durham Region prior to finalizing the project agreement with Covanta.

3. BACKGROUND

Regional Council has previously approved the terms of a Memorandum of Understanding with Durham Region

On March 27, 2008, Regional Council adopted Clause 1 of Report 2 of the Commissioner of Environmental Services and authorized entering into a Memorandum of Understanding with Durham Region to establish the framework for the procurement phase of the energy from waste project and the principles of the relationship between the Regions during the design/build and operating phases. A copy of this report is attached as *Attachment 1*.

Following adoption of these recommendations, discussions between York and Durham staff continued and further modifications to these principles were proposed. Concurrently, a detailed business case for the proposed facility was developed and the procurement process was undertaken resulting in the identification of Covanta as the preferred proponent.

The following provides further details of the revisions proposed by Durham and an update on the status of negotiations for the project agreement.

4. ANALYSIS AND OPTIONS

4.1 Revised Memorandum of Understanding

It is proposed that each Region be responsible for its share of operating costs based on ownership of processing capacity, including surplus

The facility will be designed to process 140,000 tonnes of residual waste annually. Initially, it was contemplated that York and Durham respectively would commit a minimum of 20,000 and 100,000 tonnes annually to the facility and pay their proportionate share of the operating costs in accordance with this base tonnage. The surplus capacity of 20,000 would be shared equally by the Regions. Operating costs for the surplus would be payable based on actualization. This model was developed on the premise that the utilization cost would be determined through soliciting a per tonne rate in the RFP process. Ultimately, however, the RFP was not structured to provide for this calculation. Accordingly, it is now proposed that the Regions pay their proportionate share of annual operating costs based on ownership of processing capacity, including entitlement to surplus. Accordingly, the Regions' respective share of operating costs will now correspond to their contribution to capital costs, i.e. York 21.4%, Durham 78.6%.

If the Region does not require 30,000 tonnes processing capacity initially, the terms upon which capacity may be borrowed or marketed to a third party will be addressed in detail in the co-owners' agreement.

Durham proposes stipulating that no waste pellets can be delivered to the facility

Durham has proposed that York Region not be permitted to deliver any waste pellets to the energy from waste facility. Staff have no concerns regarding this stipulation as it was not contemplated that pellets would be processed at the facility.

Capital costs which will service the ultimate capacity of the facility are proposed to be cost-shared between York and Durham equally.

The fundamental principle of the MOU is that the capital cost of design and construction will be shared based on each party's proportionate interest in the facility (i.e: 21.4% York; 78.6% Durham). Staff have acknowledged, however, that certain elements of the design contemplate expansion of the facility to its full operational potential of 400,000 tonnes per year, as identified in the Environmental Assessment document. To the extent that York Region has maintained the option to ultimately secure equal ownership of the expanded facility, Durham has proposed that the Regions share equally in those costs relate to oversizing of elements that will service the ultimate expansion. These have been identified as: oversizing of the water and sewer connections to the facility, installing a tip

floor/storage pit, constructing a watermain loop to service the facility, installing a storm water management pond and constructing a private laneway on the site.

Regional staff support sharing equally in these costs as being consistent with the intent of the MOU to provide for potential of up to a 50% ownership interest for York Region. These cost sharing arrangements will be outlined in greater detail in the co-owners' agreement.

Expansion of the facility by one Region may require contribution from the other party

The MOU provides that either Region may elect to expand the facility at its own cost. Durham has proposed a refinement to this provision which would require a contribution to upgrades to be made subject to certain triggering events and where the non-contributing Region has derived a benefit from the upgrades within five years of the construction. Staff are of the opinion that this amendment is equitable subject to further consideration in the co-owners' agreement as to how such benefit may be objectively determined.

The co-ownership arrangements with Durham Region will be incorporated in a more detailed co-owners' agreement

It was contemplated by both Regions that the MOU would provide an initial framework to guide the procurement process and establish principles for the joint ownership and operation of the facility that would be formally enshrined in a co-owners' agreement between the Regions. Negotiation on some critical issues has been deferred, including ownership of the land and arrangements for joint development at the site. Other issues have been stated as broad principles in the MOU but will require further discussion and refinement. Examples of this are: the mechanism for borrowing surplus capacity as between the Regions; the procedure for offering processing capacity to the market; the protocol for initiating expansion of the facility and the method of determining increased equity as a result of such expansion. It is recommended that staff be directed to develop the terms of the co-owners' agreement in conjunction with Durham staff and report back to Council on these terms concurrent with the recommendations on the project agreement with Covanta.

4.2 Update on Project Agreement with Covanta

Negotiations with Covanta are proceeding and are expected to be concluded shortly

On May 21, 2009, Regional Council adopted Report 3 of the Solid Waste Management Committee which recommended that Covanta be identified as the preferred vendor under the RFP and authorized that staff negotiate the terms of the agreement for the design/build and operation of the facility and report back on the negotiations. In the

meantime, Covanta was selected to commence work under the Early Works agreement. In response to direction from Council, attached to this report are the breakdown of the evaluation criteria for the RFP (*Attachment 2*) and the Report of the Fairness Monitor retained to oversee the procurement process. (*Attachment 3*)

During the week of May 25, 2009, as directed, staff from Durham and York engaged in negotiations with Covanta with a view to finalizing the terms of the project agreement. During negotiations, staff consistently reiterated that few deviations from the draft project agreement presented in the RFP would be countenanced. This was largely to ensure the integrity of the procurement process in that all proponents had structured their submissions based on the draft agreement. Some concessions were made on minor issues that were not fundamental to the commercial terms set out in the agreement. Most major terms of the project agreement have now been agreed to by Covanta. Staff are continuing to negotiate on two outstanding issues and hope these will be successfully resolved shortly.

The project agreement contemplates that both Regions will execute the agreement jointly and their respective proportionate interests will not be reflected in the document. It is therefore critical that the respective obligations of Durham and York for construction and operations be agreed upon prior to executing the agreement with Covanta.

5. FINANCIAL IMPLICATIONS

Proposed amendments to the MOU result in some cost adjustments

Additional capital costs are associated with the principle of preserving York's option to attain an equal ownership share in the future, while maintaining flexibility to expand the energy from waste facility to its potential ultimate capacity of 400,000 tonnes per year. These additional capital costs include up-front investment in initial oversizing of key facility elements to facilitate future expansion of capacity and York's equity share. York's share of the capital will be approximately \$2.5 Million for items such as oversizing of the tip floor, oversizing of utilities (gas, sewer, water), oversizing of the stormwater pond and provision of construction of a private alternate truck laneway into the site. Staff feel that these additional costs are reasonable and justified to allow York to cost-effectively maintain its option to achieve equal ownership of the energy from waste facility in the future.

Additional details such as those related to ownership of the site lands and the potential future district heating system will be resolved through negotiation of the co-owner's agreement.

