

STAFF REPORT: Finance & IT Services



REPORT TO: Council
MEETING DATE: September 21, 2011
REPORT NO.: FIT.11.45
SUBJECT: LAS Electricity Procurement Program
PREPARED BY: Sherri Adams, Manager of Purchasing

A. Recommendations

THAT Council receive Staff Report FIT.11.45 “LAS Electricity Procurement Program”; and,

THAT Council of the Town of The Blue Mountains approve the Commodity Price Hedging Policy FIT.11.15; and,

THAT the Mayor and Clerk be hereby authorized to execute an Electricity Appointment and Retainer Agreement between The Corporation of the Town of The Blue Mountains and Local Authority Services (LAS), recognizing that as the Town’s agent, LAS will negotiate all required electricity purchases on behalf of all procurement program members and that the details of all contracts will then be communicated to all program members; and,

THAT That the CAO and the Treasurer be hereby authorized to make minor alterations to the Agreement that do not substantially change its content and intent; and,

THAT the authority to make future program related decisions for the Town of The Blue Mountains be delegated to:

1. Treasurer
2. Manager of Purchasing

AND THAT the Manager of Purchasing report back to Council with the final rates and any potential savings and future rate changes;

AND FURTHER THAT Council authorize Local Authority Services, through its appointed agent, to have access to consumption data from the local electricity utility on an as needed basis, in order to compile load profile information for the procurement program and to bill all enrolled accounts.

B. Background

Ontario municipalities can choose to be served in one of three ways for the supply of electricity:

1. The Regulated Price Plan (RPP); the rate we pay now with a fixed price set by the Province that is reset semi-annually. This plan ended for larger volume accounts (i.e. >250,000kWh) in November 2009.

2. Market pricing for interval metered accounts and larger volume municipal accounts started at November 2009: Weighted Average hourly Price (WAP) will apply to conventional meters; and Hourly Ontario Electricity Pricing (HOEP) will apply to interval meters.
3. A Retail Contract: where the price is set now for the future supply of electricity i.e. the LAS program

The Town currently purchases electricity under the Province's Regulated Price Plan (RPP) (#1 above), which is delivered by Hydro One and Collus Power Corporation. The RPP was created to provide some predictability for designated users, including residential, municipalities, universities, schools and hospitals. The RPP is a two-tiered price structure based on consumption, meaning that municipalities subsidize universities and schools by paying the same fixed rates during off-peak hours (i.e. late evening and overnight) for streetlights and other items despite the much lower actual market cost of electricity during these times.

Ontario is progressively adopting time based electricity pricing. Large volume businesses have been paying an hourly price for electricity since 2002. Homeowners have begun paying time-of-use rates with the implementation of smart meters as the program rolls out and hourly prices now apply to municipal facilities that uses more than 250,000kWh annually, as of November 2009. The current government is committed to ensuring energy conservation through the true cost of electrical power and has instructed related regulatory agencies to ensure this is the case. It is expected that municipal energy costs will increase somewhat as a result of the forthcoming move to time-of-use pricing.

Local Authority Services (LAS)

The Town of The Blue Mountains is currently a participating member of the Association of Municipalities of Ontario (AMO). A division within AMO is the Local Authority Services Ltd. (LAS). LAS was created in 1992 and is a wholly owned subsidiary company of AMO, with AMO being its sole shareholder. It is incorporated under the laws of Ontario to conduct business in this province.

LAS has developed an electricity procurement program to assist municipalities in facilitating budget processes in the post-RPP era and to achieve cost savings on electricity purchases by leveraging savings through group purchasing and by removing the impact of the move to time-of-use pricing. This program is similar in operation to their longstanding Natural Gas Procurement Program. Since the local distribution companies (LDC's), such as Collus or Hydro One, does not earn its revenue based on where electricity is purchased, purchasing electricity from LAS or any other retailer will not affect the operating results of their organization. We will still receive our distribution of power from the LDC.

LAS is mandated to work with municipalities, their agencies, boards and commissions as well as other organizations of Ontario's broader public sector to assist them in reducing the cost of their expenditures and to increase their revenues through the principles of economies-of-scale and co-operative procurement efforts.

The LAS program takes a blended approach to purchasing electricity. They purchase up to 75% of our electricity requirements from the forward market (fixed for terms from 6 months up to 1.5 years) and the remaining 25% (or more) is left to the spot market. LAS will acquire

blocks of electricity based on the requirements of the program load profile for each program purchasing pool. All LAS program tenders are competitive and involve as many as five pre-qualified suppliers.

