

Request for Decision City Council



Type of Decision									
Meeting Date	Thursday, May 29, 2003				Report Date	Wednesday, May 21, 2003			
Decision Requested	<input checked="" type="checkbox"/>	Yes		No	Priority	<input checked="" type="checkbox"/>	High		Low
	Direction Only				Type of Meeting	<input checked="" type="checkbox"/>	Open		Closed

Report Title
2003 Municipal Election By-laws

Policy Implication + Budget Impact	
n/a	This report and recommendation(s) have been reviewed by the Finance Division and the funding source has been identified.
<p><u>Policy Implication:</u></p> <p>The <i>Municipal Elections Act, 1996</i>, as amended, mandates most of the provisions for elections. However, the Act does permit a municipality to tailor certain elements of an election to suit the particular needs of the municipality. In order to do this, the Act requires that Council exercise its discretion by a duly enacted by-law.</p> <p>No specific policy will be created by the adoption of these five by-laws, as these procedures will be in effect for the 2003 municipal election only.</p> <p><u>Budget Impact:</u></p> <p>None.</p>	
<input checked="" type="checkbox"/>	Background Attached

Recommendation
<p>That Council give third and final reading to the following by-laws in respect of the 2003 Municipal Election:</p> <ol style="list-style-type: none"> A By-law of the City of Greater Sudbury to Authorize the Use of a Marksense Ballot and Optical Scan Vote Tabulators and to Establish Procedures for Their Use for the November 10th, 2003 Municipal Elections under the <i>Municipal Elections Act, 1996</i>, as Amended; A By-law of the City of Greater Sudbury to Authorize the Use of the French Language in Notices, Forms and Other Information for the November 10th, 2003 Municipal Elections under the <i>Municipal Elections Act, 1996</i>, as Amended;
<input checked="" type="checkbox"/> Recommendation Continued

Recommended by the General Manager
 Doug Wuksinic General Manager of Corporate Services

Recommended by the C.A.O.
 Mark Mieto Chief Administrative Officer

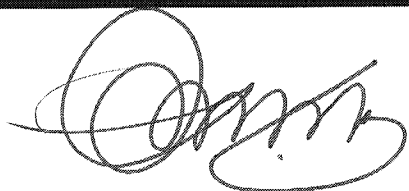
Title: **2003 Municipal Election By-laws**

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Date: 2003-05-29

Report Prepared By

Thom Mowry
City Clerk



Division Review

Ron Swiddle
Director of Legal Services and City Solicitor



Recommendation continued:

3. **A By-law of the City of Greater Sudbury to Authorize the Use of a Particular Ballot Form for the November 10th, 2003 Municipal Elections;**
4. **A By-law of the City of Greater Sudbury to Provide for the Mailing of Notices of the Day, Time and Location of Voting Places to Each Resident Voter for the November 10th, 2003 Municipal Elections and to Authorize the Use of Proxies and Proxy Voting; and,**
5. **A By-law of the City of Greater Sudbury to Provide for an Advance Vote and Reduced Voting Hours for the Year 2003 Municipal Election.**

PURPOSE:

The *Municipal Elections Act, 1996* [MEA] significantly altered the manner in which municipal elections were to be administered, from a process strictly mandated by the legislation to one where the municipal council has the flexibility to tailor certain elements of the election to suit the particular needs of the municipality.

In preparation for the 2003 Municipal Election, which will be held on Monday, November 10, 2003, a review of election procedures was undertaken, as the MEA requires various matters to be adopted by by-law prior to September 1st in an election year. The purpose of this Report is to present for Council's consideration five election by-laws which are necessary for the conduct of the 2003 Municipal Election.

Date: 2003-05-29

BACKGROUND:

1. Alternative Voting Methods:

Section 42(1)(a) of the *Municipal Elections Act, 1996*, as amended, [MEA] permits the Council of a local municipality to pass by-laws authorizing the use of voting and vote-counting equipment such as voting machines, voting recorders or optical scanning vote tabulators for municipal elections.

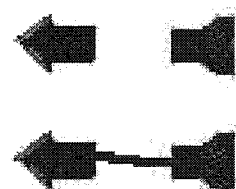
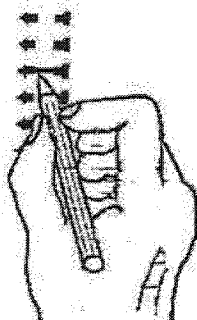
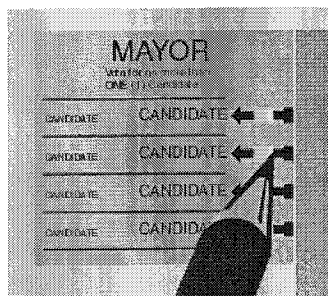
Section 42(3) of the MEA requires the Clerk, in the case of a regular election, by September 1, 2003 to establish procedures and forms for the use of any voting and vote-counting equipment authorized by by-law and to provide a copy of the procedures and forms to each candidate.

Finally, section 42(4) of the MEA provides that the procedures and forms established by the Clerk, if they are consistent with the principles of the MEA, prevail over anything in the MEA and the regulations made under it.

Council has authorized the use of optical scan vote tabulators for the November 10, 2003 municipal elections. Automated vote counting equipment has several benefits to both voters and the municipality, some of which include:

- accuracy of vote tabulation
- consistency in vote tabulation
- rejection of overvoted and/or improperly marked ballots at the time of voting, therefore reducing voter disenfranchisement
- quick tabulation of individual voting place results following the close of the voting (the results will be sent by modem from each location).

