

Toronto District Heating Corporation - District Cooling Strategy and Shareholder Direction

(City Council on December 14, 15 and 16, 1999, amended this Clause by adding thereto the following:

“It is further recommended that:

- (1) the report dated December 13, 1999, from the Chief Administrative Officer, embodying the following recommendations, be adopted:*

‘It is recommended that:

- (1) the Shareholder’s Statement of Objectives attached to this report as Appendix I, directed to the City nominees on the Board of Directors of TDHC, be approved and communicated to these City nominees; and*
- (2) the appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.’*

subject to amending Appendix I, headed ‘TDHC Shareholder Statement of Objectives’ embodied therein by:

- (a) adding to the end of Clause (f) embodied in Part III, entitled ‘The City’s Expectations of TDHC’s Operating Principles’, the words ‘and shall seek authorization from Council through the Telecommunications Steering Committee’; so that Clause (f) of Part III, shall now read as follows:*

‘(f) TDHC will inform the City’s Telecommunications Committee (or successor body) at the earliest possible time of any TDHC proposal relating to telecommunications and shall seek authorization from Council through the Telecommunications Steering Committee, or its successor body.’;

- (b) adding to Part III, entitled ‘The City’s Expectations of TDHC’s Operating Principles’, the following new Clause (j):*

‘(j) TDHC management shall negotiate and finalize a municipal access agreement with the City of Toronto as required under subsection 9(4) of the Toronto District Heating Corporation Act, 1998 to permit the continuing and future use by the TDHC of the City’s highways, public lanes and public communications for the installation, maintenance and operation of all present and future district heating and cooling equipment and infrastructure installed by the TDHC within the City’s highways, public lanes and public communications and provide for the payment of compensation to the City.’; and

(c) ***striking out Clause (i) embodied in Part 4, entitled ‘Terms of Appointment for City Nominees’, and inserting in lieu thereof the following new Clause (i):***

‘(i) To the extent permitted by law, each nominee is expected to comply with and cause TDHC to comply with paragraphs (g) and (j) of Part III above.’; and

(2) *the Chief Administrative Officer be requested to work with Toronto Hydro, Northwinds and the Toronto District Heating Corporation, in order to determine an appropriate course of action with regard to any Northwinds undertakings which may be in progress.”)*

The Policy and Finance Committee recommends the adoption of the following report (November 26, 1999) from the Chief Administrative Officer:

Purpose:

This report recommends that TDHC be re-confirmed as the Council-designated provider of district heating and cooling in the downtown core and recommends that the CAO submit directly to Council the City Direction to Council nominees on the Board of Directors of TDHC including the terms outlined in this report.

Financial Implications and Impact Statement:

There are no financial implications arising from the recommendations of this report.

Recommendations:

It is recommended that:

- (1) TDHC be re-confirmed as the Council-designated retail distributor of district heating and cooling in the downtown core;
- (2) TDHC’s Board of Directors assess the various generation sources and methods and determine the most appropriate combination of sources of energy to feed into the distribution network based on the business case and environmental benefits of each option or combination;
- (3) Toronto Hydro submit a report to the City CAO on the terms of its joint venture in the Northwinds project respecting its intentions with respect to district cooling;
- (4) the City CAO submit to Council the completed Shareholder Direction to City nominees on the Board of Directors of TDHC including the terms identified in this report; and
- (5) the appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Background:

In September 1997, both the former City of Toronto Council and Metro Council approved the concept plan proposed by TDHC to develop a district cooling piping network in the downtown core and provide cooling through the use of Deep Lake Water Cooling technology. Staff were authorized to execute an Energy Transfer Agreement with TDHC to install a new intake pipe to the Island Filtration Plant and to use the plant's infrastructure and the John Street Pumping Station to provide the cooling energy necessary for this system.

Such approval was contingent on TDHC producing a business and implementation plan satisfactory to Council. A summary of the business plan has been submitted under confidential cover for City review.

The project requires extensive engineering study which is being provided by R. V. Anderson. Phase I of the study has been completed and signed off by the City Works Department and Phase II is in progress. A comprehensive business plan will be developed once the pre-design study has been completed. The general terms of the Energy Transfer Agreement were approved by Council in September 1997 and staff of both TDHC and the City are working on finalizing the agreement.

