

**THE CORPORATION OF THE CITY OF KENORA**

**BY-LAW NUMBER 147 - 2009**

**A BY-LAW TO EXECUTE AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF KENORA AND THE KENORA HYDRO ELECTRIC CORPORATION LTD.**

**WHEREAS** By-law Number 39-2003 established a contractual relationship between the Corporation of the City of Kenora and the Kenora Hydro Electric Corporation Ltd.; and

**WHEREAS** the Kenora Hydro Electric Corporation Ltd. and the Corporation of the City of Kenora are affiliated corporations; and

**WHEREAS** the Corporation of the City of Kenora and the Kenora Hydro Electric Corporation Ltd. wish to modify the existing contractual relationship previously established by By-Law 39-2003;

**NOW THEREFORE** the Council of the Corporation of the City of Kenora enacts as follows:

1. THAT the Corporation of the City of Kenora enters into an Agreement with the Kenora Hydro Electric Corporation Ltd., and that this Agreement forms part of this By-law as Attachment "A".
2. THAT the Mayor and Clerk be hereby authorized to execute the Agreement on behalf of The Corporation of the City of Kenora.
3. THAT By-law Number 39-2003 shall be repealed effective 1 January, 2010.
4. THAT this By-law, including the Agreement as outlined in Attachment "A" shall be in effect from the 1<sup>st</sup> day of January, 2010.

**By-law read a First & Second Time this 19<sup>th</sup> day of October, 2009.**

**By-law read a Third & Final Time this 19<sup>th</sup> day of October, 2009.**

**THE CORPORATION OF THE CITY OF KENORA:**

.....L. Compton, MAYOR

.....J. McMillin, CLERK

## **MAINTENANCE AND SERVICE AGREEMENT**

### **THIS MAINTENANCE AND SERVICE LEVEL AGREEMENT**

is entered into as of

**January 1, 2010.**

### **BETWEEN**

**KENORA HYDRO ELECTRIC CORPORATION LTD. (the “Corporation”),**  
a corporation incorporated under the laws of Ontario

- and -

**THE CITY OF KENORA (the “City”).**

### **WHEREAS:**

- (1) The Corporation is a licensed distribution company ED-1999-0240 that supplies electricity within the service area of the City, which is the municipal boundary of the former Town of Kenora and part of the former Town of Keewatin from the eastern boundary of Keewatin, westerly to Keewatin Beach Road, southerly to Lake-of-the-Woods, and northerly to Darlington Bay;
- (2) The City is the sole proprietor of the Corporation and an “affiliate”, as defined by section 1 of the *Ontario Business Corporations Act 2002*;
- (3) The Corporation shares and/or utilizes services and/or resources with the City, it shall do so in accordance with this Agreement; and
- (4) It is a condition precedent for the sharing of services or resources that the Corporation and the City enter into this Agreement pursuant to the *Affiliate Relationships Code for Electricity Distributors and Transmitters*, which sets conditions on the business relationships between local distribution companies and any affiliated company by providing a clear separation between the regulated and non-regulated parts of the Corporation’s business.

**NOW, THEREFORE IT IS AGREED THAT** in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## **1. Services Provided Under this Agreement**

### **1.1 Reading, Billing and Service**

1.1.1 The Corporation covenants and agrees that:

- (a) it shall perform all water meter reading as required for the City (“**Reading**”)
- (b) it shall perform certain billing functions as required for the City (“**Billing**”)
- (c) it shall provide the Reading and Billing in reasonable quantities that are sufficient for the area serviced by the Corporation;

1.1.2 The City covenants and agrees that:

- (a) it shall provide for services, including, but not limited to, customer service, billing, collections, cashiering, accounting, payroll, general administration, information technology, records keeping, and regulatory compliance on behalf of the Corporation (“**Service**”), or as more accurately outlined in *Schedule A* attached hereto, which may be amended or updated from time to time to reflect prevailing circumstances;
- (b) it shall provide the Service in reasonable quantities that are sufficient for the area serviced by the Corporation;
- (c) it shall provide and maintain the quality of Service at least equal to the service levels required by the Ontario Energy Board (“OEB”) for the term of the Agreement; and
- (d) it shall provide sufficient information to the Corporation to make all necessary filings and reports to the OEB with respect to the levels of Service as the OEB may require from time to time.