To mark the ballot the voter must draw a line connecting the arrow that points to the choice of the candidate using the black ballot-marking pen provided by the Deputy Returning Officer, as illustrated in the following graphics:



The Voter then inserts the ballot into the secrecy sleeve provided and proceeds to a vote tabulator where the Senior Deputy Returning Officer will insert the ballot into the voting machine.

BACKGROUND continued:

1. Alternative Voting Methods:

In order to provide an added measure of due diligence, KPMG has been engaged to review the proposed procedures and to audit certain aspects of the election process. A photocopy of their letter of engagement is attached to this report for the information of Members of Council.

The procedures proposed by the Clerk have been reviewed by KPMG.

2. French Language:

Section 9 of the MEA provides that all notices, forms and other election information for Council and English-language District School Boards shall be provided in the English language only, unless the council of the municipality passes a by-law allowing the use of French, in addition to English.

However, section 9 of the Act was amended by Bill 25 (*Fewer Municipal Politicians Act, 1999*) to provide for French-language notices, forms and other information for French-language District School Boards.

The by-law for Council's consideration provides for the use of the French language for all notices, forms and other information under the Act; this includes any and all prescribed forms.

This by-law is deemed to have come into force and taken effect on January 1st, 2003.

3. Voter Notification Cards and Proxy Voting:

This by-law provides for the mailing of voter notification cards and the use of proxy voting.

Voter Notification Cards are addressed to all voters resident at a residential address rather than one card per voter. The purpose of Voter Notification Cards is to advise the voter of the date of the election, the hours of voting, the location of the voting station for that address, as well as information on advance voting. They also afford the voter an opportunity to correct any errors, such as a misspelling of their name, prior to voting day.

It is not necessary or required for voters to take their voter notification card to the voting station in order to vote. Nevertheless it does speed up the voting process, and as such, voters will be encouraged to take their card with them to the voting station.

This year Voter Notification Cards will have tickets printed along the bottom of the Card which can be used for a free ride on Sudbury Transit to and from voting stations either during the Advance Vote or on Voting Day.

BACKGROUND continued:

3. Voter Notification Cards and Proxy Voting:

Voter notification cards will be mailed out in late September or early October.

Section 42(5) of the MEA provides that where a by-law authorizing the use of an alternative voting method is in effect, Section 44 (Voting Proxies) applies only if the by-law so specifies and if the by-law specifies that Section 44 applies, it may also establish additional criteria that a person must meet to be entitled to vote by proxy.

No additional or "special" rules are recommended, with the exception that all proxy certificates will be numbered and a record kept of the number on the proxy certificates issued to candidates. Candidates will be responsible for the proper issuance of any proxy certificates issued to them. The proper use of Proxy Certificates is outlined in detail in the Candidate's and Trustee's Guides.

Electors who do not receive a Voter Notification Card, for what ever reason, can determine their voting location by entering their address on the City's election web site, either at home or at any Citizen Service Centre or Library Branch, or by telephoning the City's Call Centre.

4. Composite Ballot:

This by-law authorizes the use of a bilingual, colour and school support-coded composite ballot for the November 10th, 2003 municipal election.

There will be five composite ballot styles for each of the six wards, as follows:

1. Rainbow District School Board (Public English)
2. Sudbury Catholic District School Board (Separate English)
3. Conseil scolaire du district du Grand Nord de l'Ontario (Public French)
4. Conseil scolaire de district catholique du Nouvel-Ontario (Separate French)
5. Non-Resident (Mayor and Councillors only - no District School Board).

Each composite ballot will have the following information on its face:

- that the ballot may be invalid unless initialled by the Deputy Returning Officer
- instructions on how to vote (by completing the arrow to the right of the candidate's name)
- the date of the election
- the number of candidates an elector is entitled to vote for
- the appropriate Ward number, and in the case of District School Board Trustees, the Area or Zone shall appear on all ballots except those for non-resident electors not entitled to vote for District School Board Trustees.

Date: 2003-05-29

BACKGROUND continued:

4. Composite Ballot:

Where an acclamation has occurred for any office, a ballot may be overprinted in large block type with the word: "ACCLAMATION" will be included for that office. This will be done for the sole purpose of assisting voters, no ballot count will be taken for that office. The form of the composite ballot may be varied where the number of candidates nominated requires a reorganization of the ballot format.

5. Advance Vote:

Section 43(1) of the MEA provides that a municipal council shall pass a by-law establishing one or more dates for an advance vote, and the hours during which voting places shall be open on that date or dates.

One week of continuous Advance Voting is recommended for the November 2003 Municipal Election. Advance voting will start Monday, October 20, 2003 and end on Saturday, October 25, 2003. The hours of voting will be from 10:00 a.m. to 7:00 p.m. each day. Advance Voting will take place at each of the seven (7) Citizen Service Centres and at Tom Davies Square, 200 Brady Street, Sudbury for each of Wards 1 to 6 in order to accommodate voters located in the inner core of the City of Greater Sudbury.

Reduced Voting Hours at Various Institutions and Retirement Homes:

Section 45(7) of the *Municipal Elections Act, 1996* requires that a voting place shall be provided on the premises of an institution in which, on nomination day [Friday, September 26, 2003], 20 or more beds are occupied by persons who are disabled, chronically ill or infirm, and, at retirement homes in which, on nomination day, 50 or more beds are occupied.

Section 46(3) of the Act, further provides that if the voting place is for the use of residents only, then the council may pass a by-law for reduced voting hours.

Ten (10) locations have been identified which fall within the above criteria which will be treated as "Mobile Polls" with reduced voting hours. These locations are shown on the below chart with the proposed voting hours. These times were established in consultation with the administration of the institution.

Finally, the by-law provides that the Returning Officer may designate alternative locations for the counting of the votes from those locations.

All of which is respectfully submitted for Council's consideration.

