

APPENDIX A-2

Agreements between Durham and York Regions



**RESIDUAL WASTE MANAGEMENT
EA STUDY AGREEMENT**

This Agreement dated June 30, 2005 is made



B E T W E E N:

THE REGIONAL MUNICIPALITY OF DURHAM
("Durham")

-and-

THE REGIONAL MUNICIPALITY OF YORK
("York")

RECITALS

WHEREAS:

- (a) Durham and York are each responsible within their respective geographic limits for the disposal of solid waste; and
- (b) Durham and York wish to examine and identify a preferred method or methods of processing – physically, biologically and/or thermally - the waste that remains after the application of Durham's and York's at-source waste diversion programs in order to recover resources – both material and energy – and to minimize the amount of waste requiring landfill.

NOW THEREFORE Durham and York agree as follows:

INTERPRETATION

Definitions

1. In this Agreement and in the recitals above,
 - (a) "**Agreement**" means this Residual Waste Management Environmental Assessment Study Agreement;
 - (b) "**Durham**" means The Regional Municipality of Durham acting as a body corporate and, where the context requires, includes all employees, officers, servants and agents of The Regional Municipality of Durham;

- (c) “**JMG**” means the Joint Management Group described in Section 12;
- (d) “**Milestone**” means a milestone set out in Section 9;
- (e) “**Study**” means the study described in Section 5; and
- (f) “**York**” means The Regional Municipality of York acting as a body corporate and, where the context requires, includes all employees, officers, servants and agents of The Regional Municipality of York.

Schedules

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

Schedule “A” Joint Management Group Terms of Reference
Schedule “B” Study Budget

References

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

SCOPE OF THE STUDY

- 5. Durham and York shall jointly undertake an environmental assessment study (the “Study”) to examine and identify a preferred method or methods of processing – physically, biologically and/or thermally - the waste that remains after the application of Durham’s and York’s at-source waste diversion programs in order to recover resources – both material and energy – and to minimize the amount of waste requiring landfill.
- 6. The Study shall satisfy all of the applicable requirements for an environmental assessment under the *Environmental Assessment Act*, R.S.O. 1990, c. E18.
- 7. Only those physical, biological or thermal technologies/systems that meet or exceed current regulatory requirements shall be considered in the Study.
- 8. The Study shall establish an annual processing capacity for alternative technologies/systems based on the projected quantity of solid residual wastes generated over a 35-year planning period (2013 to 2045).
- 9. Following are the significant milestones contemplated for the Study:
 - (1) Approval by the Minister of the Environment of the Environmental Assessment Terms of Reference (Fall 2005);

- (2) Selection of the preferred technologies/systems for processing the post-diversion waste following an assessment of the alternatives to the undertaking (2006); and
 - (3) Selection of the preferred site(s) for implementation of the preferred technologies/systems following an assessment of alternative methods of carrying out the undertaking (2007).
10. The Study shall include the development of a policy designed to compensate property owners (including road authorities) impacted by the selection of the preferred site(s).
11. The Study shall assume that each party shall be responsible for arranging for the landfill disposal of its own share of residue generated from the processing of residual wastes by the preferred technologies/systems.
12. Upon completion of the Study, the parties may enter into a new agreement governing (a) the preparation of a request for proposals designed to select a technology provider to implement the preferred technologies/systems and (b) the processing of all necessary legislative approvals.

STUDY MANAGEMENT

13. The Study shall be managed by a Joint Management Group ("JMG") comprised of elected officials and citizens from Durham and York as well as an observer from the City/County of Peterborough Waste Management Steering Committee. The terms of reference for the JMG shall be as set out in Schedule "A".

