

COMMITTEE REPORT



TO **Governance Committee**

SERVICE AREA Corporate Administration
DATE April 11, 2011

**SUBJECT Guelph Municipal Holding Company (GMHC)
Implementation Strategy**

REPORT NUMBER

RECOMMENDATION

THAT Council receive and approve the Guelph Municipal Holding Company Implementation Strategy;

THAT Council approve the attached revised Shareholder Declaration in support of the new governance structure which is designed to provide oversight and direction to Guelph Hydro Inc.(GHI) and GHI subsidiaries;

THAT Council approve the Asset Transfers to Corporations Policy;

THAT staff continue to work with representatives of Guelph Junction Railway to develop a revised Shareholder Declaration specific to their organization;

THAT Council appoint the Mayor of Guelph and 3 Councillors to serve as GMHC Board members; and

THAT staff be directed to initiate a citizen selection process for an independent Board member consistent with the Council approved GMHC Board structure.

BACKGROUND

On Monday, June 28, 2010 Council approved the following:

THAT Council approve the proposed design of a Holding Company for current and future owned city assets, including Guelph Hydro Incorporated (GHI) and Guelph Junction Railway (GJR), as outlined in the attached Business Case Study.

THAT Council direct staff to prepare an Implementation Strategy for the proposed Holding Company to be approved by Council that includes financial and resource requirements planned for through the 2011 budget process.

With this direction from Council, staff initiated action on requirements to proceed.

Specifically,

- an implementation strategy was developed for Council approval taking into account the evaluation of risks and associated implications completed by the City Auditor in 2010;
- the Guelph Hydro Shareholder Declaration was collaboratively updated; and
- an Asset Transfers to Corporations Policy was created for Council approval.

REPORT

Benefits and Risks

The structure of the new governance model for the management of current and future City-owned assets, approved by Council on June 28, 2010, will help to realize the full potential of City assets and long-term economic benefits for the city. The new model represents a more strategic approach to asset management and addresses the need for increased accountability, responsiveness, greater strategic alignment and improved communications.

While keeping subsidiaries directly linked through shared policy and strategic direction, the model still embraces the concept of skills-based boards and allows for the right degree of independence so that operating companies continue to be flexible and self-reliant.

Consistent with other municipalities, specific requirements for key competencies among the holding company directors will ensure a variety of perspectives and skill sets to guide decision making and provide sound leadership. The new governance structure will enable the fulfillment of City objectives and the achievement of outcomes focused on the long-term economic prosperity of the community. In summary, the GMHC will provide:

- A better system of 'checks and balances'
- Strengthened communications
- Improved asset management practices
- Inter-operational synergies
- Strengthened strategy alignment
- Robust reporting practices

In 2010, by Council request, the City Auditor reviewed the GMHC Business Case for any potential risks and commented in their Audit concluding memorandum (Attachment #1).

In direct response to identified risks, staff will continuously confirm revenue sources and party transactions to preserve the tax free status of GMHC, forward all decisions that are identified as requiring Shareholder approval in the Shareholder Declaration to Guelph City Council for final approval, provide governance training to Board members to clarify roles and responsibilities, prepare required financial statements and an annual income tax return.

Implementation Strategy

Operation of the GMHC will require supporting resources, capacity building for board members, an updated Shareholder Declaration, the transfer of assets to the new entity and assessment after one year of operation.

Human and Financial Resourcing

City staff will support ongoing operational and administrative requirements of the GMHC consistent with the Council approved Business Case Study and Shareholder Declarations.

Capacity Building for GMHC Board Members

Budgeted Board training will be coordinated for an initial board meeting to ensure appropriate orientation to shared Board commitments, applicable legislative, governance and related responsibilities.

Revised Shareholder Declaration

City staff and GHI members have collaboratively worked to amend the attached Shareholder Declaration appended as Attachment #2. The document is consistent with and supportive of the proposed holding company structure and includes clearly outlined reporting requirements and timelines.

Asset Transfer Policy

In order for the City to transfer assets to a holding company, it must comply with various legislative requirements, including the Municipal Act, 2001 and Ontario Regulation 599/06, made under the Municipal Act.

Section 7 of Ontario Regulation 599/06 specifically provides that a municipality cannot transfer any of its assets to a corporation before it adopts policies on asset transfers to corporations.

City of Guelph Legal Services staff have drafted an Asset Transfers to Corporations Policy consistent with Municipal Act requirements (Attachment #3). The policy sets out parameters around how an asset transfer can take place and what steps are required to ensure compliance with related Provincial legislation. Once approved by Council, this policy will apply to the planned asset transfers to the proposed holding company, as well as to any other future asset transfers to that, or any other, corporation.

Evaluation

On October 26, 2009, Council approved the following when considering whether or not to proceed with a Business Case Study for a new Holding Company structure: “[t]hat staff and representatives from GHI and GJR report back to Council within one year on the efficacy of the new structure.” To that end, this commitment will be respected with a detailed report to Council following one year of operation from the approximate date of incorporation. Information will be provided on a number of parameters including but not limited to governance practices established and observed, progress achieved in relation to established metrics in the GMHC business and strategic plans, structure functionality, benefits realized and required improvements.

Next Steps

A number of next steps will be required before the GMHC entity is operational. Subject to Council approval of the Implementation Strategy, staff will:

Action	Timeframe
1. Initiate a citizen appointment process with the assistance of the City Clerks department.	May 1
2. Seek Council approval on a recommended independent Board member.	June
3. Establish a meeting schedule and Annual Agenda with the Board Chair.	
4. Schedule board governance training for all members.	
5. File articles of incorporation and all necessary supporting material with the Province of Ontario.	July
6. Receive Certificate of Incorporation from Province.	
7. Enter the Support Services Agreement with GMHC; enter the Shareholder Declarations with GMHC and GHI.	August
8. Transfer GHI assets to Guelph Municipal Holding Company.	August

CORPORATE STRATEGIC PLAN

5.3 – Open, accountable and transparent conduct of municipal business

5.6 – Organizational excellence in planning and management

FINANCIAL IMPLICATIONS

Administrative costs of the Holding Company for 2011 will be funded through the regular Guelph Hydro dividend stream. As outlined in the Council approved Business Case Study, a preliminary requirement of the board is to develop a five-year budget for Council approval.

2011 Budget

Item	2011 Cost
Incorporation Fees	\$2000
Board Governance Training and Materials	\$3000
Income Tax Filings	Staff Support
Total Expense	\$5000
Total Revenue	\$5000

In the instance of transfer of an asset to a corporation wholly owned by the City, the proposed Asset Transfer policy requires the Treasurer to provide Council with the audited net book value at which the asset will be transferred to the corporation.