The balance of the load requirements will be purchased on the spot market at the Hourly Ontario Energy Price (HOEP). Members can choose their desired hedging level. LAS does not allow for a hedging level of more than 75%, however members are encouraged to adopt a lower hedge level if desired – a 75% hedge ensures that there is no over-buying for any program members and leaving at least 25% of usage to the spot market provides flexibility and avoids claims of speculation.

Street lighting accounts are treated differently in the LAS program, as there is more opportunity for savings on the spot market for these accounts because most consumption is during “off-peak” hours. After we enroll, LAS will move our street lighting accounts to the spot market (we cannot do this on our own) and they will charge a fee of \$6 per account fee per month. We currently have five streetlight accounts.

By joining together in a pooled purchase, municipalities leverage economies-of-scale when they approach the market. Larger tenders attract better pricing from suppliers. Pricing realized by LAS in their calendar year 2010 purchase for 75 municipalities was 3.90 cents per kWh (all fees included) for all accounts. This translates into savings of approximately 0.6 per kWh against current RPP rates, even with the Provincial Benefit/Global Adjustment of 2.8 cents factored in. Current RPP prices (as of May 2011) are 6.8 cents/kWh (for the first 750 kWh), and 7.9 cents/kWh for all additional usage. These rates represent a 6% increase from the November 2010 RPP rates.

The LAS program charges a fixed fee of 0.1 cents per kWh for all electricity hedged on behalf of the municipality, as well as 0.05 cents per kWh for required billing and settlement services. LAS uses this fee to cover all program administration costs (including billing and settlement software and all contract development). Note that any consumption left to the spot market is not charged an administration fee. For further clarity, the fees are as follows:

- 0.15 cents per kWh for any electricity under a hedge agreement (max 75% of total consumption)
- \$6 per month for the billing and settlement of each streetlight account (note: per account, not per streetlight)

While there is no guarantee that the LAS hedged price will always be less than the RPP rates over the full period of the contract, entering into a retailer contract such as that being offered by LAS would provide budget stability for the municipality. Unlike other retailers, LAS is committed to acting in the best interest of all AMO members. If we do not join the LAS procurement program, we will continue to be subject to the volatility of market prices for our larger volume accounts (since November 2009). Moreover, if we choose to enter into a contract on our own we will have to undertake a contract development process with retailers/suppliers that is often lengthy, arduous, and costly.

The objectives of the LAS bulk hedging program are generally synonymous with municipal objectives:

- a) Facilitates Budgeting – purchasing blocks of electricity will produce stable prices for budgeting
- b) Competitive Pricing – provide savings on required purchases

- c) Maximize Purchasing Power – pooling requirements can leverage better pricing than individually.

The LAS Electricity Procurement Program has a current membership of 88 municipalities.

NEXT STEPS

LAS expects to go to market with its next purchasing group in the second week of October 2011. If the Town wishes to participate, the following must be done:

- Pass a By-law authorizing the enrolment in the program
- Complete the Agency Retainer Agreement with LAS
- Adopt a statement of policies and goals related to hedging electricity supply
- Confirm which accounts are to be enrolled.

It is recommended that the Town participate in this unique procurement program with LAS as it will allow for savings in our energy purchases.

As noted in the recommendation, Council will appoint the Director of Finance & IT Services and Manager of Purchasing the authority to make program related decisions relating to the contract. This includes but is not limited to confirming new accounts to be enrolled in the program, confirming accounts to be removed from the program and confirming hedge level changes in the future.

The Manager of Purchasing will report back to Council with final rates and potential savings upon receipt of same from LAS as available or annually.

C. The Blue Mountains' Strategic Plan

Ensuring long-term financial sustainability

Providing a strong, well managed municipal government

D. Environmental Impacts

LAS offers a complimentary energy management program that utilizes the data obtained in the electricity procurement program, that could be utilized to track energy consumption and lead to improvements in energy efficiency.

E. Financial Impact

The current market rate for electricity is 6.8 cents/kWh for the first 750 kWh per account per month and 7.9 cents/kWh for remaining monthly use. The LAS rate for electricity for 2010 was 3.9 cents/ kWh, plus administrative costs, for an estimated LAS member saving of 0.6 cents per kWh.

Based on staff analysis using 2010 billing for 4 municipal accounts, ranging from small to large users, the average savings in electricity costs alone would have been about 15% if the Town would have been involved in the LAS program. This equates to an overall cost

savings of about 8-10% when all fixed costs, delivery charges, debt repayment and taxes are considered.

The Town's current annual consumption for all Town owned properties for 2010 was approximately 4,566,238 kWh at a cost of \$565,000. On the LAS Electricity Procurement Program, the savings for the Town's 2010 consumption would have been approximately \$45,000 to \$55,000.