### **1.2 Failure to Maintain Reading, Billing and Service Levels**

In the event the parties fail to maintain Reading, Billing and Service at levels referred to in Section 1.1 during the term of this Agreement:

- (a) either party shall be entitled, at its own expense, to retain a professional in the industry to review and analyze all relevant records and reports of the other to determine proper Maintenance, Reading and Service levels; and

- (b) the Corporation and the City shall meet to discuss remediation and agree, acting reasonably, on the appropriate course of action to be taken.

### **1.3 Apportionment of Risk**

In the case of any actions that may arise during the course of this Agreement, each of the Corporation and the City shall:

- (a) indemnify, defend and save harmless the other from all fines, suits, proceedings, liabilities, losses, damages, costs, expenses, claims, demands or actions of any nature or kind whatsoever caused directly or indirectly related to the assets or operations which are the subject of this Agreement through a failure of either party to fully perform its obligations under this Agreement;
- (b) be individually responsible for all liability which results from:
  - a. the operations of the Corporation or the City;
  - b. any products, goods or materials brought onto the property or used by the Corporation or the City; or
  - c. any risks related to the under or over provision of Reading, Billing or Service provided by either of the parties.

### **1.4 Equal Access**

The Corporation and the City shall take all reasonable steps to ensure:

- (a) that either party does not knowingly use either the Corporation's or the City's name, logo or other distinguishing characteristics in a manner which would mislead consumers as to the distinction between the Corporation and the City;
- (b) that either party does not purposely imply in its marketing material favoured treatment or preferential access to the other. If either party becomes aware of any significant inappropriate marketing activity by the other, it shall:
  - a. immediately take reasonable steps to notify affected customers of the violation;
  - b. take necessary steps to ensure the other party is aware of the concern; and

- c. inform the Director of Licensing at the OEB of such activity and the remedial measures that were undertaken.
- (c) Requests by the City for access to the Corporation's transmission and distribution network or for utility services shall be processed and provided in the same manner as would be processed or provided for similarly situated non-affiliated parties;

### **1.5 Conduct of Work**

In connection with the terms of this Agreement, each of the Corporation and the City shall ensure:

- (a) their respective employees, agents, contractors and subcontractors are duly qualified under any applicable federal and provincial laws; and
- (b) that all work performed by their respective employees, agents, contractors and subcontractors are in compliance with any applicable federal and provincial laws.

### **2. Pricing**

In determining the price which either party shall charge the other, special consideration must be given to the circumstances of the transaction, specifically:

- (a) where either party performs the Reading, Billing or Service or shares a resource with the other, both parties shall ensure that the sale price is no more than the fair market value of the Reading, Billing, Service or resource;
- (b) in performing the Reading and Billing for the City, the Corporation shall charge the City a rate no less than the actual cost of providing that Reading and Billing and no greater than the fair market value;
- (c) in performing the Service for the Corporation, the City shall charge the Corporation an allocation of related expenditures based on budgeted expenditures and all other reasonable costs, which shall be negotiated annually based on budgeted expenditures and projected volumes/share of activity, but in any event, no more than fair market value; and

- (d) where a fair market value is not available for any Reading, Billing, Service or resource, the cost-based price of producing the service or resource shall be used.

### **3. Financial Transactions**

#### **3.1 Cost Allocation**

Both parties shall be individually responsible for obtaining and maintaining in force, and charging at actual cost and expense, as applicable, all necessary licenses, permits and approvals in respect of providing the Reading, Billing or Service on behalf of the other.

#### **3.2 Financial Support**

The Corporation or the City shall ensure that any loan, investment or other financial support provided to the other is provided on terms no more favourable than what the Corporation or the City would be able to obtain on its own from the capital markets.

