

MEMORANDUM

To: Full Board

From: Jayne Miller, Superintendent

Date: May 4, 2011

Re: Crown Hydro, LLC Letter of Intent

For a number of years Crown Hydro, LLC ("Crown") has been interested in securing site control of land owned by the MPRB for the use of a hydroelectric facility. The MPRB property Crown is requesting to use is adjacent to the Falls of St. Anthony, the "birth place of Minneapolis", and contains several national historic sites, e.g. the James J. Hill Stone Arch Bridge, the Washburn Crosby Mills and the Pillsbury "A" Mill. The Park Board has created "Mill Ruins Park", an area which contains numerous historic building sites and building foundations. Mill Ruins Park is immediately adjacent to the historic sites and the James I. Rice and West River Road Parkways.

Crown has a license issued by the Federal Energy Regulatory Commission ("FERC") to construct and operate a hydroelectric facility. If Crown is to use MPRB land, the FERC license would need to be amended identifying the MPRB land as the site for the facility. Crown may only amend its license if it enters into a land use agreement with the MPRB for the site.

Over the last several years a number of Crown proposals for a land use agreement with the MPRB have been put forth in an effort to secure the site for a hydroelectric facility. Recently, Crown has approached the MPRB to renew discussions that may lead to a land use agreement. At the April 20, 2011 Planning Committee meeting, Crown Hydro presented their new proposal. Upon completion of the presentation and discussion, the Planning Committee directed the President and Superintendent to begin negotiations with Crown Hydro and present a proposal on the project to the full Board at the upcoming Board meeting on May 4, 2011. The Committee also directed Crown to submit a full proposal to the Superintendent and President Erwin by April 25. Despite not meeting this deadline, Crown did submit a proposal for review. The Superintendent immediately began negotiating the terms and conditions important to the MPRB that had been communicated to her.

The negotiated terms and conditions resulting from the discussion from Crown were organized into a Letter of Intent for MPRB consideration. This was optimal because the Letter of Intent does not bind the Board to the Crown project, allows for modification of the terms and conditions after board review or other input, and also provides a reasonably detailed form for MPRB consideration.

If the MPRB approves the Letter of Intent, the final review, consideration, and possible approval of the MPRB of an agreement with Crown will occur on June 15, 2011.

(Note: It is legal counsel's opinion that the approval of the resolution of the letter of Intent requires a simple majority, whereas a final approval for the use of the property by Crown will require a super majority as per the *Minneapolis City Charter*).

Prepared by: Michael Salchert, Legal Counsel, Rice, Michels & Walther, LLP
Approved by: Jayne Miller, Superintendent

RESOLUTION

Resolution Approving the execution of Letter of Intent, attached hereto as Attachment 1, to enter into an Agreement with Crown Hydro, LLC for the use of Minneapolis Park and Recreation Board (“MPRB”) land for the construction and operation of a Hydroelectric Facility, Approves holding Public Hearings Regarding the potential Hydroelectric Facility on May 18 and June 1, 2011; and Authorizing and directing Superintendent Miller to negotiate with Crown Hydro, LLC in an effort to bring to the MPRB a proposed draft of a definitive Agreement with Crown Hydro, LLC for Review and Approval

WHEREAS, the City of Minneapolis acting by and through its Park and Recreation Board (Park Board) is the fee owner of parcels of land adjacent to the Mississippi River ideally located for the construction and operation of a Hydroelectric facility;

WHEREAS, Crown Hydro, LLC has a Federal Energy Regulatory Commission license to build and operate a Hydroelectric facility. Said license is amendable with FERC approval for the USE of MPRB land;

WHEREAS, Crown Hydro, LLC and the MPRB have entered into negotiations to arrive at an agreement for Crown Hydro, LLC use of MPRB land;

WHEREAS, Attachment 1 to this resolution is the Letter of Intent representing the non-binding material terms and conditions Crown Hydro, LLC and the MPRB must successful negotiate before entering into a definitive agreement for the use of MPRB land; and

WHEREAS, the MPRB desires to direct its Superintendent to negotiate with Crown Hydro, LLC to, if possible, prepare a proposal in the form of a definitive agreement with Crown Hydro, LLC for the use of MPRB land for MPRB review and consideration for approval;