Durham has proposed that York commit to providing 30,000 tonnes/year of waste to the facility and payment of operating costs proportionate to this share, consistent with York's capital cost commitment to the initial phase of construction of the facility. The only

scenario where this would represent an additional cost to York would be if the total residual waste generated in York fell below the combined minimum commitments to York's residual waste management contractors. If this were to occur, York would incur a maximum additional marginal cost on the order of \$38/tonne of short-fall to divert waste from disposal. The potential for incurring this additional cost will be mitigated by York and Durham's ability to borrow or market un-used surplus capacity at the energy from waste facility.

York's long term waste projections are conservatively low, reflecting an average nominal population growth rate of 1.4%. It is also anticipated that future construction of CEC's and densification of population in York will contribute to increasing future waste capture. York's waste management program remains focused on maximizing diversion, however it is likely that Regional growth factors will also impact growth in waste generation.

Table 1 illustrates the system costs and taxpayer impacts of a commitment to 30,000 tonnes per year.

Table 1
Comparison of Waste Management Cost Projections

Waste Management Option (Unit Costs 2010 to 2035)	2010 Tonnes	2020 Tonnes		2035 Tonnes	
		(Without Durham York EFW)	(With Durham York EFW)	(Without Durham York EFW)	(With Durham York EFW)
Blue Box (\$24 to 40/tonne)	97,000	121,000	121,000	150,000	150,000
Source Separated Organics (\$154 to 253/tonne)	98,000	130,000	130,000	162,000	162,000
Leaf & Yard Waste (\$67 to 110/tonne)	34,000	41,000	41,000	51,000	51,000
HHW & Other (\$604 to 991/tonne)	6,000	7,000	7,000	9,000	9,000
CECs (\$153 to 251/tonne)	8,000	24,000	24,000	24,000	24,000
Waste to Landfill (\$96 to 157/tonne)	34,000	48,000	18,000	82,000	52,000
Waste to Dongara (\$123 to 202/tonne)	100,000	100,000	100,000	100,000	100,000
Waste to Durham York EFW (NA, \$280/tonne, \$111/tonne)	0	0	30,000	0	30,000
Projected Annual Waste Management Cost	\$40,229,000	\$61,788,000	\$67,028,000	\$100,586,000	\$99,197,000
Blended Unit Cost (per tonne)	\$107	\$131	\$142	\$174	\$172
Taxpayer Impact (per household)	\$133	\$162	\$176	\$203	\$200

Note: Assumes future extension of landfill disposal contract

Staff have carefully reviewed the implications of this proposed revision and concluded that the revised commitment to 30,000 tonnes per year is acceptable given the likelihood that the Region may not experience a tonnage short-fall for an extended period of time, our ability to mitigate the costs of a short-fall should it occur and the relatively small additional cost impacts that would be expected to result.

6. LOCAL MUNICIPAL IMPACT

There are no local municipal impacts directly associated with this report.

7. CONCLUSION

During the procurement and evaluation phase of the energy from waste facility, discussions have continued with staff from Durham Region on certain principles guiding the respective roles of the Regions. Durham has proposed revisions to the terms originally approved by Regional Council, including the cost sharing formula for operating costs and the addition of certain capital costs to be shared equally between the Regions. Staff recommend acceptance of these additional provisions for the reasons set out in this report. The arrangements between the Regions for the construction and operation of the facility will be the subject of a more fulsome co-owners agreement which will be the subject of a future report following further discussions with Durham.

Following Council's recommendation of Covanta as the preferred proponent, negotiations between Covanta and staff from both Regions have progressed on the terms of the design/build/operate agreement. It is anticipated that the outstanding matters will be resolved shortly and staff will report to Council in due course for approval of the terms. It is not expected that the agreement will be executed by either Region until late 2009 at the earliest. In the meantime, work will continue under the Early Works agreement pending approval of the Environmental Assessment document.

For more information on this report, please contact Neil MacDonald, Manager, Solid Waste Management at Ext. 5738 or Elizabeth Wilson, Senior Counsel at ext 1402.

The Senior Management Group has reviewed this report.

(The three attachments referred to in this clause are attached to this report.)

Report No. 2 of the Commissioner of Environmental Services
Regional Council Meeting of March 27, 2008

THE REGIONAL MUNICIPALITY OF YORK

**REPORT NO. 2 OF THE
COMMISSIONER OF ENVIRONMENTAL SERVICES**

**For Consideration by
The Council of The Regional Municipality of York
on March 27, 2008**

1

**DURHAM YORK RESIDUAL WASTE ENVIRONMENTAL ASSESSMENT
MEMORANDUM OF UNDERSTANDING**

1. RECOMMENDATIONS

It is recommended that:

1. The Region enter into a revised Memorandum of Understanding with the Regional Municipality of Durham governing the process and costs to complete the Environmental Assessment for Residual Waste and establish an energy from waste facility on the following principles:
 - (a) Based on a projected processing capacity of 140,000 tonnes, Durham shall commit a minimum of 100,000 tonnes per year, and York shall commit a minimum of 20,000 tonnes;
 - (b) The additional 20,000 capacity in the facility shall be allocated equally between York and Durham;
 - (c) York and Durham shall share the capital construction costs and shall have an equity interest in the facility based on their proportionate share of the total tonnage allocation. This represents a 21.4% interest for York and 78.6% for Durham;
 - (d) Each Region may borrow excess capacity not required by the other party;
 - (e) *York and Durham shall pay their proportionate share of net operating costs based on the basic allocation of 20,000 tonnes and 100,000 tonnes respectively;*
 - (f) *York and Durham shall each pay for any use of excess capacity based on the operating rate per tonne as determined through the Request for Proposal;*
 - (g) *Excess capacity may be sold to a third party and any revenues in excess of operating costs shall be split equally between York and Durham;*

- (h) The cost of upgrades to the facility shall be allocated based on each Region's respective equity interest;
 - (i) The cost of any future expansion shall be borne by the Region requiring the additional capacity. Part of the expansion cost may be recovered from the other Region under certain conditions; and
 - (j) Either Region may terminate the MOU at the conclusion of the RFP process prior to entering into a contract with the preferred proponent.
2. The Regional Chair and Clerk be authorized to execute the Memorandum of Understanding, subject to review by Legal Services.

2. PURPOSE

This report is to obtain authorization to enter into a revised agreement with the Regional Municipality of Durham through a Memorandum of Understanding (MOU) to establish the guiding principles to manage and share costs for completion of the Individual Environmental Assessment for Residual Waste that may result in an energy from waste facility. The MOU will also establish a framework for the respective roles and responsibilities in constructing and operating the facility.

3. BACKGROUND

On April 21, 2005, Regional Council adopted Clause 1 of Report No. 3 of the Solid Waste Management Committee to initiate a partnership with Durham to jointly undertake a Residual Waste Environmental Assessment Study.

On June 23, 2005, Regional Council adopted Report No. 4 of the Commissioner of Transportation and Works 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 thermal treatment of mixed solid waste and recovery of energy, followed by the recovery of materials from the ash or char. The next steps in the project are to:

- Select the vendor to build and operate the facility.
- Complete the Environmental Assessment and Environmental Protection Act studies to be submitted to the Ministry of the Environment in 2009.
- Put the facility into operation in 2012.

