



## STAFF REPORT ACTION REQUIRED

### Licence Agreement-Toronto Hydro Energy Services Inc.

<b>Date:</b>	December 9, 2009
<b>To:</b>	Executive Committee
<b>From:</b>	Dianne Young, Chief Executive Officer, Exhibition Place
<b>Wards:</b>	Not Applicable
<b>Reference Number:</b>	

#### **SUMMARY**

With the introduction of the *Green Energy and Green Economy Act, 2009* and the passing of the Feed-In-Tariff (FIT) regulations, Exhibition Place and Toronto Hydro Energy Services Inc. (THESI) began discussions to enter an agreement which would result in the licensing of the roof of the Better Living Centre (BLC) to THESI which would then design, construct and operate totally at the cost of THESI a photovoltaic plant (PV System) covering the roof.

In 2008/09, Exhibition Place reroofed the BLC adding insulation and upgraded the building structure to allow for additional loads all in preparation of adding a PV System as part of the Board's long-term goal of energy self-sufficiency. Partnering with THESI will now allow this PV System to be built by the end of 2010. All power from the PV System will be sold to the Ontario Power Authority (OPA) through the FIT regulations although, like the wind turbine, the PV System will be connected through the BLC substation and therefore, used to power the facilities at Exhibition Place through the Exhibition Place electrical grid.

#### **RECOMMENDATION**

It is recommended that:

- (1) City of Toronto Council approve a Licence Agreement with THESI to design, build and operate a Photovoltaic System on the roof of the BLC on the terms and conditions as detailed in this report and any other terms as may be satisfactory to the Chief Executive Officer and the City Solicitor; and
- (2) Authority be given for the Board of Governors of Exhibition Place ("the Board") to enter into any interconnection/embedded generation agreement which may be

required by the electricity distributor (e.g. Toronto Hydro-Electric System Limited) which may be required as a result of the Photovoltaic System, on such terms as may be satisfactory to the Chief Executive Officer and the City Solicitor.

### **Financial Impact**

All costs associated with the design, build and operation of the nominal 500kW PV System estimated to be in the range of \$3M will be paid by THESI. The Board will receive a royalty fee for the BLC roof based on 2% of energy production revenues with a guaranteed annual base fee of \$3,000.00 adjusted annually for CPI.

### **DECISION HISTORY**

At its meeting of December 4, 2009, The Board of Governors of Exhibition Place unanimously recommended approval of a Licence Agreement with THESI to design, build and operate a Photovoltaic System on the roof of the BLC.

In 2004, the Board approved of an Environmental Plan that had as one of its goals net electrical energy self-sufficiency by December 31, 2010.

### **ISSUE BACKGROUND**

Funded by the Federation of Canadian Municipalities in 2003, the Board engaged a consultant to produce a report which would provide an Action Plan to achieve its energy self-sufficiency target in the 2004 Development Plan. The main direction in that Action Plan was to construct approximately two megawatts of photovoltaic plants. While the *Green Energy and Green Economy Act, 2009* and the FIT regulations make investments in “green” energy more feasible in Ontario, the substantial capital costs required would not allow Exhibition Place to actually undertake the capital costs to build PV plants. Accordingly, an agreement with THESI to design, build and operate the PV System on the BLC, meets the direction as laid out in the Action Plan.

### **COMMENTS**

The proposed agreement with THESI, a company wholly owned by the City of Toronto, allows Exhibition Place to be one of the first establishments in the City to construct a major photovoltaic project under the new *Green Energy and Green Economy Act, 2009*. It provides a “win-win-win” situation whereby, a major investment of infrastructure dollars by THESI; address the environmental goals of the Board; and profiles the City with one of the largest PV systems in Canada which will have a estimated reduction in greenhouse gases equivalent of 125 tonnes CO<sub>2</sub> annually for a nominal 500kW PV System. Accordingly, Exhibition Place staff recommends that the City Council enter into a Licence Agreement with THESI on the terms and conditions set out in Appendix “A” attached and any other terms as may be required by the CEO or the City Solicitor.

