

**REGIONAL DISTRICT OF NANAIMO**

**BOARD MEETING  
TUESDAY, MAY 27, 2008**

**CIRCULATED REPORT  
FOR AGENDA**

**PAGES**

**ADMINISTRATOR'S REPORTS**

- |       |  |
|-------|--|
| 2-20  | Cedar Road LFG Third Amending Agreement. (All Directors – Weighted Vote)               |
| 21-22 | Award of Tender – Tractor Loader at Regional Landfill. (All Directors – Weighted Vote) |



CAO APPROVAL	
EAP	
COW	
MAY 23 2008	
RFD	
BOARD	✓ May 27th

**MEMORANDUM**

**TO:** Demmis Trudeau,  
General Manager Transportation  
and Solid Waste Services

**DATE:** May 22, 2008

**FROM:** Carey McIver  
Manager of Solid Waste

**FILE:** 5360-46

**SUBJECT:** Canadian Imperial Bank of Commerce Consent Agreement and Cedar Road LFG  
Third Amending Agreement

**PURPOSE**

To obtain Board approval to (1) enter into a Consent Agreement with the Canadian Imperial Bank of Commerce and (2) for a third amendment to the existing Development and Operating Agreements with Cedar Road LFG Inc. for the operation and maintenance of an electrical generation facility on the RDN landfill.

**BACKGROUND**

In June 2005 the Board approved a Development Agreement with Suncurrent Industries Inc. to provide for the construction of a facility on the RDN landfill to demonstrate the commercial viability of operating external combustion engines to generate electricity using landfill gas as an alternative fuel source.

In October 2005 the Board consented to the assignment of the Development Agreement from Suncurrent Industries to Cedar Road LFG Inc. (Cedar LFG) and approved an Operating Agreement with Cedar LFG to govern the operation and maintenance of the facility as well as determine an annual royalty payment to the RDN.

In September 2006, due to delays in project financing, the Board approved an Amending Agreement to change the project completion date from July 21, 2006 to November 30, 2007. As per the Development Agreement, the Board also approved a License of Occupation for the use of the area at the Regional Landfill occupied by their electricity generating facility as well as a Waiver of Emissions Rights as required under the Project and Transfer Agreement with the Federation of Canadian Municipalities.

In November 2007, to accommodate the requirements of the BC Hydro Standing Offer Program (SOP) to facilitate the development of distributed clean electricity generating projects of less than 10 MW, the Board approved a Second Amending Agreement with Cedar LFG.

The Second Amending Agreement extended the contract term from five years with an option to renew for another five years to 10 years with an option to renew for another 10 years. In addition, this amendment allows Cedar LFG to grant BC Hydro an option to purchase the facility at the end of the contract term under the condition that if BC Hydro exercises its option to acquire the facility, it will not sell, transfer, assign or convey the facility to any other person without the written consent of the RDN. The Second Amending Agreement also changed the project completion date from November 30, 2007 to May 31, 2008 and the commercial operation date from December 31, 2007 to June 30, 2008.

## **Project Status**

As discussed in the November 2007 staff report, the current electricity generating facility retains the objective of demonstrating external combustion engines, however to increase commercial viability and reduce commercial debt risk, Cedar LFG have introduced two conventional combustion engines to the project. This has increased the overall project electricity output from 500 kW to 1.5 MW with a revised capital budget just below \$3 million.

Cedar LFG has proceeded with the construction of the facility including completing the works associated with interconnecting the facility to the BC Hydro distribution grid. Commissioning of the facility will begin in July 2008 with the arrival of the first 633 kW GE Jenbacher landfill engine and booster skid. The second GE Jenbacher engine will be commissioned in October 2008 to allow for additional gas reserves to be connected to the collection system. A 55 kW external combustion engine will also be installed by December 2008.

Cedar LFG plan to apply to the BC Hydro Standing Offer Program next January once their facility is fully up and running. In the meantime they can sell their electricity on the short-term market to Powerex, a wholly-owned power marketing subsidiary of BC Hydro.

## **Consent Agreement**

Cedar LFG has arranged for a 1.6 million loan with the Canadian Imperial Bank of Commerce (CIBC) to finance this project. To provide the bank, as lender to Cedar LFG, with a level of security in the assets that are to be incorporated as part of the LFG utilization facility, RDN legal counsel has prepared the attached Consent Agreement between CIBC and the RDN.