On February 22, 2007, Regional Council adopted Clause 2 of Report No. 2 of the Solid Waste Management Committee, thereby authorizing staff to enter into an agreement with Durham to govern the processes by which the two Regions would undertake the next steps in the energy from waste project.

On April 18, 2007, Durham Regional Council approved recommendations to Report #2007-J-14 "Regional Council Approvals to Proceed with the Durham and York Region Energy from Waste (EFW) Project". The recommendations included proposed amendments to the Durham York Energy from Waste Memorandum of Understanding.

On June 21, 2007 Council adopted Clause 1 of Report No. 1 of the Solid Waste Management Committee requesting the following amendments with Durham:

- York commits to supply a minimum of 20,000 tonnes per year of municipal waste to the energy from waste facility during its 25-year operating term, at a rate established by the Request for Proposal for the project, less any revenues from the sale of material, heat or electricity.
- York and Durham shall share the capital construction costs for the facility based on the tonnage commitment made for the initial operations of the facility. This represents 12% equity in the facility for York Region for 20,000 tonnes per year.
- Durham shall be the primary decision maker with respect to issues concerning the project such as directing consultants, communications, discussions regarding power purchase arrangements, negotiations for a Host Community Agreement, siting of the energy from waste facility, etc.
- Durham will ensure that sufficient capacity exists for York at the energy from waste facility to service the 20,000 tonnes per year committed by York to the facility throughout the 25-year operating term and that the plant is designed to allow for future expansion.
- Should York require additional capacity at the facility, it will have an option which it can exercise at any time during the 25-year operating term to expand the facility at its own cost and thereby acquire an increased ownership interest in the facility.
- Both Regions retain the ability to terminate the Memorandum of Understanding at set milestones in the project, specifically at the selection of a preferred site and at the conclusion of the Request for Proposals for the design/build/operate vendor for the facility.
- Staff ensure that York Region has the first right of referral on any excess capacity at the energy from waste facility.

On January 24, 2008 Council adopted Clauses 1 and 2 of Report No. 1 of the Solid Waste Management Committee for the preferred site for an energy from waste facility as well as a short list of pre-qualified vendors for the project.

4. ANALYSIS AND OPTIONS

The residual waste study has progressed over the last two and a half years and has become more focussed through the Environmental Assessment process. The short listing of preferred vendors for an energy from waste facility has also allowed Durham and York to better evaluate potential costs and technologies.

As a result, staff from Durham and York have reached agreement on the principles of a revised Memorandum of Understanding.

Determining the Facility Size is Based on Waste Diversion Targets and Optimum Unit Size

A challenge for both Regions in developing the potential financial impact of the Environmental Assessment and energy from waste facility is the size of the facility. Both Regions are increasing their waste diversion efforts and plan to reach at least 65% diversion. York also has its Dongara energy pelletization project that will process 100,000 tonnes per year of residual waste. As a result Durham and York are planning to need 100,000 and 20,000 tonnes per year (respectively) of residual waste capacity when the plant opens in 2012. Staff believe that an initial plant size of 140,000 tonnes per year is appropriate and will provide initially 20,000 of surplus capacity to manage growth and optimize the facility.

Establishing an Ongoing Management Committee provides a Mechanism to Deal with Future Design and Operational Issues

The current Memorandum of Understanding does not deal with management issues beyond the Environmental Assessment process. Staff now has to deal with some design and operational issues to develop a Request for Proposals for the energy from waste facility.

It is proposed that a Management Committee be established, similar to the one used by both Regions for the Duffin Creek Water Pollution Control Plant. This committee would have representation from senior staff from both Regions and operate on a consensus decision-making model. If consensus cannot be reached there will be provisions for a mediator and binding arbitration.

Surplus Capacity will be Shared Equally by Both Regions

Each Region has previously agreed to pay the cost of its required needs. Given a plant size of 140,000 tonnes per year there is surplus capacity of 20,000 tonnes per year. It is proposed that the cost to construct the surplus capacity be shared equally between the Regions. As a shared asset both Regions have access to the capacity and if it is not needed, can sell the capacity to commercial or other municipal users. It is proposed that allocation of the surplus capacity to either Region or to another customer be determined by the Management Committee on an annual basis.

Sharing Ongoing Operational Costs

Each Region has committed to pay the cost of managing its base tonnage of 100,000 and 20, 000 tonnes per year. *The cost of extra capacity will be shared between the Regions based on actual utilization. Excess capacity may be sold to a third party and any revenues in excess of operating costs shall be split equally.*

Both Regions will share equally in any revenue generated from the facility, including the sale of electricity, recovered materials and sale of steam or hot water.

To minimize the Net Cost per Tonne it is in both Regions interests to ensure the utilization of the surplus capacity and to maximize the sale of electricity, steam, hot water and recyclable goods.

It is also proposed that the Region's establish a capital replacement reserve fund. Contributions to this fund would be made annually by each Region according to their utilization of the facility.

Sharing of Costs for Future Plant Expansions/Upgrades also Addressed

a) Upgrades to the existing Facility

There may be a requirement, due to a change of law or availability of new technology, to upgrade the facility with new air pollution control or other equipment. It is proposed that the costs for any upgrades to the equipment or processes of the existing operations and any additional costs necessary to maintain the ongoing capability of the facility be shared by the Regions on the basis of their then existing respective ownership and operational interest in the facility.

b) Expansions to add more capacity to the Facility

A fundamental element of the Memorandum of Understanding is that York and Durham have the option to expand the facility if required. It is proposed that the costs for the capital and operations of the expansion be paid for by the municipality requiring the capacity.

If the existing facility is required to be upgraded as part of the expansion, it is proposed that the capital costs for this be paid by the party undertaking the plant expansion with a portion of the costs being recovered from the other Region if the upgrade becomes a legal requirement, if the other party subsequently undertakes an expansion which would have necessitated the upgrade, or if the other party derives a measurable benefit from the upgrade.

5. FINANCIAL IMPLICATIONS

A revised budget of \$7.9 million for the Environmental Assessment was adopted by Regional Council on February 21, 2008 of which York is responsible for 50%. This

budget does not include any costs that may be incurred after the submission to the Ministry of the Environment for project approval in 2009. In addition there will be preliminary facility design costs that will be identified by the design / build / operate vendor in 2009 that are proposed to be shared equally with Durham as the Ministry of the Environment is requiring detailed Environmental Protection Act level information as part of its Environmental Assessment approval process.

Durham is planning to issue the Request for Proposal for the facility this spring with a closing at year end at which time the real costs of the project will be known. The estimate of the capital cost for a 140,000 tonnes per year facility is approximately \$150 million. Based on the principles outlined above York Region's share would be \$33 million.

6. LOCAL MUNICIPAL IMPACT

Completion of this Individual Environmental Assessment and building the resulting infrastructure will ensure that the residents and communities in York Region have a long-term environmentally sound solution for managing its residual waste.

