

SHARED SERVICES AGREEMENT – CITY OF VAUGHAN AND POWERSTREAM**Recommendation**

The Deputy City Manager/Commissioner of Finance & Corporate Services, the Commissioner of Community Services, the Director of Budgeting & Financial Planning, the Director of Financial Services, the Director of Building & Facilities and the Chief Information Officer in consultation with the Director of Legal Services recommend:

- 1) That the Shared Services Agreement, substantially in the form attached be approved; and
- 2) That a By-law be enacted substantially in the form of attachment 1, authorizing the Mayor and City Clerk to execute the necessary agreements

Economic Impact

There is no impact in 2008. The costs associated with the proposed shared services agreement were taken into consideration during the 2008 operating budget process. Future impacts will be limited to contractual term adjustments tied to inflation, service cancellations, or unless otherwise negotiated between parties.

Communications Plan

Council direction will be communicated to PowerStream and all City departments impacted by this agreement.

Purpose

The purpose of this report is to seek Council approval of the revised Shared Services Agreement between PowerStream and City Representatives.

Background - Analysis and Options

In March 1993 the City of Vaughan and the Vaughan Hydro-Electric Commission entered into a Shared Services Agreement for the purpose of leveraging functional expertise and generating synergies through sharing support services. This agreement was subsequently amended to reflect changes in building and land lease arrangements. Since that amendment there have been further significant changes in the utility sector including the following:

- Deregulation of the hydro electric industry;
- Amalgamation of Vaughan Hydro with other utilities to form, PowerStream Inc.;
- New requirements under the Ontario Energy Board's Affiliate Relationship Code; and
- Changing requirements between the parties.

As a result of the above, the City of Vaughan and PowerStream have worked closely to update the Shared Services Agreement to reflect the agreed upon service requirements, the associated fees and to comply with the Affiliate Relationship Code. The amended agreement is provided as Attachment 2. It sets out the specific terms for the following services over a three year term 2008 – 2010:

Services Provided to the City

- Payroll Services
- Cashiering
- Water Meter Reading, Billing and Remittance

Services Provided to PowerStream

- Facilities & Outside Storage
- JDE License Mtce & Network Link
- Fuel Services

Also included within the agreement are sections on the standards of service, service amendments and extensions, termination requirements, dispute resolution, liability, etc.

Pricing Methodology

The pricing methodology for this agreement is based on the guidelines set out in the Ontario Energy Board – Affiliate Relationship Code. One intended purpose of the Code is to minimize cross subsidization and enhance the development of open competitive market pricing. The Affiliate Relationship Code achieves this by setting guidelines for transfer pricing to reflect fair market value (FMV). In instances where fair market value information is unavailable, transfer prices can be set using a cost plus methodology. That is the cost of providing the service plus the utility's rate of return.

Shared Services Agreement Annual Fees 2008 - 2010

Detailed below is a summary of the negotiated annual service fees over the term to the agreement:

	2008	2009	2010
<i>Services Provided to the City</i>			
Payroll Services	260,075	266,091	272,253
Cashiering	231,672	235,965	240,972
Water Services	1,376,148	1,414,367	1,439,592
<i>Services Provided to PowerStream</i>			
Facility & Land Rental	\$ 717,531	\$ 731,882	\$ 746,520
ITM JDE License Mtce & Network Link	\$ 37,000	\$ 37,740	\$ 38,495
Fuel Services	As per City's Regional Consortium Rates		
<i>Fuel</i>			
<i>Administration (Purchase Mark-up)</i>	5.44%	5.55%	5.68%

2009 & 2010 fees are based on a 2% inflation factor. However, parties will have an opportunity to review fees on an annual basis to ensure estimates remain reasonable.

Relationship to Vaughan Vision 2020

The topic covered in this report is directly related to Service and Management Excellence goals; specifically as it relates to enhancing productivity and cost effectiveness. It is also related to the process to allocate and approve the resources necessary to continue operations. The process is consistent with the priorities set by Council in the Vaughan Vision 2020 document.

Regional Implications

NA

Conclusions

The attached Shared Services Agreement between PowerStream Inc. and the City of Vaughan is reflective of services currently required and offers a continued opportunity for both organizations to benefit from leveraging functional expertise and synergies through the sharing of support services. The agreement complies with the transfer pricing and standards of conduct set out in the Ontario Energy Board's Affiliate Relationship Code. It is recommended that Council approve the amended agreement.

Attachments

Attachment 1 – Draft By-Law

Attachment 2 – Shared Services Agreement between PowerStream Inc. and the City of Vaughan.

Report prepared by:

Clayton Harris, CA, ext. 8475

Deputy City Manager/Commissioner of Finance & Corporate Services

John Henry, CMA, ext. 8348

Director of Budgeting & Financial Planning

Respectfully submitted,

Clayton Harris, CA

Deputy City Manager/Commissioner of Finance & Corporate Services

Marlon Kallideen

Commissioner of Community Services

John Henry, CMA

Director of Budgeting & Financial Planning

Barry Jackson,

Director of Financial Services

Jeff Peyton

Director of Building & Facilities

Dimitri Yampolsky

Chief Information Officer

Draft By-Law

A By-law to authorize the Mayor and Clerk to execute the Shared Services Agreement between the Corporation of the City of Vaughan and PowerStream Inc.

The Council of the Corporation of the City of Vaughan ENACTS AS FOLLOWS:

1. THAT the Mayor and Clerk be and they are hereby authorized to execute the Shared Services Agreement with between the Corporation of the City of Vaughan and PowerStream Inc. in substantially the form of the agreement attached hereto:
2. THAT this by-law supersedes all previous by-laws.

READ a FIRST, SECOND, and THIRD time and finally passed the 8th day of December 2008.

Linda D. Jackson, Mayor

Jeffrey A. Abrams, City Clerk

SHARED SERVICES AGREEMENT made in duplicate this 1st day of January, 2008

B E T W E E N:

POWERSTREAM INC.,
(hereinafter called "**PowerStream**")

- and -

THE CITY OF VAUGHAN,
(hereinafter called the "**City**")

WHEREAS on June 1, 2004, Hydro Vaughan Distribution Inc. ("**Vaughan Hydro**"), Markham Hydro Distribution Inc. and Richmond Hill Hydro Inc. amalgamated to become PowerStream (the "**Amalgamation**") in accordance with a merger agreement dated March 11, 2004, between The Corporation of the Town of Markham, the City, Hydro Vaughan Distribution Inc., Markham Energy Corporation, Markham Hydro Distribution Inc. and Richmond Hill Hydro Inc. (the "**Merger Agreement**");

AND WHEREAS prior to the Amalgamation, the City and Vaughan Hydro entered into an agreement providing for Vaughan Hydro to implement and co-ordinate the billing and collection of water rates on behalf of the City (the "**Services Agreement**");

AND WHEREAS pursuant to subsection 5.2(6)(b) of the Merger Agreement, all contracts listed on Schedule 4.2(34) of the Merger Agreement, which includes the Services Agreement, are to satisfy the requirements of the Affiliate Relationships Code for Electricity Distributors and Transmitters issued by the OEB and revised November 24, 2003 (the "**Affiliate Relationships Code**");

AND WHEREAS PowerStream and the City wish to enter into an agreement to replace the Services Agreement in order for PowerStream to continue to provide certain services to the City and the City to provide certain facilities to PowerStream consistent with the Affiliate Relationships Code and for the consideration and on the terms and conditions hereinafter set forth;

NOW THEREFORE in consideration of the premises and the mutual covenants and agreements herein contained (the receipt and sufficiency of which is hereby acknowledged by each of the Parties hereto), the Parties hereto hereby covenant and agree as follows:

1. INTERPRETATION

1.1 **Definitions.** In this Agreement, including the recitals and Schedules hereto, the following words shall have the following meanings:

1.1.1 "**Affiliate**" means a body corporate which is deemed to be affiliated with another body corporate, by virtue of one of them being the subsidiary of

the other or both being subsidiaries of the same body or each of them being controlled by the same person