Date: 2003-05-29

REDUCED VOTING HOURS INSTITUTIONS & RETIREMENT HOMES (Monday, November 10th, 2003)

WARD	VOTING SUBDIVISIO N	LOCATION	OPEN	CLOSE
Ward 1	48-1	Sudbury and District Participation Projects 576 Haig Street, Sudbury	5:00 pm	8:00 pm
Ward 1	52-2	Extendicare York 333 York Street, Sudbury	10:00 am	3:00 pm
Ward 1	68-3	Palambro Palace 1315 Regent Street, Sudbury	1:00 pm	3:00 pm
Ward 1	68-2	The Breezes Retirement Residence 1385 Regent Street, Sudbury	5:00 pm	8:00 pm
Ward 3	16-1	Valley East Long Term Care (Elizabeth Centre (at Frappier)) 2100 Main Street, Val Caron	10:00 am	2:00 pm
Ward 5	62-1	The Walford Retirement Residence 99 Walford Road, Sudbury	5:00 pm	8:00 pm
Ward 5	63	Rockview Seniors' Residence 211 Caswell Drive, Sudbury	1:00 pm	3:00 pm
Ward 5	76-1	Chronic Care, Laurentian Hospital 41 Ramsey Lake Road, Sudbury	10:00 am	12:00 noon
Ward 6	77	Finnish Rest Home 233 Fourth Avenue, Sudbury	3:00 pm	8:00 pm
Ward 6	89-2	Extendicare Falconbridge 281 Falconbridge Hwy., Sudbury	10:00 am	2:00 pm



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PRIVATE AND CONFIDENTIAL

Mr. Thom Mowry
Clerk
City of Greater Sudbury
Tom Davies Square
200 Brady Street
Sudbury, Ontario P3A 5P3

May 14, 2003

Dear Mr. Mowry

Further to our recent discussions, we are writing to confirm the terms of our engagement to conduct, at the request of the City of Greater Sudbury (the "City"), specified procedures relating to the conduct of the 2003 municipal election. We understand our assistance has been requested as a result of the City's decision to employ an automated vote tabulation system for the 2003 municipal election.

SCOPE OF REVIEW

In conducting our work on this engagement, we will undertake the following procedures:

1. Summarize the procedures to be undertaken by the City with respect to the 2003 municipal election as outlined in the document *Procedures for the Use of Vote Counting Equipment* and provide comments as to potential improvements that will allow the City to adhere to the six fundamental principals of the 2003 municipal election (as outlined in the document *Procedures for the Use of Vote Counting Equipment*)
2. Attend the acceptance testing of the vote tabulation system, which will include:
 - Reviewing a sample of pre-audited test ballots prepared by Elections Systems and Software, Inc.
 - Reviewing the reports prepared by the vote tabulation system once the pre-audited test ballots have been entered into the system
 - Comparing the results listed on the reports to the sample of pre-audited test ballots and identifying any discrepancies

Please note that where discrepancies are noted, it will be the City's responsibility to address these discrepancies.

3. For seven vote tabulation machines selected at random (one for each of the six wards plus one machine from the advanced polls):





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- Compare the election results as listed on the reports prepared by the selected machines to the election results recorded at the City's central election site (to be located at the Trillium Centre) and report on any discrepancies.
- Compare the report produced by the selected machines following a re-entry of the votes cast to the original printout obtained at the time of the closing of the polls and report on any discrepancies

Please note that where discrepancies are noted, it will be the City's responsibility to address these discrepancies.

REPORTING

We anticipate that our reporting for this engagement will be as follows:

- May 2003 – report concerning the results of work steps no. 1
- To be determined – report concerning the results of work step no. 2
- November 2003 – report concerning the results of work step no. 3 (to be provided within two days of the election date)

Please note that our reporting will be limited to listing the procedures undertaken and the results of our review, including any discrepancies noted. Our report will clearly indicate that our involvement was limited to the procedures listed and that we are not providing assurance or any opinion as to the accuracy, validity or completeness of the election results.

CLIENT SERVICE TEAM

This engagement will be lead by Oscar Poloni, a partner in KPMG's Northern Ontario Advisory Services Practice. Mr. Poloni will be assisted by Lorella Hayes, a senior manager in our Sudbury office.

In addition, other KPMG resources will be made available to assist with this engagement.

RESTRICTIONS

This engagement is subject to KPMG's standard terms and conditions, which have been included as Appendix A to this letter.

LIMITED INDEMNITY

In consideration of undertaking the engagement, the City agrees to indemnify KPMG against any and all claims, demands, suits or other proceedings for costs, damages, losses, liabilities, and



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expenses including reasonable legal fees that may be incurred in defending any claim that may be made against KPMG by any third party (including municipal election candidates) which might arise out of this assignment.

This indemnity shall not apply where:

- KPMG has been negligent, dishonest or has committed a fraudulent act in the course of our engagement; and
- The costs, damages, losses, liabilities, or expenses would not have been suffered or incurred but for the negligence, dishonesty or fraud referred to above.

KPMG's maximum liability to the City arising for any reason, whether in contract or tort, relating to services rendered under this letter shall be limited to the amount of fees paid for these services.

Furthermore, the City agrees to indemnify KPMG for fees and expenses related to preparation for and attendance at court if KPMG is required to attend at court to provide testimony related to this engagement.

If any person or entity subpoenas, or otherwise seeks to obtain any testimony or materials within KPMG's custody, possession, or control, which relate or refer in any way to KPMG's work, KPMG shall so inform you of such. Should you require KPMG to take any legal action to attempt to seek protection against disclosure, the City agrees to indemnify KPMG for all costs, expenses and liability, including fees and disbursements.

