

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) made as of the \_\_\_\_ day of \_\_\_\_\_, 2021

B E T W E E N:

**THE CORPORATION OF THE CITY OF KITCHENER**

a corporation incorporated under the laws  
of the Province of Ontario, Canada  
(“**Kitchener**”)

- and –

**THE CORPORATION OF THE CITY OF WATERLOO**

a corporation incorporated under the laws  
of the Province of Ontario, Canada  
(“**Waterloo**”)

- and -

**THE CORPORATION OF THE TOWNSHIP OF WELLESLEY**

a corporation incorporated under the laws  
of the Province of Ontario, Canada  
(“**Wellesley**”)

- and -

**THE CORPORATION OF THE TOWNSHIP OF WILMOT**

a corporation incorporated under the laws  
of the Province of Ontario, Canada  
(“**Wilmot**”)

- and -

**THE CORPORATION OF THE TOWNSHIP OF WOOLWICH**

a corporation incorporated under the laws  
of the Province of Ontario, Canada  
(“**Woolwich**”)

- and -

**KITCHENER POWER CORPORATION**

a corporation incorporated under the laws  
of the Province of Ontario, Canada  
(“KPC”)

- and -

**WATERLOO NORTH HYDRO HOLDING CORPORATION**

a corporation incorporated under the laws  
of the Province of Ontario, Canada  
(“WNH”)

**(each a “Party” and collectively, the “Parties”)**

**WHEREAS** KPC owns all of the issued and outstanding shares in the capital of Kitchener-Wilmot Hydro Inc. (“KWH”) (an OEB-regulated electricity distributor) and Kitchener Energy Services Inc. (“KESI”), and has minority interest in Grand River Energy Solutions Inc.;

**AND WHEREAS** WNH owns all of the issued and outstanding shares in the capital of Waterloo North Hydro Inc. (“WNHI”) (an OEB-regulated electricity distributor) (together with KWH the “LDCs”) and Alliance Metering Solutions Inc. (“AMS”), (together with KESI, the “Unregulated Affiliates”) and has a minority interest in Grand River Energy Solutions Inc. and Eyedro Green Solutions Inc.;

**AND WHEREAS** KPC and WNH have taken into account factors including distribution electricity rate mitigation, cost savings, sustainable cash flows, promotion of innovation, growth and sound longer-term strategic planning, customer service, promotion of local businesses and communities, and the policies of the Government of Ontario to encourage consolidation of distribution utilities in assessing strategic alternatives;

**AND WHEREAS** KPC and WNH have developed a business case for, and carried out due diligence in respect of, their potential merger and the potential merger of the LDCs (together, the “Transactions”) that has been presented to Kitchener and Wilmot (in the case of KPC) and to Waterloo, Wellesley and Woolwich (in the case of WNH) (Kitchener, Wilmot, Waterloo, Wellesley and Woolwich are collectively referred to as the “Municipal Shareholders”);

**AND WHEREAS** the Municipal Shareholders of KPC have directed KPC and the Municipal Shareholders of WNH have directed WNH to proceed with discussions relating to the Transactions on the basis of the business case;

**AND WHEREAS** the Parties wish to set out, on a non-legally binding basis (except as otherwise expressly provided herein), the principles, objectives, processes and documentation that the

Parties intend to pursue and prepare in connection with the evaluation and, subject to approval by the boards of directors of KPC and WNH and by the municipal councils of each of the Municipal Shareholders, in their sole and absolute discretions, commitment to and implementation of the Transactions.

**NOW THEREFORE** this MOU sets out certain understandings and agreements between the Parties.

## **1. Transaction Structure**

The Parties will negotiate, and if acceptable, execute and deliver a definitive merger participation agreement between the Parties and the LDCs (the “**Merger Participation Agreement**”), with a form of unanimous shareholders’ agreement (the “**Shareholders’ Agreement**”) with respect to Holdco Mergeco (as defined below) scheduled thereto, to be executed immediately following the Transactions. WNH and KPC, on the one hand, and the LDCs, on the other hand, will be amalgamated pursuant to the provisions of the *Business Corporations Act* (Ontario). The Transactions are intended to create a single holding corporation (“**Holdco Mergeco**”) and a single corporation licensed by the OEB to distribute electricity (“**LDC Mergeco**”), which would be wholly owned by Holdco Mergeco.