**CONTACT**

Dianne Young

Chief Executive Officer

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**SIGNATURE**

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Dianne Young

Chief Executive Officer

**Appendix "A" - Substantial Terms and Conditions of the Licence Agreement**

Appendix "A"  
Substantial Terms and Conditions of the Licence Agreement

- a) Design: THESI will undertake the detailed design and specifications of the PV System and provide all required engineering services, including electrical schematics, mechanical drawings and structural analysis which designs and specifications shall be subject to approval of the Board.
- b) Construction: Following the approval by the Board, THESI will:
  - (i) purchase the required equipment for the purpose of installation on the Building as part of the PV System;
  - (ii) hire trades;
  - (iii) perform the construction and Commissioning of the PV System;
  - (iv) provide to the Board all necessary documentation required by the Board, acting reasonably; and
  - (v) perform all other functions necessary for completion of the PV System.

THESI will hire local trades and purchase equipment and material from local suppliers where appropriate; abide by the Board' Fair Wage Policy; be bound by all terms, covenants and agreements in force and in effect from time to time between the Board and its Unions; be designated as the Constructor for purposes of the OHSA; and not take any actions in respect of the BLC roof which would have the effect of voiding the warranty with respect to the new roof system.

- c) Roof Load Capacity: THESI shall be responsible for ensuring that the load bearing capacity of the roof of the Building is adequate; along with the weight load distribution of the PV System it proposes to install; the anchoring of the solar arrays and responsibility for repair and maintenance of any roof penetrations required so as to ensure the water-tightness of the roof.
- d) Scheduling: THESI shall present its construction schedule for the PV System to the Board for approval and THESI agrees that the Board shall have the right to require that construction be shut down or scheduled so as to accommodate or avoid interference with Events. THESI shall commence construction August 1, 2010, with project completion and full commissioning/commencement of operations to be achieved prior to December 31, 2010. The installation period may be delayed or extended due to unexpected circumstances or scheduled events at Exhibition Place and construction will not be permitted during the Toronto Honda Indy (commencing the Thursday in advance of the first race day) or during the 28-day event period of the Canadian National Exhibition.
- e) Commissioning: For a period of not less than 180 calendar days following construction completion, THESI shall:
  - (i) conduct tests and demonstrate that the PV System are operating as represented in the design;
  - (ii) provide "as built" drawings and specifications;
  - (iii) provide for the information of the Board, if possible, a manual of operating and maintenance procedures; and

- (iv) provide copies of all permits and inspection reports from governing authorities.
- f) Ownership: THESI shall at all times during the Term be deemed to be the sole owner of the PV System.
  - g) Operations: THESI will operate the PV System at all times in compliance with all Applicable Laws; provide monitoring reports as agreed to by the parties; undertake repair, replacement or other work required to maintain to PV System in a state of good repair; permit Board staff to conduct technology tours to the Building roof, up to four (4) times a year, to allow Board staff and third parties to view the PV System and be informed as to its construction and operation; assist the Board in creating appropriate Occupant awareness of the Project; and upon the expiry of the Term, prepare and provide to the Board a final performance report.
  - h) Power Generation: THESI agrees that annual E Generation is estimated as 550 MWh for the nominal 500kW system and that all electricity generated from the PV System shall be fed back into the existing Board-owned building/facility electrical distribution system at Exhibition Place.
  - i) Grid Connections: THESI shall be solely responsible for confirming all applicable grid interconnection requirements, including assuming all responsibility and liability under any interconnection/embedded generation agreement which may be required by an electricity distributor (e.g. THESL) to be entered into by the Board and providing revenue grade metering consistent with FIT and Board requirements.
  - j) OPA Applications: The Board agrees to cooperate with THESI on any application to the OPA to allow the PV System to be accepted pursuant to the *Green Energy Act*.
  - k) Carbon/Offset Credits: The title and ownership of all potential or realized future Carbon/Offset Credits that may be derived from the PV System shall pass to the Board or the City of Toronto unless OPA retains these consistent with FIT regulations.
  - l) Shading Impacts: The Board agrees that it shall ensure that no development is permitted within Exhibition Place which shall result in a significant shading of the roofs of the BLC so as to have a substantial impact on the ability of THESI to meet the requirements of paragraph (h) above. Despite the foregoing, THESI acknowledges and agrees that the Board shall be entitled to permit the expansion of the National Soccer Stadium and the development of a hotel at Exhibition Place or development where the shading impact can be addressed by adjusting the position of the PV System at the Board's expense.
  - m) Costs: THESI be solely responsible for (i) the payment of all Project Costs and agrees that the Board shall have no liability to THESI in respect of the payment of such costs; (ii) the payment of any and all Taxes payable in connection with the PV System; and (iii) shall indemnify and save the Board harmless from any liability, claim, damages or expenses (including reasonable legal expenses) due to or arising under the *Construction Lien Act* and the failure to remove any such lien or order made against the Board.
  - n) Board's Costs: The Board shall be responsible for any roof membrane replacement or repair for the roof of the Building (save and except for repairs caused by the construction of the PV System) which may be required during the Term and agrees