FINANCIAL

14. Prior to March 31 in each year, the JMG shall review, and submit to the appropriate Committees and the Regional Councils for their approval, a detailed budget for the following calendar year of the Study. The Councils of both Durham and York must approve such budgets. The projected overall budget for the entire Study is set out in Schedule "B".
15. During 2005, each party shall pay its own costs associated with its own public information sessions. All other costs incurred in relation to the Study shall be shared between the parties. Such costs shall include, but not be limited to,
 - (a) preparation of Study documents;
 - (b) consulting fees;
 - (c) public notices and out-of-pocket expenses associated with public meetings in either Region;

- (d) *intervener funding (if any)*; and
 - (e) any hearing before the Environmental Review Tribunal.
16. Durham and York staff time and in-house resources spent on the Study shall not be a shared cost.
 17. If the parties should obtain funding from some source, such as from senior levels of government, other than the parties themselves, such funding shall be used to reduce the financial contributions of both parties equally.
 18. Each party shall indemnify the other against and save it harmless from and against all claims, demands or proceedings for loss, damage or injury, including death and from and against all costs and expenses which it may sustain, suffer or incur, resulting from or arising directly or indirectly out of the actions or omissions of such party pursuant, or purportedly pursuant to this Agreement or resulting therefrom in any way whatsoever.

GENERAL MATTERS

Term

19. The Agreement shall commence on June 30, 2005.
20. This Agreement shall terminate upon the completion of the environmental assessment, provided that either party may terminate earlier upon written notice to the other party given within 60 days after the achievement of a Milestone. Each party shall be responsible for its respective share of all costs incurred prior to termination. In addition, the terminating party shall be responsible for all costs of amending the Terms of Reference to permit the environmental assessment to continue. Neither party shall be liable to the other party for any other costs or damages resulting from the termination.

Successors and Assigns

21. This Agreement shall not be assigned by either party without the prior approval of the other.
22. This Agreement enures to the benefit of and binds the parties and their respective successors and permitted assigns.

Amendments

23. No amendment to this Agreement shall be effective unless it is in writing and signed by both parties.

Arbitration

- 24. Any dispute, difference, issue or question arising between the parties or between which concerns or touches upon the validity, construction, meaning, performance or effect of this Agreement, shall be referred to and resolved by arbitration in accordance with the *Arbitration Act, 1991*, S.O. 1991, c.17. The arbitration decision shall be final and binding and shall not be subject to appeal under any circumstances (whether with respect to a question of law, a question of fact, a question of mixed fact and law, or otherwise).

Further Assurances

- 25. The parties shall promptly and duly execute and deliver such further documents and assurances, and take such further action may be necessary from time to time in order to more effectively carry out the intent and purpose of this Agreement and to establish and protect the rights, interests and remedies intended to be created.

Notices

- 26. (1) Any notice under Section 19 shall be in writing and shall be delivered to the following addresses:

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

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

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

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

- (2) Notice shall be sufficiently given if,
 - (a) delivered in person;
 - (b) sent by registered mail; or
 - (c) sent by facsimile transmission during normal business hours on a business day.
- (3) Each notice sent shall be deemed to have been received,
 - (a) on the day it was delivered;
 - (b) on the third business day after it was mailed; or

(c) on the same day that it was sent by facsimile transmission or on the first business day thereafter if the day on which it was sent by facsimile transmission was not a business day.

(4) Either party may change its address for notice by giving notice to the other in the manner provided in this Section.

IN WITNESS WHEREOF Durham and York have executed this Agreement.

THE REGIONAL MUNICIPALITY OF DURHAM

Per: *R. Anderson*
Roger Anderson, Regional Chair

Per: *Pat Madill*
Pat Madill, Regional Clerk

Authorized by Clause 1
of Report 4 of the
Transportation and Works
Committee, adopted by **Regional Council**
at its meeting on June 23, 2005

THE REGIONAL MUNICIPALITY OF YORK

Per: *Bill Fisch*
Bill Fisch, Regional Chair

Per: *Denis Kelly*
Denis Kelly, Regional Clerk

Approved
by Solicitor: *SL*

Schedule "A"**JOINT MANAGEMENT COMMITTEE****TERMS OF REFERENCE****1. Mandate**

- 1.1 The JMG is a sub-committee of Durham's Works Committee and York's Waste Management Committee whose composition and activities shall be in accordance with these Terms of Reference.
- 1.2 The JMG shall provide advice and make recommendations to Durham's Works Committee and York's Waste Management Committee on all matters relating to (a) the Residual Waste Management Environmental Assessment Study Agreement between Durham and York dated June 30th, 2005 (the "Agreement"), (a) the environmental assessment study described in the Agreement (the "Study"); and (c) any other agreement between the parties regarding the processing of waste that remains after the application of Durham's and York's at-source waste diversion programs.

