



MILLER THOMSON LLP  
MILLERTHOMSON.COM

ACCELERATOR BUILDING + 295 HAGEY BLVD., SUITE 300  
WATERLOO, ON + N2L 6R5 + CANADA

T 519.579.3660  
F 519.743.2540

May 15, 2015

**Privileged and Confidential**

Town of Collingwood  
97 Hurontario Street  
P.O. Box 157  
Collingwood, ON L9Y 3Z5

Attention: John Brown, CAO

Dear Mr. Brown:

**Jean L. Leonard**  
Direct Line: 519.593.3246  
Direct Fax: 519.743.2540  
jleonard@millerthomson.com

**Re: Issues Surrounding the Services Agreement between Collingwood Public Utilities Commission and Collus Solutions Corp., the Sale of Shares in Collingwood Utility Services Corp., and Related Issues**

You have asked us to consider various matters with regard to the shared services agreement between Collingwood Public Utilities Commission and Collus Solutions Corp., and in relation to the sale by the Town of Collingwood to PowerStream Inc. of 50% of the shares in Collingwood Utility Services Corp.

In order to prepare this report on such a complex matter, we have reviewed the documents you have provided to us. These include the closing book for the share sale, the services agreement, staff reports, by-laws, correspondence, emails, and opinions of legal counsel. We have attached selected documents to this opinion where appropriate and have referenced them herein by Tab number. Our review and opinions herein are limited to the documents we have reviewed. If there are other documents which relate to the matters addressed in this letter which we are unaware of, they may impact our opinion.

**It is extremely important to the Town's position that this report not be provided to or discussed with any person other than members of Town Council. Dissemination of the comments set out herein would be prejudicial to the Town's legal position in relation to the matters addressed.**

**Parties**

In order to avoid confusion among the various parties involved, in this report we refer to the parties by the names set out in parentheses below.

1. The Corporation of the Town of Collingwood (the "Town")
2. PowerStream Inc. ("PowerStream")

3. Collingwood Utility Services Corp., now Collingwood PowerStream Utility Services Corp. ("**USC**")
4. Collus Power Corp., now Collus PowerStream Corp. ("**Collus**")
5. Collus Solutions Corp., now Collus PowerStream Solutions Corp. ("**Solutions**")
6. Collus Energy Corp., now Collus PowerStream Energy Corp. ("**Energy**")
7. Collingwood Public Utilities Commission ("**PUC**")

Collus, Solutions and Energy are sometimes referred to collectively as the "**Subsidiaries**".

### Issues

In our review of the materials, we have considered the following issues:

1. With regards to the services agreement between PUC and Collus dated January 1, 2003 (the "**PUC Services Agreement**")
  - (a) Is this agreement still in force? *Yes*
  - (b) What is the effect of the July 31, 2012 letter agreement that purports to amend the PUC Services Agreement? *1*
  - (c) Can PUC terminate the PUC Services Agreement, and what are the possible consequences of termination?
  - (d) Can a settlement be negotiated?
  - (e) What would happen to the PUC Services Agreement if the Town decides to dissolve PUC and run the services currently provided by PUC through the Town?
2. In relation to the Town's sale of a 50% interest in USC to PowerStream:
  - (a) What was the Town's original intention with regards to a share sale?
  - (b) Who was the Town's lawyer in this transaction, and who instructed that lawyer?
  - (c) How much oversight did Council have in this transaction?
3. In relation to the shareholders' agreement entered into between the Town and PowerStream as part of the share sale:
  - (a) How does this agreement affect the Town's interests?
  - (b) How can this agreement be revised to better protect the Town's interests?
4. Does the Town have a right to information including the salaries of the officers/directors/employees of USC, the Subsidiaries and PUC?
5. In addition, we have been asked to report on the duties of Council members sitting on boards of companies.

Based on the materials reviewed and our discussions with you, our analysis of each of the issues is as follows.

## 1. Issues in relation to the PUC Services Agreement

### (a) Is the PUC Services Agreement still in force?

- The PUC Services Agreement between PUC and Solutions (**Tab 1**) was entered into on January 1, 2003.
- The "Term" of the PUC Services Agreement is defined as ending on December 31, 2005. This is likely a drafting error, and the parties likely intended the PUC Services Agreement to automatically renew annually unless one party gave notice of termination six months prior to the end of the then-current term (i.e. by July 1<sup>st</sup> of any year). The parties to the PUC Services Agreement have continued to act as if this agreement is in full force and effect and no notice of termination has ever been provided.
- We agree with Leo Longo's opinion, as summarized in his August 10, 2014 email to John Brown (**Tab 2**), that there is a strong argument that the PUC Services Agreement is still in force.

### (b) What is the effect of the July 31, 2012 Letter Agreement?

- Section 6.3(8) of the Share Purchase Agreement among the Town, PowerStream, USC and the Subsidiaries (the "**SPA**") states that during the "Interim Period" (i.e. from March 6, 2012 to July 31, 2012, being the period between signing the SPA and closing the share sale transaction) PowerStream, the Town and USC would "Agree to amend the Service Agreements in respect of ongoing obligations with respect to the Corporation and the Subsidiaries or will have confirmed the acceptability of the Service Agreements in their current form". "Service Agreements" includes the PUC Services Agreement. The review and amendment or confirmation of the Service Agreements is a condition of the close of the share sale transaction (as per section 4.3(5) of the SPA).
- The parties to the SPA (the "**Parties**") agreed to waive this condition as (it is assumed) compliance would delay closing of the share sale. This waiver is set out in the letter agreement among the Parties dated July 31, 2012 (the "**Letter Agreement**", **Tab 3**). The Parties "agree that all of the Service Agreements will be reviewed and amended...within 12 months of the Closing Date" to ensure that the Service Agreements comply with the terms and conditions listed, including:

"(c) The term of each Service Agreement shall be for a period of 5 years;

(d) Each Service Agreement shall be reviewed annually and the Parties shall or shall cause the parties to the applicable Service Agreement (the "SA Parties") to, agree upon the revised cost of services to be provided pursuant to such agreement. If the Parties or the SA Parties are unable to agree upon the cost of services, the cost of services provided pursuant to the applicable Service Agreement shall increase by an amount equal to 3.5% of the cost of services for the prior year; and



(e) The Service Agreements shall continue in force unless the SA Parties mutually agree in writing to extended [sic] or terminate such Service Agreement.”

- The existence of the Letter Agreement surfaced recently when the Town began to consider terminating the PUC Services Agreement. During the course of an independent review of the PUC Services Agreement undertaken by Beacon 2020, Inc. and True North Consultants, Inc. in 2014 the consultants were not made aware of the Letter Agreement and the impact it may have on terminating the PUC Services Agreement. We understand that the Letter Agreement was brought to the attention of the Town’s CAO only when it was sent to him by PowerStream after the Beacon/True North review. The Letter Agreement was included in the closing documents for the share sale to PowerStream, and was signed at that time. We understand that the Town did not have a copy of the closing documents in relation to the share sale until recently.
- The Letter Agreement goes on to say that “Irrespective of the date of any particular amending agreement for a Service Agreement, the Parties agree that all such amendments shall be effective as of January 1, 2013.”
- If the Letter Agreement amends the terms of the PUC Services Agreement, then the term of the PUC Services Agreement ends on December 31, 2017 (5 years from January 1, 2013). This term cannot be terminated earlier (except for breach) unless PUC and Solutions mutually agree.
- It appears that the review of the Service Agreements as contemplated by the Letter Agreement has never occurred.
- The key question is: does the Letter Agreement amend the terms of the PUC Services Agreement, or is it just a waiver of conditions with the intent that the PUC Services Agreement would be amended in the 12 months following the close of the share sale on the terms as set out in the Letter Agreement?
  - It is our position that the better argument is that the Letter Agreement **does not** amend the terms of the PUC Services Agreement for the following reasons:
    - The Letter Agreement states that the parties thereto “agree that all of the Service Agreements **will be** reviewed and amended...**in order to comply with** the following terms and conditions.” This strongly suggests that the parties are “agreeing to agree” to amend the Service Agreements in the future. If the intention was for the Letter Agreement to create binding amendments to the Service Agreements, the language could have been along the lines of “The Parties agree that the Service Agreements are amended as follows...”.
    - PUC was **not a party** to the Letter Agreement. The PUC Services Agreement (**Tab 1**) states at section 11.08: “No amendment to, or change, waiver or discharge of, any provision of this Agreement shall be valid unless in writing and signed by authorized representatives of each Party.” Simply put, the PUC Services Agreement cannot be amended without PUC’s written authorization, which was not obtained.

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- As a related issue, if the Letter Agreement did amend the PUC Services Agreement, the Town's purchasing By-Law no. 2006-42 may not have been complied with (i.e. there was no tender for services and the procurement procedures were not complied with). There is no indication that in granting authority to complete the transaction Council was waiving its other policies of general application. We note that Leo Longo also raised this as a potential issue in his correspondence to CAO John Brown dated April 7, 2015 (Tab 4).

**(c) Can PUC terminate the PUC Services Agreement, and what are the possible consequences of termination?**

- PUC can choose to take the position that the PUC Services Agreement was not amended by the Letter Agreement. PUC could then, pursuant to section 2.01 of the PUC Services Agreement, give Solutions notice in writing **by no later than July 1, 2015** that it elects to terminate the PUC Services Agreement effective as of January 1, 2016.
- We understand that PowerStream may not be pleased with the termination of the PUC Services Agreement, as it is likely that one of PowerStream's key considerations in purchasing 50% of the shares of USC was to ensure a consistent dividend stream from USC and the Subsidiaries. The loss of the PUC Services Agreement would presumably lower Solution's profitability and therefore its ability to issue dividends.
- PowerStream may choose to sue the Town for breach of the Letter Agreement, taking the position that the Letter Agreement did in fact amend the terms of the PUC Services Agreement. If successful, the expected damages would be 50% of the expected net returns under the PUC Services Agreement for the remainder of the "amended" term (i.e. to the end of 2017). This assumes that PowerStream would receive 50% of the profits from the PUC Services Agreement as dividends. As noted above, it is our opinion that the Letter Agreement did not amend the PUC Services Agreement and that the PUC Services Agreement can therefore be terminated in accordance with its terms.
- Solutions may choose to sue PUC for breach of the PUC Services Agreement. According to Aird & Berlis's draft memorandum to the Town dated March 26, 2015, damages could be in the range of \$1,700,000 (Tab 5). We have not conducted an independent assessment of this damage estimate.
- PowerStream could additionally, or alternatively, exercise the shot gun clause in the Shareholders' Agreement (discussed below), thereby forcing the Town to either sell to PowerStream all of its shares in USC or to purchase all of PowerStream's shares.

**(d) Can a settlement be negotiated?**

- The provisions of the various agreements dealing with the right of termination are ambiguous, and there is always uncertainty and risk associated with litigation. As noted above, there is also uncertainty over the actions that such a termination may trigger. In recognition of this risk and uncertainty, the Town could attempt to negotiate with PowerStream the termination or amendment of the PUC Services

Agreement on terms that both parties would find acceptable. Such terms may include the following:

- insertion of a clear term with provisions for renewal and early termination at the option of PUC;
- insertion of a condition that any renewal of the PUC Services Agreement must comply with Town's purchasing By-Law;
- provision for all costs for services provided by Solutions to be reviewed via a market-based analysis within a reasonable period of time (e.g. six months), and for the costs to be amended if found to be out of step with market rates, or (at PUC's option) for the PUC Services Agreement to be terminated;
- confirmation that the Letter Agreement did not amend the terms of the PUC Services Agreement; and
- provision for reduction in services provided by Solutions if the Town decides to dissolve the PUC (see section 1(e) below).

**(e) What would happen to the PUC Services Agreement if the Town decides to dissolve PUC?**

- As PUC is an agent of the Town, and any delegation of authority thereto is at the discretion of the Town (see section 4 below), the Town has the option to dissolve PUC if it chooses to do so.
- In the event the Town decides to dissolve the PUC and perform PUC's tasks directly, the Town may choose to continue to utilize some of the services provided by Solutions. The Water and Wastewater Services Review prepared by BMA Management Consulting Inc., dated April 28, 2015 (**Tab 6**), states at page 28:  
  

“There are some cost items that are currently included in Collus Solution's charge to the CPUSB that would need to continue and become additional to the existing services available within the Towns' organization. These include costs related to Billing, Collecting, Customer Service, IT, Building Maintenance and SCADA. One option is to consider having these services continue through Collus Solutions but with accountability through the Director of Finance.”
- Other options available to the Town are to terminate the PUC Services Agreement and provide the services itself, or contract out to a third party.

**2. The Town's sale of a 50% interest in USC to PowerStream**

- This transaction closed in 2012, and appears to be a valid and binding transaction.
- Based on the evidence reviewed, we do not see a reasonable argument for voiding this share sale.



(a) **What was the Town's original intention with regards to a share sale?**

- The Request for Proposal issued by Collus dated October 4, 2011 (**Tab 7**) states that Collus Power Corp. and the Town of Collingwood were soliciting proposals for the "purchase of shares of up to 50% in COLLUS Power" (see highlighted section on page 1 of the Request for Proposal). There is no mention in the Request for Proposal to the sale of shares in USC.
- PowerStream's Response to the Request for Proposal dated November 16, 2011 (**Tab 8**) is based upon the purchase of 50% of the shares of Collus Power Corp., not USC (see highlighted section on page 4 of the Response). The proposed payment for the shares of Collus was \$7,300,000, with the total cash paid to the Town being \$14,510,170 (see highlighted section on page 5 of the Response).
- Staff Report CAO 2012-01 prepared by Kimberly Wingrove, CAO, dated January 23, 2012 (**Tab 9**) asks Council to approve the sale of 50% of the shares of USC (highlighted on page 1 of the Report). There is no mention in the Report to the original intention of selling 50% of the shares of Collus. On page 4 of the Report it states:

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 "Upon review of the strategic ownership options prepared by KPMG, Town Council gave direction to COLLUS to further investigate the Strategic Partnership option through the creation of a Strategic Partnership Task Team (August 2011) and to issue a Request for Proposal (RFP) (Issued October 4, 2011) to prospective partners. Upon review and rating of the various proposals submitted according to the RFP, COLLUS made a recommendation (December 5, 2011) to Town Council that COLLUS be directed by the Town to complete negotiations with PowerStream Inc. ("PowerStream"). KPMG LLP and legal representatives from Aird and Berlis were engaged throughout the negotiation process. ***It was determined that the transaction would be most beneficial to the Town if the Town was to sell a 50% interest in Collingwood Utility Services Corp.***" [emphasis added]

There is no mention as to who made the determination that the best course of action was to sell 50% of USC, nor any indication that this change in course was considered by Council.

- The minutes of an In-Camera meeting (**Tab 10**) dated December 5, 2011 (i.e. after receipt of PowerStream's Response to the Request for Proposal and before Staff Report CAO 2012-01) state that Collus recommended to Council "That the COLLUS Power Corp Board hereby accepts the findings of the Strategic Partnership Task Team and recommends to Collingwood Council that Collus Power Board be directed to undertake negotiations with PowerStream Inc. for the purpose of entering into a Strategic Partnership arrangement". The motion that was moved by Council was "That Council direct the Collus Board to continue negotiations with the preferred proponent, being PowerStream Inc., for a potential strategic partnership arrangement". At no point does Council discuss or consider selling the shares of USC instead of the shares of Collus.
- The only information we have seen that addresses the move from selling an interest in Collus to an interest in USC is in what appears to be a power point presentation

prepared by Aird & Berlis LLP (**Tab 11**). This presentation is undated. Page 3 of the presentation states as follows:

“Why sale of shares of CUS rather than COLLUS directly?

NOTE: Original Request for Proposals (“RFP”) from Collus Power Inc. (“Collus”) contemplated purchase of shares of Collus from CIS

KPMG LLP review determined transaction was more beneficial from a tax perspective when Vendor was Town and target was CUS, rather than Collus

Implications:

- a) Collus Energy Corp. (“Energy”) and Collus Solutions Corp. (“Solutions”) are also part of the transaction
  - b) Pre-closing adjustments to Energy, Solutions and Collus
  - c) More due diligence
  - d) Avoid capital gains tax on the transaction (estimated at \$350,000)”
- As stated above, in PowerStream’s Response to the Request for Proposal it offered to pay \$7,300,000 for 50% of the shares of Collus. Instead, PowerStream purchased 50% of the shares of USC for \$8,000,000. There is no indication as to how this price differential was arrived at. The Town received further consideration, but this was through recapitalization dividends paid by USC, Collus and Solutions.
  - **Summary**
    - It was essential for the Town to be actively involved in all aspects of a major transaction such as this one. It appears that the decision to sell the shares of USC instead of the shares of Collus occurred without significant, or any, Council review or input. Such a substantial decision should not and cannot be delegated.

**(b) Who was the Town’s lawyer in this transaction, and who instructed that lawyer?**

- The Town was represented by Aird & Berlis. The Closing Agenda found at tab 52 of the Closing Book prepared by Aird & Berlis lists Ron Clark, Leo Longo, John Mascarin and Corrine Kennedy as representing the Town, USC, Collus and Solutions.
- The summary in the Closing Agenda of which lawyers were acting for the Town is not entirely consistent with positions taken at that time and subsequently by Aird & Berlis. In an email from Leo Longo to Sandra Cooper and Rick Lloyd dated January 16, 2012, Mr. Longo advised that Ron Clark and Corinne Kennedy of Aird & Berlis were advising Collus, not the Town (**Tab 12**). We understand that Mr. Longo has recently confirmed that he was not representing the Town in this transaction.
- Ron Clark’s position on who he represented and who was representing the Town has been inconsistent. We understand that he had initially indicated that he represented the Town, however later he advised that he represented the Town generally and his partner, Leo Longo, represented the Town with regards to any issues specific to a municipality.



- Aird & Berlis's representation of the Town, USC, Collus and Solutions would not necessarily be unusual if the interests of all parties were aligned. However, Leo Longo of Aird & Berlis cautioned the Mayor and Rick Lloyd (see January 16, 2012 email from Leo Longo to Sandra Cooper and Rick Lloyd together with Rick Lloyd's response, **Tab 12**) that Collus's interests and the Town's interests may not be the same. Notwithstanding that caution, none of these parties sought independent legal advice.
- Aird & Berlis appears to have taken instructions from Ed Houghton for the Town, USC and the Subsidiaries (see email from Ron Clark to John Brown dated March 5, 2015, **Tab 13**). Ed Houghton was President and CEO of USC and Collus (among others) at the time of entering into the Share Purchase Agreement. At the time of the closing of the transaction he was also acting CAO of the Town. Given the multiple roles Mr. Houghton held, it would be difficult, if not impossible, to determine whose interests Mr. Houghton was representing in the transaction.
- **Summary**
  - In a major transaction such as this, consideration should have been given to:
    - (a) whether it was appropriate for the Town, USC and the Subsidiaries to all have the same legal representation;
    - (b) whether the interests of all of these parties were fully aligned;
    - (c) whether independent legal advice was necessary or advisable for any or all of these parties;
    - (d) even if all of the parties believed it was appropriate to be represented by the same law firm, whether each party should have designated a different person to give instructions to their lawyer within that law firm and to determine if any conflicts of interest arose; and
    - (e) whether a 50% co-ownership structure was in the best interests of the Town.

(c) **How much oversight did Council provide?**

- By-Law No. 2012-011 (**Tab 14**) which authorized the share sale was extremely broad. This by-law authorized the Mayor or the Clerk to:
 

*“...execute the Share Purchase Agreement and the Unanimous Shareholders Agreement, with such changes as they may consider reasonable, and to execute all documentation necessary to effect the sale of the Shares to PowerStream, the Transaction and this By-law, including without limitation **approve financing, authorize and file articles of amendment, amend bylaws, amend and enter into service agreements between the Town and CUS or its Subsidiaries, authorize dividends to be declared and paid by CUS and the Subsidiaries and authorize repayment of debt under the outstanding promissory note issued to the Town by Collus.**”* [emphasis added]

- The original by-law proposed by Leo Longo was much more constrained (**Tab 15**). It provided:

“...That The [sic] Mayor and Clerk be authorized to execute the Share Purchase Agreement and the Shareholders Agreement with Powerstream Inc. respecting the purchase of shares of the Collingwood Utility Services Corp. **once those agreements are in a form and content to the satisfaction of the Town's Solicitor. That Appropriate [sic] Town Staff and the Town Solicitor report back to Council as required as the conditions precedent to closing this transaction are addressed and, in any event, prior to the final closing of this share purchase transaction.**” [emphasis added]

- Leo Longo sent his original draft by-law to Ed Houghton with the request that Mr. Houghton add the “Whereas” clauses to explain the evolution of the transaction (see email from Leo Longo to Ed Houghton, January 17, 2012 at **Tab 15**). The revised by-law Mr. Houghton sent back to Mr. Longo added “Whereas” sections, but also amended the body of the by-law (**Tab 15**). In this draft the Share Purchase Agreement and Unanimous Shareholders' Agreement were to be signed by the Mayor and the Clerk “once those agreements are in a form and content to the satisfaction of the Mayor” (as opposed to “to the satisfaction of the Town's Solicitor”), and the Mayor and Clerk are authorized to execute and deliver “all other documents, notices, certificates to be signed and/or delivered under or in connection with the Share Purchase Agreement or Unanimous Shareholders Agreement”.
- The by-law, as revised by Mr. Houghton, was further revised by Aird & Berlis until it was in its final form. An email from Corrine Kennedy of Aird & Berlis (January 19, 2012, **Tab 16**) to Leo Longo states:

“After some further discussion with Ed and Ron, and in an effort to make sure we're [sic] covered all bases with respect to authorizing at the front end of this transaction **and don't have to go back**, I am working on some revisions to the bylaw for your review.” [emphasis added]

- **Summary**
  - The final form of the by-law authorizing the share transaction gave the Mayor or the Clerk a great deal of discretion and authority not only to complete that transaction, but to enter into other significant agreements without having to return to Council. We have several concerns about this approach. First, the grant of this type of far-reaching authority is highly unusual for a major municipal transaction where the interests of the constituents of Collingwood were to be protected. Second, by providing that either the Mayor or Clerk could exercise this authority, the by-law created the potential for conflicting instructions, or that only one of the listed persons could exercise the authority of Council. Third, by not placing any parameters around the exercise of authority (as had originally been suggested by Mr. Longo), the authorizing by-law created the opportunity for the transaction to move forward without the Town having independent legal representation. We recommend that such a broad grant of authority for significant transactions not be repeated in the future, and that Council maintain its role as overseer of such matters.

- It appears from the written record that the negotiations surrounding the share sale were in effect delegated to Collus. Collus is a subsidiary of the company whose shares were being sold. The Town was the party selling the shares, and therefore the party which should have had oversight over all negotiations.
- While Council may have been apprised of the details of the share transaction and related agreements, there is no record of this having occurred. The impression that is created from the written record is that there was very little oversight by Council of this transaction. This likely explains the lack of follow-up on obtaining the reporting book, and Council's lack of knowledge of and confusion over the impact of the July 31, 2012 Letter Agreement.

### 3. The Shareholders' Agreement between the Town and PowerStream

- As part of the closing of the share sale, the Town and PowerStream entered into a Shareholders' Agreement (the "S.A.") that governs their relationship as equal shareholders of USC.
- (a) **How does the S.A. affect the Town's interests?**
- The S.A. states that the board of USC is to have 6 directors, with the Town to nominate 3 and PowerStream to nominate 3 (s. 4.1 of the S.A.). The majority of directors nominated by each shareholder are to be independent. We note that a review of board composition undertaken by Aird & Berlis (Memorandum to Town, April 10, 2015, **Tab 17**) states that the independent requirement does not appear to have been complied with.
  - Both the Town and PowerStream are to elect the directors for the board of each of the Subsidiaries (s. 4.2 of the S.A.)
  - The dividend policy for USC is set out in Schedule "B" to the S.A. It states that USC and the Subsidiaries "shall normally pay a minimum of 50% of annual net income as dividends". Arguably this dividend policy was a key consideration of PowerStream in deciding to purchase 50% of the shares of USC, as it provides a consistent source of revenue.
  - The S.A. has a "shot gun" clause at s. 9.1. A shot gun clause is common for a 50/50 share ownership structure, and is in fact contemplated at section 3.1 of the Town's Request for Proposals which was issued when a share sale was first contemplated. The shot gun clause has a notice period of twenty (20) days. While a shot gun clause is not unusual, it should be taken into account when considering if the Town will terminate the PUC Services Agreement.
- (b) **How can the S.A. be revised to better protect the Town's interests?**
- A municipality has unique characteristics that differentiate it from private corporations or individuals. Key among these is a municipality's obligation to serve the interests of its constituents, as opposed to shareholders. In order to meet this requirement, the Town needs to be fully informed of the business of USC and the Subsidiaries. As set out in sections 4 and 5 of this report, given the nature of corporations and the



positions taken by the senior officers of those corporations, the Town has been unable to obtain information it requires.

- These difficulties may be overcome through amending the S.A. to better protect the Town's interests. These changes should also be beneficial to PowerStream, and therefore negotiating these changes with PowerStream has a reasonable chance of success. Our recommended amendments to the S.A. are as follows:
  - all directors be obligated to report to their nominating shareholder (i.e. the Town and PowerStream, respectively) the business dealings and financial position of the company they serve on a regular basis (e.g. quarterly);
  - any confidential information obtained by directors with regards to the company they serve must still be reported to the nominating shareholder, however the shareholder is obliged to keep the information confidential. In the case of the Town, this would require the information to be shared in an "in camera" meeting; and
  - the time for response to a "shot gun" notice be increased from 20 days to 120 days. This would allow sufficient time for the party receiving the notice to obtain a valuation of USC and, if necessary, obtain financing to purchase the other party's shares.
- It is important to note, however, that appointed directors must consider the interests of the corporation they serve (over the interests of the shareholder who appointed them) while they are acting as directors of that corporation. The Town cannot direct how its nominee directors may vote on any corporate matter. The Town's recourse, if it is unhappy with a director's decisions, is to remove that director as its nominee.

- Section 137 of the *Ontario Business Corporations Act* states as follows:

"Subject to the articles, the by-laws **or any unanimous shareholder agreement**, the directors of a corporation may fix the remuneration of the directors, officers and employees of the corporation." [emphasis added]

It is therefore open to the shareholders of a corporation to remove this power from the directors and fix the remuneration themselves. The S.A. can be further amended to state that each company is obligated to fully disclose to the shareholders all salaries, wages, bonuses, benefits and pensions of its employees. The shareholders may also want to control these amounts. In addition, all employment terms should be disclosed including any severance requirements.

**4. Does the Town have a right to know the salaries of the officers/directors/employees of USC, the Subsidiaries and PUC?**

- The Town is 50% shareholder of USC, and yet has not been able to obtain the salaries of the officers, directors, and employees of USC or the Subsidiaries.
- Section 5.2(14) of the SPA states that Schedule 5.2(14) will list all employees of USC and the Subsidiaries together with their wages (among other information). It appears that at some point in the negotiations of the SPA the requirement to list

wages was removed. Section 5.2(14) of the SPA should have been amended accordingly. As this transaction involved PowerStream purchasing the shares of USC, it would have been PowerStream which would have requested this information, not the Town. At some point PowerStream must have withdrawn its request that wages be included in the schedule.

- Under the *Ontario Business Corporations Act* (the “**OBCA**”), shareholders are entitled to review certain corporate information (s. 145(1) of the OBCA), however salaries are not included in this list.
- A good argument can be made that the Town, as an owner of USC, has a right to know the financial details of the company, and by extension the details of the Subsidiaries. However, instead of arguing the issue we believe a better approach would be to amend the S.A. (as set out in section 3(b) above) to make such disclosure mandatory.
- The Town does have a right to salary disclosure from PUC. The PUC is a municipal services board created by the Town and not a private corporation. Section 197 of the *Municipal Act, 2001* provides that a municipal services board is an agent of the municipality, and section 198 provides that the delegation of authority thereto is in the discretion of the municipality. It is within the Town’s control to amend its delegation of authority to require the disclosure of such information.

## 5. Duty of Council members sitting on boards

- Leo Longo’s opinion to John Brown dated March 31, 2015 (**Tab 18**) states that Councillors who sit on corporate boards as directors owe a fiduciary duty to that corporation. We agree with Mr. Longo’s position. Although councillors are appointed to boards to represent the interests of their appointing municipalities, their foremost duty while sitting as members of those boards is to the interests of that entity. They therefore cannot share information that the corporation has deemed to be confidential, nor can they share municipal information that the Town has deemed to be confidential. They must strike a delicate balance of upholding their fiduciary duties to both the appointing municipality and the private board without compromising the interests of either entity.
- There has been judicial consideration of this issue, which has clearly established that appointed directors owe a fiduciary duty to the corporation whose interests they are considering, and they cannot permit their appointing corporation (or in this case municipality) to control the best exercise of their judgment in that context. In *PWA Corp. v. Gemini Group Automated Distribution Systems Inc.*,<sup>1</sup> the Court described this obligation as follows (emphasis added):

A director nominated by a particular shareholder of the Corporation is not in any sense relieved of his or her fiduciary duties to the Corporation. The nominee director is not accorded an attenuated standard of loyalty to the Corporation. **The director must exercise her or his judgment in the interests of the Corporation and comply with his duties of disclosure, and must not subordinate the interests of the Corporation to those of the director’s patron.**

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<sup>1</sup> *PWA Corp. v. Gemini Group Automated Distribution Systems Inc.* (1993), Ontario Court of Appeal.

- Similarly, in *820099 Ontario Inc. v. Harold E. Ballard Limited*,<sup>2</sup> the Court of Appeal commented as follows (emphasis added):

It may well be that the corporate life a nominee director who votes against the interests of his "appointing" shareholder will be neither happy nor long. **However, the role that any director must play (whether or not a nominee director) is that he must act in the best interests of the Corporation.** If the interests of the Corporation (and indirectly the interests of the shareholders as a whole) require that the director vote in a certain way, it must be the way that he conscientiously believes after a reasonable review is the best for the Corporation. **The nominee director's obligation to his "appointing" shareholder would seem to me to include the duty to tell the appointer that his requested course of action is wrong if the director in fact feels this way.** Such advice, although likely initially unwelcome, may well be valuable to the appointer in the long run. The nominee director cannot be a "Yes man"; he must be an analytical person who can say "Yes" or "No" as the occasion requires (or to put it another way, as the Corporation requires).

- It is our opinion that the above principles extend to the sharing of information by a municipal appointee. In cases where the board of a private corporation has determined that certain information is confidential and should not be shared with other persons or entities, it would be inappropriate for a municipal appointee to ignore that position and share the confidential information with the Town. Similarly, it would be inappropriate for such an appointee to share confidential Town information with the corporation.
- It would be possible to set out in an agreement between the Town and a private corporation the nature and degree of information that would be shared between the parties, which would override the general principles discussed above. This principle is discussed above in the proposed amendments to the S.A.

