



**City of Kingston  
Report to Council  
Report Number 16-098**

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<b>To:</b>	<b>Mayor &amp; Members of Council</b>
<b>From:</b>	<b>Gerard Hunt, Chief Administrative Officer</b>
<b>Resource Staff:</b>	<b>Susan Nicholson, City Solicitor</b>
<b>Date of Meeting:</b>	<b>March 22, 2016</b>
<b>Subject:</b>	<b>Service Agreements – Utilities Kingston and the City of Kingston</b>

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**Executive Summary:**

In 2000, the City of Kingston entered into an agreement with the newly incorporated business corporation, Utilities Kingston, to provide services related to the operations and management of the municipally owned utilities. This decision was made in order to enable the municipal utilities to continue to take advantage of the multi-utility model and continue the operation of the municipal utilities along with the electricity business that was required to be transferred to Kingston Hydro under the *Energy Competition Act*.

In 2015, an exercise was undertaken to review the existing agreement and to revise the agreement to capture the changes of the past 15 years.

Some of the changes include the addition of language to the preamble to better reflect the nature of the collaborative relationship that exists between the parties, amendments to the obligations of the parties, amendments to insurance and additional detail in the scope of work outlining the responsibilities.

With respect to the obligations of the parties, language has been included to specifically indicate that the City of Kingston is obligated to ensure compliance with the *Safe Drinking Water Act, 2002*, an obligation that cannot be contracted out.

**Recommendation:**

**That** Council authorize the Mayor and Clerk to renew the agreements between 1425445 Ontario Limited (Operating as Utilities Kingston) and the City of Kingston, in a form satisfactory to the Director of Legal Services, in order for Utilities Kingston to continue to provide the management and operations of municipally owned utilities and for the City to continue to provide services to Utilities Kingston.

March 22, 2016

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**Authorizing Signatures:**

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER

**Gerard Hunt, Chief Administrative Officer**

**Consultation with the following Members of the Corporate Management Team:**

Cynthia Beach, Corporate & Strategic Initiatives

Lanie Hurdle, Community Services

Not required

Denis Leger, Transportation, Facilities & Emergency Services

Not required

Jim Keech, President and CEO, Utilities Kingston

Desiree Kennedy, Chief Financial Officer & City Treasurer

Not required

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**Options/Discussion:**

In 2000, in response to the requirements of the *Energy Competition Act, 1998*, the Council of the City of Kingston approved the formation of what would become Kingston Hydro and Utilities Kingston. At amalgamation, the City had brought together all the utilities services under a department of the City that was branded as Utilities Kingston. The multi-utility model provided benefits in cost savings and customer service for utilities customers that Council wished to retain.

In order to satisfy both the goal of retaining the multi-utility model and the requirements of the legislation, a model of multiple corporations and management contracts was proposed. Kingston Hydro was created to function as the owner of the electricity assets and Utilities Kingston was created to provide asset management and operations services for Kingston Hydro, as well as the utilities that are owned by the City of Kingston. In order to maximize efficiencies, many central services (e.g. Legal, Finance, Information Services etc. ) were to continue to be provided by the City of Kingston.

Three contracts were put in place: one between Utilities Kingston and Kingston Hydro which is not discussed in this report and two agreements between the City and Utilities Kingston, one that covered the services that the City has elected to purchase from Utilities Kingston and one that speaks to the services that the City provides to Utilities Kingston. Neither of these contracts included a specific termination date and the scope of work that was identified was at a very high level.

In the absence of a termination date, the parties agreed that it would be good practice to review and update the contracts and an exercise to do this was undertaken in 2015. The review resulted in a recommendation to enshrine in each contract an understanding that there is a partnership relationship between the parties that has provided benefits to the community.

In addition, it is proposed that there be updates to the contract language in areas such as the provision of insurance, confidentiality, and record keeping and the scope of work for each contract was further developed to better reflect the responsibilities of each of the parties as it is now understood with fifteen years of experience.

**Existing Policy/By-Law:**

Contracts for service approved at the meeting of City Council September 14, 2000.

**Notice Provisions:**

None required

**Accessibility Considerations:**

None

**Financial Considerations:**

None

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**Contacts:**

Jim Keech, President and CEO, Utilities Kingston

**Other City of Kingston Staff Consulted:**

Desiree Kennedy, Chief Financial Officer and Treasurer

Cynthia Beach, Commissioner, Corporate and Strategic Initiatives

David Johnston, Chief Information Officer

Colleen Gareau, Director, Strategic Communications

Susan Nicholson, Director, Legal Services

Nancy Taylor, Vice President, Utilities Kingston

**Exhibits Attached:**

Exhibit A – Agreement with Utilities Kingston to provide services to the City of Kingston

Exhibit B – Agreement for the City of Kingston to provide services to Utilities Kingston

## SERVICES AGREEMENT

This Agreement made this XX day of XXXXX, 2016

Between:

The Corporation of the City of Kingston (the “City”)

and

1425445 Ontario Limited (“Utilities Kingston”)

WHEREAS the City of Kingston is the sole shareholder of Utilities Kingston;

AND WHEREAS the cooperative relationship between the City of Kingston and its affiliate corporations is of significant importance to the overall efficiency and effectiveness of delivery of services to the Kingston community;

AND WHEREAS the City of Kingston and Utilities Kingston are independent corporations that have worked together and developed operational and cost efficiencies in the delivery of services through cooperative efforts including joint project management and integration that supports increased operational capacity, better service delivery and the ability to take on larger more complex initiatives for both organizations;

AND WHEREAS the City of Kingston and Utilities Kingston agree that an integrated relationship has developed where each is an important partner in providing the services necessary to advance the operational objectives of each corporation;

AND WHEREAS Utilities Kingston has agreed to provide the services as described in Schedule “A” in a diligent and timely manner in accordance with this Agreement;

NOW THEREFORE the management of each corporation is charged with ensuring ongoing integrated operations and, following the terms and conditions herein;

THIS AGREEMENT WITNESSES that, in consideration of the mutual covenants and agreements herein contained, the parties hereby agree with each other as follows:

**1.0 DEFINITIONS**

- a) “City owned utilities” include water, wastewater, natural gas, street lights, traffic signals, and appliance rentals;
- b) “Records” means the accounting and record keeping system maintained by Utilities Kingston;
- c) “Prudent Industry Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the utility industry in Ontario or any of the practices, methods and acts which in the exercise of reasonable judgement in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost, consistent with good business practices. Prudent Industry Practice is not intended to be limited to the optimum practice, method or act, exclusive of all others, but rather is intended to include prudent practices, methods and acts generally accepted in Ontario.