For the proposed transfer of 100% of the shares of Guelph Hydro Inc. to a holding company wholly owned by the City, the audited net book value as at December 31, 2010 is \$66.788 million.

DEPARTMENTAL CONSULTATION

Finance
Human Resources and Legal Services
Information Services

COMMUNICATIONS

Legislatively required public consultation was conducted on the GMHC Business Case Study in 2010. Ongoing communication and collaboration between City Councillors, staff and Guelph Hydro have occurred throughout the planning and development phases of this effort.

ATTACHMENTS

Attachment #1 – Identified Risks by Deloitte & Touche LLP and affiliated entities
Attachment #2 – Revised Shareholder Declaration
Attachment #3 – Asset Transfer Policy
Attachment #4 – Council approved Business Case Study

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Recommended By:

Hans Loewig, CAO

Additional matters (continued)

The following reportable matters are reported to the Committee. The City is investigating alternate governance models for the management of current and future City-owned assets to ensure the greatest value to the City as the primary shareholder. As external auditor, we are providing the following comments:

Reporting matter	Comments
<ul style="list-style-type: none"> Taxation of holding company 	<p>We understand that the City has obtained a preliminary tax opinion regarding the tax status of a municipal holding company. We would advise that the City should ensure that all companies that may be placed in a municipal holding company would retain their tax status in the new regime.</p> <p>The corporation should also continually review the sources of revenue and its related party transactions as these items may have an affect on the taxation of the holding company. Income tax laws and regulations are continually being amended, and changes to the taxation regime could have an impact on the future taxation of the holding company.</p>
<ul style="list-style-type: none"> Governance 	<p>It appears that is possible for non-elected officials to control the Board of the Holding Company. The City should ensure that this structure is intentional.</p>
<ul style="list-style-type: none"> Public policy 	<p>The Board of Directors of the Holding Company owe a fiduciary duty to the company. As such, their primary responsibility may be in conflict with public policy directives as articulated by the elected officials. The City should ensure that this is direction is intentional.</p>
<ul style="list-style-type: none"> Dividends 	<p>The Board of Directors' primary responsibility is to the Holding Company, and the City has budgeted to receive a dividend stream from the City owned assets. The Company may have competing interests with the City relating to use of cash generated from the assets, so the City should ensure that its financial interests are protected in the shareholder direction.</p>
<ul style="list-style-type: none"> Reporting and compliance 	<p>There will be additional reporting and compliance required for the holding company. Annual audited financial statements are required, and the corporation will be required to file an annual income tax return and other documents with regulatory authorities. The cost of this compliance should be budgeted by the Corporation.</p>

SHAREHOLDER DECLARATION

THE CORPORATION OF THE CITY OF GUELPH

– and –

GUELPH MUNICIPAL HOLDINGS INC.

– and –

GUELPH HYDRO INC.

– and –

GUELPH HYDRO ELECTRIC SYSTEMS INC.

– and –

ECOTRICITY GUELPH INC.

– and –

**ANY SUBSIDIARIES OF
GUELPH HYDRO INC. FROM TIME TO TIME**

Dated as of , 2011

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Schedule “B-1”	Guelph Municipal Holdings Inc. Dividend Policy
Schedule “B-2”	Guelph Hydro Inc. Dividend Policy
Schedule “C”	Form of Services Agreement Between Holdco and The City

CITY OF GUELPH

SHAREHOLDER DECLARATION

RECITALS:

1. Guelph Municipal Holdings Inc. (“**Holdco**”) is wholly-owned by the Corporation of the City of Guelph (the “**City**”) and has been incorporated by the City to serve as a holding corporation to hold the shares of corporations with share capital which are established by or on behalf of the City from time to time as permitted under governing Laws;
2. The entry into, and the exercise of powers of the City under, this Shareholder Declaration is considered necessary to acquire, hold, dispose of and otherwise deal with the shares of Guelph Hydro Inc. (“**GHI**”) and its Subsidiaries.
3. GHI is wholly-owned by Holdco;
4. Guelph Hydro Electric Systems Inc. (“**GHESI**”) and Ecotricity Guelph Inc. (“**Ecotricity**”) are each wholly-owned by GHI;
5. This Shareholder Declaration sets out the requirements of the City relating to the governance and other fundamental principles and policies of Holdco in relation to GHI and its Subsidiaries;
6. This Shareholder Declaration sets out the requirements of Holdco relating to the governance and other fundamental principles and policies of GHI and its Subsidiaries;
7. A fundamental principle of this Shareholder Declaration is that any change in the scope of activities or role of Holdco shall not impact the business activities, role and governance structure of GHI; and
8. The City intends and acknowledges that GHI shall collaborate with the City and play a significant role in the development and implementation of the Community Energy Initiative.

1. Definitions and Interpretation

- 1.1 Wherever used in this Shareholder Declaration, the following terms shall have these respective meanings:

“**Board**” means the board of directors of a corporation;

“**Book Value**” means the book value of the applicable corporation and its direct subsidiaries on a consolidated basis as at the end of its last completed financial year as shown in its audited financial statements;

“**CEO**” means the chief executive officer of a corporation;

“**Chair**” means the Chair of the Board of Holdco from time to time;

“**City**” has the meaning ascribed thereto in the Recitals;

“**Community Energy Initiative**” means the City’s Community Energy Plan (now called Initiative) dated April 3, 2007 which outlines the City’s strategies and vision with respect to energy conservation, consumption, generation and efficiency and environmental sustainability as may be modified by Council from time to time;

“**Council**” means the city council of the City and, where appropriate, in its capacity as the governing body of the City as shareholder of Holdco;

“**Energy Legislation**” means legislation enacted from time to time by the Province of Ontario regulating the energy sector and including without limitation the *Electricity Act, 1998*, the *Ontario Energy Board Act, 1998*, the *Green Energy and Green Economy Act, 2009* and all regulations thereunder, and all amendments, re-enactments and replacements to such legislation and all other statutes, decisions, orders and policies of the Province of Ontario with respect to the energy sector which may be enacted from time to time;

“**GAAP**”, when used in respect of accounting terms or accounting determinations relating to a Person, means generally accepted accounting principles in effect from time to time in Canada, being those accounting principles set forth in the Handbook or other official record of accounting principles in Canada from time to time published by the Institute of Chartered Accountants in Canada, as such principles may be amended, varied or replaced by International Financial Reporting Standards (IFRS) then in effect and generally accepted in Canada and adopted or required to have been adopted by the Person;

“**GHI**” means Guelph Hydro Inc.;

“**GHI Business Plan**” has the meaning ascribed thereto in Section 11.2;