The issues relating to these transactions are complex ones, but we trust that the foregoing is satisfactory for your current purposes. If you have any comments or questions or require further elaboration on any particular point, please let us know.

Yours truly,

MILLER THOMSON LLP

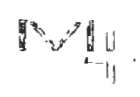
Per: 

Jean L. Leonard

c. Steven O'Melia

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<sup>2</sup> *820099 Ontario Inc. v. Harold E. Ballard Limited* (1991), Ontario Court (General Division).





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**MILLER THOMSON LLP**

**REPORT BOOK TO**

**THE CORPORATION OF THE**

**TOWN OF COLLINGWOOD**

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**AMENDING AGREEMENT**

THIS AMENDING AGREEMENT is made this 4<sup>th</sup> day of NOVEMBER, 2004.

BETWEEN:

**COLLUS SOLUTIONS CORP.**, corporation incorporated pursuant to the laws of the Province of Ontario

(Hereinafter referred to as "SERVCO")

-and-

**Collingwood Public Utilities** a service board of the Town of Collingwood incorporated pursuant to the laws of the Province of Ontario

(Hereinafter referred to as "CPU")

**WHEREAS** SERVCO and the former Collingwood Public Utilities Commission (the "CPUC") had entered into an agreement (the "Services Agreement") dated as of January 1, 2003 whereby the CPUC had agreed to purchase services from SERVCO as provided in the Services Agreement; and

**WHEREAS** the Town of Collingwood By-Law 04-29 enacted as per the requirements of the Municipal Act 2001 that the CPUC became the CPU ; and

**WHEREAS** the Effective Date of the Services Agreement is defined as January 1, 2003; and

**NOW THEREFORE THIS AMENDING AGREEMENT WITNESSETH** that, in consideration of the mutual covenants and agreements herein contained and subject to the terms and conditions hereinafter set out, the Parties hereto agree as follows:

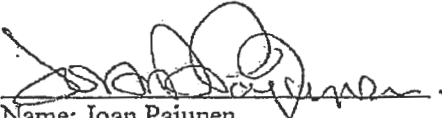
- (a) That the terms and conditions of the Service Agreement pertaining directly to the CPUC are now applicable to the CPU;



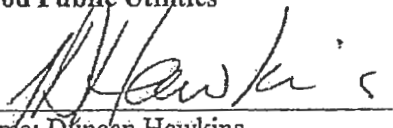
(b) The Effective Date of the amended Service Agreement is January 1, 2004

**IN WITNESS WHEREOF** this Amending Agreement has been executed by the parties hereto as of the date written above.

**COLLUS SOLUTIONS CORP.**

By:   
Name: Joan Pajunen  
Title: Chair of the Board of Directors

**Collingwood Public Utilities**

By:   
Name: Duncan Hawkins  
Title: Chair of the CPU

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COLLINGWOOD PUBLIC UTILITIES COMMISSION

- and -

COLLUS SOLUTIONS CORP

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SERVICES AGREEMENT

---

January 1, 2003

**CONFIDENTIAL**

**SERVICES AGREEMENT**

THIS SERVICES AGREEMENT is made as of the 1<sup>st</sup> day of January, 2003.

BETWEEN:

**COLLINGWOOD PUBLIC UTILITIES  
COMMISSION**, a commission established pursuant to the  
laws of the Province of Ontario

(Hereinafter referred to as "PUC")

- and -

**COLLUS SOLUTIONS CORP** a corporation  
incorporated pursuant to the laws of the Province of  
Ontario

(hereinafter referred to as "SERVCO")

**RECITALS:**

1. SERVCO agrees to provide supervisory, operational, engineering, finance, administrative services and other services to PUC on the terms as set forth in this Agreement, and SERVCO shall provide such other products and services as may be agreed to by the Parties from time to time.
2. This agreement shall not limit the activities of SERVCO, with the exception of those activities within the exclusive statutory and licensed jurisdictions of PUC including the items specifically identified in this Agreement.
3. This agreement sets out certain arrangements between PUC and SERVCO that were in place prior to the date of execution of this Agreement.

**NOW THEREFORE** in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

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**Article One INTERPRETATION**

**Section 1.01: Definitions**

Unless the context otherwise specifies or requires, for the purposes of this Agreement all capitalized terms herein shall have the meanings set forth below:

- (a) “**Advisors**” means employees, agents, professional advisors, contractors and subcontractors, and “**Advisor**” means any one of them;
- (b) “**Affiliate**,” with respect to a corporation, shall have the same meaning as is ascribed to such term in the *Business Corporations Act* (Ontario);
- (c) “**Agreement**” “**this Agreement**”, “**the Agreement**”, “**SERVCO Services, SERVCO Management Services Agreement**”, “**hereto**”, “**hereof**”, “**herein**”, “**hereby**”, “**hereunder**” and similar expressions mean this SERVCO Services Agreement together with all Schedules attached hereto, as they may be amended from time to time;
- (d) “**Business Day**” means any day other than a Saturday or Sunday or a statutory or bank holiday in the Province of Ontario;
- (e) “**Claims**” has the meaning ascribed to such term in Section 4.05;
- (f) “**Confidential Consumer Information**” means information PUC has obtained relating to a specific consumer in the process of providing current or prospective distribution service;
- (g) “**Default**” means in respect of PUC, an event set out in Section 8.01 and, in respect of SERVCO, an event set out in Section 8.02;
- (h) “**Effective Date**” means the date first written above;
- (i) “**Event of Default**” means a Default, the notice and cure periods (if any) respecting, which have expired;
- (j) “**Extraordinary Costs**” means cost as defined in Section 5.07;
- (k) “**Force Majeure Event**” has the meaning ascribed to such term in Section 11.01;
- (l) “**Law**” means any law, rule, regulation, Code, order, writ, judgement, decree or other legal or regulatory termination by a court, regulatory agency or governmental authority of competent jurisdiction;



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- (m) **"Person"** includes an individual, corporation, partnership, joint venture, association, trust, pension fund, union, governmental agency, official, board, tribunal, ministry, commission or department;
- (n) **"Prime Rate"** means, for any day, an annual rate of interest equal to the rate of interest which SERVCO's principal bank establishes at its' principal office in Toronto as the reference rate of interest to determine interest rates that it will charge on such day for commercial loans in Canadian dollars made to its customers in Canada and which it refers to as its "prime rate of interest";
- (o) **"Services"** are Services that are provided under Section 3.01 of this Agreement;
- (p) **"Term"** has the meaning ascribed thereto in Section 2.01 of this Agreement;
- (q) **"Third Party Expenses"** means all fees, costs and charges paid to third parties by SERVCO on behalf of PUC in connection with providing the Services and the Management Services or incurred by PUC's employees while providing Services under this Agreement paid by SERVCO; and
- (r) **"Total Controllable Costs"** has the meaning ascribed to such term in Section 5.01;

**Section 1.02: Construction of Agreement**

In this Agreement:

- (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders;
- (b) all usage of the word **"including"** or the phrase **"e.g.,"** in this Agreement shall mean **"including, without limitation,"** throughout this Agreement;
- (c) any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated there under, as the same may be amended, re-enacted, consolidated and/or replaced, from time to time, and any successor statute thereto, unless otherwise expressly provided;
- (d) any reference to a specific executive position or an internal division or department of a Party shall include any successor positions, divisions or departments having substantially the same responsibilities or performing substantially the same functions;
- (e) when calculating the period of time within which or following which any act is to be done or step taken, the date which is the reference day in calculating such period shall be excluded; and if the last day of such period is not a Business Day, the period shall end on the next Business Day;
- (f) all dollar amounts are expressed in Canadian dollars;

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- (g) the division of this Agreement into separate Articles, Sections, subsections and Schedules, the provision of a table of contents and the insertion of headings is for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (h) words or abbreviations which have well known or trade meanings are used herein in accordance with their recognized meanings; and
- (i) the terms and conditions hereof are the result of negotiations between the Parties and the Parties therefore agree that this Agreement shall not be construed in favour of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

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**Article Two TERM**

**Section 2.01: Term**

Unless terminated in accordance with Section 10.01 of this Agreement, the term of this Agreement shall be from the Effective Date to and including January 1, 2004 and the term shall be automatically extended for a further period of one (1) year unless either Party gives notice in writing that the Agreement is not to be extended on the date which is six (6) months prior to the end of the term, or the end of renewal as the case may be.

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**Article Three SERVCO SERVICES AND COVENANTS**

**Section 3.01: Services**

Unless the parties otherwise agree in writing and subject to the terms, covenants and conditions contained in this Agreement and to the observance and performance by PUC & SERVCO of all terms, covenants and conditions hereof, SERVCO will provide or cause to be provided to PUC the following services (collectively, the "Services"):

**Reconnect and Collection**

Responses to reconnects and collection issues will be completed in an expeditious and timely fashion as to avoid potential levels of bad debt write offs.

**Meter Reading**

The meters of PUC'S Residential & General Service customers shall be read in a timely manner with a SENSUS hand held meter-reading device or other hand held meter-reading device that the parties may agree upon. A Schedule for meter reading will be supplied by SERVCO to PUC for consideration and PUC approval.

**Billing & Collecting**

SERVCO shall utilize equipment that performs billing and collecting functions to North American industry standards. Said equipment shall meet the local needs of the community and shall be capable of providing customized local services such as equal payment plans. PUC shall be entitled to review from time to time the capabilities of the system's workstations and network server to ensure that these local services are available to customers in the future.

SERVCO will rent all computer hardware and software that it requires from the PUC at a rate of \$84,000 plus federal GST per annum. The rental fee will be reviewed annually and may be adjusted upon agreement between the PUC and SERVCO. If a review is not performed and or PUC and SERVCO fail to reach agreement then a 3.5% per annum increase will be applied to the previous year's amount. SERVCO may use the equipment to perform all functions that it requires.

All collections of customer payments will be done from an established local community office.



## CONFIDENTIAL

### Customer Service

Customer Service will be provided by qualified, readily accessible and knowledgeable local staff that meets the needs of existing and potential customers. Services will include the provision of local community and engineering planning information to serve new business. PUC customer information will be readily available to PUC in a local office in both electronic and hard copy. SERVCO staff shall be knowledgeable in respect of community demographics and shall provide personal and friendly customer service, including ongoing community services such as underground cable locates for customers.

### Data Tracking

Competent SERVCO staff and equipment shall upon the request of PUC maintain and collect numerous types of data by using technological means and integrated computer systems in order to track trends and circumstances as required by others.

### Accounting

Skilled local staff will provide and maintain accounting services that are readily accessible at the local level, including financial statements, financial planning, payroll, collection, withholding or remittance of taxes and other required functions. These records will be kept in a format that is acceptable to the Accounting Procedures Handbook for Electric Distribution Utilities and Generally Accepted Accounting Principles ("GAAP") of the Canadian Institute of Chartered Accountants ("CICA") and will be available for PUC on request. [GAAP and CICA not defined]

### Engineering Services

Certified knowledgeable staff with experience in the water utility field will utilize water engineering industry standards, recognising the local conditions in performing the engineering functions the PUC requires.

### Planning and Necessary Maintenance

Qualified staff will provide planning and necessary maintenance to the water system in a timely fashion appropriate for the maintenance need. To the extent practicable, this maintenance will be co-ordinated and integrated with municipal infrastructure projects, including other community utilities such as Bell Canada. Utilising its' in depth local knowledge and information sources, SERVCO will respond to other local reconstruction programs to coordinate activity with the view to minimizing costs to all parties.

### Contracting with Developers, Customers and others

Competent SERVCO staff with local knowledge will be utilized to provide services such as material procurement and handling, design, planning, cost estimating, installation, scheduling, inspection and liaison with other utilities, contractors, the municipality with respect to development, customers and others.

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### Subcontracting services

To the extent practicable, local services will generally be utilized for subcontracted services.

### After Hours Response

SERVCO will cause staff to respond to service calls within 30 minutes of a request for such service and shall have a crew in operation within the utility's service area within the time stated.

### Normal Hours Response

SERVCO will cause staff to respond to service calls on a scheduled basis.

### Emergency Preparedness

An Emergency Measures Plan will be maintained and updated as required.

### Provision of Supervisory Services

All supervisory services provided by SERVCO under this agreement will be provided directly or indirectly by SERVCO. SERVCO provides distribution plant maintenance supervision to PUC.

### Provision of Management Services

SERVCO shall provide to PUC Management Services, which shall include but not be limited to human resources, regulatory assistance and advice and policy development. SERVCO shall provide to PUC reports relating to Management Services rendered by SERVCO and such reports shall be provided to the President and/or CEO of PUC and upon request to the PUC commissioners.

In providing the Management Services, it is specifically understood that SERVCO is an independent contractor and not an agent or employee of PUC. Management Services include the reports on such items as regulatory, policy, and human resources to PUC.

As such, except as permitted by this Agreement, SERVCO shall not be authorized to bind or commit PUC, either actually or apparently, in any manner whatsoever without the prior written authority from PUC to do so. SERVCO does not have the authority to bind PUC with respect to regular regulatory submissions without the prior approval of the President and/or CEO of PUC who shall report such approval to the PUC Board, but it is expected that SERVCO will respond to questions and interrogatories on regulatory submission once initiated. Regardless, SERVCO will report to PUC on all regulatory activities.

SERVCO shall not be authorized to bind or commit PUC, either actually or apparently, in any manner whatsoever without the prior written authority from PUC to divestitures of any interest of PUC in real property.

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SERVCO shall not be authorized to bind or commit PUC, either actually or apparently, in any manner whatsoever without the prior written authority from PUC to divestitures of any interest of PUC in personal property in excess of \$5,000 annually.

Further, where PUC has an approved policy with respect to the services, which SERVCO provides to third parties when providing services on behalf of PUC, SERVCO shall be bound by that policy. If activities should have a policy, then SERVCO shall expeditiously bring the matter to the attention of PUC by way of a report to the PUC Board for consideration.

**Section 3.02: Capital Construction Activities by SERVCO**

- (a) With prior written annual approval of PUC, SERVCO will undertake, by way of acquisition or construction, a capital construction program.
- (b) For unplanned capital or construction activities, including any interest in real property the monthly capital amount will be limited to \$20,000 but must not exceed \$100,000 in any 12 month period. Such amounts will be billed by SERVCO within 90 days of the costs being incurred. On receipt of the approval of PUC, any previously unplanned capital or construction activity shall be considered to have been planned. Any land acquisitions or construction on behalf of PUC including easements, leases, or interest in real property shall be billed by SERVCO within 90 days of the costs being incurred and if not part of the approved capital construction program shall be limited to \$5,000.
- (c) In extreme and unusual situations, the President and/or the CEO or the Chair of PUC may authorize unplanned acquisition or capital expenditures in excess of the previous limits, provided notification is provided to PUC by SERVCO within 72 hours of the commencement of such activities.
- (d) At the time capital is approved, the division of capital activities between PUC resourced activities and SERVCO resourced activities will be established.

**Section 3.03: Performance Standards**

- (a) SERVCO will endeavour to perform in the top quartile of industry standards.
- (b) SERVCO will make all reasonable efforts to meet or exceed performance measures established by the PUC.
- (c) PUC/SERVCO commit to attempting to provide distribution price stability for customers.
- (d) SERVCO will use their bid policies to ensure that the most efficient purchases are made.

**Section 3.04: Changes**

PUC and SERVCO may, from time to time, agree to modifications to the Services, by negotiating appropriate changes to the descriptions of the services and the consideration in connection with such changes and shall initial and attach amended schedules hereto.

**CONFIDENTIAL**

**Section 3.05: General SERVCO Covenants**

- (a) SERVCO shall be responsible for obtaining all necessary licences and permits and for complying with all applicable federal, provincial and municipal laws, codes and regulations in connection with the provision of the services hereunder and SERVCO shall when requested provide PUC with adequate evidence of its compliance with this Section 3.05;
- (b) SERVCO shall comply, while on the premises used by PUC, with all the rules and regulations of PUC from time to time in force, which are brought to its notice or of which it could reasonably be aware;
- (c) SERVCO shall pay for and maintain for the benefit of SERVCO appropriate insurance concerning the operations and liabilities of SERVCO relevant to this Agreement including, without limiting the generality of the foregoing, workers' compensation and employment insurance in conformity with applicable statutory requirements in respect of any remuneration payable by SERVCO to any employees of SERVCO and public liability and property damage insurance;
- (d) All SERVCO Personnel with responsibility for the provision of Services shall be familiar with the PUC water service area.

**Section 3.06: Regulatory Change**

If any change of Law after the date of this Master Agreement renders this Agreement illegal or unenforceable, then the Parties shall be required to renegotiate in good faith for thirty (30) days with a goal to developing a substitute agreement, which is consistent with the change of Law.



**CONFIDENTIAL**

**Article Four MUTUAL COVENANTS**

**Section 4.01: Maintain Records**

PUC and SERVCO will maintain such records as may be necessary in connection with this Agreement and as are agreed upon by the Parties, acting reasonably.

**Section 4.02: Notification of Changes of Circumstances**

PUC shall promptly give written notice to SERVCO of any changes or prospective changes in circumstances that would materially affect the resources required for the performance of the Services, including any anticipated material change in the nature or level of business of PUC, the number of employees of PUC, or any efforts relating to the organization of or collective bargaining by employees of PUC, or any lease or service arrangements contemplated with any third parties.

**CONFIDENTIAL**

**Article Five FEES AND PAYMENTS**

**Section 5.01: Financial Consideration**

SERVCO agrees to provide the services as outlined in the terms of this Agreement to PUC for an annual base cost of \$670,000.00 for the year ending December 31, 2003. The base cost will be reviewed annually and may be adjusted upon agreement between the PUC and SERVCO. If a review is not performed and/or PUC and SERVCO fail to reach agreement, then a 3.5% per annum increase will be applied to the previous year's amount.

- (a) Excluding SERVCO services, PUC costs that will be paid directly by PUC ("Base Direct Costs") include those following and any other direct costs it chooses to incur:
- Income and corporate taxes or payments in lieu of taxes
  - Property Taxes
  - Land Taxes
  - Directors Fees
  - Insurance not jointly held or provided by the parties
  - Costs of insurance jointly held will be shared on a pro rata basis

**Section 5.02: Third Party Services Expenses**

Prior to incurring any Third Party Services Expenses that materially exceed the historical levels of such expenses, SERVCO shall use reasonable efforts to notify PUC of the amount of such differences and the circumstances giving rise thereto. In the event that PUC considers any such increase to be unjustified, the Parties shall work together cooperatively and in good faith to minimize such expenses; provided, however that any material reduction in Third Party Services directly resulting from such increased Third Party Services Expenses not being paid shall not be considered an Event of Default.

**Section 5.03: Taxes**

In addition to the Fees in 5:01, PUC shall pay to SERVCO an amount equal to any and all goods and services taxes, sales taxes, value-added taxes or any other taxes (excluding income taxes) properly eligible on the supply of the Third Party Services provided for under this Agreement.

**Section 5.04: Late Payment**

If PUC fails to pay any amounts payable when due, such amounts shall bear interest from the due date thereof to the date of payment at Prime Rate plus two percentage points.

**CONFIDENTIAL**

**Article Six REPRESENTATIONS AND WARRANTIES**

**Section 6.01: Representations and Warranties of SERVCO**

SERVCO hereby represents and warrants to PUC as follows and acknowledges that PUC is relying on such representations and warranties in connection herewith:

- (a) SERVCO is a company established pursuant to the laws of the Province of Ontario and it has the rights, powers and privileges to execute and deliver this Agreement and to perform its obligations hereunder;
- (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action;
- (c) this Agreement has been duly executed and delivered by SERVCO and constitutes a legal, valid and binding obligation of SERVCO, enforceable against SERVCO by PUC in accordance with its terms; and
- (d) SERVCO has the necessary resources and expertise to acquire or perform the Services and Management Services.

**Section 6.02: Representations and Warranties of PUC**

PUC hereby represents and warrants to SERVCO as follows and acknowledges that SERVCO is relying on such representations and warranties in connection herewith:

- (a) PUC is a company, duly organized, validly existing and in good standing under the laws of the Province of Ontario and it has the rights, powers and privileges to execute and deliver this Agreement and to perform its obligations hereunder;
- (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary commission actions; and
- (c) this Agreement has been duly executed and delivered by PUC and constitutes a legal, valid and binding obligation of PUC, enforceable against PUC by SERVCO in accordance with its terms.

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**Article Seven INDEMNIFICATION**

**Section 7.01: Indemnification by PUC**

The parties shall indemnify each other, and their respective officers and directors, from any losses, liabilities and damages (including taxes and related penalties) and all related costs and expenses, including reasonable legal fees on a solicitor and client basis and expenses and costs of litigation, settlement, judgment, appeal, interest and penalties ("Losses") arising out of or relating to:

- (a) any claim by Advisors, customers or suppliers of a party arising from or related to this Agreement or the Services, provided that such indemnity shall be without prejudice to any claim such party may have against the other party in connection therewith; and
- (b) any claim based on the personal or bodily injury (including death) or damage to property received or sustained by any reason of any act or omission, whether negligent or otherwise, to the extent caused by a party or that party's Advisor at any location of the party in the course of or in connection with the performance of the Services and Management Services.

**Section 7.02: Indemnification Procedures**

If any third party makes a claim covered by this Agreement against any indemnitee hereunder (an "Indemnitee") with respect to which such Indemnitee intends to seek indemnification under this Agreement, such Indemnitee shall give notice of such claim to the indemnifying Party (the "Indemnifying Party") as soon as practicable, including a brief description of the amount and basis therefore, if known. Each Party shall co-operate fully with the other Party in its defence of any such claim. The indemnity obligations of an Indemnifying Party under this Agreement shall be conditional on notice of the claim having been provided and the Indemnifying Party having had the opportunity to consult with the Indemnitee regarding the claim. An Indemnitee seeking indemnification hereunder in respect of a claim shall not settle such claim without prior approval of the Indemnitor.



**CONFIDENTIAL**

**Article Eight DEFAULT**

**Section 8.01: Events of Default by PUC**

The occurrence of any one or more of the following events shall constitute a Default by PUC under this Agreement and shall constitute an Event of Default if such Default is not remedied prior to the expiry of the relevant notice period (if any) and the relevant cure period (if any) applicable to such Default as hereinafter set out:

- (a) if PUC defaults in the payment of any amount due to SERVCO under this Agreement and such default shall continue unremedied for sixty (60) days following notice thereof to PUC by SERVCO; and
- (b) if PUC fails in any material respect to perform or observe any of its other material obligations under this Agreement and such failure shall continue unremedied for a period of 60 days following notice thereof (giving particulars of the failure in reasonable detail) from SERVCO to PUC or such longer period as may be reasonably necessary to cure such failure (if such failure is capable of being cured), provided that PUC:
  - (i) proceeds with all due diligence to cure or cause to be cured such failure; and
  - (ii) its proceedings can be reasonably expected to cure or cause to be cured such failure within a reasonable time frame acceptable to SERVCO, acting reasonably.

**Section 8.02: Default by SERVCO**

It shall constitute a Default by SERVCO under this Agreement and shall constitute an Event of Default if such Default is not cured prior to the expiry of the relevant notice period (if any) and the relevant cure period (if any) applicable to such Default as hereinafter set out:

- (a) if SERVCO defaults in the payment of any amount to PUC under this Agreement and such default shall continue unremedied for sixty (60) days following notice thereof to SERVCO by PUC; and
- (b) if SERVCO fails in any material respect to perform or observe any of its respective material obligations under this Agreement, and such failure shall continue unremedied for a period of sixty (60) days following notice thereof (giving particulars of the failure in reasonable detail) from PUC to SERVCO or such longer period as may be reasonably necessary to cure such failure (if it is capable of being cured), provided that SERVCO:
  - (i) proceeds with all due diligence to cure or cause to be cured such failure; and
  - (ii) SERVCO's proceedings can be reasonably expected to cure or cause to be cured such failure within a reasonable time frame acceptable to PUC, acting reasonably.

**CONFIDENTIAL**

**Article Nine REMEDIES**

**Section 9.01: Default Remedies**

- (a) Unless otherwise agreed to in writing, in the event PUC is in default under Section 8.01(a) and Section 8.01(b), SERVCO may terminate this Agreement and all amounts payable by PUC hereunder shall become due and payable forthwith;
- (b) Any dispute between the Parties in respect of Section 8.01(b) and 8.02(b) shall be submitted to and be definitively settled by arbitration on the request of any Party pursuant to Section 11.02 of this Agreement;
- (c) While any dispute is being resolved by arbitration, the Parties shall continue to perform all obligations under this Agreement with due diligence and shall continue to comply with all terms of this Agreement;
- (d) If a Party has failed to comply with the arbitrator's award or decision in accordance with said arbitrator's award or decision, the other Party may terminate this Agreement and all amounts owing by the Party to the other Party shall be due and payable and all properties of the other Party shall be returned forthwith;
- (e) The remedies in this section are expressly in lieu of any or all of the remedies, which may be available to each of PUC and SERVCO resulting from the furnishing, the failure to furnish or the quality of any Services. Each of PUC and SERVCO hereby recognises and agrees that the Parties will come together to establish a reasonable remedy consistent with the intent of this Agreement, and the Parties further agree that PUC will receive no additional compensation while establishing a reasonable remedy.

**Section 9.02: Limitation of Liability**

For breach or Default by SERVCO under or related to this Agreement, SERVCO's entire aggregate liability, regardless of the form of action, whether based on contract or tort, including negligence and including, without limitation, the furnishing, the failure to furnish or the quality of any Services, shall in no event exceed the amount paid by PUC for the Services that is the subject of the claim.

**Section 9.03: No Consequential Damages**

In no event will SERVCO be liable to PUC, or PUC be liable to SERVCO for special, incidental, indirect or consequential loss or damage, lost business revenue, loss of profits, failure to realize expected profits or savings, or any damages or losses pursuant to claims brought by a third party (even if the Party causing such loss or damage has been advised of the possibility of same) in connection with this Agreement.

**CONFIDENTIAL**

**Article Ten TERMINATION**

**Section 10.01: Termination**

This Agreement shall terminate:

- (a) in accordance with the provisions of Section 9.01; or
- (b) in accordance with Section 2.01 upon issuance of the six (6) month advance notice of termination.

**Section 10.02: Notice of Termination**

Any termination hereof pursuant to Section 10.01 shall be by written notice of the terminating Party.

CONFIDENTIAL

Article Eleven GENERAL

Section 11.01: Force Majeure

No Party shall be liable for a failure or delay in the performance of its obligations pursuant to this Agreement:

- (a) provided that such failure or delay could not have been prevented by reasonable precautions;
- (b) provided that such failure or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, work around plans or other means; and
- (c) if and to the extent such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions, strikes, lock outs or labour disruptions or revolutions in Canada, or any other similar causes beyond the reasonable control of such Party,

(each, a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the non-performing Party shall be excused from any further performance of those of its obligations pursuant to this Agreement affected by the Force Majeure Event only for so long as:

- (a) such Force Majeure Event continues; and
- (b) such Party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

The Party delayed by a Force Majeure Event shall:

- (a) immediately notify the other Parties by telephone (to be confirmed in writing within five (5) days of the inception of such delay) of the occurrence of a Force Majeure Event; and
- (b) describe in reasonable detail the circumstances causing the Force Majeure Event.



CONFIDENTIAL

Section 11.02: Dispute Resolution

If any dispute arising in relation to an event of default under Section 8.01(b) or Section 8.02(b) or its implementation of Section 8.01(b) or Section 8.02(b) cannot be resolved by negotiation between the Parties, then the dispute shall be referred to one arbitrator agreeable to and appointed by both Parties. If the Parties cannot agree on one arbitrator, the matter in dispute shall be referred to a panel of three arbitrators, one of which shall be appointed by PUC, one appointed by SERVCO, and the third appointed by the two arbitrators selected by the two Parties. The arbitrator or arbitrators shall receive such oral and written evidence as may be required to investigate the matter in dispute and to render a decision. The arbitrator shall be guided by this agreement and the intent of this agreement. The decision of the arbitrator or arbitrators shall be provided in writing to all of the Parties no later than 30 days after the sole arbitrator or the third arbitrator has been appointed. The decision of the arbitrator or arbitrators shall be final and binding on all of the Parties.

Section 11.03: Assignment

Neither Party shall, without the Approval of the other Party hereto, which may be arbitrarily withheld in the sole discretion of either of them, assign or transfer its interest in this Agreement. This Agreement shall be binding on the Parties and their respective successors and permitted assigns. Any purported assignment in contravention of this Agreement shall be void.

Section 11.04: Notices

All notices, requests, approvals, consents and other communications required or permitted under this Agreement shall be in writing and addressed as follows:

(a) If to SERVCO,

COLLUS Solutions Corp  
Attn: Chair of the Board of Directors  
Fax: 705-445-8267

If to PUC,

Collingwood Public Utilities Commission  
Attn: Chair of the Commission  
Fax: 705-445-0791

and shall be sent by fax and the Party sending such notice shall telephone to confirm receipt. A copy of any such notice shall also be sent on the date such notice is transmitted by fax by registered express mail or courier with the capacity to verify receipt of delivery. Any Party may change its address or fax number for notification purposes by giving the other Party notice of the new address or fax number and the date upon which it will become effective in accordance with the terms of this Agreement. A notice shall be deemed to have been received as of the next Business Day following its transmission by fax.

**CONFIDENTIAL**

**Section 11.05: Severability**

If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable or contrary to law, then the remaining provisions of this Agreement, or the application of such provisions to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each such provision of this Agreement shall be valid and enforceable to the extent granted by law. If any clause is deemed unenforceable or contrary to law, the parties shall alter the said clause and this agreement to produce enforceability or compliance with law such that the intent of the original clause is maintained and such change or alteration may be established through the dispute resolution clause in this agreement.

**Section 11.06: Waiver**

No delay or omission by a Party to exercise any right or power it has under this Agreement or to object to the failure of any covenant of any other Party to be performed in a timely and complete manner, shall impair any such right or power or be construed as a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the Party waiving its rights.

**Section 11.07: Entire Agreement**

This Agreement constitutes the entire Agreement among the Parties with respect to the Services or Management Services, and there are no other representations, understandings or agreements, either oral or written, between the Parties other than as herein set forth.

**Section 11.08: Amendments**

No amendment to, or change, waiver or discharge of, any provision of this Agreement shall be valid unless in writing and signed by authorized representatives of each Party.

**Section 11.09: Governing Law**

This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein, excluding their rules governing conflicts of laws. The Parties hereby agree that the courts of the Province of Ontario shall have exclusive jurisdiction over disputes under this Agreement, and the Parties agree that jurisdiction and venue in such courts is appropriate and irrevocably affirm to the jurisdiction of such courts.

**CONFIDENTIAL**

**Section 11.10: Survival**

The terms of Section 7, Section 9 and Section 11 shall survive the expiration of this Agreement or termination of this Agreement for any reason.