- 1.1.2 **"Affiliate Relationships Code"** means that as described in the third recital of this Agreement;
- 1.1.3 **"Agreement"** means this agreement and all recitals and all Schedules attached hereto as the same may be amended, modified, supplemented, restated, or replaced from time to time;
- 1.1.4 **"Applicable Law"** means collectively, all applicable federal, provincial, territorial, municipal and foreign laws, statutes, ordinances, decrees, rules, regulations, by-laws, legally enforceable policies, codes, or guidelines, judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, directives, rulings or awards, and conditions of any grant of approval, permission, certification, consent, registration, authority or licence by any court, statutory body, self-regulatory authority, stock exchange or other Governmental Authority;
- 1.1.5 **"Binding Arbitration"** has the meaning ascribed thereto in Section 8.12;
- 1.1.6 **"Business Day"** means any day other than a day which is a Saturday, a Sunday or a statutory holiday or a civic holiday in Ontario;
- 1.1.7 **"Claims"** has the meaning ascribed thereto in Section 7.2;
- 1.1.8 **"Confidential Information"** means the confidential, secret or proprietary information of one Party (the **"Disclosing Party"**), including any of such information or data which (a) the Disclosing Party is obligated, under contract or law, to keep confidential and (b) is technical, financial or business in nature, and which has been or may hereafter be disclosed, directly or indirectly, to the other Party (the **"Recipient"**), either orally, in writing or in any other material form, or delivered to the Recipient;
- 1.1.9 **"Disclosing Party"** has the meaning ascribed thereto in Section 3.2;
- 1.1.10 **"Effective Date"** means the date of this Agreement – January 1, 2008;
- 1.1.11 **"Extension Notice"** has the meaning ascribed thereto in Section 4.2;
- 1.1.12 **"Facilities"** means the facilities provided by the City to PowerStream as set out on Schedule A attached hereto;
- 1.1.13 **"Fees for the Facilities"** means collectively, the charges set out in the Lease, for the provision of the facilities by the City to PowerStream as set out on Schedule A attached hereto, plus all applicable taxes if any in respect thereof;

- 1.1.14 **"Fee Review Date"** has the meaning ascribed thereto in subsection 2.5.2;
- 1.1.15 **"Fees"** means collectively the Fees for the Facilities and the PowerStream Fees;
- 1.1.16 **"Governmental Authority"** means any court, arbitrator, administrative agency, commission, or governmental or regulatory official, department, agency, body, authority or instrumentality, whether foreign, federal, state, provincial, municipal, or local, having jurisdiction over the Parties;
- 1.1.17 **"In Writing"** or **"Written"** means a posted letter, a facsimile transmittal or an e-mail message;
- 1.1.18 **"Internal Dispute Resolution"** has the meaning ascribed thereto in subsection 8.12.1;
- 1.1.19 **"Lease"** means the commercial terms related to the facilities leased by PowerStream from the City, which are set out in Schedule A.
- 1.1.20 **"MFIPPA"** means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M. 56.
- 1.1.21 **"Notice"** has the meaning ascribed thereto in Section 8.4;
- 1.1.22 **"Parties"** means the parties to this Agreement and **"Party"** shall mean any one of them.
- 1.1.23 **"PowerStream Fees"** means collectively, the charges for the provision of the Services as set out in Schedules D, E and F attached hereto, plus all applicable sales or service taxes in respect thereof,
- 1.1.24 **"Receiving Party"** has the meaning ascribed thereto in Section 3.2;
- 1.1.25 **"Requested Party"** has the meaning ascribed thereto in Section 8.1;
- 1.1.26 **"Services"** means the services purchased by the City from PowerStream as set out on Schedules B and C attached hereto, or those services agreed to in writing between the Parties from time to time;
- 1.1.27 **"Term"** means the term of this Agreement commencing on the Effective Date to and including the Termination Date;
- 1.1.28 **"Termination Date"** has the meaning ascribed thereto in Section 4.1; and
- 1.1.29 **"Unsatisfied Party"** has the meaning ascribed thereto in Section 8.1.
- 1.2 **Headings**. The division of this Agreement into Sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms **"this Agreement"**,

“hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Section or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to “Sections” are to sections and “subsections” are to subsections of this Agreement.

- 1.3 **Extended Meanings.** In this Agreement words importing the singular number only shall include the plural and vice versa, words importing any gender shall include all genders and words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organisations, companies and corporations.
- 1.4 **Currency.** All references to currency herein are to lawful money of Canada unless otherwise specified.
- 1.5 **Schedules.** The following Schedules which are attached to this Agreement are incorporated by reference into this Agreement and are deemed to be a part of it:

Facilities provided by the City to PowerStream:

Schedule A	-	Facilities
Schedule B	-	Information Technology
Schedule C	-	Fuel Service Charge

Services Purchased from PowerStream by the City:

Schedule D	-	Payroll Services
Schedule E	-	Cashier Services
Schedule F	-	Water Meter Reading and Water Billing and Remittance
Schedule G	-	Pricing Summary

2. SERVICES

- 2.1 **Provision of Services.**
- 2.2 In accordance with the terms hereof, from and after the Effective Date to the Termination Date:
- 2.2.1 PowerStream agrees to provide and perform, at the request of the City, the Services for the benefit of the City or the City’s Affiliates, as the case may be; and

- 2.2.2 the City agrees to provide the Facilities for the benefit of PowerStream or PowerStream's Affiliates, as the case may be, as the successor in title to Markham Hydro Distribution Inc., the named Tenant in the Lease, in accordance with the provisions of the Lease, as amended in writing from time to time. PowerStream covenants and agrees to comply with the provisions of the Lease, as amended from time to time.
- 2.3 **Standard of Services.** Notwithstanding the provisions of section 7.1 herein, PowerStream shall provide the Services in a prudent business manner in accordance with the policies and service levels applicable to such Services and the practices, policies and service levels as set out in Schedules B and C inclusively or such practices, policies and service levels as may be amended from time to time pursuant to Section 2.4 hereof. PowerStream shall provide the Services in accordance with all Applicable Laws. Notwithstanding the foregoing, "**Applicable Laws**" shall not include any by-laws, guidelines, directions, rules or standards of the City introduced, proclaimed or implemented after the date hereof that affects the provision of the Services by PowerStream hereunder or the terms hereof.
- 2.4 **Amendments.** At any time during the term of this Agreement the City may request changes in the Services that the City receives or the practices, policies or performance levels applicable to the Services received by the City by submitting such requests in writing to PowerStream. Within a reasonable time, but in any event not more than thirty (30) Business Days after receiving written notice of a request, PowerStream shall advise the City whether the change requested will have an impact on the delivery of the Services, acting reasonably, and whether or not the request will have an impact on the associated Fees and whether PowerStream authorizes the implementation of the change under the revised terms specified by the City or rejects the change proposed. Minor adjustments to existing reports shall not trigger fee increases or the imposition of one-time fees. Pending PowerStream's response, the City shall continue to receive the applicable Services in accordance with the latest approved terms for the provision of such Services.
- 2.5 **Fees.**
- 2.5.1 PowerStream Fees rendered by PowerStream shall be those as set out on Schedules D, E and F, or as mutually agreed upon by the Parties in writing from time to time.
- 2.5.2 Fees for the services provided by the City shall be those as set out on Schedules A, B and C, or as mutually agreed upon by the Parties in writing from time to time.
- 2.5.3 The Parties shall review the PowerStream Fees on an annual basis, prior to or on November 1st (the "**Fee Review Date**"). PowerStream shall base the PowerStream Fees for the following year on reasonable estimates. If the

Parties are unable to agree on the adjustments to the PowerStream Fees within thirty (30) days of the Fee Review Date then the dispute shall be settled by the dispute resolution procedure in accordance with Section 8.12 herein.

2.5.4 Unless otherwise specified herein, PowerStream Fees shall be invoiced to the City on a quarterly basis.

2.5.5 Fees for the Facilities shall be invoiced to PowerStream in accordance with the Lease.

2.5.6 The Parties agree that payment of PowerStream Fees and other charges provided for hereunder will be due and payable in arrears not later than thirty (30) days after the date of invoice.

2.5.7 All PowerStream Fees and the Facilities shall comply with the requirements of the Affiliate Relationships Code.

2.6 **Co-operation by City.** The City shall co-operate with PowerStream to assist it in the provision of the Services. Without limiting the generality of the foregoing, the City will:

2.6.1 assign a minimum of two (2) representatives of the City to co-ordinate with PowerStream the provision of the Services to the City to deal with financial and operational issues respectively;

2.6.2 prepare and provide to PowerStream, in a mutually acceptable format, all information reasonably required by PowerStream to permit proper delivery of the Services;

2.6.3 establish, incorporate and maintain as part of the practices, policies and service levels applicable to such Services, in consultation with PowerStream, operating procedures to satisfy the City's requirements for accuracy and auditing;

2.6.4 train, if necessary, personnel to assist in the provision of the required information to PowerStream to permit PowerStream to provide the Services; and

2.6.5 provide PowerStream assistance in collecting amounts owed to the City. The City may place any of such unpaid amounts on the collector's roll and enforce any other rights or remedies of the City pursuant to section 398(2) of the *Municipal Act*, S. O. 2001, c. 25.