F. Attached

1. By-law to Authorize the Execution of an Agreement with Local Authority Services (LAS) to Provide Professional Services Regarding Price Hedging Options for Electricity and to Act as the Town's Agent (including Schedule "A" Commodity Price Hedging Policy and Schedule "B" Electricity Appointment and Retainer Agreement)

Respectfully submitted,

Signature

For more information, please contact:
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THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

BY-LAW NO. 2011 –

Being a By-law to Authorize the Execution of an Agreement with Local Authority Services (LAS) to Provide Professional Services Regarding Price Hedging Options for Electricity and to Act as the Town's Agent

WHEREAS pursuant to Section 9 of the *Municipal Act, 2001* S.O. 2001, chapter 25 a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS Section 6(1) of Ontario Regulation 653/08 made under the *Municipal Act, 2001* requires a municipality, prior to adopting a by-law authorizing a commodity price hedging agreement, to adopt a statement of policies and goals relating to the use of financial agreements to address commodity pricing and costs;

AND WHEREAS it is deemed expedient for the Council of The Corporation of the Town of The Blue Mountains to enter into an Electricity Appointment and Retainer Agreement with the Local Authority Services Ltd., (LAS), on an exclusive basis to provide professional services regarding advice on price hedging options for electricity and to act as its agent in taking certain actions related to such price hedging activity as set forth in the agreement; a wholly owned subsidiary company of the Association of Municipalities of Ontario, as Agent, to negotiate all required electricity purchases on behalf of all procurement program members;

NOW THEREFORE the Council of The Corporation of the Town of The Blue Mountains hereby enacts as follows:

- a) That the Commodity Price Hedging Policy of The Corporation of the Town of The Blue Mountains, being Policy No. FIT.11.15, attached hereto as Schedule "A" and hereby declared to form part of this By-law, is hereby adopted.
- b) That the Mayor and Clerk are hereby authorized to execute an Electricity Appointment and Retainer Agreement between The Corporation of the Town of The Blue Mountains and Local Authority Services (LAS), attached hereto as Schedule "B".
- c) That the C.A.O. and the Treasurer are hereby authorized to make minor alterations to the Agreement that does not substantially change its content.
- d) That any By-law or By-laws, or parts of any By-law or By-laws that are inconsistent with this By-law are hereby deemed repealed.

AND FURTHER that this By-law shall come into force and take effect upon the enactment thereof.

Enacted and passed this day of , 2011.

Ellen Anderson, Mayor

Corrina Giles, Clerk

TOWN OF THE BLUE MOUNTAINS

POLICY & PROCEDURES

Subject Title: Commodity Price Hedging Policy

Corporate Policy (Approved by Council)

Policy Ref. No.: FIT.11.15

Administrative Policy (Approved by CAO)

By-law No.: 2011-

Department Policy: (Approved by Mgr.)

Name of Dept.: Finance & IT Services

Date Approved:

Staff Report: FIT.11.45

Policy Statement

This policy governs the procedures regarding the evaluation and determination of Commodity Price Hedging for The Corporation of the Town of The Blue Mountains as required under Section 6(1) of the *Municipal Act, 2001* and Ontario Regulation 653/05.

Purpose

Price instability of some commodities required by the Town can lead to budgeting challenges and increased financial risk. The primary objective for the Town's Commodity Price Hedging Policy is to reduce financial risk by providing price stability and protection against the affects of adverse market conditions.

Application

This policy applies to all Financial Agreements that are entered into by the Town for the purpose of fixing future prices through commodity price hedging, as well as to those employees responsible for the control, management, or purchasing of hedging agreements.

No person shall be permitted to engage in a commodity price hedging activity using Financial Agreements except as provided for under the terms of this policy.

Definitions

Agent means an individual or organization acting on behalf of the Town to provide advice on price hedging strategy and/or to execute agreements and transaction.

Commodity means, whether in the original or processed state, an agricultural product, a forest product, a product of the sea, a mineral, a metal, a hydrocarbon fuel, electricity, a precious stone or other gem and other physical goods but does not include chattel paper, a document of title, an instrument, money or securities.

Commodity Price Hedging Agreement is a financial instrument to fix the cost and/or manage the financial risk associated with the purchase of a commodity.

Hedge means, in the context of this policy, the purchase of a commitment to acquire a specified quantity of a commodity, at a specific price, at some future point in time.

Town means The Corporation of the Town of The Blue Mountains.

Treasurer means the Treasurer for the Town of The Blue Mountains or their designate.

