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CLARINGTON HOST COMMUNITY AGREEMENT

The Solid Waste Management Committee recommends the adoption of the recommendation contained in the following report dated June 12, 2009, from the Commissioner of Environmental Services.

1. RECOMMENDATION

It is recommended that:

1. Council authorize the Regional Chair and Regional Clerk to execute the Energy from Waste Host Community Agreement terms approved by the Municipality of Clarington substantially in the form attached hereto as Attachment 1 subject to:
 - a) Prior approval of the Durham York Residual Waste Environmental Assessment by the Minister of the Environment;
 - b) Council's approval and execution of a co-owner's agreement with Durham for the Durham York energy from waste facility; and,
 - c) Council's approval and joint execution with Durham Region of the Design, Build Operation and Maintenance Agreement with Covanta Energy Corporation.

2. PURPOSE

This report explains York's position on the Host Community Agreement for the siting of the Durham-York energy from waste facility in Clarington. The Host Community Agreement represents an agreement by both Durham and York Regions and, as such, requires approval of both Councils.

The Host Community Agreement represents terms acceptable to the Regions and to the host municipality for the construction and operation of the energy from waste facility. With this agreement, Clarington has identified that they will be a willing host which will facilitate the Environmental Assessment and later approvals processes.

3. BACKGROUND

Host Community Agreement identifies Clarington as a willing host for Energy from Waste

On May 21, 2009, Council approved selection of Covanta Energy Corporation as Durham and York's preferred vendor for the Durham York energy from waste project and authorized the expenditure of \$428,875 as York's share of the Early Works component of the work. Council also authorized staff to negotiate terms of the Design, Build and

Operational contract with Covanta and directed staff to report back with their recommendation following Ministry of the Environment approval of the Environmental Assessment.

On May 11, 2009, Clarington Council approved the Host Community Agreement with the Regions indicating that they would act as a willing host for the energy from waste facility.

4. ANALYSIS AND OPTIONS

Agreement outlines Clarington's benefits from hosting EFW facility

The Host Community Agreement represents an agreement between the Regions and the municipality of Clarington on a number of issues relating to the construction, operation and ongoing monitoring relating to the energy from waste facility.

Both Regions agreed to:

1. Establishment of a Site Liaison Committee during construction, operation and monitoring of the energy from waste facility;
2. Protection of human health and environment by guaranteeing emission standards and ensuring maximum achievable control technology (MACT) as well as monitoring systems as deemed appropriate by the Ministry of Environment;
3. Monitoring of ambient air in the immediate vicinity for a three-year term;
4. Implementation of no less than \$9 million value of architectural/site plan features.

Durham agreed to:

1. Commitment to a 70% waste diversion/recycling rate;
2. Establishment of a hazardous waste depot to serve Clarington residents;
3. Construction of Energy Drive from Courtice Road to Osbourne Road;
4. Construction of a storm water management facility to serve the Clarington Energy Park;
5. Construction of a private truck access lane next to the rail line on the energy from waste site (included in previous business case and Recommendation No. 4);
6. Transfer to Clarington of an approximately 22 acre land parcel which is surplus to the Courtice Water Pollution Control Plant;
7. Construction of a waterfront trail from Courtice Road to the eastern limit of Durham Region owned property; and,
8. Agreement not to establish an Industrial, Commercial or Institutional (IC&I) Waste Transfer Station within the Municipality of Clarington.

The Regions also agreed to consideration of studies including a three year ambient air monitoring study and a soil monitoring study in the area of the facility. Terms of these

studies will evolve following approval of the Environmental Assessment by the Ministry of the Environment. If warranted, studies could continue beyond the initial study period.