2.7 **Customer Information.**

2.7.1 PowerStream acknowledges that the ownership of all data in respect of water and sewer customers of the City as such data relates to: water and

sewer information, water and sewer consumption history and charges, fire protection information, customer information including name, billing address, legal description, service address, the final twelve (12) months of meter readings for each customer, outstanding water and sewer invoices, customer credit and collection information, and information with regard to work orders and asset management systems is and shall remain the property of the City. PowerStream shall ensure that all of the data contemplated by this Section 2.7.1 is backed up in accordance with current PowerStream procedures and can be restored in 1-2 Business Days. The City acknowledges that PowerStream can only back up data collected over a maximum period of 7 years.

- 2.7.2 The City acknowledges that the ownership of data in respect of electricity customers of PowerStream or any of its Affiliates is and shall remain the property of PowerStream
- 2.7.3 Requests for data by the City under Section 2.7.1 shall be made in writing, which may include electronic mail, by an individual designated by the City to the attention of Bill Schmidt, Director of Information and Technology at PowerStream or such other individual designated by PowerStream. PowerStream shall within 1 Business Day advise the City of the effort required to provide such data and such data shall be provided by PowerStream to the City no later than 2 Business Days from the date the request is made by the City or within such other, longer period of time as set out in the response from PowerStream.
- 2.7.4 Each Party, its employees and agents shall abide by all Applicable Laws, including the requirements of the Affiliate Relationships Code to the extent that it applies, related to the collection, use, retention, destruction and disclosure of any personal data which has been collected, used, retained, destroyed and disclosed in connection with the Services and the Facilities provided by such Party hereunder.

3. CONFIDENTIAL INFORMATION

- 3.1 **Confidentiality Obligation.** Commencing upon the Effective Date and continuing thereafter, each Party:
 - 3.1.1 shall treat as confidential, keep in safe custody and not disclose to any third party any Confidential Information provided to it by the other Party; and
 - 3.1.2 use such Confidential Information only to the extent necessary to comply with this Agreement.
- 3.2 Each of the Parties shall establish and enforce procedures to protect Confidential Information disclosed to it by the other Party and shall restrict disclosure of such Confidential Information to only those employees, officers, agents and

professional advisors of it and its Affiliates who need to know such information in connection with such Party's performance of this Agreement and in accordance with MFIPPA or any other applicable legislation. If a Party or its Affiliate is required by order of any Governmental Authority or Applicable Law or the rules of a stock exchange to disclose Confidential Information disclosed to it by the other Party, it shall promptly notify the other Party of the request for disclosure and shall cooperate with the other Party if that other Party opposes the request for disclosure and wishes to seek confidential treatment for such Confidential Information that is required to be disclosed. Each of the Parties acknowledges that no adequate remedy at law exists for a material breach or threatened material breach of this Section 3.2 the continuation of which unremedied will cause the other Party to suffer irreparable harm, and agrees that the other Party is entitled, in addition to other remedies which may be available at law or in equity, to immediate injunctive relief from any breach of this Section 3.2 and to specific performance of its rights. Promptly following the Termination Date, each Party agrees to use commercially reasonable efforts to deliver to the other Party (the "**Disclosing Party**") the Confidential Information (including all electronic and other copies thereof) disclosed to it (the "**Receiving Party**") by the Disclosing Party that the Receiving Party possesses or, upon request by a Disclosing Party, the Receiving Party shall confirm to the Disclosing Party that such Confidential Information has been destroyed in accordance with the Disclosing Party's instructions but, in no event if such Confidential Information is not returned to the Disclosing Party or destroyed in accordance with its instructions, such Confidential Information shall not be disclosed by the Receiving Party to any other person. Notwithstanding the forgoing, (i) PowerStream acknowledges that the City and its Affiliates are subject to MFIPPA and PowerStream agrees to act in accordance with applicable provincial laws relating to privacy as they apply to the provision of the Services by PowerStream; and (ii) the City acknowledges that PowerStream and its Affiliates are subject to the *Personal Information Protection and Electronic Documents Act* (Canada) and the City agrees to act in accordance with applicable federal laws relating to privacy as they apply to the provision of the Facilities by the City.

4. TERM.

- 4.1 **Term.** This Agreement will be effective as at the Effective Date and shall terminate three (3) years after the Effective Date, unless terminated earlier pursuant to Section 5.1 or extended by renewal of the term pursuant to Section 4.2 (the "**Termination Date**").
- 4.2 **Extension of Term.** If either Party gives notice in writing to the other Party by not later than sixty (60) days prior to the Termination Date, requesting the continuation of Services or the provision of the Facilities, as the case may be (an "**Extension Notice**") for an additional one year period, the Parties agree to negotiate, in good faith, in order to determine the terms and conditions on which such Services or the provision of the Facilities will be provided for a renewal term of one year or such longer period as is mutually agreed to. Notwithstanding

anything in this Section 4.2 to the contrary, there shall be no obligation upon any Party having been provided with an Extension Notice to extend the term of this Agreement.

5. TERMINATION.

5.1 **Termination.** This Agreement, except for subsections 2.5.1, 2.5.2, 2.5.4 to 2.5.7 inclusive, and Sections 3.1, 3.2 and 7.1 to 7.5 inclusive, which shall survive the termination of this Agreement, shall terminate on the Termination Date and may be terminated prior thereto as follows:

5.1.1 by the mutual written consent of the Parties hereto;

5.1.2 by either Party effective upon not less than twelve (12) months written notice to the other Party in respect of the Facilities or the Services, save and except for water services provided by PowerStream to the City as set out on Schedule B hereto, which shall require PowerStream to provide the City with eighteen (18) months written notice for termination of such service;

5.1.3 by either Party effective upon not less than thirty (30) days written notice of any material breach or default of any provision or obligation of this Agreement by a Party, provided that such notice will not be effective to terminate this Agreement in the event the other Party cures the default during such notice period; and

5.1.4 immediately, by either Party if the other Party becomes insolvent or is a party to any bankruptcy or receivership proceeding or any similar action affecting the affairs, property or solvency of such Party.

5.1.5 **Termination Without Prejudice.** Any such termination of this Agreement shall be without prejudice to any other remedies which any Party may have against the other arising out of such breach or default and shall not affect any rights or obligations of any Party arising under this Agreement prior to such termination.

6. FORCE MAJEURE.

6.1 **Force Majeure.** Performance of any obligation under this Agreement, other than the payment of Fees pursuant to Section 2.5.6, may be suspended by either Party without liability to the extent that an act of God, war, fire, earthquake, explosion, governmental expropriation, governmental law or regulation or any other occurrence beyond the reasonable control of such Party or labour disruption, strike or injunction (if such labour event is not caused by the bad faith or unreasonable conduct of such Party) delays, prevents, restricts, limits or renders commercially unfeasible the performance of any such obligation. The affected Party may invoke this provision by promptly notifying the other Party of the nature and estimated duration of the suspension. No Party hereto invoking this

provision shall be liable for any failure to perform or any delay in the performance of its obligations in this Section 6.1.

7. DISCLAIMER, LIMIT OF LIABILITY AND INDEMNITY

- 7.1 **Disclaimer.** The Services provided by PowerStream are provided without any warranty whatsoever, other than as is set forth in Section 2.3 hereof. In particular, PowerStream makes no warranty as to the suitability of any of the Services for the specific purposes or needs of the City. The warranty contained in this Agreement is the only warranty made by PowerStream with respect to the Services. PowerStream specifically excludes any other warranties or conditions express or implied, including, but not limited to, implied warranties or conditions of merchantability, merchantable or satisfactory quality or fitness for a particular purpose, and those arising from a course of dealing or usage of trade.
- 7.2 **Indemnity by the City.** The City agrees to indemnify, defend and hold harmless PowerStream from any and all claims, litigation, damages, losses, causes of action or expenses (including legal fees and disbursements) (“**Claims**”) suffered or incurred by PowerStream from third parties or otherwise in connection with:
- 7.2.1.1 a breach of the City’s obligations under this Agreement insofar as PowerStream has complied with its obligations under this Agreement; and
 - 7.2.1.2 any negligence on the part of the City, its employees, contractors or agents in its provision of the Facilities.
- 7.3 Notwithstanding the provisions of Section 7.2, the City shall be under no obligation to indemnify and save harmless PowerStream from any Claims resulting from the negligence or wilful misconduct of PowerStream in its provision of the Services hereunder.
- 7.4 **Indemnity by PowerStream.** PowerStream agrees to indemnify, defend and hold harmless the City from any and all Claims suffered or incurred by the City from third parties or otherwise in connection with:
- 7.4.1 a breach of PowerStream’s obligations under this Agreement insofar as the City has complied with its obligations under this Agreement; and
 - 7.4.2 any negligence on the part of PowerStream, its employees, contractors or agents in its provision of the Services hereunder.
- 7.5 Notwithstanding the provisions of Section 7.4, PowerStream shall be under no obligation to indemnify and save harmless the City from any Claims resulting from the negligence or wilful misconduct of the City in its provision of the Facilities hereunder.