**Section 11.11: Third Party Beneficiaries**

Each Party intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person or entity other than the Parties.

**Section 11.12: Covenant of Further Assurances**

The Parties agree that, subsequent to the execution and delivery of this Agreement and without any additional consideration, the Parties shall execute and deliver or cause to be executed and delivered any further legal instruments and perform any acts which are or may become necessary to effectuate the purposes of this Agreement and to complete the transactions contemplated hereunder.

CONFIDENTIAL

COLLINGWOOD PUBLIC UTILITIES COMMISSISON

Per: *Duncan Hawkins* c/s  
Name: Mr. Duncan Hawkins

Title: Chair of the Commission

Date June 1, 2003

COLLUS SOLUTIONS CORP

Per: *Jack Gartley* c/s  
Name: Mr. Jack Gartley

Title: Chair of the Board of Directors

Date June 1, 2003





Sent from my iPhone

On Aug 10, 2014, at 5:13 PM, "Leo Longo" <[llongo@airdberlis.com](mailto:llongo@airdberlis.com)> wrote:

John;

Further to our conversation with Sara this past Friday, I have considered whether the "Services Agreement" is still in force and effect.

Based upon my review of the materials emailed to me that day and our discussion, I am of the opinion that the Agreement appears to be still in effect as:

- 1) the Agreement seems to have contemplated automatic annual renewals; and
- 2) no written notice of termination has ever been delivered as required under s. 2.01.

Section 2.01 of the Services Agreement provided that, barring an earlier termination under the Agreement [pursuant to s. 10.01]:

- 1) the original term of the Agreement was up to and including January 1, 2004; and
- 2) the term would automatically be extended for a further period of one year unless a written notice was delivered six months prior to the end of renewal.

If s. 2.01 intended to only grant one renewal extension to January 1, 2005, it would have clearly set that out. Rather, s. 2.01 speaks of "renewal" without an article preceding the word. Had the Agreement said "the" renewal, one would assume that that would have meant a single renewal period to January 1, 2005. Had the Agreement said "a" or "any" renewal, one would assume that many renewals were contemplated as one was required to give the 6 month termination notice before any particular annual renewal period was set to end.

In the absence of the word "a", "the" and "any" before the word "renewal", one needs to give the clause a meaning that the ordinary reading of the words would bear.

As noted above, it would have been so easy for the parties to have said that the term of the Agreement was only intended to be a maximum of two years if that was their intention.

Further, if the Agreement was indeed only meant to be for a maximum of two years, why would one need to give a 6 month notice prior to the initial one time renewal period expiring? i.e. give notice to terminate the Agreement that would have been terminating anyways?

The wording of s. 2.01 suggests to me that the contracting parties intended that the Agreement would be automatically extended on an annual basis unless the required 6 month notice was provided.

AM

Finally, the PUC and Collus Solutions seem to have been behaving as if the Agreement was still in full force and effect. Annual payments have been made to Collus Solutions from 2003 to date.

The March 1, 2012 "comfort letter" from the Mayor [Town] and Ed Houghton [CUS] to PowerStream implies that the Service Agreement is in place and that the Town intended to continue to purchase services as described in the Agreement.

I see no basis or reason provided by Gaviller for its statement in its May 12, 2014 letter to CUS that the Service Agreement expired on January 1, 2005...other than presuming that they have interpreted s. 2.01 to have meant that.

For the foregoing reasons, I believe that the Agreement intended to permit annual automatic renewals of its provisions unless a proper written termination notice was delivered. No such notice has ever been provided.

Assuming the Agreement is still in effect, its current term expires on January 1, 2015.

I have started to give consideration to what might be done under these circumstances.

How can the Agreement be terminated?

I – Section 10.01

See s.10.01 of the Agreement which provides it may be terminated:

- 1) in accordance with s. 9.01 [which refers to s. 8.01 which deals with the PUC defaulting]; or
- 2) upon giving 6 months advance notice under s. 2.01.

Assuming PUC has never defaulted [triggering 10.01(a)], the PUC or Collus Solutions can terminate the Agreement by giving notice under s. 10.01(b). Since the time for cancelling the agreement as of January 1, 2015 has passed without such written notice being served, any notice served now could only terminate the Agreement on January 1, 2016.

II – Breach of Agreement

Section 11.08 provides that no amendments to the Agreement are valid unless made in writing and signed by the parties.

You have advised that many changes have been made to the relationship between the parties over the past decade without any of it being written and signed. Services have been added and some dropped. While the parties may have carried on with such amended arrangements over the years, it appears that these changes were never formally documented as is required under the Agreement.

Note that s. 11.06 states that there will be no waiver of a party's rights and enforcement. Breaches of contract are not waived or be deemed to have been waived by

non-enforcement.

I will stop here and await further instructions from you.

Regards,  
LFL

<image005.png>

**Leo F. Longo**  
Certified Specialist  
(Municipal Law, Local Government & Land Use  
Planning and Development)

T 416.865.7778  
F 416.863.1515  
E [llongo@airdberlis.com](mailto:llongo@airdberlis.com)

Brookfield Place • 181 Bay Street  
Suite 1800 • Box 754  
Toronto ON • M5J 2T9 • Canada  
[www.airdberlis.com](http://www.airdberlis.com)

<image003.jpg>

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<image004.jpg>Please consider the environment before printing this email.

----- Message from John Brown <jbrown@collingwood.ca> on Wed, 30 Jul 2014 14:48:33 -0400 -----

<Leo Longo <llongo@airdberlis.com :To  
<Sara Almas <salmas@collingwood.ca :cc  
...Re: I will be in Town this Friday :Subject

Hi Leo

Sarah is on vacation and I wanted to review with her your three e mails before considering the need for a meeting with you.

When she and can chat I will let you know the next steps

Thanks

John

Sent from my iPhone

On Jul 30, 2014, at 2:44 PM, "Leo Longo" <llongo@airdberlis.com> wrote:







July 31, 2012

The Corporation of the Town of Collingwood  
Collingwood Utility Services Corp.  
Collus Power Corp.  
Collus Solutions Corp.  
Collus Energy Corp.  
P.O. Box 189  
43 Stewart Road  
Collingwood, ON  
L9Y 3Z5

Re: Shared services agreements

Pursuant to the terms of a share purchase agreement dated as of March 6, 2012 between PowerStream Inc. (the "Purchaser"), The Corporation of the Town of Collingwood (the "Vendor"), Collingwood Utility Services Corp. (the "Corporation"), Collus Power Corp. ("Collus"), Collus Solutions Corp. ("Solutions") and Collus Energy Corp. ("Energy") (the "Purchase Agreement"), the Vendor has agreed to sell, and the Purchaser has agreed to purchase, 50% of the Vendor's interest in the Corporation. Capitalized terms used and not otherwise defined herein have the meaning given to them in the Purchase Agreement.

Section 4.3(5) of the Purchase Agreement requires the Parties to have reviewed and amended or confirmed the Service Agreements as provided for in Section 6.3(8) of the Purchase Agreement as a condition to Closing. The Service Agreements provide for the provision of services to the Vendor and its subsidiaries or alternatively for the purchase of services from the Vendor, and include the following agreements:

1. Computer rental agreement between Solutions and Collingwood Public Utilities Commission ("CPUC") dated December 3, 2003, as amended from time to time;
2. Services agreement between Solutions and CPUC dated January 1, 2003, as amended by an amending agreement dated November 4, 2004;
3. Services Agreement between Collus and Solutions dated December 18, 2002, as amended by an amending agreement dated December 17, 2003;
4. Street lighting agreement between Collus and Solutions dated January 1, 2003; and
5. Street lighting agreement between Solutions and the Vendor dated January 1, 2003.

PowerStream Inc.

161 Cityview Boulevard, Vaughan, ON L4H 0A9 Tel: 905-417-6900 Fax: 905-532-4505 www.powerstream.ca



Each of the Vendor, the Corporation, Collus, Solutions and Energy represent and warrant that all Service Agreements entered into between the Corporation, the Vendor, Collus, Solutions, Energy and any of their respective Affiliates are described in this letter agreement and as at the date of this letter agreement, there are no other Service Agreements between such parties.

The Parties acknowledge and confirm that there is considerable work involved in assessing the appropriate costs and conditions for the provision of services as set out in the Service Agreements. The Parties hereby waive the fulfillment of the condition precedent set out in Section 4.3(5) of the Purchase Agreement and agree that all of the Service Agreements will be reviewed and amended, or shall cause all Service Agreements to be reviewed and amended, as necessary, within 12 months of the Closing Date, in order to comply with the following terms and conditions:

- (a) All services provided by the Corporation to the Vendor and its subsidiaries shall be on a fully allocated cost, plus a return on equity equal to the weighted average cost of capital allowed for local distribution companies by the OEB;
- (b) All services purchased by the Corporation from the Vendor and its subsidiaries shall not exceed the fair market value of such services;
- (c) The term of each Service Agreement shall be for a period of 5 years;
- (d) Each Service Agreement shall be reviewed annually and the Parties shall, or shall cause the parties to the applicable Service Agreement (the "SA Parties") to, agree upon the revised cost of services to be provided pursuant to such agreement. If the Parties or the SA Parties are unable to agree upon the cost of services, the cost of services provided pursuant to the applicable Service Agreement shall increase by an amount equal to 3.5% of the cost of services for the prior year; and
- (e) The Service Agreements shall continue in force unless the SA Parties mutually agree in writing to extend or terminate such Service Agreement.

Irrespective of the date of any particular amending agreement for a Service Agreement, the Parties agree that all such amendments shall be effective as of January 1, 2013.

If the SA Parties are not able to agree upon the initial cost of services, the Parties shall select or cause the SA Parties to select, an Independent Accounting Firm to resolve the dispute by conducting an independent review and verification of the proposed cost of services. The Parties agree that the procedures set out in Section 2.7(f) and (g) of the Purchase Agreement shall apply, *mutatis mutandis*, to any dispute between the SA Parties



in respect of the cost of services payable pursuant to a Service Agreement and shall cause the SA Parties to comply with such requirements accordingly.

Yours truly,

**POWERSTREAM INC.**

Dennis Nolan

Executive Vice-President,  
Corporate Services and Secretary

**ACCEPTED AND AGREED** this \_\_\_\_ day of \_\_\_\_\_, 2012.

**THE CORPORATION OF THE TOWN OF COLLINGWOOD**

Per: \_\_\_\_\_  
Name: Sandra Cooper  
Title: Mayor

Per: \_\_\_\_\_  
Name: Sara Almas  
Title: Clerk

**COLLINGWOOD UTILITY SERVICES CORP.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:



in respect of the cost of services payable pursuant to a Service Agreement and shall cause the SA Parties to comply with such requirements accordingly.

Yours truly,

**POWERSTREAM INC.**

Dennis Nolan

Executive Vice-President,  
Corporate Services and Secretary

**ACCEPTED AND AGREED** this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**THE CORPORATION OF THE TOWN OF COLLINGWOOD**

Per: Sandra Cooper  
Name: Sandra Cooper  
Title: Mayor

Per: [Signature]  
Name: Sara Almas  
Title: Clerk

**COLLINGWOOD UTILITY SERVICES CORP.**

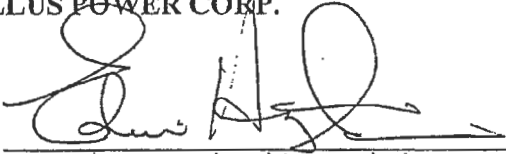
Per: [Signature]  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:






**COLLUS POWER CORP.**

Per:   
Name: Edwin Houghton  
Title: PRES & CEO

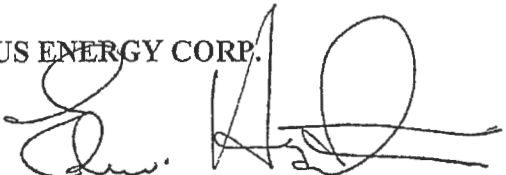
Per: \_\_\_\_\_  
Name:  
Title:

**COLLUS SOLUTIONS CORP.**

Per:   
Name: Edwin Houghton  
Title: PRES & CEO

Per: \_\_\_\_\_  
Name:  
Title:

**COLLUS ENERGY CORP.**

Per:   
Name: Edwin Houghton  
Title: PRES & CEO

Per: \_\_\_\_\_  
Name:  
Title:



*Leo's legal opinion,*

**John Brown**

---

**From:** Leo Longo [llongo@airdberlis.com]  
**Sent:** Tuesday, April 07, 2015 1:22 PM  
**To:** John Brown  
**Subject:** SSA - July 31, 2012 PowerStream Letter PRIVILEGED & CONFIDENTIAL

John;

We have discussed the above-captioned letter and our firm's draft privileged and confidential memo dated March 26, 2015.

The memo reports on the legal status of the July 31, 2012 letter. While acknowledging that the Town is open to take the position that the letter is merely a non-enforceable "agreement to agree", it cautions against taking that position. Not apparently factored into that advice are some of the matters discussed below.

In our discussion last week with Sara, she advised that the import of signing the July 31, 2012 letter was never discussed with her. She believed that the Town, in signing the letter, simply waived compliance with 4.3(5) of the Purchase Agreement...but was not amending the SSA.

As was noted by Ron in the memo, the July 31, 2012 letter spoke to:

i) the parties undertaking a review and amendment of 5 agreements, including the SSA, within a 12 month period. No such review occurred;

ii) the fact that "there is considerable work involved in assessing the appropriate costs and conditions for the provision of services as set out in the Services Agreements". No such work or assessment has been undertaken; and

iii) that each of the 5 agreements was to be reviewed annually by the parties "to agree upon the revised cost of services to be provided pursuant to such agreement". No such annual reviews have been undertaken.

All of this will no doubt be taken into consideration when determining whether that letter constitutes a binding contract.

In determining what course of action to recommend to the Town respecting the SSA, you have advised that:

i) you have commissioned a Phase 2 consultant's report respecting the cost savings that might be realized by the Town assuming direct control over the provision of services currently supplied by Solutions to the Town pursuant to the SSA. You believe that substantial annual cost savings (\$500,000) and other public benefits would accrue to the Town in so doing;

ii) you have also requested that the Town's labour lawyers provide an opinion on the financial ramifications and liability exposure of the Town terminating the SSA from an employment law perspective. That opinion has yet to be received; and

iii) Ron Clark has advised that if the Town were to attempt to terminate the SSA and PowerStream was successful in persuading a court or arbitrator that the July 31, 2012 letter constituted a binding and enforceable legal agreement extending the SSA's term to December 31, 2017, the Town financial exposure might be in the range of \$1,700,000 [or otherwise calculated based upon a cost-based approach plus a "return on equity"].

At this juncture and up to July 1, 2015, the Town will be considering whether it will serve a notice on Solutions respecting the termination of the SSA on December 31, 2015. During this period you will be meeting with Town

staff and with reps from PowerStream and Solutions...and an opportunity exists to negotiate an exit strategy from the SSA that might be agreeable to all parties concerned. As these discussions occur it would be prudent for the Town not to be seen as having a final position as to whether the July 31, 2012 letter constitutes a binding agreement. Rather, at most that issue should be said to be under active review and consideration by the Town's lawyers.

Possible outcomes to be explored during those discussions include:

- i) terminating the SSA as of December 1, 2015;
- ii) renegotiating the actual services to be provided by Solutions under the SSA [and related Town costs for same] for any agreed-upon period of time between now and December 31, 2017;
- iii) maintaining the status quo.

Which outcome to be pursued will be based upon those discussions and weighing all of the advice the Town has or will be receiving in the coming days from its consultants and legal counsel.

Recognize that there are discrete buy-sell provisions in the shareholders' agreement between the parties that would allow either PowerStream or the Town to put the other party to their election to either buy or sell their shares to the other at a fixed price. These provisions are now in effect to my knowledge [as the contractual "standstill" period has expired]. It is speculative as to whether the Town's final position on whether to terminate the SSA might prompt PowerStream to initiate the buy-sell process. The "threat" of such provisions being invoked is now a constant concern going forward and will loom over any future discussions the Town and PowerStream may have on any matter.

A matter that I find troubling is that the Town has had a Purchasing By-law No. 2006-42 throughout this period and that:

- i) between the adoption of this by-law in 2006 and the PowerStream deal in 2012, the Town has been annually paying Solutions for services without adhering to the tender and procurement provisions of said By-law;
- ii) it appears that no consideration was given to Purchasing By-law No. 2006-42 and its requirements when the various PowerStream agreements were entered into; and
- iii) it appears that no consideration was given to Purchasing By-law No. 2006-42 and its requirements when the Mayor and Clerk signed the Town's acceptance and agreement to the July 31, 2012 PowerStream letter.

Any consideration of what course of action the Town will now pursue respecting the SSA should be taken, in part, in full consideration of and compliance with Purchasing By-law No. 2006-42.

I hope this assists.

Regards,  
LFL.

---

**Leo F. Longo**  
Certified Specialist  
(Municipal Law: Local Government & Land Use Planning and Development)

T 416.865.7778  
F 416.863.1515  
E llongo@airdberlis.com

Brookfield Place • 181 Bay Street  
Suite 1800 • Box 754  
Toronto ON • M5J 2T9 • Canada  
[www.airdberlis.com](http://www.airdberlis.com)

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Barristers and Solicitors

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DRAFT

**AIRD & BERLIS LLP**  
Barristers and Solicitors

**MEMORANDUM**  
**Privileged and Confidential**

**TO:** The Town of Collingwood (the "Town") *(Ron Clark)*  
**FROM:** Aird & Berlis LLP ("A&B")  
**DATE:** March 26, 2015  
**RE:** Services Agreement between Collingwood Public Utilities Commission ("CPU") and Collus Solutions Corp. ("Collus") dated January 1, 2003, as amended by an Amending Agreement dated November 4, 2004 (the "Services Agreement"): Considerations re Potential Termination

**I. Introduction**

A document entitled "Collingwood Public Utilities: Service Agreement Review" (the "**Review**") dated December 22, 2014 and updated February 8, 2015, by True North Consultants, Inc. and Beacon 2020 Inc., prepared at the direction of the Town's municipal council, contains an independent operational review of the Services Agreement. The stated purpose of the review was to determine whether or not the agreement provided value-for-money to the Town's ratepayers in light of certain determinations of the auditors of CPU that the Services Agreement terminated as at January 1, 2005. The Review contains a recommendation that the Services Agreement be terminated before June 1, 2015 following giving of notice and expiry of a six-month notice period.

Pursuant to the terms of a share purchase agreement (the "**Purchase Agreement**") dated as of March 6, 2012 between PowerStream Inc. (the "**PowerStream**"), the Town, Collingwood Utility Services Corp. (the "**Corporation**") and certain subsidiaries of the Corporation (including Collus), PowerStream purchased 50% of the shares in the Corporation. The Purchase Agreement contains certain obligations with respect to the Services Agreement.

You have asked A&B to advise you whether the provisions of the Purchase Agreement would create any issues in relation to the conclusions contained in the Review with respect to the termination of the Services Agreement.

In particular, we have addressed the following issues:

- (a) Was the Services Agreement amended as part of the PowerStream share purchase transaction?

- (b) If so, does CPU still have the right to terminate the Services Agreement on six-months' notice?
- (c) What are the implications if CPU or the Town were to terminate the Services Agreement?

In addressing the above, we have reviewed the Services Agreement, the Review, the Purchase Agreement, and ancillary and related documents stemming from the purchase and sale contemplated by the Purchase Agreement.

**II. Conclusions**

- (a) In a letter from PowerStream to the other parties to the Purchase Agreement dated July 31, 2012 (the "**July 31 Letter**"), and signed back by the Town and the Corporation, the parties agreed to review and amend the Services Agreements (among others) within 12 months of the closing of the share purchase transaction. The amendments were required to incorporate certain stated terms and conditions, including that:
  - (i) the term of the Service Agreement shall be for a period of 5 years; and
  - (ii) "The Services Agreements shall continue in force unless the SA Parties mutually agree in writing to extend or terminate such Service Agreement."

All such amendments were to be effective as of January 1, 2013. To our knowledge, no such review and amendment was ever carried out.

- (b) If so, does CPU still have the right to terminate the Services Agreement on six-months' notice? The answer to this question depends on:
  - (i) whether the July 31 Letter was, in the absence of a formal amendment to the Services Agreement, legally effective and binding in amending the Services Agreement; and
  - (ii) if so, whether the wording "the term of each Service Agreement shall be for a period of 5 years;" meant that the Service Agreement's term should run for five years following the effective date of the amendment (January 1, 2013).

PowerStream would likely argue that the July 31 Letter sets out the terms and conditions of the amendments with sufficient certainty that the letter has the legal effect of amending the Service Agreement. They would also likely argue that the new term of five years is intended to run from the date of the amendment, i.e. January 1, 2013.

It is open to the Town to take the position that the terms of the July 31 Letter are not sufficiently certain, and that they merely amount to a non-enforceable "agreement to agree". The wording of the July 31 Letter itself acknowledges that "there is considerable work involved in assessing the appropriate costs and conditions for the provision of services as set out in the Services Agreements".

On balance, we are not comfortable saying that the Town would have a winning argument before an arbitrator or court. If PowerStream's arguments were to be accepted by the Town or prevail in a dispute resolution proceeding, CPU would not have the right to terminate the Services Agreement on six-months' notice.



The July 31 Letter appears to have amended the Services Agreement such that the term of the Services Agreement shall end on December 31, 2017, and the Services Agreement shall continue in force unless the parties to the Services Agreement mutually agree in writing to extend or terminate the Services Agreement.

- (c) What are the implications if CPU or the Town were to terminate the Services Agreement?

If CPU were to improperly terminate the Services Agreement, and thereby default in the payment of any amount due to Collus under the Services Agreement or fail in any material respect to perform or observe any of its other material obligations, then provided such defaults were not properly remedied:

- (i) all amounts payable by CPU under the Services Agreement would become immediately due; and
- (ii) CPU would receive no additional compensation from Collus while Collus and CPU came together to establish a reasonable remedy consistent with the intent of the Services Agreement.

The annual base cost payable by CPU under the Services Agreement (s. 5.01) is \$670,000, subject to annual adjustment or, failing agreement on such adjustment, a 3.5% per annum increase. Using that number, CPU's exposure upon termination could be in the range of \$1,700,000 or so. This is based on a new five year term that commenced on January 1, 2013 of which approximately 2.5 years remain. Note, however, that the payment calculation would likely be based on the terms of the July 31 Letter. That letter provides for a cost-based approach plus a return on equity. Thus, CPU's exposure may differ following a calculation with those figures.

### III. Services Agreement

#### A. Term of the Services Agreement

The term of the Services Agreement is set out in Section 2.01 of the Services Agreement:

Unless terminated in accordance with Section 10.01 of this Agreement, the term of this Agreement shall be from the Effective Date to and including January 1, 2004 and the term shall be automatically extended for a further period of one (1) year unless either Party gives notice in writing that the Agreement is not to be extended on the date which is six (6) months prior to the end of the term, or the end of renewal as the case may be. [Emphasis Added]

Page 3 of the Review notes that "according to the CPU auditor the Agreement ended January 1, 2005". This interpretation may be correct in terms of the strict wording of the Services Agreement, which appears to contemplate only a one year extension in the absence of a termination notice. (However, the reference to six months prior to the end of the renewal only has meaning in the context of a renewal beyond such one year extension.)

However, it appears that the parties considered the Services Agreement to be in force following January 1, 2005. Monthly payments continued to be made and, at the time that the Purchase Agreement was entered into, the assumption certainly appeared to be that the agreement was in force since it was specifically contemplated in the Purchase Agreement that the Services Agreement be amended.

Further, a letter dated March 1, 2012 from the Town and Collus to PowerStream sets out a non-binding statement of intention that the Town of Collingwood will continue to purchase the services as described in the Services Agreement and that amendments to the Services Agreement contemplated by the Purchase Agreement will be made such that the Services Agreement is in compliance with the Affiliate Relationships Code of the Ontario Energy Board.

**B. Consequences of Improper Termination**

If CPU were to improperly default in the payment of any amount due to Collus under the Services Agreement or were to fail in any material respect to perform or observe any of its other material obligations, then provided such defaults were not properly remedied:

- (i) Collus would be entitled, pursuant to Section 9.01 of the Services Agreement, to terminate the Services Agreement;
- (ii) all amounts payable by CPU under the Services Agreement would become immediately due;
- (iii) any dispute between CPU and Collus would be settled by final and binding arbitration; and
- (iv) CPU would receive no additional compensation from Collus while Collus and CPU came together to establish a reasonable remedy consistent with the intent of the Services Agreement.

The annual base cost payable by CPU under the Services Agreement (s. 5.01) is \$670,000, subject to annual adjustment or, failing agreement on such adjustment, a 3.5% per annum increase. Using that number, CPU's exposure upon termination could be in the range of \$1,700,000 or so. This is based on a new five year term that commenced on January 1, 2013 of which approximately 2.5 years remain. Note, however, that the payment calculation would likely be based on the terms of the July 31 Letter. That letter provides for a cost-based approach plus a return on equity. Thus, PUC's exposure may differ following a calculation with those figures.

**IV. Purchase Agreement**

The Purchase Agreement, which was entered into on March 6, 2012, contemplates the amendment of the Services Agreement.

Section 4.3 of the Purchase Agreement states:

The obligations of each of the Parties to complete the Transaction shall be subject to fulfilment of all of the following conditions on or before the Closing Date:

[...]

- (5) the Parties will have reviewed and amended or confirmed the Service Agreements, as provided for in Section 6.3(8).

Section 6.3 (8) of the Services Agreement states:

Service Agreements. During the Interim Period, the Vendor, the Purchaser and the Corporation will agree to amend the Service Agreements in respect of ongoing



obligations with respect to the Corporation and the Subsidiaries of will have confirmed the acceptability of the Service Agreements in their current form.

V. July 31 Letter

On July 31, 2012, the transactions contemplated by the Purchase Agreement were completed. Additionally, on July 31, 2012, Powerstream sent the July 31 Letter to the other parties to the Purchase Agreement.

The July 31 Letter defines 'Services Agreements' to include the services agreement between Collus and CPU dated January 1, 2003, as amended by the amending agreement dated November 4, 2004.

In the July 31 Letter, the parties agreed to:

"[...] waive fulfillment of the condition precedent set out in Section 4.3(5) of the Purchase Agreement and agree that all of the Service Agreements will be reviewed and amended, or shall cause all Service Agreements to be reviewed and amended, as necessary, within 12 months of the Closing Date, in order to comply with the following terms and conditions:

[...]

(c) The term of each Service Agreement shall be for a period of 5 years;

(d) Each Service Agreement shall be reviewed annually and the Parties shall, or cause the parties to the applicable Service Agreement (the "SA Parties") to, agree upon the revised cost of services to be provided pursuant to such agreement.[...]

(e) The Service Agreements shall continue in force unless the SA Parties mutually agree in writing to extended [sic] or terminate such Service Agreement

Irrespective of the date of any particular amending agreement for a Service Agreement, the Parties agree that all such amendments shall be effective as of January 1, 2013.

The July 31 Letter, which was accepted and agreed to by the parties to the Purchase Agreement, is arguably a legally binding contract in which the parties:

- (i) waived the condition precedent in Section 4.3(5) of the Purchase Agreement to review or amend the Services Agreement prior to the Closing Date (as such term was defined in the Purchase Agreement); and
- (ii) agreed to amend the Services Agreement to have, effective January 1, 2013, a term of five (5) years and to continue in force unless mutually agreed to in writing to extend or terminate the Services Agreement.

PowerStream would likely argue that the July 31 Letter sets out the terms and conditions of the amendments with sufficient certainty that the letter has the legal effect of amending the Service Agreement. They would also likely argue that the new term of five years is intended to run from the date of the amendment, i.e. January 1, 2013.

It is open to the Town to take the position that the terms of the July 31 Letter are not sufficiently certain, and that they merely amount to a non-enforceable "agreement to agree". The wording of the July 31

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Letter itself acknowledges that "there is considerable work involved in assessing the appropriate costs and conditions for the provision of services as set out in the Services Agreements".  
On balance, we are not comfortable saying that the Town would have a winning argument before an arbitrator or court. If PowerStream's arguments were to be accepted by the Town or prevail in a dispute resolution proceeding, CPU would not have the right to terminate the Services Agreement on six-months' notice.

22177153.2





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## TOWN OF COLLINGWOOD

WATER AND WASTEWATER

SERVICES REVIEW

**CONFIDENTIAL**

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APRIL 28th 2015



BMA Management Consulting Inc.

DFA Infrastructure International Inc.



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## 1 Background

On January 1, 2004 with the changes in the Municipal Act, the water utility commission became a municipal services board. The municipal services board known as the Collingwood Public Utilities Services Board (CPUSB) was given a new mandate by the Town of Collingwood in 2012 through By-Law 2012-096 with responsibility for operating and maintaining the Town's wastewater systems in addition to the water systems. The representation, mandate and limitations of the CPUSB were defined in By-Law 2012-096 and further updated in By-Law 2015-006.

In 2012, 50% of the hydro shares were sold to PowerStream to form the new entity Collus PowerStream as well as its subsidiaries including Collus PowerStream Solutions (Collus Solutions), established under the Business Corporations Act. Collus PowerStream Solutions and the CPUSB share a number of services.

The purpose of this review was to assess the current water and wastewater operations as part of the overall operational review of the Town's operations and make recommendations for improvement. This report identifies the key issues and recommendations respecting water and wastewater. It does not address implementation and the respective issues that would need to be resolved as part of the implementation process.

### 1.1 Municipal Act – Delegation Limitations

In a report entitled "Good Governance in Restructuring Water Supply: A Handbook," Commissioned by the Federation of Canadian Municipalities, "Improving governance can lead to more efficient and cost-effective service provision, service levels more attuned to users' preferences, and increased responsiveness to changing conditions and public needs." Some of the advantages identified by a utility that is owned and operated by a municipal government include:

- Clear and direct accountability exists through municipal council;
- Results in coordination with other municipal activities (e.g. road repair) and policies; and
- Creates opportunities for economies of scale.

In the past Municipalities established separate utilities to deliver water and wastewater to facilitate the transfer of assets and a "business" approach to service delivery. The utilities were financially stand alone entities. Revenues are from user fees rather than taxes and reserves were dedicated. Full cost recovery over asset lifecycle was easier to implement under a municipal board approach. Changes to the Municipal Act broaden the powers of municipalities to directly assess "utility" charges to users and have service agreements and financial arrangements with other municipalities and private sector organizations. Many municipalities found that public accountability was weakened and now the directly managed municipal utility is the most widespread business

model for water and wastewater services in Canada. The benefits of separate utilities and municipal service boards for water and wastewater service deliver are generally no longer as significant as in the past.