that it shall undertake any such repair or replacement by the Board in a staged approach after consultation with THESI.

- o) Term: This Agreement shall be for the Construction Period and an operating term of twenty (20) years commencing upon the first day of production (as per FIT) and terminating on the 20<sup>th</sup> anniversary thereafter. On the expiry of the Term., the Board will have the following options: (1) to have the PV System removed and the BLC restored by THESI at no cost to the Board; or (2) to purchase the PV System at fair market value.
- p) Licence Fee: THESI shall pay the Board a Licence Fee which is THE GREATER OF an annual base fee of \$3000.00, adjusted annually by the amount of any increase in CPI OR 2% of the Gross Revenues received by THESI from the sale of the electrical power generated by the PV System;
- q) Warranty: THESI shall warrant the PV System and Monitoring for deficiencies in construction, workmanship, materials and design over the Term. THESI shall obtain from the manufacturer(s) of the PV System components any available warranty with respect to the performance and operation of the components
- r) Indemnification: THESI shall protect, indemnify and hold the Board and the City of Toronto, their elected representatives, officers, employees and agents, harmless from and against any and all loss, claims, actions, damages, liability and expense in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising from any breach of this Agreement by THESI, its officers, employees, agents, contractors and sub-contractors, or the wilful misconduct or negligent act or omission or delay of THESI and its officers, employees, agents, contractors and sub-contractors.
- s) Letter of Credit for Construction: THESI shall provide to the Board a Letter of Credit in the amount of 50% times the PV System value for the period of the Construction Period and up three (3) months thereafter, which shall secure the removal of any PV System equipment and the restoration of the roof in the event that the construction is not satisfactorily completed by THESI and may be drawn upon by the Board in the event that THESI after receipt of notice to do so, fails to remove the equipment and undertake any required restoration work.
- t) Insurance: THESI shall effect, maintain and keep in force, at its sole cost and expense during the term of this Agreement the following insurances:
  - (i) builder's risk insurance upon all work including equipment and/or systems to be installed by THESI or on behalf of THESI by its contractors or sub-contractors for the full replacement cost thereof including the cost of labour to complete such work or installation. Such insurance to be maintained for the period up to the issuance of the Construction Completion Certificate and to name the Board and the City of Toronto as loss payees as their interests may appear;
  - (ii) commercial general liability insurance with respect to the operations of THESI and its contractors and sub-contractors in an amount of not less than five million dollars (\$5,000,000.00) per occurrence including personal injury, employers' liability, Board' and contractors' protective, completed operations, broad form contractual liability coverage, occurrence property damage and

