



TORONTO STAFF REPORT

April 12, 2002

To: The Board of Governors of Exhibition Place

From: Anna Kinastowski, City Solicitor

Subject: Resolution to confirm appointment of City of Toronto as Agent – Power Purchase Agreement – **Electricity Market Opening May 1, 2002**

Purpose:

To request that the Board pass the attached resolution so as to permit the finalization of contractual arrangements with Toronto Hydro Energy Services Inc. for the purchase of electrical power.

Financial Implications and Impact Statement:

The recommendations in this report have no financial implications.

Recommendations:

It is recommended that The Board of Governors of Exhibition Place formally adopt the attached Resolution confirming the appointment of the City of Toronto as the Board's agent for the purposes as set out therein, and that the Resolution be certified by the Chair of the Board or such officials of the Board as may be required.

Background:

At its meeting of October 26, 2001, the Board adopted the report (dated October 15, 2001) of the General Manager & CEO recommending that the appropriate Exhibition Place officials be authorized to enter into an electricity pricing arrangement with Toronto Hydro Energy Services Inc. (THESI) and/or the City of Toronto for the purchase of electric power. The authority provided by the Board contemplated the possibility that the City would, on behalf of itself and its local boards, agencies and commissions (including the Board of Governors of Exhibition Place), enter into an agreement with THESI. The Board would then in turn enter into an agency agreement with the City to set out the basis upon which the City would act on behalf of the Board in purchasing a supply of electrical power for the Board's needs.

Comments:

In the course of its negotiations with the City, THESI has now indicated that it requires a Board resolution specifically appointing the City as its agent for the purposes of the Power Purchase Agreement (the "PPA"). The form is attached to this report for the approval of the Board. The resolution does not impose any additional legal obligations on the Board and merely provides a framework for the arrangement to be entered into with the City. In the PPA, the City will be required to make certain representations and warranties stating that an agency agreement with the other agencies, boards and commissions benefiting from the PPA arrangements has been executed. This agency agreement will be available for review and execution by Board officials within the next two weeks after details have been finalized and will contain a representation and warranty from the Board that it is in fact authorized to enter into this arrangement and that it has duly appointed the City as its agent.

Given the urgency of this matter, with the Electricity Market Opening in 20 days, it is requested that the Board deal with this matter on an expedited basis, so that signed copies of the resolution can be provided to THESI prior to Market Opening. There are two blanks in the attached resolution which will need to be completed when the correct information is available: the first is the date of the Master Agreement, which date will likely be April 29th, 2002; the second is the number of days which the City will provide the Board to repay to the City the amounts which the City has paid to THESI for electricity on the Board's behalf, which will likely be 15.

Conclusions:

This report requests that the Board adopt the attached resolution as required by THESI in its negotiations with the City of Toronto.

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Anna Kinastowski
City Solicitor

List of Attachments:

Appendix "A" – Draft Resolution

APPENDIX "A"

DRAFT RESOLUTION

Authority for City of Toronto ("City") to act as Agent for The Board of Governors of Exhibition Place for the Purposes of Entering into an Electricity Supply Contract with Toronto Hydro Energy Services Inc.

IT IS HEREBY RESOLVED THAT:

1. The Board of Governors of Exhibition Place (the "Board") appoints the City as its Agent for the purposes of:
 - A. Negotiating the electricity purchase agreement with Toronto Hydro Energy Services Inc. for the Board's estimated pro rata share of electricity based on the Board's past consumption patterns;
 - B. Executing the Master Agreement (among THESI, the City, the Toronto Transit Commission, and Toronto Community Housing Corporation and those Agencies, Boards, Commissions and Corporations on whose behalf the City is appointed Agent) dated as of the ___ day of April, 2002 and any Transactional Agreements for the purchase of various blocks of power on behalf of the Board;
 - C. Administering the Master Agreement and any Transactional Agreements, including monitoring any excess sell-back of electrical power or instructing THESI with respect to the acquisition of electrical power to meet shortfalls in the contracted amount on behalf of the Board, subject to the terms and conditions of those respective Agreements;
 - D. Receiving monthly invoices and detailed statements of consumption for both the distribution portion and retail portion of the Board's electricity usage, as well as any ancillary charges, under THESI's Retailer-Consolidated Billing arrangements with Toronto Hydro Electric System Limited;
 - E. Paying the amounts invoiced to THESI within 24 hours of receipt on behalf of the Board;
 - F. Forwarding the Board's portion of the invoice to the Board forthwith for review and approval by the Board;
 - G. Receiving payment from the Board of the Board's pro rata share of the invoiced amount within ___ days of the City's payment to THESI on the Board's behalf; or, alternatively, deducting the Board's payment from monies which the City would otherwise transfer to the Board as part of the annual budget approval process;

- H. Providing notification to THESI of any disputes raised by the Board with respect to the Board's invoice and taking any necessary steps to enforce the Board's rights under the Master Agreement and Transactional Agreements; and,
 - I. Doing such other things as are necessary to implement the Master Agreement and any Transactional Agreements on behalf of the Board.
2. The Board will pay the City for all amounts paid on the Board's behalf within an agreed upon time period, failing which the City shall deduct amounts owing from any funds under the care and control of City Treasurer which have been allocated by City for the Board and not yet paid to the Board; and failing such recovery of funds, the City shall take any necessary action to enforce payment against the Board.
 3. The City and the Board shall each indemnify the other with respect to claims, damages, etc. attributable to any negligent or wilful act or omission by one or the other party with respect to the performance of the Agency Agreement, the Master Agreement or any Transactional Agreement.

The foregoing Resolution is hereby adopted by The Board of Governors of Exhibition Place this 26th day of April, 2002.