It is important to understand and note the limitations of the Town's delegation of water and wastewater to the CPUSB. Under Municipal Act, Section 23.4 the Town continues to be ultimately responsible for financing capital and operating costs and dealing with property matters as if it has direct control. The existing watermain easement is an example of a property matter that should remain the Town's responsibility. The following is the excerpt from the Municipal Act:

**Effect of delegation to municipal service boards**

*23.4 (1) When a municipality has delegated a power or duty to a municipal service board, the municipality may provide that any existing by-law or resolution of the municipality that relates to the delegated power or duty is, to the extent it applies in any part of the municipality, deemed to be a by-law or resolution of the municipal service board. 2006, c. 32, Sched. A, s. 15.*

**Limitation**

*(2) If a municipal service or activity is under the control and management of a municipal service board, nothing in this Act or a by-law made under this Act,*

- (a) authorizes the municipal service board to provide for the financing of the municipal service or activity otherwise than by fees and charges under Part XII (Fees and Charges) unless the municipal service board has the consent of the municipality to do so;*
- (b) removes from the municipality its power to finance the capital and operating costs of providing the service or activity as if the municipality had control and management of the service or activity; or*
- (c) removes from the municipality its power to deal with real and personal property in connection with the service or activity as if the municipality had control and management of the service or activity. 2006, c. 32, Sched. A, s. 15.*

## 1.2 Standard Duty of Care

The Safe Drinking Water Act, 2002, (SWDA) Section 19 requires that individuals with decision-making power over a water system exercise a level of care, diligence and skill and that they do so competently, with honesty and integrity. The responsibility for meeting the standard duty of care extends to members of Council and senior staff at the Town (as the Owner) and the CPUSB and staff (as the Operator). It is also important to note that under SWDA Section 14 members of Council and Town staff (as the Owner) are not relieved of this responsibility even if the operations are delegated to a third party. Excerpts of the SWDA Sections 19 and 14 are presented below for further detail.

**SDWA Section 19 - Standard of care, municipal drinking water system**

*19. (1) Each of the persons listed in subsection (2) shall,*

- (a) exercise the level of care, diligence and skill in respect of a municipal drinking water system that a reasonably prudent person would be expected to exercise in a similar situation; and*
- (b) act honestly, competently and with integrity, with a view to ensuring the protection and safety of the users of the municipal drinking water system. 2002, c 32, s. 19 (1).*

*Same*

(2) *The following are the persons listed for the purposes of subsection (1):*

1. *The owner of the municipal drinking water system.*
2. *If the municipal drinking water system is owned by a corporation other than a municipality, every officer and director of the corporation.*
3. *If the system is owned by a municipality, every person who, on behalf of the municipality, oversees the accredited operating authority of the system or exercises decision-making authority over the system. 2002, c. 32, s. 19 (2).*

*Offence*

(3) *Every person under a duty described in subsection (1) who fails to carry out that duty is guilty of an offence. 2002, c. 32, s. 19 (3).*

*Same*

(4) *A person may be convicted of an offence under this section in respect of a municipal drinking water system whether or not the owner of the system is prosecuted or convicted. 2002, c. 32, s. 19 (4).*

*Reliance on experts*

(5) *A person shall not be considered to have failed to carry out a duty described in subsection (1) in any circumstance in which the person relies in good faith on a report of an engineer, lawyer, accountant or other person whose professional qualifications lend credibility to the report. 2002, c. 32, s. 19 (5).*

#### **SDWA Section 14 (2)- Delegation of Duty**

(2) *If an owner of a drinking water system enters into an agreement with an accredited operating authority, the owner may, in the agreement, delegate a duty imposed on the owner under this Act to the accredited operating authority. 2002, c. 32, s. 14 (2).*

*Exception*

(3) *A delegation referred to in subsection (2) shall not relieve the owner of the drinking water system from the duty to comply with section 19 or the duty,*

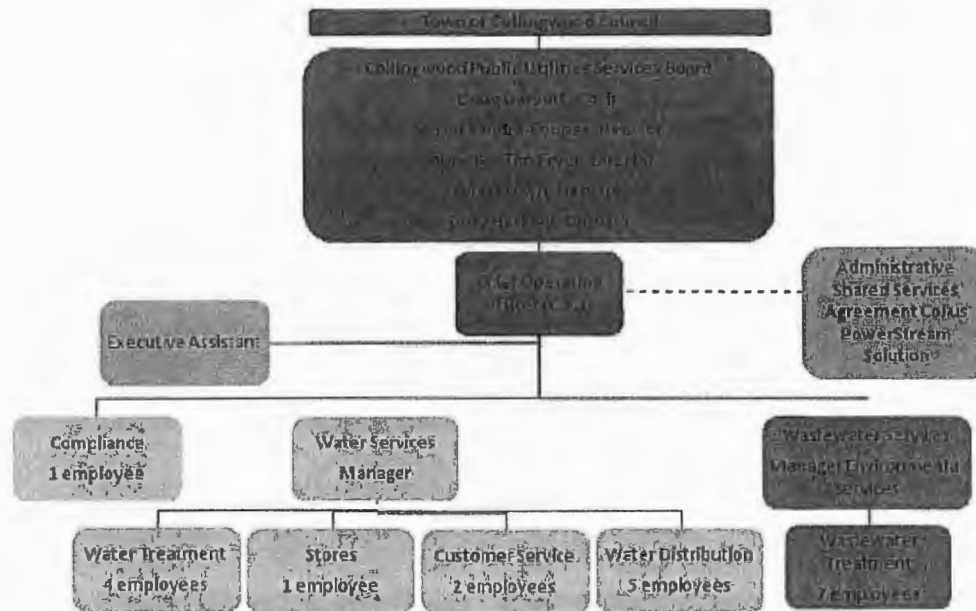
*(a) to ensure that the accredited operating authority carries out its duties under this Act and the agreement in a competent and diligent manner while it is in charge of the system; and*

*(b) upon discovery that the accredited operating authority is failing to act in accordance with clause (a), to take all reasonable steps to ensure that the operation of the system complies with the requirements under this Act. 2002, c. 32, s. 14 (3).*

### 1.3 CPUSB Organization Chart

The 2013 CPUSB organization chart including staff levels is shown below. The Board membership has since been updated to reflect the recent changes made by Council in 2015. However, the executive management remains as shown headed by the Chief Operating Officer (COO) who reports to the Collingwood Public Utilities Board.

Figure 1- Organization Chart



Administration services including human resources (HR) and financial services are provided by Collus Solutions through a shared services agreement that is currently under review. The HR Manager and the Chief Financial Officer (CFO), who are both Collus PowerStream Solutions employees, also hold Executive Management positions at the CPUSB and report to the COO and the Board which is not an ideal situation since there may be conflicting objectives between Collus PowerStream Solutions and the CPUSB.

All water treatment and distribution employees are CPUSB staff and are members of the International Brotherhood of Electrical Workers (IBEW) which evolved through the affiliation with Hydro. Wastewater treatment employees are Town staff but report to CPUSB for operations. The activities related to the wastewater collection system are performed by the Town's Public Works Department employees under the direction of the Public Works Director. These employees also undertake winter maintenance activities during the winter months. Wastewater collection employees are Canadian Union of Public Employees (CUPE) members but the wastewater treatment employees are not unionized.

All water treatment and distribution employees are CPUSB staff and are members of the International Brotherhood of Electrical Workers (IBEW) which evolved through the affiliation with Hydro. Wastewater treatment employees are Town staff but report through the Wastewater Services Manager to the COO of the CPUSB on operations related matters. There is generally no dedicated wastewater collection staff. The activities related to the wastewater collection system are undertaken by the Town's Public Works Department staff as part of their overall duties, under the direction of the Public Works Director. The benefit of this arrangement is the staff optimization. Employees perform wastewater collection system maintenance as well as other functions



e.g. winter road maintenance thereby reducing staff costs. These employees are Canadian Union of Public Employees (CUPE) members but the wastewater treatment employees are not unionized.

## 1.4 Water & Wastewater Systems Summary

The water and wastewater system customers and volumes are provided are noted in Table 1-1. This indicates that the average water consumption per residential customer is approximately 164 m3 per year. This is below the annual average of approximately 180m3 that is typical of many systems and is attributed in part to the conservation programs and low level of water loss indicated in Table 1-3. The wastewater volume treated in 2013 is significantly higher than the water volume consumed by customers. This suggests that the level of inflow and infiltration into the wastewater system is quite high.

**Table 1-1: Customers and Volume**

2013 Customers	Water	Wastewater
Residential	9,203	8509
Non-Residential (ICI)	716	560
<b>Total</b>	<b>9,919</b>	<b>9,069</b>
Water Consumption (m3)	2012	2013
Residential		1,507,321
Non-Residential (ICI)		853,367
<b>Total</b>	<b>-</b>	<b>2,360,688</b>
Wastewater Volume (m3)	2012	2013
Residential		
Non-Residential (ICI)		
<b>Total</b>	<b>6,247,923</b>	<b>6,505,420</b>

**Table 1-2: Water & Wastewater Systems**

2013 W&WW Systems	Water		Wastewater		
Treatment	RA Baker Membrane	31.14 MLD	Conventional WWTP (UV)		
Elevated Storage	1				
Reservoirs	2				
Boosters /SPS	2			7	
Mains (km)	157			92	

The CPUSB 2014-2016 Business Plan indicates that the per capita water consumption is approximately 170 litres per capita per day as shown in Table 1-3. Using the 2011 Census population of 19,241 and the 2013 residential water consumption, the per capita consumption appears to be higher than estimated at approximately 215 per capita per day.

**Table 1-3: Water Programs**

2013 & 2014 Water Programs		No.
Infrast. Leak Index (ILI)		1.99
Low Flush Toilet Rebates		132
Quench Buggy Events		15
Per Capita Consumption (lpd)		170
Backflow Prevention		
Source water risk management		

The Collingwood Water Treatment Plant (WTP) capacity is approximately 31,140 m<sup>3</sup> per day as noted in Table 1-4. A significant portion (approximately 42%) of the capacity is utilized by other municipalities based on service agreements with the CPUSB. Regarding current usage the Town of Blue Mountain uses approximately 13% of the volume currently produced but contributes 10% of the revenues and New Tecumseth uses approximately 35% but contributes only 19% of the revenues. This may suggest that revenues should be higher. A review of these service agreements was not completed as part of this study to confirm whether or not the charge to each municipality considers the full cost of supplying water and wastewater including, but not limited to future asset replacement, etc. However information provided by CPUSB staff indicated the following:

- Currently, Collingwood’s agreement with the Town of Blue Mountains provides that they be billed for a minimum of 4,000 m<sup>3</sup>/day. They have requested that this minimum be reduced to 1,000 m<sup>3</sup>/day. This results in a decrease of approximately \$300,000 in revenues;
- The Town of Blue Mountain agreement was recently updated and awaiting ratification. The agreed consumption rates under the revised agreement are the same as those charged to customers in the Town of Collingwood customers;
- The Municipality of New Tecumseth is charged a fixed fee for a maximum volume whether or not the full volume is taken (i.e. a take or pay charge) under the current agreement. This agreement evolved from earlier agreements developed by the Province of Ontario and does not include full cost recovery;
- The Devil’s Glen charges under the agreement include a mark-up on materials and labour (twice the hourly rate);
- The CFB Meaford agreement is similar to the Devil’s Glen agreement plus an additional 35% mark-up on labour; and

- The CPUSB also provides process water (i.e. non-potable water) to large industries generating annual revenues of approximately \$150,000. These industries worked with the CPUSB to establish the non-filtered water source.

**Table 1-4: WTP Capacity Volumes & Revenues**

Municipality	Annual Usage m <sup>3</sup>	% of Capacity	% Usage	Annual Revenues	% Revenues
Collingwood	14,003	45%	52%	\$ 3,861,621	71%
New Tecumseth	9,490	30%	35%	\$ 1,032,562	19%
The Town of Blue Mountains	3,660	12%	13%	\$ 515,785	10%
<b>Total</b>	<b>27,153</b>	<b>87%</b>	<b>100%</b>	<b>\$ 5,409,968</b>	<b>100%</b>
Existing Plant Capacity	<b>31,140</b>	<b>100%</b>			
Remaining Plant Capacity	<b>3,987</b>	<b>13%</b>			

## 1.5 Key Volume & Capacity Issues

There are a couple of issues to be addressed and/ or confirmed as follows:

- The per capita water consumption using the 2011 Census population and 2013 volume indicates a higher per capita consumption (215 litres per capita per day -lpcd) than stated in the 2014-2016 Business Plan (170 lpcd). The actual per capita consumption should be confirmed by CPUSB staff;
- Full costs for water service is defined in subsection 3(7) of the Act and includes "source protection costs, operating costs, renewal and replacement costs and improvement costs associated with extracting, treating or distributing water to the public and such other costs which may be specified by regulation."
- The agreements with the Town of Blue Mountains and Town of New Tecumseth for water supply should be reviewed to confirm if the charges are based on full cost recovery. It should be noted that in other jurisdictions premiums are often charged to the purchasing municipalities over and above the actual cost of supply. This may be an option to consider in future agreement negotiations;
- The Collingwood WTP is operating at 87% capacity as noted in Table 1-3. Approximately 42% is for supplying the two external municipalities. This level of use and growth in the two municipalities will require a plant expansion sooner than would otherwise be needed for Collingwood alone. Therefore cost sharing of the water treatment plant expansion should also be taken into account in the agreements with these two municipalities; and
- The level of inflow and infiltration (I&I) into the sewer system appears to be excessive especially in view of the sewer pipe replacement projects that were recently completed by the Town. Discussions with the Town's staff confirmed that the volume of I&I declined following the sewer pipe replacement but remains high requiring further reduction efforts and programs.



## 2 Infrastructure

The current water and wastewater assets appear to be in generally good working condition based on discussions with CPUSB staff. The watermain break history is shown in Table 2-1. This shows a consistent decline in the number of breaks per 100km since 2009 and current levels are reasonable compared to other similar jurisdictions (based on MPMP benchmarking information). The Infrastructure Leak Index (ILI) of 1.99 for the water system indicates that water loss is within acceptable levels based on industry standards. The external facilities operated by the CPUSB are also in good working order and the respective owners are cooperative and diligent in facilitating capital investments when needed. Specific sections of the wastewater collection system were also recently replaced through the Town's capital program.

**Table 2-1: Watermain Break History**

Watermain Breaks	2009	2010	2011	2012	2013
Mains	12	13	7	9	7
Services	1	11	5	4	6
<b>Total</b>	<b>13</b>	<b>24</b>	<b>12</b>	<b>13</b>	<b>13</b>
Watermain Length (km)	157	157	157	157	157
<b>Average per 100 Km</b>	<b>7.6</b>	<b>8.3</b>	<b>4.5</b>	<b>5.7</b>	<b>4.5</b>
Peer Group Median	5.1	3.7	13	8	7

The water and wastewater assets were included along with other municipal assets in the 2013 Town of Collingwood Asset Management Plan (AMP). Most of the watermains are either cast iron or ductile iron with concrete pressure pipe for the larger transmission mains. The AMP indicates that approximately \$15.9 million in infrastructure renewal is required in the between 2014 and 2022 mostly for WTP upgrades and electrical/ mechanical upgrades at the West End Reservoir and the Osler Bluff Booster station. Approximately \$2 million is required for membrane filter replacement at the WTP. Note that there are no watermain replacements projected for this period as a 100-year life expectancy was used making most of the replacement due well into the future.

The wastewater collection system is a mix of pipe materials including PVC, Vitreous Clay, and asbestos cement. The Town was proactive over the past decade and completed a full inventory of the wastewater system including condition assessments which resulted in an aggressive sewer main replacement program to address old and failing pipes.

The AMP indicates that approximately \$24.3 million is required for wastewater between 2014 and 2022. Most of this is relates to WWTP upgrades and electrical/ mechanical work at the Patterson Pumping Station,



Minnesota Street Pumping Station and the Black Ash Pumping Station. There are also sewer pipe replacements projected within the period.

The 2014 Water and Wastewater Rate Study is based on these projected water and wastewater costs.

## 2.1 Key Infrastructure Issues

There are a few infrastructure issues to be addressed as follows:

- Membrane filters are approximately 17 year old. These usually have a 10-year life expectancy which would make them overdue for replacement. There is no redundancy so filters operate 24/7 and production is reduced when the filters are off line for repairs. This is a potential risk to the water operations;
- There is currently no storage at the plant so supply is fully reliant on the system reservoirs and tank for storage. This may be a potential risk to the supply depending on the supply period that can be covered by the existing storage facilities;
- Although there are no major issues with main breaks and water quality, cast iron mains tend to be a problem in other jurisdictions. They also account for almost all of the watermain breaks in the Collingwood water distribution system. The AMP assigned a life expectancy of 100 years for cast iron mains. Typically older cast iron water mains (50 or more years old) tend to break more easily and cause water quality issues due to brown water resulting from internal build up of sediment. This is a potential liability that should be further investigated to confirm the risk and future financial liability; and
- There is some degree of coordination between the CPUSB and the Public Works Department on capital projects. The timing of most of the watermain replacements are driven by the timing of the road related projects. Consideration should be given to improved coordination to allow watermain replacement projects to drive the timing where appropriate and for asset management planning purposes including development application reviews. A planned 10-year capital program should be prepared. It should also be noted that the CPUSB's financial contribution on capital projects is limited to the actual cost of the watermain construction. It does not include the cost of design, required agency approvals, project management, contract administration and contractor overhead on the project (e.g. bonds, insurances, surveys, etc.). Based on this the road projects that are tax supported are subsidizing the watermain projects (rate supported) to some extent. This also impacts the service agreements with The Blue Mountains and New Tecumseth.

### 3 Staff Resources

The current water and wastewater staffing levels are indicated in the following sections. The main positives include:

- Overtime seems to be within reasonable levels based on conversations with various staff and is incurred mostly to address emergency situations. Staff is also willing to respond after hours;
- Good working relationship among the operators and good coverage for one another;
- Good mix of qualifications to do both operations and most maintenance in house. Only major repairs and maintenance is outsourced; and
- MOE considers the Sewage Pumping Station (SPS) to be in the collection system so all treatment operators have collection system licences since they are responsible for the stations.

WTP staff includes four (4) operators (including the Overall Responsible Operator – ORO for treatment) plus one (1) contract operator for CFB Meaford WTP. They also go to Devil's Glen 3 times per week. One of the operators is also qualified in the SCADA system. Water Distribution Staff includes five (5) operators (including the distribution system ORO). No distribution system operations are required in non-CPUSB systems.

Wastewater Treatment Plant (WWTP) staff includes eight (8) operators (including the ORO/ Supervisor). All operators perform most maintenance work except for the standby generator maintenance (contracted out). They operate the Collingwood WWTP and seven (7) SPS plus two (2) WWTPs in Clearview and sometimes CFB Meaford WWTP as coverage for the contracted operator. Wastewater collection system activities such as system flushing and sewer main and lateral repairs and maintenance are performed by the Town's Public Works Department staff as part of their regular duties.

#### 3.1 Key Staffing Issues

The following are the main issues identified related to staffing:

- WTP staff is stretched during periods when operators are away on vacation and coverage is required for other facilities. There are a few employees with higher vacation entitlements due to service;
- Water distribution staff is also stretched when operators are away on vacation. Also significant growth over the years means more to be done e.g. approximately 1600 Hydrants are now maintained compared to approximately 800 a decade ago. Staff indicate that an additional FTE would be sufficient to manage the workload;
- There is a challenge dealing with all the locate requests and meter related issues. In 2013 there were approximately 1,916 water locates requests and 1,892 wastewater locates requests;

- Although it appears that water loss (and non-revenue water) appears to be relatively low, this review did not investigate in detail any potential risk to revenues of malfunctioning water meters. It is understood from staff discussions that there is a planned program for water meter replacement in 2015;
- Difficulty keeping up with valve turning and dead-end flushing. There is the possibility of not meeting DWQMS requirements ;
- Operators in all areas are approaching retirement which will result in loss of knowledge and resources if not replaced in a timely fashion with suitable training. The Wastewater Service Manager's retirement was delayed to March 2015 to allow sufficient time for a replacement to be appointed. This has since been completed. One other operator is also due to retire in May 2015; and
- There appears to be a "separation" between the Wastewater Treatment Plant Operators and the CPUSB as the Wastewater Treatment Plant Operators believe that they are accountable to the Town (being their employer). However, this does not affect their responsibility to ensure proper facility operations.

## 4 Innovation

The CPUSB has been innovative over the years being one of the first in Ontario to implement microfiltration treatment and ISO certification for its water system and has been recognized for its services. The wastewater treatment system operated by the Town also received recognition by the "Great Lakes Sewage Report Card" in 2013 for plant performance. Services have also been provided to other jurisdictions at a fee thereby increasing annual revenue. Co-generation at the WWTP and biosolids conversion to fertilizer, are expected to be initiated in 2015 as well as extending its ISO certification to include wastewater. The Co-Gen is expected to result in approximately \$19,000 per year in net revenues.

## 5 Regulatory Compliance

The water system operations are in compliance with the Drinking Water Quality Management System (DWQMS) and ISO 14001:2004 which was implemented prior to the DWQMS becoming law. The existing quality management system (QMS) is a combination of the DWQMS and ISO 14001 into a single QMS which addresses the requirements of each individual system. There have also been no adverse water samples (SWDA O.Reg. 170/03). Wastewater operations have also met all the Certificate of Approval requirements for collection and treatment.

### 5.1 Compliance Issues

- ISO certification for the water is becoming increasingly difficult to manage as the water footprint on the environment is relatively low and targets become increasingly difficult to set and achieve each year;

- ISO certification is also discretionary whereas DWQMS is mandatory. Satisfying both sets of requirements is not necessarily required i.e. there is over compliance resulting in additional staff time that could be utilized for other more critical functions;
- The CPUSB plans to establish a QMS for wastewater but this would be discretionary as there is no regulatory requirement for a wastewater QMS. However, some municipalities are considering developing systems that tend to mirror the DWQMS but limited in scope as a best practise. Staff has indicated that the Wastewater Operations Plan (similar to the DWQMS/ ISO Water System Plan) is approximately 75% complete and can mirror the Water Operations Plan. This would facilitate easier implementation of the wastewater QMS. Further work on the wastewater QMS is required;
- Preventative maintenance tends to be a challenge in meeting the DWQMS requirements;
- There appears to be a disconnect between Top Management (i.e. senior management at the CPUSB) and the DWQMS requirements especially in terms of scheduling timely meetings; and
- The CPUSB staff indicated plans to have a second compliance officer dedicated to Wastewater. Discussions with the CPUSB compliance staff suggest that there is sufficient overlap between the two (2) functions and enough staff capacity that consideration should instead be given to extending this responsibility to the existing Water Compliance Officer. Having a single compliance officer for both water and wastewater would optimize resources and reduce potential additional costs of a dedicated Wastewater Compliance Officer. This is consistent with most other jurisdictions.

## 6 Human Resources (HR) Management

HR services at the CPUSB are provided by Collus Solutions which is 100% owned by Collingwood Power under the Affiliate Relationships Code section 2.2.1. The HR Manager is employed by Collus Solutions and serves on the CPUSB Executive Management Team. This is the sole HR position that performs all HR work for both the CPUSB and Collus Utilities (Hydro). The HR Manager also functions as the Secretary to the CPUSB and as the Executive Assistant to the CEO of Collus Hydro.

The unionized water and hydro employees operate under a single IBEW collective agreement. The current agreement is for the period September 1, 2013 to August 31, 2017. Usually there is one (1) water representative and one (1) hydro representative at the negotiations. Health and safety activities include typical requirements for the workplace including joint committees etc. The system seems to be working well from an operations perspective as there are no grievances and no health and safety concerns. However, the wastewater treatment staff follow both the Town's and the CPUSB's health and safety requirements resulting in some duplication of effort.



## 6.1 Human Resources Management Issues

The following are the key issues to be considered:

- The HR Manager works for both the CPUSB and Collus PowerStream Solutions and also functions as the Executive Assistant to the CEO of Collus Hydro. This arrangement does not facilitate accountability and transparency from the CPUSB perspective and should be resolved;
- By-Law 2012-096 gave the CPUSB control of Wastewater services but was not explicit on the transfer of the wastewater employees from the Town to the CPUSB. Therefore Wastewater Treatment Employees are serving two masters - the Town for HR related matters and the CPUSB for WWTP Operations. Having water and wastewater staff in the same organization will create synergies and be beneficial in facilitating cross training, better coverage and succession planning;
- The implications of the wastewater employees becoming unionized.
- Consideration should be given to the fact that wastewater treatment staff is not interested in becoming unionized as indicated during the staff interviews. Whether or not becoming an IBEW member is mandatory or discretionary should be confirmed. The implications, if any, of not joining the IBEW should be made clear e.g. limited work opportunities in the future etc. A review of the IBEW agreement should be undertaken to identify and address all implications to staff;
- The transfer of wastewater collection system functions from the Public Works Department to the CPUSB as noted in By-Law 2012-96 would not result in any Public Works staff reduction because wastewater is only part of their regular duties. Therefore the CPUSB would require additional staff to for wastewater collection or enter into an agreement with the Town for wastewater collection services. The salary equivalent is estimated to be approximately \$99,000 based on 2015 budget;
- The wastewater treatment operators follow the health and safety requirements of both the Town and CPUSB and attend both sets of H&S meetings. This results in duplication of effort and efficiencies; and
- Although there has been a recent hire of a Water Manager (i.e. at the management level), consideration should be given to succession planning at the operator level to ensure that sufficient resources are available in the future. This may include cross training between water and wastewater staff and obtaining the respective accreditation and appropriate operator licences.

## 7 CPUSB Finance & Administration

The administration includes the COO, the Executive Assistant to the COO and a Customer Services Representative. The COO has overall responsibility for the administration and operations of the CPUSB and reports to the Board and annually to Council regarding the business plan. The Chief Financial Officer (CFO) is employed by Collus Solutions and is responsible for all finance related matters for the CPUSB. A total of 17 shared staff at Collus Solutions which amounts to approximately 6.2 Full Time Equivalents (FTEs) is allocated to the CPUSB. These include finance, human resources, IT, SCADA and some engineering staff. The CFO is also responsible for financial services at Collus Hydro.

Responsibility for the annual budgets for water and wastewater services is currently a shared responsibility between the CPUSB and the Town although By-Law 2012-96 transferred operating responsibility for both water and wastewater to the CPUSB. The water budget is outside of the Town's control as it is prepared and managed by the CPUSB. The Town directly prepares and manages the wastewater budget as all staff are directly employees of the Town. The budget processes are as follows:

- Water treatment and water distribution budgets are prepared under the direction of the CFO and are presented to the CPUSB Board for approval. Once a year, the COO presents the CPUSB's Business Plan to Council ;
- Wastewater treatment budgets are prepared by the Wastewater Services Manager, submitted to the Town's Director of Finance and included as part of the Town's budget process for approval by Council; and
- The wastewater collection budgets are part of the Public Works Department budgets prepared by the Public Works staff and included with the departmental budget as part of the Town's annual budget process for approval by Council.

All external debt or loans require the approval of Council and are established as Town debt with the amounts for repayment to be funded from CPUSB revenues. There is also a loan from the Town's Wastewater Reserve to the CPUSB. The principal outstanding as of January 2015 is \$5,739,959. Annual repayment by the CPUSB to the Town is approximately \$349,500.

The CPUSB operation has been in a deficit (including consideration of amortization and interest expenses) position over the past several years and its latest pro forma financial statements indicate annual surpluses in the future (increasing from \$103,300 in 2015 to \$577,900 by 2017). This is due mainly to the recent update to the water and wastewater rates which are expected to generate higher revenues and a projected increase in revenue for recovery of wastewater system administration costs (increasing from \$184,800 in 2014 to \$597,000 by 2017). According to the Operating Budget Forecast in the 2014 Water & Wastewater Rate Study, the administration cost to wastewater is expected to rise to 675,000 by 2022.

The intention regarding the administration costs to wastewater is that all administration costs incurred by the CPUSB would be shared between water and wastewater (based on the respective number of water and wastewater accounts) and not be fully funded by water as in the past. This results in 48% of the total administration cost being allocated to wastewater. The full amount of the 2014 administration costs allocated to wastewater based on the 2014 budget is \$485,872 as shown in Table 7-1.

**Table 7-1: Wastewater Administration Cost**

Administration Cost Item	Annual Allocation to Wastewater
Billing & Collecting	\$ 185,887
Direct Administration Costs (Board expenses, Collus Solutions wage burden, Office Supplies & Executive Wages)	\$ 151,313
Office Facility Costs	\$ 57,981
Information Technology (IT)	\$ 59,574
Asset Use (Computers, furniture, software & 43 Stewart Road)	\$ 31,117
<b>Total Annual Cost</b>	<b>\$ 485,872</b>

Only the Billing & Collecting cost of \$185,887 (based on actual expenditure) was charged in 2014 i.e. not the entire \$485,872. The intent is to phase in the full charge by 2017 which is estimated to be \$597,000. This indicates an increase of approximately \$111,000 (23%) which significantly exceeds the rate of inflation. Under the existing billing process, the CPUSB issues the water and wastewater bills but all wastewater revenues are transferred to the Town. The amount of the charge is unsubstantiated given the types of costs that are included and the fact that the Town administers the entire wastewater program. The only costs that would be relevant to the CPUSB are the cost of Billing & Collecting which includes wastewater. Therefore calculation of the wastewater administration charge and the increase to \$577,000 by 2017 should be checked for reasonableness.

The 2014 rate study accounts for the wastewater administration charge in the water and sewer rate calculations (but it does not explain the basis of the amount) as follows:

- The Water System Operating Budget Forecast includes the amount as a revenue from the wastewater operating budget i.e. from the Town's annual budget, thereby reducing the revenue requirements from the water rate; and

- The Wastewater System Operating Forecast includes the amount as wastewater expenditure thereby increasing the revenues required from the wastewater rate.

Under the existing billing process, the CPUSB issues the water and wastewater bills but all wastewater revenues are transferred to the Town. Therefore the wastewater administration charge would require a payment from the Town to the CPUSB

The pro forma Statement of Operations which presents the projected revenues and expenses for the period 2015 to 2017 is shown as Table 7-2. Table 7-3 shows a breakdown of the annual expenses based on the 2014 budget. This reflects the income statement so it includes amortization expenses and does not include repayment on the loan/debt principal.