“**GHI Declaration**” means the Shareholder Declaration in respect of GHI dated November 1, 2000;

“**GHI Subsidiaries**” means GHESI and Ecotricity and any other subsidiary of GHI from time to time;

“**Governmental Authority**” means any federal, provincial, or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule making entity, having jurisdiction in the relevant circumstances, including the Ontario Municipal Board, the Ontario Power Authority, the Independent Electricity System Operator, the Ontario Energy Board, the Electrical Safety Authority, and any Person acting under the authority of any Governmental Authority;

“**Holdco**” has the meaning ascribed thereto in the Recitals;

“**Holdco Board**” means the board of directors of Holdco;

“**Holdco Business Plan**” has the meaning ascribed thereto in Section 10.2;

“**Laws**” means:

- (a) applicable Canadian federal, provincial or municipal laws, orders-in-council, by-laws, codes, rules, policies, regulations and statutes;
- (b) applicable orders, decisions, codes, judgments, injunctions, decrees, awards and writs of any court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction;
- (c) applicable rulings and conditions of any licence, permit, certificate, registration, authorization, consent and approval issued by a Governmental Authority; and
- (d) any requirements under or prescribed by applicable common law;

“**Mayor**” means the Mayor of the City;

“**MFIPPA**” means the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario);

“**Municipal Act**” means the *Municipal Act* 2001 (Ontario);

“**Municipal Member**” means a sitting member of Council;

“**Net Income**” means the net income after taxes or payments in lieu of taxes as determined in accordance with GAAP, subject to, in the case of GHESI, regulatory adjustments to reflect Ontario Energy Board sanctioned accounting practices for electricity distributors; for greater clarity, the consolidated Net Income of Holdco and of GHI shall incorporate the GHESI regulatory adjustments in accordance with the foregoing;

“**Nominating Committee**” means a committee established by the GHI Board for the purpose set out in Section 6.7;

“**OBCA**” means the *Business Corporations Act* (Ontario);

“**Person**” means a natural person, firm, trust, partnership, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, governmental or regulatory authority or other entity of any kind;

“**Private Director**” means an individual who is not a Municipal Member or an employee of, or consultant to, the City or any agency, board or commission of, or corporation established by, the City;

“**Shareholder Declaration**” means this shareholder declaration;

“**Shareholder Representative**” has the meaning ascribed thereto in Section 9.1;

“**Subsidiary**” means any subsidiary body corporate (as defined in the OBCA) of a Person which, for greater certainty, in respect of Holdco, includes GHI and its Subsidiaries; and

“**Subsidiary Board**” means the board of directors of any Subsidiary of Holdco.

1.2 Schedules – The following schedules form a part of this Shareholder Declaration and are incorporated by reference:

Schedule “A” Excerpts from Canadian Securities Administrators (CSA) Corporate Governance Guidelines

Schedule “B-1” Guelph Municipal Holdings Inc. Dividend Policy

Schedule “B-2” Guelph Hydro Inc. Dividend Policy

Schedule “C” Form of Services Agreement Between Holdco and The City

1.3 Headings and Table of Contents – The inclusion of headings and a table of contents in this Shareholder Declaration are for convenience of reference only and shall not affect the construction or interpretation of this Shareholder Declaration.

1.4 Number – In this Shareholder Declaration, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Laws – All references to statutes or Law contained in this Shareholder Declaration means those statutes or Law in effect from time to time, and all amendments thereto or any re-enactment thereof or replacement statutes.

2. Purpose and Governing Principles

2.1 Purposes

(a) This Shareholder Declaration sets out the requirements of the City relating to governance and other fundamental and necessary matters relating to the ownership of Holdco and the powers necessary to acquire, hold, dispose of and otherwise deal with the shares thereof. Except as provided in Section 13, this Shareholder Declaration is not intended to constitute a unanimous shareholder declaration under the OBCA or to formally restrict the exercise of the powers of the Holdco Board.

(b) This Shareholder Declaration also sets out the requirements of Holdco relating to governance and other fundamental matters relating to the ownership of GHI and GHI’s Subsidiaries. Except as provided in Section 13, this Shareholder Declaration is not intended to constitute a unanimous shareholder declaration under the OBCA or to formally restrict the exercise of the powers of the GHI Board or the Board of any Subsidiary of GHI.

2.2 Overarching Principles – The following principles shall apply to this Shareholder Declaration:

- (a) A Shareholder Declaration for municipal entities should foster and reinforce a collaborative relationship and shared values among all parties and recognize that the interface between the worlds governed by the Municipal Act (public sector) and the OBCA (private sector) requires mutual respect, understanding and flexibility and regular communication between GHI and Holdco concerning the activities of GHI and its Subsidiaries. Such communication should take place whether or not such activities would require the approval of Holdco or the City pursuant to Section 13.3 and the activities of the City and Holdco which may be applicable to the Community Energy Initiative and otherwise to GHI and its Subsidiaries shall be a fundamental aspect of such relationship.
- (b) Decision-making authority should be clearly assigned to the appropriate Board of Holdco, GHI or GHI's Subsidiaries.
- (c) The authority of a Board as described pursuant to this Shareholder Declaration will be accompanied by clearly articulated reporting and approval requirements as set out in this Shareholder Declaration to ensure transparency, accountability and recognition of the role of Council as the ultimate authority over each corporation governed by this Shareholder Declaration.
- (d) The provisions of this Shareholder Declaration should be interpreted so as to maximize transparency and facilitate communication between the City and Holdco on the one hand and GHI and its Subsidiaries on the other.
- (e) The principles of director independence and skills-based boards will be paramount in the interpretation of this Shareholder Declaration but consistent with the policies of the City publicly adopted from time to time with respect to Holdco and its Subsidiaries.
- (f) The unique overlapping community interests and professional capabilities of the “family of companies” – including the City – are important components of an integrated and coordinated approach to excellence in asset management.
- (g) Shareholder return and benefits will be measured by several metrics, including but not limited to, dividends. In general, a long term, strategic view will be applied to the measure of shareholder return and communicated in writing to the Boards of Holdco and its Subsidiaries by City Council.
- (h) It is recognized that GHI and its Subsidiaries are operated on a “for-profit” basis, may operate in a competitive environment, and are subject to the obligation to make payments in lieu of taxes under Energy Legislation.
- (i) The opportunity for community assets to contribute to the building of community capacity, community pride and overall community well-being should be key drivers to this Shareholder Declaration.

- (j) In making decisions concerning GHI and its Subsidiaries, Holdco shall act in a commercially reasonable manner consistent with the City's requirements as owner from time to time.