## **2. Merger Objectives**

The Transactions would result in an entity or entities able to achieve the following objectives:

- (a) Customers will enjoy ten year distribution rate stability and distribution rates as low or lower than in a standalone alternative;
- (b) Distribution rates of the former KWH and WNHI service territories will harmonize over time;
- (c) Continued excellence in customer service;
- (d) Total cost savings to be shared amongst the Municipal Shareholders and customers;
- (e) Stronger and more sustainable cash flow to Municipal Shareholders via interest and dividends;
- (f) The ability to dedicate significant leadership and focus on innovation and growth;
- (g) A larger entity with a stronger balance sheet capable of supporting future growth;
- (h) Improved service reliability leveraging best practices and capabilities of both LDCs;
- (i) A stronger energy and infrastructure partner for local businesses and communities;

- (j) Alignment with provincial government policies encouraging consolidation in the electricity distribution sector; and
- (k) Increased ability to access financial and other resources available to invest in non-regulated energy services, businesses and solutions for customers.

### 3. Valuation and Share Allocation

Upon completion of the Transactions, each of the Municipal Shareholders would receive shares in the capital of Holdco Mergeco based on the current valuation of KPC and WNH and their Subsidiaries, including the LDCs and the Unregulated Affiliates, as follows (rounded):

City of Kitchener	53.4%
City of Waterloo	30.8%
Township of Woolwich	8.5%
Township of Wilmot	4.5%
Township of Wellesley	2.8%

The above ownership percentages are based on the valuation and financial model developed jointly by KPC and WNH as at the date hereof and are intended to be incorporated into the Merger Participation Agreement and the Unanimous Shareholders' Agreement as fixed ownership percentages. Any adjustments based on (a) completion of due diligence; (b) the occurrence of one or more events occurring from the date hereof to the date of the Transaction and resulting, individually or in the aggregate, in a positive or negative material change in the business, condition (financial or otherwise), operations, performance, properties or prospects of KPC or WNH, together with their respective Subsidiaries such that it would result in a material change of the valuation of KPC or WNH and the ownership percentages noted above; and/or (c) typical post-closing adjustments based on the financial condition of KPC and WNH at the closing of the Transactions; will be made by way of cash payment.

### 4. Governance

The Shareholders' Agreement will provide for a governance structure whereby each Municipal Shareholder has the right to nominate (and have elected) a number of directors of Holdco Mergeco approximately proportional to its share ownership percentage in Holdco Mergeco. Certain directors will be required to be "independent" i.e. not councillors or employees of the appointing Municipal Shareholder. Of its nominee directors, each Municipal Shareholder may nominate a maximum number of non-independent directors. The Townships of Woolwich, Wilmot and Wellesley (collectively, the "**Townships**") will nominate two directors. Therefore, the board of directors of Mergeco Holdco would consist of thirteen directors, elected on the basis of the following:

<u>Number of Directors</u>	<u>Nominated by</u>	<u>Max. Non-Independent Directors</u>
7	Kitchener	3
4	Waterloo	2
2	Townships	1

The LDC Mergeco board of directors would consist of nine directors, five of which would be nominated by Holdco Mergeco and the remainder nominated by the Municipal Shareholders, as follows:

<u>Number of Directors</u>	<u>Nominated by</u>	<u>Max. Non-Independent Directors</u>
5	Holdco Mergeco	0
2	Kitchener	2
1	Waterloo	1
1	Townships	1

In addition, the Townships will be entitled to two non-voting observer positions on the boards of Holdco Mergeco and LDC Mergeco, on rotation.