NOW, THEREFORE, BE IT RESOLVED THAT THE MINNEAPOLIS PARK AND RECREATION BOARD hereby authorizes the execution of the attached letter of Intent by the Secretary and President;

BE IT FURTHER RESOLVED that the Minneapolis Park and Recreation Board will hold Public Hearings Regarding the potential Hydroelectric Facility on May 18 and June 1, 2011; and

BE IT FURTHER RESOLVED that the Minneapolis Park and Recreation Board hereby authorizes and directs Superintendent Miller to negotiate with Crown Hydro, LLC in an effort to bring to the MPRB a proposed draft of a definitive Agreement with Crown Hydro, LLC for review and approval.

Adopted by the Park and Recreation Board
in formal meeting assembled May 4th, 2011.

John Erwin, President

Karen Robinson, Secretary

Approved:

R.T. Rybak, Mayor

May 4, 2011

Ms. Jayne Miller
Superintendent
Minneapolis Park & Recreation Board
2117 West River Road
Minneapolis, MN 55411

Re: Letter of Intent – Crown Hydro Project

Dear Superintendent Miller:

This Letter of Intent sets forth certain (i) non-binding understandings by and between the Minneapolis Park & Recreation Board and Crown Hydro, LLC for the purpose of developing a hydroelectric power production facility with a maximum capacity of 3.2 megawatts on the Mississippi River in the City of Minneapolis and which facility will use property owned and/or controlled by the Park Board, and (ii) binding agreements regarding the rights and obligations of the parties upon execution of this Letter of Intent.

The parties acknowledge and agree that, although this Letter of Intent describes their current intent, nothing contained in this Letter of Intent constitutes a legally binding agreement other than the provisions contained in paragraphs numbered 1 through 6 below under the heading “Binding Agreements,” which will be binding on the parties. Except for the Binding Agreements, there are no other legally binding obligations of any party relating to the subject matter of this Letter of Intent unless and until the parties mutually execute definitive agreement(s) related to the Crown Hydro project.

Non-Binding Intentions

1. Form of definitive agreement(s). The parties will endeavor to prepare and execute a development and use agreement or lease agreement which will allow Crown Hydro to use defined Park Board property, consistent with the property as outlined in Exhibit A, and including the First Street Tunnel for a spillway, which agreement(s) will contain, in addition to those matters specifically set forth in this Letter of Intent, customary representations, warranties, indemnities, and agreements of the parties and other customary provisions of contracts of a similar nature. The definitive agreement(s) will specifically describe, by appropriate legal description, the Park Board property to be used for the project, on both a temporary and permanent basis, such property to be verified by an appropriate title review.

2. Term of agreement(s). The term of the agreement(s) would be coterminous with the project’s license from the Federal Energy Regulatory Commission.

3. Park Board Compensation. Crown Hydro will pay the Park Board (1) \$500,000.00 at the project's commercial operation date, and (2) a minimum annual license/use fee in the amount of \$100,000.00, which base amount can increase based upon increased energy production (i.e., kilowatt-hours) over a certain amount to be agreed on by the parties. Final compensation to the Park Board is subject to Park Board approval.

4. Minimum flows over St. Anthony Spillway. Crown Hydro recognizes the Park Board's interest in maintaining a minimum of 2000 cfs over the St. Anthony Spillway, particularly during the prime viewing periods. The Park Board recognizes Crown Hydro's interest in maximizing energy production. In that regard, Crown Hydro will commit to not operate its facility where the flow of the river as measured at the St. Anthony Spillway is less than 2,000 cfs during the prime viewing periods, such best viewing periods to be worked on by the parties and set forth in the definitive agreement(s). The minimum flow plan will be set forth in an annual schedule and will be set forth in the definitive agreement(s) and is subject to final approval by the Park Board. In addition, the intent of the parties is that the Park Board will close its existing aesthetic diversion in order to maximize energy production and aesthetics over the spillway. The increased energy production from the diversion will be factored into the final compensation referred to above in paragraph no. 3.

5. Operation and Maintenance Plan. Definitive agreement(s) will be conditioned upon final approval by the Park Board of a Crown Hydro operation and maintenance plan.