5. FINANCIAL IMPLICATIONS

Shared Costs of the Host Community Agreement estimated at \$10 million

The Host Community Agreement includes shared financial concessions estimated at \$10 million to:

1. Construct Energy Drive from Courtice Road to Osbourne Road within the Clarington Energy Business Park;
2. Construct an expanded storm water management system also to service the broader Clarington Energy Park;
3. Transfer to Clarington an approximate 22 acre land parcel surplus to the Courtice Water Pollution Control Plant;
4. Construct an Household Hazardous Waste facility in Clarington; and,
5. Construct a waterfront trail from Courtice Road to the eastern limit of Durham owned lands.

York Region will pay about \$2.5 million of this shared cost.

The commitment to protection of human health and environment by guaranteeing emission standards and ensuring maximum achievable control technology and monitoring systems are already included in the overall project costs. The majority of the \$9 million for architectural and site plan enhancements will come from the project costs and were detailed in the May 21, 2009 report recommending Covanta as the preferred vendor.

6. LOCAL MUNICIPAL IMPACT

The energy from waste facility will provide local solution to the problem of locally generated wastes from York and Durham Regions. Agreement by the Host Community of Clarington will facilitate the development and operation of this facility.

7. CONCLUSION

The Host Community Agreement represents a good compromise solution benefitting both the Regional Municipalities of Durham and York and the Host Community of Clarington.

For more information on this report, please contact Laura McDowell, Director Environmental Protection and Promotion at Ext. 5077.

The Senior Management Group has reviewed this report.

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

This Host Community Agreement dated the , day of 2009 is made,

B E T W E E N:

THE REGIONAL MUNICIPALITY OF DURHAM

("Durham")

-and-

THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON

("Clarington")

WHEREAS:

- (a) Durham jointly with The Regional Municipality of York, is in the midst of a procurement process designed to identify a preferred vendor capable of designing, building and operating an energy from waste ("EFW Facility") sufficient to meet their needs, as identified through an individual environmental assessment (the "EA") undertaken to identify a preferred method of processing post-diversion waste;
- (b) The EA process has resulted in the approval by Durham Regional Council of a preferred site for the EFW Facility within the Municipality of Clarington ("Clarington"), more particularly described in Schedule "A" hereto.
- (c) Durham is completing its requirements to finalize the EA for submission to the Minister of the Environment and to make application under the Environmental Protection Act for one or more Certificates of Approval.
- (d) Clarington will be the host community of the EFW Facility to the benefit of communities in Durham, York, the industrial/commercial/institutional sector, and potentially municipal waste from other municipalities identified in the EA.
- (e) Durham and Clarington wish to enter into this agreement in order to set forth their respective rights, duties, obligations and commitments regarding the development, construction and operation of the EFW Facility.

NOW THEREFORE the parties agree as follows:

1. Term

1.1 This agreement shall commence upon the date that it is last signed and shall last for the operational lifespan of the EFW Facility.

1.2 In the event that the facility is expanded beyond 400,000 tonnes per year and the expanded portions of the EFW Facility have a twenty five (25) year operating period, Durham and Clarington either shall extend the term of this agreement or enter into a new Host Community Agreement.

2. Community Consultation and Communications

2.1 Durham shall support the development and operation of an EFW Site Liaison Committee (SLC) for the purpose of facilitating input from the community and the distribution of relevant information in regards to the construction, operation and monitoring of the EFW facility.

2.2 The scope for a Terms of Reference for a new SLC shall be agreed upon by Durham and Clarington at the conclusion of the mandate of the initial SLC, which terms shall otherwise be generally analogous to the current committee.

2.3 Durham shall present to Clarington Council and hold one community information meeting prior to the submission of the final EA documentation to the Ministry of the Environment for approval. In addition, Durham shall make a presentation to Clarington Council and shall hold one community information meeting before the Site Liaison Committee regarding the terms of the Certificate of Approval for the EFW Facility subsequent to its issuance.