**2.0 TERM**

The term of the Agreement shall commence on **XXXXXX** and continue hereafter until terminated as set out in Article 16.0.

**3.0 OBLIGATIONS OF THE CITY**

- a) The City shall be responsible for the approval of rates and charges for the services provided under this contract by Utilities Kingston to customers in the City of Kingston.
- b) The City shall be responsible for approval of the capital and operating budgets for the City owned utilities managed by Utilities Kingston.

- c) The City shall be responsible for the approval of all necessary by-laws with respect to City owned utilities.
- d) The City shall be responsible for ensuring compliance with applicable legislation, including the provisions of s. 11 of the *Safe Drinking Water Act, 2002*.
- e) The City may, at any time and at its own expense conduct an audit of the management and operations of the services provided under this contract.

#### **4.0 OBLIGATIONS OF UTILITIES KINGSTON**

- a) Utilities Kingston shall be responsible for all aspects of the operation, maintenance, and management of the services provided under the terms of this Agreement and to provide such services in accordance with Prudent Industry Practice, including without limitation, providing all necessary staff to operate and manage the services.
- b) Utilities Kingston shall abide by and ensure that its officers, employees, agents and representatives abide by the provisions of all applicable municipal, provincial and federal legislation. The foregoing obligation shall survive the termination of this Agreement and shall continue until any applicable statutory limitation period has expired.
- c) In fulfilling its duties and responsibilities pursuant to this Agreement, Utilities Kingston agrees to comply with all reasonable instructions received from the City.

#### **5.0 RECORDS**

- a) Utilities Kingston shall keep Records on the services provided, conforming to the requirements prescribed from time to time by the City and in accordance with the City's records management and retention by-laws.

- b) Utilities Kingston shall keep records associated with the services provided to the City separate from any records associated with any other activities carried on by Utilities Kingston.
- c) Utilities Kingston shall furnish the City with an annual report on services provided and costs to manage and deliver same. The City will be provided with access to such records, including copies of documents therefrom as the City may require from time to time.
- d) Utilities Kingston agrees that the City shall have the right to enter Utilities Kingston's premises during business hours, or such other hours as may be necessary, to conduct an audit of Utilities Kingston's records in respect of the management and operation of the City owned utilities and the provision of services pursuant to this Agreement.

## **6.0 CONFIDENTIAL INFORMATION**

The parties recognize that in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O 1990 and *Personal Information Protection and Electronic Documents Act* (PIPEDA) all records that Utilities Kingston receives from the City relating to specific customers is confidential information and Utilities Kingston undertakes that such confidential information shall not be disclosed by it, except as may be necessary in the proper discharge of its duties under this Agreement or as legally required, or used for any purpose other than the specific business purposes for which it received the confidential information. Utilities Kingston shall ensure that those employees who have access to such confidential information understand and agree to abide by Utilities Kingston's undertaking. The foregoing obligation shall survive the termination of this Agreement.

## **7.0 MANAGEMENT AND PERSONNEL**

- a) Utilities Kingston acknowledges that it is solely responsible for the control and management of its employees.



- b) Utilities Kingston shall provide sufficient qualified and competent management, supervisory and operations personnel and support services to provide the management and delivery of the services under this Agreement.
- c) Utilities Kingston shall be responsible for its workforce policies and procedures including compliance with applicable collective agreements, federal and provincial legislation including without limitation, occupational health and safety, employment standards, federal and provincial income taxes, insurance premiums, contributions to benefit and compensation plans and any other management and employment related obligations. Utilities Kingston shall maintain in good standing WSIB premiums, pursuant to provincial law covering all eligible employees who may be employed to provide services under this Agreement.

## **8.0 PAYMENTS**

- a) The City agrees to reimburse Utilities Kingston on an actual cost recovery basis for those services provided in fulfillment of this Agreement. Utilities Kingston is responsible to ensure that its accounting methods and procedures accurately allocate those costs and expenses associated with the provision of services to the City under this Agreement.
- b) The City acknowledges that it is responsible for all capital and operating expenses incurred by Utilities Kingston in its capacity as the management company for the City owned assets and utilities. For greater certainty this includes all expenses, accrued or otherwise, that are calculated in accordance with the applicable required accounting standards of Utilities Kingston. For any accrued expenditures that do not require a cash outlay in the immediate 365 days from accrual, such as employee future benefits, the City acknowledges that it is responsible for these expenditures and an appropriate accounting entry will be set up on the City's accounting records and Utilities Kingston's accounting records to reflect the fact that the City

will be required to fund the payment to Utilities Kingston upon the request of Utilities Kingston.

- b) The City may, at its own expense, conduct an audit of Utilities Kingston's financial records, including the allocation of costs and expenses under this Agreement.

