

THE CORPORATION OF THE CITY OF KENORA

BY-LAW NUMBER 30-2003

A BY-LAW TO AMEND BY-LAW NUMBER 95-99 BEING A BY-LAW TO AUTHORIZE THE PURCHASE OF A DEBENTURE FROM KENORA HYDRO ELECTRIC CORPORATION LTD. ON THE TERMS AND CONDITIONS CONTAINED THEREIN

WHEREAS By-law Number 95-99 was passed in October 1999, prior to final 1999 year end information being available; and

WHEREAS By-law Number 95-99 included estimated values based on projected utility value as at 31 December 1999; and

WHEREAS it was the intent of By-law Number 95-99 to amend the related dollar amounts once final audited statements and utility valuation information was available following 31 December 1999;

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

1. THAT all dollar references contained within the actual By-law Number 95-99 be amended to read Three Million, Sixty-Nine Thousand, Two Hundred and Seventy-Eight Dollars (\$3,069,278.86);
2. THAT Section 1 be amended to read as follows:
“THAT on December 31, 1999 the Kenora Hydro Electric Corporation Ltd. will borrow \$3,069,278.86 by way of debenture from the Corporation of the Town of Kenora, now City of Kenora. This debenture will bear interest on a monthly basis at a rate equal to the City’s appointed bank’s prime rate for that month as used for calculating interest payments on the City’s accounts.
3. THAT the agreement attached to By-law Number 95-99 be amended as per the attached amendments;
4. THAT the Mayor and Clerk be hereby authorized to execute all amended documents related to the above-noted matters on behalf of The Corporation of the City of Kenora.
5. THAT this By-law shall be in effect from the 31st day of December, 1999.

By-law read a First & Second Time this 17th day of February, 2003.

By-law read a Third & Final Time this 17th day of February, 2003.

THE CORPORATION OF THE CITY OF KENORA:

.....D. Canfield, MAYOR

.....J. McMillin, CLERK

AMENDMENTS TO THE AGREEMENT made on the 6th day of October, 1999

BETWEEN:

THE HYDRO ELECTRIC COMMISSION OF
THE CORPORATION OF THE CITY OF KENORA,
(hereinafter called "the Commission")

OF THE FIRST PART

- and -

THE CORPORATION OF THE CITY OF KENORA
(hereinafter called "the City")

OF THE SECOND PART

- and -

KENORA HYDRO ELECTRIC CORPORATION LTD.
(hereinafter called "the Company")

OF THE THIRD PART

WHEREAS the original agreement made on the 6th day of October 1999 between the above-noted parties was made prior to final 1999 year end information being available;

AND WHEREAS the original agreement included estimated values based on projected utility value as at 31 December 1999;

AND WHEREAS it was the intent of the original agreement to amend the agreement once final audited statements and utility valuation information was available following 31 December 1999;

NOW THEREFORE the parties to the agreement hereto covenant and agree to amend the original agreement as follows:

1. Section 1 shall be amended to read as follows:

The Commission agrees to sell and the Company agrees to purchase all the assets of the Commission including land, building, distribution lines, distribution transformers and meters, substation equipment and other assets of the said business for the price or sum of TEN MILLION, NINE HUNDRED AND SIXTY NINE THOUSAND, FIVE HUNDRED AND TWENTY THREE

DOLLARS AND SEVENTY SIX CENTS (\$10,969,523.76), which purchase price is arrived at as follows:

ASSETS

Fixed Assets

Land and Building, Distribution lines, distribution transformers and meters, substation equipment, and all other capital assets	\$ 5,010,058.40
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Current Assets

Cash on hand and bank, accounts Receivable net of doubtful accounts, Inventory, prepaid expenses	\$ 3,709,465.36
Goodwill	<u>\$ 2,250,000.00</u>

TOTAL	<u>\$ 10,969,523.76</u>
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2. Section 2 shall be amended to read as follows:

The parties hereto mutually agree that the amount due by the Company to the Vendor for the acquisition of the business shall be paid as follows:

ASSUMPTION OF LIABILITIES

Assumption of all accounts payable, including liability for vested sick leave at December 31, 1999 – estimated	\$ 1,184,745.66
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ISSUE OF DEMAND NOTES

Promissory Note bearing interest when demanded at a rate equal to The Toronto-Dominion Bank bank prime	\$ 3,069,278.85
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Common Shares	\$ 1,000.00
Preferred Class A Shares	2,250,000.00
Preferred Class C Shares	1,396,220.39
Preferred Class C Shares	<u>\$ 3,068,278.86</u>
	<u>\$ 6,715,499.25</u>

\$ 10,969,523.76

Share Capital

Authorized

- Unlimited Class A non-voting redeemable preference shares, non-cumulative dividends at 2 – 10% of the paid up amount
- Unlimited Class C voting, redeemable preference shares, non-cumulative Dividends at 6% of the paid up amount
- Unlimited Preference shares

3. Section 3 shall be amended to read as follows:

The Company covenants and agrees to assume and pay the liabilities of the said business as of 31st December, 1999, which liabilities are in the amount of \$1,184,745.66.

4. Section 4 shall be amended to read as follows:

The book value of the fixed assets and the current working capital as reflected in Clause 2 herein are the actual figures as at December 31, 1999.

5. Section 7 shall be amended to read as follows:

On December 31, 1999, the Company shall borrow \$3,069,278.85 by way of debenture from the City. This debenture shall be repayable based on demand, and shall bear interest at a rate equal to the City's appointed bank's prime rate for that month as used for calculating interest payments on the City's accounts.

6. Sections 8 through 11 shall be amended in that all dollar references contained within these sections be amended to read \$3,069,278.86.

NOTWITHSTANDING the fact that the original Agreement is dated the 6th day of October 1999, and the amendments herein are dated the 17th day of February 2003, the terms and conditions herein shall be effective the 31st day of December 1999.

This Agreement and the related changes shall enure to the benefit of and be binding upon the respective parties hereto and their respective heirs, executors, successors and / or assigns.

IN WITNESS WHEREOF the party of the first part have set their hands and seals and the parties of the second and third parts have hereunto affixed

their corporate seals, attested to by their proper signing officers, as of 17 February 2003.

SEALED, SIGNED AND DELIVERED) THE HYDRO ELECTRIC COMMISSION
in the presence of:) OF THE CORPORATION OF THE CITY
) OF KENORA
)
)
) Per: _____
Witness) Gerald V. Lucas, Chairman
)
)
) Per: _____
Witness) Mark P. Duggan, Vice-Chairman
)
) THE CORPORATION OF THE CITY OF
) KENORA
)
) Per: _____
) David Canfield, Mayor
)
)
) Per: _____
) Joanne McMillan, Clerk
) "CORPORATE SEAL"
)
) KENORA HYDRO ELECTRIC
) CORPORATION LTD.
)
) Per: _____
) David E. Sinclair, President
)
)
) Per: _____
) William E. Preisentanz, Secretary
) "CORPORATE SEAL"