3. Permitted Business Activities

- 3.1 As Permitted by Law – Subject to the restrictions in Section 13, (i) Holdco shall serve as a holding corporation to hold the shares of corporations which are established by or on behalf of the City from time to time under applicable Laws, and (ii) GHI and the GHI Subsidiaries may engage in the business activities which are permitted by applicable Laws, and as the Board of GHI may determine for GHI and its Subsidiaries consistent with Subsection 3.2 including, without limitation, with respect to GHI and its Subsidiaries, the business activities referred to in Subsection 3.2. In so doing, Holdco, GHI and its Subsidiaries shall each conform to all applicable Laws.
- 3.2 Specific Activities – As at the date hereof, GHI or one or more of its Subsidiaries (i) may engage in any business activities as may be permitted by applicable Laws including, without limitation, Energy Legislation, as amended or replaced from time to time and as authorized by the Board of GHI or of any GHI Subsidiary, as applicable, from time to time; and (ii) shall have a significant role in the development and implementation of the City's Community Energy Initiative.

4. Corporate Governance

- 4.1 Holdco Directors Duties – As required by the OBCA, the Holdco Board shall supervise the management of the business and affairs of Holdco, and, in so doing, shall act honestly and in good faith with a view to the best interests of Holdco and shall exercise the same degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.
- 4.2 GHI Directors Duties – As required by the OBCA, the GHI Board and any Subsidiary Board shall supervise the management of the business and affairs of GHI and any Subsidiary respectively, and, in so doing, shall act honestly and in good faith with a view to the best interests of GHI or the Subsidiary respectively and shall exercise the same degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances.
- 4.3 Standards of Governance – In addition, the City expects the Board of GHI and any GHI Subsidiary to observe substantially the same standards of corporate governance as may be established from time to time by the Canadian Securities Administrators or any other applicable regulatory or governmental authority in Canada for publicly traded corporations with such modifications as may be necessary to reflect the fact that GHI and any GHI Subsidiary are not publicly traded corporations. An excerpt of Canadian Securities Administrators National Policy 58-201 *Corporate Governance Guidelines* as currently in effect is attached to this Shareholder Declaration as Schedule "A".

5. Board of Directors and Officers of Holdco

- 5.1 Qualifications – In addition to sound judgement and personal integrity, the qualifications of candidates for the Board of Holdco may include:
- (a) awareness of public policy issues related to Holdco;
 - (b) relevant business expertise and industry knowledge;
 - (c) experience on boards of significant commercial corporations;
 - (d) financial, legal, accounting and/or marketing experience; and
 - (e) knowledge and experience with risk management strategy.
- 5.2 Residency – Preference may be given to qualified candidates for a Board who are residents of the City, however non-residents of the City shall not be excluded from serving as Board members.
- 5.3 Number of Directors – The Board of Holdco shall consist of a minimum of seven (7) directors to be appointed by and approved by the City.
- 5.4 Composition of the Holdco Board – Unless otherwise determined by the City in its discretion, the Holdco Board shall consist of the Mayor, three Municipal Members, the chair of the Board of GHI, the chair(s) of the Board of any other direct Subsidiary of Holdco, and an independent member who shall not be a Municipal Member. The chief executive officer, chief operating officer, president or general manager, as the case may be, of a Subsidiary or of Holdco shall not be eligible to serve as a director on, nor chair of, the Holdco Board nor chair of the Board of GHI.
- 5.5 Chair of Holdco – The Chair of the Holdco Board shall be the Mayor.
- 5.6 Officers of Holdco – The CEO of Holdco shall be the Chief Administrative Officer of the City or such other Person as the City may determine from time to time. The Treasurer of Holdco shall be the Treasurer of the City or such other Person as the City may determine from time to time. The General Counsel and Secretary of Holdco shall be the City Solicitor of the City or such other Person as the City may determine from time to time. The CEO of GHI and the CEO of Holdco shall meet at least quarterly to discuss matters as contemplated by Section 2.2(a).
- 5.7 Term of Municipal Members – The term for each member of the Holdco Board shall be concurrent with the municipal term of each Council, and each member of the Holdco Board shall be appointed for such term, provided that:
- (a) following the expiry of such term of Council, each director shall continue to serve until replaced by the City as at the effective date of the appointment of a replacement director;

- (b) notwithstanding this Section 5.7, the City may, in its discretion, terminate the term of a member of the Holdco Board prior to the end of the municipal term of Council and appoint a replacement director; and
- (c) where a member of the Holdco Board resigns or his or her term is terminated for any reason prior to the end of the municipal term of Council then in effect, the term of the replacement director shall be concurrent with the balance of the municipal term of Council then in effect.

5.8 Successive Terms – Any member of the Holdco Board may serve for successive terms as determined by the City in its discretion.

5.9 Holdco Board Committees – The Holdco Board may establish committees of the Board in the Holdco Board’s discretion. These committees may include the following:

- (a) Audit and Finance Committee to review financial results; and
- (b) Governance Committee to address governance matters.

5.10 Compensation

- (a) Directors – No member of the Holdco Board shall receive any remuneration or other compensation of any kind, other than as expressly approved by the City, for serving as a director on the Holdco Board or on any committee thereof, or carrying out any activities or providing services in relation thereto provided that each member of the Holdco Board shall be entitled to incur reasonable expenses for travel and/or training in respect of the director’s role on the Holdco Board, in accordance with policies established by the Holdco Board from time to time and approved by the City.
- (b) Officers – Any officer of Holdco who is also a Municipal Member or an employee of, or consultant to, the City or any agency, board, commission or corporation of the City, shall not receive any compensation for serving in such capacity in addition to such officer’s compensation, if any, as an employee of or consultant to the City.

6. Directors of GHI and its Subsidiaries

6.1 Qualifications – In addition to sound judgement and personal integrity, the qualifications of candidates for the Board of GHI and of any Subsidiary may include:

- (a) awareness of public policy issues related to GHI or the Subsidiary, as applicable;
- (b) relevant business expertise and industry knowledge including, but not limited to, knowledge of electric utilities, energy conservation and demand management and electricity generation;
- (c) experience on boards of significant commercial corporations;

