

*Change Order to:
Backup Utility Management Services
SOW No.3*

ERTH



CORPORATION

*The Corporation of the
Town of Tillsonburg*

Your Partners in Solution Delivery

Submitted on: Friday, August 11, 2023
Submitted by: ERTH Corporation

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Confidentiality Statement

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In no event shall ERTH Corporation be liable to anyone for special, incidental, collateral, or consequential damages arising from the use of this information.

This information has been provided in confidence to The Town of Tillsonburg and THI for the purpose of evaluating the following proposal from ERTH Corporation for services described within the following response.

1. Introduction

This Change Order is issued in respect to the ongoing hosting & related Services being provided by ERTH to Tillsonburg pursuant to Statement of Work No.3: Backup Utility Management Services (“SOW No.3”) and the Master Service Agreement described below.

Related Documents

This Change Order is entered into pursuant to a Master Services Agreement made between THI and ERTH dated July 26, 2021 (the "Master Agreement") and SOW No.3 executed by the parties in connection therewith.

In the event of any inconsistency between the terms and conditions of the Master Agreement and the terms and conditions of this CO, the terms and conditions of the Master Agreement will prevail except in relation to a provision in the CO that specifically identifies a conflicting provision of the Master Agreement and states that the conflicting provision of the Master Agreement does not prevail.

2. Changes to SOW No.3

ERTH’s scope of services set out in the SOW No. 3 shall be amended as follows:

(a) Section 2.1 shall be amended as reflected below:

In the event that it requires the Services, the Town will notify ERTH in writing and ERTH agrees to make commercially reasonable efforts to commence providing the Services within three (3) business days. The Services to be provided by ERTH pursuant to this SOW No.3 include:

- *Assisting Town staff and the THI Board of Directors in the general management, operation, and oversight of THI on a temporary basis*

- Assist the Town with the day-to-day running of the utility, including supervision, providing advice and assistance to inside and outside staff and assisting with setting operational priorities
 - Assisting Town staff in preparing and filing necessary financial and regulatory requirements
 - Working with staff to resolve any IESO billing issues or OEB reporting issues
 - Assisting THI/Town in ensuring operations are performed in accordance with applicable financial and regulatory framework
 - Assisting Town staff in preparing financial and regulatory reports for THI board and shareholder
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- Assistance with respect to engineering, design work, operational planning, capital planning, capacity planning, and asset management activities, as required
 - Assist Town staff in preparing operational reports for THI board and shareholder
 - Attend Town management, board and shareholder meetings, as required

For greater certainty, those services deleted from the amended Section 2.1 above shall be considered out of scope.

(b) The following language shall be added to the end of Section 2.1:

In providing the Services, the Town acknowledges and agrees that ERTH may represent and disclose that it is providing management services to THI pursuant to an exclusive relationship.

(c) Section 4 shall be deleted in its entirety and replaced with the following new Section 4:

ERTH will provide the appropriate management resources to delivering the Services in a timely and professional manner. ERTH will attend THI's offices two (2) days per week to provide Services.

(d) Section 5 shall be deleted in its entirety and replaced with the following new Section 5:

5. Term, Exclusivity, and Commitment to Negotiate

5.1. *The term of this SOW No.3 shall expire on December 31, 2024 unless extended by written agreement of both parties or an alternative agreement is negotiated.*

5.2. *During the Term, the Town and ERTH agree to use commercially reasonable efforts to commence confidential discussions regarding a potential merger of THI and ERTH Power Corporation.*

5.3. *To allow the parties to satisfy the commitment described in Section 5.2 above, and to allow ERTH to provide the Services without interference, the Town agrees not to, directly or indirectly, solicit or entertain during the Term any offer to merge THI with another entity or for the purchase of substantially all of the assets of THI (the "Exclusivity Period"), and the Town further agrees to deal exclusively with ERTH during such the Exclusivity Period with respect to THI.*

(e) The fees for the Services described in Section 6.1 shall be deleted and replaced with the fees set out below. The remaining contents of Section 6.1 are unchanged.

*The fees for the Services outlined in this SOW No.3 shall be **Ten Thousand Dollars (\$10,000) per month.***

3. Acceptance

Please acknowledge your agreement by signing and returning to us a copy of this Change Order either by mail or scanned email copy.

Accepted on behalf of:

The Corporation of the Town of Tillsonburg	ERTH Corporation
Name Kyle Pratt	Name Chris White
Signature 	Signature 
Title Chief Administrative Officer	Title President & CEO
Date August 11, 2023	Date August 11, 2023