KPMG is a registered Limited Liability Partnership ("LLP") established under the laws of the Province of Ontario. The Firm is a partnership, but its partners have a degree of limited liability. A partner is not personally liable for any debts, obligations or liabilities of the LLP that arise from a negligent act or omission by another partner of any person under that other partner's direct supervision or control. The legislation does not, however, reduce or limit the liability of the Firm. All the Firm's assets and insurance protection remain at risk. The Firm's insurance exceeds the mandatory professional indemnity insurance requirements established by the various Institutes/Ordre of Chartered Accountants, including that of the Institute of Chartered Accountants of Ontario of \$1 million. In addition, all partners of the LLP remain personally liable for their own actions and/or actions of those who they directly supervise or control. Of course, the Firm and all its resources stand fully behind the work of all its partners and employees.

Our reports are confidential and are intended solely for the use of our client to assist them with this specific matter and are not intended for general use, circulation or publication. Any such reports are not to be published, circulated, reproduced or used for any purpose without our prior permission in each specific instance. We will not assume any responsibility or liability for any costs damages, losses, liabilities expenses incurred by anyone as a result of circulation, publication, reproduction, use of or reliance upon our reports. Comments in our reports are not intended, nor should they be interpreted to be, legal advice or opinion.



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We trust the above is satisfactory for your purposes and appreciate the opportunity to be of continued assistance to the City. Should you have any questions concerning this or any other matter, please do not hesitate to contact us at your convenience. If you are in agreement with the content of this letter, please indicate so by signing in the space designated below and returning a copy to us.

Yours very truly

Oscar Poloni, CA, CBV

lds

The City of Greater Sudbury agrees with the terms of the engagement as set out above.

By _____

Date _____



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May 14, 2003

APPENDIX A STANDARD TERMS AND CONDITIONS

1. **Services.** It is understood and agreed that KPMG's services may include advice and recommendations; but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, Client. Nothing in these Standard Terms and Conditions shall be construed as precluding or limiting in any way the right of KPMG to provide services of any kind or nature whatsoever to any person or entity as KPMG in its sole discretion deems appropriate.
2. **Expenses/Taxes/Payment of Invoices.** All fees and other charges do not include any applicable federal, provincial, or other goods and services or sales taxes, or any other taxes or duties whether presently in force or imposed in the future. Any such taxes or duties shall be assumed and paid by Client without deduction from the fees and charges hereunder.

KPMG will bill for all reasonable expenses including travel, meals, accommodations, long-distance telecommunications, photocopying, delivery, postage, clerical assistance and database research.

Without limiting its rights or remedies, KPMG shall have the right to halt or terminate entirely its services until payment is received on past due invoices.

3. **Term.** Unless terminated sooner in accordance with its terms, this engagement shall terminate on the completion of KPMG's services hereunder. This engagement may be terminated by either party at any time by giving written notice to the other party not less than 30 calendar days before the effective date of termination.
4. **Ownership.**
 - a) KPMG Technology. KPMG has created, acquired or otherwise has rights in, and may, in connection with the performance of services hereunder, employ, provide, modify, create, acquire or otherwise obtain rights in, various concepts, ideas, methods, methodologies, procedures, processes, know-how, and techniques; models (including, without limitation, function, process, system and data models); templates; the generalized features of the structure, sequence and organization of software, user interfaces and screen designs; general purpose consulting and software tools, utilities and routines; and logic, coherence and methods of operation of systems (collectively, the "KPMG Technology").
 - b) Ownership of Deliverables. Except as provided below, upon full and final payment to KPMG hereunder, one copy of those tangible items specified as deliverables or work product in the attached Engagement Letter or Proposal (the "Deliverables") will become the property of Client. To the extent that any KPMG Technology is contained in any of the Deliverables, KPMG hereby grants Client, upon full and final payment to KPMG hereunder, a royalty-free paid-up, worldwide, non-exclusive license to use such KPMG Technology for Client's own internal purposes in connection with the Deliverables.



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APPENDIX A STANDARD TERMS AND CONDITIONS

- c) Ownership of KPMG Property. To the extent that KPMG utilizes any of its property (including, without limitation, the KPMG Technology or any hardware or software of KPMG) in connection with the performance of services hereunder, such property shall remain the property of KPMG and, except for the license expressly granted in the preceding Paragraph, Client shall acquire no right or interest in such property. In addition, and notwithstanding anything in these Standard Terms and Conditions or the Engagement Letter or Proposal to the contrary, the parties acknowledge and agree that (a) KPMG will own all right, title, and interest, including, without limitation, all rights under all copyright, patent, trademark, trade name and other intellectual property laws, in and to the KPMG Technology and (b) KPMG may employ, modify, disclose, and otherwise exploit the KPMG Technology (including, without limitation, providing services or creating programming or materials for other clients).
5. **Limitation on Warranties. THIS IS A SERVICES ENGAGEMENT. KPMG WARRANTS THAT IT WILL PERFORM SERVICES HEREUNDER IN GOOD FAITH. KPMG DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES, REPRESENTATIONS OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE**
6. **Limitation on Liability.** Client agrees that KPMG shall not be liable to Client for any actions, damages, claims, liabilities, costs expenses, or losses in any way arising out of or relating to the services performed hereunder for an aggregate amount in excess of the fees paid by Client to KPMG under this engagement. On a multi-phase engagement, KPMG's liability shall be based on the amount actually paid to KPMG for the particular phase that gives rise to the liability. In the event of a claim by a third party relating to the services performed hereunder, Client will indemnify KPMG, its partners, principals and employees from all such claims, liabilities, cost and expenses, except to the extent determined to have resulted from the gross negligence or the intentional, deliberate or fraudulent misconduct of KPMG personnel. In no event shall KPMG be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses (including, without limitation, lost profits and opportunity costs). In any action, claim, loss or damages arising out of this engagement, Client agrees that KPMG's liability will be several and not joint and several. Client may only claim payment from KPMG of KPMG's proportionate share of the total liability based on degree of fault. In furtherance and not in limitation of the foregoing, KPMG will not be liable in respect of any decisions made by Client as a result of the performance by KPMG of its services hereunder. The provisions of this Paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss, whether in contract, statute, tort (including, without limitation, negligence) or otherwise.
7. **Cooperation.** Client shall cooperate with KPMG in the performance by KPMG of its services hereunder, including, without limitation, providing KPMG with reasonable facilities and timely access to all relevant data, information and personnel of Client. Client shall be responsible for the performance of its employees and agents and for the accuracy and completeness of all data and information provided to KPMG for purposes of the performance by KPMG of its services hereunder.
8. **Force Majeure.** Neither Client nor KPMG shall be liable for any delays resulting from circumstances or causes beyond its reasonable control, including, without limitation, fire or other casualty, act of God, strike or labour dispute, war or other violence, or any law, order or requirement of any governmental agency or authority.