3. Protection of Human Health and the Environment

3.1 Durham shall ensure that the EFW Facility incorporates and utilizes modern, state of the art, emission control technologies that meet or exceed the Ontario A7 air emission guidelines and European Union standards as identified below:

THE REGIONS' AIR EMISSION CRITERIA BASED UPON THE PROVINCE OF ONTARIO AND EUROPEAN UNION AIR EMISSION REQUIREMENTS			
Pollutant	Units (1)	YD EFW Stack Emission Limits	Measurement Basis (see notes)
Total Particulate Matter	mg/Rm3	9	(2)
Sulphur Dioxide (SO ₂)	mg/Rm3	35	(3)
Hydrogen Chloride (HCl)	mg/Rm3	9	(4)
Hydrogen Fluoride (HF)	mg/Rm3	0.92	(4)
Nitrogen Oxides (NO _x)	mg/Rm3	180	(4)
Carbon Monoxide (CO)	mg/Rm3	45	(4)
Mercury (Hg)	µg/Pµ3	15	(2)
Cadmium (Cd)	µg/Pµ3	7	(2)
Cadmium + Thallium (Cd + Th)	µg/Pµ3	46	(2)
Lead (Pb)	µg/Pµ3	50	(2)
Sum of (As, Ni, Co, Pb, Cr, Cu, V, Mn, Sb)	µg/Pµ3	460	(2)
Dioxins	pg/Rm3	60	(2)
Organic Matter (as CH ₄)	mg/Rm3	49	(2)
NOTES:			
(1) = All units corrected to 11% O ₂ and adjusted to Reference Temperature and Pressure mg/Rm3 = Milligrams per Reference Cubic Metre (25°C, 101.3 kPa)			
*g/Rm3 = Micrograms per Reference Cubic Metre (25°C, 101.3 kPa)			
pg/Rm3 = Picograms per Reference Cubic Metre (25°C, 101.3 kPa)			
(2) Calculated as the arithmetic average of 3 stack tests conducted in accordance with standard methods			
(3) Calculated as the geometric average of 24 hours of data from a continuous emission monitoring system			
(4) Calculated as the arithmetic average of 24 hours of data from a continuous emission monitoring system			

3.2 Durham shall ensure that the EFW Facility utilizes maximum achievable control technology (MACT) for emissions control and monitoring systems. Durham and the operator shall seek to achieve normal operating levels significantly better than the emission limits identified in Section 3.1.

3.3 Durham shall ensure that, where technically possible, the EFW Facility utilizes 24/7 monitoring systems for such parameters as are deemed appropriate by the Ministry of the Environment. The results of such monitoring systems shall be made accessible to the public on a website or programmable display board designed for such purpose. In addition, Durham shall ensure that the operator monitors the ambient air in the immediate vicinity of the EFW Facility for a three year term commencing upon the commencement of operations.

4. Facility Size

4.1 Durham is seeking approval from the Ministry of the Environment to construct and operate an EFW Facility with a total processing capacity of up to 400,000 tonnes per year of municipal solid waste.

4.2 The parties hereto acknowledge and agree that EFW Facility will not immediately be constructed to the ultimate capacity. Durham will be seeking an initial Certificate of Approval for the construction and operation of a facility for approximately 140,000 tonnes per year. The capacity of the EFW Facility may be expanded, as required by Durham and York, up to the maximum permissible capacity set forth by the Ministry of the Environment in the Certificate of Approval which may be amended from time to time. The EFW Facility may not be expanded in excess of 400,000 tonnes per year.

4.3 At the time of any expansion, Durham will give consideration to improvements to the emission control system to meet the then current MACT standards and shall apply for a new or amended Certificate of Approval if required by the Province of Ontario.

4.4 Durham will not construct a transfer station for ICI waste in Clarington without the agreement of Clarington.

5. Architectural/Site Plan Considerations

5.1 Clarington shall be consulted with respect to the architectural and site plan requirements section(s) of the Request for Proposals.