## 5. Due Diligence

- (a) KPC and its financial, legal and other advisors, as it considers reasonably necessary, (the “**KPC Parties**”) have undertaken and may continue to undertake due diligence investigations with respect to WNH, WNH I and AMS in relation to the Transactions and WNH and its financial, legal and other advisors, as it considers reasonably necessary, (the “**WNH Parties**”) have undertaken and may continue to undertake due diligence investigations with respect to KPC, KWH and KESI in relation to the Transactions.
- (b) Due diligence has included or may include matters customary to such transactions including, financial, tax, legal, environmental, employment and labour, regulatory, and real estate issues and the condition of the distribution system and such other matters as determined by the Parties, acting reasonably, that are material to the Transactions.
- (c) KPC agrees to continue to provide, and shall cause its Subsidiaries to continue to provide, reasonable access to the WNH Parties to their premises, employees and books and records as the WNH Parties may reasonably require to conduct such due diligence.

- (d) WNH agrees to continue to provide, and shall cause its Subsidiaries to continue to provide, reasonable access to the KPC Parties to their premises, employees and books and records as the KPC Parties may reasonably require to conduct such due diligence.
- (e) Any information obtained by any Party as a result of due diligence conducted in relation to the Transactions will be maintained by each Party in confidence subject to the terms of the Confidentiality Agreement. The Parties will cooperate to complete due diligence expeditiously.

## **6. Condition Precedent to Merger Participation Agreement**

The execution and delivery by the Parties of the Merger Participation Agreement (and the form of Shareholders' Agreement scheduled thereto) will be subject to the prior approval of the boards of directors of WNH, WNHI, KPC, and KWH and the councils of the Municipal Shareholders, which approval in each case may be withheld or granted in the sole and absolute discretion of each board or council, as the case may be.

## **7. Merger Participation Agreement and Shareholders' Agreement**

All of the terms and conditions of the proposed Transactions shall be provided in the Merger Participation Agreement and the Shareholders' Agreement and related principal agreements to be negotiated, agreed, executed and delivered by the Parties. The Merger Participation Agreement will contain such representations, warranties and covenants regarding the parties thereto and their respective businesses, such conditions to closing the Transactions, and such indemnities from the Municipal Shareholders as are customary for transactions such as the Transactions.

## **8. Employees and Labour Relations**

The Merger Participation Agreement will provide that any reduction in employment as in connection with the Transactions are primarily to be carried out on a voluntary basis, including retirement and attrition and each of KPC and WNH will cause their respective subsidiaries to work diligently to resolve in a timely manner any outstanding labour relations matters to be addressed in connection with the proposed Transactions under the applicable collective bargaining agreements or otherwise.

## **9. Location of Facilities**

The Merger Participation Agreement and the Unanimous Shareholders' Agreement will provide that: (a) Holdco Mergeco will cause LDC Mergeco to continue to have a substantial physical and functional presence in each of the two historic service areas of KWHI and WNHI; (b) Holdco Mergeco and LDC Mergeco will maintain their head offices at the current head office of KPC located at 301 Victoria Street South, Kitchener, Ontario N2M 3A2 for an indefinite period from the date of closing of the Transactions or at such other location within the City of Kitchener as may be approved by Kitchener; and (c) Holdco Mergeco will cause LDC Mergeco to maintain a second office at the current head office of WNH, located at 526 Country Squire Road, Waterloo, Ontario N2J 4G8, at which activities will include leading innovation and new technology

development, for an indefinite period from the date of closing of the Transactions, or at such other location within the municipalities of Waterloo, Woolwich or Wellesley area as may be approved by Waterloo, Woolwich and Wellesley.

## **10. Timetable**

The Parties will assess the potential Transactions and, subject to Section 5, if the Transactions are considered acceptable and desirable, endeavour to enter into the Merger Participation Agreement by no later than December 31, 2021 and satisfy or cause to be satisfied all conditions precedent to and complete the Transactions on or before a date that is not later than six months following Ontario Energy Board approval of the amalgamation of the LDCs. The Merger Participation Agreement will establish the obligations of the Parties with respect to timing and deliverables to the completion of the Transactions.