## **9.0 INSURANCE**

Utilities Kingston shall obtain and keep in force during the term of this Agreement, for the protection of Utilities Kingston and the City insurance coverage as follows:

- a) Comprehensive general, bodily injury and property damage liability insurance with limits of not less than \$25,000,000 inclusive per occurrence for bodily injury, death and damage to property including loss thereof.
- c) Automobile liability insurance with respect to its licensed vehicles which have limits of not less than \$25,000,000 per occurrence endorsed to provide both parties with not less than 15 days' notice in advance of any cancellation, change or amendment respecting coverage:
  - i) Standard non-owned automobile policy including standard contractual liability endorsement;
  - ii) Standard owners' forms automobile policy providing third party liability and accident benefits insurance and covering licensed vehicles owned or operated by or on behalf of Utilities Kingston.
- e) Such other coverage as may be agreed upon by the parties, including contracts between Utilities Kingston and any third parties, whereby the City's interests will also be insured.

- f) Utilities Kingston and the City shall be the named insureds on such coverages, with loss payable to Utilities Kingston and the City as their respective interests may appear.
- g) The City and Utilities Kingston agree that the amounts of insurance coverage may be amended from time to time as agreed to by the parties.

#### **10.0 INDEMNIFICATION**

The parties shall defend, fully indemnify and hold harmless each other and their respective officers, employees, agents and representatives, from any and all manner of actions, causes of action, proceedings, claims, demands, penalties, fines and costs, including without limitation, all legal costs and disbursements that might be incurred, which other party may suffer, or which may hereafter be sustained or incurred by reason of, or in any way arising out of, such damage, loss or injury, including death to any property or person, as a result of its failure or negligence, or its failure at any time to comply with the provisions of this Agreement.

#### **11.0 AUTHORIZED REPRESENTATIVES**

- a) The City hereby appoints the Chief Administrative Officer as its authorized representative to deal with Utilities Kingston, with authority to act for and on behalf of the City respecting the day to day administration of this Agreement.
- b) Utilities Kingston hereby appoints the President and Chief Executive Officer of Utilities Kingston as its authorized representative to deal with the City, with authority to act on behalf of Utilities Kingston respecting the day to day administration of this Agreement.

#### **12.0 FAILURE TO COMPLY**

The failure of either party to enforce or insist upon compliance with any of the terms and conditions of this Agreement, or a waiver of any default under this

Agreement, shall not constitute a general waiver or relinquishment of any such term or condition, or of any subsequent default of the same or any other term or condition of this Agreement, but the same shall be and remain at all times in full force and effect.

### **13.0 FORCE MAJEURE**

Neither of the parties shall be liable for delay in or failure to perform their respective obligations under this Agreement when such failure is caused by events beyond the reasonable control of either party, such as fire, explosion, flood, act of God or inevitable accident, civil disorder or disturbance, vandalism, war, riot, sabotage, weather or energy related closings, governmental actions or regulations, nor for real or personal property destroyed or damaged due to such events; in the event of catastrophe, the parties' obligations shall cease until the cause of such delay or failure is resolved or repaired. The parties shall explore all reasonable avenues available to avoid or resolve events of force majeure in the shortest possible time.

### **14.0 LABOUR DISRUPTION**

In the event of a labour disruption, including a walk out, lock out or strike, the parties shall use reasonable efforts to perform their obligations under this Agreement at a satisfactory level as mutually agreed upon by them. The payment terms, as set out above, of this Agreement may be modified to allow for changes in service or requirements during the period of the labour disruption.

Where a labour disruption of one of the parties adversely impacts the other, every effort will be made to mitigate the impact.

### **15.0 DISPUTE RESOLUTION**

- a) The parties agree to consult each other and to negotiate in good faith to resolve any differences or disputes which either party may have relating to the interpretation, application or implementation of this Agreement, or any

dispute which may arise over any costs, fees or other costs incurred and, failing agreement, the parties agree to resolve their disputes by arbitration as provided in Article 15.0 (b).

- b) Arbitration of a dispute shall be commenced by written notice by a party requesting arbitration to the other, which notice shall identify the issue or issues it wishes to submit to arbitration. Within thirty (30) days of the notice, the parties shall agree upon a single arbitrator, and if the parties are unable to agree upon an arbitrator, either party may apply to a court of competent jurisdiction for the appointment of an arbitrator pursuant to the Arbitration Act, 1991, as may be amended from time to time, or any successor general arbitration statute in the Province of Ontario.
- c) The commencement of the arbitration and all rules of procedure for the arbitration shall be by agreements of the parties, or failing agreement, as determined by the arbitrator or chair of the arbitrator panel. The provisions of the *Arbitration's Act*, 1991, as may be amended or any successor legislation shall apply to the arbitration.

## **16.0 TERMINATION**

- a) Events of Termination
  - i) If either party breaches a material term of this Agreement, the non breaching party shall give written notice to the other of such breach; if the breach is remedied within 30 days, the notice shall be null and void; if the breach is not or cannot be remedied by the breaching party within the 30 days as aforesaid or within such longer period as may have been stipulated for in such notice, the Agreement may be terminated at the discretion of the non-breaching party. Said termination shall take effect 30 days from the end of the notice period.

ii) If either party goes into receivership or gives notice of insolvency or pending insolvency, or if there is reorganization in the system of utility delivery in the province, the other party may elect to terminate this Agreement forthwith. The decision to amend the Agreement in the event of one of the above occurrences shall be as mutually agreed by both parties.

b) Notice of Termination

The City may terminate this Agreement at any time upon twelve (12) months written notice to Utilities Kingston, or such sooner period if the parties mutually agree.

Utilities Kingston may terminate this Agreement at any time upon twenty-four (24) months written notice to the City, or such sooner period if the parties mutually agree.

## 17.0 NOTICES

Any notice or communication required or permitted to be given under this Agreement shall be valid only if delivered in writing in accordance with this clause.