Under the Consent Agreement, in the event that Cedar LFG falls into default under the Development or Operating Agreements (the Agreements), the RDN would have to give notice of the default to CIBC. CIBC would then have the opportunity to correct the default. CIBC would also have the ability on termination of the Agreements by RDN to either:

1. Assume the Agreements itself – stepping into the role of Cedar LFG (not likely), or
2. Find an assignee for the obligations of Cedar LFG under the Agreements (more likely). The RDN would have the ability to approve any assignee; or
3. Do neither, in which case the RDN could exercise its Option to Purchase.

The Consent Agreement between the RDN and CIBC protects the essential interest of the RDN in the case of default by Cedar LFG by allowing a process by which the RDN could acquire the assets of the facility in the event that the interest of Cedar LFG is not taken over by another party acceptable to RDN or by BC Hydro.

## **Amending Agreement**

Due to the requirements of the Consent Agreement, RDN legal counsel has prepared the attached Third Amending Agreement to the Development and Operating Agreements with Cedar LFG. This third amending agreement changes the project completion date from May 31, 2008 to November 30, 2008 and the commercial operation date from June 30, 2008 to December 31, 2008.

Legal counsel has also added a new clause to be included in the Option to Purchase under the Operating Agreement to confirm that the RDN's right to acquire the facility will be subject to BC Hydro's right to purchase and CIBC's right to step in to protect its security by assuming the obligations of Cedar LFG or by assigning its interests to a third party acceptable to the RDN.

## **ALTERNATIVES**

1. Approve the Consent Agreement with the Canadian Imperial Bank of Commerce and the Third Amending Agreement with Cedar Road LFG Inc.
2. Do not approve the Consent Agreement with the Canadian Imperial Bank of Commerce and the Third Amending Agreement with Cedar Road LFG Inc.

## **FINANCIAL IMPLICATIONS**

As reported to the Board in past reports, the only direct costs to the RDN for this project have been engineering and legal services associated with the negotiation of the agreements as well as the integration of the RDN collection and flare system with the Cedar LFG facility. These costs are not anticipated to exceed \$25,000 and should be recovered from Cedar LFG's future payments to the RDN for the use of the gas. Based on a set of conservative assumptions, these payments may amount to roughly \$400,000 over the 20 year term of the project.

## **SUMMARY**

In 2005 the Board approved Development and Operating Agreements with Cedar Road LFG Inc. (formerly Suncurrent) to provide for the construction and operation of a facility on the RDN Landfill to generate electricity using landfill gas as an alternative fuel source.

In 2006, the Board approved an Amending Agreement to change the project completion date from July 21, 2006 to November 30, 2007. As per the Development Agreement, the Board also approved a License of Occupation for the use of the area at the Regional Landfill occupied by their electricity generating facility as well as a Waiver of Emissions Rights as required under the Project and Transfer Agreement with the Federation of Canadian Municipalities.


In 2007, to accommodate the requirements of the BC Hydro Standing Offer Program (SOP), the Board approved a Second Amending Agreement with Cedar LFG. The Second Amending Agreement extended the contract term from 10 to 20 years; allowed Cedar LFG to grant BC Hydro an option to purchase the facility at the end of the contract term with the written consent of the RDN; and changed the project completion date from November 30, 2007 to May 31, 2008.

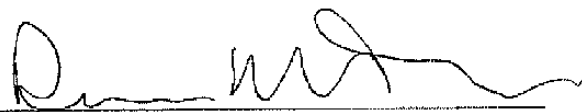
Cedar LFG has arranged for a loan with the Canadian Imperial Bank of Commerce (CIBC) to finance this project. To provide the bank, as lender to Cedar LFG, with a level of security in the assets of the project, RDN legal counsel has prepared the attached Consent Agreement between CIBC and the RDN. This agreement protects the essential interest of the RDN in the case of default by Cedar LFG by allowing a process by which the RDN could acquire the assets of the facility in the event that the interest of Cedar LFG is not taken over by another party acceptable to RDN or by BC Hydro.