### **4. Confidentiality**

Where the Corporation or the City shares information services with the other, all information relating to a consumer, retailer or generator (“Confidential Information”) must be protected from access by the other unless:

- (a) either party receives the consent of that consumer, retailer or generator for release of the Confidential Information;
- (b) the Confidential Information is for:
  - a. billing or market operation purposes;
  - b. the purpose of complying with a legal or law enforcement requirement; or
  - c. the processing of past due accounts of the consumer that has been passed to a debt collection agency;
- (c) the Confidential Information may also be disclosed where the information has been sufficiently aggregated such that any individual consumer, retailer or generator’s information cannot reasonably be identified. If such information is aggregated, it must be disclosed on a non-discriminatory basis to any party requesting the information.

## **5. Record Keeping and Reporting Requirements**

### **5.1 Maintenance of Records**

- (a) the parties shall maintain updated records in a form and manner as prescribed by the OEB so as to be able to substantiate compliance with the *Affiliate Relationships Code*, and provide such information to the OEB as requested; and
- (b) in any event, the City shall maintain the financial and accounting records on behalf of the Corporation as an independent entity separate from the financial records of the City.

### **5.2 Transactions over \$100,000.00**

Where the total cost of transactions with the City exceeds on an annual basis \$100,000.00, the Corporation shall maintain, and make available upon request by the OEB, separate records showing:

- (a) the nature of the relationship amongst the City and the Corporation;
- (b) the product or service in question;
- (c) the form of price or cost determination; and
- (d) the start date and expected completion date of the transaction.

## **6. Dispute Resolution**

An agreeable arbitration process shall settle any dispute, controversy or claim arising out of or in connection with, or relating to, this Agreement, or the performance, breach or validity thereof.

## **7. Applicable Law**

This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of such province and all court competent to hear appeals therefrom.

## **8. Severability**

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each provision is hereby declared to be separate, severable and distinct.

## **9. Amendments and Waivers**

No amendment or waiver of any provision of this Agreement shall be binding unless consented to in writing, or as specified in the Agreement. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver otherwise provided.

## **10. Term**

The term of this Agreement shall commence upon the date of execution hereof for a period of 5 years. Upon agreement, the parties may renew this Agreement no later than six (6) months from the end of the term for an additional period of 5 years.

## **11. Termination**

Either party may terminate this agreement with written notice. Where notice is provided prior to June 30, the agreement termination date shall be no sooner than December 31 of that year. Where notice is provided after June 30, the agreement termination date shall be not less than six months from the day written notice was provided.

## **12. Counterparts**

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement.

**IN WITNESS WHEREOF** this Agreement has been executed by the Parties.

**KENORA HYDRO ELECTRIC CORPORATION LTD.**

By: \_\_\_\_\_  
Dave Sinclair, President & CEO

By: \_\_\_\_\_  
Gerry Lucas, Chair

**THE CITY OF KENORA**

By: \_\_\_\_\_  
Len Compton, Mayor

By: \_\_\_\_\_  
Joanne McMillan, City Clerk

- SCHEDULE A -

APPENDIX TO SERVICES PROVIDED

**1. GENERAL RULES GOVERNING THIS AGREEMENT**

- A) This Agreement is based on the City and the Corporation having an affiliate Relationships as described in the Affiliate Relationships Code for Electricity Distributors and Transmitters.
- B) The City is not an energy service provider as described in the Affiliate Relationships Code for Electricity Distributors and Transmitters.
- C) The City is authorized to use the Corporation's logo for all information sent to customers on behalf of the Corporation.

**2. SCOPE OF CUSTOMER SERVICE, CASHIERING, BILLING & COLLECTING ACTIVITY**

- A) The City shall provide appropriate staff to administer and execute the following:
  - (a) initiation and maintenance of customer files that either party receives, including the consent of that consumer, retailer or generator for release of the Confidential Information;
  - (b) processing of customer inquiries, orders and adjustments;
  - (c) printing and mailing of regular customer billings on the basis of completed billing calculations as supplied by the Corporation;
  - (d) preparation and mailing of informational pamphlets with the regular customer billings as required;
  - (e) receipt and application of customer payments;
  - (f) such measures as may be required from time to time to effect the timely collection of accounts in arrears, including but not limited to the cut-off of power supply to the subject customer.
- B) The City shall ensure that its staff shall be adequately trained by enrolment in applicable courses pertaining to job function.
- C) The City shall supply all materials and services related to the provision of customer service, cashiering, billing and collecting and related training, as

outlined in Paragraphs A and B above. These materials and supplies shall include the costs of general office supplies and services, postage, billing forms and envelopes, as well as costs of maintenance of the HTE hardware and software as applicable to the water and sewer billing.