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**Table 7-2: Statement of Operations**

*Collingwood Public Utilities Service Board*  
**STATEMENT OF OPERATIONS**

	December 2017 PROFORMA	December 2016 PROFORMA	December 2015 BUDGET	December 2014 BUDGET	December 2013 ACTUAL
<b>Revenue</b>					
<b>Sale of water</b>					
Residential	3,645,340	3,473,472	3,293,490	3,165,807	2,987,608
Commercial	964,746	941,216	931,995	895,863	874,013
New Tecumseth	1,177,075	1,116,262	1,058,344	1,003,185	1,032,562
Town of Blue Mountain	237,615	231,775	229,352	220,460	515,785
Process	146,952	143,368	141,970	136,466	144,730
	6,171,728	5,906,093	5,655,151	5,421,781	5,554,698
<b>Other revenue</b>					
Hydrant maintenance	148,800	148,800	148,800	148,800	148,225
Interest income	6,000	6,000	6,000	6,000	25,802
Water meters	54,000	54,000	54,000	54,000	47,104
Operations management fee - CFB Meaford	211,900	206,700	201,700	196,800	200,100
Operations management fee - Devils Glen	106,000	103,400	100,900	98,400	96,296
Lease revenue (Collus) - Stewart Road Building	216,000	216,000	216,000	216,000	216,000
Lease revenue (Collus) - Computers	21,792	21,792	21,792	21,792	21,792
Waste Water Admin Fee	597,000	582,400	378,797	184,779	
Water Connection Charges	47,383	46,228	45,100	44,000	68,097
Southern Servicing Special Charges	89,428	89,428	89,428	89,428	89,428
Miscellaneous revenue	27,917	27,273	26,600	25,960	32,095
	1,526,221	1,502,020	1,289,117	1,085,959	944,139
<b>Total Revenue</b>	<b>7,697,949</b>	<b>7,408,113</b>	<b>6,944,268</b>	<b>6,507,740</b>	<b>6,498,837</b>
<b>Expenses</b>					
Water Treatment	1,527,428	1,490,174	1,453,828	1,418,368	1,372,337
Water Distribution	1,409,427	1,375,050	1,341,512	1,308,792	1,354,988
Administration and general operations	1,859,521	1,814,167	1,769,919	1,726,750	1,805,592
Customer billing and collection	442,889	432,087	421,548	411,264	369,526
	5,239,265	5,111,478	4,986,808	4,865,174	4,902,443
Amortization	1,752,443	1,752,443	1,709,700	1,668,000	1,570,421
Interest	128,314	136,229	144,442	152,334	94,803
	7,120,022	7,000,149	6,840,950	6,685,508	6,567,668
<b>Net Revenue (Expense) from Continuing Operations</b>	<b>577,928</b>	<b>407,964</b>	<b>103,318</b>	<b>(177,768)</b>	<b>(68,831)</b>
<b>Other</b>					
Municipal Special Charges					121,327
Contributed tangible capital assets	0	0	0	634,500	10,713
	0	0	0	634,500	132,040
<b>Annual Surplus (Deficit)</b>	<b>577,928</b>	<b>407,964</b>	<b>103,318</b>	<b>456,732</b>	<b>63,289</b>
<b>Accumulated Surplus, beginning of year</b>	<b>28,583,684</b>	<b>28,175,720</b>	<b>28,072,402</b>	<b>27,615,670</b>	<b>27,552,461</b>
<b>Accumulated Surplus, end of year</b>	<b>29,161,611</b>	<b>28,583,684</b>	<b>28,175,720</b>	<b>28,072,402</b>	<b>27,615,670</b>

**Table 7-3: CPUSB Annual Expenses (2014 Budget)**

Description	Budget	Description	Budget
Advertising and Promotion	\$8,400	Photocopier Lease	\$7,980
Amortization	\$1,668,000	Postage	\$54,840
Audit	\$24,000	Property Taxes	\$85,500
Bad Debts	\$24,000	Rent	\$312,000
Board Expense	\$30,000	Repairs & Maint - Building	\$33,240
Chemicals	\$94,820	Repairs & Maint - Equipment	\$142,860
Computer Small Equipment	\$1,800	Security	\$1,560
Computer Toner & Supplies	\$2,400	Small Office Furniture & Equip	\$600
Computer Small Software	\$3,600	Small Tools and Equipment	\$15,180
Computer Support	\$28,800	Staff Recruitment	\$600
Conservation	\$7,200	Studies	\$25,000
Consulting Fees	\$4,800	Subcontract	\$98,600
Meter Reading Services	\$144,000	Supplies	\$8,340
Employee - Accomodations	\$3,240	Telephone	\$34,460
Employee - Clothing & Boots	\$23,100	Utilities - Electricity	\$826,480
Employee - Conferences	\$13,800	Utilities - Natural Gas	\$9,800
Employee - Courses & Seminars	\$31,200	Water Testing	\$68,700
Employee - Future Benefits	\$6,702	Website	\$6,000
Employee - Meals	\$4,980	Vehicle - Burden	\$115,860
Employee - Mileage	\$6,780	Wages & Stores - Burden	\$654,646
Employee - Professional Fees	\$2,640	Wages - Accounting	\$136,500
Equipment Rentals	\$600	Wages - Customer Service	\$75,400
Fuel - Clear Diesel	\$8,160	Wages - Assistant	\$115,100
Fuel - Coloured Diesel	\$7,740	Wages - Billing	\$42,900
Fuel - Gasoline	\$24,000	Wages - Collecting	\$22,100
Garbage Collection	\$28,260	Wages - Engineering	\$53,300
Inspection	\$30,200	Wages - Executive	\$250,800
Insurance	\$145,200	Wages - HR	\$45,500
Insurance Deductible	\$600	Wages - IT	\$71,500
Interest and Bank Charges	\$144	Wages - O&M	\$851,492
Interest on Long-Term Debt	\$152,334	Wages - Scada/Bldg	\$12,250
Internet & Broadband Fees	\$13,860	EI / CPP Expense	\$62,783
Janitorial Contract	\$18,300	EHT Expense	\$24,000
Janitorial Mats	\$5,540	WSIB Expense	\$13,000
Janitorial Supplies	\$3,220	Sick Expense	\$12,000
Legal	\$6,000	Vacation Expense	\$91,000
Licences, Fees and Dues	\$31,000	Health Benefits Expense	\$106,000
Management Fee - Solutions	\$120,000	OMERS expense	\$123,000
Materials Non-Stock	\$33,360	Bereavement Expenses	\$2,400
Materials Stock	\$16,680	Appointment Time	\$2,400
Municipal Works Day	\$2,000	Allocated Burden	(\$729,103)
Office Supplies	\$15,600		
		<b>Total</b>	<b>\$6,625,508</b>

The following are noted:

- The CPUSB rents its administration building from the Town for \$216,000 annually but sub-leases out the use to Collus Hydro for an equivalent amount;
- The CPUSB also pays a property lease amount to the Town for a property easement required for a portion of a watermain along the Collingwood to Utopia rail corridor. Although the property management function related to this corridor was the responsibility of some Town departments in the past, the COO became the default responsible person due to the waterline easement. However, responsibility for all property matters should be with the Town as noted in Section 23.4 of the Municipal Act;
- No external debt is incurred by the CPUSB as all debt and front end financing are managed by the Town;
- Existing Town financial software has the capacity to handle the additional payroll and accounts payable if the water accounting is transferred from the CPUSB to the Town;
- There is approximately \$2million in cash balance that is committed to replacing the water meters in 2015; and
- Table 7-2: Statement of Operations indicates a decrease of approximately \$295,300 in the annual revenue from the sale of water to the Town of Blue Mountain, between 2013 and 2014. The review of third party agreements was not within the scope of this study as previously noted, so the reasons for this significant reduction in annual revenue should be further investigated and confirmed.

## 7.1 CPUSB Administration Costs

The administration costs incurred by the CPUSB can be categorized into two (2) types:

- Direct administration costs which include CPUSB Board expenses, annual audit fees and salaries and benefits related to the COO, two (2) Executive Assistants and the Water Services Manager. An estimate of the direct administration costs is shown in Table 7-4. Note that the cost of operations such as plant and distribution staff, chemicals, etc. are direct operating costs that are not administrative in nature and are therefore not included in Table 7-4; and
- The cost of services provided by Collus PowerStream Solutions. These costs include all costs associated with administering the CPUSB (other than the direct administration costs noted above) such as billing & collecting, customer service, financial activities (payroll, payables, receivables, information technology, etc.), human resources activities (recruitment, vacations, health & safety, collective agreement negotiations and interpretation, etc.).



**Table 7-4: Direct CPUSB Administration Costs**

Activity	FTE	2014 Budget	2014 Actual	2015 Estimate
Board Expenses		\$ 30,000	\$ 30,000	\$ 30,000
Annual Audit Fees		\$ 24,000	\$ 24,000	\$ 24,000
Administration Staff Costs:	4	\$ 625,299	\$ 477,479	\$ 487,595
<b>Total</b>	<b>4</b>	<b>\$ 679,299</b>	<b>\$ 531,479</b>	<b>\$ 541,595</b>

The administration staff costs include salary and benefits for four (4) positions. In 2014 two (2) of the four (4) staff positions were not filled for the entire year and a portion of one of the Executive Assistant's time was reassigned to other non-administration functions. As a result the actual 2014 costs were lower than budgeted by approximately \$110,000. The 2015 direct administration costs are estimated to be approximately \$482,000 assuming no increases from 2014 and full year costs.

Collus Solutions is an independent organization that is owned by Collus PowerStream and administers the operations of both the CPUSB and Collus PowerStream. Collus Solutions allocates its charges (for administering both organizations) to the CPUSB and Collus PowerStream based on different drivers (FTEs, floor area, factors to cover burden costs, etc.) depending on the cost item. The CPUSB relies on the judgment of Collus PowerStream Solutions for these allocations which in some cases is complex. In 2014 the allocated cost to the CPUSB included a management fee, allocated salaries and burden costs. This method resulted in a portion of the allocated Collus PowerStream Solutions costs for administration services not being included in the allocated burden budget amount shown in the CPUSB 2014 budget. The budgeted amount was lower by approximately \$41,000. To simplify the allocations, Collus Solutions will begin using a different method to allocate their costs to the CPUSB and Collus Hydro:

- The respective salaries & wages allocated to the CPUSB and Collus Hydro multiplied by a factor of 1.45 to cover all burden and non- salary administrative costs

In 2015 the cost of Collus Solutions services allocated to the CPUSB is budgeted to be approximately \$720,000 using the new formula (i.e. \$496,365 x 1.45). The salary and wage portion to be allocated to the CPUSB in 2015 is based on 6.2 Full Time Equivalents (FTEs) and estimated to be approximately \$496,365 allowing for a 5% increase over 2014 actual costs. Note that the Collus Solutions charge to the CPUSB is based on an allocation of costs at the sole discretion of Collus Solution and not on a fee for service.



**Table 7-5: Collus Solutions Salaries & Wages Allocated to the CPUSB**

Activity	FTE	2014 Budget	2014 Actual	Increase %	2015 Budget
Accounting	1.76	\$ 136,500	\$ 153,675	5%	\$ 161,359
Billing	0.98	\$ 42,900	\$ 53,429	5%	\$ 56,100
Customer Service	1.60	\$ 75,400	\$ 79,593	5%	\$ 83,573
Collections	0.40	\$ 22,100	\$ 20,676	5%	\$ 21,710
HR	0.45	\$ 45,500	\$ 54,844	5%	\$ 57,586
IT	0.64	\$ 71,500	\$ 63,786	5%	\$ 66,975
Building	0.16		\$ 7,532	5%	\$ 7,909
Scada	0.11		\$ 3,180	5%	\$ 3,339
Engineering / GIS	0.21	\$ 53,300	\$ 25,302	5%	\$ 26,567
<b>Total</b>	<b>6.20</b>	<b>\$ 459,450.00</b>	<b>\$ 472,729</b>		<b>\$ 496,365</b>

The total Collus Solutions cost allocated to the CPUSB is itemized in Table 7-6.

**Table 7-6: 2015 Collus Solutions Costs Allocated to the CPUSB**

Cost Description	Amount
Administration	\$ 4,489
Bank Charges & Interest	\$ 126
Board Expense	\$ 1,593
Fees - Audit	\$ 4,552
Fees - Legal	\$ 3,642
Fees - Actuary	\$ 2,048
Employee Future Benefits	\$ 8,588
Water CPUSB Salaries	\$ 496,365
Vacation Expense	\$ 47,073
EI&CPP	\$ 24,635
EHT	\$ 10,902
WSIB	\$ 1,821
Pension Benefits	\$ 60,210
Health Benefits	\$ 54,310
<b>Total Collus Solutions Cost</b>	<b>\$ 720,356</b>

## 7.2 Finance & Administration Issues

The following are the key issues to be considered:

- The position of CFO reports to both the CPUSB and Collus PowerStream Solutions. This arrangement does not facilitate accountability and transparency from the CPUSB perspective and should be resolved;
- The method used by Collus Solutions to charge costs to the CPUSB and Collus Hydro is at Collus Solution's sole discretion. The current arrangement does not allow the CPUSB to independently validate these costs. The charge to the CPUSB is also on an allocation basis as opposed to a fee for service. These should be addressed;
- The rental cost to the CPUSB should be clarified and confirmed with the Town. The building is included as a CPUSB asset in the financial statements (based on discussions with the CFO). On a broader scale the ownership of the assets and should be clarified ;
- Although the CPUSB shows an operating deficit in recent years, the Cash Flow Statement shows a cash position of approximately \$2.6 million at the beginning of 2015. Consideration should be given to establishing one or more reserve funds to finance future capital investments including those identified in the 2013 Town of Collingwood Asset Management Plan. The 2014 rate study allows for reserve contributions for both water and wastewater;

## 8 Conclusions & Recommendations

The following are the main conclusions:

1. In the past, municipalities set up a water public service board to help ensure financial sustainability. With the passage of the Water Sustainability Act, it is no longer necessary to maintain a separate service board; rather, financial sustainability is governed through the Act. The vast majority of Ontario municipalities operate water within the municipal structure, as a rate supported enterprise, to increase public transparency and accountability;
2. Notwithstanding the delegation of water and wastewater operations to the CPUSB, Town staff and members of Council remain responsible for the Standard Duty of Care for the water system as noted in SDWA Section 19 and SDWA Section 14;
3. The responsibility for property management of the rail corridor (where there is an easement for the watermain) currently lies with the COO. However, all property management matters should remain with the Town;
4. The water and wastewater operations seem to run well from a technical perspective. The operations meet all regulatory requirements. Customer needs are met although there are always challenges;

5. Inflow and infiltration (I&I) to the wastewater system seems to be very high (albeit declining) based on the wastewater volumes treated compared to the water volumes purchased by customers (and entering the sewer system);
6. There are innovative ideas and programs in place or being considered e.g. the co-generation project;
7. There are significant additional revenues generated from third party contracts. Discussion with staff indicate that revenues cover the full cost of services but this was not confirmed as a review of those agreements were outside the scope of this study. The current revenue levels also do not seem to match the usage. Furthermore a capacity expansion at the WTP may be required sooner than expected due to the demand from the two (2) municipal customers;
8. Staff resources are generally sufficient. However there is a need for succession planning to address impending retirements and a need to address periodic shortfalls in staff capacity during the year;
9. Coordination between CPUSB and Town staff on development applications reviews and capital projects has been improving. However there is still room for improvement;
10. The AMP indicates significant investments in water and wastewater facilities between 2014 and 2022. The Micro filters are due for replacement and WTP storage is required. However, watermain replacement is not expected until well beyond 2022. This may be due to the 100-year life expectancy assigned to watermains which could be an overestimate of the remaining lives for the cast iron mains. This represents a major potential liability and should be checked and confirmed;
11. Wastewater Plant operation staff report to two masters – the Town for HR related items and the CPUSB for operations. This also results in attendance at both sets of health and safety meetings which is inefficient;
12. The wastewater treatment staff do not wish to join the IBEW union. The implications of this possibility should be considered;
13. There has been no review to address the transfer of wastewater staff i.e. salaries, seniority, length of service, pension, benefits, etc. These are significant issues that remain outstanding;
14. The By-Law 2012-096 authorizes the CPUSB to undertake wastewater operations but did not explicitly address the transfer of staff. Furthermore, the Town continues to be responsible for wastewater system budgeting and management;
15. The expenditures related to administration are difficult to understand in terms of input costs and accountability. However, based on the information provided by Collus Solutions/ CPUSB finance staff the Collus Solutions administration charge to the CPUSB are based on salaries of Collus Solutions staff allocated to the CPUSB multiplies by a factor on 1.45. The value of the factor is selected so that Collus Solutions' net annual costs are zero. Apart from this there is no basis for determining the factor ;



16. The amount of the wastewater administration charge by the CPUSB to the Town is unsubstantiated based on the cost components included in the calculation given that the Town manages the wastewater system. The annual increase to approximately \$577,000 by 2017 also exceeds a reasonable rate of inflation.
17. The current arrangement whereby two (2) Collus Solutions positions also function as the CFO and HR Manager for the CPUSB does not facilitate clear accountability and transparency; and
18. Notwithstanding the transfer of wastewater to the CPUSB under By-law 2012-096, the overall water and wastewater remains a mix of responsibilities between the Town and the CPUSB:
  - All water treatment and distribution staff are employees of the CPUSB. However, wastewater treatment staff is employees of the Town but report to the CPUSB's COO for operational purposes. The wastewater collection functions are performed by the Town's Public Works staff i.e. not CPUSB staff; and
  - Similarly, the responsibility and accountability for the respective budgets are also divided. The Town directly prepares and manages the wastewater budgets. The water budgets prepared and managed by the CPUSB and are outside the Town's control.

The following are the main recommendations for consideration by the Town and CPUSB:

1. Review the Asset Management Plan to ensure that the long term asset funding needs with respect to cast iron watermains are addressed;
2. Review all water supply agreements with third parties (for drinking and raw water) to ensure that the respective rates and charges are based on full cost recovery and consider additional premiums. It should be noted that in other jurisdictions premiums are often charged to the purchasing municipalities over and above the actual cost of supply. This may be an option to consider in future agreement negotiations. The reasons for the reduction in annual charges of approximately \$295,300 to the Town of Blue Mountain (as noted in Table 7-2) should be further investigated and confirmed;
3. It is recognized that the oversight/management function of the Collingwood to Utopia rail corridor has been responsibility of the COO. However, it is recommended that all property matters including the rail land, maintenance and the future use of corridor be the responsibility of one an appropriate Town department, as long as the waterline easement remains protected;
4. The Collingwood WTP is operating at 87% capacity as noted in Table 1-3. Approximately 42% is for supplying the two external municipalities. This level of use and growth in the two municipalities will require a plant expansion sooner that would otherwise be needed for Collingwood. Therefore the water treatment plant expansion should also be taken into account in the cost charging agreements, with these two municipalities;
5. Consolidate water and wastewater staff under the same organization. This would facilitate synergies by cross training, better succession planning, clarity to the employees; and improved efficiencies;



6. Assign the current Water Compliance Officer to also undertake wastewater compliance to leverage knowledge and work already completed for the water systems;
7. The reasonableness and amount of the wastewater administration charges by the CPUSB to the Town should be checked and confirmed;
8. The Collus Solutions charge to the CPUSB on an allocation basis as opposed to a fee for service basis should be reviewed for consistency with the service agreement;
9. Change the current arrangement between the CPUSB and Collus Solutions to ensure clear accountability and transparency regarding the CPUSB operations and associated costs.
10. Based on the “total cost” to taxpayers of the Town of Collingwood it is more cost effective to return the water operations to the Town which is already managing the wastewater system. It is important to note that when water and hydro operated as a single utility the Town was the only “shareholder” so costs and benefits to the operations were realized by tax payers. However with the separation of the hydro component into its own entity as Collus PowerStream, ownership of the hydro component and its subsidiary Collus Solutions, is now shared with the private sector. Therefore it is even more critical for transparency, clear lines of accountability and cost control to be given top priority in the interest of the tax payer. The dual role of Collus Solutions (partially privately owned and operated) as both the provider of administration services to the CPUSB for a fee and as the “senior administration staff of CPUSB” (i.e. holding the interest of the CPUSB and the tax payers as top priority) appears to be in conflict. The mechanisms for checks and balances normally associated with transparency and clear accountability in the interest of the tax payer would be much tighter under the Town’s direct management.

Although wastewater was transferred to the CPUSB under By-Law 2012-096, in reality wastewater is a service that is currently provided by the Town (i.e. employees of the Town) and not directly by the CPUSB

Some of the preliminary advantages would be:

- Clear lines of accountability and transparency;
- Council’s Standard Duty of Care respecting the water system would be clear. As it stands Council remains ultimately responsible for Standard Duty of Care. Section 14(3) of the SWDA specifically states that owners are not relieved of their Standard Duty of Care as per Section 19 even if operations are delegated via an agreement to another party. Direct control would also facilitate addressing the asset management and service delivery issues noted in this report to Council’s satisfaction in the context of the Standard Duty of Care;
- The Town could continue to maintain the existing water supply and operating contracts with other parties (under the Municipal Act and the Water Opportunities Act). The details of these requirements should be confirmed during implementation;

- More efficient coordination of development reviews, site plans, asset management and capital planning and improved cost sharing of design, approvals, contract administration and construction costs;
- Opportunity to consolidate and cross train water and wastewater staff to address workload increases, retirements and succession planning; and
- High level estimates of the potential savings as shown in Table 8-1.

**Table 8-1: High Level Potential Annual Savings**

Administration Cost Item	2015 Budget	Potential Savings
<b>Direct Administration Costs</b>		
Board Expenses	\$ 30,000	\$ 30,000
Annual Audit Fees	\$ 24,000	\$ 24,000
Administration Staff Costs	\$ 487,595	\$ 298,523
<b>Subtotal</b>	<b>\$ 541,595</b>	<b>\$ 352,523</b>
<b>Collus Solutions Charge to PUB</b>		
Administration	\$ 4,489	\$ 4,489
Bank Charges & Interest	\$ 126	\$ 126
Board Expense	\$ 1,593	\$ 1,593
Fees - Audit	\$ 4,552	\$ 4,552
Fees - Legal	\$ 3,642	\$ 3,642
Fees - Actuary	\$ 2,048	\$ 2,048
Employee Future Benefits	\$ 8,588	\$ 8,588
Salaries Allocated to Water CPUSB	\$ 496,365	\$ 496,365
Vacation Expense	\$ 47,073	\$ 47,073
EI&CPP	\$ 24,635	\$ 24,635
EHT	\$ 10,902	\$ 10,902
WSIB	\$ 1,821	\$ 1,821
Pension Benefits	\$ 60,210	\$ 60,210
Health Benefits	\$ 54,310	\$ 54,310
<b>Subtotal</b>	<b>\$ 720,356</b>	<b>\$ 720,356</b>
<b>Total</b>	<b>\$ 1,261,951</b>	<b>\$ 1,072,879</b>
<b>Added Administration Costs to be Incurred by Town</b>		
Billing	\$ -	\$ 81,346
Customer Service	\$ -	\$ 121,180
Collections	\$ -	\$ 31,479
Information Technology (IT)	\$ -	\$ 97,114
Building	\$ -	\$ 11,467
SCADA	\$ -	\$ 4,842
<b>Total</b>	<b>\$ -</b>	<b>\$ 347,428</b>
<b>Potential Net Annual Savings</b>		<b>\$ 725,450</b>

The total potential annual savings is estimated to be approximately \$725,000 but this would depend on where Water and Wastewater fits into the Town's organization. If it becomes its own department, then a new Director position and an administrative assistant may be required. However, if it can be accommodated within the Public Works Department, then the Director position will not be required.

There are some cost items that are currently included in Collus Solutions' charge to the CPUSB that would need to continue and become additional to the existing services available within the Town's organization. These include costs related to Billing, Collecting, Customer Service, IT, Building Maintenance and SCADA. One option is to consider having these services continue through Collus Solutions but with accountability through the Director of Finance.

In addition to the potential savings noted in Table 8-1, the Wastewater Administration charges noted in Table 7-1 from the CPUSB to the Town would also be significantly reduced due to the lower administration cost upon which the charge would be based. As previously noted in Section 7, under the existing arrangement, this cost is projected to increase annually from approximately \$185,000 in 2014 to approximately \$597,000 by 2017.

This scope of this report does not include addressing the implementation of the recommendations. However, the following should be considered during the implementation process:

- Continuation of Billing & Collecting and IT services by Collus Solutions as a direct service provider to the Town on a fee for service basis. Collus is already set up for these functions and should be able to continue seamlessly;
- Review the IBEW and CUPE collective agreements to identify the issues that need to be addressed as part of the transfer. Consideration could be given to honouring the IBEW conditions on an interim basis until it expires following which the CUPE agreement would take effect; and
- Assimilating the water operations in to the Town as a separate department (at least initially) reporting to the CAO. This would allow all transitional issues to be directly addressed at the most senior level and for the Director of Public Works to focus on other needs of other functional areas within Public Works. Once the transfer is complete and operations are normalized consideration could be given to merging with the Public Works Department to benefit from the synergies that exist;







# **COLLUS Power Corp**

Request for Proposal—  
Strategic Partnership

October 4, 2011



*COLLUS Power Corp*  
*RFP Strategic Partnership*

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*COLLUS Power Corp  
RFP Strategic Partnership*

# 1 Purpose of the Request

This request for proposal is being issued by COLLUS Power Corp and the Town of Collingwood for the purpose of soliciting written proposals to enter into a strategic partnership arrangement. For purposes of this request, some of the key needs from a strategic partner include the following:

- ~~Purchase of shares of up to 50% of COLLUS Power~~
- Provision of strategic and specialized resources to COLLUS Power while continuing to effectively engage the COLLUS Power and affiliate employees
- Support in growing the COLLUS Power business, both organically and through acquisition
- Continued and substantial presence in the communities we serve
- Continued and enhanced support for the interests of the communities we serve
- Continued focus on maintaining and enhancing the competitive distribution rate and cost structure of COLLUS Power

This request does not include any of the activities associated with the water operations. Collingwood Public Utilities Services will continue these activities.



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*RFP Strategic Partnership*

## 2 Background

- Collingwood Utility Services is a community owned utility that provides reliable electricity and water services to its customers.
- Collingwood Utility Services and its employees have built a reputation in both the water and electricity industry for being forward thinking and fiscally responsible in the pursuit of success for their various business activities.
- The electricity and water services in Collingwood have been delivered on the basis of a "shared service model" designed to maximize efficiencies between all utility services and bring the greatest value to the customer.
- COLLUS Power is the exclusively licensed electricity distribution company that services the businesses and residences with the Town of Collingwood and the neighbouring communities of Thornbury, Stayner and Creemore. COLLUS Power was incorporated in 2000 in response to Ontario Government legislation to restructure the electricity industry in Ontario.
- COLLUS Power acquired the electricity distribution assets of Thornbury, Stayner and Creemore in July 2001.
- Collingwood, Thornbury, Stayner and Creemore have a combined population of approximately 27,000 full time residents (plus a large number of seasonal residents).
- The common shares of COLLUS Power are wholly-owned by Collingwood Utility Services Corp, a holding company that is a wholly-owned subsidiary of the Town of Collingwood.
- COLLUS Power has a mix of approximately 15,300 customers, residential, industrial, commercial and institutional. COLLUS Power has no large use customers and 128 greater than 50kW general use customers. Growth prospects for COLLUS Power are quite strong in the near term due to ongoing residential and commercial development.
- Collingwood Public Utilities utilizes COLLUS Power's CIS and affiliate services to perform the water and wastewater billing function for the Town of Collingwood, with the expectation of continuing to do so.
- COLLUS Power and the affiliates share a Great Plains Financial software system with the Town of Collingwood. The system includes Work Tec project accounting software and a fixed asset management module that will be utilized as COLLUS Power completes the transition to IFRS requirements for January 1, 2012.
- COLLUS Power has made significant investments in the past in order to maintain its distribution system in a good state of repair. Several of the system's features include the following:
  - The electrical system consists of 33 K. of 44 kV wires for approximately 211 kilometers of overhead wires and 128 kilometers of underground wires.





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- Meters meet the requirements of the Electricity and Gas Inspection Act and over the last few years COLLUS Power has installed new smart meters at all customer sites and is ready for the changeover to time-of-use electricity billing. This changeover is scheduled to begin in January 2012.
- COLLUS Power leases its head office premises located at 43 Stewart Road in Collingwood, Ontario from Collingwood Public Utilities. The building houses the COLLUS Power's administrative, engineering, operating and field personnel and rolling stock
- COLLUS Power owns various distribution and transformer station equipment, as well as other equipment and vehicles
- The employee base of COLLUS Power consists of 11 employees. In addition to its direct employees, COLLUS Power subcontracts various personnel services from COLLUS Solutions Corp, an affiliated company, whose employees and costs are allocated approximately 60%/40% between COLLUS Power and Collingwood Public Utilities Services Board, respectively. Collingwood Public Utilities Services Board provides water services to the residents of Collingwood. (See the accompanying chart depicting corporate structure).
- The customer base is comprised of approximately 13,600 residential, 1,600 general service less than 50kW and 128 general service 50kW to 4,999 kW. COLLUS Power distributed approximately 313 million Kwh of power in calendar 2010.

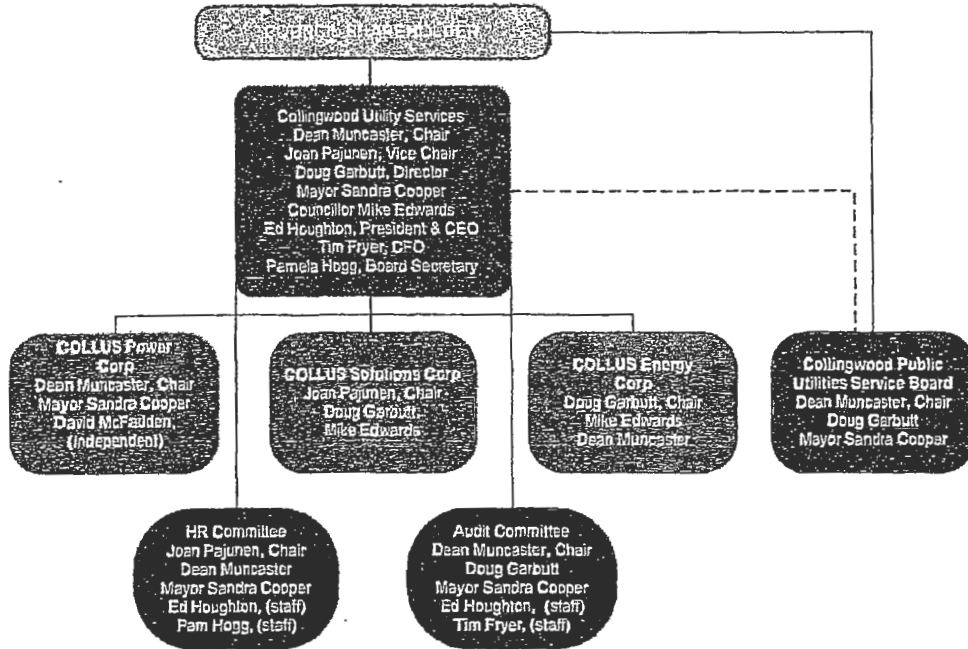
**2.1 Governance & Ownership**

- **Collingwood Utility Services Corp.** is comprised of five directors with Council being articulated in the Electricity Act as the single shareholder. The Board is made up of the Mayor, a Councillor and three other Council appointed Directors. Members of the Board make up two Committees, an Audit Committee and an HR Committee.
- **COLLUS Power** is comprised of three directors, one being the Mayor and the two other directors are appointed by Council. One of the directors must be totally independent of any affiliate.
- **Collingwood Public Utilities** is municipally owned and governed by a Municipal Services Board that from time to time, when required, reports to Council. The Board is comprised of three Directors, one being the Mayor, with the other two appointed by Council. Existing municipal by-laws provide some strategic direction, outlines executive limitations and reporting requirements. Reporting of Board business to Council is done by Staff presentations at Council Meetings, issuing updates via email from the President and CEO, and through Her Worship Mayor Cooper as our Council Representative.