Procedures

Statutory Requirements

A commodity price hedging agreement may only be undertaken if the agreement is in compliance with the Ontario Regulation 653/05. Requirements include the following:

- a) The Financial Agreement must fix, directly or indirectly, or enable the municipality to fix the price or range of prices to be paid by the municipality for the future delivery of some or all of the commodity or the future cost to the municipality of an equivalent quantity of the commodity.
- b) The Town may enter into a Financial Agreement only for the future delivery of some or all of a commodity or the future cost of an equivalent quantity of a commodity. A financial agreement shall not be entered into for the purpose of speculative investing; and
- c) The Town is prohibited from selling or disposing of the Financial Agreement or an interest in the Agreement. An exception to this requirement exists if there is a sale or change of use of real property to which the Agreement applies or the Town ceases an activity for which the commodity was being acquired.

Statement of Commodity Price Hedging Policies and Goals

1. The Town will consider commodity price hedging agreements as a means of fixing, directly or indirectly, or enabling the Town to fix, the price or range of prices to be paid by the Town for the future delivery of some or all of the commodity or the future cost to the Town of an equivalent quantity, where it is advantageous for the Town to do so.
2. In determining whether a particular commodity price hedging agreement is advantageous for the Town, the following will be taken into account:
 - a) Any and all projects of the Town are projects for which commodity price hedging agreements will be appropriate;

- b) If, at any time, it is the opinion that fixed costs and estimated costs of the Town will be reduced by virtue of the use of such an agreement.
- c) If, at the time, it is the opinion that the future price or cost to the Town of the applicable commodity will be lower or more stable than it would be without the agreement;
- d) If, at the time, the project includes a detailed estimate of the expected result of using such an agreement;
- e) If, at the time, it is the opinion that the financial and other risks to the Town that would exist with the use of such an agreement will be lower than the financial and other risks to the Town that would exist without such an agreement;
- f) If, at the time, it is the opinion that the agreement contains adequate risk control measures relating to such an agreement, such as;
 - i) Limited credit exposure based on credit rating and/ or on the degree of regulatory oversight and/ or on the regulatory capital of the other party to the agreement;
 - ii) A standard agreement;
 - iii) On-going monitoring with respect to the agreement.

Approvals

Approval by Council will be required prior to commencing a hedging program for each commodity. Approval may be sought concurrently with the initial purchase of a commodity or at some point during the term of a commodity purchase contract. The subsequent financial agreements must be approved by the Treasurer.

Delegation of Authority

The Treasurer will have the overall responsibility for the commodity price hedging program which involve financial agreements and will have responsibility for directing/implementing the activities of the commodity price hedging program.

Notwithstanding, the Town may delegate specific authority to an “agent” of the Town. The authority delegated will be strictly governed by the terms of an agency contract that will be approved by Council.

Responsibilities

All officers and employees responsible for commodity price hedging agreements will follow the standard of care identified in this policy. No person shall be permitted to engage in a commodity price hedging activity using financial agreements except as provided for under the terms of this policy.

The Treasurer will be responsible for all activities undertaken and shall establish a system of controls to regulate the activities of staff and exercise control over those staff including:

- Establishing delegation of authority to persons responsible for commodity price hedging activities.
- Reviewing and recommending the financial and business aspects of any Financial Agreements to be utilized in hedging a commodity price;
- The signing and execution of documents on behalf of the Town and perform all other related acts with respect to Financial Agreements; and
- Ensuring that all reporting requirements identified within this Policy are met.

Reporting Requirements

In addition to information requested by Council or that the Treasurer considers appropriate, the Treasurer shall submit on an annual basis to Council a detailed report on all existing financial agreements. The report will contain the following information and documents:

- a) A statement about the status of the agreements during the period of the report, including a comparison of the expected and actual results of using the agreements;
- b) A statement indicating whether all of the agreements entered during the period of the report are consistent with the Town 's statement of policies and goals relating to the use of financial agreements to address commodity pricing and costs; and
- c) A statement of transactions with financial institutions.

Exclusions

None

References and Related Policies

The Municipal Act, 2001, S.O. 2001, c.25

Ontario Regulation 653/05 – Debt-Related Financial Instruments and financial agreements

Consequences of Non-Compliance

Consequences shall be commensurate with the severity of the breach of this policy.

Review Cycle

This policy shall be reviewed on a regular basis. Amendments may be made at any time at the recommendation of the Director. The appropriate authority must approve any policy changes.

This Electricity Agency Appointment and Retainer Agreement (“**Agreement**”) is made and entered into as of this ___ day of _____, 20__.