While these studies and plans were in development, Toronto Hydro entered into a joint venture (the Northwinds Project) with a private company, Unicom Thermal Technologies, and the Ontario Hydro Services Corporation to develop ice plants to produce cooling energy to be used in a district cooling system. In December 1998, Council adopted a Notice of Motion which resolved that:

- “(i) the City of Toronto support the Northwinds proposal if the intention is to use ice storage to supply supplementary peaking capacity to the Deep Lake Water Cooling system;
- (ii) the City of Toronto direct Toronto Hydro to align its marketing activity to support Deep Lake Water Cooling as the cooling base load source in Toronto to be implemented as agreed with TDHC; and
- (iii) the City of Toronto direct Toronto Hydro to support the expeditious implementation of Deep Lake Water Cooling by TDHC, it being the most energy efficient and CO₂ reducing technology for cooling, and therefore, in the best interests of the building cooling customer and the environment.”

Since then, the Northwinds consortium and TDHC have both been marketing their products to secure cooling customers for district cooling in order to secure funding to build their respective infrastructures. At its meeting of July 27, 28, 29, 1999, Council expressed its desire to have the two companies work in a compatible and non-competitive manner. It also directed that a meeting be held before the end of October with all stakeholders “to consider how these two City corporations can develop a relationship to work cooperatively

in delivering district cooling”, that “the Mayor or his designate be requested to bring these two technologies together” and that “the CAO be requested to attempt to find a resolution by November 30, 1999”.

In response to Council’s direction, a meeting of stakeholders in this matter was held on October 15, 1999. Although the issue of competition between the two companies was not resolved at that meeting, it assisted in articulating the relative positions of the parties and the issues which would need to be addressed in any workable proposal. This report proposes an approach to district cooling which considers the previous Council positions on this matter and the requirements of the various stakeholders.

At its meeting of September 28, 29, 30, 1999, Council directed that the CAO bring forward a document outlining the City’s objectives in holding an interest in TDHC, such document to be forwarded to the City’s nominees on the Board of Directors of TDHC to guide the execution of their duties on the Board of Directors. This report describes the major concepts for such a document and recommends that the CAO submit the finalized document directly to Council for its meeting of December 14, 1999.

Comments:

Strategy Respecting District Cooling:

District steam heating is a network of pipes which delivers to its customers steam heat generated at a few steam generating plants placed strategically in the downtown core. Similarly, district cooling is a network of pipes delivering cool air to its customers and replaces the need for each building to construct its own air-conditioning system. Different piping networks are required for the two systems.

District systems, both heating and cooling, have and always will be operating in an unrestricted competitive market. They compete on pricing and reliability with heating and cooling systems built and operated by individual building operators. Thus, these systems have always operated in a competitive market and require a substantial customer base to be cost effective.

Similar to the electricity system, the component parts of district cooling are retailing, the distribution network of pipes, and generation. The piping for district systems generally is built under main City streets and therefore requires the cooperation and approval of the City in building the network. The comprehensive piping network needed to service customers with district cooling services will need to be developed over time. There is a need to coordinate the marketing and pipe-building strategies to ensure that the piping goes to the secured customers and that the customers along the planned routes are targetted first by the sales force. In a developing system, there is a strong symbiotic relationship between marketing and network development. It therefore makes sense for only one company to develop, build, and market the district cooling system.

There are however several options for generating cool energy which could be provided to the district cooling network. These include DLWC, steam-driven chillers, ice plants, electric chillers

or other technologies not yet fully developed. There may be sufficient demand to use a combination of these generation methods.

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distt cooling system - fig 1

Relying on Council's previous decisions to support TDHC's plan to develop district cooling in the downtown core, TDHC has developed the first phase of the cooling pipe network by constructing the pipes necessary for the cooling plant in the Metro Toronto Convention Centre. This cooling plant uses steam-driven chillers and absorption chillers which will be the main source of cool energy until the Deep Lake Water Cooling project is completed. There is currently an excess capacity which is being marketed to other cooling customers. DLWC will ultimately be used as the main source of cooling, and steam-driven chillers or ice plant technology using steam to drive turbines could be used to both polish the cooling energy and to supply peak demand beyond the DLWC capacity. The Board of TDHC will have to assess these and other generation methods, including the Northwinds option, to determine the most appropriate combination of sources of energy to feed into the distribution network based on the business case and environmental benefits of each option or combination.