Notices can be provided as follows:

The City:

Chief Administrative Officer and to the Office of the Clerk  
Kingston City Hall  
216 Ontario Street,  
Kingston, ON  
K7L 2Z3

Utilities Kingston:

President and Chief Executive Officer  
85 Lappans Lane  
P.O. Box 790,  
Kingston, ON

K7L 4X7

**18.0 AMENDMENTS**

No amendment to this Agreement shall be of any force or effect unless by writing and signed by both parties.

**19.0 SEVERABILITY**

If any term or provision of this Agreement is held by a competent authority to be invalid, illegal or unenforceable for any reason, the remaining provisions of this Agreement and its Schedule shall continue in full force and effect.

**20.0 ASSIGNMENT**

This Agreement may not be assigned by either party to a third party without the written consent of the other party.

**21.0 GOVERNING LAW**

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario.

**22.0 TIME OF THE ESSENCE**

Time is of the essence in the Agreement and all of the provisions in it.

**23.0 ENTIRE AGREEMENT**

This Agreement, together with the Schedule "A" attached hereto constitutes the entire agreement between the parties with respect to the matters herein and supersedes all prior oral or written representations.

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

For the Corporation of the City of Kingston

For 1425445 Ontario Limited (o/a  
Utilities Kingston)

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Mayor Bryan Paterson  
Chair

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James Keech  
President and CEO

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John Bolognone  
City Clerk

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Nancy Taylor  
Corporate Secretary



## **Schedule A**

### **Scope of Services**

The cooperative relationship between the City of Kingston and its affiliate corporations is of significant importance to the overall efficiency and effectiveness of delivery of services to the Kingston community.

The City of Kingston and Utilities Kingston are independent corporations that have worked together and developed operational and cost efficiencies in the delivery of services through cooperative efforts including joint project management and integration that supports increased operational capacity, better service delivery and the ability to take on larger more complex initiatives for both organizations. The City of Kingston and Utilities Kingston agree that an integrated relationship has developed where each is an important partner in providing the services necessary to advance the operational objectives of each corporation;

Utilities Kingston agrees to provide the services further described below in a diligent and timely manner in accordance with this Agreement.

The delivery model used by Utilities Kingston is focused on the guiding principles of:

*Lowest possible rates to customers*

*Best customer service delivery*

*Shared services where possible*

*Maximized co-ordination for development and infrastructure renewal*

*Rate based services and full cost accounting*

*No cross-subsidization*

*Best return/lowest cost to the shareholder*

Utilities Kingston will provide all services related to the Management, Engineering, Business Administration, Operations and Maintenance of the City of Kingston's natural gas, water and wastewater utilities.

This will include but not be limited to: Water Treatment and Distribution; Wastewater Collection and Treatment, Natural Gas Procurement, Regulation and Distribution; Traffic Signals and Street Lighting and the provision of services for all utilities to the customer.

Without limiting the generality of the foregoing, Utilities Kingston shall be vested with the following powers which it will exercise on behalf of the City:

- 1) Provide all activities related to managing and operating the water utility, including but not limited to:
  - a) Ensuring that Utilities Kingston maintains accreditation and licensing as an Operating Authority as required by the Drinking Water Quality Management System in order to deliver safe and reliable drinking water;
  - b) Preparation of capital and operating budgets and user rates for approval;
  - c) Preparation of ten year financial plans, incorporating capital, operating and rates;
  - d) Preparation of plans and documentation supporting the establishment of impost rates or development charges;
  - e) Management of water reserve funds;
  - f) Development and maintenance of asset management plans for all water related infrastructure;
  - g) Acquire land, easements, licenses on behalf of the City to enable the construction of infrastructure.
  
- 2) Provide all activities related to managing and operating the wastewater utility, including but not limited to:
  - a) Meeting all legislative requirements for the operation and maintenance of wastewater collection and treatment facilities;
  - b) Preparation of capital and operating budgets and user rates for approval;
  - c) Preparation of ten year financial plans, incorporating capital, operating and rates;
  - d) Preparation of plans and documentation supporting the establishment of impost rates or development charges;
  - e) Management of wastewater reserve funds;
  - f) Provide information that may be required for the preparation of impost or development charges fees;

- g) Development and maintenance of asset management plans for all wastewater related infrastructure;
  - h) Acquire land, easements, licenses on behalf of the City to enable the construction of infrastructure.
- 3) Provide all activities related to managing and operating the natural gas utility, including but not limited to:
- a) Meeting all legislative requirement for the operation and maintenance of regulating and distribution facilities;
  - b) Ensuring that the “Gas Marketers” license is maintained in good standing and renewed as required;
  - c) Preparation of capital and operating budgets and user rates for approval;
  - d) Preparation of ten year financials plans, incorporating capital, operating and rates;
  - e) Management of natural gas reserve funds;
  - f) Manage contracts and procurement of natural gas commodity, transportation and storage;
  - g) Manage natural gas direct purchase and retailer customers;
  - h) Development and maintenance of asset management plans for all natural gas related infrastructure;
  - i) Acquire land, easements, licenses on behalf of the City to enable the construction of infrastructure;
- 4) Along with the City of Kingston Engineering Group, Traffic Division, provide all services related to operating and maintaining the traffic signal and streetlights, including but not limited to:
- a) The operation and maintenance of all equipment facilities;
  - b) Respond to emergencies in a timely manner; and
  - c) Provide recommendations to the City for any capital improvements to these systems.

- 5) Provide all activities related to managing and operating the appliance rental business, including but not limited to:
  - a) Development of business and marketing plans;
  - b) Oversight of equipment installation program;
  - c) Maintenance of all equipment as required; and
  - d) Respond to customer emergencies in a timely manner.
  
- 6) Provide and maintain TTS (Time Tracking System) as required.