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APPENDIX A STANDARD TERMS AND CONDITIONS

9. **Limitation on Actions.** No action, regardless of form, arising under or relating to this engagement, may be brought by either party more than one year after the cause of action has accrued, except that an action for non-payment may be brought by a party not later than one year following the date of the last payment due to such party hereunder.
10. **Independent Contractor.** It is understood and agreed that each of the parties hereto is an independent contractor and that neither party is, nor shall be considered to be, an agent, distributor or representative of the other. Neither party shall act or represent itself, directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf of, or in the name of, the other.
11. **Survival.** The provisions of Paragraphs 1, 2, 4, 5, 6, 9, 10, 11 and 16 hereof shall survive the expiration or termination of this engagement.
12. **Assignment.** Except as provided below, neither party may assign, transfer or delegate any of the rights or obligations hereunder without the prior written consent of the other party. KPMG may assign its rights and obligations hereunder to any affiliate or successor in interest to all or substantially all of the assets or business of the relevant KPMG practice, without the consent of Client.
13. **Severability.** In the event that any provision of these Standard Terms and Conditions or the attached Engagement Letter or Proposal shall be held to be invalid, void or unenforceable, then the remainder of the Standard Terms and Conditions and the Engagement Letter or Proposal, as the case may be, shall not be affected, impaired or invalidated, and each such provision shall be valid and enforceable to the fullest extent permitted by law.
14. **Internet Communication.** Client recognizes and accepts the risks associated with communicating by Internet e-mail, including (but without limitation) the lack of security, unreliability of delivery and possible loss of confidentiality and privilege. Unless Client requests in writing that KPMG does not communicate by Internet e-mail, KPMG accepts no responsibility or liability in respect of risk associated with its use.
15. **Entire Agreement.** These Standard Terms and Conditions, and the attached Proposal or Engagement Letter, including Exhibits, constitute the entire agreement between KPMG and Client with respect to the subject matter hereof and supersede all other oral and written representation, understandings or agreements relating to the subject matter hereof. In the event of a conflict or inconsistency between these Standard Terms and Conditions and the attached Proposal or Engagement Letter, these Standard Terms and Conditions will prevail.
16. **Governing Law.** These Standard Terms and Conditions and the attached Engagement Letter or Proposal shall be governed by the laws of the Province where KPMG's principal office performing this engagement is located.



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APPENDIX A

STANDARD TERMS AND CONDITIONS

17. **LLP.** KPMG LLP is a registered Limited Liability Partnership ("LLP") established under the laws of the Province of Ontario. KPMG is a partnership, but its partners have a degree of limited liability. A partner is not personally liable for any debts, obligations or liabilities of the LLP that arise from a negligent act or omission by another partner or any person under that other partner's direct supervision or control. The legislation does not, however, reduce or limit the liability of the firm. The firm's insurance exceeds the mandatory professional indemnity insurance requirements established by the various Institutes/Ordre of Chartered Accountants. Subject to the other provisions hereof, all partners of the LLP remain personally liable for their own actions and/or actions of those who they directly supervise or control.

Request for Decision City Council





Type of Decision									
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	Direction Only				Type of Meeting	<input checked="" type="checkbox"/>	Open	<input type="checkbox"/>	Closed

Report Title
Water Supply Agreement, City of Greater Sudbury, Whitefish Lake First Nation

Policy Implication + Budget Impact	
<input type="checkbox"/>	This report and recommendation(s) have been reviewed by the Finance Division and the funding source has been identified.
<input type="checkbox"/>	Background Attached

Recommendation	
That Council authorize the Mayor and Clerk to sign an Agreement with Whitefish Lake Indian Reserve No. 6 known as the Whitefish Lake First Nation for the supply of potable water to the First Nations, subject to final approval by the City Solicitor.	
<input type="checkbox"/>	Recommendation Continued

Recommended by the General Manager
 D. Bélisle General Manager of Public Works

Recommended by the C.A.O.
 M. Mieto Chief Administrative Officer

Date: May 21, 2003

Report Prepared By

J. P. Graham, P.Eng.
Plants Engineer

Division Review

The Whitefish Lake First Nation have approached the City of Greater Sudbury requesting to purchase water from the City to supply the First Nations' lands. Their proposal is to provide a new water supply to the existing residential population and for a new business park located immediately south of Junction Creek and east of Reserve Road.

We have had advance discussions with the Band and the agreement is nearing finalization. A copy of the draft agreement is attached to the report.

The agreement anticipates that the City will supply a maximum flow of water of 600 cubic meters per day to the First Nations. This agreement has been modelled after a very similar agreement where the City of Greater Sudbury supplies water to the Markstay area.