7. CONCLUSION

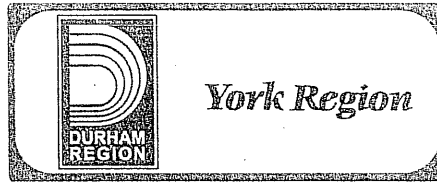
This report has outlined changes to the Memorandum of Understanding with Durham Region for the continuation of the Individual Environmental Assessment for the management of residual waste. The proposed changes also establish the principles for York and Durham to plan for the construction, financing and operations of an energy from waste facility.

Respectfully submitted,

**March 19, 2008
Newmarket, Ontario**

**Erin Mahoney
Commissioner of Environmental Services**

***(Report No. 2 of the Commissioner of Environmental Services was adopted,
without amendment by Regional Council at its meeting on March 27, 2008.)***



THE REGIONAL MUNICIPALITY OF DURHAM
AND
THE REGIONAL MUNICIPALITY OF YORK

REQUEST FOR PROPOSALS RFP-604-2008

TO DESIGN, BUILD, OPERATE AND MAINTAIN AN ENERGY FROM WASTE
FACILITY

ADDENDUM #34 – JANUARY 19, 2009

This addendum will form a part of the Proposal Documents for the above-noted proposal and shall be read in conjunction therewith. This addendum will take precedence over all requirements of the original Proposal Documents and any addenda issued previously. Bidders shall acknowledge receipt of this addendum by signing and returning it with the completed Proposal submitted. If, in the opinion of the Regions, the addendum issued affects the price of the proposal and the addendum is not returned or acknowledged, then the proposal submitted will be deemed non-compliant and rejected. If, in the opinion of the Regions, the addendum does not affect the proposal price and it is not submitted with the proposal or acknowledged, the bidder will be allowed two working days to submit the missing signed addendum to the Region of Durham Purchasing Section.

Please note the following changes/clarifications:

Remove: Section 5.3.3 - Evaluation of Technical Elements
Section 5.3.4 - Evaluation of Project Delivery Elements
Section 5.3.5 - Evaluation of Cost and Commercial Elements

Replace With: Section 5.3.3 (Revised) - Evaluation of Technical Elements
Section 5.3.4 (Revised) - Evaluation of Project Delivery Elements
Section 5.3.5 (Revised) - Evaluation of Cost and Commercial Elements

I/we hereby acknowledge receipt of this addendum.

Signed (Must be Signing Officer of Firm)

Position

Name of Firm

5.3.3 (Revised) - Evaluation of Technical Elements:

TECHNICAL ELEMENTS

TOTAL OF 45 POINTS

Environmental & Performance Considerations

25 Points

- Air – RFP Form 4 section 8 - points awarded based on number of pollutant elements and the degree of reduction below with guaranteed emission limits below those defined in Table 4-1 of Appendix 1 and Appendix C-2
- Water – points awarded based on decreased use of potable water for facility processes - e.g. less reliance on purchased potable water for process make-up water
- Ash Management – points awarded based on bottom ash quality and increased diversion through the beneficial reuse and/or stabilization of process residues (i.e. less reliance on landfill and greater marketability of bottom ash up to and including and price guarantees) Substantive evidence required to support claims
- Odour – points awarded based on comprehensive detailed plans for i) odour control during both construction and operation phases. Defined process for managing (receiving, logging, investigating and resolving) complaints
- Noise – points awarded based on comprehensive detailed plans for i) noise control during both construction and operation phases and ii) defined process for managing (receiving, logging, investigating and resolving) complaints
- Energy Recovery – points awarded based on energy recovery above the minimum design criteria – e.g. higher electrical generation while still meeting the minimum district heat requirements
- Recovered Materials Management – points awarded based on improved methods and efficiencies of recovery and comprehensive marketing plans, up to and including potential guaranteed floor pricing
- Capacity and Expansion Capability – points awarded based on ease of incremental expandability to ultimate 400,000 tpy facility

REGIONAL MUNICIPALITIES OF DURHAM AND YORK
TO DESIGN, BUILD, OPERATE AND MAINTAIN AN ENERGY FROM WASTE FACILITY
SECTION 5

capacity.

Design, Construction and Operational Considerations **15 Points**

- Guarantees – points awarded based on the extent that the reduced project Construction Period Guarantee (Form 4 Section 1) and increased points for greater Guaranteed Facility Availability guarantee (Form 4 Section 7)
- Facility design – points awarded based on the extent that the facility design proposal exceeds the minimum Technical Requirements, and for additional details/clarity of the design concept – i.e. level of detail in the basis of design and in required drawings
- Facility operations and maintenance – points awarded based on the level of detail and extent to which Annual, Five Year and Life Cycle O&M plans meet or exceed the Technical Requirements and generally accepted industry standards

Innovation in Environmental Performance, Design, Construction and/or Operational Considerations – points awarded based on innovation elements based on degree of identification and control of risks; environmental, economic, and social benefits; added value and demonstrated ability within the proposal to actually implement. **5 points**

5.3.4 (Revised) - Evaluation of Project Delivery Elements

PROJECT DELIVERY ELEMENTS **TOTAL OF 20 POINTS**

Schedule and Cost Control **6 points**

- Critical path management - points awarded based on comprehensive details and reasonableness of plans for maintaining construction schedule and meeting schedule guarantee
- Budget forecasting and cost control measures - points awarded based on comprehensive detail of plan for maintaining cost control and meeting milestone targets

Methods – points awarded based on comprehensive detail in each of the following plans and their integration within **6 points**

the submission

- Quality Assurance/Quality Control plans
- Construction impact mitigation, complaint mitigation methods
- Environmental and Management plan consistent with ISO 14001:2004
- Health and Safety plan
- Community relations plan

Team Organization and Qualifications – points awarded based on completeness and clarity of organizational plan, roles and responsibilities

2 Points

- Project management qualifications
- Experience and track record
- Accountability framework

Permits/Approval Plan - points awarded based on demonstrated understanding of Early Works Agreement schedule and plan; increased points for clarity and input in the four areas below

6 Points

- Permitting schedule
- Coordination with project schedule
- Understanding and experience with local approval requirements
- Minimized reliance on Regional Staffing resources

**TO DESIGN, BUILD, OPERATE AND MAINTAIN AN ENERGY FROM WASTE FACILITY
SECTION 5**

5.3.5 (Revised) - Evaluation of Cost and Commercial Elements

The evaluation of cost and commercial elements will be completed based on a collective assessment of evaluation factors to determine a single collective score under each element of RFP "Section 4.6 Part 3 - Cost and Commercial Considerations," i.e. Section 4.6.1: Capital and Operating Costs, Section 4.6.2 Value for Money, and Section 4.6.3 Guarantees. Because the assessment includes qualitative and quantitative analyses, the lowest priced proposal may not necessarily be awarded the highest score. Proponents should also not assume that just meeting minimum RFP requirements under section 4.6 will result in the highest score. Since it is assumed that all proposals will meet minimum requirements, proposals which exceed minimum requirements will be awarded the highest scores.