BETWEEN:

Local Authority Services Limited (“LAS”)

-AND-

The Corporation of the Town of The Blue Mountains (“Member”)

Each of the foregoing entities being referred to individually as “**Party**” or collectively as “**Parties**”.

WHEREAS the Member wishes to retain LAS on an exclusive basis to provide professional services regarding advice on price hedging options for electricity and to act as its agent in taking certain actions related to such price hedging activity as set forth herein;

AND WHEREAS the Member acknowledges that the price hedging options may include but are not limited to (i) entering into financial agreements and transactions providing a fixed contract price for a notional quantity of electricity without the physical delivery of electricity and/or (ii) entering into agreements pursuant to which the Member is billed the Hourly Ontario Electricity Price (“**HOEP**”) for all or part of its electricity needs and/or (iii) entering into agreements pursuant to which a retailer arranges for its electricity needs and the Member is billed a fixed price for all or part its electricity needs and HOEP for a portion of its electricity needs (all of which agreements or transactions referred to as “**Financial Agreements**”);

AND WHEREAS the Member wishes to enter into Financial Agreements to minimize the cost or financial risk associated with the procurement of electricity;

AND WHEREAS the Member has passed the necessary by-laws or resolutions to permit the Member to enter into Financial Agreements and transactions thereunder;

AND WHEREAS the Member has adopted a statement of policies and goals relating to the use of financial agreements to address commodity pricing and costs and has passed the necessary by-laws or resolutions authorizing LAS to act as its agent;

AND WHEREAS the Member has provided LAS with copies of the aforementioned policies, goals, bylaws or resolutions;

NOW THEREFORE THE PARTIES agree as follows:

1. **APPOINTMENT AND AUTHORIZATION OF LAS**

- 1.1 The Member appoints LAS as its exclusive agent in respect of all matters specified in this Agreement including the solicitation and analysis of offers, negotiating and execution of Financial Agreements and the management and administration associated with such Financial Agreements.
- 1.2 The Member acknowledges and agrees that LAS, as its exclusive agent has full and complete authorization and discretion to take the following actions on behalf of the Member:
- (a) access any and all information relating to the Member which is in the possession and control of the distribution utility which relates to the supply and delivery of electricity at any service address of the Member;
 - (b) negotiate on behalf of the Member Financial Agreements including the specific terms and conditions contained therein, and execute the same together with other related agreements and documents reasonably requested by the counterparty to the Financial Agreements, on the Member's behalf;
 - (c) disclose to any third party any information of the Member which is necessary to disclose for the purposes of this Agreement or any Financial Agreement or for the purpose of billing, settlement or accounts and administrative matters or for any other purpose relating to the Financial Agreements;
 - (d) as agent for the Member enter into transactions under the Financial Agreements in the name of the Member, and to execute on behalf of the Member confirmations evidencing such transactions;
 - (e) enrol, or appoint another party as the Member's retailer to enroll, the Member's electricity account(s) with the Local Distribution Company ("LDC") to ensure billing of the account(s);
 - (f) carry out or direct the Member to carry out any ongoing responsibilities of the Member specified in any Financial Agreements or exercise any rights as required to implement said Financial Agreements;
 - (g) terminate any of the Financial Agreements including any or all of the transactions under the Financial Agreements or any related agreements entered into with the counterparty to the Financial Agreements, on the Member's behalf;
 - (h) act as retailer for the Member or in the event that LAS elects not to act as the Member's retailer to contract with and otherwise appoint on the Member's behalf any third party licensed to act as retailer in the Province of Ontario as selected by LAS in its sole discretion for the purpose of acting as the Member's retailer;
 - (i) terminate any contract with or any appointment of any third party appointed to act as the Member's retailer;
 - (j) contract with and otherwise appoint any third party selected by LAS in its sole discretion for the purposes of carrying out any responsibilities of LAS contained in this Agreement (any such appointee, consultant, service provider or delegate shall be engaged on terms satisfactory to LAS); and

- (k) carry out any duties or responsibilities and take any actions on the Member's behalf not otherwise specified herein that are incidental or related to carrying out its role as agent herein.

2. **LAS OBLIGATIONS**

2.1 LAS will:

- (a) solicit and analyze offers, negotiate and where appropriate enter into Financial Agreements in the name of the Member as agent for the Member;
- (b) monitor the regulatory developments concerning electricity and where appropriate provide recommendations to the Members on Financial Agreements;
- (c) continuously search for and solicit Financial Agreements on the Member's behalf;
- (d) account to the Member for all amounts paid to or to be paid by the Member under the Financial Agreements or this Agreement;
- (e) receive information from LDC(s), settle billing amounts, receive payments due to or from the Member, and pay Financial Agreement counterparties;
- (f) notify the Member promptly of any amounts due from the Member in excess of the amounts paid by the Member to the applicable LDC(s) on account of the Financial Agreements; and
- (g) take such other action as the LAS deems appropriate in the exercise of its authority and performance of its obligations under this Agreement.