2. Scope of Activities

- 2.1 The JMG shall,
- (a) examine the composition and quantity of the post-diversion residual wastes to be managed;
 - (b) establish the limits of the area to be serviced by a facility, or facilities, established as a result of the Committee's work;
 - (c) research available energy and recyclable resource markets and their operating requirements;
 - (d) review and make recommendations regarding the Study's preferred post-diversion residual waste processing technologies and systems;
 - (e) review and make recommendations regarding the Study's preferred site location(s) for the required facility or facilities;
 - (f) secure meaningful public input through public information protocols such as workshops and open houses;
 - (g) report and make recommendations to the Durham's Works Committee and to York's Waste Management Committee respecting all other matters set out in Section 1.2 of these Terms of Reference, as required.

3. **Composition**

3.1 The JMG shall be comprised as follows:

a) *8 Voting members*

Four (4) current members of Durham's Works Committee.

Four (4) current members of York's Waste Management Committee.

The Chairs and Vice Chairs of each Committee, or their designate, shall sit as members of the JMG. These members shall select the remaining two (2) members from their respective Committee to sit on the JMG.

b) *6 Non-voting members*

Three (3) interested residents from the Region of Durham[M1].

Three (3) interested residents from the Region of York.

c) The Chair of the City & County of Peterborough's Waste Management Steering Committee, or a designate, shall sit as an observer.

3.2 Membership in the JMG shall be for a 3-year term corresponding with the terms of Regional Councils.

3.3 The JMG may establish project teams and/or working groups as deemed necessary to address specific issues. The Chair of any project team or working group shall be a voting member of the JMG.

4. **Officers**

4.1 The Chairs of Durham's Works Committee and York's Waste Management Committee shall be Co-Chairs of the JMG and shall preside over JMG meetings in an alternating fashion. If either Co-Chair is absent, the Vice-Chair of the respective Regional Committee shall serve as Chair for that JMG meeting.

5. **Support Services**

5.1 Durham's Commissioner of Works and York's Commissioner of Transportation & Works and their designates shall serve as staff liaison to the JMG.

5.2 Staff support from both Durham and York shall be provided to the JMG as required.

5.3 The staff liaisons shall co-ordinate all requests for advice from the JMG through meeting agendas and addenda to meeting agendas. JMG responses to such requests shall be co-ordinated by the staff liaison to the respective Regional Committees.

- 5.4 Both Regions shall provide secretarial and other administrative support services to the JMG in an alternating fashion. When, for example, the JMG meeting is in Durham Region, administrative support shall be provided by Durham Region staff. The respective Regional Departments shall be responsible for these administrative expenses.

6. **Meetings**

- 6.1 The JMG shall coordinate its meetings with the Durham's Works Committee and the York's Waste Management Committee meetings. Special meetings may be held at the call of the both of the Co-chairs of the JMG.
- 6.2 The location of JMG meetings shall alternate between the Region of Durham and Region of York offices.
- 6.3 Unless otherwise determined, all JMG meetings shall be open to the public. As a formal advisory Committee within both Durham and York, procedures at the JMG meetings shall be governed by the procedural by-law of the Region hosting the meeting unless specified otherwise in this Terms of Reference.

7. **Delegations at Committee Meetings**

- 7.1 Any person wishing to appear before the JMG as a delegate must submit a request to both staff liaisons advising of the topic or item to which they wish to speak. All such requests must be received at least one week prior to a JMG meeting to ensure that the delegation is included in the meeting's agenda. Any person wishing to address the JMG as a delegate, who has not previously arranged to do so, may be granted permission to do so only by resolution of the JMG.

8. **Minutes and Agenda**

- 8.1 All minutes of meetings of the JMG shall be submitted to both Durham's Works Committee and York's Waste Management Committee.

9. **Committee Resolutions**

- 9.1 JMG shall seek to achieve consensus on decisions. Recommendations are 'carried' if supported by a majority of voting members. Only resolutions as they appear in the adopted Minutes may be considered as officially representing the position of the JMG.