COST AND COMMERCIAL ELEMENTS TOTAL OF 35 POINTS***Capital and Operating Costs*****5 points**

- Evaluation Factors:
 - Reasonableness of all cost inputs, including methodology and approach used to determine Unitary Major Equipment Repair and Facility Refurbishment Costs
 - Integrity of the Model
- Considerations:
 - A qualitative assessment of the factors will be completed on a collective basis by assessing the degree to which capital costs, maintenance costs, life-cycle costs and operating costs included in the Model are consistent with:
 1. RFP requirements;
 2. Proposal details; and
 3. Projects of a similar scope and magnitude.

Value for Money**20 points**

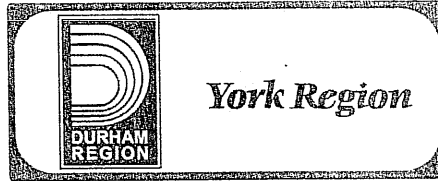
- Evaluation Factors:
 - Magnitude of NPV costs to the Regions
 - Timing of cash flows and costs to the Regions
 - Sensitivity of costs to the Regions
- Considerations:
 - An assessment of the factors will be completed on a collective basis by assessing the stability and magnitude of both nominal and NPV costs, including:
 1. Comparison to the lowest NPV Proposal;
 2. Comparison to the lowest Total Annual Operating Fee;
 3. Degrees of fluctuation in nominal and NPV costs due to sensitivity analyses; and,
 4. Impacts to value for money considerations, based upon alternative/innovative options provided by the Proponent (only considered where a new and complete model is provided for any and each alternative proposal as per section 4.6.2.4).

TO DESIGN, BUILD, OPERATE AND MAINTAIN AN ENERGY FROM WASTE FACILITY
SECTION 5

Guarantees

10 points

- Evaluation Factors:
 - Financial capacity and condition of the Project Guarantor
 - Construction inflation
 - Other guarantees
- Considerations:
 - A qualitative assessment of the factors will be completed on a collective basis by assessing:
 1. The condition and capacity of the Parent Guarantor;
 2. The degree to which the Proponents construction costs are fixed in the Proposal; and
 3. The degree to which the guarantees in Form 4 will benefit the Regions.



THE REGIONAL MUNICIPALITY OF DURHAM
AND
THE REGIONAL MUNICIPALITY OF YORK

REQUEST FOR PROPOSALS RFP-604-2008

TO DESIGN, BUILD, OPERATE AND MAINTAIN AN ENERGY FROM WASTE
FACILITY

ADDENDUM #34 – JANUARY 19, 2009

This addendum will form a part of the Proposal Documents for the above-noted proposal and shall be read in conjunction therewith. This addendum will take precedence over all requirements of the original Proposal Documents and any addenda issued previously. Bidders shall acknowledge receipt of this addendum by signing and returning it with the completed Proposal submitted. If, in the opinion of the Regions, the addendum issued affects the price of the proposal and the addendum is not returned or acknowledged, then the proposal submitted will be deemed non-compliant and rejected. If, in the opinion of the Regions, the addendum does not affect the proposal price and it is not submitted with the proposal or acknowledged, the bidder will be allowed two working days to submit the missing signed addendum to the Region of Durham Purchasing Section.

Please note the following changes/clarifications:

Remove: Section 5.3.3 - Evaluation of Technical Elements
Section 5.3.4 - Evaluation of Project Delivery Elements
Section 5.3.5 - Evaluation of Cost and Commercial Elements

Replace With: Section 5.3.3 (Revised) - Evaluation of Technical Elements
Section 5.3.4 (Revised) - Evaluation of Project Delivery Elements
Section 5.3.5 (Revised) - Evaluation of Cost and Commercial Elements

I/we hereby acknowledge receipt of this addendum.

Signed (Must be Signing Officer of Firm)

Position

Name of Firm

5.3.3 (Revised) - Evaluation of Technical Elements:

TECHNICAL ELEMENTS

TOTAL OF 45 POINTS

Environmental & Performance Considerations

25 Points

- Air – RFP Form 4 section 8 - points awarded based on number of pollutant elements and the degree of reduction below with guaranteed emission limits below those defined in Table 4-1 of Appendix 1 and Appendix C-2
- Water – points awarded based on decreased use of potable water for facility processes - e.g. less reliance on purchased potable water for process make-up water
- Ash Management – points awarded based on bottom ash quality and increased diversion through the beneficial reuse and/or stabilization of process residues (i.e. less reliance on landfill and greater marketability of bottom ash up to and including and price guarantees) Substantive evidence required to support claims
- Odour – points awarded based on comprehensive detailed plans for i) odour control during both construction and operation phases. Defined process for managing (receiving, logging, investigating and resolving) complaints
- Noise – points awarded based on comprehensive detailed plans for i) noise control during both construction and operation phases and ii) defined process for managing (receiving, logging, investigating and resolving) complaints
- Energy Recovery – points awarded based on energy recovery above the minimum design criteria – e.g. higher electrical generation while still meeting the minimum district heat requirements
- Recovered Materials Management – points awarded based on improved methods and efficiencies of recovery and comprehensive marketing plans, up to and including potential guaranteed floor pricing
- Capacity and Expansion Capability – points awarded based on ease of incremental expandability to ultimate 400,000 tpy facility

ABCD

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Ms. LouAnn Birkett
 Purchasing Manager
 Region of Durham Supply and Services Division
 605 Rossland Rd. East
 Whitby, Ontario
 L1N 6A3

April 21, 2009

Re: Draft Report – Fairness Monitor for Durham/York Residual Waste Treatment Facility

Dear Ms. Birkett:

The Regional Municipality of Durham (the “Region”) retained KPMG LLP (“KPMG”) to monitor from a fairness perspective the Region’s Request for Proposals (“RFP”) process whereby Proponents identified through a Request for Qualifications (“RFQ”) were invited to submit proposals to design, build and operate a residual waste treatment facility (the “EFW Facility”) and a Preferred Proponent would be identified who would then be invited to enter into legal agreements to develop the facilities. The RFP process was managed by the Region on behalf of the Region and the Regional Municipality of York (jointly referred to as “the Regions”).

This draft report summarizes KPMG’s findings and conclusions regarding the RFP phase of the procurement. In accordance with the terms of our engagement, KPMG will conclude with the Council approval of the preferred proponent. The current draft presents an overview of the process, KPMG’s scope of work, KPMG’s methodology to assess fairness, and KPMG’s observations during the RFP phase of the procurement process, which serve as the basis for our findings and conclusion.

The scope of the review addressed in this draft letter is limited to the RFP phase, which commenced in August 2008 and will conclude with the announcement of the preferred proponent by the Region. The procurement of a vendor to design, build and operate the facility was undertaken concurrently with the environmental approval process for the EFW facility. KPMG’s review has been limited to the question of whether the procurement of a vendor to design, build and operate the EFW Facility has been undertaken in accordance with the fairness principles described later in this letter.

Capitalized terms in this letter, if not defined herein, have the meaning ascribed to them in the Request for Proposals (“RFP”), the RFP Selection Framework or the Process and Principles for Evaluation of RFP-604-2008 Proposals.