3. **MEMBER UNDERTAKINGS**

3.1 The Member will:

- (a) remain liable as principal for all obligations incurred under or relating to the Member's Financial Agreements whether arising out of actions taken by LAS or the Member;
- (b) provide all necessary accurate data to enable LAS to solicit bids, negotiate and manage new Financial Agreements prudently and as LAS believes to be in the Member's best interest;
- (c) forward to LAS all notices or other communication received by the Member relating to the Financial Agreements or services provided under this Agreement by LAS;
- (d) provide credit and financial information and collateral or performance assurances if required under any Financial Agreement or this Agreement;
- (e) keep confidential the terms of this Agreement and any of the advice, details or arrangements provided to it by LAS or any of its third party providers;

- (f) inform LAS of any statement of policies and goals relating to the use of Financial Agreements and any amendments thereto;
- (g) if requested by LAS, provide prudential support to LAS, in order to permit: (i) LAS to enter into a service agreement with the member's distributor(s); (ii) LAS to satisfy any prudential support required by the distributor under such service agreement; and
- (h) execute any such documentation as may be deemed necessary by LAS to permit LAS to undertake any of the functions specified under this Agreement including the Notice of Appointment of Agent as set forth in Appendix A to this Agreement.

3.2 The Member acknowledges that bids may be solicited by LAS and transactions under the Financial Agreements may be negotiated on behalf of a number of members. The Member further acknowledges and agrees that LAS may determine in its sole discretion whether the Member participates in any particular transaction under its Financial Agreement.

3.3 The Member acknowledges that the fixed price for any transaction under its Financial Agreements could at any time be below, above or equal to the price charged by the Member's LDC(s) or HOEP. The Member also acknowledges that the Financial Agreements will contain provisions which may result in the Member owing a termination payment following default under the Financial Agreements even though the member is not the defaulting party.

3.4 The Member acknowledges that LAS or a retailer appointed by LAS may charge and the Member agrees to pay a finance charge for each megawatt hour supplied provided that such charge reasonably represents the cost of LAS and/or its retailer (including specified affiliates) providing collateral or performance assurance under hedges or financial agreements with third party suppliers related to the Financial Agreements.

4. **LAS FEES**

4.1 The Member agrees to pay the fees set forth in Appendix B to this Agreement to LAS. The payment of these fees to LAS shall cover the costs of managing and administering the LAS electricity program on behalf of the Member including the costs of billing and settlement of accounts and the cost of any third party engaged by LAS to assist in providing services under this Agreement or under the program. The Member acknowledges that these fees may be included on the Members bill from the distributor or billed directly to the Member by the retailer.

4.2 The Member acknowledges that a retailer appointed by LAS under Section 1.2 (j), may charge the Member a finance charge as set forth in Appendix B to this Agreement, related to such retailer's obligation to provide credit assurances to a third party with which retailer has entered into a financial agreement for the benefit of the Member.

5. **TERM**

5.1 The term of this Agreement shall commence on the date of execution and shall remain in effect for an initial period of two (2) years and thereafter shall automatically renew from year to year unless and until terminated by either Party upon one hundred and eighty (180) days prior written notice; provided, however, that this Agreement and any other documents executed and delivered hereunder shall remain in effect until the last transaction entered into under any of the Financial

Agreements expires. The obligation to make payment under Section 4 and Appendix B, and the liability and indemnification provisions shall survive the termination of this Agreement.

6. **LIABILITY AND INDEMNIFICATION**

- 6.1 While LAS takes proactive measures for the protection of the Member's interests, LAS cannot provide unconditional protection from the occurrence of unanticipated and uncontrollable events resulting in adverse financial consequences for the Member. LAS does warrant that the services provided by LAS under this Agreement will be performed in a professional manner. The Member agrees that if LAS breaches this warranty in performing services provided under this Agreement, the sole and complete liability of LAS for such breach will be limited to the return of the fees paid by the Member for services under this Agreement.
- 6.2 LAS liability under or for breach of this Agreement shall not exceed the amount of fees paid by the Member under this Agreement. In no event shall LAS be liable to the Member for incidental, indirect, special, punitive, exemplary or consequential damages howsoever caused, whether for breach of warranty, in tort, for contract or otherwise even if LAS has been advised of the possibility of such damages.
- 6.3 The Member hereby indemnifies LAS, its affiliates, its respective officers, directors, energy committee members, employees, agents, sub-agents, contractors, and consultants and holds them harmless from and against all losses, costs, liabilities, damages and expenses (including without limitation reasonable legal fees) it may incur as a result of LAS acting as the Member's agent as provided herein and the Member hereby agrees that it is liable for all obligations which LAS enters into on the Member's behalf.