- (d) financial, legal, accounting and/or marketing experience; and
 - (e) knowledge and experience with risk management strategy.
- 6.2 Residency – Preference may be given to qualified candidates for the Board of GHI or any GHI Subsidiary who are residents of the City, however non-residents of the City shall not be excluded from serving as GHI or a GHI Subsidiary Board members.
- 6.3 Composition of Board – The Board of GHI shall be comprised of seven (7) Private Directors who have been recommended by GHI to Holdco and by Holdco to the City, and appointed by Holdco, subject to the approval of Council. Where Holdco does not accept a candidate recommended by GHI, Holdco shall provide the reasons for such decision to GHI.
- 6.4 Chair of GHI and any GHI Subsidiary – The Chair of GHI or of any GHI Subsidiary shall be a Private Director appointed by the respective Board.
- 6.5 Term – Subject to Holdco’s right to remove a director from office, the term for each member of the GHI Board shall be as follows:
- (a) All Private Directors may serve for three year terms; and
 - (b) Any member of the GHI Board may serve for successive terms as determined by Holdco.
- 6.6 Board Committees – The GHI Board may establish committees of the Board at the Board’s discretion. These committees may include the following:
- (a) Audit and Finance Committee to review financial results;
 - (b) Governance Committee to address governance matters; and
 - (c) Nominating Committee to identify, evaluate and recommend candidates for the GHI Board to Holdco.
- 6.7 Role of Nominating Committee – Holdco shall consider candidates nominated by the Nominating Committee of the GHI Board, but shall not be obliged to select such candidates. Where Holdco has not accepted a candidate recommended by GHI, it shall provide an explanation of its decision to GHI. It is expected that the GHI Nominating Committee will develop a process to identify and evaluate potential Board candidates in order for GHI to recommend a slate of qualified candidates to Holdco for the purpose of Holdco’s appointment of the directors of GHI, subject to approval of Council.
- 6.8 Directors Compensation
- (a) The GHI Board may establish compensation for members of the GHI Board and the Chair of GHI and members of the Board(s) of its Subsidiaries in amounts

sufficient to attract candidates with necessary qualifications and consistent with industry norms and standards for comparable businesses.

- (b) The GHI Board shall establish a compensation plan for members of the Board and the Chair of GHI and its Subsidiaries. The GHI Board may, in determining such compensation plan, have reference to compensation of the members of the board of directors of companies that are engaged in comparable businesses, including municipally-owned Ontario electricity distributors and their affiliates of similar size. GHI shall from time to time and not less than annually provide information to Holdco and to Council in respect of the compensation plan for directors together with any studies, surveys or other information on which such compensation plan was based.
- (c) Compensation for each member of the Board of GHI and its Subsidiaries in whatever form, whether monetary, non-monetary, in-kind, stipends or expenses (including without limitation expenses for travel, accommodation, conferences, seminars or other education, whether reimbursements, advances, and whether required or appropriate for a director or not) shall be itemized and described in reasonable detail and provided in writing to Holdco on at least an annual basis in respect of a financial year not later than 60 days following the end of such financial year and, from time to time at the request of Holdco in respect of a period designated by Holdco within 30 days following such request.

6.9 Directors of Subsidiaries – The directors of the GHI Subsidiaries shall be chosen by the GHI Board and shall serve for such term as the GHI Board shall determine. The directors of GHESI shall be subject to the requirements contained in the OEB’s Affiliate Relationships Code from time to time.

7. Dividend Policies, Risk Management and Strategic Objectives for Holdco

7.1 The Holdco Board shall establish policies addressing the following matters:

- (a) Dividends – to ensure the payment of an annual dividend from Holdco consistent with the Holdco Dividend Policy attached as Schedule “B-1”;
- (b) Risk Management – to ensure that each Subsidiary has adopted appropriate risk management strategies and internal controls consistent with industry norms in order to manage all risks related to the businesses conducted by Holdco Subsidiaries; and
- (c) Strategic Objectives – to provide input to GHI as to the City’s long term strategic objectives for GHI and its Subsidiaries which are consistent with the maintenance of a viable, competitive business and preservation of the value of the businesses of GHI and its Subsidiaries for the City.

8. Best Practice Principles for GHI and GHI Subsidiaries and GHI Role in the Community Energy Initiative

8.1 Best Practice Principles

In the conduct of its operations, the GHI Board shall abide by the following principles and target compliance with the corporate governance rules of the Canadian securities regulators:

- (a) Capital Structure – to develop and maintain a prudent financial and capitalization structure consistent with industry norms and sound financial principles and established on the basis that all Subsidiaries are intended to be self financing entities;
- (b) Distribution Rates – to ensure the establishment by GHESI of just and reasonable rates for the regulated distribution business of GHESI, which are:
 - (i) consistent with similar utilities in comparable growth areas and as may be permitted under the OEB Act;
 - (ii) intended to enhance the value of GHESI; and
 - (iii) consistent with the encouragement of economic development and activity within the City of Guelph;
- (c) Returns – to enhance value to the City by generating a reasonable return:
 - (i) through the payment of dividends, interest or otherwise;
 - (ii) in respect of GHESI, comparable to the returns on the regulated distribution businesses received by other comparable municipalities as permitted by the OEB pursuant to the OEB Act;
 - (iii) consistent with a prudent financial and capitalization structure and, in respect of GHESI, maintaining just and reasonable rates;
- (d) Dividends – subject to compliance with the Conditions Precedent stated therein to ensure the payment of an annual dividend from GHI to Holdco consistent with the GHI Dividend Policy attached as Schedule “B-2”;
- (e) Risk Management – to manage all risks related to the business conducted by GHI and its Subsidiaries, through the adoption of appropriate risk management strategies and internal controls consistent with industry norms; and
- (f) Strategic Planning – to develop a long range strategic plan for GHI and its Subsidiaries which is consistent with the maintenance of a viable, competitive business and preserves the value of the business for the City.

8.2 Community Energy Initiative – The City acknowledges its intention that GHI will play a significant role in the development and implementation of the Community Energy Initiative. The City and GHI shall communicate regularly through the Mayor’s Task Force on the Community Energy Initiative, or such other task force or committee of Council which may be established from time to time in respect of the implementation of the Community Energy Initiative. It is the City’s intention that the City and GHI will work collaboratively to jointly develop a memorandum of understanding outlining the roles, management and administrative structures among the City, GHI and GHI’s Subsidiaries in respect of the Community Energy Initiative.

9. **Decisions of the City & Shareholder Representative**

9.1 Shareholder Representative – The City hereby designates the Chief Administrative Officer of the City or the individual designated by the Chief Administrative Officer of the City from time to time as its legal representative (the “**Shareholder Representative**”) for purposes of communicating to the Holdco Board pursuant to Subsection 9.2, any consent or approval required by this Shareholder Declaration or by the OBCA.

9.2 City Approval – Approvals or decisions of the City required pursuant to this Shareholder Declaration or the OBCA shall require a resolution or bylaw of Council passed at a meeting of Council and shall be communicated in writing to Holdco’s Board and signed by the Shareholder Representative and/or the Mayor.