Since the City has already invested \$33 million over the years in TDHC's, it makes sense to protect its investment and maximize it to the fullest extent possible. While customers require some measure of cooling all year long, heating is required only in cooler weather. This results in idle steam capacity in the summer months, which means that TDHC is not deriving the maximum use from its steam equipment. Consequently, there is a net negative impact on the bottom line. However, TDHC could use this summer steam, and any other unused steam throughout the year, to power chillers, thereby achieving maximum efficiency and profits. TDHC's current plan is to use cold lake water to provide base load cooling and steam-driven absorption chillers for polishing and peaking*. This strategy allows TDHC to derive maximum efficiency from its district energy system.

To further improve the efficiency of operations, TDHC has signed a Memorandum of Understanding with Toronto Hydro to partner in the construction and/or operation of co-generation plants. Co-gen plants will greatly reduce Hydro's dependence on Ontario Power Generation Inc. and TDHC's dependence on gas, an increasingly expensive commodity. Furthermore, co-gen will maximize energy efficiency and make a significant contribution to our CO₂ reduction efforts. The more energy generated through co-generation, the greater the profits for both TDHC and Toronto Hydro.

It is clear that only one distribution network for district cooling is feasible in the downtown core. At the moment, the market is confused because two different City corporations are bidding for district cooling customers. This is not a workable approach since the cost effectiveness of the system depends on having a sufficient customer base to use the capacity of the system and reduce prices.

It has become obvious that the companies cannot see their way to cooperate in the development of district cooling. The options are that one or the other be selected as the provider of district energy or that the two be forced into a corporate union. There are a number of concerns with the latter. First, both have just completed a comprehensive corporate restructuring and need to become comfortable with their new situation before another restructuring. The City would also

* If necessary, steam driven chillers are used to cool the water beyond the temperature at which it is pumped out of the lake.

Peaking refers to the energy needed to meet the highest level of customer demand on any given day

have to consider the impact on OMERS, its new partner in TDHC. Finally, it must be remembered that TDHC was first created from the Steam Division of Toronto Hydro and thorough analysis should be conducted before merging the two again.

TDHC is already well established as the largest district energy system in Canada and the second-largest in North America. It has already developed 7,700 tons of cooling capacity and supplies both the Air Canada Centre and the Metro Toronto Convention Centre and has 2.1 km of piping in the ground for cooling purposes. TDHC has 112 district heating customers who are already advocates of district energy systems. TDHC is already clearly established as Toronto's district energy company.

With respect to shareholdings, the City owns 50 percent of TDHC with the City's pension fund as its only partner. The Northwinds project is owned 1/3 by Toronto Hydro and 2/3 by others.

TDHC's business plan projects a competitive customer price and a reasonable return on investment using an environmentally sensitive technology to generate cooling as well as use of excess steam from its heating system for chillers to meet peak demand.

Given this analysis, the need for the City to protect its investments to date and future earnings potential, and considering Council's previously stated position, it is recommended that TDHC be re-confirmed as the Council-sanctioned retail distributor of district heating and cooling in the downtown core.

There may be a need and desire to provide additional cooling capacity to TDHC's district cooling network beyond the DLWC capacity. Northwinds could continue to develop the ice plant technology to sell cooling energy to TDHC, but should not sell its cooling capacity directly to customers, given that it will have no distribution network. It is recommended that Toronto Hydro prepare a report on the terms of its joint venture in the Northwinds project and its intentions respecting district cooling.

Shareholder Statement of Objectives:

Unlike Toronto Hydro where the City is the sole shareholder, TDHC is owned jointly by the City and OMERS. It is therefore not appropriate for the City to unilaterally provide direction to the Board of Directors. Directors are required to act in the best interests of the corporation they serve and not allow their discretion to be fettered. However, it is appropriate for the City to articulate its goals and objectives in maintaining an interest in TDHC to inform the City's nominees on the Board. In addition, the City needs to clearly outline the terms of the appointment of its nominees and the City's expectations.