7. **REPRESENTATIONS AND WARRANTIES**

- 7.1 The Member represents and warrants to LAS on an ongoing basis that:
- (a) all acts necessary to the valid execution, delivery and performance of this Agreement and the Financial Agreements, including without limitation, public notice or other required procedures have or will be taken and performed as required under the *Municipal Act, 2001*;
 - (b) the authorizing by-law with respect to the Agreement and the Financial Agreements have been passed by the council of the Member in full compliance with the *Municipal Act, 2001*, the same was signed by the head of the council and the clerk and sealed with the municipal seal of the Member and no application has been made or action brought to quash, set aside or declared invalid such authorizing by-law nor has the same been in any way repealed, altered or amended and such authorizing by-law is now in full force and effect;
 - (c) the aforesaid authorizing by-law and the Financial Agreements contemplated thereby do not conflict with or result in a breach or violation of any statutory provisions which apply to the Member or any agreement to which the Member is a party or under which the Member or any of its property is or may be bound, or, violate any order, award, judgment, determination, writ, injunction or decree applicable to the Member of any regulatory, administrative or other government or public body or authority, arbitrator or court;

- (d) no litigation or proceedings of any nature are now pending or threatened, attacking or in any way attempting to restrain or enjoin the Agreement or any of the Financial Agreements as authorized under the aforesaid authorizing by-law, or in any manner questioning the proceedings and authority under which any Financial Agreements will be entered into, or the capacity of the officers of the Member authorized thereunder to enter into any Financial Agreements, and no authority or proceedings for the Agreement or any Financial Agreements have been repealed, revoked or rescinded in whole or in part;
- (e) entry into and performance of this Agreement and the Financial Agreements by the Member are for a proper public purpose within the meaning of the *Municipal Act, 2001* and the regulations made thereunder;
- (f) the Member obligations to make payments hereunder are unsubordinated obligations and are not subject to any prior claim under any agreement or financial instrument to which the Member is a party;
- (g) the Member is not now subject to any restructuring order under Part V of the *Municipal Act, 2001* or other statutory authority; accordingly, no approval of the aforesaid authorizing by-law, the Agreement or the Financial Agreements is required to be given by any transition board or commission appointed in respect of the restructuring of the Member; and
- (i) to the extent that the term of any transaction entered into under a Financial Agreement exceeds the current Member council's term, before the Member exercised any powers in respect of the transaction, the Member's treasurer calculated an updated debt limit under Ontario Regulation 403/02 and the treasurer determined that the transaction would not cause the Member to exceed its updated limit and that the approval of the Ontario Municipal Board in respect of the transaction was not required.

7.2 Each Party represents and warrants to the other on an ongoing basis that:

- (a) it has the capacity and authority to execute this Agreement and perform its obligations and has taken the necessary action to authorize the execution and performance of this Agreement and the person signing this Agreement is authorized and empowered to do so;
- (b) it has obtained or submitted any authorization or approval or notice to with any governmental authority or regulatory body that is required for the due execution, delivery and performance of this Agreement;
- (c) the execution, delivery and performance of this Agreement does not violate or conflict with any law applicable to it;
- (d) this Agreement constitutes a valid and legal binding obligations enforceable against it in accordance with its terms;

8. **MISCELLANEOUS**

- 8.1 This Agreement shall be governed by and construed in accordance with the laws of the province of Ontario.
- 8.2 This Agreement may be executed by the Parties in separate counterparts, and each executed counterpart shall have the same force and effect as the original instrument. The Parties agree to accept facsimile signatures in lieu of original signatures as evidence of the agreement of the other Party, but each Party shall deliver to the other Party an originally executed copy of this Agreement as soon as possible thereafter.
- 8.3 Each Party will from time to time and promptly upon request, sign and deliver all further documents including any notices of appointment of agent and take all further action as may be reasonably necessary or appropriate to give effect to the terms and intent of this Agreement and to complete the Financial Agreements contemplated by this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement by the duly authorized officers:

Local Authority Services Limited

The Corporation of the Town of The Blue Mountains

Nancy Plumridge

Ellen Anderson

Corrina Giles

President

Mayor

Clerk

Local Authority Services Limited
200 University Avenue, Suite 801,
Toronto, ON M5H 3C6

Town of The Blue Mountains
32 Mill Street, P.O. Box 310
Thornbury, ON N0H 2P0

(T) 416-971-9856

(T) 519-599-3131

(F) 416-971-6191

(F) 519-599-2474

Appendix A

NOTICE OF APPOINTMENT OF AGENT

THIS NOTICE OF APPOINTMENT OF AGENT is made as of the _____ day of _____, 20__.