We therefore recommend that Council authorize the signing of this agreement subject to a final review and approval by the City Solicitor.

Attachment

WATER SUPPLY AGREEMENT
CITY OF GREATER SUDBURY - WHITEFISH LAKE INDIAN RESERVE NO. 6

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WATER SUPPLY AGREEMENT

CITY OF GREATER SUDBURY - WHITEFISH LAKE INDIAN RESERVE NO. 6

1. DATE OF AGREEMENT:

This Agreement is made as of and is effective from

2. PARTIES:

There are two parties to this Agreement, being:

WHITEFISH LAKE INDIAN RESERVE NO. 6 (as represented by the Whitefish Lake Band Council) (hereafter called the "First Nation").

- and -

THE CITY OF GREATER SUDBURY (hereafter called the "City").

3. RECITALS:

- 3.1 The First Nation requires a source for the supply of water to serve the First Nation Lands in order to accommodate future development within the First Nation Lands.
- 3.2 The First Nation desires, and the City has agreed to provide water from the City's water system to the First Nation Lands, pursuant to the terms of this Agreement.
- 3.3 The First Nation will construct a Transmission Water Main that will connect with the City's Water Distribution System, and will carry water to the First Nation Lands.
- 3.4 The construction to be undertaken by the First Nation within the City will be limited to those works which are required to implement the supply of potable water to the First Nation Lands pursuant to the terms of this Agreement.
- 3.5 Section 21 of the *Municipal Act, 2001*, S.O.2001,c.25 (the "Municipal Act"), as amended, provides that a municipality may enter into an agreement with a First Nation to supply potable water to the reserve occupied by the First Nation, whether the reserve is within the municipality or not;
- 3.6 In consideration of the mutual covenants of the Agreement, and other valuable consideration which each party acknowledges to be received and adequate, the parties now agree to the following provisions;

4. OBJECT:

The City agrees to supply water to the First Nation Lands in accordance with the provisions of this Agreement. More specifically, the City agrees to supply water to the First Nation Lands at a point along the Transmission Water Main coincident with the City's Boundary.

It is intended that this water be for the use or consumption of the (occupants from time to time of the First Nation Lands, including, without limitation, unless otherwise noted in agreement, permanent or temporary residents, tenants, subtenants, licensees, individuals, businesses, corporations or institutions).

The City agrees that it will take reasonable steps to ensure that the supply of water is not interrupted or reduced, unless the First Nation requires. The parties acknowledge that interruptions of supply will occur for the purposes of maintenance and repair. The City will take reasonable steps to notify the First Nation in advance of any interruption or reduction where advance notice is feasible and will proceed with due diligence to remedy any conditions which result in such interruption or reduction.

Nothing in this Agreement shall detract from the right of the First Nation to procure water from one or more alternate sources. In the event that the First Nation procures water from an alternate source, the First Nation shall be required to provide 90 days advance notice to a change in the demand for water as a result of procuring such alternative source.

5. **CONDITION:**

This Agreement is conditional upon the First Nation obtaining, at its own expense:

- (a) All necessary approvals, including without limitation, approvals from the Ministry of the Environment and Energy (or its successor ministry), pursuant to *The Environmental Assessment Act* and *The Ontario Water Resources Act*;
- (b) easements, if required, for the purpose of constructing, installing or maintaining the Transmission Water Main and Community Water Works, and
- (c) the approval of the Ontario Municipal Board to this Agreement, should such approval be required to give effect to this Agreement,

by the day of 2004, and then providing written notice to the City that these approvals have been obtained or conditions have been met, subject to such extensions as may be reasonably required from time to time by the First Nation.

In the event that these conditions are not met within the time set out, as extended from time to time, this Agreement is at an end, subject to any further agreement between the parties to extend the time period for the satisfaction of these conditions beyond (*month /day/year*).

6. **TERM:**

For all purposes of this Agreement except the supply of water, the right and obligations contemplated shall take effect on the first business day following receipt by the City of written notice referred to in the Conditions section being paragraph 5 of this Agreement.

For the purposes of the "supply of water" as contemplated by the Municipal Act, this Agreement shall be effective as of the day of substantial performance, as defined in the *Construction Lien Act*, of the last contract associated with the construction of the works contemplated in this Agreement and shall continue for a period of 20 years. The parties agree that at the completion of year 15 of the Agreement the parties shall meet as required over the remaining five years of the Agreement to determine whether the Agreement shall be renewed, revised or terminated. This five year period is intended to provide the parties with sufficient flexibility to resolve the long term interest of both parties regarding the supply of water to the First Nation provided that at the option of the First Nation, this Agreement may be extended from time to time for successive periods of ten (10) years each provided that the First Nation shall provide to the City no less than twelve (12) months notice of its intention to renew.

7. **CITY RESERVOIR:**

n/a

8. **MAXIMUM QUANTITY:**

The City is not obligated to supply more than 600m³ of water per day to the First Nation except under temporary unusual or emergency conditions where more water may be required.

8.1 **Minimum Pressure:**

The Region shall consistently supply potable water to the Whitefish Lake First Nation community at a minimum system pressure of 485 kPa (70 psi) as measured at the water metering station except under temporary unusual or emergency conditions such as watermain breaks, fires, etc.

8.2 Maximum Fire Flows and Duration:

The City is obligated to supply fire flows up to 6,500 L/min to the Whitefish Lake First Nation as measured at the water metering station and for a duration of 2 hours.

9. MINIMUM CHARGE:

Independent of how much water is actually supplied by the City to the First Nation Lands, the First Nation shall be invoiced and responsible to pay a minimum charge based on calculation of 5% of the maximum quantity (600m³/day), multiplied by the prevailing rate for each cubic metre of water. This minimum charge shall not be imposed by the City for a transition period of one year from the date of the first supply of water to permit the First Nation an opportunity to connect their consumers to the Community Water Works.