- D) The Corporation shall provide appropriate and adequately trained staff to administer and execute the following:
  - (a) the recording of customer consumption;
  - (b) the maintenance of consumption meters in good working order, according to the requirements of the Federal Ministry of Consumer and Corporate Affairs or the ultimate governing authority;
  - (c) the provision of billing services, including generation of any required and related work orders for water and sewer services, as well as costs of maintenance of the HTE hardware and software as applicable to the hydro billing;
  - (d) the performance of any required hydro related work orders, including cut-offs.
- E) The Corporation shall supply all materials and services related to the provision of meter reading and maintenance, as outlined in Paragraph D above.
- F) The Corporation shall take all reasonable steps to ensure the City is informed of all changes of meters and related specifications related to customer service and collecting on a timely basis.
- G) The Corporation shall not provide services to new customers without prior approval from the City customer service and/or collection staff.

**3. SCOPE OF FINANCIAL & ACCOUNTING RECORDS KEEPING ACTIVITY**

- A) The City shall provide appropriate staff to administer and execute the following:
  - (a) maintenance of all financial and accounting records; according to Generally Accepted Accounting Principles (GAAP);
  - (b) back-up documentation as required by the Corporation's Board of Directors and/or the Ontario Energy Board (OEB);

#### **4. SCOPE OF PAYROLL & BENEFITS RECORDS KEEPING ACTIVITY**

- A) The City shall provide appropriate staff to administer and execute the following:
  - (a) maintenance of payroll records and administration of pay for the employees of the Corporation;
  - (b) maintenance and administration of benefits of the employees of the Corporation;
  - (c) preparation and mailing of informational pamphlets with employee pay deposit receipts as required

#### **5. SCOPE OF INFORMATION TECHNOLOGY SERVICES**

- A) The City shall provide appropriate staff to administer and execute the following:
  - (a) set up and access to the internet;
  - (b) access to and maintenance of the HTE system;
  - (c) troubleshooting of all computer, application and internet problems encountered by the Corporation's employees.

#### **6. SCOPE OF GENERAL ADMINISTRATION & REGULATORY COMPLIANCE SERVICES**

- A) The City shall prepare any required documentation for necessary filings and reports to the OEB related to information generated with respect to Service provided by the City for the Corporation as the OEB may require from time to time.
- B) The Corporation shall ensure that all updates and changes relating to the electricity market are communicated to the appropriate employees.

#### **7. PAYMENT OF MONIES**

- A) On or before the 15<sup>th</sup> of the following month, the City shall remit to the Corporation the total amount of current billing, including such late payment charges levied and collected during the month.
- B) On or before the 15<sup>th</sup> of the following month, the Corporation shall remit to the City its payment for billing and collecting services, calculated as one twelfth (1/12<sup>th</sup>) of the total annual charge.

## **8. SETTLEMENT OF BAD DEBTS**

- A) The City requires both Council and Board approval to remove accounts as uncollectible from active receivables. Once accounts are deemed by the City to be uncollectible, and approved by both Council and the Board, those accounts shall be removed from the City's active receivables list and their collection settled between the City and the Corporation on the basis of an equal sharing of the bad debt.
  
- B) Either of the parties shall be entitled to pursue the collection of bad debts, provided that both parties agree that vigorous collection of the debt should be undertaken and that both parties agree to share in the costs of that collection. In the event that one party is not prepared to pursue the collection of a bad debt, the other party shall be entitled to take whatever action is necessary to collect the debt, provided that party is solely responsible for all charges and expenses incurred in the collection. In the event that the debt is collected either in whole or in part, the expense incurred collecting the debt shall be paid first and thereafter, the amount collected shall be paid equally to each of the parties herein.