## SERVICES AGREEMENT

This Agreement made this XX day of XXXXX, 2016

Between:

1425445 Ontario Limited (“Utilities Kingston”)

and

The Corporation of the City of Kingston (the “City”)

WHEREAS the City of Kingston is the sole shareholder of Utilities Kingston;

AND WHEREAS the cooperative relationship between the City of Kingston and its affiliate corporations is of significant importance to the overall efficiency and effectiveness of delivery of services to the Kingston community;

AND WHEREAS the City of Kingston and Utilities Kingston are independent corporations that have worked together and developed operational and cost efficiencies in the delivery of services through cooperative efforts including joint project management and integration that supports increased operational capacity, better service delivery and the ability to take on larger more complex initiatives for both organizations;

AND WHEREAS the City of Kingston and Utilities Kingston agree that an integrated relationship has developed where each is an important partner in providing the services necessary to advance the operational objectives of each corporation;

AND WHEREAS the City of Kingston has agreed to provide the services as described in Schedule “A” in a diligent and timely manner in accordance with this Agreement;

NOW THEREFORE the management of each corporation is charged with ensuring ongoing integrated operations and, following the terms and conditions herein;

THIS AGREEMENT WITNESSES that, in consideration of the mutual covenants and agreements herein contained, the parties hereby agree with each other as follows:

### **1.0 DEFINITIONS**

- a) "Records" means the accounting and record keeping system maintained by the City of Kingston;
- b) "Prudent Industry Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of municipalities in Ontario or any of the practices, methods and acts which in the exercise of reasonable judgement in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost, consistent with good business practices. Prudent Industry Practice is not intended to be limited to the optimum practice, method or act, exclusive of all others, but rather is intended to include prudent practices, methods and acts generally accepted in Ontario.

### **2.0 TERM**

The term of the Agreement shall commence on **XXXXXX** and continue hereafter until terminated as set out in Article 16.0.

### **3.0 OBLIGATIONS OF THE CITY OF KINGSTON**

- a) The City of Kingston shall provide such resources, expertise and support in order to fulfill the terms of this Agreement, including staff time as appropriate at the sole discretion of the City.
- b) The City of Kingston agrees that the services provided will be in accordance with Prudent Industry practice.
- c) The City of Kingston agrees to maintain records of the services provided such that any necessary audit may be performed.

- d) The City of Kingston agrees to consult with Utilities Kingston on policies and procedures and/or any changes that impact the services that are set out in this agreement.

#### **4.0 OBLIGATIONS OF UTILITIES KINGSTON**

- a) Utilities Kingston agrees to supply information or resources that may be required by the City of Kingston to perform the services set out in this agreement in a timely manner.
- b) Utilities Kingston agrees to consult with the City of Kingston in the event that regulatory or legislative changes impact the services that are set out in this agreement.
- c) Utilities Kingston agrees to adopt suitable policies and procedures to ensure that the services identified may be delivered as identified in the agreement and without negative impact on other City services.

#### **5.0 RECORDS**

- a) The City of Kingston shall keep records on the services provided; conforming to the requirements prescribed from time to time by the City and in accordance with the City's records management and retention by-laws.
- b) The City of Kingston shall keep records associated with the services provided to the City separate from any records associated with any other activities to be carried on by Utilities Kingston.

#### **6.0 CONFIDENTIAL INFORMATION**

The parties recognize that in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O 1990 and *Personal Information Protection and Electronic Documents Act* (PIPEDA) all information that the City of Kingston receives from Utilities Kingston relating to specific employees, customers or other third parties is confidential information and the City of

Kingston undertakes that such confidential information shall not be disclosed by it, except as may be necessary in the proper discharge of its duties under this Agreement or as legally required, or used for any purpose other than the specific business purposes for which it received the confidential information. The City of Kingston shall ensure that those employees who have access to such confidential information understand and agree to abide by the City of Kingston's undertaking. The foregoing obligation shall survive the termination of this Agreement.

## **7.0 MANAGEMENT AND PERSONNEL**

- a) The City of Kingston acknowledges that it is solely responsible for the control and management of its employees.
- b) The City of Kingston shall provide sufficient qualified management, supervisory and operations personnel and support services to provide the management and delivery of the services under this Agreement.
- c) The City of Kingston shall be responsible for its workforce policies and procedures including compliance with applicable collective agreements, federal and provincial legislation including without limitation, federal and provincial income taxes, insurance premiums, contributions to benefit and compensation plans and any other employment related obligations. The City of Kingston shall maintain in good standing WSIB premiums, pursuant to provincial law covering all eligible employees who may be employed to provide services under this Agreement.



## **8.0 PAYMENTS**

- a) Utilities Kingston agrees to reimburse all actual expenses that are incurred in the fulfillment of this Agreement and that have been appropriately allocated by the City of Kingston.
- b) The parties shall complete an annual review of the services provided with respect to whether modifications have been made or are required. Effective 2016, the annual review shall include a review of the costs and cost allocation methodologies being used in order to determine the charges for the following budget year.

## **9.0 INSURANCE**

The City of Kingston shall obtain and keep in force during the term of this Agreement, for the protection of Utilities Kingston and the City, insurance coverage as follows:

- a) Comprehensive general, bodily injury and property damage liability insurance with limits of not less than \$25,000,000 inclusive per occurrence for bodily injury, death and damage to property including loss thereof.
- b) Automobile liability insurance with respect to its licensed vehicles which have limits of not less than \$25,000,000 per occurrence endorsed to provide both parties with not less than 15 days' notice in advance of any cancellation, change or amendment respecting coverage:
  - i) Standard non-owned automobile policy including standard contractual liability endorsement;
- c) Such other coverage as may be agreed upon by the parties, including contracts between Utilities Kingston and any third parties, whereby the City's interests will also be insured.

- d) The City and Utilities Kingston agree that the amounts of insurance coverage may be amended from time to time as agreed to by the parties.