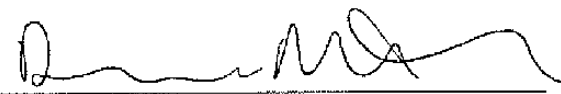
RDN legal counsel has also prepared the attached Third Amending Agreement to the Development and Operating Agreements with Cedar LFG. This third amending agreement changes the project completion date from May 31, 2008 to November 30, 2008 and the commercial operation date from June 30, 2008 to December 31, 2008.

**RECOMMENDATIONS**

1. That the Board enter into a Consent Agreement with the Canadian Imperial Bank of Commerce;  
and,
2. That the Board approve the Third Amending Agreement with Cedar Road LFG Inc.

  
\_\_\_\_\_  
Report Writer

  
\_\_\_\_\_  
General Manager Concurrence

  
\_\_\_\_\_  
For CAO Concurrence

COMMENTS:

**CONSENT AGREEMENT**

**THIS AGREEMENT** made this     day of     , 2008.

**BETWEEN:**

**REGIONAL DISTRICT OF NANAIMO**  
6300 Hammond Bay Road  
Nanaimo, B.C.  
V9T 6N2

**("RDN")**

**OF THE FIRST PART**

**AND:**

**CANADIAN IMPERIAL BANK OF COMMERCE**

**(the "Lender")**

**OF THE SECOND PART**

**WHEREAS:**

- A. The RDN entered into a Development Agreement with Suncurrent Industries Inc. for the development of an electricity-generating facility at the RDN Landfill on land described as:  
  
PID 013-239-813  
Lot 1, Sections 2 and 3, Plan 48020, except Plan VIP66090, Land District 32  
  
**(the "Lands");**
- B. By agreement dated November 2, 2005, the Development Agreement was assigned from Suncurrent Industries Inc. to Cedar Road LFG Inc.;
- C. The RDN subsequently entered into an Operating Agreement, Licence of Occupation, Option to Purchase, and Waiver of Emission Rights with Cedar Road LFG Inc.;
- D. The Development Agreement and the Operating Agreement were amended by an Amending Agreement dated October 26, 2006, and a Second Amending Agreement dated November 27, 2007;

- E. The RDN and Cedar Road LFG Inc. propose to enter into a Third Amending Agreement, a copy of which has been provided to the Lender;
- F. Cedar Road LFG Inc. (the "Generator") wishes to obtain financing from the Lender (the "**Credit**"), and intends to grant the Lender a security interest (the "**Security**") in all of its undertaking and assets, including those located upon the Lands ("**Collateral**").
- G. The RDN has agreed to grant to the Lender certain rights under the terms of this Agreement.

**NOW THIS AGREEMENT WITNESSES** that the RDN and the Lender, in consideration of the premises, the terms and conditions hereinafter contained, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties covenant and agree each with the other as follows:

## 1.0 DEFINITIONS AND INTERPRETATION

### 1.1. For the purpose of this Agreement:

**"Amending Agreements"** means the amending agreements referred to in Recitals D and E above;

**"Agreements"** means, collectively, the Development Agreement, the Amending Agreements, the Operating Agreement, the Licence of Occupation, the Option to Purchase and the Waiver of Emission Rights;

**"Assumption Notice"** means a notice given by the Lender to the RDN pursuant to section 6.1(a) of this Agreement.

**"Generator's Facility"** means the Generator's landfill gas electricity-generating facility, including all improvements of the Generator relating thereto, located on the Lands in Nanaimo, British Columbia.

**"Receiver"** means a receiver, manager or receiver-manager appointed or designated by, or on the initiative of, the Lender.

### 1.2. In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing a corporate entity include individuals and vice versa.

### 1.3. Unless otherwise stated, any reference to an enactment includes and is a reference to such enactment including amendments thereto and in force from time to time, and to any enactment that may be passed which supplements or supersedes such enactment.

- 1.4. The language in all parts of this Agreement shall in all cases be construed as a whole and neither strictly for nor strictly against either of the parties to this Agreement.
- 1.5. Except where otherwise expressly provided, all monetary amounts in this Agreement are stated and shall be paid in Canadian currency.
- 1.6. Unless otherwise stated, a reference in this Agreement to a designated article, section, subsection, paragraph or other subdivision or to a schedule is to the designated article, section, subsection, paragraph or other subdivision of, or schedule to this Agreement.
- 1.7. A requirement in this Agreement that a party provide approval or consent means that approval is not to be unreasonably withheld or delayed unless the paragraph specifies that the approval is to be in the sole discretion of a party, in which case approval is to be in the exclusive, complete and unfettered discretion of the party.