9.3 Holdco Approvals – Approvals or decisions of Holdco required pursuant to this Shareholder Declaration shall require a resolution of the Holdco Board and, where expressly required pursuant to this Shareholder Declaration, the approval of the City and communicated in writing to the GHI Board.

10. **Holdco Reports to City and Business Plan**

10.1 Regular Reporting – Holdco shall, from time to time, but at least annually, report to Council on major business developments or materially significant results in respect of Holdco or any Subsidiary, and the chair of GHI shall attend such meetings of Council where reports are made in respect of GHI or any GHI Subsidiaries, and such reports may be received and considered by the City at an in camera meeting of Council subject to the requirements of the *Municipal Act* and other applicable Laws.

10.2 Business Plan – Holdco shall promptly provide the City with the business plan (the “**Holdco Business Plan**”) for Holdco and GHI on an annual basis prior to the end of each financial year of Holdco, GHI and GHI’s Subsidiaries. The Holdco Business Plan shall include all of the following:

- (a) the strategic objectives that Holdco, GHI and GHI’s Subsidiaries will undertake;
- (b) an operating budget for Holdco for the next financial year and an operating and capital expenditure budget on a consolidated basis for GHI’s next financial year and an operating and capital expenditure projection on a consolidated basis for

GHI for each of the two subsequent financial years, including the resources necessary to implement the Holdco Business Plan;

- (c) the projected annual revenues and Net Income for Holdco, GHI and GHI's Subsidiaries for the following two financial years; and
- (d) any material variances from the Holdco Business Plan then in effect.

10.3 Annual Report to Council – Within six months after the end of each financial year of Holdco, Holdco shall report to a public meeting of Council and the Chair shall attend such meeting and provide the following information with respect to Holdco and GHI and the chair of GHI shall also be present at such public meeting:

- (a) audited consolidated financial statements for GHI; and
- (b) such additional information as the City may specify from time to time.

10.4 Confirmation of Compliance – The Holdco Board shall, in a confidential report to Council, annually confirm by the end of each financial year that it has complied with the requirements of this Shareholder Declaration and is in compliance with applicable Laws and that it has received a similar confirmation of compliance from the Board of GHI.

10.5 Confidentiality

- (a) Except as required by applicable law or any Governmental Authority and except for the annual report to Council pursuant to Section 10.3, the City shall treat as confidential each Holdco Business Plan and all other information provided to it in confidence pursuant to this Section 10, subject to the Municipal Act and applicable Laws. The parties acknowledge that information that is in the custody or under the control of the City or Holdco is subject to the access provisions of MFIPPA.
- (b) The City acknowledges that GHI shall, from time to time, supply it in confidence with confidential information, the disclosure of which could reasonably be expected to significantly prejudice the competitive position of or interfere with contractual or other negotiations of GHI, or result in undue loss to GHI, and the City shall protect such information in accordance with the exemption for third party information in Section 10 of MFIPPA.
- (c) The City shall inform GHI of any request made for access to information supplied to the City by GHI, permit GHI an opportunity to make representations on the disclosure of such information, and consider any such representations prior to disclosing or permitting access to the information and shall provide GHI with notice of its decision concerning any such request for access to information of GHI or any of its Subsidiaries.

11. GHI Reports to Holdco and Business Plan

11.1 Regular Reporting

- (a) GHI shall, from time to time but at least semi-annually, report to Holdco on major business developments or materially significant results in respect of GHI or any GHI Subsidiary and, on an immediate basis, any material event or results in respect of GHI or any GHI Subsidiary.
- (b) Upon written notice by Holdco following a resolution to that effect passed by the Holdco Board that such access is required or appropriate due to extraordinary circumstances as determined in the reasonable belief of the Holdco Board:
 - (i) the CEO of Holdco, or his/her designate, shall have unrestricted access to the books and records of any Subsidiary of Holdco during normal business hours. Such Persons shall treat all confidential information of each Subsidiary of Holdco with the same level of care and confidentiality as any confidential information of Holdco and shall ensure that such access shall not disrupt the normal conduct of business; and
 - (ii) each Subsidiary shall provide such information relating to the operations, business and affairs of such corporation as is requested. The Subsidiary shall provide the requested information within 30 days after the request is received, provided however that if the information is required by the Holdco Board by resolution on an urgent basis, the Subsidiary shall use its best efforts to provide such information within five (5) business days of receipt of the request, or within such other time frame as may be specified.

11.2 Business Plan – GHI shall promptly provide Holdco with the business plan for each financial year as approved by the GHI Board (the “**GHI Business Plan**”) for GHI and for each of the GHI Subsidiaries prior to the end of each financial year of GHI or each GHI Subsidiary. The GHI Business Plan shall include all of the following:

- (a) the strategic direction and any new business initiatives that GHI will undertake;
- (b) an operating and capital expenditure budget for the next financial year and an operating and capital expenditure projection for each of the two subsequent financial years, including the resources necessary to implement the GHI Business Plan and whether and how retained earnings for each year are to be allocated;
- (c) the projected annual revenues and Net Income for the following two financial years; and
- (d) any material variances from the GHI Business Plan then in effect.

11.3 Annual Report to Holdco – Within six months after the end of each financial year, GHI shall provide the following information to Holdco:

- (a) consolidated financial statements for GHI and unconsolidated financial statements for GHI and each GHI Subsidiary as at the end of such financial year;
- (b) a business performance report, including an analysis of variances to plan for the last completed financial year;
- (c) such additional information as Holdco may specify from time to time for the last completed financial year.

11.4 Confirmation of Compliance – At the end of each financial year the GHI Board shall confirm to Holdco in writing that GHI and its Subsidiaries have complied with the requirements of this Shareholder Declaration, that GHI is in compliance with all applicable Laws, and that GHI has received a similar confirmation of compliance from the Board of each GHI Subsidiary.

11.5 Confidentiality

- (a) Except as required by applicable Law or any Governmental Authority, the City and Holdco shall treat as confidential each GHI Business Plan and all other information provided to it in confidence pursuant to this Section 11, subject to the Municipal Act and applicable Laws. The parties acknowledge that information that is in the custody or under the control of the City or Holdco is subject to the access provisions of MFIPPA.
- (b) Holdco acknowledges that GHI shall, from time to time, supply it in confidence with confidential information, the disclosure of which could reasonably be expected to significantly prejudice the competitive position of or interfere with contractual or other negotiations of GHI, or result in undue loss to GHI, and Holdco shall protect such information in accordance with the exemption for third party information in Section 10 of MFIPPA.
- (c) Holdco shall inform GHI of any request made for access to information supplied to Holdco by GHI, permit GHI an opportunity to make representations on the disclosure of such information, and consider any such representations prior to disclosing or permitting access to the information and shall provide GHI with notice of its decision concerning any such access request concerning GHI or any GHI Subsidiary.