6. Financing Plan. Definitive agreement(s) will be conditioned upon final approval by the Park Board of a definitive financing plan from Crown Hydro.

7. Tunnel Integrity/Facility Engineering. Definitive agreement(s) will be conditioned upon final approval by the Park Board and other agencies with jurisdiction of (1) all appropriate First Street tunnel structural modifications and engineering and public protection; and (2) site plan, and (3) facility design and engineering plans and/or drawings.

8. Noise and Vibration. Definitive agreement(s) will be conditioned upon final approval by the Park Board of a noise and vibration plan, with the intent that if the facility exceeds certain pre-determined levels, Crown Hydro will shut the facility down until it can be brought into compliance with the noise and vibration plan.

9. Historical/Cultural Resources. Definitive agreement(s) will be conditioned upon Crown Hydro's compliance with the 1998 Programmatic Agreement that governs cultural and historic resources and such agreement (or its terms) will be included in the definitive agreement(s).

10. Insurance. Crown Hydro will acquire general public liability insurance, and insurance necessary to address any potential claim, liability, property damage, casualty or personal injury associated with the facility, in commercially reasonable amounts and to be approved by the Park Board. To the extent practicable, Crown Hydro will also supplement its insurance coverage, in amounts approved by the Park Board, to insure the protection of any historic property assets and adjacent property interests.

11. Option to Purchase/Right of First Refusal. For as long as Crown Hydro owns the facility, the Park Board will have a non-exclusive option to purchase the facility at a price to be negotiated by the parties, and if the parties are unable to agree on a price, a price will be determined by a mutually agreed upon independent, third party appraiser. In addition, for as long as Crown Hydro owns the facility, the Park Board will have a right of first refusal to purchase the facility upon terms and conditions substantially similar to a verified competing offer. Any transfer of the facility to the Park Board is subject to the consent of the FERC, Xcel Energy, and other applicable third parties (if any).

12. Regulatory Permits/Legal Compliance. Crown Hydro will be responsible for obtaining all remaining environmental and regulatory assessments and/or permits, at its cost, with the support and reasonable assistance of the Park Board, including but not limited to any environmental assessment worksheets (and any environmental impact statement), water appropriation, NHPA Section 106 requirements, and any FERC amendment. Estimated schedules for completion of such remaining permitting will be included as part of the definitive agreement(s).

13. Grid Interconnection Underground. Crown Hydro will be responsible for interconnecting the facility to the Xcel Energy grid. Crown Hydro also commits to making sure that all major facility components, including any grid interconnection, are below ground, and not visible or accessible by the public.

14. Crown Hydro Utility Obligations. Crown Hydro has the burden to comply with all obligations imposed on it by Xcel Energy, including those imposed by the power purchase agreement and renewable development fund. Crown Hydro has the burden to comply with all utility obligations imposed on it by the Park Board.

15. Park Board Consultant and Staff Costs. Following execution of the definitive agreement(s), Crown Hydro will pay for the costs of Park Board staff and consultants, including reasonable attorneys' fees, up to a total cap of \$50,000.

16. Park Board Public Hearings. The Park Board will hold two public hearings with respect to the Crown Hydro project (May 18 and June 1, 2011), according to the Park Board's public hearing requirements.

17. Liens/Liabilities. Crown Hydro agrees not to encumber, or cause to be encumbered, any Park Board property, and agrees to indemnify the Park Board in the event the Park Board is required to remove any such encumbrances. Crown Hydro will assume all liabilities for construction and operation of the facility, and agrees to indemnify Park Board for liabilities not caused by the Park Board.

18. Sale to Third Party/Assignment. Crown Hydro may assign the definitive agreement(s) only upon consent of the Park Board, such consent not to be reasonably withheld. Where Crown Hydro sells the facility to any party other than the Park Board, Crown Hydro will pay the Park Board 10% of the sale price, after accounting for any applicable taxes and closing

costs (i.e., the Park Board would agree to be responsible for any costs/taxes associated with 10% of the sale).