5.2 Clarington and Durham shall negotiate in good faith the terms of a site plan agreement for the development of the EFW Facility site which shall include the lands required for the private truck access lane referred to in paragraph 9.5. Durham shall comply with normal site plan and building code permit requirements and shall construct Energy Drive through their lands identified on Schedule "A".

5.3 Durham shall incorporate a cash allowance of no less than Nine Million Dollars (\$9,000,000) in the Request for Proposals ("RFP") for the provision of architectural treatments and upgrades to the EFW Facility. Durham shall consult with Clarington on the proposed architectural treatments received from the preferred bidder and prior to submitting their site plan application to Clarington for approval.

5.4 At the time of any expansion, Durham will include similar and consistent architectural treatments and upgrades to any new portions of the EFW Facility. Durham shall consult with Clarington on the proposed architectural treatments during the finalization of the arrangements with the Operator for the expansion and prior to submitting their site plan application to Clarington for approval of the expansion.

6. Commitment to a Comprehensive Waste Management Strategy

6.1 Durham shall continue to implement and support an aggressive residual waste diversion and recycling program to achieve and/or exceed a 70% diversion recycling rate for the entire Region.

6.2 Durham shall establish a hazardous waste depot to serve the residents of Clarington within one (1) year of commissioning of the EFW Facility.

7. EFW Facility Waste Sources

7.1 Durham shall ensure that the source of the waste processed at the EFW Facility is consistent with that identified in the EA Terms of Reference and supporting documentation.

7.2 The Parties agree that Industrial, Commercial and Institutional ("ICI") Waste, with a similar composition to municipal solid waste, may be processed at the EFW Facility provided that said ICI Waste is first screened at a transfer station to ensure the removal of any undesirable and hazardous materials.

7.3 The EFW Facility may be utilized to process biosolid wastes generated from water pollution control plants located within Durham Region on an emergency basis in order to support Durham's other operations provided that biosolid wastes do not comprise more than 10% of the total annual tonnage of waste processed at the EFW Facility in a calendar year.

7.4 Notwithstanding the provisions of 7.1 hereof, in the event that the source of waste processed at the EFW Facility at any subsequent time includes the City of Toronto, then Clarington shall be paid the sum of Ten Dollars (\$10.00) per tonne for each tonne of waste from that source.

8. Payments in Lieu of Taxes

8.1 Durham shall not structure the ownership of the EFW Facility in any way designed to attain tax exempt status or to avoid the Payments in Lieu of Taxes (PIL's).

8.2 Durham acknowledges that the PIL will be in the vicinity of \$650,000 per year. However Durham cannot guarantee the exact amount as that is a matter outside of its direct control.

9. Economic Development

9.1 Durham shall acquire title by way of agreement or expropriation to the properties described in Schedule "B". Upon the properties described in Schedule "B" being determined by Durham Regional Council to be surplus to the present or future requirements of the Regional Municipality of Durham, then Durham shall convey, at nominal consideration, some part of the lands described in Schedule "B" to The Municipality of Clarington.

9.2 Prior to the commissioning of the EFW Facility, Durham shall complete construction of Energy Drive from Courtice Road to Osbourne Road as a Type "C" Arterial road, complete with all applicable services including: sanitary sewerage, watermain, storm drainage, district heating, and street lighting and shall dedicate Energy Drive to Clarington as a public highway.

9.3 Durham shall construct a storm water management facility of a sufficient size to accommodate development of the Energy Park and Clarington shall execute a front-ending agreement in order to receive and reimburse Durham for the proportional costs of same from any benefiting landowners within the Energy Park. Provided approval to cross the CN Railway line with the necessary drainage works can be reasonably obtained from the Canadian National Railway, then Durham shall construct the storm water management facility on the lands described in 9.7 hereof.

9.4 Durham shall commence an environmental assessment process to support the provision of municipal services to the east Bowmanville science park which is located north of Highway 401.

9.5 Durham shall construct a private truck access lane with landscaping or other screening on its lands on the north side of the Canadian National Railway line connecting with Courtice Road to be utilized, where possible, for all deliveries of waste to the EFW Facility.