12. Annual Resolutions

- (a) The City shall, at an in camera meeting of Council, consider candidates for the Holdco Board as proposed by the Holdco Nominating Committee and the appointment of the auditors of Holdco and receive the audited financial statements of Holdco for the last completed financial year;

- (b) The City, by resolution in writing signed in accordance with Section 9.2, shall appoint the necessary members of the Holdco Board and appoint the auditors for Holdco and complete such other business as would normally be completed at an annual meeting of shareholders under the OBCA; and
- (c) Holdco by resolution in writing shall appoint the necessary members of the GHI Board and appoint the auditors for GHI and its Subsidiaries and complete such other business as would normally be completed at an annual meeting of shareholders under the OBCA, subject to approval of Council.

13. Matters Requiring City or Holdco Approval

13.1 Approvals in Respect of Holdco – The City hereby directs Holdco at all times to seek the approval of the City in respect of each of the following matters prior to Holdco undertaking or causing to be undertaken any of the following matters with respect to Holdco:

- (a) Entry into one or more transactions to acquire or be acquired, whether by way of purchase or otherwise, of, or merger or amalgamation with, any one or more Persons;
- (b) Execution of any memorandum of understanding or other material and binding document with any Person in relation to any transaction described in paragraph (a) of this Subsection 13.1 with respect to Holdco, or any public announcement or disclosure in relation to such discussions or document;
- (c) changing or removing any restriction on the business of Holdco;
- (d) creating new classes of shares of Holdco or any Subsidiary or in any other manner to amend the articles to reduce or increase the number of directors of Holdco or any Subsidiary;
- (e) enter into one or more mergers or amalgamations of Holdco or any Subsidiary with any other corporation(s), other than another Subsidiary;
- (f) the institution of proceedings for any winding-up, arrangement or dissolution of Holdco or any Subsidiary;
- (g) appointment of auditors of Holdco;
- (h) an application to continue Holdco or any Subsidiary as a corporation under the laws of another jurisdiction;
- (i) issue, or enter into any agreement to issue, any shares of any class, or any securities convertible into any shares of any class of Holdco or any Subsidiary;
- (j) redeem or purchase any outstanding shares of Holdco or any Subsidiary;

- (k) in any financial year, enter into one or more transactions which individually or in the aggregate, except as provided in the Business Plan, result in the disposition, lease or sale of any part of the business of Holdco or any Subsidiary equal to or greater than 25% of the Book Value of Holdco on a consolidated basis;
- (l) any change in the dividend policy of Holdco or any Subsidiary;
- (m) any sale, transfer or other disposition by Holdco of any of the shares of any Subsidiary;
- (n) engaging in any business activity other than as expressly permitted under Section 3;
- (o) salary, benefits and other compensation of members of the Holdco Board or any officers of Holdco;
- (p) election, replacement, composition and number of members of the Holdco Board;
- (q) appointment and replacement of officers of Holdco;
- (r) directors and officers insurance arrangements for Holdco; and
- (s) entry by Holdco into any joint venture, partnership, strategic alliance or other venture, which would require an investment, or which would have a financial impact greater than 25% of the Book Value of Holdco.

13.2 City Approval Required – The City hereby directs Holdco at all times to seek the approval of the City in respect of each of the matters requiring Holdco approval pursuant to Section 13.3.

13.3 Approvals in Respect of GHI and its Subsidiaries – Holdco hereby directs GHI at all times to seek the approval of Holdco in respect of each of the following matters prior to undertaking or causing to be undertaken any of the following matters with respect to GHI or any Subsidiary:

- (a) Entry into one or more transactions to acquire or be acquired, whether by way of purchase or otherwise, of, or merger or amalgamation with, any one or more Persons, which transactions have a value of greater than 25% of the Book Value of GHI and its Subsidiaries on a consolidated basis; provided that (i) GHI shall have the authority without seeking the approval of Holdco to approve any of the foregoing which involves a transaction with a financial impact less than 25% of the Book Value of GHI and its Subsidiaries on a consolidated basis; and (ii) any of the foregoing transactions involving GHESI shall require the prior written approval of Holdco and the City regardless of the size of the transaction;
- (b) Execution of any binding memorandum of understanding or other binding and material document with any Person in relation to any transaction described in paragraph (a) of this Subsection 13.3 with respect to GHESI or another licensed

- electricity distributor, or any public announcement or disclosure in relation to such discussions or document;
- (c) changing or removing any restriction on the business of GHI or a GHI Subsidiary;
 - (d) creating new classes of shares of GHI or any GHI Subsidiary or in any other manner to amend the articles of GHI to reduce or increase the number of directors of GHI or a GHI Subsidiary;
 - (e) enter into one or more amalgamations of GHI or any GHI Subsidiary with any other corporation(s) other than another Subsidiary of GHI;
 - (f) the institution of proceedings for any winding-up, arrangement or dissolution of GHI or any GHI Subsidiary;
 - (g) appointment of auditors of GHI and any GHI Subsidiary;
 - (h) an application to continue GHI or any GHI Subsidiary as a corporation under the laws of another jurisdiction;
 - (i) issue, or enter into any agreement to issue, any shares of any class, or any securities convertible into any shares of any class of GHI or any GHI Subsidiary;
 - (j) redeem or purchase any outstanding shares of GHI or any GHI Subsidiary;
 - (k) in any financial year, enter into one or more transactions which individually or in the aggregate, except as provided in the Business Plan, result in the disposition, lease or sale of any part of the business of GHI or any GHI Subsidiary equal to or greater than 25% of the Book Value of GHI and its Subsidiaries on a consolidated basis provided that GHI shall have the authority without seeking the approval of Holdco to approve any of the foregoing which involves a transaction with a financial impact of less than 25% of the Book Value of GHI and its Subsidiaries on a consolidated basis;
 - (l) any change in the dividend policy of GHI;
 - (m) any sale, transfer or other disposition by GHI of any of the shares of any GHI Subsidiary;
 - (n) engaging in any business activity other than as expressly permitted under Section 3;
 - (o) election, replacement, composition and number of members of the GHI Board;
 - (p) creation or acquisition of shares in the capital of any GHI Subsidiary; and
 - (q) entry into any joint venture, partnership, strategic alliance or other venture, including, without limitation, ventures in respect of the generation or co

generation of electricity, which would require an investment, or which would have a financial impact greater than 25% of the Book Value of GHI and its Subsidiaries on a consolidated basis provided that GHI shall have the authority without seeking the approval of Holdco to approve any of the foregoing which involves a transaction with a financial impact of less than 25% of the Book Value of GHI and its Subsidiaries on a consolidated basis.