- 7.6 **Insurance.** PowerStream shall provide and keep in force a comprehensive liability insurance policy with coverage equal to or greater than Five Million Dollars (\$5,000,000) (Canadian) of sufficient coverage in respect of the Services performed by it under the terms of this Agreement. The City shall provide and keep in force insurance in respect of the Facilities as required under the terms of this Agreement.

8. MISCELLANEOUS

- 8.1 **Audit.** PowerStream shall maintain accurate and complete books and records with respect to (i) the Services provided hereunder, (ii) the PowerStream Fees, and (iii) any information provided by the City to PowerStream for the provision of the Services. The City shall maintain accurate and complete books and records in respect to (i) the Facilities provided hereunder, (ii) the Fees for the Facilities, and (iii) any information provided by PowerStream for the provision of the Facilities. Each Party shall keep its accounts and records in accordance with Canadian generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants (or a successor institute) with respect to the computation of Fees and other charges payable pursuant to this Agreement. Each Party shall be entitled to audit such books and records in order to confirm compliance with the terms of this Agreement. Each Party shall make such books and records available to individuals designated by the other Party and provide any assistance it may reasonably require in order to conduct audits and inspections, provided that:

8.1.1 audits and inspections shall be made at reasonable times and on at least ten (10) Business Days prior notice; and

8.1.2 audits of Fees shall be made not later than twenty four (24) months after such Fees have been paid by a Party to the other Party.

Each Party agrees to provide the other Party with reasonable facilities for such audits and inspections and copies of documents, where necessary, appropriate and permitted by law. If a Party is not satisfied with the information provided (the "**Unsatisfied Party**"), the Unsatisfied Party may retain, at its own expense, an independent auditor, to review the books and records referred to above. The Party requested to provide additional information (the "**Requested Party**") may refuse to disclose to the Unsatisfied Party or its agents any information that the Requested Party is prevented from disclosing as a result of a confidentiality obligation to another person provided that the Requested Party shall use commercially reasonable efforts to obtain consents to permit disclosure of such information if such information is reasonably required in order to conduct an audit and inspection by the Requesting Party under this Section 8.1 and the Requesting Party or its agents has requested access to such information. Each of the Parties agree that any third party conducting an audit or inspection shall be subject to the confidentiality provisions of Sections 3.1 and 3.2 and may be required by the Requested Party to enter into a confidentiality and non-disclosure agreement in

form and substance reasonably acceptable to the Requested Party and each of the Parties agree that should an independent auditor be deemed by the Requested Party to be a competitor of the Requested Party, the Parties shall mutually agree to the review and audit procedures prior to such review and audit.

- 8.2 **Governing Law.** This Agreement shall be governed by and construed in accordance with the law of the Province of Ontario and the laws of Canada applicable therein.
- 8.3 **Successors.** This Agreement will enure to the benefit of and be binding on the respective successors and assigns of each of the Parties.
- 8.4 **Time of Essence.** Time shall be of the essence of this Agreement
- 8.5 **Notices.** Unless otherwise expressly provided herein, any notice, consent or other communication (a "Notice") given pursuant to or in connection with this Agreement shall be in writing and shall be sufficiently given to the person to whom it is addressed if transmitted by facsimile, delivered in person to or for such person at the address of such person indicated below or at such other address as such person shall have provided in writing to the other Party in accordance with this provision. Any Notice provided in accordance with this provision shall be deemed to have been sufficiently given or made on the date on which it was so transmitted by facsimile or delivered provided that if such day is not a Business Day or delivery occurs after normal business hours of the recipient, the Notice shall be deemed given or made on the Business Day following transmission or delivery, as the case may be.

To PowerStream:

PowerStream Inc.
161 Cityview Boulevard
Vaughan, Ontario
L4H 0A9

Attention: Dennis Nolan
Executive Vice President, Corporate Services and
Secretary

Fax: (905) 532-4616

E-Mail: dennis.nolan@powerstream.ca

To the City:

City of Vaughan
2141 Major Mackenzie Drive
Vaughan, Ontario
L6A 1T1

Primary contact:

Attention: Clayton Harris
Deputy City Manager/Commissioner of Finance &
Corporate Services

Fax: (905) 832-8591

E-Mail: clayton.harris@vaughan.ca

For agreement invoicing/payment or matters related to water & sewer services:

Attention: Barry Jackson
Director of City Financial Services/Deputy
Treasurer

Fax: (905) 303-2036

E-Mail: barry.jackson@vaughan.ca

For building & facility and fleet services issues:

Attention: Marlon Kallideen
Commissioner of Community Services

Fax: (905) 303-2033

E-Mail: marlon.kallideen@vaughan.ca

or:

Attention: Jeff Peyton
Director of Buildings & Facilities

Fax: (905) 303-2007

E-Mail: jeff.peyton@vaughan.ca

For matters relating to the information technology services:

Attention: Dimitri Yampolsky
Chief Information Officer

Fax: (905) 832-8568

E-Mail: dimitri.yampolsky@vaughan.ca

or to such other address as such Party shall have notified to the other Party hereto. Any communication so addressed and delivered shall be deemed to have been sufficiently given or made on the date on which it was received.

- 8.6 **Entire Agreement.** This Agreement, together with the recitals and the Schedules attached hereto, constitutes the entire agreement between the Parties hereto with regard to the subject matter hereof and supersedes and cancels all previous negotiations, agreements, commitments and writings in respect of the subject matter hereof. This Agreement may not be modified or amended in any respect except by written instrument signed by the Parties hereto.
- 8.7 **Waiver.** The failure of any Party to this Agreement at any time to require performance by the other Party of any provision hereof shall in no way affect the full right to require such performance at any time thereafter of any other provision hereof and no waiver by any Party hereof of any breach of condition, covenant or agreement shall constitute a waiver except in respect of the particular breach giving rise to such waiver. Any such waiver shall be effective only if made in writing by the Party entitled to waive the provision.
- 8.8 **Independent Contractor.** By virtue of this Agreement, no Party hereto constitutes any other Party hereto as its agent, partner, joint venturer, franchisee or legal representative and no Party has express or implied authority to bind any other Party hereto in any manner whatsoever. Unless otherwise contemplated in the Services or the Facilities or approved in writing by the other Party, no Party hereto will assume or create any obligation or responsibility whatsoever, express or implied, on behalf of or in the name of that other Party.
- 8.9 **Assignment.** This Agreement and the privileges herein granted shall not be assigned by either Party except with the prior written consent of the other, such consent not to be unreasonably withheld. Notwithstanding the foregoing, either party or its permitted assignee may, as security only, assign, transfer, pledge, grant a security interest in or otherwise dispose of its rights and interests under this Agreement to a trustee or lending institution, including such an assignment, transfer or other disposition upon or pursuant to the exercise of remedies by such trustee or lending institution.

- 8.10 **Further Assurances.** Each of the Parties hereto from time to time at the request and expense of the other Party hereto and without further consideration, will execute and deliver such other instruments of transfer, conveyance and assignment and take such further action as such other Party may require to more effectively complete any matter provided for herein.
- 8.11 **Severability.** Any covenant or provision hereof determined to be void or unenforceable in whole or in part will be deemed not to affect or impair the validity or enforceability of any other covenant or provision hereof and the covenants and provisions hereof are declared to be separate and distinct.
- 8.12 **Arbitration.**
- 8.12.1 In the event of any dispute or claim between the Parties, arising out of, or relating to, in any way connected with this Agreement or its interpretation or the fulfilment of the obligations of the Parties hereunder (a “**Dispute**”), such Dispute shall be referred internally by either Party by written notification to Dennis Nolan, Executive Vice President, Corporate Services and Secretary at PowerStream and Clayton Harris, Deputy City Manager and Commissioner of Finance and Corporate Services at the City for resolution (the “**Internal Dispute Resolution**”). If the Dispute is not resolved within 60 Business Days of a Dispute being referred to the Internal Dispute Resolution then such Dispute shall be settled by binding arbitration (“**Binding Arbitration**”). Binding Arbitration shall be conducted in accordance with the *Arbitration Act, 1991* (Ontario), as amended from time to time.
- 8.12.2 It shall be a condition precedent to the right of a Party to this Agreement to submit a Dispute to Binding Arbitration that such Party shall have given written notice of its intention to do so to the other Party to this Agreement and such written notice shall state the particulars of such Dispute. Within ten (10) Business Days of such notice being provided, the Parties to this Agreement shall mutually appoint a single arbitrator to determine the Dispute. The arbitrator shall fix a time, which shall not be later than ten (10) Business Days following his or her appointment, and a place in Vaughan, Ontario, for the purpose of hearing the evidence and representations of the Parties. Each of the Parties shall co-operate with the arbitrator and shall provide him or her with all information in their possession or under their control necessary or relevant to the matter being determined. Within ten (10) Business Days after the conclusion of the arbitration hearing, or such longer period as may be required by the arbitrator appointed under this subsection 8.12.2, the arbitrator shall make an award and reduce the same to writing and deliver one copy of his or her decision to each Party.
- 8.12.3 If the Parties fail to agree on an arbitrator within the time period specified in subsection 8.12.2 above, then, unless the parties otherwise agree, the

Dispute shall be submitted to ADR Chambers for final resolution, which submission shall be by written notice which may be provided by either Party to ADR Chambers and to the other Party to this Agreement. Within five (5) Business Days following the date of any notice given by either Party pursuant to this subsection 8.12.3, an arbitrator shall be selected by random draw made by ADR Chambers. The arbitrator so selected shall perform both the settlement conference and the trial in the matter. The Parties further agree to be bound by the rules of the ADR Chambers in force from time to time.