During the second year of the Agreement and all subsequent years the minimum charge shall be imposed by the City unless the amount of water consumed by the First Nation exceeds the minimum charge at which point the metered charge shall apply to the First Nation.

10. QUALITY OF WATER:

As concerns to the quality of the water to be supplied by the City to the First Nation; the City's obligations shall be limited to a supply of water in accordance with Ontario Drinking Water Standards established by the Ontario Ministry of Environment (MOE) and the MOE Certificate of Approval for the water facility. The assessment of water quality, including turbidity and chlorine residual levels shall be based on water samples collected by the City at the water metering station which shall be located at or near the boundary of the First Nation Lands. Chlorine residual levels and turbidity levels at the water metering station shall be maintained within the levels established in MOE Procedure B 13-3, Chlorination of Potable Water Supplies in Ontario and Regulation 459/00.

The City assumes no responsibility for the quality of water in the Community Water Works or the Transmission Water Main beyond the Water Metering Station. Any Transmission Water Main on the First Nation Lands over or above those delivered by the City, shall be solely the responsibility of the First Nation. The City reserves the right to modify, add or delete treatment processes in its treatment facilities, with notice to the First Nation, provided that the City obtains the appropriate approvals from the Ministry of Environment and Energy, or its successors.

The City will forward to the First Nation, 3 copies of all correspondence, notifications, warnings, postings, reports, etc. as required in Ontario Regulation 459/00 Sections 8 through 13 inclusive. Where notices are issued by the Ontario MOE and/or the Medical Officers of Health, these notices will also be forwarded to the Health Canada Medical Services Branch, Senior Environmental Health Officer, Indian and Northern Affairs Canada office in Sudbury and the designated person at the Whitefish Lake First Nation (refer to Schedule B) Analytical results from all samples collected at the water metering station shall also be forwarded to the First Nation in accordance with the procedure outlined in Schedule B.

11. CONNECTION TO CITY:

The First Nation shall have the right to connect the First Nation's Water Distribution System to the City's water distribution system at the intersection of Municipal Road 55 and Reserve Road.

12. CONSTRUCTION WITHIN CITY:

In addition to making a connection with the City's Water Distribution System, the parties contemplate that there will be other construction within the City's boundaries to facilitate the purposes of the Agreement. These will include installation of a new water main from Municipal Road 55 to Junction Creek, a water metering station, and a creek crossing (Junction Creek) which may be required to permit the implementation of the terms of this agreement to transport and deliver water to the First Nation Lands.

The First Nation agrees to assume all responsibility for the expense of designing and construction of the Water Distribution System within the City Boundaries. The First Nation also agrees that such construction shall be in accordance with the City's standards and requirements, as well as

all applicable provincial standards. These works shall be designed and supervised by a professional consulting engineering firm retained by the First Nation, which firm is licensed to practice in the Province of Ontario.

The design and contract documents for works within the City Boundary shall be reviewed and approved by the City, acting reasonably, prior to the award of any contract for these works.

The First Nation agrees that the construction works shall include a form of back check valve, at or near the City's Boundary, to prevent back flows of water supplied to the First Nation Lands.

13. OWNERSHIP AND MAINTENANCE:

All elements of the Water Distribution System located south of the water metering chamber shall be owned by, and, or be the responsibility of the First Nation. The First Nation shall be responsible for the proper operation, performance, maintenance and repair of such Water Distribution System.

Until such time as the City has received satisfactory evidence of compliance (based on both the City's own inspection and the inspection of others it may reasonably require) that the Water Distribution System within the City Boundary has been constructed in accordance with the construction contract documents, the elements of the Water Distribution System being constructed or installed by reason of this Agreement shall be owned and at the risk of the First Nation. The City shall act diligently in requesting and approving the evidence of compliance. Once the contemplated satisfactory evidence of compliance is received, the City shall notify the First Nation. Thereafter, the City shall own and be responsible for the proper operation, performance, maintenance and repair of the Water Distribution System within the City Boundaries up to and including the metering chamber.

It is contemplated that the City will be entitled to the benefit of all guarantees and warranties that might usually attach to the Water Distribution System installed within the City Boundaries. The First Nation agrees to do such things that may be required to allow the City to have the benefit of such guarantees or warranties.

After the City has assumed the Water Distribution System within the City Boundaries, the City will be responsible for the operation and maintenance of same, including the operation and maintenance of the water meter in the water metering station and any subsequent capital improvements required on those works.

14. FUTURE USES:

Nothing in this Agreement shall prevent the City from using that part of the Transmission Water Main located within the City's Boundary provide it does not impact, reduce or interrupt the water flow rate, capacity, pressure or water quality established at the date of this Agreement.

The First Nation agrees that it will not supply water originating in the Water Distribution System within City Boundaries to users other than those within the First Nation Lands without the specific written consent of the City.

15. METERING:

In the event that the City or the First Nation wishes to have the City's water meter(s) checked for accuracy, the City agrees to have the meter checked forthwith for accuracy by the meter manufacturer or by an independent testing firm as agreed to and approved by both the First Nation and the City.

The First Nation and the City shall be provided with a copy of the test results and if the test results reveal that the meter was registering correctly as determined by the parties with reference to the manufacturer's specifications on accuracy, the expense of removing and testing the meter shall be paid by the party requesting such a test.

If the meter when tested is found to register incorrectly, an adjustment will be made in an amount equal to the percentage of error to the water rates paid for the preceding three months prior to the testing of the meter. In such event, the expense of removing, testing, calibrating, reconditioning

and/or repairing the meter shall be born by the City. Upon the installation of the reconditioned or new totalizer water meter, the City shall notify the First Nation in writing and shall provide the First Nation with a copy of the meter accuracy test report as prepared by the manufacturer or by an independent testing firm.