#### **10.0 INDEMNIFICATION**

The parties shall defend, fully indemnify and hold harmless each other and their respective officers, employees, agents and representatives, from any and all manner of actions, causes of action, proceedings, claims, demands, penalties, fines and costs, including without limitation, all legal costs and disbursements that might be incurred, which other party may suffer, or which may hereafter be sustained or incurred by reason of, or in any way arising out of, such damage, loss or injury, including death to any property or person, as a result of its failure or negligence, or its failure at any time to comply with the provisions of this Agreement.

#### **11.0 AUTHORIZED REPRESENTATIVES**

- a) The City hereby appoints the Chief Administrative Officer as its authorized representative to deal with Utilities Kingston, with authority to act for and on behalf of the City respecting the day to day administration of this Agreement.
- b) Utilities Kingston hereby appoints the President and Chief Executive Officer of Utilities Kingston as its authorized representative to deal with the City, with authority to act on behalf of Utilities Kingston respecting the day to day administration of this Agreement.

#### **12.0 FAILURE TO COMPLY**

The failure of either party to enforce or insist upon compliance with any of the terms and conditions of this Agreement, or a waiver of any default under this Agreement, shall not constitute a general waiver or relinquishment of any such term or condition, or of any subsequent default of the same or any other term or

condition of this Agreement, but the same shall be and remain at all times in full force and effect.

### **13.0 FORCE MAJEURE**

Neither of the parties shall be liable for delay in or failure to perform their respective obligations under this Agreement when such failure is caused by events beyond the reasonable control of either party, such as fire, explosion, flood, act of God or inevitable accident, civil disorder or disturbance, vandalism, war, riot, sabotage, weather or energy related closings, governmental actions or regulations, nor for real or personal property destroyed or damaged due to such events; in the event of catastrophe, the parties' obligations shall cease until the cause of such delay or failure is resolved or repaired. The parties shall explore all reasonable avenues available to avoid or resolve events of force majeure in the shortest possible time.

### **14.0 LABOUR DISRUPTION**

In the event of a labour disruption, including a walk out, lock out or strike, the parties shall use reasonable efforts to perform their obligations under this Agreement at a satisfactory level as mutually agreed upon by them. The payment terms of this Agreement may be modified to allow for changes in service or requirements during the period of the labour disruption.

Where a labour disruption of one of the parties adversely impacts the other, every effort will be made to mitigate the impact.

### **15.0 DISPUTE RESOLUTION**

- a) The parties agree to consult each other and to negotiate in good faith to resolve any differences or disputes which either party may have relating to the interpretation, application or implementation of this Agreement, or any dispute which may arise over any costs, fees or other costs incurred and,

failing agreement, the parties agree to resolve their disputes by arbitration as provided in Article 15.0 (b).

- b) Arbitration of a dispute shall be commenced by written notice by a party requesting arbitration to the other, which notice shall identify the issue or issues it wishes to submit to arbitration. Within thirty (30) days of the notice, the parties shall agree upon a single arbitrator, and if the parties are unable to agree upon an arbitrator, either party may apply to a court of competent jurisdiction for the appointment of an arbitrator pursuant to the Arbitration Act, 1991, as may be amended from time to time, or any successor general arbitration statute in the Province of Ontario.
- c) The commencement of the arbitration and all rules of procedure for the arbitration shall be by agreements of the parties, or failing agreement, as determined by the arbitrator or chair of the arbitrator panel. The provisions of the *Arbitration's Act*, 1991, as may be amended or any successor legislation shall apply to the arbitration.

## **16.0 TERMINATION**

- a) Events of Termination
  - i) If either party breaches a material term of this Agreement, the non breaching party shall give written notice to the other of such breach; if the breach is remedied within 30 days, the notice shall be null and void; if the breach is not or cannot be remedied by the breaching party within the 30 days as aforesaid or within such longer period as may have been stipulated for in such notice, the Agreement may be terminated at the discretion of the non-breaching party. Said termination shall take effect 30 days from the end of the notice period.

- ii) If either party goes into receivership or gives notice of insolvency or pending insolvency, the other party may elect to terminate this Agreement forthwith.

b) Notice of Termination

The parties may terminate this Agreement at any time upon twelve (12) months' written notice, or such sooner period if the parties mutually agree.

## 17.0 NOTICES

Any notice or communication required or permitted to be given under this Agreement shall be valid only if delivered in writing in accordance with this clause.

Notices can be provided as follows:

The City:

Chief Administrative Officer and to the Office of the Clerk  
Kingston City Hall  
216 Ontario Street,  
Kingston, ON  
K7L 2Z3

Utilities Kingston:

President and Chief Executive Officer  
85 Lappans Lane  
P.O. Box 790,  
Kingston, ON  
K7L 4X7

## 18.0 AMENDMENTS

No amendment to this Agreement shall be of any force or effect unless by writing and signed by both parties.

**19.0 SEVERABILITY**

If any term or provision of this Agreement is held by a competent authority to be invalid, illegal or unenforceable for any reason, the remaining provisions of this Agreement and its Schedule shall continue in full force and effect.

**20.0 ASSIGNMENT**

This Agreement may not be assigned by either party to a third party without the written consent of the other party.

**21.0 GOVERNING LAW**

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario.

**22.0 TIME OF THE ESSENCE**

Time is of the essence in the Agreement and all of the provisions in it.

**23.0 ENTIRE AGREEMENT**

This Agreement, together with the Schedule "A" attached hereto constitutes the entire agreement between the parties with respect to the matters herein and supersedes all prior oral or written representations.

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

For The Corporation of the City of Kingston

For 1425445 Ontario Limited (o/a  
Utilities Kingston)

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Mayor Bryan Paterson  
Chair

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James Keech  
President and CEO

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John Bolognone  
City Clerk

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Nancy Taylor  
Corporate Secretary

## Schedule A

### Scope of Services

The cooperative relationship between the City of Kingston and its affiliate corporations is of significant importance to the overall efficiency and effectiveness of delivery of services to the Kingston community.