## **11. Exclusivity and Conduct of Business**

- (a) Each Party acknowledges that pursuit of the Transactions will involve the expenditure of substantial time and money by the Parties. Subject to all the terms of this Section 11, each Party agrees that commencing on the date hereof to and including the date of termination of this MOU pursuant to Section 12 it will not, without the prior written consent of the other Party, directly or indirectly (including through any Affiliate, employee, officer, director, shareholder, agent or other person acting on its behalf or at its direction) have, initiate or continue any communications, discussion or negotiations of any nature, or respond to any proposal or request for information relating to the purchase, sale or other transfer, whether in one transaction or a series of transactions, of the whole or any part of the business or non-surplus assets of the Party or its OEB-regulated or unregulated Subsidiaries, or of any third party.
- (b) Each Party shall be responsible for any breach of this Section 11 by its Affiliates, employees, officers, directors, shareholders, agents or other persons acting on its behalf or at its direction. The Parties agree that monetary damages may not be a sufficient remedy for any breach of this Section 11 and that the non-breaching Parties shall be entitled to equitable relief, including injunction and specific performance, as a remedy for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 11 but shall be in addition to all other remedies available at law or equity, including, in the event of litigation, recovery of reasonable legal fees and expenses by the prevailing party (as determined by a court of competent jurisdiction in a final, non-appealable order).
- (c) It is the intent of the Parties that, during the period beginning on the date hereof and ending at the date of the Merger Participation Agreement or such earlier date as this MOU may terminate in accordance with Section 12, the businesses of KPC and WNHI and their respective Subsidiaries be carried on in the ordinary course and in a manner that minimizes the likelihood of such events and changes as

would materially affect and cause changes to the valuations and share percentages set out in Section 3.

## **12. Termination**

- (a) This MOU will terminate upon the earlier of:
  - (i) the execution of the Merger Participation Agreement;
  - (ii) the mutual written agreement of the Parties;
  - (iii) written notice from KPC (if it and its Municipal Shareholders are the non-breaching Parties) or WNH (if it and its Municipal Shareholders are the non-breaching Parties) to the other Parties if WNH or its Municipal Shareholders or KPC or its Municipal Shareholders breaches any of their respective obligations under Section 11(a) or (b); or
  - (iv) seven (7) days' written notice by KPC or WNH to the other Parties.
- (b) Except with respect to any liabilities that may be incurred or suffered by a Party in connection with a breach by another Party of any provision referenced in Section 15, termination of this MOU prior to full execution and delivery of the Merger Participation Agreement shall be without liability and no Party will be entitled to any form of relief whatsoever, including injunctive relief or damages.

## **13. Transaction Expenses**

Expenses of the Parties incidental to this MOU, the Shareholders' Agreement, the Merger Participation Agreement and otherwise to the Transactions (the "**Transaction Expenses**") will be borne by the Party incurring them.

## **14. Notices**

Any notice or communication to be made or given hereunder shall be in writing and may be made or given by personal delivery or email addressed to the respective Party at the below address or such other address or email as a Party may from time to time notify the other Party.

To: Kitchener

The Corporation of the City of Kitchener  
200 King Street West  
Kitchener, ON N2G 497

Attention: Dan Chapman, Chief Administrative Officer

Email: dan.chapman@kitchener.ca



And to: Waterloo

The Corporation of the City of Waterloo  
100 Regina Street South  
Waterloo, ON N2J 4A8

Attention: Tim Anderson, Chief Administrative Officer

Email: [Tim.Anderson@waterloo.ca](mailto:Tim.Anderson@waterloo.ca)

And to: Wellesley

Township of Wellesley  
4639 Lobsinger Line  
St. Clements, ON N0B 2M0

Attention: Rik Louwagie, Chief Administrative Officer

Email: [rlouwagie@wellesley.ca](mailto:rlouwagie@wellesley.ca)

And to: Woolwich

Township of Woolwich  
24 Church Street West  
Elmira, ON N3B 2Z6

Attention: David Brenneman, Chief Administrative Officer

Email: [dbrenneman@woolwich.ca](mailto:dbrenneman@woolwich.ca)