## **2.0 AMENDMENTS**

- 2.1. The RDN and the Generator acknowledge and agree that the Agreements are in full force and effect and that the Agreements as originally executed, have been amended only as referred to herein.

## **3.0 CONFIRMATIONS CONCERNING THE AGREEMENTS**

- 3.1. The RDN confirms to the Lender that:
  - (a) the RDN has not received any notice of assignment by the Generator of all or any part of its right, title and interest in and to the Facility;
  - (b) the RDN has not given any notice of termination;
  - (c) the RDN is not aware of any default or other circumstance that would entitle the RDN to give a notice of disconnection or notice of termination, provided however that the RDN has not undertaken any investigation or due diligence in respect of this confirmation; and
  - (d) to the knowledge of RDN, the Generator's operations at the Generator's Facility are in compliance with all applicable bylaws, codes and permitting requirements of RDN.

## **4.0 ASSIGNMENT OF AGREEMENTS TO LENDER**

### **4.1. RDN Acknowledgment**

- (a) The RDN acknowledges receipt of notice of, and consents to the



assignment by the Generator to the Lender of all the right, title and interest of the Generator in and to the Agreements made pursuant to and in accordance with the Credit and the Security;

- (b) Subject to sub-paragraph 4.1(c), the RDN hereby waives in favour of the Lender any landlord's lien and all rights of levy or distraint, or security interest that it has or may hereafter have, whether by statute, contract (including the Agreements) or common law, in any of the Collateral ("**Landlord's Liens**"), and agrees that, until the Lender has been paid in full, the Lender's Security in the Collateral takes priority over any Landlord's Liens;
- (c) Sub-paragraph 4.1(b) does not apply to any lien the RDN may in future have as a result of the failure of the Generator to pay local government taxes levied against the Lands; and
- (d) The RDN acknowledges that any Collateral located at any time on the Lands shall not be deemed a fixture and shall be considered personal property, despite any degree of affixation to the Lands.

#### 4.2. Lender Acknowledgment

The Lender acknowledges that:

- (a) it has received copies of the Agreements; and
- (b) the assignment by the Generator to the Lender of the Agreements pursuant to the Credit and Security is subject in all respects to the terms and conditions of this Agreement.

#### 5.0 NOTICES

5.1. The RDN covenants and agrees with the Lender that, except as hereinafter otherwise permitted, the RDN:

- (a) shall give the Lender a copy of any material waiver, amendment or modification to any of the Agreements, including a signed copy of the third amending agreement, once available;
- (b) shall give the Lender 45 days written notice and opportunity to cure any failure of the Generator to pay local government taxes before taking any enforcement or other action against the Collateral as a result of such failure to pay local government taxes;
- (c) shall give the Lender a copy of any notice of disconnection or notice of

termination of any of the Agreements concurrently with, or promptly after, any such notice is given to the Generator;

- (d) shall give the Lender a copy of any notice of termination of any of the Agreements received from the Generator, promptly after receipt from the Generator; and
- (e) shall not exercise any right it may have to terminate the Agreements unless it has complied with paragraph (a) - (c) above (as applicable) with respect to the default or other circumstance entitling the RDN to terminate.

Nothing in this Agreement prevents or restricts:

- (i) termination of the Agreements upon failure of any condition for which notice is not required under the Agreements;
- (ii) the exercise by the RDN with respect to the Generator of any other right or remedy that it may be entitled to exercise under or in relation to the Agreements; or
- (iii) the right of the Lender to cure, or cause the cure of any default by the Generator under the Agreements that would be curable by the Generator, whether or not an Assumption Notice is given.