8.12.4 There shall be no right of appeal from the arbitrator's award except in accordance with the *Arbitration Act, 1991* (Ontario). The Parties agree that a judgment upon the arbitration award may be entered in any court in Canada or any court having jurisdiction, or that an application may be made to such court for judicial recognition of the award and/or an order of enforcement thereof. The Parties agree that the arbitrator selected pursuant to subsections 8.12.2 and 8.12.3 shall determine costs (legal fees and disbursements) as part of the arbitrator's award.

8.13 **Counterparts.** This Agreement may be executed by the Parties hereto in several counterparts, each of which when so executed and delivered shall be an original and all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto on the date first above written.

POWERSTREAM INC.

Per: _____
Name: Dennis Nolan
Title: EVP Corporate Services & Secretary

CITY OF VAUGHAN

Per: _____
Name: Linda Jackson
Title: Mayor

Per: _____
Name: Jeffrey Abrams
Title: City Clerk

SCHEDULE A FACILITIES TERMS

***Shared Service Agreement
Power Stream & The City of Vaughan
Facility Rental – Schedule A***

SERVICE PROVIDED

The City of Vaughan agrees to provide Power Stream facility space at the following locations for the term of the agreement:

- Joint Operations Centre – Designated office/warehouse space
- Joint Operations Centre – Designated outdoor space
- Civic Centre – Designated counter space

As part of the rental fee, Power Stream will receive occupancy services consistent to the City's current operational standards. This would include services which are normally the responsibility of the tenant such as parking, access to common areas, custodial, insurance, cleaning, garbage collection, security, telephone system and long distance charges, etc. For reference purposes, a more specific list of services provided is illustrated later in the schedule.

Additional service requests related to enhanced service levels, renovations, alterations, or additional space, will require mutual agreement and may result in a fee adjustment or separate billing. Requests of this nature should be submitted by way of a work order or written request to the City's Building and Facilities Department.

PRICING

In consideration of the above, Power Stream shall pay the following annual rental rates inclusive of Maintenance, and Insurance over the term of the agreement, termed TMI. Property taxes are bill directly to PowerStream and are not included in this pricing. Payments shall be due at the end of each quarter commencing January 2008.

<i>2008 Annual Rent & TMI</i>	<i>Civic</i>	<i>JOC - Industrial</i>	<i>JOC Outdoor</i>	<i>Total</i>
Area Rented	361	24,455	240,808	265,623
Market Rental Rate/Ft2	\$ 9.18	\$ 7.14	8%	
Estimated TMI/Ft2	\$ 17.30	\$ 8.37	Incl	
Estimated Investment			\$ 4,107,235	
Rent & TMI	9,549	379,404	328,579	717,532
<i>Note - As agreed and additional \$34,053/month for every month the 2007 footprint is occupied.</i>				

<i>2009 Annual Rent & TMI</i>	<i>Civic</i>	<i>JOC - Industrial</i>	<i>JOC Outdoor</i>	<i>Total</i>
Area Rented	361	24,455	240,808	265,623
Market Rental Rate/Ft2	\$ 9.36	\$ 7.28	8%	
Estimated TMI/Ft2	\$ 17.65	\$ 8.54	Incl	
Estimated Investment			\$ 4,189,379	
Rent & TMI	9,740	386,992	335,150	731,882

<i>2010 Annual Rent & TMI</i>	<i>Civic</i>	<i>JOC - Industrial</i>	<i>JOC Outdoor</i>	<i>Total</i>
Area Rented	361	24,455	240,808	265,623
Market Rental Rate/Ft2	\$ 9.55	\$ 7.43	8%	
Estimated TMI/Ft2	\$ 18.00	\$ 8.71	Incl	
Estimated Investment			\$ 4,273,167	
Rent & TMI	9,935	394,731	341,853	746,520

Note: Annual rent is increased in relation to inflation.

***Shared Service Agreement
Power Stream & The City of Vaughan
Facility Rental – Schedule A***

PRICING METHODOLOGY

Indoor Rent

Based on an estimated market rate per square foot obtained from Bosley Farr Associates LTD, external real-estate analysts/consultants.

2007 Office Space – approx. \$9 (2008 rate adjusted for inflation)

2007 Industrial Space - approx. \$7 (2008 rate adjusted for inflation)

Space occupied is based on actual occupancy plus a proportionate share of common space (i.e. entrances, corridors, cafeteria, washrooms, etc.). Area to be occupied was provided by Power Stream and validated through the City's Building & Facility department.

The above indoor rent methodology includes outdoor area access for parking and open space, an area equivalent to the indoor space rented. This is termed a double density factor and is frequently applied in the industry.

Outdoor Rent

Per Bosley Farr Associates LTD, annual rental rates are typically defined by an expected return on property investment. Not to be construed as appraised values, listed below are guidelines provided for rent valuation purposes.

Industry Annual Rate of Return (property)	8%
Estimated excess land value/acre	\$500,000

Cost of Land Improvements	
General paving/lighted	\$3.50/Ft2
General Fencing	\$2.50/Ft2
Truck Port Construction	\$50/Ft2

TMI – Taxes, Maintenance, Insurance

95% of direct occupancy services provided are performed by external parties through either a tender, contract, or required service call. Based on this information the majority of the budget approximately represents market value. For the purposes of the shared service agreement a square foot rate was determined for each facility type. Per Bosely Farr and Associates our calculated rate is relatively consistent with local industry trends.

Property taxes are bill directly to PowerStream and are not included in the above mentioned calculation.

***Shared Service Agreement
Power Stream & The City of Vaughan
Facility Rental – Schedule A***

LEASEHOLD IMPROVEMENTS

Power Stream may install its usual trade fixtures in the usual manner, provided such installations do not damage the structure of the leased premises or the building, and provided further that Power Stream shall have submitted detailed plans and specifications for such trade fixtures to the City and shall have obtained the City's prior written consent thereto, which consent may not be unreasonably withheld.

At the termination of this lease, whether due to expiry of same or for any other cause whatsoever, and at the option of the City, any or all installations, improvements, alterations, additions, partitions and fixtures, other than trade or tenant fixtures, in or upon the leased premises, whether placed there by Power Stream or the City, shall become the property of the City without compensation therefore to Power stream. Notwithstanding anything herein contained, the City shall be under no obligation to repair or maintain the tenant's installations, alterations, additions, partitions and fixtures or anything in the nature of a leasehold improvement made or installed by Power Stream except for those as detailed in this schedule of the agreement. The City may at its sole option, elect that anything in the nature of a leasehold improvement made or installed by or on behalf of Power Stream be removed and it shall be Power Stream's obligation to restore the leased premises to the condition they were in previous to said alteration, installation, addition, partition etc. The removal and restoration shall be at the sole expense of Power Stream.

REPORTING/COMMUNICATION

Space occupied should be confirmed annually before the final billing. Any additional space requirements will be billed retroactively to the date of occupancy.

JOC OUTDOOR LEASE COMMITMENT UNTIL 2012

It should be noted that Power Stream has committed to continue lease payments for outdoor storage until 2012. On May 29th a memo was provided, which illustrates lease payments will be approximately \$120k/year with an annual 3% escalation factor. However, in the spirit of the agreement a market value assessment will be required at a later date before finalizing this lease arrangement.