9.7 Durham shall convey to Clarington at a nominal cost the lands on the west side of Courtice Road identified in Schedule "C".

9.8 Concurrent with the construction of the EFW Facility, Durham shall construct a segment of a paved asphalt waterfront trail on a mutually agreed upon alignment from Courtice Road to the eastern limits of Durham's lands south of the Courtice Water Pollution Control Plant.

10. Operational Issues

10.1 Durham shall require the operator of the EFW Facility (the "Operator") to have the EFW Facility compliant with the International Standards Organization 14001:2004 Environmental Management Standard (ISO 14001) within thirty six (36) months of its commencing operations and to maintain such compliance thereafter.

10.2 Durham shall ensure that the Operator prepares, maintains and adheres to an Emergency Management Plan (including spills) for the EFW Facility which Plan shall be reviewed and approved by the Clarington Emergency and Fire Services Department.

10.3 Deleted

10.4 Durham shall ensure that the bottom and fly ash generated at the EFW Facility are dealt with in a manner which complies with all applicable legal and regulatory requirements and approvals. Bottom ash can be stored outside if fully screened. Fly ash shall be stored internally in a building until the time of transfer to a disposal site. No bottom ash or fly ash shall be disposed of in a landfill site in Clarington.

10.5 Durham will require the Operator of the EFW Facility to provide a certificate of insurance showing the Municipality of Clarington as an additional insured thereon.

10.6 Durham hereby agrees to indemnify and hold Clarington harmless from all manner of actions, causes of action, suits, demands, and claims whatsoever in connection with any and all injuries up to and including death, or damages to its property, which may occur as a result of the design, construction or operation of the EFW Facility save and except when such injury, loss or damage is occasioned by the negligent acts or omissions or willful misconduct of Clarington, or those for whom it is at law responsible..

10.7 Durham shall ensure that all waste haulage vehicles accessing and egressing the EFW Facility site will use the truck access routes.

10.8 In addition to all public information, the Operator shall on or before March 31st in each calendar year provide the Clerk of Clarington with a report related to the emissions output from the EFW Facility for the previous calendar year.

11. End Use Plan

11.1 Durham shall decommission and dismantle the EFW Facility within five (5) years of its ceasing of operations to a standard suitable for re-use as an industrial/commercial site.

12. Issue Resolution

12.1 In the event of any dispute, disagreement, or claim arising under or in connection with this Agreement, then the parties hereto shall, upon written notice from either party, meet as soon as reasonably possible in order to resolve said dispute.

12.2 In the event that informal discussions are not effective in resolving any disputes or differences of opinion arising between the parties which concern or touch upon the validity, construction, meaning, performance or effect of this Agreement, then said dispute shall first be mediated within a sixty (60) day time period prior to any dispute proceeding to arbitration. The parties shall determine a mutually agreeable location for the mediation to occur. The parties shall make all reasonable efforts to resolve their disputes by amicable negotiations and agree to provide, without prejudice, frank, candid, and timely disclosure of relevant facts, information, and documents to facilitate these negotiations. Any resolution of the dispute in mediation shall be kept confidential by all parties.

12.3 By giving a notice in writing to the other party, not later than ten (10) working days after the date of termination of the mediated negotiations, all matters remaining in difference between the parties in relation to this Agreement shall then be referred to the arbitration of a single arbitrator, if the parties agree upon one, otherwise to three arbitrators, one to be appointed by each party and a third to be chosen by the first two named before they enter upon the business of arbitration. The award and determination of the arbitrator or arbitrators or two of the three arbitrators shall be binding upon the parties and their respective heirs, executors, successors, administrators and assigns.