I Overview of the Procurement Process

The procurement process for the EFW Facility involved two phases, an RFQ phase and an RFP phase. The RFQ phase is described in our letter of August 1, 2008, which presents an overview of the RFQ process, KPMG’s observations during the RFQ phase, and our findings and conclusion

regarding the RFQ process. The RFQ phase resulted in the short listing of five Proponents. For a complete understanding of the matters which took place during the RFQ phase, the reader may wish to refer to the August 1 letter.

The RFP phase commenced with the issuance of the RFP and led to the receipt of Proposals on February 19, 2009. During the period of time from the issuance of the RFP to the receipt of the Proposals, it is our understanding that the following took place:

- On August 22nd, 2008, the Region issued the RFP to the five short listed Proponents.
- As a precondition for participating in the RFP process, Proponents and any consultant or advisor to a Proponent to which it intended to grant access to the Data Room were required to enter into a Participation Agreement which set out the terms and conditions for access to the Data Room and confirmed their agreement to abide by the provisions of the procurement process, including the RFP. All five Proponents together with various consultants and advisors did so.
- In early September a letter was sent to the councilors and staff of the Region and its municipalities, with a copy to York Region, reminding them that that until further notice, all pre-qualified respondents to Durham's RFP-604-2008, including all vendor team members, are subject to stringent rules regarding communications and lobbying. Additionally the letter directed councilors and staff to notify the procurement lead of any potential violations of these restrictions.
- A process framework (the RFP Selection Framework") and "Process and Principles for Evaluation" were developed, which documented the process to be followed in the soliciting, receiving, and evaluating proposals.
- RFP information (such as addenda to the RFP, questions from potential respondents together with the answers from the Regions) was provided to qualified Proponents via the Region's Data Room. Access to the Data Room was limited to members of Proponent team members, consultants and advisors that had signed the Participation Agreement.
- Except as described in the following bullet, questions and answers were posted to the Data Room. As questions were received, they were reviewed by the Procurement Team Leader and distributed to technical, legal and/or financial personnel to draft a proposed answer. Draft answers were reviewed by the Procurement Team Leader for clarity, completeness and consistency. Questions and answers were then assembled periodically but on a frequent basis into question and answer sets, and posted to the Data Room.
- In accordance with the provisions of Section 2.9.2 of the RFP, the Regions considered various questions from Proponents that were marked by the Proponents as "commercial in confidence" and determined based on the nature of the question and the supporting justification whether the question warranted confidential treatment. Where the request to treat the question as confidential was justified, the response was circulated only to the Proponent that had made the inquiry. When the Region did not believe that confidential treatment was warranted, as provided for in the RFP, the Proponent was given an

opportunity to withdraw the question and if the question was not withdrawn, the question and the answer were posted to the Data Room.

- Commercial in confidence meetings were held with each Proponent to (a) provide the Regions' representatives with familiarity of the designs and concepts proposed by Proponents; (b) providing Proponents with some comments and feedback from the Regions on the general acceptability of particular solutions Proponents might have been considering for various aspects of their Proposals, and (c) provide an opportunity to each Proponent to raise issues or concerns. An initial meeting was held with each Proponent for one day each from October 5 to October 9, 2008 inclusive. A second round of commercial in confidence meetings was offered to the Proponents, and four of the teams (Green Conversion, Covanta, Wheelabrator and Veolia) elected to participate. These meetings were held on November 4th and 5th.
- A process document outlining the process and rules for commercial in confidence meetings was developed and followed for these meetings. In accordance with the RFP document Section 2.10, the Regions used reasonable efforts to distribute to all Proponents any new information provided by the Regions to any Proponent during the meeting, save and except information that was considered by the Regions to qualify as "Commercial in Confidence" according to the provisions of the RFP Selection Framework.
- Proponents submitted two rounds of comments on the draft Project Agreement and Early Works Agreement. The first round of comments was received by November 28, 2008 and a second draft of the project agreement was issued on December 5, 2008. Proponents were then given to December 12, 2008 to make additional comments and a final draft of the Project Agreement and Early Works Agreement was issued on December 19, 2008. The Regions made changes to the second and final draft of the Project Agreement and Early Works Agreement based on consideration of comments received from the Proponents both in the form of mark-ups of the first draft Project agreement, and in the form of comments received during the commercially confidential meetings and through the question and answer process. Amendments were also made in the second and final drafts of the agreements to improve the drafting and to reflect changes in the project definition and development plan.
- On February 9, 2009, members of the project team tasked with the work to evaluate Proposals (the "Evaluation Team") attended a briefing session, which provided an overview of the Process and Principles for Evaluation of RFP-604-2008 Proposals, submission evaluation guidelines and the logistics and rules for the conduct of the evaluation within the evaluation office. Additionally the meeting provided an opportunity to review any questions the members of the teams might have had regarding the evaluation.
- Detailed evaluation scoresheets were developed and finalized by the Evaluation Team prior to the review of Proposals.

On February 19, 2009, four Proposals were received from the following Proponents:

- Covanta Energy Corporation;

- Green Conversion Systems LLC (Formerly: WRSI/DESC Joint Venture; Fisia Babcock Environmental GmbH; Kiewit Industrial Company; Morgan Stanley Biomass LLC; Babcock & Wilcox);
- Wheelabrator Technologies Inc. (A Waste Management Company), and
- Urbaser SA.

The Proposals were received prior to the deadline.

A few minutes before the submission deadline Veolia, the fifth short listed Proponent, submitted a letter to the Regions indicating that it would not be submitting a Proposal.

As per the RFP, Proposals were evaluated using a two-stage process.

Stage One was a pass/fail evaluation of mandatory compliance requirements. Based on its review of the Proposals, the Mandatory Compliance Evaluation Committee (comprising two members of staff from the procurement department and the Legal Advisor) concluded that all four Proposals were complete and met the compliance requirements. Accordingly, the submissions were released to the Evaluation Team to conduct the substantive evaluation, which graded the proposals using the pre-established evaluation criteria.

All personnel involved in the evaluation process were freed of potential conflicts. After receiving copies of the Proposals (but prior to undertaking detailed evaluations) Evaluation Team members and Expert Resources undertook a preliminary review of the Proposals to identify the RFP Proponents' team members and other key staff, and to disclose any relationships.

One situation which was identified prior to the receipt of Proposals merited further investigation. HDR, the Expert Resource assisting in the assessment of technical elements of the Proposals, disclosed a relationship that exists between HDR and Stantec, a member of the Wheelabrator team. The City of Northampton Mass. has an agreement with Stantec to undertake a solid waste study and HDR is a sub-consultant to Stantec for this engagement. The Legal Advisor spoke with the City Engineer who indicated that the sub-consultancy was merely a contracting convenience but that the essential relationship was a direct flow-through from Northampton to HDR. Additionally, the City Engineer indicated that the engagement has a discrete scope (to prepare economic analysis of various waste management options) and limited budget (under \$100,000). Based in part on the nature and scope of the engagement, the Regions determined that the HDR relationship did not represent a conflict of interest and the firm was cleared to participate in the evaluation as an Expert Resource to the Evaluation Team. The relationship between HDR and Stantec was also disclosed by Wheelabrator in Form 10 Relationship Disclosure Form of its Proposal, as required in the RFP.