## 6.0 REALIZATION BY LENDER

### 6.1. Assumption Notice and/or Transfer of Operations: Agreements not Terminated

If the Generator has defaulted under the Credit or the Security, the Lender may, at its option, do any one or more of the following:

- (a) give the RDN written notice (an "**Assumption Notice**") stating that the Lender is assuming the Agreements whereupon:
  - (i) the Lender shall be entitled to all the rights and benefits, and shall have assumed, and shall perform and discharge, all the obligations and liabilities of the Generator under the Agreements, and the Lender shall be a party to, and bound by the Agreements as if an original signatory thereto in the place and stead of the Generator;
  - (ii) notwithstanding subparagraph (i) above, the Lender shall not be liable to RDN for defaults of the Generator or for any other circumstance or liability occurring before the Assumption Notice is given;

- (iii) the Lender may assign its interest in the Agreements to a third person or persons provided that the Lender obtains RDN's prior written consent, not to be unreasonably withheld, and provided that the proposed assignee or transferee has agreed in writing with the RDN to be bound by the terms of the Agreements, and upon assignment to the assignee or transferee and execution and delivery of such agreement in writing by such assignee or transferee, the Lender will be released from its obligations under the Agreements; or
  - (iv) the Lender may terminate the Agreements (other than the Option to Purchase and Waiver of Emission Rights) upon 30 days' notice in writing to the RDN, and upon such termination, the Lender will be released from its obligations under the Agreements (including the Option to Purchase and Waiver of Emission Rights); or
- (b) without assuming the rights, obligations or any liability of the Generator under the Agreements, give written notice to the RDN that the Lender wishes to cause the Generator to assign all of the Generator's right, title and interest in and to the Agreements and the Generator's Facility to a third person or persons provided that the Lender and the Generator first obtain the RDN's prior written consent, not to be unreasonably withheld, in which case:
- (i) it is acknowledged that the RDN's consent may be conditional on the assignee entering into agreements with the RDN in substantially the same terms as the Agreements (and in the case of the Waiver of Emission Rights, in exactly the same terms); and
  - (ii) the RDN agrees that if the Lender enters the Generator's Facility for the purpose of viewing or examining the state of repair, condition or operation thereof such shall not constitute taking possession thereof.

## 6.2. RDN purchase of Collateral - Following Termination of the Agreements

Upon termination of the Agreements by RDN, the Generator (prior to assumption by the Lender), or the Lender (following assumption by the Lender), the RDN may within 60 days, pursuant to the Option to Purchase, provide written notice to the Lender that it intends to purchase all of the Collateral, and if it does so:

- (a) the Lender will exercise its rights as a secured party holding a security interest in the Collateral, and enter into the Generator's Facility and repossess in order to sell the Collateral to the RDN; RDN agrees that the entry by the Lender for this purpose shall not constitute taking possession

thereof;

- (b) the purchase price for the Collateral will, notwithstanding the terms of the Option to Purchase, be the fair market value thereof;
- (c) the purchase price for the Collateral, if not agreed between the parties, will be determined by an appraiser or appraisers appointed pursuant to s. 6.3 of the Option to Purchase, who will be experienced in the valuation of industrial equipment of the type comprising the Collateral; and
- (d) RDN shall pay the entirety of the purchase price to the Lender, pursuant to s. 59 of the *Personal Property Security Act*, and by virtue of that section, the RDN shall take title free and clear of the interest of the Generator, the interest of the Lender and the interest of any secured party registered against the Collateral subordinate to the Lender.

6.3. Sale of Collateral - Following Termination of the Agreements (if RDN elects not to Purchase)

Upon termination of the Agreements by RDN, the Generator (prior to assumption by the Lender), or the Lender (following assumption by the Lender), and if the RDN does not, within 60 days of the termination, elect by notice in writing to the Lender to purchase all of the Collateral for the fair market value thereof:

- (a) the Lender may enter into the Generator's Facility and inspect, remove or repossess the Collateral and may advertise and conduct a public auction or private sale of the Collateral; provided, however, that the Lender will repair, or pay the reasonable cost to repair, any damage to the Lands resulting from such inspection, removal, repossession, auction or sale; RDN agrees that the entry by the Lender for this purpose shall not constitute taking possession thereof.

6.4. Lender Liability and Release

Other than as specifically set out herein, the Lender will not, pursuant to this Agreement, be obliged to exercise any of its rights, powers, or remedies under the Credit, the Security or statute, whether or not the Lender has exercised some of such rights, powers, and remedies, and whether or not the Lender has become entitled to exercise them.

The Lender assumes no liability to RDN under the Agreements unless and until the Lender gives an Assumption Notice. Thereafter, if the Lender completes an assignment to a third person or persons pursuant to and in accordance with the applicable provisions of the Agreements and this Agreement, the Lender shall be released from all liability and obligations to the RDN under the Agreements

accruing from and after completion of that assignment.