13. Clarington's Commitments

13.1 Clarington agrees, in consideration of the aforementioned commitments on the part of Durham, to be a willing host to the EFW Facility and to acknowledge that willingness as follows:

- .1 It shall not oppose the development or operation of the EFW Facility;
- .2 It acknowledges that, provided that there is public ownership of the EFW Facility and the site by one or more municipalities, it will be considered a "public use" for the purposes of the Zoning By-law and that is not necessary to amend the Clarington Official Plan or Zoning By-law;
- .3 It shall expedite the review of all applications for approval submitted by, or on behalf of, the Operator or Durham related to the construction, maintenance and operation of the EFW Facility; and,
- .4 Should the existing South Service Road ever be deemed to be surplus due to the construction of Energy Park Drive, the South Service Road shall be closed and conveyed to Durham for nominal consideration; and,
- .5 It shall strongly encourage and promote development within the Clarington Energy Business Park and other areas of Clarington to utilize district heating and cooling provided by the EFW Facility.

14. Miscellaneous

14.1 This agreement is entered into solely between Durham and Clarington and is not intended or designed, and in fact it explicitly excludes the creation of any rights or beneficial

interests in any third party save and except the Regional Municipality of York in so far as its interest exists in the EFW Facility, from time to time.

15. Further Assurances

The parties hereby covenant and agree, after a request in writing by one party to the other parties, to forthwith execute and provide all further documents, instruments and assurances as may be necessary or required in order to carry out (and give effect to) the true intent of this Agreement, and to effect the registration against and release from title to the lands subject to this Agreement of such notices or other instruments in accordance with the provision of this Agreement.

16. Enurement

This Agreement shall enure to the benefit of and bind the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF Durham and Clarington have executed this Host Community Agreement.

THE REGIONAL MUNICIPALITY OF DURHAM

Per: _____
Roger Anderson, Regional Chair

Per: _____
Pat Madill, Regional Clerk

THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON

Per: _____
Jim Abernethy, Mayor

Per: _____
Patti L. Barrie, Clerk

Schedule "A"

Legal Description of Proposed Site of EFW Facility

Part of Lot 27, Concession Broken Front, Darlington, designated as Parts 1 and 2 on 40R-19984, save and except Parts 1 and 2 on 40R-20362, Municipality of Clarington, Regional Municipality of Durham, being all of PIN 26605-0082(LT)

Schedule "B"

Legal Description of Lands Proposed to be acquired

FIRSTLY: PT LTS 27 & 28 BROKEN FRONT CONCESSION, DARLINGTON, AS IN N41298 SAVE & EXCEPT PART 1 PL 40R21517 NORTH OF THE CANADIAN NATIONAL RAILWAY; MUNICIPALITY OF CLARINGTON, REGIONAL MUNICIPALITY OF DURHAM, being all of PIN 26605-0086 (LT)

SECONDLY: PT LT 28 BROKEN FRONT CONCESSION, DARLINGTON BEING PTS 2 & 3 on 10R2689; MUNICIPALITY OF CLARINGTON, REGIONAL MUNICIPALITY OF DURHAM, being all of PIN 26605-0030 (LT)

THIRDLY: PT LT 28 BROKEN FRONT CONCESSION, DARLINGTON being PT 1, 10R2689; MUNICIPALITY OF CLARINGTON, REGIONAL MUNICIPALITY OF DURHAM, being all of PIN 26605-0031 (LT)

Schedule "C"

Legal Description of Lands to be Transferred to Clarington

FIRSTLY: PT LT 29 AND 30 BROKEN FRONT CONCESSION, DARLINGTON being PTS 1, 2, AND 3, 40R20750; MUNICIPALITY OF CLARINGTON, REGIONAL MUNICIPALITY OF DURHAM, being all of PIN 26604-0017 (LT)

SECONDLY: PT LT 29 BROKEN FRONT CONCESSION, DARLINGTON being PT 1 on 10R571; MUNICIPALITY OF CLARINGTON, REGIONAL MUNICIPALITY OF DURHAM, being all of PIN 26604-0016 (LT)