16. RATE OF PAYMENTS:

The First Nation shall pay the City for water supplied in the 2004 calendar year at a rate of \$0.684 per cubic metre.

17. INVOICES:

The City shall supply the First Nation with invoices on a monthly basis. These invoices shall include such details about the water supplies as the First Nation may reasonably request, provided such details are reasonably available to the City. Payment shall be due on the date specified on the invoice, and not to be less than 30 days of the invoice mailing date, which shall not be earlier than 10 days following the month-end of the period covered by the invoice.

18. INTEREST:

Interest shall be paid to the City on any amount not paid by the due date at a rate equivalent to that charged to residential consumers in the City, as may be established by City by-law.

19. INDEMNITIES:

The First Nation hereby agrees to indemnify and save harmless the City from any and all manner of actions, claims and demands which are made against the City with respect to any losses or damages suffered by the City as a result of the First Nation's breach of the terms of this Agreement, provided that the First Nation's covenant to indemnify and save harmless the City as foresaid shall not include or extend to any action, claim or demand which is made against the City by reason of, or arising from, negligence on the part of the City or its workmen, employees and/or agents.

The City agrees to indemnify and save harmless the First Nation from any and all manner of actions, claims, demands, losses or damages suffered by the First Nation as a result of the breach by the City of the terms of this Agreement or as a result of the negligence in the performance of the terms and conditions thereof by the City or its workmen, employees and/or agents.

20. DISPUTE RESOLUTION:

In a general way, the parties hereby commit themselves to making reasonable efforts to resolve any disputes that may arise in connection with this Agreement in a timely and cost-effective manner, which may include a mediation process. Failing resolution by negotiations between the parties or mediation, disputes arising out of this Agreement except those arising from the Rate of Payments as contained in paragraph 16 of the Agreement shall be resolved by an arbitration process consistent with the provision of *The Arbitrations Act* (Ontario) or successor legislation.

Any arbitration shall be conducted by a single arbitrator agreed upon by the parties to the dispute. If the parties shall be unable or unwilling to agree on an arbitrator within a period of 40 days from the receipt of notice of the dispute, the arbitrator shall be appointed by a judge of the Ontario Court (General Division) on application to it. The award and determination which shall be made by the arbitrator shall be final and binding on the parties. The provision of this paragraph shall be deemed to be a submission to arbitration within the provision of *The Arbitrations Act* (Ontario) and any amendment to it provided that any limitation in the remuneration of the arbitrator imposed by the legislation shall not be applicable.

Disputes between the parties arising with respect to the Rate of Payments governed by paragraph 16 of the Agreement which can not be resolved shall be referred to the Ontario Municipal Board pursuant to section 54(k) of the *Ontario Municipal Board Act*, R.S.O. 1990 c. o.28.

21. GENERAL:

21.1 Severability:

If any term or provision of this Agreement or the application thereto any person shall to any extent to be held to be invalid or unenforceable, the balance of the Agreement shall not be affected thereby and each term and provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

21.2 Governing Law:

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

21.3 Notices:

All notices which may or are required to be given pursuant to any provision of this Agreement shall be given or made in writing and shall be delivered by prepaid courier to or mailed by prepaid registered mail, in the case of:

the City, to:

[need an address for delivery]

P.O. Box 5000 Station A
Sudbury, Ontario P3A 5P3

Attention: General Manager of Public Works

the First Nation, to:

[need an address for delivery]

P.O. Box 39
Naughton, Ontario POM 2MO

Attention: Executive Director

Or to such other address as either party hereto may from time to time advise the other party hereto by notice in writing. The date of receipt of any such notice shall be deemed in the case of delivery to be the date of delivery, or in the case of mailing to be the fifth day of business following the date of mailing.

21.4 Assignment:

This Agreement shall not be assigned by either party hereto without the prior written consent of the other party.

21.5 Further Assurances:

The parties hereto, and each of them, covenant and agree that each of them shall and will, upon reasonable request of the other party, make, do, execute or cause to be made, one or executed, all such further and other lawful acts, deeds, things, devices and assurances whatsoever for the better or more perfect and absolute performance of the terms and conditions of this Agreement.

21.6 Entire Agreement:

With the exception of such contracts as are contemplated relating to the construction of water works between the parties, this Agreement contains the entire Agreement between the parties, with reference to the subject matter hereof, and shall not be altered or amended except by an agreement in writing duly executed by these parties. This Agreement shall ensure to the benefit of and be binding upon these parties and their successors and assigns.

21.7 Schedules:

The Schedules noted below form part of this Agreement:

Schedule "A" - Definitions

Schedule "B" - First Nation designated persons

21.8 Continuation of Water Supply:

The City agrees to provide a continuous supply of water, where practicable, to the First Nation Lands for the term of this agreement and shall maintain the City's Distribution System within the City Boundaries in a first class condition. The City will not shut-off or discontinue the supply of water to the First Nation for any reason other than where there has been a default in payment for a period greater than six (6) months, and where after at least thirty (30) days prior written notice of such default to the First Nation, such default has not been remedied. Alternatively, the City, at its discretion, may reduce but not entirely shut-off the supply of water to the First Nation Lands.

22. SIGNING:

As evidence of their agreement, those proper signing officers of the parties, duly authorized, sign their names and affix their respective party's corporate seals:

WHITEFISH LAKE INDIAN RESERVE NO. 6
(as represented by the Whitefish Lake Band Council)

PER: _____

PER: _____

THE CITY OF GREATER SUDBURY

PER: _____

PER: _____