And to: Wilmot

Township of Wilmot  
60 Snyder's Road West  
Baden, ON N3A 1A1

Attention: Sandy Jackson, Acting Chief Administrative Officer

Email: [sandy.jackson@wilmot.ca](mailto:sandy.jackson@wilmot.ca)

And to: KPC:

Kitchener Power Corporation  
301 Victoria Street South,

Kitchener, ON N2G 4L2

Attention: Jerry Van Ooteghem, President and CEO

Email: jvanooteghem@kwhydro.ca

And to WNH:

Waterloo North Hydro Holding Corporation  
526 Country Squire Road,  
Waterloo, ON N2J 4G8

Attention: Rene Gatien, President and CEO

Email: rgatien@wnhydro.com

## **15. Binding Effect**

This MOU is not intended to constitute a legally binding agreement, nor is it to be relied upon as constituting a final agreement for the transactions contemplated herein. This MOU is written with the understanding that no Party will be bound by any of its terms until negotiations have been concluded and definitive agreements have been executed and delivered. Notwithstanding the foregoing, the Parties agree that the following provisions are legally binding and enforceable against each of them: Sections 5 (Due Diligence), 8 (Labour Relations), 9 (Location of Facilities), 11(a) and (b) (Exclusivity and Conduct of Business), 12 (Termination), 13 (Transaction Expenses), 14 (Notices), 15 (Binding Effect), 16 (Interpretation), 17 (Governing Law), 18 (Successors and Assigns), 19 (Invalidity) and 20 (Entire Agreement).

## **16. Interpretation**

Capitalized terms have the meanings given to such terms in Schedule 1 attached to and forming part of this MOU. Each reference in this MOU to a statute is deemed to be a reference to such statute as amended, re-enacted or replaced from time to time. In this MOU, unless otherwise expressly provided herein or unless the context otherwise requires, words importing the singular number include the plural and vice versa.

## **17. Governing Law**

This MOU shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Parties hereto irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario to resolve any dispute which may arise among them concerning this MOU and the subject matters hereof.

## **18. Successors and Assigns**

All covenants and agreements of each Party in this MOU shall bind its permitted successors and permitted assigns.

## **19. Invalidity**

Each of the provisions contained in this MOU is distinct and severable and a declaration of invalidity, illegality or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision of this MOU.

## **20. Entire Agreement**

This MOU constitutes the entire agreement among the Parties with respect to the matters contemplated herein and supersede any prior negotiations, understandings or agreements with respect thereto.

## **21. Execution and Delivery**

This MOU may be executed in one or more counterparts and delivered in an original form, by facsimile, or by email (.PDF format), each of which shall be deemed an original, and all which together shall constitute one and the same instrument.

*[remainder of page intentionally left blank]*

The Parties have executed this MOU as of the date first written above.

**THE CORPORATION OF THE CITY OF  
KITCHENER**

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

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

**THE CORPORATION OF THE CITY OF  
WATERLOO**

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

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

**THE CORPORATION OF THE TOWNSHIP  
OF WELLESLEY**

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

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

**THE CORPORATION OF THE TOWNSHIP  
OF WILMOT**

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

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

**THE CORPORATION OF THE TOWNSHIP  
OF WOOLWICH**

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

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

**KITCHENER POWER CORPORATION**

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

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

**WATERLOO NORTH HYDRO HOLDING  
CORPORATION**

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

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

Title:

## **SCHEDULE 1 DEFINITIONS**

“**Affiliate**” has the meaning given to it in the OBCA.

"**including**" means including without limitation.

"**LDCs**" has the meaning given to it in the Recitals hereto.

"**OEB**" means the Ontario Energy Board.

“**Party**” and “**Parties**” have the meanings given to them in the Recitals hereto.

“**Transactions**” has the meaning given to it in the Recitals hereto.

“**Unregulated Affiliate**” has the meaning given to it in the Recitals hereto.

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