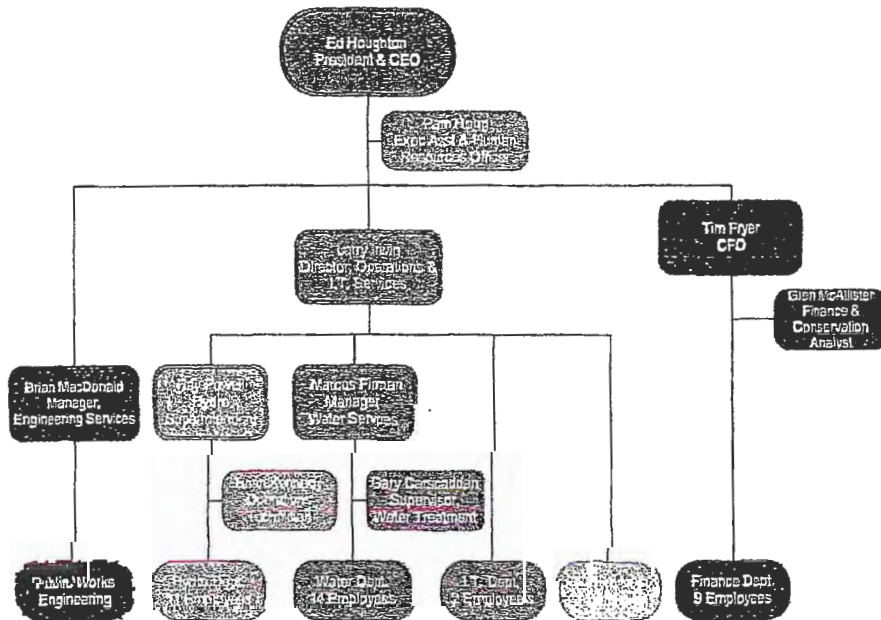


COLLUS Power Corp  
RFP Strategic Partnership

### 2.1.1 Organizational Structure



### 2.1.2 Employee Structure Overview





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*RFP Strategic Partnership*

### 3 Proposal Scope and Response

All prospective strategic partners are asked to address the following in their non-binding proposals.

#### 3.1 Purchase of Shares

- ~~The proposed payment for up to 50% of the shares of COLLUS Power~~
- Terms of payment, including the form of consideration if other than cash.
- Any proposed timing considerations.
- Pre-closing conditions (i.e., due diligence, etc.).
- Proposed representation on COLLUS Power's Board of Directors. Our preference is that a majority of the board members be independent.
- Philosophy or guiding principles for the determination of annual dividends paid to the shareholders
- Other considerations including any proposed capital structure and shareholders' agreement matters. The shareholders' agreement will require the inclusion of buy-sell arrangements to include both right of first refusal and "shot gun" provisions.
- Actions required to satisfy the Ontario Energy Board's MAAD provisions.

#### 3.2 Provision of Strategic and Specialized Resources

- Outline the ability to provide COLLUS Power with resources in a range of areas, including engineering, construction, call center, regulatory and rates, safety and others. Provide details on the approach to providing such resources, including the general financial and working arrangements.
- Details regarding your approach to working with the existing financial information systems (the degree of stand-alone and integrated working of these systems for the future).
- In the context of the preceding, provide details about the approach to managing effective ongoing arrangements with the current COLLUS Power employee group and COLLUS Solutions Corp employee group. Include details about working with existing unions and financial arrangements.

#### 3.3 Support in Growing the COLLUS Power Business

- Outline the approach you would bring as a partner to supporting organic business growth in the COLLUS Power service area.
- Outline the approach you would bring as a partner to supporting future acquisition and merger growth of COLLUS Power.



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*RFP Strategic Partnership*

### **3.4 Customer Experience and Satisfaction**

Summarize your approach to ensuring that the existing customer experience and satisfaction of COLLUS Power is maintained and enhanced.

### **3.5 Supporting the Interests of the Communities We Serve**

Detail your intentions as a strategic partner in how you would continue and enhance a substantial presence and support for the interests of the communities we serve. Considerations would include local presence, economic development, interaction with the community, etc.

### **3.6 Competitive Distribution Rate and Cost Structure of COLLUS Power**

Outline the approach you would bring as a strategic partner in maintaining and enhancing the competitive distribution rate and cost structure of COLLUS Power, while the company continues to realize desired rates of return.

### **3.7 Other**

Include other matters, such as employee relations, that you would bring to COLLUS Power as a strategic partner.

### **3.8 Proposal Response and Contact**

- Proposal responses should be submitted in two parts, with each part in separate sealed envelopes. One envelope should contain the Purchase of Shares portion of the response described in section 3.1, and the other envelope should include the remaining parts of the proposal response.
- Proposal responses should be sent to the attention of Mr. Dean Muncaster, Chairman, COLLUS Power, 43 Stewart Road, Collingwood, Ontario, L9Y 3Z5 by no later than 4:30 pm on November 16th, 2011. Submissions should include 12 hard copies and one electronic copy, including one copy marked as the original and signed by an authorized representative of the proponent. Proposals submitted after the closing date and time, regardless of the medium by which they were submitted, will not be accepted.
- Proposals which fail to conform to the scope and requirements as set out in section 3 of this request for proposal will be disqualified and rejected. (For example, a proposal which proposes a purchase of greater than 50% of the shares of COLLUS Power will be disqualified)
- All inquiries regarding this request for proposal should be directed in writing to Mr. John Herhalt, Partner, KPMG LLP, via email: [jherhalt@kpmg.ca](mailto:jherhalt@kpmg.ca)





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### **3.9 Anticipated Process**

Proposals will be reviewed and evaluated by the COLLUS Power Strategic Partnership Task Team with the goal of completing the selection process by the end of December 2011.



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## 4 Proposal Evaluation

Proposals will be evaluated using the following criteria and weightings:

	<u>Points</u>
• Payment for up to 50% of shares	
• Other considerations in Section 3.1	30
• Provision of strategic and specialized resources	
• Support in growing the COLLUS business	30
• Support for employees and their careers	10
• Customer experience and satisfaction	
• Supporting the interests of the communities we serve	10
• Competitive distribution rate and cost structure of COLLUS	10
• Cultural and synergistic fit	10

**100 Points**



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## 5 Data Availability

Proponents will need access to various data in order to prepare their proposal submission. COLLUS Power will have the following data available at KPMG LLP, 333 Bay Street, 46th floor, Toronto, Ontario from October 5th through November 9<sup>th</sup>, by appointment. Appointments can be arranged through Diane Meehan of KPMG via phone 417-777-3443 or email [dmmeehan@kpmg.ca](mailto:dmmeehan@kpmg.ca). To the extent additional data is required and not noted below, please advise Mr. John Herhalt prior to making your appointment.

- 2011-2013 Business Plan & Annual Report
- 2008, 2009 and 2010 audited financial statements of COLLUS Power and its affiliates
- 2011 interim financial statements (quarterly) of COLLUS Power and its affiliates along with 2010 comparatives
- Tax returns and assessments for the last 5 years
- 2011 budget and forecast information of COLLUS Power (draft)
- 2012 budget information for COLLUS Power (including capital expenditure budget for 5 years)
- 2010 and 2011 Kwh volumes
- Historical summary of customer information by consumption and load forecasts for several years
- List of largest customers
- Annual statistics and other customer information
- Asset condition studies
- System reliability summaries
- 2010 Rate schedule and most recent approved OEB rate submissions
- Corporate structure and operating arrangement description between affiliates (including agreements and contracts)
- Distribution system map of the COLLUS Power service area and forecast of potential residential and business growth in the service area
- Summary of capital assets including rolling stock
- Summary of employees and their arrangements for COLLUS Power and COLLUS Solutions Corp (includes organization chart, years of service, ages)
- Annual operations and maintenance programs
- Third party agreements and contracts



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- Promissory notes
- Shareholder declaration (agreement) and corporate by-laws
- Insurance contracts and claims history
- Recent claims settlement and outstanding unresolved claims against the LDC or its representatives
- Union collective agreement
- Actuarial reports on employee future retiree benefits
- Any reports, decisions, orders related to non-compliance matters – legal, health and safety, environmental, regulatory





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## 6 Terms and Conditions

The request for proposal will be governed by the following terms and conditions:

### 6.1 Confidential Information

Proponents will continue to be governed by the "Non-disclosure Agreements" recently signed and shall not disclose any details pertaining to their proposal, this request for proposal or the selection process in whole or in part to anyone not specifically involved in their proposal without the COLLUS Power Strategic Partnership Task Team ("SPTT") prior written approval. Proponents shall not issue a news release or other public announcement or at any time directly or indirectly communicate with the media pertaining to details of their proposal, this request for proposals or the selection process without SPTT's prior written approval.

### 6.2 Communication of Information

- It is the proponent's responsibility to ensure that it has all necessary information concerning the intent and requirements of this request for proposal and to clarify any details in question mentioned or not before submitting a proposal. SPTT shall not be responsible for any misunderstanding on the part of the Proponent concerning this request for proposal and/or its process.
- No verbal instructions or information will be binding on SPTT. All written instructions and specifications will be considered clear and complete unless written attention is called to any apparent discrepancies or incompleteness before submission of a proposal. No individual other than those designated as a contact in this request for proposal is authorized to comment on any portion of the request for proposal.
- SPTT is under no obligation to provide additional information but may do so at its sole discretion. Inquiries received less than two days prior to the closing date and time may not be answered. At SPTT's discretion, the substance of any inquiries for additional information and responses to these inquiries may or may not be communicated to all recipients of this request for proposal.

### 6.3 Proposal Validity Period

Proposals and their details shall remain in effect and open for acceptance by SPTT for a period of 60 days after the closing date.

### 6.4 SPTT May Seek Clarification and Incorporate Response into Proposal

SPTT may, in its sole discretion, choose to meet with some or all of the Proponents to discuss aspects of their Proposal. SPTT may require one or more Proponents to submit supplementary



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information clarifying any matters contained in their Proposal after the closing date and the supplementary documentation received from a Proponent shall, if accepted by SPTT, be considered to form part of that Proponent's Proposal. In the event that SPTT receives information at any stage of the evaluation process which results in earlier information provided by the Proponent being deemed by SPTT to be inaccurate, incomplete or misleading, SPTT reserves the right to revisit the Proponent's compliance with the mandatory requirements of this RFP and/or adjust the scoring of rated criteria.

## **6.5 Proposal to be Retained**

The Proponent agrees that all rights, title and interests, including copyright ownership, to this request for proposal and all information and material of any kind whatsoever that may be provided to the Proponent by SPTT or otherwise obtained by the Proponent relating to this request for proposal or in the Proponent's performance of the work if it is the successful Proponent, shall remain the property of SPTT and further that all such information and material and any copies thereof shall be returned to SPTT upon request. SPTT shall obtain all rights, title and interests, including copyright ownership, to the deliverables that are to be produced and delivered to SPTT in accordance with this RFP and SPTT may disclose, use or modify such deliverables in any manner it deems appropriate. The Proponent shall not do any act that may compromise or diminish SPTT's interest as aforesaid. All Proposals submitted in response to this RFP shall become the property of SPTT. SPTT will not return the Proposal or any accompanying documentation submitted by a Proponent.

## **6.6 Reserved Rights of SPTT**

- SPTT reserves the right to terminate, at any time, this request for proposal at any stage or the solicitation of indications of interest as submitted under this request for proposal. SPTT intends to conduct business in the ordinary manner during the evaluation and selection period; however, COLLUS Power and its shareholders reserve the right to take any action, whether or not in the ordinary course of business, which they deem necessary or prudent to conduct such business.
- SPTT also reserves the right to accept any proposal in whole or in part or reject any or all proposals.
- The costs and expenses incurred for the preparation and submission of a proposal and all other costs and expenses incurred by the proponents relating to this request for proposal shall be borne by the proponents. SPTT shall not be liable for such costs and expenses or to reimburse, including, without limitation, in the event of rejection of any or all proposals.
- SPTT shall not be liable for any expenses, costs, losses or any direct or indirect damages incurred or suffered by any proponent or any third party resulting from SPTT exercising any of its express or implied rights under this request.



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**6.7 Acceptance**

The submission of a proposal by a proponent in response to this request for proposal shall constitute the said proponent's agreement to the terms and conditions described in this request for proposal.

**6.8 Errors, Omissions and Independent Advice**

SPTT and KPMG LLP do not accept any responsibility for any verbal information or advice or any errors or omissions which may be contained in this request for proposal or any documentation disclosed or otherwise provided by or with this request for proposal. Neither COLLUS Power or KPMG LLP nor any of its affiliates, directors, officers, employees or agents makes any representations or warranties, either express or implied, with respect to the completeness or accuracy of this request for proposal and supporting documentation or any information or opinion contained herein. Any use or reliance on this request for proposal or on any information or opinion contained herein or documentation disclosed or otherwise provided by or with this request for proposal is at the risk of the Proponents, and neither COLLUS Power or KPMG LLP nor any of its affiliates, directors, officers, employees or agents shall be liable for any action, cost, loss, damage, injury and/or liability whatsoever incurred by any person arising out of same. The Proponents are responsible for obtaining their own independent legal, accounting and other advice with respect to this request for proposal, any information included in this request for proposal or in any documentation disclosed or otherwise provided by or with this request for proposal.





**PowerStream's Response  
to COLLUS Power Corp Request For Proposal**



**STRATEGIC PARTNERSHIP  
Section 3.1 – Purchase of Shares**

**CONFIDENTIAL**

November 16, 2011

**Table of Contents**

This document contains PowerStream's response to Section 3.1 of COLLUS Power Corp's Request for Proposal - Strategic Partnership, and addresses matters directly related to purchase of shares.

The remaining sections (3.2 - 3.7) of PowerStream's proposal are submitted under separate cover, as required by the RFP.

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Response to COLLUS Power RFP for Strategic Partnership  
**SECTION 3.1 – PURCHASE OF SHARES**  
November 16, 2011  
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## **A INTRODUCTION**

PowerStream is pleased to respond to the Request for Proposal document issued by COLLUS Power Corp (“COLLUS Power”) on October 4, 2011.

On September 19, 2011 the PowerStream team made a presentation to the COLLUS Power Strategic Partnership Task Team. The PowerPoint presentation made at that time is attached as an appendix to PowerStream’s response to the RFP in Section B.

PowerStream Inc. is the second largest municipally-owned electricity distribution company in Ontario, serving more than 330,000 customers in nine municipalities located in Simcoe County and York Region that have a combined population of approximately 1,000,000.

Created on June 1, 2004, following the merger of three York Region-based utilities (Markham Hydro, Richmond Hill Hydro and Vaughan Hydro), PowerStream Inc. is jointly owned by City of Vaughan, the Town of Markham and the City of Barrie. PowerStream’s unprecedented and unrivaled expansion of its customer base from just over 192,000 in 2004 to 334,472 (as of October 31, 2011) is a result of serving an area of the province that continues to experience tremendous population growth in combination with the company’s own pursuit of forming strategic partnerships and relationships with other utilities. PowerStream has successfully completed the voluntary merger of four utilities and the acquisition of another in less than five years.

Although for most companies the transitional challenges that usually follow a merger or acquisition can often impede the achievement of other corporate goals and objectives, PowerStream through these consolidations has continued to demonstrate its industry leadership in customer service, innovation and environmental stewardship.

Several major projects completed by PowerStream since its merger with Barrie Hydro Distribution Inc. on January 1, 2009, such as bringing into service the company’s 11<sup>th</sup> transformer station directly connected to the provincial transmission grid and the incorporation of several smart grid features to its own distribution system, along with some impressive customer and employee satisfaction figures, are indicative of the company’s ability to transition, move forward and lead at the same time. This is further evidenced by the number of awards the company has earned over in recent years including Greater Toronto’s Top Employers (2012), Electricity Distributors Association’s Performance Excellence Award (2011), United Way of Great Simcoe County’s Campaign Merit Award (2010), Ontario Energy Association’s Company of the Year Award (2010), Ministry of the Environment’s Ontario Environmental Leader (2010), Vaughan Chamber of Commerce Business of the Year (2010), Electricity Distributors Association’s Environmental Excellence Award (2009) and Smart Commute Employer of the Year for North Toronto, Vaughan (2009 and 2011).

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SECTION 3.1 - PURCHASE OF SHARES  
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PowerStream's commitment to the environment and sustainable growth has been demonstrated in several areas and on a number of occasions. The company has built two work location buildings that have been certified by the Canada Green Building Council as LEED® (Leadership in Energy and Environmental Design) Gold. No other company in Simcoe County or York Region, and no other electricity distribution utility in Ontario, operates out of multiple LEED® gold certified facilities. Further to this, PowerStream has an active solar PV generation business and is an industry leader in the delivery of conservation and demand management programs to its customers.

PowerStream believes that COLLUS Power and PowerStream share the same values which are critical to making the proposed Strategic Partnership successful. In fact, COLLUS Power's inspirational and forward-thinking value statement that the organization values "the entrepreneurial spirit to responsibly and decisively challenge the conventional" aligns well with PowerStream's vision statement of being "a socially responsible company, committed to the environment and sustainable growth, leading the way into the future with boldness, innovation, and industry best in class performance." Moreover, COLLUS Power's stated values of "trust, responsibility, sustainability, people, partnerships & collaboration and continuous improvement" are similar in intent and spirit to PowerStream's values of "respect, teamwork, performance, accountability and initiative."

PowerStream is proposing a structure which will satisfy the objectives of both COLLUS Power and the Town of Collingwood and create a partnership which will continue to operate in the best interests of the customer, employees and Shareholders in all the service territories currently served by both entities. This structure recognizes the importance of municipal ownership, growth and community involvement, principles that are held in high regard by both organizations and the customers they serve. The model, articulated to the COLLUS Power Strategic Partnership Task Team by Brian Bentz, President & CEO of PowerStream on September 19, 2011, is transferable for future regional growth with other communities and we believe that this will provide a model for further consolidation.

~~The structure envisaged by COLLUS Power and wholly supported by PowerStream includes:~~

- ~~A proposal to purchase 50% of the equity in COLLUS Power~~ and provide an additional cash payment by facilitating the recapitalization of COLLUS Power
- A proposal to provide strategic and specialized resources to COLLUS Power while continuing to effectively engage the COLLUS Power and affiliate employees
- A proposal to support growing the COLLUS Power business both organically and through acquisition or merger
- A proposal to provide a continued and substantial presence in the communities that COLLUS Power serves



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- A proposal to provide continued and enhanced support for the interests of the communities COLLUS Power serves
- A proposal to provide continued focus on maintaining and enhancing the competitive distribution rate and cost structure of COLLUS Power

PowerStream is very pleased to have been given the opportunity by COLLUS Power to respond to the RFP and PowerStream strongly believes in the strategic, operational and financial benefits that its Proposal offers.

NOTE: In PowerStream's Response we have, assuming that we may be the successful proponent, referred to the post closing utility as "COLLUS PowerStream".

**B PURCHASE OF SHARES**

**B.1 Proposed Payment**

Subject to the Terms and Conditions of a Share Purchase Agreement, the Town of Collingwood would receive total cash consideration of \$14,510,170 upon closing. This payment is comprised of:

Sale of 50% Equity of COLLUS Power	\$7,300,000
Recapitalization Dividend	\$5,500,000
Repayment of Town of Collingwood Note	\$1,710,170
<b>TOTAL CASH TO TOWN OF COLLINGWOOD</b>	<b>\$14,510,170</b>

Upon closing, PowerStream would pay \$7.3 million for duly-issued shares evidencing PowerStream's ownership of 50% of the outstanding equity share capital of COLLUS Power.

PowerStream would also facilitate a special recapitalization dividend to be paid immediately prior to closing to recapitalize COLLUS Power to its deemed capital structure, as determined by its Ontario Energy Board ("OEB") defined regulatory rate base, while also maintaining a deemed level of working capital based on the 2011 audited financial statements, as at December 31, 2011. We estimate the amount of the recapitalization dividend to be approximately \$5.5 million. If the 2011 audited financial statements are not final, the recapitalization dividend will be estimated based on the unaudited financial statements. If required, upon finalization of the 2011 audited and closing financial statements, a post closing adjustment would be made to reflect the difference between the estimated 2011 results and the closing financial statements.

In addition, as part of its proposal, PowerStream is prepared to offer, if the Town of Collingwood so chooses, that the existing promissory note, payable held by the Town of Collingwood, would be repaid by third party debt facilitated by PowerStream. This would give the Town of Collingwood an additional \$1,710,170 as part of the sale of COLLUS Power for a potential total cash distribution to the Town of Collingwood of \$14,510,170.

**B.2 *Proposed Timing Considerations;* B.3 *Due Diligence Requirements;*  
B.4 *Pre-Closing Conditions***

If PowerStream is the successful Proponent, a Share Purchase Agreement would be prepared to effect the transaction. Such agreement would contain customary representations and warranties for a transaction of this nature. The Share Purchase Agreement would include a new Shareholder Agreement, which would, among other things, set out the composition of the Board of Directors, Unanimous Consent Items, Objectives and Guiding Principles, and Liquidity Rights. The Share Purchase Agreement will also provide for customary due diligence including, but not limited to: financial systems and record of accounts, inspection of physical plant and related assets, review of audited financial results for the fiscal year 2011, closing financial statements and other related documents, and review of Information and Technical Systems.

**B.5 *Representation on Proposed New COLLUS PowerStream Board***

As noted in COLLUS Power's RFP, its the preference is that a majority of Board members on the Board be independent. Consistent with this philosophy, PowerStream proposes the following Board structure:

- 6 person Board of Directors comprised of 3 representatives each from The Town of Collingwood and PowerStream
- 2 co-chairs to be nominated by each Shareholder
- A majority of the representatives from both Shareholders would be independent

The proposed Board of Directors structure, combined with the Shareholders Agreement, would ensure that there is significant local input over the COLLUS PowerStream operations.

**B.6 *Proposed Dividend Policy***

PowerStream's Proposal is conditional upon agreement on a new Dividend Policy. In 2010, COLLUS Power did not pay a dividend to its Shareholder. Starting in 2013 COLLUS PowerStream would expect to pay a dividend to its Shareholders. The proposed Dividend Policy is consistent with other dividend policies for regulated entities in Ontario.

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Such Policy is based on the philosophy that the purpose of the dividend policy is to provide the Shareholders with a steady income stream from continuing operations while providing COLLUS PowerStream with an appropriate capital structure and working capital level in order to operate as a viable business. The Dividend Policy philosophy would be consistent with the objectives and guiding principles of COLLUS PowerStream.

It is proposed that Dividend amounts would be determined as follows:

- COLLUS PowerStream shall pay a minimum of 50% of annual net income, as dividends, with consideration given to the following:
  - Cash position at the beginning of the year;
  - Working capital requirements for the current year; and,
  - Net capital expenditures required for the current year.

Based on the forecasted net income for COLLUS PowerStream, and assuming that COLLUS PowerStream earns the regulated rate of return, we anticipate that the net income in 2013 could be in the range of \$800,000 to \$1,000,000. As per the proposed Dividend Policy, COLLUS PowerStream would therefore pay a dividend of approximately \$400,000 to \$500,000.

#### **B.7 Other - Shareholders Agreement Matters**

PowerStream's Proposal is conditional upon the Parties agreeing upon their respective Liquidity Rights to be incorporated in the new Shareholder Agreement. As contemplated in the RFP, the new Shareholder Agreement would provide for certain buy/sell arrangements.

Such arrangements would include:

Any transfer or pledge of shares in COLLUS PowerStream would be prohibited without the written consent of the other Shareholder, provided that the Shareholders Agreement shall include liquidity provisions to be negotiated, such as:

1. In the event that either Shareholder receives a bona fide offer which it desires to accept from an arm's length third party to acquire all of the Shares owned by such Shareholder for cash (an "Offer"), the other Shareholder shall be entitled to a right of first refusal to acquire such Shares at the same price and on the same terms and conditions as set out in the Offer, failing which the Shareholder receiving such Offer shall be entitled to sell its Shares to the third party which made the Offer subject to that third party agreeing to be bound by the Shareholders Agreement;

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2. At any time after 2 years from the date of closing, either Shareholder may by written notice to the other institute a buy - sell mechanism by specifying a price per Share and requiring that the recipient Shareholder in its discretion elect either to (i) purchase all of the Shares of the initiating Shareholder, or alternatively (ii) sell all of the Shares of the recipient Shareholder, in each case at the price per Share specified in the initiating notice;
3. At any time after 2 years from the date of closing, Collingwood Utility Services Corp, as the owner of 50% of the outstanding Shares of COLLUS PowerStream, shall be entitled to Put those shares to PowerStream Inc and require that the latter acquire such Shares at a price equal to their fair market value determined by the same valuation approach as was utilized in the purchase by PowerStream Inc. of its initial 50% shareholding in COLLUS PowerStream.

**B.8 Ontario Energy Board**

It is our understanding based on Section 86(2) of the OEB Act which deals with 'Acquisition of Share Control' that, as a result of COLLUS Power Corp and the Town of Collingwood selling 20% or more of their equity in COLLUS Power, a MAADS ("Mergers, Acquisitions, Amalgamation and Divestitures") application to the OEB will be required. This application will follow a process similar to that for a rate application with a newspaper notice, interrogatories from intervenors, written submissions and a written or oral hearing.

MAADs applications are evaluated based on a "no harms test", meaning that the OEB must determine that COLLUS Power and PowerStream customers will be no worse off as a result of the transaction. Although this may appear simple, the application, the subsequent additional evidence and the Decision are very important strategic information. OEB staff and intervenors will refer back to these documents for years to come.

PowerStream staff has extensive experience in the MAADs process, most recently with the Barrie-PowerStream merger. This application was approved by the OEB at the end of an oral hearing in December 2008.

PowerStream staff will support COLLUS Power staff in the MAADs application by providing strategic advice and assisting with the compilation of evidence, interrogatory responses, submissions, witness training and hearing preparation, as necessary.



## C APPENDIX

### C.1 *Objectives and Guiding Principles*

PowerStream proposes that the new Shareholder Agreement would set out the Guiding Principles of the Corporation, which would include the following:

- **For Profit Corporation** – COLLUS PowerStream will continue to be a for profit corporation committed to optimize its rate of return and Shareholder value. Subject to OEB approval, the maximum rate of return sought by COLLUS PowerStream from time to time will be achieved as soon as practical
- **Capital Structure** – COLLUS PowerStream will maintain a capital structure consistent with the OEB capital structure mandated by the OEB (currently 60/40 debt to equity).
- **Dividend Policy** – COLLUS PowerStream will plan to pay dividends to its Shareholders approximating 50% of the net income on an annual basis with due consideration given to the cash position at the beginning of the year, working capital requirements and net capital expenditure requirements.
- **Growth** – COLLUS PowerStream will be committed to pursuing significant growth opportunities on a prudent and profitable basis giving due consideration to the geographic footprint, size and location of LDCs in Ontario.
- **Employees** – COLLUS PowerStream will treat all employees in a fair and equitable manner. The Corporation will develop with its employees a shared commitment towards high customer service, improved productivity and workplace safety. The Corporation will ensure that all staff understand the Corporation's business plan and have the skills they require to fulfill their part in achieving those goals.
- **Customers** – The customers of the Corporation are the operational priority of the Corporation. COLLUS PowerStream will provide a reliable, effective and efficient electricity distribution system.
- **Community and stakeholders** – COLLUS PowerStream will play a significant role in the local communities in which it operates. COLLUS PowerStream will act as a good corporate citizen and a facilitator of economic development in the communities it services.





# STAFF REPORT

<b>REPORT #:</b>	CAO 2012-01
<b>DATE:</b>	January 23, 2012
<b>SUBMITTED TO:</b>	Mayor and Council
<b>SUBMITTED BY:</b>	Kimberly Wingrove, CAO
<b>SUBJECT:</b>	COLLUS PowerStream Strategic Partnership

## 1. RECOMMENDATION:

*THAT* Council receive Staff Report CA02012-01 titled COLLUS PowerStream Strategic Partnership, and enact By-law 2012-011 to execute the agreements with respect to the sale of 50% of the shares of the Collingwood Utility Services Corp to PowerStream Inc., and related matters.

## 2. SUMMARY AND BACKGROUND:

~~Council is being asked to approve the sale of 50% of the shares of Collingwood Utility Services Corp to PowerStream Inc.~~ Currently, the Town of Collingwood is the sole shareholder of Collingwood Utility Services Corporation. Collingwood Utility Services Corp. serves approximately 15,000 business and residential customers in Collingwood, Creemore, Thornbury and Stayner.

PowerStream is the second largest municipally-owned electricity distribution company in Ontario, delivering power to more than 335,000 customers. PowerStream serves the communities of Alliston, Aurora, Barrie, Beeton, Bradford West Gwillimbury, Markham, Penetanguishene, Richmond Hill, Thornton, Tottenham and Vaughan. PowerStream is jointly owned by the municipalities of Barrie, Markham and Vaughan.

During the previous term of council, a review of operations was initiated as part of COLLUS' ongoing approach to ensure that our Municipality is receiving the most Shareholder and customer value for its dollar with a focus on fiscal responsibility and the reduction of debt. Immediately following the 2010 municipal election, Council challenged us all to begin looking for new opportunities and attempt to do more with less. The COLLUS board then engaged KPMG to look at the corporation's value, to provide the board with a review of what is happening in the

electricity distribution industry, to provide insight to what might happen in the future and to provide various strategic ownership options.

After examining several options, a strategic partnership option was chosen for several reasons:

- **Reduced Risk.** The Town will reduce/mitigate itself from the risks of being in the electricity distribution business specifically in the area commodity risk.
- **Retains an Income Stream.** The Town will continue to earn a future dividend stream based on equity ownership in the new partner's Local Distribution Company (LDC).
- **Operating Synergies with the Shareholder.** The Town retains the ability to obtain operating cost synergies through the integration of support functions with the water utility and IT.
- **Control.** The Town retains joint-control of the utility and its decisions with respect to levels of customer service, promotion of economic development, rates, subject to OEB oversight.
- **Provides Additional Funding to Town:** The funds that are received as a result of this partnership transaction will allow the Municipality to reduce debt or to be available for valued community projects.
- **Policy Challenges.** This option does address the expected push for additional consolidation of LDCs in the province.
- **Future Opportunities.**

The share purchase agreement and shareholders agreement address the requirements of the strategic partner relationship including:

- An investment of up to 50% in Collingwood Utility Services Corp. shares
- Provision of strategic and specialized resources to Collingwood Utility Services through Service Agreements
- Support in growing the Collingwood Utility Services business, both organically and through acquisition
- Continued and enhanced support for the interests of the communities we serve and our employees
- Continued and substantial presence in the communities we serve
- Continued focus on maintaining and enhancing the competitive distribution rate and cost structure of Collingwood Utility Services Corp.