The following are the recommended City objectives in holding an interest in TDHC:

- (1) the value of TDHC and its infrastructure be maintained or increased;
- (2) environmental benefits of both district heating and cooling be optimized by assisting the City in achieving Council's stated objectives regarding CO₂ reduction through district

energy, deep lake water cooling and co-generation, and where possible using sustainable and renewable energy supply;

- (3) district energy customers enjoy rates comparable to in-house provision of heating and cooling, thereby increasing the market share and maximizing overall environmental benefits from district energy; and
- (4) any City investment in TDHC be used to yield an industry average investment return over the long term.

As a shareholder, the City expects that TDHC will:

- (1) operate in a commercially prudent manner;
- (2) provide a reliable, effective and efficient district energy system;
- (3) respect the environmental goals of the community;
- (4) act in compliance with all laws and regulations;
- (5) emphasize customer orientation and satisfaction;
- (6) hold the safety of its employees and the community as a primary concern; and
- (7) treat its employees fairly, with due regard for their well-being.

The terms of appointment of the City's nominees will include:

- (1) appointments will be for 3 years or until their successors are appointed;
- (2) City nominees hold office at the pleasure of Council and may be replaced at any time without notice or financial compensation in lieu of notice;
- (3) Directors will have unfettered discretion in managing the affairs of the corporation except where shareholder approval is required in accordance with the Shareholders' Agreement;
- (4) Directors are expected to act in the best interests of the corporation while giving appropriate consideration to the objectives of the shareholders;
- (5) wherever there is a conflict between acting in the best interests of the corporation and the objectives of the City, the City nominees will initiate a dialogue with the City CAO to resolve the conflict;
- (6) Directors must be ready to offer their resignations should the balance of board nominations be changed by virtue of an explicit decision by City Council not to meet required capital calls;

- (7) Directors must hold confidential all proprietary information, but provide authorized City officials with such information upon request; and
- (8) Directors, individually or collectively, must provide City Council with an annual report of their activities, priorities, and plans and should be available for a discussion of the report with the appropriate Council committee.

It is recommended that the City CAO submit directly to Council for its meeting of December 14, 1999 the completed Shareholder Direction which includes the above terms and directions.

Conclusions:

This report recommends a strategy for development and delivery of district cooling through TDHC and recommends that Toronto Hydro report further on its involvement in the Northwinds project and its intentions respecting district cooling. This report also recommends the terms to be included in the Shareholder Direction to the City's nominees on the Board of Directors of TDHC and requests the CAO to present the completed document directly to Council on December 14, 1999.

Contact:

Nancy Autton, Senior Corporate Policy and Management Consultant, Tel.: Phone: 397-0306, Fax: 696-3645 e-mail: nautton@metrodesk.metrotor.on.ca

(City Council on December 14, 15 and 16, 1999, had before it, during consideration of the foregoing Clause, the following report (December 13, 1999) from the Chief Administrative Officer:

Purpose:

To recommend the Shareholder's Statement of Objectives to the City nominees on the Board of Directors of TDHC.

Financial Implications and Impact Statement:

There are no financial implications arising from the recommendations of this report.

Recommendations:

It is recommended that:

- (1) *the Shareholder's Statement of Objectives attached to this report as Appendix 1, directed to the City nominees on the Board of Directors of TDHC, be approved and communicated to these City nominees; and*

- (2) *the appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.*

Background and Comments:

At its meeting of September 28, 29, 30, 1999, Council approved the Shareholders' Agreement between OMERS and the City respecting TDHC. Council also directed that the CAO bring forward a document to be used as a guide to the City's nominees on the Board of Directors.

The CAO report dated November 26, 1999 entitled "TDHC – District Cooling Strategy and Shareholder Direction" recommended the basic concepts to be included in a Shareholder's Direction. The Policy and Finance Committee recommends approval of the report which is included in the Council agenda as Policy and finance Report No. 11, Clause 12. The report recommended that the CAO bring forward the completed Shareholder Direction to Council for approval at its December meeting.

The attachment to this report was developed using the concepts outlined in the CAO's November 26 report and relevant terms of the Shareholder Agreement previously approved by Council.