The City of Kingston and Utilities Kingston are independent corporations that have worked together and developed operational and cost efficiencies in the delivery of services through cooperative efforts including joint project management and integration that supports increased operational capacity, better service delivery and the ability to take on larger more complex initiatives for both organizations. The City of Kingston and Utilities Kingston agree that an integrated relationship has developed where each is an important partner in providing the services necessary to advance the operational objectives of each corporation;

The City of Kingston agrees to provide the services further described below in a diligent and timely manner in accordance with this Agreement;

- 1) Provide ***Information Systems and Technology Services***, including but not limited to:
  - A. Provide and maintain access devices (i.e. desktop, laptop, tablet, phones (desk and mobile)) as determined jointly by Utilities Kingston and the City, to support access and use of standard office applications and special business applications by UK employees
  - B. Provide front-line Help desk support to access device users
  - C. Manage and provide administrative support and maintenance of Active Directory and standard user profiles which are used to provide secure access to software products and services available on the corporation's IT infrastructure



- D. Provide access to electronic mail, file shares, GIS and other network resources for UK staff from both internal and remote locations
- E. Monitor, review and recommend actions to effectively manage file and data storage requirements needed to support UK business operations
- F. Provide database instances and refreshes as required and determined jointly
- G. Provide licensing, maintenance and support for relational database technology, including upgrades, updates and patches as required, to ensure the confidentiality, integrity and availability of UK information and to meet minimum security requirements (such as PCI Data Security Standards)
- H. Provide software version updates/patches to corporate devices and servers, as determined jointly or as required to ensure to maintain minimum security requirements
- I. Provide monitoring of the performance of the IT infrastructure, including servers, storage, databases and networks
- J. Consult with, and assist Utilities Kingston System group with the planning, design, configuration and support of IT infrastructure necessary to implement and support new Utilities Kingston business applications
- K. Consult with Utilities Kingston on the identification of critical systems, business continuity plans, and appropriate disaster recovery processes to recover/restore business services in the event of a disaster or major unplanned event
- L. Ensure that all data and software assets are protected through appropriate backup and recovery policies and procedures which enable recovery/restoration of data and business services as required by UK
- M. Consult with Utilities Kingston and jointly ensure appropriate security is in place to protect data and network traffic and in particular for sensitive data such as banking information ( i.e., PCI DSS (Payment Card Industry Data Security Standards)) or other standards that Utilities Kingston may be required to meet
- N. Ensure network security audits are performed internally and/or by third parties as required by PCI DSS (Payment Card Industry Data Security Standards)

- O. Ensure that IT resources (access devices, software, servers, storage, databases networks) are used efficiently and continue to meet mutually agreed upon performance standards
  - P. Provide access and administrative rights to shared development and test environments for the Enterprise GIS to allow UK GIS staff to access and maintain Utilities Kingston managed assets before promotion to the Enterprise GIS production environment
  - Q. Consult with UK Systems and GIS staff on streamlining Change Management processes, and provide training such that those trained staff may obtain the necessary permissions to publish UK managed data to the Enterprise GIS production environment in accordance with the City's policies and procedures
  - R. Consult with UK Systems and GIS staff on Enterprise GIS planning and design to ensure the enterprise GIS meets current and future business needs of both parties
  - S. Consult regularly, and determine jointly, improvements to IT Service management processes to ensure responsive and consistent service levels and effective management of risks
- 2) Provide **Customer Service Support Services**, including but not limited to:
- A. Provide call and email answering services meeting the minimum service levels required by the Ontario Energy Board which currently are:
    - a) Telephone Accessibility (65% minimum on a yearly basis)
      - Total number of qualified incoming calls in each month
      - Number of qualified incoming calls that were answered within 30 seconds
    - b) Telephone Call Abandon Rate (10% or less on a yearly basis)
      - Total number of qualified incoming calls in each month
      - Number of qualified incoming calls in each month that were abandoned after 30 seconds before they were answered
    - c) Written Responses to Enquiries (80% minimum on a yearly basis)
      - Total number of qualified enquiries received in each month

- Number of qualified enquiries in each month that were responded to within 10 business days.
- B. Provide and monitor statistics for 'first call resolution' as defined by the Ontario Energy Board
  - C. Handle all general inquiries for Utilities Kingston
  - D. Process residential and commercial applications for service for electric, gas, water and sewer
  - E. Collect deposits from residential and commercial customers
  - F. Explain and investigate billing inquiries/adjustments (i.e. high bill complaints, bill delays, high consumption concerns, estimates, Equal Payment Plan close-outs, etc.)
  - G. Process Pre-authorized Payment applications
  - H. Collect and update customer information on billing system such as password, identification, contacts, banking information
  - I. Issue service orders for move-ins, move-outs, maintenance and check reads
  - J. Handle and resolve customer complaints
  - K. Book appointments on behalf of various Utilities departments
  - L. Take phone-in readings for electric, water and gas
  - M. Prepare and send out consumption history reports/payment history reports
  - N. Log and track special programs as required (i.e. Rain barrels, Summer Savings, Refrigerator Retirement Program, Flooding and Lead Pipes calls, etc.)
  - O. Handle all zero out calls for utilities received through 546-0000 and 546-1181
  - P. Handle all UK e-mails received through Contact Us e-mail address
  - Q. Provide input into and participate in testing of system upgrades and website changes.
- 3) Provide **Communications** support services, including but not limited to:
- A. Media coordination, monitoring and analytics
  - B. News releases and media advisories – may include information gathering, writing, editing, delivery to maintained media lists