Stage Two in the evaluation was a grading of the Proposals, comprising:

- Technical (grading of 45%)
- Project delivery considerations (grading of 20%)

- Cost and commercial considerations (grading of 35%)

During the evaluation, the following took place:

- Reasonable steps were taken to help ensure the security and confidentiality measures set out in the RFP Selection Framework were applied.
- Questions developed by the Evaluation Team regarding the Proposals were reviewed by the Procurement Team Leader and Legal Advisor prior to being issued to Proponents to help ensure questions were clear, complete, appropriate and consistent. Various requests for clarification were raised with proponents and, in certain instances, these were not necessarily fully addressed in the responses. However none of these outstanding matters related to the preferred proponent and they did not impact the outcome of the evaluation.
- The Evaluation Team assessed Proposals based on the pre-established evaluation criteria. Scores assigned during the evaluation process were based on consensus. Each member of the Evaluation Team confirmed in writing his or her concurrence with the final evaluation scores.
- Following the final Evaluation Team meeting to assign consensus scores to the Proposals, an unexpected announcement was made on March 13, 2009 by the Ontario Ministry of the Environment proposing revisions to Ontario's A-7 Guideline regarding the air pollution control, design and operation for municipal waste thermal treatment facilities. These proposed revisions included reductions in several in-stack concentration limits, including: dioxins/furans, carbon monoxide and organic matter and proposed changes to certain of the continuous and long-term monitoring, design and operational requirements. The Regions reviewed the proposed Guidelines in conjunction with the requirements set forth in the RFP and have indicated to us that they are satisfied that the proposed revisions to Guideline A-7 will not materially change the obligations or responsibilities of the DBO Contractor or the Regions as set forth in RFP. Additionally, it is the Regions' expectation that the preferred proponent should have no difficulty operating in compliance with Guideline A-7, as it may exist from time to time. As a result its assessment of the proposed revisions to the A-7 Guidelines, the Regions decided to proceed to the next step in the procurement process.
- ***[NTD: are there other events/circumstances that warrant disclosure? For example, substitution of team members? I have not documented these but could do so if you think this adds to the clarity and completeness of the report.]***

II Scope of Work

In March, 2008, KPMG was engaged by the Region to assist in monitoring whether a fair process was conducted in the selection of a Preferred Proponent for the EFW Project. KPMG was to undertake the following:

- Monitor and report on the procurement process; and
- Comment on the fairness of the procurement process.

KPMG's role was solely that of an observer to the RFP process. KPMG did not develop the RFP or participate in the evaluation of submissions. As the fairness consultant, KPMG's scope did not involve an assessment of the appropriateness of the project's mandatory requirements, technical requirements, financial requirements, the evaluation criteria or the submissions, except as these pertain to the fairness of the process. .

KPMG's work was based on the following:

- Discussions and meetings with the Region staff and advisors to discuss the RFP documents, procurement process, evaluation and related matters;
- Review of the RFP document prior to issue;
- Review of the RFP Selection Framework and the Process and Principles for Evaluation of RFP-604-2008 Proposals;
- Review of the evaluation process, including the evaluation criteria and evaluation tools;
- Review of addenda, and questions and answers issued prior to the RFP deadline;
- Review of clarification questions issued to Proponents during the evaluation;
- Review of the evaluation reports, and
- Attendance at certain events and meetings, including all commercial in confidence meetings, the evaluation briefing session, the RFP closing and compliance review, and select meetings of the Evaluation Team (including meetings to develop and finalize the evaluation criteria and supporting scoresheets and meetings to assess the Proposals and reach final consensus scores).

Please note that KPMG has reviewed the information provided, but has not audited or otherwise independently verified the accuracy of the information. Additionally, we have reviewed a draft of this letter with the Procurement Team Leader and Legal Advisor to confirm our understanding of the events and circumstances outlined in this document. In the event that there are errors or omissions in our understanding of the process, these may change the conclusions described in this report.

III KPMG's Methodology to Assess Fairness

KPMG's approach to fairness monitoring is based on a set of fairness principles, developed by KPMG, which describe the foundation of a fair process (see the Appendix to this letter). These principles have been developed based on KPMG's experience in conducting transaction and procurement processes and monitoring fairness. The fairness principles were discussed with the Region at the onset of our assignment, and it was agreed that our fairness monitoring would be based on these principles:

1. All potential Proponents have the same opportunity made available to them to access information;
2. The information made available to Proponents should be sufficient to ensure that the Proponents have the opportunity to fully understand the opportunity;
3. All potential Proponents have reasonable access to the opportunity;
4. The criteria established in the invitation documents truly reflect the needs and objectives in respect of the project;
5. The evaluation criteria and the evaluation processes and procedures are established prior to the evaluation of submissions;
6. The evaluation criteria, invitation documents, and evaluation processes are internally consistent;
7. The pre-established evaluation criteria and evaluation process are followed; and
8. The evaluation criteria and process are consistently applied to all submissions.

In applying these fairness principles, the following guidelines are used to help determine the fairness of the evaluation processes:

- **Variances** — A variance from the Fairness Principles is deemed to have occurred if a circumstance(s), situation(s) or event(s) occurs during the process that is addressed in a manner that is inconsistent with or departs from one or more of the Fairness Principles.
- **Violations - Individual Variances** — A violation from the fairness principles is deemed to have occurred if an individual variance is deemed to have resulted in a process where one or more Proponent(s) (potential, successful or unsuccessful) enjoyed a material advantage over any other or conversely, was subject to a material disadvantage and the material advantage or disadvantage affected the results of the process. If so, a *violation* of the Fairness Principles would have occurred and, consequently, the overall process would be deemed to be unfair in that respect.
- **Violations – Collective Variances** — A violation from the fairness principles is deemed to have occurred if individual variances, when considered collectively, resulted in a process

where one or more Proponent(s) (potential, successful or unsuccessful) enjoyed a material advantage over any other or conversely, was subject to a material disadvantage and the material advantage or disadvantage affected the results of the process. If so, a *violation* of the Fairness Principles would have occurred and, consequently, the overall process would be deemed to be unfair in that respect.

IV Analysis of Key Issues

In November 2008, Stantec Consulting Services Inc. (Stantec) notified the Region that its parent company, Stantec Inc, anticipated buying all of the issued and outstanding shares of Jacques Whitford on or around January 2, 2009. This potential acquisition was of concern to the Regions because Stantec Consulting Services Inc. is the engineering team member of the Wheelabrator bid team, and Jacques Whitford is engaged by the Region to assist in the application for environmental approval of the EFW facility. As the Regions' environmental consultant, Jacques Whitford had provided general advice to the Region which potentially may have been used in establishing certain of the technical requirements set out in the RFP. Additionally, although Jacques Whitford was not expected to participate in the Evaluation Team, it was contemplated that certain excerpts of the Proposals would be made available to the firm prior to the identification of a Preferred Proponent in order that Jacques Whitford might timely advance the environmental application process.