Contact:

Nancy Autton

Senior Corporate Policy and management Consultant

Phone: 397-0306 Fax: 696-3645 e-mail: nautton@mta1.metrodesk.metrotor.on.ca

(Appendix I

Toronto District Heating Corporation
Shareholder Statement of Objectives)

TDHC SHAREHOLDER STATEMENT OF OBJECTIVES

TO: The City of Toronto's Nominees to the Board of Directors of Toronto District Heating Corporation

FROM: The City of Toronto

SUBJECT: The City's Statement of Objectives as a Shareholder of Toronto District Heating Corporation

December 10, 1999

I. INTRODUCTION

(a) Background

Toronto District Heating Corporation ("TDHC") has existed, under several names and guises, for over 30 years. Initially incorporated to integrate the steam heating activities of downtown hospitals and other public sector buildings, TDHC now, in addition, serves over in excess of 100 downtown commercial buildings. December 1999 marks the start of an important new era for TDHC. Throughout its history TDHC has been a non-share corporation run along co-operative lines. It was overseen by a board of directors comprising representatives of its primary stakeholders, the Province, several major downtown hospitals, the University of Toronto and the City.

In December 1999 TDHC will become a business corporation with share capital incorporated under the Business Corporations Act of Ontario (OBCA). Initially, its shares will be owned 50/50 by the City and Borealis Penco Corporation, a wholly-owned subsidiary of OMERS. Consequently, TDHC's Board of Directors will be made up of City and Borealis nominees.

TDHC's new corporate status brings with it a renewed commitment to operating along commercial lines with a focus on customer service.

(b) Purpose of this Shareholder Statement

The purpose of this Statement of Objectives is to articulate the following for the benefit of the City's nominees to TDHC's Board of Directors:

- 1. the City's objectives in holding its interest in TDHC;*
- 2. the City's expectations of the principles to which TDHC adhere in carrying on business;*
- 3. the terms of appointment of the City's nominees.*

In making this Statement, the City is in no way attempting to interfere with any director's legal duty to act at all times in the best interests of TDHC. Furthermore, the City recognizes that, as a participant in a joint venture corporation, both the City and directors nominated by the City must work co-operatively with Borealis and the directors Borealis nominates with a view to making TDHC a successful and effective enterprise.

II. THE CITY'S OBJECTIVES AS AN INVESTOR IN TDHC

As a major investor, the City has specific objectives in holding its interest in TDHC. The City requests its nominees to take appropriate account of these goals when directing TDHC's affairs.

The City's goals are as follows:

- (a) The value of TDHC and its assets will be increased or, at minimum, maintained.*

- (b) *TDHC will assist the City to achieve City Council's stated objectives in respect of CO₂ reduction, by maximizing environmental benefits through the use of clean energy sources and energy sources that are sustainable and renewable such as district heating and cooling, deep lake water cooling, and co-generation.*
- (c) *TDHC will supply its district energy customers at rates competitive with their in-house provision of heating and cooling, thereby increasing market share and maximizing overall environmental benefits from district energy.*
- (d) *Over the long term, TDHC will strive to provide a rate of return on the City's investment at least equal to an industry average investment return.*

III. THE CITY'S EXPECTATIONS OF TDHC'S OPERATING PRINCIPLES

The City expects that its nominees to the Board of Directors to cause TDHC to operate in accordance with the following principles:

- (a) *TDHC will carry on business in a commercially prudent manner.*
- (b) *TDHC will provide a reliable, effective and efficient district energy system.*
- (c) *TDHC will respect the environmental goals of the community.*
- (d) *TDHC will at all times act in compliance with all applicable laws and regulations. TDHC is governed primarily by The Toronto District Heating Corporations Act 1980, the Toronto District Heating Corporation Act, 1998¹, and the OBCA. In addition, TDHC is subject to many other statutes and laws, such as the Environmental Protection Act, health and safety legislation and other employment and labour laws, and taxation legislation. The City expects its nominees to make themselves familiar with the major pieces of legislation affecting TDHC and their role as directors.*
- (d) *To the extent permitted by law, TDHC will comply with the terms of the shareholders' agreement dated December * 1999 between the City, Borealis and TDHC (the Shareholders' Agreement), as amended from time to time.*

Of particular relevance are those parts of the Shareholders Agreement dealing with:

- (i) *directors' meetings (sections 3.5 - 3.7)*
- (ii) *matters needing unanimous shareholder approval in addition to any legally-mandated directors' approval (section 3.12)*
- (iii) *matters needing 70% or more approval of the directors (section 3.13)*
- (iv) *the requirement for an annual business plan (section 3.17) and quarterly reports*

¹For example, under the *Toronto District Heating Corporation Act, 1998*, TDHC is required to give priority to the needs of those downtown hospitals that were previously represented on TDHC's board of directors.