By: _____
a municipal corporation, having offices in the _____ of _____ in the Province of Ontario (hereinafter called "Customer"),

To: **All Interested Parties**
(each a "Notified Party").

1. Appointment. Customer confirms that it has entered into a contract relating to the retail sale of electricity (the "Contract") with LOCAL AUTHORITY SERVICES LIMITED ("LAS"). In order to facilitate the retail sale of electricity described in the Contract, Customer gives notice to the Notified Party that it has appointed LAS as Customer's sole and exclusive electricity retailer and agent for purposes related to the supply of electricity to each "Service Address" and for matters relating to facilitation of such supply.
2. Enrollment. Customer authorizes and directs LAS to enroll Customer with any Notified Party. Customer approves of the switch from its current electricity supplier to LAS as its retailer.
3. Direction. Customer hereby requests, authorizes and directs Notified Party to release any and all information in such Distribution Co.'s possession and control relating to Customer and the supply and delivery of electricity to each Service Address set forth below including, but not limited to, Customer usage information, site usage history reports, credit and payment history, consumption history, utility account number and account information to LAS.
4. Effective Date. The appointments and directions are effective as of the date first set above.
5. Responsibility. Customer confirms that it has the authority to enter into an agreement for the supply of electricity to each Service Address and to appoint an agent in connection thereof.

The Corporation of the Town of The Blue Mountains

By: _____
Name: Ellen Anderson
Title: Mayor

Corrina Giles
Clek

Appendix B Fees

In accordance with Section 4.1, the Member agrees to pay LAS the following fees:

- (a) a fee of 0.1 cents per kilowatt-hour (kWh) for the notional quantity of electricity transacted under the Financial Agreements;
- (b) a fee of 0.05 cents per kilowatt-hour (kWh) for the billing and settlement services;
- (c) a fee of \$6 per month per account for all accounts billed on the spot market; and
- (d) such other fees as may be agreed upon between the retailer and/or LAS as consideration for the retailer acting as the Member's retailer.

In accordance with Section 4.2, the Member also acknowledges that LAS may hire a third party to act as retailer for Member, and that such retailer may hedge its obligations under the Financial Agreements with the Member by contracting with affiliates or third party suppliers. Further, Member acknowledges that if such retailer enters into hedges with third party suppliers related to the Financial Agreements, and such hedges require the retailer or its affiliates to provide performance assurances to the third party supplier, then the retailer may charge Member a finance fee for each megawatt hour supplied to Member to compensate retailer for the cost of providing such performance assurance, and such finance fee shall be billed under the Financial Agreement with the Member, and included on such invoice thereunder. Such finance fee shall be calculated as follows: $\text{Finance Fee/MWh} = (A \times B) / C$. Where, A = a per annum rate equal to (i) the sum of (a) 30 day LIBOR, determined by retailer, plus (b) twenty seven (27) basis points, (ii) divided by 12; B = the Aggregate Exposure (as defined below); and C = the total number of MWh being supplied by retailer to all participants in the LAS Program as of the date of determination. Member acknowledges that "C" may be equal to or greater than the number of MWh in the hedge transaction requiring credit support from retailer. For the purposes of this Section 3.4, "Aggregate Exposure" means the total of all Supplier Exposures. For the purposes of this Section 3.4, "Supplier Exposure" means, for each Supplier, the lesser of (i) the total mark-to-market exposure, if any, that retailer or its affiliates has with a Supplier who has entered into a hedge transaction with retailer, provided that if the amount is negative, then such amount shall be \$0, and (ii) the total mark-to-market exposure, if any, that retailer or its affiliates has with a Supplier under all hedge transactions with such Supplier that are associated with an outstanding transaction(s) between a Member and retailer, provided that if the amount is negative, then such amount shall be \$0.

Accepted and agreed to this ___ day of _____, 20__ by:

Local Authority Services Limited

The Corporation of the Town of The Blue Mountains

Nancy Plumridge

Ellen Anderson

Corrina Giles

President

Mayor

Clerk

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