When this relationship became known, the Region took various steps designed to confirm its understanding of the circumstances and protect the integrity of the procurement. For example:

- The Legal Advisor spoke with Wheelabrator to confirm the status and anticipated time frame for the acquisition and arrangements that would be put in place assuming the acquisition was successful. These discussions were subsequently confirmed in writing by Stantec.
- Stantec was asked to put certain provisions in place in order to ensure confidentiality between Stantec and Jacques Whitford until such time as a Preferred Proponent is identified by the Regions, or until the Project Agreement is executed in the event that Wheelabrator is the successful Proponent. These provisions were reviewed by KPMG and are similar in nature and scope to those used in other procurements or other circumstances where confidentiality is required between related entities.
- The Region's Project Manager for the EFW Project confirmed that the nature and extent of advice provided by Jacques Whitford during the period leading up to the notification of the proposed acquisition had no significant bearing on the RFP or supporting documents.
- Jacques Whitford signed a confidentiality agreement at the RFQ stage which extends throughout the procurement process. Additionally, Jacques Whitford was requested to

return all information on the RFQ which they had received in order to support the environmental application process.

- The RFP information from the Proposals required by Jacques Whitford to advance the environmental approval process was provided anonymously. In advance of the Proposal submission deadline, the project team identified what information would be required by Jacques Whitford and all data that identified the name of the Proponent was deleted from the application.
- Staff at Jacques Whitford and members of the Evaluation Team and Expert Resources supporting the evaluation of proposals were directed not to communicate during the evaluation process, either verbally or in writing, including email.

This issue might have potentially been a variance from Fairness Principle 1, Fairness Principle 8 or both. Fairness Principle 1 calls for all potential bidders to have the same opportunity made available to them to access information and in particular that appropriate confidentiality and security measures be used to prevent premature access by potential bidders to information. Fairness Principle 8 calls for the evaluation criteria and process to be applied consistently to all submissions, and in particular the application of the evaluation criteria must be free from undue influence of individuals who may have conflicts of interest in the outcome of the evaluation.

Based on KPMG's observations and assessment as outlined above, the various measures put in place by the parties (in particular, the confidentiality provisions put in place between Stantec and Jacques Whitford, the removal of team identities from information provided to Jacques Whitford to help it advance the environmental approval process, and the cessation of communications between staff at Jacques Whitford and members of the Evaluation Team and Expert Resources) were sufficient for us to conclude that no variance of the fairness principles occurred.

No other key issues were identified during the RFP process.

V Conclusions

This conclusion is based only on information that was made available until the date of this letter. This is subject to change in the future.

KPMG is satisfied that the RFP process for the EFW Facility was fair to all Proponents.

VI Use of This Letter

This letter is confidential and is not intended for general use, circulation or publication and is not to be published, circulated, or reproduced without our express, prior and written consent in each specific instance. KPMG will not assume any responsibility or liability of any costs, damages, losses, or expenses incurred by any party as a result of publication, circulation, reproduction, use of or reliance upon this letter.

Notwithstanding the foregoing, KPMG expressly authorizes the addressee to share this letter with the rest of the evaluation team and to disclose the conclusions contained within this letter to other individuals within the Regions, without further express written permission.

Comments in this letter are not intended as, nor should they be interpreted to be, advice or opinion of a legal nature. Such matters should be referred to the Region's legal counsel.

Should any information, which was not available to KPMG as at the date of this letter, become available subsequently, KPMG reserves the right to review such information and adjust this letter accordingly.

* * * * *

If you have any questions or require clarification on aspects of this letter, please do not hesitate to contact the undersigned.

Yours very truly,

Will Lipson
Managing Director

Appendix - Fairness Principles and Implications

1. All potential bidders have the same opportunity made available to them to access information.

The implications of this principle include:

- All potential bidders have the same opportunity to access calls for tenders. This requires that calls for tenders be released to all potential bidders at the same time and that reasonable efforts are made to post communications in all appropriate media.
- All addenda to calls for tenders are distributed to all potential bidders at the same time.
- All responses to questions, as well as the questions themselves, are provided to all potential bidders at the same time.
- All potential bidders have the same access to information sessions, questions and answers, data rooms, and any other information related to the process.
- Appropriate confidentiality and security measures are used to prevent premature access by potential bidders to information.

2. The information made available to bidders is sufficient to ensure that the bidders have the opportunity to fully understand the opportunity.

The implications of this principle include:

- All information available that is material to understanding the opportunity and therefore may have a material impact on the bids is made available to potential bidders.
- The information that is made available is appropriate to the particular stage in the process.
- Potential bidders have adequate access to information so that a reasonable bidder would have sufficient time to respond.
- Potential bidders are made aware of the limitations that apply to the reliability of the information.

3. All potential bidders have reasonable access to the opportunity.

The implications of this principle include:

- Bidders understand what is required of them to meet the criteria when they are bidding. Calls for tenders solicit clearly all the information necessary to apply the evaluation criteria.
- The opportunity is adequately reflected in calls for tenders to permit the bidder to make informed decisions with respect to its bid.
- Timely notice is provided to all potential bidders of all key events (e.g., bidder information sessions, submission deadlines, bidder presentations).
- Bidders are treated consistently in soliciting information required to clarify a proposal.
- Reasonable timeframes are provided to all potential bidders for all key deliverables (e.g., reasonable time to submit questions regarding the invitation documents, to prepare proposals after the issuance of the last response to questions).
- The contracts that are ultimately awarded to successful bidders are, to the maximum extent practical, the same as that described in the invitation documents.

4. The criteria established in the invitation documents truly reflect the needs and objectives in respect of the procurement.

The implications of this principle include:

- The evaluation process fairly reflects the true requirements of the initiative.
- The evaluation criteria fairly reflect the true requirements of the owner. The true requirements are fully disclosed to potential bidders. (In other words, there are not any hidden criteria.)

5. The evaluation criteria and the evaluation process are established prior to the evaluation of submissions.

The implications of this principle include:

- The process to solicit information through clarifications is established prior to the receipt of the submissions.
- The procedures to maintain confidentiality and security of information are established prior to the receipt of submissions.
- The process for receipt of submissions is established prior to receipt of the submissions.
- The approval process for identification of qualified bidders in the invitation documents and for the selection of the preferred bidders is established prior to receipt of the submissions.

6. The evaluation criteria, calls for tenders, and evaluation processes are internally consistent.

The implications of this principle include:

- The evaluation criteria reflect the requirements set forth in the invitation documents.
- The evaluation process reflects the information provided in the invitation documents.
- The evaluation process reflects the requirements necessary to appropriately apply the evaluation criteria.

7. The pre-established evaluation criteria and evaluation process are followed.

The implications of this principle include:

- Pre-established criteria are applied.
- Pre-established processes are applied.
- Changes, if any, are consistent with the procedures laid out in the evaluation process.

8. The evaluation criteria and process are consistently applied to all submissions.

The implications of this principle include:

- All bidders are evaluated in a consistent manner.
- The evaluation criteria are applied by individuals with appropriate technical competence and appropriate oversight is applied.
- Other staff are appropriately supervised.