**Joint Service Agreement between the City Power Stream
Facility Services Provided**

Occupancy Services Provided	J.O.C.	Civic Centre
<u>Security 24/7</u>		
Security Guard - (Patrol & Open Facilities)	24 hrs 7 days a week	Business Hours Upstairs
Designated Security Cameras	6 of 18 designated	3 of 16 designated
Security Camera Monitoring (Guard @ J.O.C.)	Yes	Yes
Security Camera Maintenance	Yes	Yes
Categories and Inventory Security Tapes	Daily	Daily
Swipe Card Access (Installation, Monitoring, Card Creation)	2004 Budget	Yes
Burglar Alarm	No	No
<u>Safety</u>		
Fire Alarm Monitoring	Yes	Yes
Fire Alarm System Maintenance (Panel Lights/Detectors)	Monthly	Monthly
Fire Code Inspection/Testing	Annually	Annually
Fire Extinguisher & Safety Equipment Replacement	Min every 5 yrs	Min every 5 yrs
Emergency Power Testing & Maintenance	Quarterly	Quarterly
Environment Testing (Air Quality, Lighting, Temperature)	As requested	As requested
Temperature Control - EMS	Daily	Daily
Major Air Filter Maintenance & Changes	Quarterly	Semi-annual
Outdoor Lighting Program (Timers, Decorations, Maintenance)	Semi-annual	Semi-annual
Pest Control	Monthly	Monthly
<u>General Maintenance</u>		
Cleaning Services General Areas (Dusting, Mopping, Garbage Pick-Up, etc.)	Daily	Daily
Cleaning Services Hydro Specific Areas (Dusting, Mopping, Garbage Pick-Up, etc.)	Daily	Daily
Office Garbage Disposal & Bin Rental	Weekly	Weekly
Janitorial Supplies (Soap, Tissue, Paper Towels, Garbage Bags, etc.)	Daily	Daily
Emergency Clean-Up (Flooding, Spills, Frayed Rugs, etc)	As requested	As requested
Bio-Chem. Napkin Removal	Monthly	Monthly
Carpet Replacement (Entrances, Office and Warehouse)	Weekly	Weekly
Carpet Steam Cleaning	Quarterly	Semi-Annual
Window Cleaning (1x per year - industry standard is 1x)	Annual	Annual
Relamping/ Lighting	Weekly	Weekly
General Fluorescent Lens Cleaning	Annual	Weekly
Plant/Vegetation Maintenance (Water, Feed, Clean, Trim)	Weekly	Annual
Plant Replacement	As required	Quarterly
Auto & Handicap Door Maintenance	As required	As required
Lock & Key Maintenance & Replacement	As required	As required
Repair Work Areas (Adjust Workstations, Computer Trays, etc.)	Weekly	Weekly
General Maintenance, Repair & Installation (Electrical/HVAC/Paint/Labour etc.)	As requested	As requested
Signage (Purchase, Installation, Replacement, Maintenance)	As requested	As requested
Plumbing Program	Monthly	Monthly
Material & Supplies (Lights, Ballasts, Taps, Gaskets, Baskets, etc.)	Daily	Daily
Machine Time, Small Tools, Rental Equipment.	Daily	Daily
Elevator Maintenance	None	Monthly
Rooftop Maintenance - Roof/Drainage Inspection & Debris Removal	Quarterly	Quarterly
<u>Warehouse Maintenance</u>		
Overhead Door Maintenance Program (6 of 20)	Monthly	NA
Power Loading Dock Maintenance Program	Quarterly	NA
Power Crane Maintenance & Inspection (1 of 3)	Annual	NA
Pump-Out Shop Catch Basins	Quarterly	Quarterly
<u>Outdoor Maintenance</u>		
Parking Lot Sweeping	Semi-Annual	Semi-annual
Walkway and Entrance Sweeping	As required	As required
Parking Lot - Repairs, Line Painting, etc.	As required	As required
Pump-Out Catch Basins	As required	As required
Fire Hydrant Maintenance	As required	As required
Eaves Trough and Gutter Cleaning	Annual	Annual
Tree & Shrub Maintenance including Spring Mulching	Semi-Annual	Semi-Annual
Tree & Shrub Pruning	Every 3 years	Every 3 years
Tree & Shrub Replacement	As required	As required
Flower Planting	Spring	Spring
Cultivation	Weekly	Weekly
Watering & Fertilizing	Monthly	Monthly
Turf (Grass) Cutting & Trimming	Weekly	Weekly
Fertilization and Aeration	Yearly	Yearly
Debris Pick-Up	Weekly	Weekly
Empty Outside Garbage Cans	Daily	Daily
Snow Removal Parking - Plow, Material Application, & Removal	20 Visits/Winter	20 Visits/Winter
Snow Removal Walkways - Shovel, Blower, & Material Application	As required	As required
<u>Additional Services</u>		
Telephone Line Charges	Max. \$17,000	Monthly
Long Distance	Max. \$5,000	Monthly
Wash Bay Service including Materials and Equipment	Unlimited	None
Designated TV Cable Outlet	Monthly	Monthly
Hydro	Monthly	Monthly
Water	Monthly	Monthly
Gas	Monthly	Monthly
General Administration (Management, Coordination, Invoice Processing & Payment)	Daily	Daily
Moving Furniture, Hanging Pictures, & Delivering Boxes	Weekly/As requested	Weekly/As requested
<u>Direct Charge Backs</u>		
Transformer Station (Maintenance, Locks, Signage, etc.)	As billed	As billed
Cafeteria (Food & Post-Meeting Clean-Up)	As billed	As billed
Garbage Disposal (Wood/Metal Recycling)	As billed	As billed
<u>Rental Services</u>		
Items included in the TMI rate that are strategically provided services to ensure a minimum standard of service. It is in the City's best interest to control these services to ensure a consistent image, protect the City's investment, and avoid potential litigation. Service requirements above the standard are the tenant's responsibility and can be provided by the City for a negotiated fee.		

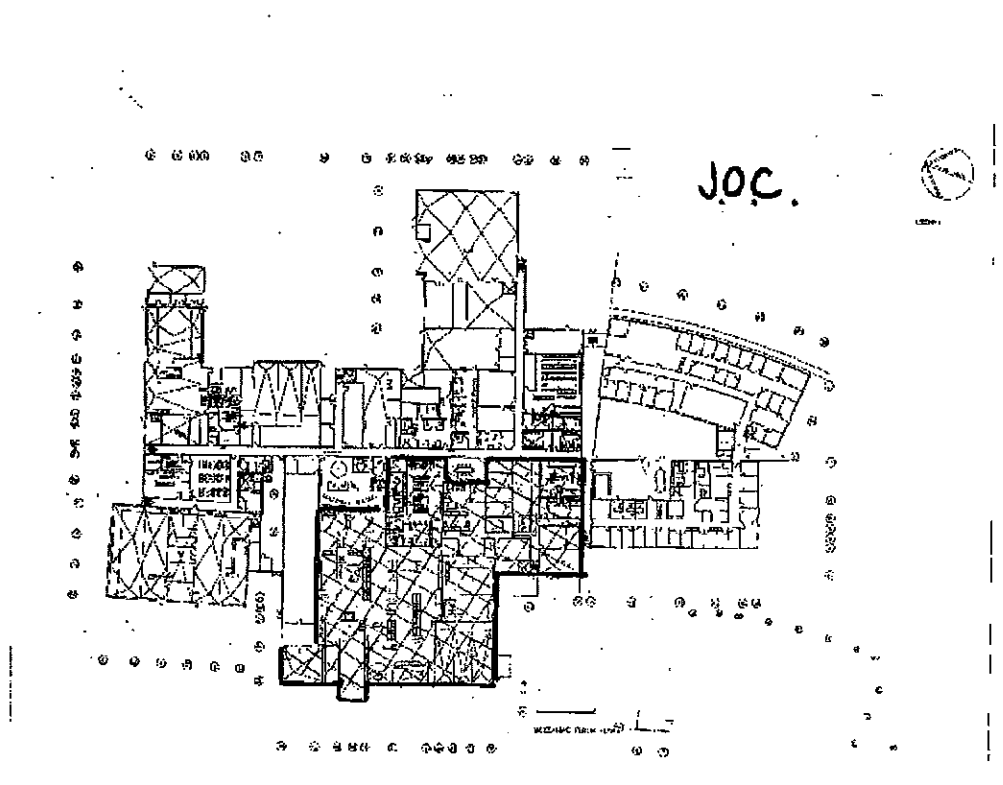
General Notes

- A) Transformer locations are excluded from this schedule as these sites are maintained by Hydro Vaughan Distribution Inc.
B) General building structural maintenance repairs are assumed to be included in the rental rate
C) Currently Hydro is not charged for outdoor service or administration costs.

