The Regional Municipality of Durham
To: The Works Committee
From: Commissioner of Works
Report: 2011-WR-10
Date: June 15, 2011

SUBJECT:
Energy from Waste Facility: Durham/York Co-owners' Agreement

RECOMMENDATION:
THAT the Works Committee recommends to Regional Council that the Durham/York Energy from Waste Co-owners’ Agreement be approved.

REPORT:
Attachment No. 1: The Co-owner’s Agreement between the Municipality of Durham and the Municipality of York

1. PURPOSE

To action the following directive carried at a Regional Municipality of Durham (Region) Council meeting held on April 6, 2011:

   “3. THAT prior to the Regional Chair and Clerk executing the Co-owners' Agreement with York Region, it come back to Durham Regional Council for approval, and that it include the sale of a 50 per cent interest in EFW facility lands to York Region at fair market value;”

2. BACKGROUND

The Regional Municipality of Durham and the Regional Municipality of York (Regions) entered into an Energy from Waste (EFW) Memorandum of Understanding (MOU) dated June 25, 2009, to govern the next steps in the EFW project. The MOU included:

a) The preparation and issuance of a request for proposals designed to select a technology provider to implement the preferred technologies/systems identified in the Environmental Assessment;
b) Defining the processes through which the necessary approvals for a functioning EFW facility will be obtained; and

c) Defining the ownership model for the EFW facility and the future contractual arrangements between the Regions regarding capacity.

The EFW MOU also made provisions for the Regions to negotiate a Co-owners’ Agreement which would establish terms to ensure clarity around Durham and York’s shared obligations with respect to the operation of the EFW facility, including site servicing and owner obligations and responsibilities with respect to the executed Project Agreement with Covanta.

3. DISCUSSION

The attached Co-owners’ Agreement (Attachment No. 1) is based upon the provisions of the approved EFW MOU and the April 2011 direction of Regional Council, with additional details governing the respective roles and responsibilities of the Regions for the design, construction and operation of the EFW facility.

The Regions shall own the EFW facility in partnership with one another and shall contribute to the capital costs of the design, construction and commissioning based on their respective shares: The Regional Municipality of York (York) 30,000 tonnes per year (21.4%) and The Regional Municipality of Durham (Durham) 110,000 tonnes per year (78.6%). The Regions will be responsible for paying the net operating costs of the project based on their respective shares: York 30,000 tonnes per year (21.4%) and Durham 110,000 tonnes per year (78.6%), with the exception of oversized components related to site servicing and the Covanta facility which will be equally cost shared.

The proposed management models are designed to ensure direct oversight of the project and that the Regions’ interests are well covered, while balancing the need to remain at arms length and avoid transferring construction risks to the Regions. Durham, as the majority partner, will oversee the main contract at the Project Manager level and York will participate at the Project Leader and Management Committee levels.

Durham shall convey to York a fifty per cent (50%) interest in the Facility Lands, free and clear of all encumbrances, no later than 60 days following the issuance of the final building permit for the EFW facility by the Town of Clarington. The purchase price for the lands shall be calculated based on an appraised value of $110,000 per acre (site is approximately 29 acres).
4. **FINANCIAL IMPLICATIONS**


York Region approved (September 15, 2010) $68.3 million of capital funding for the project, based upon increased contributions to cover the cost of 50/50 land ownership, 50/50 oversized components and 50/50 funding of specific Host Community Agreement items.

5. **CONCLUSION**

The proposed Co-owners' Agreement is based on the provisions of the approved Energy from Waste Memorandum of Understanding and Council direction of April 2011, with additional details governing the respective roles and responsibilities of the Regional Municipality of Durham and the Regional Municipality of York for the design, construction and operation of the Energy from Waste facility.

Provisions within the Co-owners' Agreement address the cost sharing formula for capital construction and operational expenditures, governance and project management structure, cost share items within the Host Community Agreement and oversized Energy from Waste components, land ownership and waste delivery coordination.

This report has been reviewed by Finance and Legal Department staff.

[Signature]

Clifford Curtis, P.Eng., MBA, Commissioner of Works

Recommended for presentation to Committee

[Signature]

G.H. Cubitt, M.S.W., Chief Administrative Officer