6.5. Generator Not Released

Nothing in this Agreement, and neither the giving of an Assumption Notice, nor any assignment pursuant to section 6.1(b) releases the Generator from its obligations and liabilities to the RDN under and in relation to the Agreements.

6.6. Receiver Included

References in this section 6 to the Lender include a Receiver.

**7.0 NOTICE**

7.1. It is hereby mutually agreed that any notice required to be given under this Agreement will be deemed to be sufficiently given:

- (a) to be delivered at the time of delivery; and
- (b) if mailed from any government post office in the Province of British Columbia by prepaid registered mail addressed as follows:

if to the RDN:

6300 Hammond Bay Road  
Nanaimo, B.C.  
V9T 6N2

Attention: Ms. Carey McIver  
Fax No. (250) 390-1542

if to the Lender:

Canadian Imperial Bank of Commerce  
7<sup>th</sup> Floor  
400 Burrard Street  
Vancouver, B.C. V6C 3A6

Attention: Mr. R.A. Gibson  
Fax No. (604) 665-1144

Unless otherwise specified herein, any notice required to be given under this Agreement by any party will be deemed to have been given if mailed by prepaid registered mail, or sent by facsimile transmission, or delivered to the address of the other party set forth on the first page of this Agreement or at such other

address as the other party may from time to time direct in writing, and any such notice will be deemed to have been received if mailed or faxed, 72 hours after the time of mailing or faxing and, if delivered, upon the date of delivery. If normal mail service or facsimile service is interrupted by strike, slow down, force majeure or other cause, then a notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the notice must utilize any other such services which have not been so interrupted or must deliver such notice in order to ensure prompt receipt thereof.

## **8.0 TERMINATION**

8.1. This Agreement, and all rights and liabilities among the parties hereunder shall terminate upon the full and final discharge of all of the Security.

## **9.0 JURISDICTION**

9.1. Each party to this Agreement attorns irrevocably and unconditionally to the Courts of the Province of British Columbia, and to Courts to which appeals therefrom may be taken, in connection with any action, suit or proceeding commenced under or in relation to this Agreement. Notwithstanding the foregoing, the lender acknowledges that upon an Assumption Notice being given, the Lender will become party to, and bound by, the dispute resolution provision contained in the Agreements with respect to matters arising under the Agreements.

## **10.0 TIME**

10.1. Time is to be the essence of this Agreement.

## **11.0 BINDING EFFECT**

11.1. This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees.

## **12.0 WAIVER**

12.1. The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

## **13.0 HEADINGS**

- 13.1. Section and paragraph headings are inserted for identification purposes only and do not form a part of the Agreement.

#### **14.0 LANGUAGE**

- 14.1. Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.

#### **15.0 CUMULATIVE REMEDIES**

- 15.1. No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.

#### **16.0 LAW APPLICABLE**

- 16.1. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

#### **17.0 RELATIONSHIP OF PARTIES**

- 17.1. No provision of this Agreement shall be construed to create a partnership or joint venture relationship, an employer-employee relationship, a landlord-tenant, or a principal-agent relationship.

#### **18.0 AMENDMENT**

- 18.1. This Agreement may not be modified or amended except by the written agreement of the parties.

#### **19.0 INTEGRATION**

- 19.1. This Agreement contains the entire agreement and understanding of the parties with respect to the matters contemplated by this Agreement and supersedes all prior and contemporaneous agreements between them with respect to such matters.

#### **20.0 SURVIVAL**

- 20.1. All representations and warranties set forth in this Agreement and all provisions of this Agreement, the full performance of which is not required prior to a termination of this Agreement, shall survive any such termination and be fully enforceable thereafter.

#### **21.0 NOTICE OF VIOLATIONS**

21.1. Each party shall promptly notify the other party of any matter which is likely to continue or give rise to a violation of its obligations under this Agreement.

**22.0 ENTIRE AGREEMENT**

22.1. The whole agreement between the parties is set forth in this document and no representations, warranties or conditions, express or implied, have been made other than those expressed.