- provisions for cross liability and severability of interests. Such insurance shall be endorsed to add the Board and the City of Toronto as additional insureds;
- (iii) insurance upon personal property of every description and kind owned by THESI or for which THESI is legally liable, or installed by or on behalf of THESI, which is located within Exhibition Place, including, without limitation, all equipment and components associated with the PV System in an amount sufficient to cover the full replacement cost thereof, on an “all risk” basis including sprinkler leakage (where applicable), earthquake, flood and collapse. Such insurance shall contain a waiver of any subrogation rights that THESI’s insurers may have against the Board and against those for whom it is in law responsible, whether any such damage is caused by the act, omission or negligence of the Board or those for whom it is in law responsible;
  - (iv) standard owner’s automobile liability insurance on all non-owned and rented vehicles used in the operation of the PV System by THESI with limits of not less than \$2,000,000 in respect of any one accident;
  - (v) standard non-owned automobile liability insurance on all owned and rented vehicles used in the operation of the PV System by THESI with limits of not less than \$2,000,000 in respect of any one accident; and
  - (vi) professional liability insurance with limits of not less than \$1,000,000 in respect of any one claim.

Such policies of insurance shall be placed with insurers licensed to conduct business in the Province of Ontario. All policies are to be primary and not excess to any other insurance available to the Board. Each of the aforementioned policies shall be endorsed to provide the Board with thirty (30) days' prior written notice, by registered mail, of any material change that restricts or reduces the insurance required under this Agreement or any cancellation thereof;

Evidence of such insurance shall be delivered to the Board prior to the execution of this Agreement by Certificate of Insurance, satisfactory in form and detail to the Board, acting reasonably;

- u) Default: The Board may, by written notice to THESI, at any time suspend or terminate the whole or any part of THESI’s performance of the Project in the event of any of the following: THESI materially fails to perform or comply with the terms and conditions of this Agreement in a manner satisfactory to the Board, and such default is not remedied within thirty (30) days of written notice of such default delivered by the Board to THESI; THESI is declared bankrupt, makes a voluntary assignment for the benefit of creditors, becomes insolvent or is the subject of a receivership; THESI proceeds to voluntary liquidation or is dissolved; or THESI has knowingly furnished a false or misleading representation or warranty to the Board.
- v) Abandonment: THESI or the Board shall have the right to terminate this Agreement by delivering notice to such effect to the other party in the event that (i) the PV System is substantially damaged or destroyed, and cannot be repaired or re-built; or (ii) the BLC or part(s) thereof have been destroyed or expropriated such that they have become unusable for the purposes for which they were designed or the Board is

unable to carry on its business as presently carried out; or (iii) the completion of the installation of the PV System shall be delayed due to Force Majeure and THESI, acting reasonably, concludes that it cannot complete the Project or meet its performance guarantee because of this delay. Upon such termination, THESI shall be responsible for all Project Costs and all outstanding costs and commitments incurred in accordance with the term of this Agreement to the date of the event triggering the abandonment or suspension of the Project.

- w) Assignment: THESI shall not assign or transfer any or all of its rights or obligations under this Agreement without having first obtained the written consent of both of the Board, such consent not to be unreasonably withheld provided however that THESI shall, provided that it is not in breach of this Agreement, have the right to assign this Agreement to an Affiliate without the consent of the Board provided that THESI has first given notice to the Board and further provided that THESI and its Affiliate have first entered into an agreement directly with the Board in a form satisfactory to the City Solicitor, whereby the Affiliate agrees to perform, observe and keep each and every covenant, proviso, condition and agreement in this Agreement on the part of THESI to be performed, observed and kept.
- x) Termination: This agreement terminates if THESI cannot obtain a FIT contract, regulatory approvals or Toronto Hydro Corporate Board approval for the PV System by Dec.31, 2010.
- y) Additional Commercial Terms: Such other commercial terms as may be required to finalize the long form of agreement which are satisfactory to the Chief Executive Officer and the City Solicitor.