This request does not include any of the activities associated with the water operations. **Collingwood Public Utilities Services will continue these operations "as is".**

Further to the resolution passed unanimously by the Board of Collingwood Utility Services Corp. (see attached), the Town, as the sole shareholder of Collingwood Utility Services Corp., is being asked to approve a transaction wherein the Town will sell 50% of its shares in the issued capital of Collingwood Utility Services Corp. to PowerStream Inc., pursuant to a share purchase agreement and enter into an agreement respecting the governance, shareholdings and related matters of and regarding Collingwood Utility Services Corp. (the "Unanimous Shareholders Agreement"), each of the draft Share Purchase Agreement and the Unanimous Shareholders



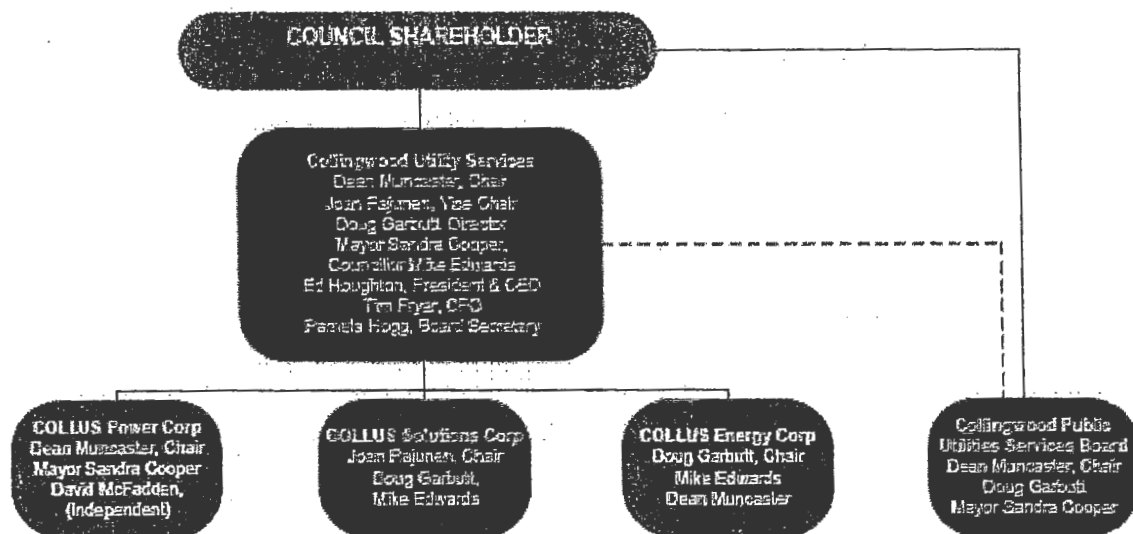
Agreement having been provided to Council and approved by Collingwood Utility Services Corp.;

With Council approval, the Town and Collingwood Utility Services will enter into the Share Purchase Agreement with PowerStream, to approve the Transaction contemplated thereby, and following the fulfillment of and completion of certain conditions precedent set out therein, sell the Shares and enter into the Unanimous Shareholders Agreement.

The resolution directs the Mayor of the Town of Collingwood and the Clerk to execute the Share Purchase Agreement and the Unanimous Shareholders Agreement, with such changes as they may consider reasonable, and to execute all documentation necessary to effect the sale of the Shares to PowerStream, the Transaction and By-law 2012-011, including without limitation approve financing, authorize and file articles of amendment, amend bylaws, amend and enter into service agreements between the Town and Collingwood Utility Services or its Subsidiaries, authorize dividends to be declared and paid by Collingwood Utility Services and the Subsidiaries and authorize repayment of debt under the outstanding promissory note issued to the Town by COLLUS.

**3. DISCUSSION:**

As noted above, Collingwood Utility Services is wholly owned by the Town; each of COLLUS Power Corp. ("COLLUS"), COLLUS Energy Corp. ("Energy") and COLLUS Solutions Corp. ("Solutions") is a wholly owned subsidiary of Collingwood Utility Services (collectively, COLLUS, Energy and Solutions are referred to as the "Subsidiaries");



As a regulated utility, COLLUS Power is subject to oversight by the Ontario Energy Board (OEB). Thus, decisions on rates and services quality for any owner are constrained by OEB rules in place

Upon review of the strategic ownership options prepared by KPMG, Town Council gave direction to COLLUS to further investigate the Strategic Partnership option through the creation of a Strategic Partnership Task Team (August 2011) and to issue a Request for Proposal (RFP) (Issued October 4, 2011) to prospective partners. Upon review and rating of the various proposals submitted according to the RFP, COLLUS made a recommendation (December 5, 2011) to Town Council that COLLUS be directed by the Town to complete negotiations with PowerStream Inc. ("PowerStream"). KPMG LLP and legal representatives from Aird and Berlis were engaged throughout the negotiation process. It was determined that the transaction would be most beneficial to the Town if the Town was to sell a 50% interest in Collingwood Utility Services Corp. As such, the Share Purchase Agreement and the Unanimous Shareholders Agreement reflect this structure.

The Share Purchase agreement details the financial considerations being provided to the Town by PowerStream Inc. It includes amongst other items, a dispute resolution mechanism should there be any disagreement on the final financial figures. It also contains the representations and warranties made by the Town regarding corporate power and authority and appropriate by-laws to enter into the transaction. It outlines the service agreements with the Town and details the employee groups and any contractual agreements in place respecting them. There are a number of conditions to closing including sign off by third party and regulatory agencies such as the Ontario Energy Board and Infrastructure Ontario. There is a drop dead date of December 31, 2012 for the completion of these conditions.

The Unanimous Shareholders agreement is entered into by PowerStream and the Town of Collingwood upon execution of the Share Purchase agreement. It requires a new strategic plan be created within 6 months that will be updated every 3 years. The Shareholders Agreement also outlines board composition (equal representation, co-chairs for the first 2 years, 3 year director terms), conditions requiring shareholder approval, development of a business plan and the dividend policy. Collingwood Utility Services Corp. has the first right of refusal on mutually acceptable participation in any future mergers or acquisitions undertaken by both PowerStream and COLLUS.

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#### **4. EFFECT ON TOWN FINANCES:**

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Under the terms of the Share Purchase Agreement, the Town of Collingwood will receive cash and other considerations valued at approximately \$15M. Under the Ontario Electricity Act., the Town would pay a Transfer Tax equal to 33%, less Payments in-lieu of Taxes (PILS) of the proceeds if it sells its ownership interest in COLLUS to another entity. At present, the Provincial government has introduced an exemption (or "holiday") from transfer tax for sales of municipally-owned utilities to entities owned by municipalities or by the province.

A commitment has been made to hold a public meeting to determine where the proceeds of the sale would be directed.

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**5. DISPOSITION:**

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If approved, By-law 2012-011 shall come into full force and effect upon the Mayor and the Clerk being authorized, for and on behalf of the Town, to execute the Share Purchase Agreement and the Unanimous Shareholders Agreement, with such changes as they may consider reasonable, and to execute all documentation necessary to effect the sale of the Shares to PowerStream, the Transaction and this By-law, including without limitation approved financing, authorize and file articles of amendment, amend bylaws, amend and enter into service agreements between the Town and Collingwood Utility Services Corp. or its Subsidiaries, authorize dividends to be declared and paid by Collingwood Utility Services and the Subsidiaries and authorize repayment of debt under the outstanding promissory note issued to the Town by COLLUS.

The Collingwood Utility Services Board and the Town of Collingwood will proceed with the fulfillment of the conditions of the Share Purchase Agreement.

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**6. APPENDICES:**

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- Resolution of Board, Collingwood Utility Services Corp., January 20, 2012

**SIGNATURE**

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**Kimberly Wingrove  
CAO  
Town of Collingwood**







TOWN OF COLLINGWOOD

CONFIDENTIAL - Release of this information  
may breach legislation and may cause legal  
implications to the town and others.

**IN-CAMERA MINUTES**

**December 5, 2011**

An in-camera session of Council was scheduled for December 5<sup>th</sup>, 2011 in the Council Chambers, Town Hall, Collingwood during the regular meeting of Council to be held at 5:00pm.

**MAYOR COOPER CALLED COUNCIL TO ORDER AT (8:35pm)**

**Members of Council Present:**

Mayor Cooper  
Deputy Mayor Lloyd  
Councillor Edwards  
Councillor Lloyd  
Councillor Chadwick  
Councillor Hull  
Councillor West  
Councillor Cunningham  
Councillor Gardhouse

**THAT** this Council proceeds in Camera in order to address a matter pertaining to:

- labour relations or employee negotiations
- the security of the property of the municipality or local board
- personal matters about an identifiable individual, including municipal or local board employees
- advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

**Items for Discussion**

**a) COLLUS Partnership RFP Review**

Staff Present: Kim Wingrove, CAO  
Sara Almas, Clerk  
Ed Houghton, President & CEO of COLLUS  
Dean Muncaster, Chair of COLLUS  
Larry Irwin, Director of Information Technology  
Doug Garbutt  
John Rocx, KPMG

**\*\* Councillor Chadwick removed himself from the room and did not participate in discussion on the above noted matter with respect to his previously declared conflict.**

Mayor Cooper provided an overview of the RFP and potential partnership opportunities.

Ed Houghton reported on the process to date and detailed the evaluation of the Request for Proposals.

COLLUS provided a recommendation for Council's consideration as follows:

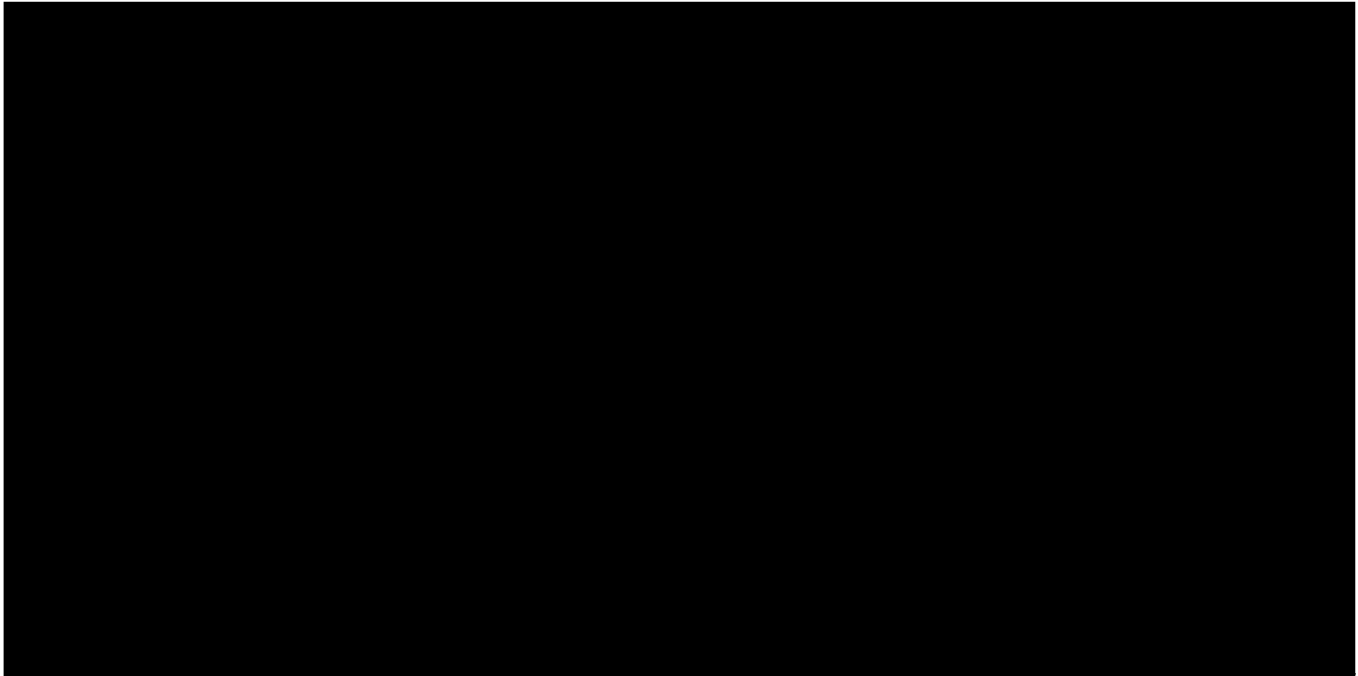
**THAT** the COLLUS Power Corp Board hereby accepts the findings of the Strategic Partnership Task Team and recommends to Collingwood Council that Collus Power Board be directed to undertake negotiations with PowerStream Inc. for the purpose of entering into a Strategic Partnership arrangement;

**AND FURTHER THAT** the results of these negotiations be brought back to Collingwood Council in a timely fashion for further review and consideration.

***Moved by Councillor Edwards  
Seconded by Councillor West***

**THAT** Council direct the Collus Board to continue negotiations with the preferred proponent, being PowerStream Inc., for a potential strategic partnership arrangement.

**CARRIED**



**c) *Litigation/Legal Direction***

Staff Present: Kim Wingrove, CAO  
Sara Almas, Clerk  
Marianne Nero, Human Resources Manager

Marianne Nero, Human Resources Manager advised Council that she will be at pre-trial hearing for former staff member Belinda Hindle, who has been offered 6 months severance pay, however this offer has been refused twice. Ms. Nero provided Council with the settlement being recommended by our solicitor.

***Moved by Deputy Mayor Lloyd  
Seconded by Councillor Cunningham***

**THAT** Council authorize the Solicitor and Human Resources Manager to proceed with litigation and offer Belinda Hindle up to 10 months of severance, as recommended.

**CARRIED**

**d) *Performance Evaluation Process***

Staff Present: Marianne Nero, Human Resources Manager  
Leo Longo, Municipal Solicitor

\* Clerk Almas, delegated the Clerk's responsibility to record in-camera minutes to Solicitor Leo Longo, and left the room.

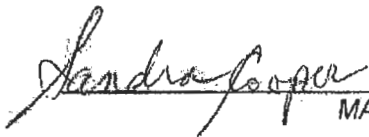
A discussion occurred respecting the background of and current Town process of evaluating the CAO's performance. It was suggested that such reviews be conducted annually and early in each calendar year.

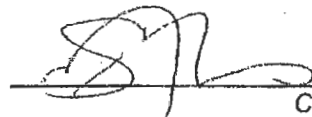
**Moved by Councillor Chadwick  
Seconded by Councillor Edwards**

**THAT** the Town's Manager, Human Resources be requested to bring back a report to Council suggesting a process to undertake the annual performance reviews of the Town's CAO.

**CARRIED**

**ADJOURNED** at (10:25 pm ) to rise in open session.

  
MAYOR

  
CLERK



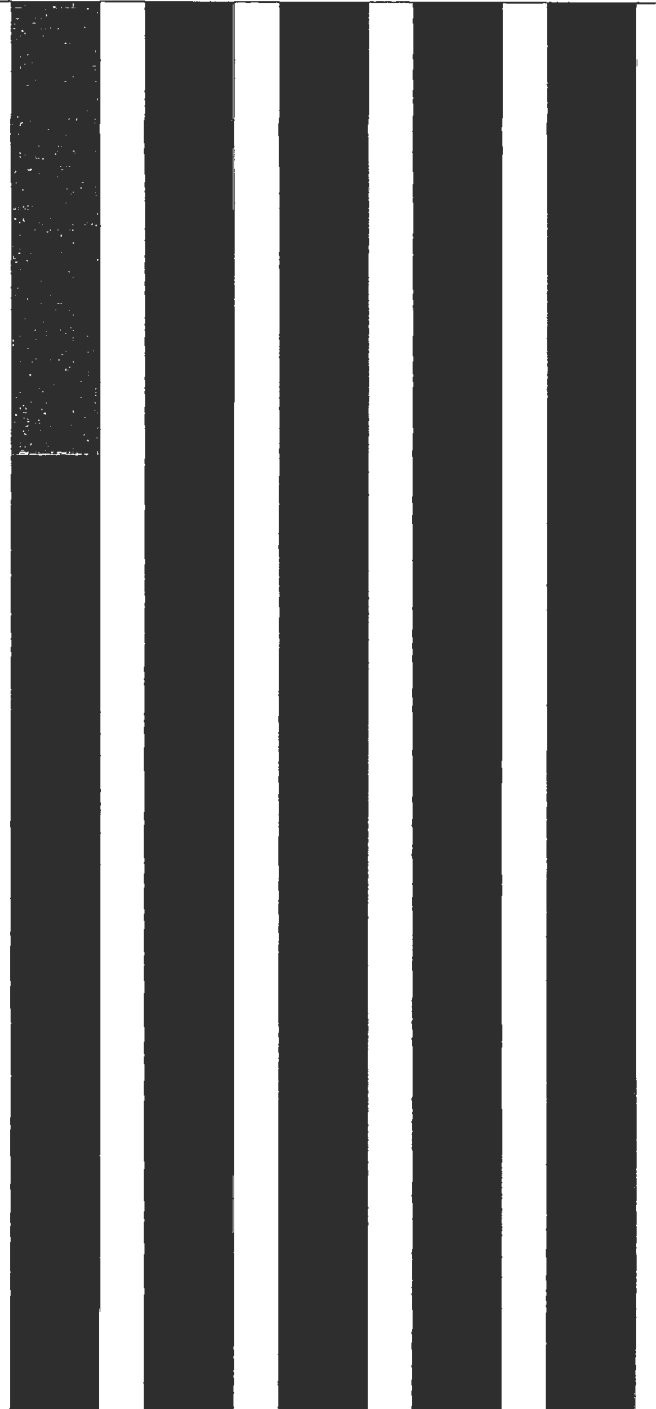


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A Strategic Partnership between  
Collingwood Utility Services and  
PowerStream Inc.

Proposed Transaction:  
Purchase of 50% of Collingwood Utility Services  
Inc. shares by PowerStream Inc.

*PRIVILEGED & CONFIDENTIAL*



# Overview

- I. Why sale of the shares of Collingwood Utility Services Inc. (“CUS”) and not Collus Power Inc. (“Collus”) directly?
- II. Transaction Structure and Major Agreements
  - a) Share Purchase Agreement
  - b) Shareholders’ Agreement
- III. Outstanding Issues
- IV. Questions?

## I. Why sale of shares of CUS rather than COLLUS directly?

NOTE: Original Request for Proposals (“RFP”) from Collus Power Inc. (“Collus”) contemplated purchase of shares of Collus from CUS

KPMG LLP review determined transaction was more beneficial from a tax perspective when Vendor was Town and target was CUS, rather than Collus

### Implications:

- a) Collus Energy Corp. (“Energy”) and Collus Solutions Corp. (“Solutions”) are also part of the transaction
- b) Pre-closing adjustments to Energy, Solutions and Collus
- c) More due diligence
- d) Avoid capital gains tax on the transaction (estimated at \$350,000)

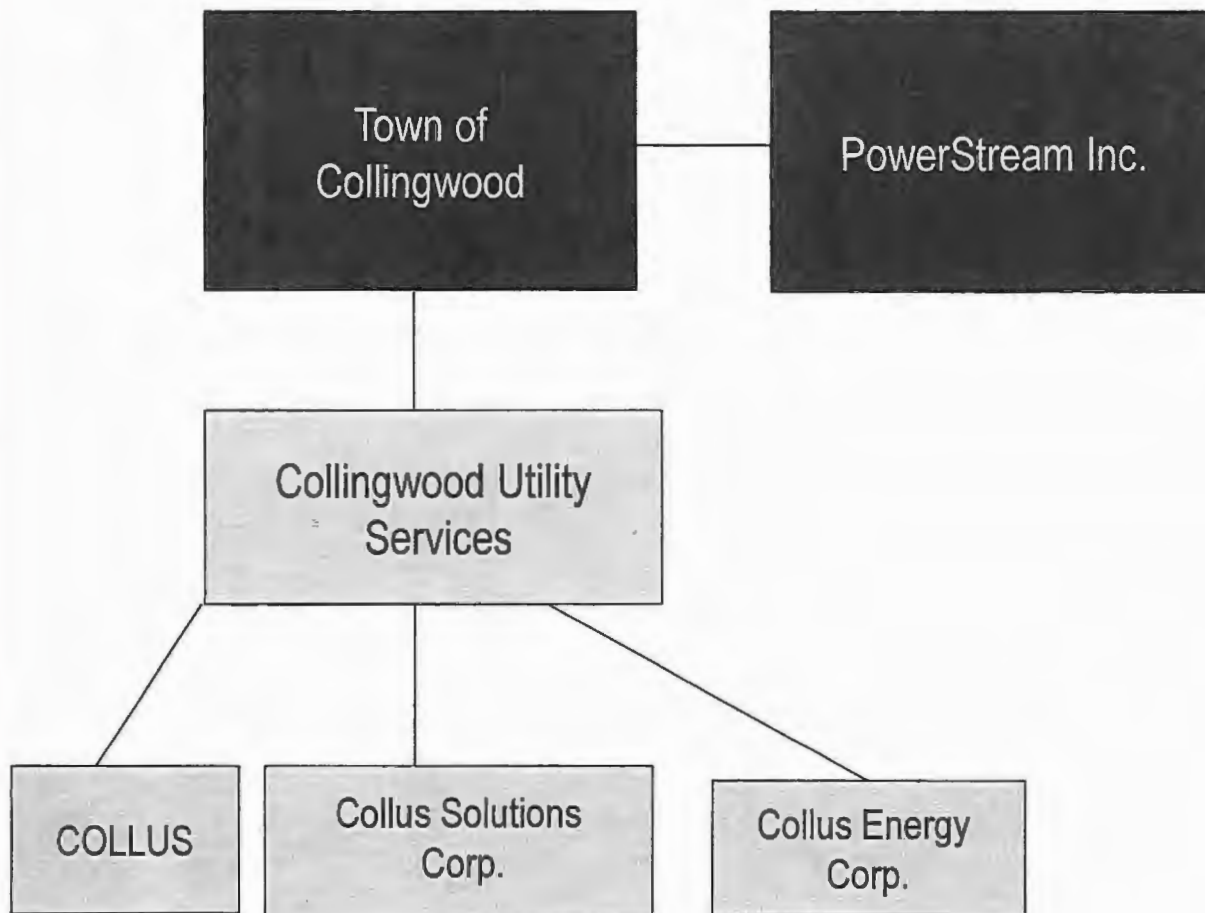
## II. Transaction Structure

### Major Agreements:

- (a) Share Purchase Agreement
- (b) Shareholders' Agreement



# Share Purchase Agreement ("SPA")



## Share Purchase Agreement (“SPA”)

1. Timing:
  - a) Pre-Execution and Due Diligence
  - b) Execution of Agreements
  - c) Interim Period – fulfillment of conditions
  - d) Closing Target Date - April 2012 following:
    - i. financial arrangements
    - ii. Infrastructure Ontario consent
    - iii. Amendment to Service Agreements
    - iv. OEB filing
    - v. Interim 2011 Financial Statements
2. Consideration (see Article 2 of SPA):
  - a) PowerStream pays \$8M for 50% of shares of CUS
  - b) \$5.2M – Estimated dividend arising from debt injection by PowerStream (or Third Party) through Collus and up to Town

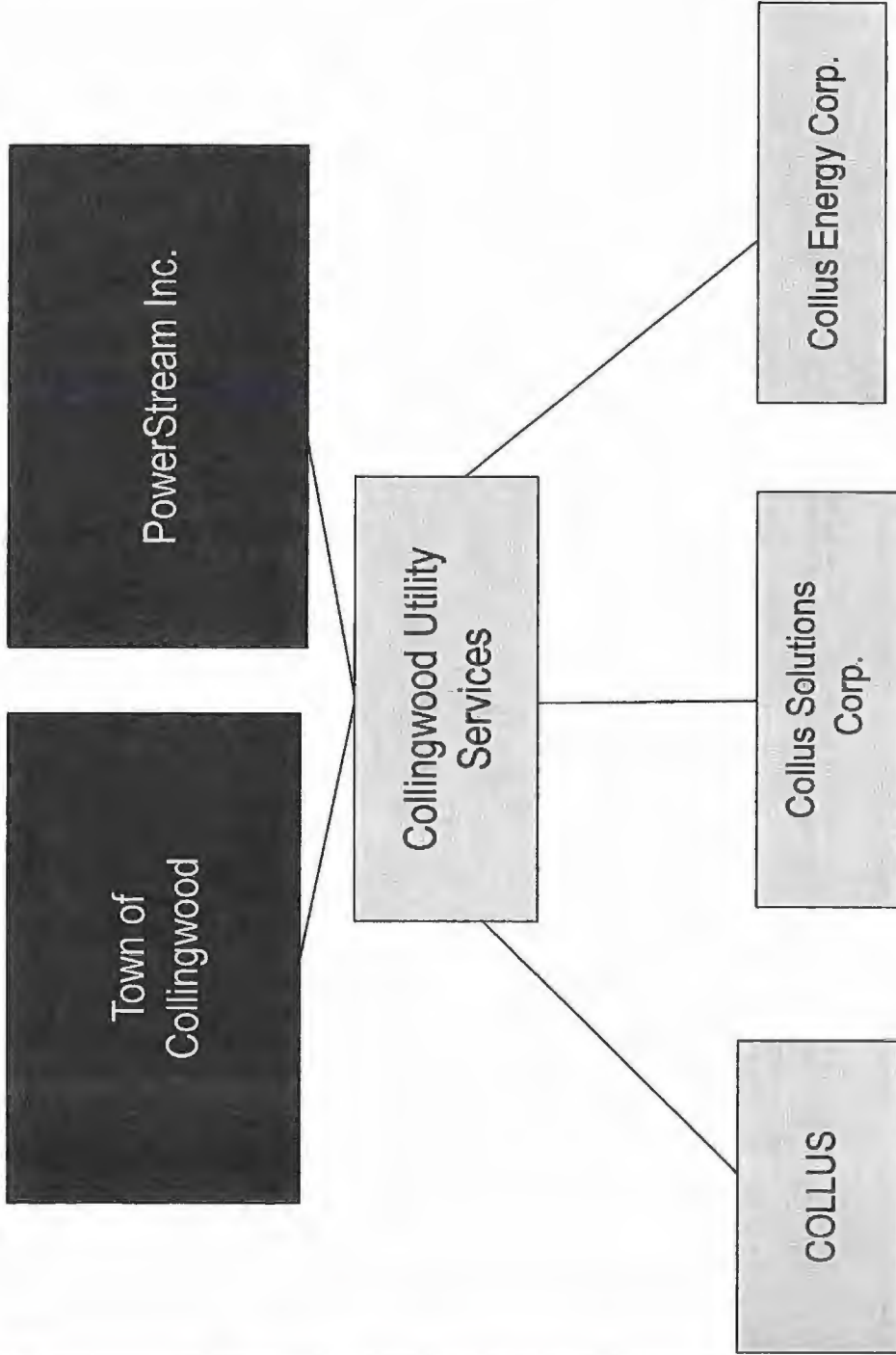
- i. based on draft Working Capital numbers
    - ii. adjusted post-closing
    - iii. Holdback Amount of \$1M
  - c) \$1.7M – Repayment of Promissory Note to Town
  - d) Dispute resolution mechanism for disagreements on calculation of final numbers
- 3. Reps and Warranties (see Section 5.1(a) and (b))
  - a) Basic reps of Town with respect to the Town  
(corporate power and authority, enforceability, no bankruptcy, no violation of by-laws and contracts by entering into transaction)
  - b) More extensive reps by Town and CUS re CUS and Subsidiaries (ie. Collus, Energy, Solutions)  
(Issued capital, ownership of shares, no third party rights to purchase shares, no violations of by-laws and contracts by entering into the transaction, compliance with laws, real property and leased property, intellectual property, environmental, insurance, employees and plans, litigation, taxes, service agreements with Town)

- c) Some exceptions in schedules
  - d) Basic reps by PowerStream (Section 5.3)  
(corporate power, authority, enforceability, authorization, no bankruptcy, absence of conflict)
4. Conditions to Closing (Article 4)
- a) OEB filing
  - b) Service Agreements with Town and Subsidiaries
  - c) Bring-down of reps and warranties
  - d) Updating schedules to SPA
  - e) Infrastructure Ontario and any other Third Party Consents (if any)
  - f) Legal Opinions
  - g) Drop dead date - December 31, 2012
  - h) Financing
5. Covenants during interim period – operate in the ordinary course (ie. CUS and Subsidiaries) (Article 6)



6. Indemnification provisions (Article 7) - Caps and Floors
  - a) Floor - Parties can only bring a claim once Indemnifiable Losses reach \$100K
  - b) Cap – maximum amount to be indemnified is amount equal to Purchase Price (\$8M)

# Shareholders' Agreement



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Transaction Structure (cont'd)  
*Who are the Shareholders?*

# Shareholders' Agreement

1. Entered into on Closing and governing relationship between Town and PowerStream with respect to Collus
2. Guiding Principles (Section 2.1):
  - a) enhance Shareholder investor value
  - b) generate cost savings through economies of scale
  - c) treat all employees in fair and equitable manner
  - d) seek to grow business organically and through acquisition or merger
  - e) continued and substantial presence in community
  - f) be integral participant in local communities in which they operate
  - g) maintain service reliability levels
  - h) continued high level of safety
  - i) maintain and sustain infrastructure through adequate levels of investment consistent with good utility practice
  - j) customer service levels maintained or improved

(see full list)
3. Strategic Plan – updated within 6 months of agreement and every 3 years (Section 2.2)

*for what parts?  
prof?*



## Shareholders' Agreement

4. Board (Article 4) –
  - a) equal representation by both shareholders – 6 total, 3 nominations by each Shareholder
  - b) Chair – first 2 years after agreement – two co-Chairs, 1 representing each Shareholder, then alternating chairs/vice-chairs from each Shareholder
  - c) Board director terms – 3 years
  - d) Quorum – majority of directors, provided there is a representative from each of the Shareholders

5. ✖

Shareholder Approval (Section 5) (ie. both Shareholders) required for the following:

- ? major changes to business, mergers, new classes of shares, disposition of assets of business outside of the ordinary course, enter into business ventures outside of ordinary course or that would change tax status of corporation and subsidiaries, borrowing of funds outside of ordinary course, issuance of additional shares, changes to Dividend Policy, winding up or dissolution, amend or repeal bylaws, changing or removing restrictions on business, expenditures exceeding \$500K, etc.
- ?

option to ↓ stock ??