**23.0 SEVERABILITY**

23.1. Each article of this Agreement shall be severable. If any provision of this Agreement is held to be illegal or invalid by a Court of competent jurisdiction, the provision may be severed and the illegality or invalidity shall not affect the validity of the remainder of this Agreement.

**24.0 COUNTERPART**

24.1. This Agreement may be executed in counterpart with the same effect as if both parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

**IN WITNESS WHEREOF** the parties hereto have set their hands and seals as of the day and year first above written.

REGIONAL DISTRICT OF NANAIMO )  
 by its authorized signatories )  
 )  
 )  
 \_\_\_\_\_ )  
 Chief Administrative Officer, Carol Mason )  
 )  
 )  
 \_\_\_\_\_ )  
 Senior Manager, Corporate Administration, )  
 Maureen Pearce )

CANADIAN IMPERIAL BANK OF )  
 COMMERCE by its authorized signatories )  
 )  
 )  
 \_\_\_\_\_ )  
 Name: )  
 )  
 )  
 \_\_\_\_\_ )



Name: )  
)

**THIRD AMENDING AGREEMENT  
TO DEVELOPMENT AGREEMENT AND OPERATING AGREEMENT**

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2008.

BETWEEN:

**REGIONAL DISTRICT OF NANAIMO**  
6300 Hammond Bay Road  
Nanaimo, BC V9T 6N2  
  
(the "RDN")

OF THE FIRST PART

AND:

**CEDAR ROAD LFG INC.**  
(Inc. #A0065860)  
Box 852, Station A  
Nanaimo, BC V9R 5N2  
  
("IPP")

OF THE SECOND PART

**WHEREAS:**

- A. The RDN and Suncurrent Industries Ltd. ("**Suncurrent**") entered into a Development Agreement dated July 21, 2005 which was assigned to the IPP by agreement dated November 2, 2005;
- B. The RDN and IPP entered into an Operating Agreement, dated November 2, 2005;
- C. The Development Agreement and Operating Agreement were amended by an Amending Agreement dated October 26, 2006, and by a Second Amending Agreement dated November 27, 2007;
- D. The parties wish to amend the Development Agreement and the Operating Agreement, both as amended, to provide for an extension of the Commercial Operation Date and to make other amendments agreed to by the parties.

**NOW THIS AGREEMENT WITNESSES** that in consideration of the premises, the terms and conditions hereinafter contained and the payment of TEN (\$10.00) DOLLARS from the IPP to RDN, the sufficiency and receipt of which is hereby acknowledged, the parties covenant and agree each with the other as follows:

**1.0 DEVELOPMENT AGREEMENT**

1.1. The Development Agreement is amended as follows:

- (a) Section 1.1 is amended by

- (i) deleting the definition of "Commercial Operation Date" and replacing it with the following:

" 'Commercial Operation Date' means November 30, 2008.";

- (ii) deleting the definition of "Completion Date" and replacing it with the following:

" 'Completion Date' means substantial completion of construction of the Facility which shall be on or before December 31, 2008."

- (b) The Option to Purchase attached as Schedule "B" to the Operating Agreement is amended by adding the following new section 3.3:

"3.3 The RDN may only acquire the Facility under this Option to Purchase provided that:

- (a) BC Hydro has not elected to acquire the Facility; and
- (b) The Canadian Imperial Bank of Commerce ("**CIBC**") does not arrange for assignment of the Agreements to a third party or transfer of the Facility to a third party under the Agreement between the RDN and the CIBC dated \_\_\_\_\_, 2008.

## **2.0 REFERENCE**

- 2.1. A reference to the Development Agreement, the Operating Agreement or to the Licence is a reference to those Agreements as amended;

## **3.0 RATIFICATION**

- 3.1. Except as expressly amended by this Agreement, the parties ratify and confirm the Development Agreement, the Operating Agreement and the Licence. The Development Agreement, the Operating Agreement, the Licence and this Agreement shall be read and construed as one document.

**4.0 TIME**

4.1. Time shall remain of the essence of the Development Agreement, the Operating Agreement, the Licence and of this Agreement.