*Shared Service Agreement
Power Stream & The City of Vaughan
Facility Rental – Schedule A*

Joint Operations Center (J.O.C) – designated indoor space rented (Bold Perimeter)

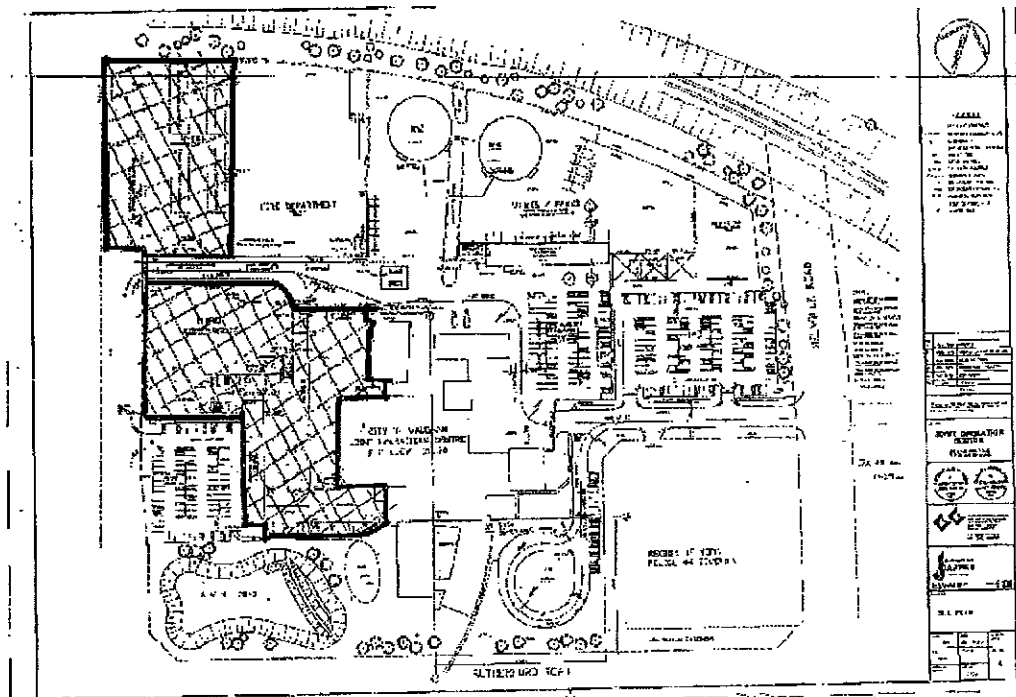
Note: Area illustrated does not include common or shared areas i.e. parking, entrances, pathways, grass areas. These items are allocated on a proportional basis.



**Shared Service Agreement
Power Stream & The City of Vaughan
Facility Rental – Schedule A**

Joint Operations Center (J.O.C) – designated outdoor space rented (Bold Perimeter)

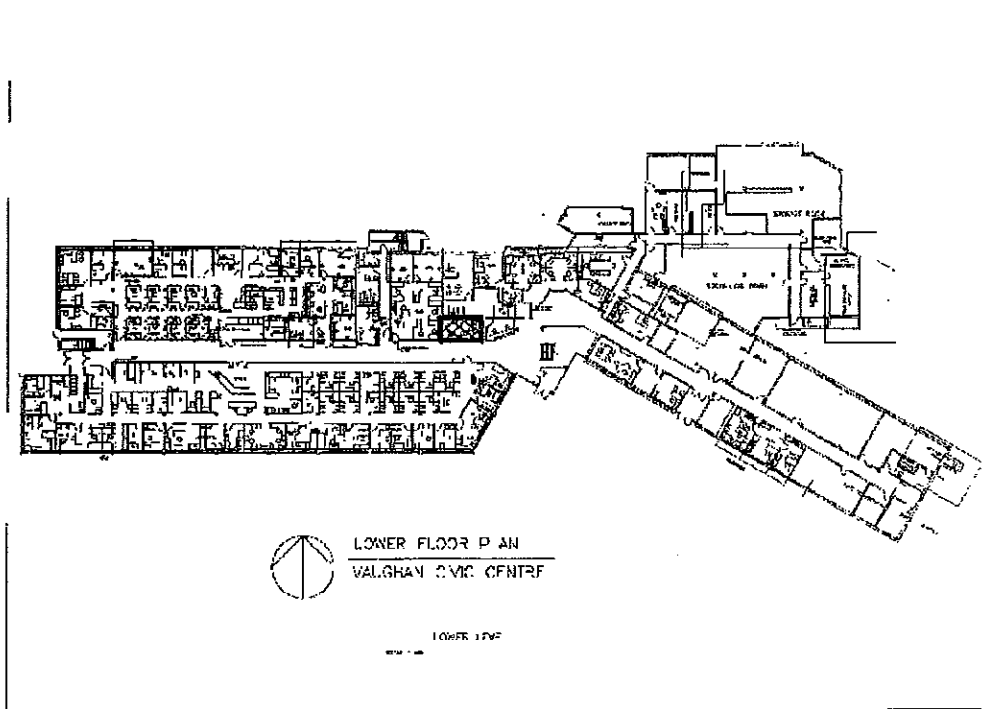
Note: Area illustrated does not include common or shared areas i.e. parking, entrances, corridor, cafeteria, Washrooms. These items are allocated on a proportional basis.



***Shared Service Agreement
Power Stream & The City of Vaughan
Facility Rental – Schedule A***

Civic Centre – designated indoor space rented (Bold Perimeter)

Note: Area illustrated does not include common or shared areas i.e. parking, entrances, corridor, cafeteria, washrooms. These items are allocated on a proportional basis.



SCHEDULE B

INFORMATION TECHNOLOGY

***Shared Service Agreement
Power Stream & The City of Vaughan
Information Technology Service – Schedule B***

SERVICE PROVIDED

JDE Enterprise Software License Maintenance

Currently the City of Vaughan pays for JDE software annual maintenance fees, which provides continuous access to JDE software bug fixes, news releases, etc. PowerStream currently holds an identical set of applications and equally benefits from this service. Therefore it is reasonable to share in this cost.

Network Link (WAN Services)

There is a mutual need to establish a network link between the Civic Centre and the PowerStream's head office. This link is necessary for the City to provide payroll information to PowerStream for administration and processing purposes. PowerStream requires a link to access billing information in order to perform the cashiering function located at the Civic Centre.

PRICING

In consideration of the above, PowerStream shall pay the following annual amounts

Service	2008	2009	2010
JDE Enterprise Software License Maintenance	32,500	33,150	33,813
Network Link (WAN Services)	4,500	4,590	4,682
Total Information Technology Services	37,000	37,740	38,495

Note: Annual amount increased in relation to inflation.

PRICING METHODOLOGY

Services are provided by external parties and should therefore be considered market value. Both parties benefit equally from the services mentioned above and costs are shared evenly (50/50).

OTHER INTERESTS

Additional service requests will require mutual agreement and may result in a fee adjustment or separate billing. Requests of this nature should be submitted by way of a work order or written request to the City's Information Technology Management Department.

SCHEDULE C

FUEL SERVICE CHARGES

***Shared Service Agreement
Power Stream & The City of Vaughan
Fuel & Administration Surcharge – Schedule C***

SERVICE PROVIDED

Fuel

The City currently provides PowerStream with access to vehicle fuel, which is purchased for Vaughan through the York Region coop program.

Fuel Administration

An administration surcharge is applied to cover the costs of managing the fuel service and associated infrastructure. This would include, but is not limited to the following:

- Purchasing & tracking fuel
- Maintaining pumps
- Administering the service (card issue, polling, reporting, invoicing)
- Associated amortization of the pumps, tanks, etc.

PRICING

In consideration of the above, PowerStream shall pay the following annual amounts:

Service	2008	2009	2010
Fuel	Co-op Rate	Co-op Rate	Co-op Rate
Administration Fee	5.44%	5.55%	5.68%
<i>(Applied to the amount of fuel purchased)</i>			

Note: Administration fee is increased annually in relation to inflation.

PRICING METHODOLOGY

Fuel prices are set at the York Region coop program rates as PowerStream can obtain these rates independently in the open market.

The administration surcharge is based on the City's cost of providing the service increased by the agreements established 7.3% rate of return. The cost of the service is based on a labour effort analysis, applied operating costs, and capital cost amortization. The administration surcharge is calculated by dividing the cost by total consumption.

OTHER INTERESTS

Fuel will be billed directly on a quarterly basis incorporating the fuel administration surcharge. Additional service requests will require mutual agreement and may result in a fee adjustments or separate billing. Requests of this nature should be submitted by way of a written request to the City's Fleet Department.

SCHEDULE D

PAYROLL SERVICES

Schedule D – Payroll Services
Payroll Services Provided by PowerStream to the City of Vaughan

Service Summary

PowerStream agrees to provide the following payroll services to the City of Vaughan for the years 2008 to 2010.