19. Disclosure of Information. The parties recognize the requirements that the Data Practices Act, Minn. Statutes Chapter 13, imposes on the Park Board to make information available to the public. The parties agree that during the negotiations of any definitive agreement, the parties intend to keep all non-public data (as recognized in the DPA) as non-public, and any public data (as recognized in the DPA) as public. Within 30 days of any request by the Park Board, Crown Hydro will provide to the Park Board any non-public information related to the project, including financial information, engineering plans and/or drawings, or information related to operation and maintenance, regulatory compliance, and contracts.

20. Pending Legislation. Provided the parties are able to execute the definitive agreement(s), Crown Hydro agrees to suspend all efforts to have the Legislature enact HF 1440 and SF 1191 and will undertake its best efforts to have the bills removed from legislative consideration.

21. Agreement Not to Sue on the LOI. Provided the Park Board acts in good faith, and without waiving any other rights in law or equity outside the scope of this Letter of Intent, Crown Hydro agrees not to sue the Park Board on the sole basis that the parties are unable to execute definitive agreement(s) as contemplated by this Letter of Intent.

22. Miscellaneous.

(a) Car Charging Stations. Crown Hydro will provide one or more (depending on costs) metered vehicle electric charging stations for patrons of the Mill City Ruins parking lot, with revenue to be shared equally by the parties.

(b) Lighting of the Spillway. Crown Hydro will prepare at its expense a feasibility study for the purposes of lighting enhancements at the spillway.

(c) Education. Crown Hydro will provide appropriate educational/historical signage or interpretive exhibit(s), subject to Park Board approval.

Binding Agreements

1. Financing Plan. For purposes of its due diligence, the Park Board and its representatives are entitled access to Crown Hydro's properties, books, records, personnel, business and other commercial relationships related to the project.

2. Termination. This Letter of Intent will terminate on June 16, 2011, subject to any mutually agreed extension.

3. Expenses. The parties will bear their respective expenses and costs related to this Letter of Intent and up to execution of any definitive agreements contemplated, including, without limitation, attorneys' fees, accounting fees and disbursements, whether or not definitive agreements are ultimately consummated.

4. Confidentiality. Except as required by applicable law, the parties agree not to disclose the existence or terms of this Letter of Intent or information about the project considered confidential by Crown Hydro to any third party (other than its representatives on a need to know basis).

5. Governing Law. This Letter of Intent shall be governed by and construed in accordance with the laws of the State of Minnesota applicable to agreements made and to be performed therein without giving effect to conflict of law principles.

6. Counterparts. This Letter of Intent may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Very truly yours,

CROWN HYDRO, LLC

By: _____

Its:

If the foregoing accurately sets forth your understanding, please execute where indicated below and return a fully executed copy of this Letter of Intent to my attention.

Minneapolis Park & Recreation Board

By: _____
Name:
Title:

By: _____
Name:
Title:

- c: Jayne Miller, Superintendent, Minneapolis Park & Recreation Board
- John Erwin, Chair, Minneapolis Park & Recreation Board
- Don Siggelkow, Minneapolis Park & Recreation Board
- Michael Salchert, Esq.
- Brian Rice, Esq.
- Tim Keane, Esq.

Todd Guerrero, Esq.
Joel Toso, Wenck Associates, Inc.

4920415_2.DOC

EXHIBIT A

(This property description is subject to change based on a comprehensive title search and/or land survey as necessary for the proposed Hydroelectric project).

A STRIP OF LAND 30 FT WIDE ADJ THE
NELY LINE OF LOT 1 AUD SUB NO 32 EX
HWY

THAT PART OF GOVT LOT 10 IN SEC 23
TWP 29 RG 24 LYING NWLY OF THE NLY
EXTENSION OF CTR LINE OF PORTLAND
AVE S AND LYING SELY OF 3RD AVE S

BEG AT MOST SLY COR OF LOT 6 AUD SUBD
NO 32 TH NWLY TO MOST SLY COR OF LOT
2 THOF TH ON AN ASSUMED BEARING OF
N 29 DEG 23 MIN 40 SEC E ALONG SELY

COM AT MOST SLY COR OF LOT 2 AUD SUBD
NO 32 TH ON AN ASSUMED BEARING OF N
29 DEG 23 MIN 40 SEC E ALONG SELY
LINE OF SAID LOT 2 DIS 22.4 FT TH N