- (section 3.18)
- (v) *shareholders' meeting and procedures for the City, as shareholder, to make decisions (sections 4.1, 4.2 and 4.5)*
 - (vi) *restrictions on share sales and transfers in addition to legally-mandated directors' approval (Article 5)*
 - (vii) *rules governing capital calls made by the TDHC board of directors (section 6.2)*
 - (viii) *procedures for resolving deadlock at the board and shareholder levels (Article 7).*

The City's nominees are expected to make themselves familiar with and, to the extent permitted by law, cause TDHC to comply with the provisions of the Shareholders' Agreement.

- (e) *To the extent permitted by law, TDHC will also comply with Section 9.11 of the Shareholders Agreement by giving the City as much notice as possible of any construction TDHC intends to carry out. This will permit the City, if it so wishes, to co-ordinate its own construction with that of TDHC, thereby reducing overall costs and minimizing disruption on City streets..*
- (f) *TDHC will inform the City's Telecommunications Committee (or successor body) at the earliest possible time of any TDHC proposal relating to telecommunications.*
- (g) *TDHC will be customer-focussed and will provide its services with an emphasis on customer satisfaction.*
- (i) *TDHC will hold the safety of its employees, customers and the community as a primary concern.*
- (j) *TDHC will treat its employees fairly and responsibly, with appropriate regard for their well-being.*

4. TERMS OF APPOINTMENT FOR CITY NOMINEES

The following terms of appointment apply to the City's nominees to TDHC's Board of Directors:

- (a) *Subject to paragraphs 4(b) and (j), each nominee is appointed for three (3) years or until their successor is appointed.*
- (b) *Each nominee holds office at the pleasure of City Council and may be removed or replaced at any time without notice or financial compensation in lieu of notice.*
- (c) *Subject to the OBCA, The Toronto District Heating Corporation Act, Toronto District Heating Corporation Act, 1998 and other applicable laws, each nominee will have unfettered discretion in managing the affairs of TDHC, except where the Shareholders' Agreement requires shareholder approval (e.g. section 3.12).*
- (d) *Each nominee is expected to act in the best interests of TDHC at all times, while giving appropriate consideration to this Statement.*

- (e) *In the case of a conflict between acting in the best interests of TDHC and the goals, objectives and expectations of the City as set out in this Statement, City nominees will initiate a dialogue with the City's Chief Administrative Officer in order to resolve the conflict.*
- (f) *Each nominee is expected to act in accordance with all applicable laws and regulations, such as the provisions of the OBCA dealing with conflicts of interest.*
- (g) *Each nominee is expected to act in accordance with any code of conduct issued by City Council which specifically applies to City nominees on boards of corporations.*
- (h) *To the extent permitted by law, each nominee is expected to comply with and cause TDHC to comply with the Shareholders' Agreement, described under Part 3 above.*
- (i) *To the extent permitted by law, each nominee is expected to cause TDHC to comply with paragraph (g) of Part 3 above.*
- (j) *All nominees of the City must be ready to offer their resignations should a decision by City Council not to meet a capital call result in a reduction in the number of City nominees on TDHC's Board of Directors, as provided in section 3.1 and Schedule "B" of the Shareholders Agreement.*
- (k) *Each nominee must hold confidential all proprietary information of TDHC. Nevertheless, each nominee is to provide authorized City officials with TDHC proprietary information upon request but may require such officials to sign a confidentiality undertaking. Each nominee must also comply with the confidentiality provisions contained in Article 8 of the Shareholders' Agreement.*
- (l) *At the end of each year of their appointment, City nominees are to submit to the City a written report setting out the nominees' activities over the past year and their priorities and plans for the coming year. The report may be provided by the City nominees collectively, or individually. Following submission of each report, City nominees are to make themselves available, if required, to meet with City Council and/or the appropriate Council committee to discuss the report.*

This Statement may be amended at any time at the discretion of the City, having given prior notice to its nominees.

DATED at Toronto this ____ day of December, 1999.

THE CITY OF TORONTO

By:

Chief Administrative Officer)