## Shareholders' Agreement (Cont'd)

6. Business Plan (Section 5.4)
  - a) within 90 days of agreement Shareholders to work in best good faith efforts to develop and approve business plan
  - b) each year thereafter, new Business Plan developed and approved by the Board, provided to Shareholders for informational purposes
  
7. Dividend Policy (Section 5.4 and Schedule B)
  - a) each year, usually minimum of 50% of annual net income as dividends for CUS, COLLUS , Energy and Solutions after considering factors listed (cash position, working capital requirements for current year, net capital expenditures required for current year)
  
8. Right of First Refusal for CUS re: PowerSteam M&A Transactions

## Shareholders' Agreement (Cont'd)

9. Restrictions on Share Transfers (Article 7 and Article 8)
  - a) Standstill Period – no share transfers for 30 months from date of agreement without prior written consent (Section 6.1)
  - b) Right of First Refusal re third party offers to purchase shares (Article 8)
  - c) Shareholder Withdrawal from Corporation at Fair Market Value (Article 9)
  - d) Shotgun - Buy/Sell Notice (Article 10)

### III. Outstanding Issues

1. Holding Company between Town and CUS?
2. Source of financing of \$5.2M and \$1.7M
3. Service Agreements with Town and Subsidiaries – approval or amendment
4. Calculation of Recapitalization Dividend methodology

*Why was this not dealt with at Court?*

## Summary and Timeline

End of January	Interim Period (February 2012 to end of April 2012)			
Execution of Share Purchase Agreement	OEB notification	Arrangement of Financing for transaction	Review/Amend Service Agreements	Infrastructure Ontario consent, Others?

### [Business to be carried on in the ordinary course]

Immediately prior to Closing	April 2012 (projected)	On Closing	Post-Closing (60 days)
Recapitalization Dividend and Repayment of Promissory Note to Town of Collingwood	Closing of Transaction	Execution of Shareholders' Agreement	Adjustment of Recapitalization Dividend amount based on 2011 Financial Statements

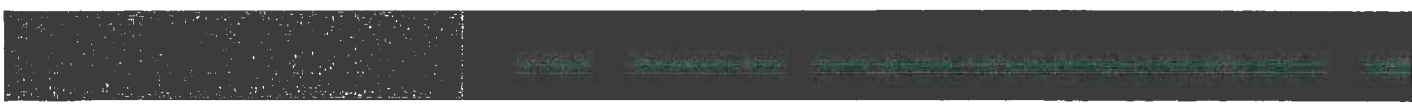


# IV. Questions?

PRIVILEGED & CONFIDENTIAL

11698193

THANK YOU





Linda Yantsis

---

From: Rick Lloyd <rlloyd@collingwood.ca>  
 Sent: January-16-12 4:47 PM  
 To: Leo Longo; Sandra Cooper  
 Subject: RE: Collus

Hi Leo:

As always, I appreciate your counsel and suggestions as they related to our municipality.

I respectfully want to respond to your one point about Collus and the municipality not necessarily having the same best interests. The fact is that the best interest of the Town has been the driving force and objective for this entire initiative. Both the Mayor and I have been part of the review team along with the Board that serves at the pleasure of Council. It is also important to recognize that on a consistent basis Council has been fully briefed and provided unanimous support to continue with this direction. I trust this addresses your point in a satisfactory manner.

Regards,  
 Rick

---

From: Leo Longo [llongo@airdberlis.com]  
 Sent: Monday, January 16, 2012 12:38 PM  
 To: Sandra Cooper; Rick Lloyd  
 Subject: Re: Collus

Partially.

Ron and Corrine are advising Collus, not the Town. I just want to note that the Town's interests may not be identical to Collus.

LFL

Leo F. Longo  
 Aird & Berlis LLP  
 Brookfield Place, Suite 1800  
 Box 754, 181 Bay Street  
 Toronto, Ontario M5J 2T9  
 T:416-865-7778  
 F:416-863-1515  
 E:llongo@airdberlis.com

Certified Specialist - Municipal Law:  
 Local Government & Land Use Planning and Development

Sent from my BlackBerry Wireless Device

----- Original Message -----

From: Sandra Cooper [mailto:scooper@collingwood.ca]  
 Sent: Monday, January 16, 2012 12:26 PM  
 To: Leo Longo; Rick Lloyd <rlloyd@collingwood.ca>  
 Subject: Re: Collus

Leo:  
 Collus has included Corrine and Ron from A and B to review documents.





Phone: 705-445-1800, ext 2255

Fax: 705-445-2549

Email: [phogg@collus.com](mailto:phogg@collus.com)

[www.collus.com](http://www.collus.com)

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----- Message from John Brown <[jbrown@collingwood.ca](mailto:jbrown@collingwood.ca)> on Thu, 5 Mar 2015 17:09:27 -0500 -----

<Leo Longo <[llongo@airdberlis.com](mailto:llongo@airdberlis.com) :To

<Sara Almas <[salmas@collingwood.ca](mailto:salmas@collingwood.ca) :cc

.Fwd: Representation of the town on share sale :Subject

For file.

Sent from my iPhone

Begin forwarded message:

**From:** Ron Clark <[rclark@airdberlis.com](mailto:rclark@airdberlis.com)>  
**Date:** March 5, 2015 at 5:06:08 PM EST  
**To:** John Brown <[jbrown@collingwood.ca](mailto:jbrown@collingwood.ca)>  
**Cc:** Leo Longo <[llongo@airdberlis.com](mailto:llongo@airdberlis.com)>  
**Subject:** RE: Representation of the town on share sale.

Ed Houghton.

-----Original Message-----

**From:** John Brown [[mailto:jbrown@collingwood.ca](mailto:mailto:jbrown@collingwood.ca)]  
**Sent:** March-05-15 4:56 PM  
**To:** Ron Clark  
**Cc:** Leo Longo  
**Subject:** Representation of the town on share sale.

I apologize however I forgot to ask you who in the town you took instructions from and reported to.

Thanks

John

Sent from my iPhone



**BY-LAW No. 2012-011  
OF THE  
CORPORATION OF THE TOWN OF COLLINGWOOD**




---

BEING A BY-LAW TO AUTHORIZE THE ENTERING INTO AND EXECUTION  
OF A SHARE PURCHASE AGREEMENT RESPECTING THE SALE OF THE  
SHARES OF THE TOWN OF COLLINGWOOD (THE "TOWN") IN  
COLLINGWOOD UTILITY SERVICES CORP. ("CUS") TO POWERSTREAM  
INC., A SHAREHOLDERS AGREEMENT IN RESPECT OF CUS AND  
RELATED MATTERS

---

**WHEREAS** CUS is wholly owned by the Town;

**AND WHEREAS** each of Collus Power Corp. ("Collus"), Collus Energy Corp. ("Energy") and Collus Solutions Corp. ("Solutions") is a wholly owned subsidiary of CUS (collectively, Collus, Energy and Solutions are referred to as the "Subsidiaries");

**AND WHEREAS** the Town, as the sole shareholder of CUS, wishes to approve a transaction (the "Transaction") wherein the Town will sell 50% of its shares in the issued capital of CUS (the "Shares") to PowerStream Inc. ("PowerStream"), pursuant to a share purchase agreement (the "Share Purchase Agreement") and enter into an agreement respecting the governance, shareholdings and related matters of and regarding CUS (the "Unanimous Shareholders Agreement"), each of the draft Share Purchase Agreement and the Unanimous Shareholder Agreement having been provided to Council and approved by CUS;

**AND WHEREAS** it is in the interest of the Town and CUS to enter into the Share Purchase Agreement, to approve the Transaction contemplated thereby, and following the fulfillment of and completion of certain conditions precedent set out therein, sell the Shares and enter into the Unanimous Shareholders Agreement,

**NOW THEREFORE COUNCIL OF THE CORPORATION OF THE TOWN OF COLLINGWOOD ENACTS AS FOLLOWS:**

1. **THAT** Report No. CAO2012-01 be received.
2. **THAT** the Town enter into the Share Purchase Agreement and the Unanimous Shareholders Agreement with PowerStream, once those agreements are in a form and content to the satisfaction of the Mayor.
3. **THAT** the Mayor or the Clerk be authorized, for and on behalf of the Town, to execute the Share Purchase Agreement and the Unanimous Shareholders Agreement, with such changes as they may consider reasonable, and to execute all documentation necessary to effect the sale of the Shares to PowerStream, the Transaction and this By-law, including without limitation approve financing, authorize and file articles of amendment, amend bylaws, amend and enter into service agreements between the Town and CUS or its Subsidiaries, authorize dividends to be declared and paid by CUS and the Subsidiaries and authorize repayment of debt under the outstanding promissory note issued to the Town by Collus.
4. **THAT** this By-law shall come into full force and effect on the date of final passage hereof at which time all By-laws and/or resolutions that are inconsistent with the provisions of this By-law and the same are hereby repealed or rescinded insofar as it is necessary to give effect to the provisions of this By-law.



ENACTED AND PASSED this 23<sup>rd</sup> day of January, 2012.

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CLERK

11741870.5



1

**Sara Almas**

**From:** Leo Longo (llongo@airdberlis.com)  
**Sent:** Tuesday, January 17, 2012 5:14 PM  
**To:** Ed Houghton  
**Cc:** Sara Almas; Kim Wingrove; John Mascarin  
**Subject:** Council By-Law Re CUS/Collus Share Purchase  
**Attachments:** 11730545\_2.docx

Ed;

Here's an initial draft of a proposed authorizing Council by-law for your review and input.

In particular, can you take a stab at drafting the "Whereas" clauses due to your intimate familiarity with this proposal.

In addition, I assume that a report will need to be prepared for Council that addresses the transaction and attaches the draft agreements. Will you be preparing that report?

Who handles the legal work for CUS? Will that person/firm be preparing the necessary corporate minute(s) authorizing the draft agreements from CUS's perspective?

Please advise how John and I can assist in this matter.

Regards,  
LFL

---

**Leo F. Longo**  
Certified Specialist  
(Municipal Law: Local Government & Land Use Planning and Development)

T 416.865.7778  
F 416.863.1515  
E [llongo@airdberlis.com](mailto:llongo@airdberlis.com)

Brookfield Place • 181 Bay Street  
Suite 1800 • Box 754  
Toronto ON • M5J 2T9 • Canada  
[www.airdberlis.com](http://www.airdberlis.com)

**AIRD & BERLIS LLP**  
Solicitors and Notaries

*Edwards  
Jan 16/20*  
*Mtg next Thurs/Fri.*

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**BY-LAW No. 2012-XXX  
OF THE  
CORPORATION OF THE TOWN OF COLLINGWOOD**



BEING A BY-LAW TO AUTHORIZE THE ENTERING INTO AND EXECUTION  
OF A SHARE PURCHASE AGREEMENT AND A SHAREHOLDERS  
AGREEMENT WITH POWERSTREAM INC. RESPECTING THE  
COLLINGWOOD UTILITY SERVICES CORP.

**WHEREAS**

**AND WHEREAS**

**NOW THEREFORE COUNCIL OF THE CORPORATION OF THE TOWN OF  
COLLINGWOOD ENACTS AS FOLLOWS:**

1. **THAT** Report XXX be received.
2. **THAT** The Mayor and Clerk be authorized to execute the Share Purchase Agreement and Shareholders Agreement with Powerstream Inc. respecting the purchase of shares of the Collingwood Utility Services Corp. once those agreements are in a form and content to the satisfaction of the Town's Solicitor.
3. **THAT** Appropriate Town Staff and the Town Solicitor report back to Council, as required as the conditions precedent to closing this transaction are addressed and, in any event, prior to the final closing of this share purchase transaction.
4. **THAT** this By-law shall come into full force and effect on the date of final passage hereof at which time all By-laws and/or resolutions that are inconsistent with the provisions of this By-law and the same are hereby repealed or rescinded insofar as it is necessary to give effect to the provisions of this By-law.

**ENACTED AND PASSED** this day of , 2012.

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CLERK



(2)

**Linda Yantsis**

---

**From:** Ed Houghton <ehoughton@collus.com>  
**Sent:** January 18, 2012 2:32 PM  
**To:** Leo Longo  
**Subject:** Fwd: Emailing: Docfile.doc  
**Attachments:** Docfile.doc; ATT00001..htm

Sent from my iPad

Begin forwarded message:

**From:** Shirley Houghton <[shirley.houghton@gmail.com](mailto:shirley.houghton@gmail.com)>  
**Date:** 18 January, 2012 1:19:59 PM EST  
**To:** Ed Houghton <[ehoughton@collus.com](mailto:ehoughton@collus.com)>  
**Subject:** Emailing: Docfile.doc

The message is ready to be sent with the following file or link attachments:

Docfile.doc

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

**WHEREAS** Collingwood Utility Services Inc. ("CUS") is a wholly-owned subsidiary of the Corporation of the Town of Collingwood (the "Town");

**AND WHEREAS** COLLUS Power Corp. ("COLLUS") is a wholly-owned subsidiary of CUS;

**AND WHEREAS** the Town, as sole Shareholders of CUS, wish to approve the sale of 50% of CUS shares to PowerStream Inc. ("PowerStream"), substantially in the form of the draft Share Purchase Agreement and a Unanimous Shareholders Agreement, approved by CUS;

**AND WHEREAS** the Town, as sole Shareholders of CUS, has been informed of the principal terms and provisions of the Share Purchase Agreement and Unanimous Shareholders Agreement, and it is in the interest of the Town and CUS to enter into the Share Purchase Agreement and the Unanimous Shareholders Agreement, and to approve the transaction contemplated thereby;

**NOW THEREFORE COUNCIL OF THE CORPORATION OF THE TOWN OF COLLINGWOOD ENACTS AS FOLLOWS:**

1. **THAT** report XXX be received.
2. **THAT** the Mayor and Clerk be authorized to execute the Share Purchase Agreement and Unanimous Shareholders Agreement with Powerstream respecting the purchase of shares of CUS, once those agreements are in a form and content to the satisfaction of the Mayor.
3. **THAT** the Mayor and Clerk be authorized to execute or deliver all other documents, notices, certificates to be signed and/or delivered under or in connection with the Share Purchase Agreement or Unanimous Shareholders Agreement; and
4. **THAT** this By-law shall come into full force and effect on the date of final passage hereof at which time all By-laws and/or resolutions that are inconsistent with the provisions of this By-law and the same are hereby repealed or rescinded insofar as it is necessary to give effect to the provisions of this By-law.

**ENACTED AND PASSED** this    day of    , 2012.

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CLERK



**Linda Yantsis**

---

5

**From:** Leo Longo  
**Sent:** January-19-12 1:08 PM  
**To:** Corrine Kennedy  
**Cc:** John Mascarin; Ron Clark; 'salmas@collingwood.ca'  
**Subject:** Re: Draft By-Law

Corrine;  
 I think they need this to go out with the Agenda this afternoon. I have copied the Clerk so that she is aware of this.  
 LFL

Leo F. Longo  
 Aird & Berlis LLP  
 Brookfield Place, Suite 1800  
 Box 754, 181 Bay Street  
 Toronto, Ontario M5J 2T9  
 T:416-865-7778  
 F:416-863-1515  
 E:longo@airdberlis.com

Certified Specialist - Municipal Law:  
 Local Government & Land Use Planning and Development

Sent from my BlackBerry Wireless Device

---

**From:** Corrine Kennedy  
**Sent:** Thursday, January 19, 2012 12:46 PM  
**To:** Leo Longo  
**Cc:** John Mascarin; Ron Clark  
**Subject:** RE: Draft By-Law

Hi Leo,

After some further discussion with Ed and Ron, and in an effort to make sure we're covered all bases with respect to authorizing at the front end of this transaction and don't have to go back, I am working on some revisions to the bylaw for your review. I hope to turn it to you as early as possible this afternoon. Hope that works for you, but please let me know if you have any concerns about that approach.

Thanks very much,  
 Corrine

---

**From:** Leo Longo  
**Sent:** January 18, 2012 3:18 PM  
**To:** 'Sandra Cooper'; Rick Lloyd; Kim Wingrove; Sara Almas; 'Ed Houghton'  
**Cc:** John Mascarin; Ron Clark; Corrine Kennedy  
**Subject:** Draft By-Law

To All;



Further to our conference call this afternoon, please see the revised draft that incorporates much of what was discussed.

As directed, this by-law will not cite any statutory provisions within its "Whereas" clauses.

I have left in section 4, of the by-law. If it is felt that such provision is unnecessary or undesirable, you can remove it.

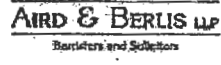
Regards,  
LFL

---

**Leo F. Longo**  
Certified Specialist  
(Municipal Law: Local Government & Land Use Planning and Development)

T 416.865.7778  
F 416.863.1515  
E [llongo@airdberlis.com](mailto:llongo@airdberlis.com)

Brookfield Place • 181 Bay Street  
Suite 1800 • Box 754  
Toronto ON • M5J 2T9 • Canada  
[www.airdberlis.com](http://www.airdberlis.com)



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**AIRD & BERLIS LLP**  
Barristers and Solicitors

**MEMORANDUM**  
**Privileged and Confidential**

**TO:** The Town of Collingwood (the "Town")  
**FROM:** Aird & Berlis LLP ("A&B")  
**DATE:** April 10, 2015  
**RE:** Collus PowerStream Utility Services Corporation (formerly Collingwood Utility Services Corp.) (the "Corporation"): Composition of Board of Directors and Compliance with Unanimous Shareholder Agreement between the Town of Collingwood (the "Town"), PowerStream Inc. ("PowerStream") and the Corporation dated July 31, 2012 (the "Shareholders Agreement")

**I. Introduction**

You have asked A&B to review the current composition of the Board of Directors of the Corporation and advise whether it is in accordance with the provisions within the Shareholders Agreement.

**II. Directors Appointed and Confirmed**

The Shareholders Agreement contains provisions at Article 4 governing the composition of the Board.

A resolution of shareholders of the Corporation dated March 13, 2012 fixes the number of directors at six and elects the following directors:

- Brian Bentz
- Jeff Lehman
- Dan Horchik
- David McFadden

and confirms the following directors:

- Sandra Cooper
- David McFadden
- Joan Pajunen
- Brian Bentz
- Jeff Lehman
- Dan Horchik

On the Corporation's website, the above persons are listed as directors, with the exception of Joan Pajunen, who appears to have been replaced by David Garner.

Based on the fact that Brian Bentz, Jeff Lehman and Dan Horchick were newly appointed, and that Brian Bentz is CEO of PowerStream, that Dan Horchik is on the board of PowerStream. and that Jeff

Lehman is the Mayor of Barrie, Ontario (a shareholder and service territory of PowerStream), I assume each of these directors was nominated by PowerStream. I assume that the balance of the directors were appointed by the Town.

**III. Requirements of Shareholders Agreement and Compliance**

Below is a chart setting out the relevant provisions of the Shareholders Agreement and an assessment as to whether each such provision has been complied with. The relevant requirements for composition of the Board of Directors of the Corporation are contained in Article 4.

<u>Relevant Provisions of Shareholder Agreement</u>	<u>Whether Board composition complies (Yes/No)</u>
<p>4.1 Number and Identity of Directors.</p> <p>(a) Each Shareholder shall be entitled to nominate and elect that number of directors to the Board and any Subsidiary Board (rounding up or down to the nearest whole number) which is in the same proportion to the total number of directors of the Corporation as the number of Shares owned by that Shareholder is to the total number of Shares issued and outstanding from time to time.</p>	<p>Yes.</p> <p>Notes: Shareholding by Town and PowerStream is 50/50. Each entitled to nominate and elect three directors.</p>
<p>(b) The Articles of the Corporation and each Subsidiary shall provide for the Board and each Subsidiary Board to consist of a minimum of 1 director and a maximum of 10 directors.</p>	<p>Yes.</p> <p>Notes: Articles provide for minimum 1 director and maximum of 10 directors.</p>
<p>(c) The Board and each Subsidiary Board as at the date of this Agreement shall consist of 6 directors. In accordance with Section 4.1(a), Collingwood shall be entitled to nominate 3 directors and PowerStream shall be entitled to nominate 3 directors.</p>	<p>Yes.</p>
<p>The majority of the Directors nominated by each Shareholder shall be independent from such Shareholder. Directors shall hold office until such time as their successors are elected by the Shareholders.</p>	<p>There is an argument that the requirement has not been met.</p> <p>Notes: Resolution of March 13, 2012 elects three directors associated with PowerStream and three directors associated with the Town. The term "independent" is not defined. Presumably David McFadden and David Garner are the Town's "independent" directors and Dan Horchik and Jeff Lehman are PowerStream's "independent" directors. As noted above, Dan Horchik is on the board of PowerStream. and Jeff Lehman is the Mayor of Barrie, Ontario (a shareholder of</p>

	<p>PowerStream),</p> <p>The OEB's Compliance Bulletin 200601 dated February 24, 2006 provides as follows:</p> <p>"This Bulletin is intended to provide guidance to licensed electricity distributors in relation to compliance with the requirement for independent directors under section 2.1.3 of the Affiliate Relationships Code for Electricity Distributors and Transmitters. (the "ARC").</p> <p>Under section 2.1.3 of the ARC, a licensed electricity distributor must ensure that at least one-third of its Board of Directors is independent from any affiliate. For distributors that are "municipal utilities" as defined in the ARC, this requirement comes into effect on July 1, 2006.</p> <p>The Compliance Office has received a number of inquiries regarding this requirement and, more specifically, around the meaning of the word "independent".</p> <p>In my view the following persons would not be considered independent within the meaning of section 2.1.3 of the ARC:</p> <ul style="list-style-type: none"> <li>• a shareholder, director, officer or employee of an affiliate;</li> <li>• where the affiliate is a municipality, the mayor, a member of the municipal council, a member of a "local board" as defined in the Municipal Act, 2001 or an employee of the municipality; and</li> <li>• an employee of the distributor."</li> </ul> <p>While "independent" may have a different meaning in the Shareholders Agreement than the ARC, two of PowerStream's appointed directors would appear not to meet the independence requirement under s. 4.1(c) if the definition under the ARC is used.</p>
<p>4.2 Election of Directors. The Shareholders shall elect the members of the Corporation and any Subsidiary Board. The Shareholders shall at all times act and vote their Shares to elect as directors of the Corporation or a Subsidiary the individuals nominated as directors, and, if required by a Shareholder, as contemplated in Section 4.6, to remove such director(s).</p>	<p>Yes (to extent applicable).</p>



<p>4.3 Qualification of Directors. The Board and any Subsidiary Board should reflect a cross-section of skills and experience. In addition to sound judgment and personal integrity, the qualifications of candidates for the Board and any Subsidiary Board may include:</p> <p>(a) industry knowledge concerning electricity distribution specifically and regulated industries generally;</p> <p>(b) business experience with businesses comparable to the Corporation or the Subsidiary, as applicable;</p> <p>(c) financial, legal, accounting and/or marketing experience;</p> <p>(d) experience on boards of public companies or major corporations;</p> <p>(e) awareness of public policy issues related to the Corporation or the Subsidiary, as applicable, and the electricity distribution business generally; and</p> <p>(f) knowledge and experience with corporate governance principles and/or risk management strategies.</p>	<p>Unclear whether all criteria of (a) to (f) are met, but these are not mandatory ("may include"). Generally, requirement that Board reflect a cross-section of skills and experience appears to be met.</p>
<p>4.4 Chair.</p> <p>(a) For two years from the date hereof, the Board shall have two co-Chairs, one nominated by each of the current Shareholders from among the directors. The co-Chairs shall preside at each meeting of the Board. In the absence of the co-Chairs, the chair of the meeting shall be selected by the directors in attendance at such meeting.</p>	<p>Yes (based on information on website, Brian Bentz and David McFadden are co-chairs).</p>
<p>(b) After the period contemplated by paragraph (a), and each year thereafter, the Board will have a Chair and a Vice-Chair, each representing one of the Shareholders and appointed by such Shareholder from the directors, with the right to appoint the Chair and Vice-Chair alternating between the Shareholders every second year.</p>	<p>N/A.</p>





image001.gif

----- Message from John Brown <jbrown@collingwood.ca> on Tue, 31 Mar 2015 13:37:34 -0400 -----

<Leo Longo' <llongo@airdberlis.com' :To

<Sara Almas <salmas@collingwood.ca :cc

RE: Closed Session Council Meeting Respecting SSA :Subject

**Thanks Leo ,**

**I think we should leave this aspect of the overall issue for now .**

**We wait your call following reading the material which Sara sent to you this morning .( we do not want a written opinion at this stage).**

**john**

**From:** Leo Longo [mailto:llongo@airdberlis.com]  
**Sent:** Tuesday, March 31, 2015 1:22 PM  
**To:** John Brown  
**Cc:** Sara Almas  
**Subject:** Closed Session Council Meeting Respecting SSA

John;

In our call yesterday you wondered about the propriety of the Mayor attending a closed session meeting of Town council at which council would/might determine its legal position respecting its contractual relationship [the Shared Services Agreement] with an arms-length corporation on which the Mayor sits as a director.

This issue touches upon matters of the use of confidential information and conflict of interest.

It is accepted that as a member of a board of directors of a corporation that the Mayor owes a fiduciary duty to that corporation that is distinct from her duties to the Town. In a paper I wrote in 2006 I observed:

**"The Councillor on a Local Board**

What is the relationship between a councillor and a local board to which one has been appointed? Is the councillor's duty to serve the board or the municipal corporation and the council which made the appointment? When serving on a local board, a councillor's duty is to act in the best interests of that board regardless of how selected to it. This is so even when that interest is contrary to the wishes of the council that appointed the member to such board.<sup>31</sup> Council retains the power to remove its appointees to a board should it be displeased with that appointee's performance or positions taken.<sup>32</sup>

31. See Kushner, J. and Siegel, D., "Councillor as a Board Member", Municipal World

(September, 1997) p. 24 and "Reader's Comment", *Municipal World* (May, 1998) p. 24. See also Crawford, K.G., *Canadian Municipal Government*, University of Toronto Press (Toronto, 1954) at pp. 126-132.

32. *Walker v. Toronto (City)* (1993), 15 M.P.L.R. (2d) 213 (Ont. Ct. (Gen.Div.))"

So the Mayor owes a fiduciary duty to the Board on which she sits.

She also owes a duty to Council to respect the Code of Conduct she signed when assuming office.

The Council Code of Conduct is attached as Schedule "A" to By-Law No. 2014-042. Relevant extracts from that Code are highlighted and include the following:

**2. Use of Information**

In their decision making process, Members of Council are sometimes privy to information which may be confidential or controversial such as, but not limited to "In Camera" meetings. It is imperative that they;

- o Not use confidential information for their personal advantage,
- o Not use confidential information to cause detriment or benefit to others,
- o Respect the status of confidential (personnel, legal, property acquisition) information until the matter ceases to be confidential as determined by **Council**,
- o Understand that they enjoy the same access rights to municipal information as any other member of the community, unless it is specifically relevant to a matter before the Council and
- o Only release confidential information according to the provisions of the Municipal Freedom of Information and Protection of Individual Privacy Act.

**3. Communications and Media Relations**

Members of Council will attempt to accurately and adequately communicate the attitudes and decisions of Collingwood's Council, even if they disagree with a majority decision of Council so that;

- o There is respect for the decision making processes of Council,
- o Official information related to decisions and resolutions made by Council will normally be communicated in the first instance to the community and the media in an official capacity by the Mayor or designate,
- o Information concerning adopted policies, procedures and decisions of the Council is conveyed openly and accurately and
- o Confidential information will be communicated only when and after determined by Council."

Attending the closed session council meeting will be placing the Mayor in a very difficult situation. She must maintain council confidentiality while owing a fiduciary duty to the arms-length corporation for which she sits as a director.

Which "master" does she serve? Which interest overrides the other? How is she to reconcile her two competing duties?

Note that section 2(a)(i) of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 defines an "indirect pecuniary interest" as being:

**"Indirect pecuniary interest**

2. For the purposes of this Act, a member has an indirect pecuniary interest in any matter in



which the council or local board, as the case may be, is concerned, if,

- (a) the member or his or her nominee,
  - (i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,
  - (ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public, or
  - (iii) is a member of a body,
 that has a pecuniary interest in the matter; or
- (b) the member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter."

Such an interest triggers the obligations under s. 5 of the Act to disclose; not participate and not influence. Note particularly s. 5(2) highlighted:

**"When present at meeting at which matter considered**

- 5. (1)** Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,
- (a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
  - (b) shall not take part in the discussion of, or vote on any question in respect of the matter; and
  - (c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.

**Where member to leave closed meeting**

- (2)** Where the meeting referred to in subsection (1) is not open to the public, in addition to complying with the requirements of that subsection, the member shall forthwith leave the meeting or the part of the meeting during which the matter is under consideration."

However, section 4(h) of the Act sets out the following exception to the above requirements, stating the member does not have a disqualifying interest:

- (h) by reason only of the member being a director or senior officer of a corporation incorporated for the purpose of carrying on business for and on behalf of the municipality or local board or by reason only of the member being a member of a board, commission, or other body as an appointee of a council or local board;

Here the corporation involved is now only 50% owned by the Town. Is it a corporation "carrying on business for and on behalf of the municipality". The answer at best is "partly" as it is also carrying on business for and on behalf of its other 50% owner...Powerstream. Under these circumstances, does exception 4(h) apply? I have not yet found any case law that assists in answering this.

The Court of Appeal decision in *Orangeville (Town) v. Dufferin (County)*, 2010 ONCA 83, attached, does not assist in answering the question in issue here. In that case it was determined that 2 local councillors sitting on an upper-tier council could participate at the upper-tier council meeting in a matter affecting the pecuniary interest of the lower-tier.



This is where my research stands at present.

Regards,  
LFL

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**Leo F. Longo**  
**Certified Specialist**  
**(Municipal Law, Local Government & Land Use Planning and Development)**

T 416.865.7778  
F 416.863.1515  
E [llongo@airdberlis.com](mailto:llongo@airdberlis.com)

Brookfield Place • 181 Bay Street  
Suite 1800 • Box 754  
Toronto ON • M5J 2T9 • Canada  
[www.airdberlis.com](http://www.airdberlis.com)

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----- Message from John Brown <jbrown@collingwood.ca> on Sat, 28 Mar 2015 09:54:05 -0400 -----

<Leo Longo' <llongo@airdberlis.com' :To  
<Sara Almas <salmas@collingwood.ca :cc

RE: PUC / Collus Solutions - Services Agreement - January 1, 2003 :Subject

Let's leave this for Monday Leo,

john

**From:** Leo Longo [mailto:[llongo@airdberlis.com](mailto:llongo@airdberlis.com)]  
**Sent:** Saturday, March 28, 2015 9:01 AM  
**To:** John Brown  
**Subject:** RE: PUC / Collus Solutions - Services Agreement - January 1, 2003