**IN WITNESS WHEREOF** the parties hereto have set their hands as of the day and year first above written.

**REGIONAL DISTRICT OF NANAIMO** )  
 by its authorized signatories )  
 )  
 \_\_\_\_\_ )  
 Chief Administrative Officer )  
 )  
 \_\_\_\_\_ )  
 Senior Manager of Corporate Administration )

**CEDAR ROAD LFG INC.** by its authorized )  
 signatories )  
 )  
 \_\_\_\_\_ )  
 Name: )  
 )  
 \_\_\_\_\_ )  
 Name: )



KUN NEROKI	
CAO APPROVAL	
EAP	
COW	
MAY 22 2008	
RHD	
BOARD	✓ May 27th

**MEMORANDUM**

**TO:** Carcy McIver  
Manager Solid Waste

**DATE:** May 14, 2008

**FROM:** Helmut Blanken, P.Eng.  
Superintendent Engineering & Disposal Operations

**FILE:** 1240-20-SW

**SUBJECT:** Landfill Track Loader  
Tender Award

**PURPOSE**

To award the acquisition of a track loader for the Regional Landfill.

**BACKGROUND**

A Caterpillar 963C track loader is currently used at the Regional Landfill for grading, dozing, loading, backfilling, carrying material and compacting waste. This equipment was leased from Finning (Canada) Ltd. in 2004 for a four year term ending May 31, 2008. Staff has completed a tender call for a replacement track loader. The loader is intended to be financed over a four year period – financing options requested included owner (i.e. RDN) financing with a guaranteed buy back after four years or vendor financing of a similar nature.

Bids were submitted from Brandt Tractor Ltd and Finning (Canada) Ltd. as shown below:

	Net Vendor Financing	Net MFA Financing (includes sale back on return to vendor where applicable)
Brandt Tractor Ltd.	\$241,488	\$302,304
Finning (Canada) Ltd.	\$256,968	\$269,364

The Brandt Tractor bid has been rejected because the equipment is non-compliant in three critical areas - minimum horsepower (requested 188Hp, provided 181Hp), minimum breakout force (requested 43,000 lbs, provided 36,869 lbs), and no information on sprocket guarding.

The Finning (Canada) Ltd submission for a Caterpillar 963D track loader meets all of the minimum specifications. The quoted Finning equipment is specifically used in landfill applications and is the same as equipment currently in use. That equipment has performed well, staff is familiar with its operating characteristics and Finning has provided a high level of maintenance service.

## ALTERNATIVES

1. Award the tender for the acquisition of a track loader to Finning (Canada) Ltd. and enter into vendor financing for 48 months at a net cost of approximately \$256,968. Authorize the General Manager of Finance & Information Services to execute a 48 month lease with Finning (Canada) Ltd.
2. Award the tender for the acquisition of a track loader to Finning (Canada) Ltd. and authorize the General Manager of Finance & Information Services to execute a 48 month lease with the Municipal Finance Authority, at a net cost of approximately \$269,364.

## FINANCIAL IMPLICATIONS

### Alternative 1

Under this alternative Finning the vendor, will provide lease financing at an annual cost of \$85,656 and a lump sum credit at the end of the lease for a net cost of approximately \$256,968. The Finning lease is a variable rate lease with an initial interest rate of 4.9%.

Staff recommends a continuation of lease type financing for two reasons – current interest rates make spreading the cost over a four year period quite affordable and under this alternative the equipment is returned to the vendor who is in a better position to dispose of it in a specialized market place.

### Alternative 2

Under this alternative, the annual cost is approximately \$67,500. The MFA lease rate is currently 3.75% and is also a variable rate lease. Under this alternative the buyback credit is less than under the vendor financing, resulting in a higher overall cost. The net cost, after the sale back to Finning will be approximately \$269,364.

## SUMMARY

A tender for the replacement of a track loader used at the Regional Landfill for grading, dozing, loading, backfilling, carrying material and compacting waste has been completed. Two bids were received, only one of which was fully compliant with the tender specifications. The equipment is intended to be financed over a four year period and the vendor financing option is the most cost effective with respect to this tender. Staff recommends awarding the supply of the equipment to Finning (Canada) Ltd.

## RECOMMENDATION

That Finning (Canada) Ltd. be awarded the supply and financing of a Caterpillar 963D track loader and the General Manager, Finance & Information Services be authorized to execute a four year lease/sale back agreement with an approximate net value of \$256,968.

  
Report Writer

for

  
Manager Concurrence

  
for CAO Concurrence

COMMENTS:

Landfill Track Loader Tender Award to Board May 2008