- C. Broadcast and print advertising – includes radio campaigns and print and digital ads
  - D. Graphic design services
  - E. Training and networking opportunities relating to strategic communications
  - F. Provide analytics for websites and social media accounts
- 4) Provide ***Human Resources and Payroll Services***, including but not limited to:
- A. Processing of employee payroll:
    - Processing of the current two weekly payrolls (or in the future one consolidated bi-weekly payroll) for all Utilities Kingston employees
    - Administering historical adjustments
    - Year-end payroll processes, including T4 processing
    - Monthly remittances
    - Service Canada administration
    - Support with internal and external audits including external audit support and ongoing training and education on PeopleSoft data administration
    - Administration of mass pay adjustments
  - B. Benefits administration with respect to data and system maintenance, benefit remittances and external reporting and year-end audit functions. PeopleSoft administration for pension, benefits, sick and vacation accruals. Ongoing support and education and training in Utilities Kingston benefit plans.
  - C. Administer remittances to WSIB for loss time injury cases based on requests from Utilities Kingston
  - D. Administrative support for HRMS:
    - Education and training
    - Fulfilling reporting requests
    - Implementation, testing and administration of upgrades and system maintenance

- Consultations with UK resources to determine what HRMS initiatives can be leveraged by Utilities Kingston
  - Assessment of Utilities Kingston's requirements for new initiatives, including documentation of the scope of work, priority, time and resource requirements
  - Advise Utilities Kingston of new technology improvements or changes as they become available
- 5) Provide **Financial Services**, including but not limited to:
- A. Financial Planning
    - Update reserve fund continuity schedules for debt approval and issuances
    - Process monthly capital project funding and transfer entries
    - Perform monthly reserve fund bank reconciliations
    - Reserve fund year end processing and reporting / consolidation requirements for FIR/F/S
    - Assist with impost study data collection and reporting
  - B. Investment management
    - Manage investments of reserve funds
    - Calculate monthly investment income allocations
    - Process monthly transaction entries
  - C. Debt management
    - Manage long term debt issuances and repayment processes, in accordance with financial plans prepared during previous budget process
    - Annual debt reporting to council
  - D. Capital
    - Process funding transactions
    - Grant administration and reporting - manage capital grant requirements including government claims, reconciliations and reporting
    - Capital year end processing and reporting/consolidation requirements for FIR/F/S
  - E. Transaction accounting
    - Approve journal entries prepared by city staff

- Processing of monthly allocation processes / trucking entries/maintenance of combo edits
  - Bill septic, water haulers, Sydenham Water project, work orders and other miscellaneous monthly invoices and process receipts
  - Interface payroll entries - research and adjust payroll errors
  - Preparation/review of UK bank reconciliations, weekly cheque/EFT runs, etc.
  - Interfund transfers for internal utility costs, cell phones, cut permits
  - Interfund and interunit reconciliations, interest entries
- F. Compliance requirements
- (HST) remittances and self-assessment entries, dealing with CRA issues and audits
  - Inclusion of UK/Hydro in commodity tax review, coordination of review
- G. Management and review
- Provide support for UK Manager of Finance as required regarding all aspects of accounting, reporting, taxes, audit, payables, receivables, business issues, software, etc.
  - Training of UK staff as required
- H. Year-end reporting and audit
- Assist with operating year- end consolidation and audit support requirements (e.g. Financial Information Return schedules, G/W/S financial statement schedules)
  - Assist with year-end city reporting incorporating Utilities Kingston operations
  - Assistance as required with the calculation and allocation of employee future benefit costs
- I. Technical and system support
- Creating queries, assisting with new capital reports, security issues
  - Assistance with maintaining TTS/payroll account structure – including fleet rate chargeback calculations and review, vehicle setup
  - System testing for changes/updates, manage system security, assist with query development as required
  - Set-up project codes, accounts and programs in PS

- Maintenance of PeopleSoft/FMS reports (manager reports and financial statements)
- Support computer software and changes, as needed

J. Provide Accounts Payable Services

- Set up vendors, vendor inquiries
- Entering invoices
- Payment processing of cheques and EFTs and including weekly retailer payments , monthly IESO payments
- NSF cheque processing

K. Provide Purchasing Services

- Incorporate utility requirements into City of Kingston standing purchase orders where applicable
- Receive/respond/refer vendor and public inquiries regarding utility related purchases
- Purchasing card administration

L. Provide Cashier and Payment Services

- Approving adjustments (bank errors, tax acct transfers)
- Posting of payments to customer accounts, filing of postdated cheques, pay direct (manual) payments
- Daily collection and balancing of receipts and updating accounts
- Correspondence to customers with respect to adjustments where incorrect payment applied
- Account inquiries, including advising C&C of postdated or other payments
- Collections, agency postings, Service Centre deposits, Customer Service deposits

6) Provide **Legal Services**, including but not limited to:

- A. Construction contracts and tenders
- B. Purchasing standards and policy

- C. Information technology, including fibre, contracts and agreements
  - D. Environmental law and compliance
  - E. Real property including disposition, acquisition, and easements
  - F. Municipal and other regulatory requirements including gas, water, sewer and electrical utility regulation
  - G. Electricity customer connection related matters
  - H. Insurance claims management and litigation support
  - I. Damage recoveries
  - J. Collections; and
  - K. Privacy related matters
- 7) Provide Fleet maintenance services for vehicles and towable units (e.g. trailers) operated by Utilities Kingston including but not limited to:
- A. Ensure required preventative maintenance is completed
  - B. Provide emergency breakdown assistance as required
  - C. Provide guidance and assistance with specifying/sourcing equipment/tools related to vehicles
  - D. Provide assistance with installations, modifications and removals of equipment/tools on vehicles wherever possible
  - E. Provide guidance and advice on vehicle replacements and frequency
  - F. Assist with the provisioning of specifications for new vehicles and provide procurement services as required
  - G. Recommend vehicle charge rates based on projected capital and operating costs as required
- 8) Provide mailroom support including sorting, delivery and managing outgoing mail
- 9) Provide storage and management services for Utilities Kingston and Kingston Hydro archived files