- **Payroll administration**
 - Payroll service for the COV employees.
 - Payroll to City Council for Region of York, Hydro Vaughan Holdings, Inc., Hydro Vaughan Energy Corp and Vaughan Holdings.
 - Retroactive payment processing for collective agreement ratified.
 - Payment of retiring allowances and severance packages including RRSP transfers.
 - Distribution of labour costs to the City's general ledger.
 - Special payments for cleaning allowances, long service pay, reclass pay, shift premiums, statutory holiday pay, etc.
 - Preparation of Record of Employment forms.
 - Processing of bank deposit changes and tax changes.
- **Tax, benefits, and deductions administration**
 - Weekly deductions and remittances for income tax, CPP, EI (4 CRA business numbers), support payments and garnishments, employee credit union, group RRSP, recreation memberships, Canada Savings Bonds, union dues (6 unions), group home and auto insurance, optional and spousal life insurance, United Way, employee computer purchase plan, clothing and uniform deductions.
 - Monthly remittances for Employer Health Tax (4 accounts), WSIB, OMERS (2 accounts).
 - Monthly and annual reporting for OMERS (2 accounts).
- **Reporting**
 - Monthly reporting to Statistics Canada, OMERS, Employer Health Tax, and WSIB.
 - Annual reporting for CRA (T4 and T4A's), OMERS, Employer Health Tax, WSIB, Public Sector Salary Disclosure Information, EI Premium Reduction Application.
 - Responding to HRDC requests for information regarding employment insurance claims.
 - Ad hoc reporting to department managers for budget monitoring.
 - Assist with City Financial Information Return.
- **Other**
 - Coordinate payroll audits by City auditors, CRA, Ministry of Finance, and WSIB.
 - Perform all acceptance testing and implement payroll computer systems changes including integration with other finance and HR systems.
 - Legislative interpretation and ensuring compliance with legislation.
 - Ensure compliance with City by-laws and six collective agreements.
 - OMERS administration (leave of absence buy-backs, termination reporting, etc.).

- Liaise with external government organizations, banks, lawyers, etc.

Costing Methodology

PowerStream will charge the following prices for providing the payroll services listed above to the City of Vaughan:

- 2008: \$260,075
- 2009: \$266,091
- 2010: \$272,253

The prices listed above are cost based and are marked up by PowerStream's weighted average cost of capital of 7.3%. The following process was used to arrive at the costs.

1. Determined the direct costs associated with providing the service.
2. Determined the indirect costs associated with providing the service.
3. Determined what percentage of each budgetary account of the Payroll Department is attributable to providing the services.
4. Determined what costs are related only to providing the service and PowerStream wouldn't incur if it didn't provide the service
5. Adjusted all costs for 2% inflation for years 2009 and 2010
6. Summed all the costs related to providing the cashier services.
7. Adjusted the total cost for 7.3% in order to ensure a ROI of 7.3% as required by the ARC.
8. The adjusted amount is the price charged to the COV.

SCHEDULE E CASHIER SERVICES

Schedule E - Cashier Services

Cashier Services Provided by PowerStream to the City of Vaughan

Service Summary

PowerStream agrees to provide the following cashier services to the City of Vaughan for the years 2008 to 2010.

- Opening and sorting night box for payments
- Processing payments for:
 - Taxes
 - Parking permits
 - Permits
 - Licensing
 - Dog Tags
- Delivery of items to the COV Mail Room
- Encoding all cheques in preparation for daily bank deposits
- Preparing Debit Machine, Visa/MasterCard
- Cash petty cash cheques
- Change/create float for events (Canada Day, Winder Fest, etc.)
- Prepare courier pick-up for Symcor payments
- Prepare for Brinks pick-up of daily cash deposits
- Prepare daily COV blotter
- Issue COV receipts
- Deliver completed/processed receipts to appropriate departments:
 - Building
 - Taxes
 - Bylaws
 - Licensing
 - Finance
- Process and accept ticket purchases for COV events/offers
 - Wonderland
 - Ontario Place
 - Golf tournaments
 - Other special events
- Respond to counter inquiries (location of departments, tax due dates, etc.)

Costing Methodology

PowerStream will charge the following prices for providing the cashier services listed above to the City of Vaughan:

- 2008: \$231,672
- 2009: \$235,965
- 2010: \$240,972

The prices listed above are cost based and are marked up by PowerStream's weighted average cost of capital of 7.3%. The following process was used to arrive at the costs.

1. Determined the direct costs associated with providing the service.
2. Determined the indirect costs associated with providing the service.
3. Determined what percentage of each budgetary account of the Payroll Department is attributable to providing the services.
4. Determined what costs are related only to providing the service and PowerStream wouldn't incur if it didn't provide the service
5. Adjusted all costs for 2% inflation for years 2009 and 2010
6. Summed all the costs related to providing the cashier services.
7. Adjusted the total cost for 7.3% in order to ensure a ROI of 7.3% as required by the ARC.
8. The adjusted amount is the price charged to the COV.

**SCHEDULE F
WATER METER READING
AND BILLING**

SCHEDULE F

SERVICE DESCRIPTION FOR WATER METER READING AND WATER BILLING AND REMITTANCE

GENERAL SERVICES PROVIDED

- **Billing of all water/sewer services.**
 - As required, PowerStream to explain the methodology used to produce estimated readings and the adjustment/correction once regular reads are collected.
 - PowerStream shall be responsible for the work quality of their meter readers.
 - PowerStream shall be responsible for submitting any work orders relating to water meters to the City and/or the City's contractor in a timely manner.

Revenue Management & Collections

- Payment by customers of water accounts are in conjunction with electricity accounts and the amounts owing are treated as one (unless prevented by the Ontario Energy Board from doing so).
- Upon request, PowerStream shall investigate & provide account details to the City for specific customers where consumption varies from historic consumption levels.
- PowerStream shall provide billing & collection for Waterworks customer services as per the Town's approved user fee schedule for the following services:
 - Frozen meter replacement
 - Water turn on and/or turn off
 - Water meter removal, replacement and/or reinstallation
 - Water meter testing
- PowerStream shall provide written notices to the customer to have the ARB installed or repaired
- Coordination of appointments for repairs to water meter remote readout devices.

CUSTOMER ACCOUNT MANAGEMENT

- Resolution of Returned Mail
- Management of outgoing mail.

SERVICE LEVELS

- PowerStream will include with its regular bill mailings one (1) bill insert per mailing (containing Waterworks information supplied by the municipality) at no cost. Availability is at the discretion of PowerStream. There may be third party costs associated with bill inserts.

Telephone and Written Inquiry Handling

Response to telephone and written inquiries regarding water/sewer and electric will meet or exceed the mandated requirements as set out by the Ontario Energy Board:

- Telephone Response – 65% of calls answered within 30 seconds.
- Written Response to Inquiry – Within 10 business days, 80% of the time.

Annual statistics are reported to the Ontario Energy Board.

REPORTING STATISTICS

- Monthly Billing Summary - best efforts by the fifth working day and no later than the 10th calendar day.
- Monthly Active Account Count List of Water Accounts best efforts by the fifth working day (broken down between residential and commercial) and no later than the 10th calendar day.

Water Meter Serial Number Corrections

PowerStream shall update the water meter serial numbers in their database as provided by the City from time to time. These corrections should be merged into PowerStream's database within 20 business days of receipt.

Work Orders Statistics

- PowerStream shall provide the City monthly reports of outstanding work orders.

Customer Billing Data

PowerStream should provide customer billing data to the City in electronic format at the end of each billing month. The billing data should include the customers billed in the current month, separated into residential, general and industrial customers. Data is used in various Waterworks analyses.

PRICING

PowerStream will charge the following prices for providing the water meter reading, billing and payment & collection services listed above. An adjustment based on actual accounts will be made at the end of Q1 2009 and at the end of Q1 2010. Remittance is on the 10th day after month end.

- 2008: \$1,376,148
- 2009: \$1,414,367
- 2010: \$1,439,592
-

The prices listed above are cost based and are marked up by PowerStream's weighted average cost of capital of 7.3%. The following process was used to arrive at the costs. The meter reading service is obtained from a competitive bidding process.

1. Determined the direct costs associated with providing the service.
2. Determined the indirect costs associated with providing the service.
3. Determined what percentage of each budgetary account of the various Customer Services Departments are attributable to providing the services.
4. Determined what costs are related only to providing the service and PowerStream wouldn't incur if it didn't provide the service
5. Adjusted all costs for 2% inflation for years 2009 and 2010
6. Summed all the costs related to providing the water services.
7. Adjusted the total cost for 7.3% in order to ensure a ROI of 7.3% as required by the ARC.
8. The adjusted amount is the price charged to the City of Vaughan.

SCHEDULE G PRICING SUMMARY

PRICING SUMMARY

City of Vaughan/PowerStream Joint Services Pricing Summary 2008 to 2010

Services Provided by the City of Vaughan to PowerStream
(In Dollars)

<i>Schedule - Service</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
A - Facilities	717,532	731,882	746,520
B - Information Technology	37,000	37,740	38,495
C - Fuel Service Charge	10,919	11,158	11,404

Services Provided by PowerStream to the City of Vaughan

<i>Service</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
D - Payroll	260,075	266,091	272,253
E - Cashier	231,671	235,965	240,972
F - Water Services	1,376,148	1,414,367	1,439,592