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**DURHAM/YORK ENERGY FROM WASTE – REVISIONS TO
THE MEMORANDUM OF UNDERSTANDING**

(Regional Council, at its meeting on June 21, 2007, amended the following report to reflect that the matter of the first right of refusal on any excess capacity be referred to the Chief Administrative Officer.)

The Solid Waste Management Committee recommends the following:

1. The following deputations be received and referred to the Consultant, Genivar, for the Durham/York Residual Waste Study:
 - (a) Laura Bowman, Public Consultation Co-ordinator, York-Simcoe Naturalists, and submission dated May 29, 2007, regarding the York-Durham Residual Waste Study process; and
 - b) Michael O’Flanagan for Edward Candolini, representing Communities First in York Region, May 29, 2007, regarding the York-Durham Residual Waste Study and tonnage costs.
2. The communication from Laura Higgins, Newmarket Resident, May 30, 2007, regarding the proposed Thermal Waste Treatment Facility, be received.
3. The recommendations contained in the following report, May 31, 2007, from the Director, Solid Waste Management, be adopted; and
4. The following additional recommendation 3 be adopted as follows:
 3. Staff ensure that York Region has the first right of refusal on any excess capacity at the energy from waste facility when negotiating the revised Memorandum of Understanding agreement with the Regional Municipality of Durham.

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 by which the two Regions will undertake the next steps in the joint energy from waste project, in the form generally set out in this report.

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 (Durham) through a Memorandum of Understanding in order to identify the processes and guiding principles, by which the two Regions will proceed to establish and operate an energy from waste facility to service the waste disposal needs of the two Regions and possibly other communities.

3. BACKGROUND

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:

- Identify the preferred site for the development of an energy from waste processing facility by late 2007.
- Complete the Environmental Assessment and Environmental Protection Act studies to be submitted to the Ministry of the Environment in 2008.
- Select the vendor to build and operate the facility by June, 2008.
- Put the facility into operation by late 2010/early 2011.

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.

Both Regional staffs have come to an agreement on the revised wording for an updated Memorandum of Understanding and both York and Durham staffs have committed to placing the revised document before their Solid Waste Management Committee and Works Committee respectively at the next meeting of each committee, which by coincidence, happens to fall on the same day of June 6, 2007.

4. ANALYSIS AND OPTIONS

Durham Region has requested that it become the primary lead on the project and partner with York Region in the ownership of the energy from waste facility that may result from the Environmental Assessment that is currently underway. As a result, changes to the existing Memorandum of Understanding adopted by York in February, 2007 are required. It is proposed that Legal Services prepare a revised Memorandum of Understanding consistent with the following:

- 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 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.

5. FINANCIAL IMPLICATIONS

It is a fundamental principle of the Memorandum of Understanding that all costs incurred by either Region, which are related to the Environmental Assessment process, be shared equally between the two Regions. Durham and York staff time and in-house resources spent on the project are the sole responsibility of each respective Region.

All costs related to the facility development and construction would be shared on an equity ownership basis. A 12% equity in the proposed energy from waste facility is estimated to be \$30 million. The exact cost will be known in early 2008 at the conclusion of a Request for Proposals from qualified vendors.

At its April Council meeting, Durham also approved additional project expenditures to retain Borden Ladner Gervais LLP and Deloitte and Touché LLP, with upset limits of \$300,000 and \$400,000 respectively, to commence work on the facility development and assist on the Environmental Assessment. York's share of these costs is estimated to be \$200,000. Durham is also working with the Town of Clarington to undertake and fund a peer review on parts of the Environmental Assessment study. Durham staff believe that the upset cost for this review is approximately \$200,000 and is currently in discussions with Clarington to finalize the scope and cost of the review.

York has spent \$1.4 million on the Environmental Assessment Study to date and has a remaining budget of \$1.7 million. The expenditure of these funds to secure capacity and an expansion option in the future ensure the residents of York Region a long-term waste disposal solution.

6. LOCAL MUNICIPAL IMPACT

The success of the energy from waste project will require active public participation for citizens and local municipalities across the Region. Staff and elected officials will be notified of all public meetings and are invited to attend. As the project proceeds, there may be the need for specific input and involvement from one or more local municipalities. It is proposed that York discuss the opportunity for East Gwillimbury to participate in the peer review of the Environmental Assessment in conjunction with Clarington.

7. CONCLUSION

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

Report No. 7 of the Solid Waste Management Committee
Regional Council Meeting of June 21, 2007

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

The Senior Management Group has reviewed this report.