- 13.4 Declaration to GHESI and Ecotricity – GHI hereby directs each of GHESI and Ecotricity at all times to seek the approval of GHI in respect of each of the matters enumerated in Subsection 13.3 prior to such corporation undertaking or causing to be undertaken any of such matters.

14. Revisions to this Shareholder Declaration

The City acknowledges that this Shareholder Declaration may be revised from time to time as circumstances may require and:

- (a) that the City will consult with the Holdco Board; and
- (b) the City and Holdco will consult with the GHI Board.

prior to completing any revisions and will promptly provide the affected Holdco Board or GHI Board, as the case may be, with copies of such revisions.

15. Holdco Activities

Holdco shall have no employees. All activities and business of Holdco shall be carried out pursuant to a services agreement between Holdco and the City substantially in the form of Schedule C or as otherwise agreed by Holdco and the City. Holdco shall promptly prepare, finalize and execute a services agreement following the effective date of this Shareholder Declaration.

16. Notices

- (a) Any notice, designation, communication, request, demand or other document, required or permitted to be given or sent or delivered to or from the City, Holdco or a Subsidiary shall be in writing and shall be sufficiently given or sent or delivered if it is:
 - (i) delivered personally,
 - (ii) sent to the party entitled to receive it by registered mail, postage prepaid, mailed in Canada, or
 - (iii) sent by facsimile.

(b) Notices shall be sent to the following addresses or facsimile numbers:

(i) in the case of the City,

The Corporation of the City of Guelph
City Hall, 1 Carden Street
Guelph, Ontario

Attention: Chief Administrative Officer

Facsimile: (519) 822-8277

(ii) in the case of Holdco,

Guelph Municipal Holdings Inc.
City Hall, 1 Carden Street
Guelph, Ontario
N1H 3A1

Attention: Chief Executive Officer

Facsimile: (519) 822-8277

(iii) in the case of GHI,

Guelph Hydro Inc.
395 Southgate Drive
Guelph, Ontario
N1G 4Y1

Attention: Chief Executive Officer

Facsimile: (519) 836-1055

(iv) in the case of GHESI,

Guelph Hydro Electric Systems Inc.
395 Southgate Drive
Guelph, Ontario
N1G 4Y1

Attention: Chief Operating Officer

Facsimile: (519) 836-1055

(v) in the case of Ecotricity,

395 Southgate Drive
Guelph, Ontario
N1G 4Y1

Attention: Chief Executive Officer of GHI

Facsimile: (519) 836-1055

or to such other address or telecopier number as the party entitled to or receiving such notice, designation, communication, request, demand or other document shall, by a notice given in accordance with this Section, have communicated to the party giving or sending or delivering such notice, designation, communication, request, demand or other document.

- (c) Any notice, designation, communication, request, demand or other document given or sent or delivered as aforesaid shall:
- (i) if delivered as aforesaid, be deemed to have been given, sent, delivered and received on the date of delivery;
 - (ii) if sent by mail as aforesaid, be deemed to have been given, sent, delivered and received (but not actually received) on the fourth Business Day following the date of mailing, unless at any time between the date of mailing and the fourth Business Day thereafter there is a discontinuance or interruption of regular postal service, whether due to strike or lockout or work slowdown, affecting postal service at the point of dispatch or delivery or any intermediate point, in which case the same shall be deemed to have been given, sent, delivered and received in the ordinary course of the mails, allowing for such discontinuance or interruption of regular postal service; and
 - (iii) if sent by telecopy machine, be deemed to have been given, sent, delivered and received on the date the sender receives the telecopy answer back confirming receipt by the recipient.

17. Replacement of Previous Declarations

The GHI Declaration is hereby terminated and of no further force or effect as of the effective date of this Shareholder Declaration.

18. New Subsidiaries

GHI shall ensure that any new or additional wholly-owned Subsidiary acquired or incorporated by it from time to time shall become a party to this Shareholder Declaration and that the provisions hereof shall apply to it *mutatis mutandis*.

DATED at Guelph, Ontario, as of the date first written above.

**THE CORPORATION OF THE CITY OF
GUELPH**

By: _____
Name:
Title:

By: _____
Name:
Title:

GUELPH MUNICIPAL HOLDINGS INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

GUELPH HYDRO INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

**GUELPH HYDRO ELECTRIC SYSTEMS
INC.**

By: _____
Name:
Title:

By: _____
Name:
Title:

ECOTRICITY GUELPH INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE “A”

EXCERPTS FROM CANADIAN SECURITIES ADMINISTRATORS (CSA) CORPORATE GOVERNANCE GUIDELINES¹

PART 2 – PURPOSE AND APPLICATION

2.1 Purpose of this Policy

This Policy provides guidance on corporate governance practices which have been formulated to:

- achieve a balance between providing protection to investors and fostering fair and efficient capital markets and confidence in capital markets;
- be sensitive to the realities of the greater numbers of small companies and controlled companies in the Canadian corporate landscape;
- take into account the impact of corporate governance developments in the U.S. and around the world; and
- recognize that corporate governance is evolving.

The guidelines in this Policy are not intended to be prescriptive. We encourage issuers to consider the guidelines in developing their own corporate governance practices.

2.2 Application

This Policy applies to all reporting issuers, other than investment funds. Consequently, it applies to both corporate and non-corporate entities. Reference to a particular corporate characteristic, such as a board of directors (the board), includes any equivalent characteristic of a non-corporate entity. For example, in the case of a limited partnership, we recommend that a majority of the directors of the general partner should be independent of the limited partnership (including the general partner).

PART 3 – MEANING OF INDEPENDENCE

3.1 Meaning of Independence

For the purposes of this Policy, a director is independent if he or she would be independent for the purposes of National Instrument 58-101 *Disclosure of Corporate Governance Practices*.

¹ These excerpts are from the CSA Corporate Governance Guidelines National Policy 58-201 in effect as at the date of the signing of the Shareholder Declaration.

PART 4 – CORPORATE GOVERNANCE GUIDELINES

4.1 Composition of the Board

- (a) The board should have a majority of independent directors.
- (b) The chair of the board should be an independent director. Where this is not appropriate, an independent director should be appointed to act as “lead director”. However, either an independent chair or an independent lead director should act as the effective leader of the board and ensure that the board's agenda will enable it to successfully carry out its duties.

4.2 Meetings of Independent Directors

The independent directors should hold regularly scheduled meetings at which non-independent directors and members of management are not in attendance.

4.3 Board Mandate

The board should adopt a written mandate in which it explicitly acknowledges responsibility for the stewardship of the issuer, including responsibility for:

- (a) to the extent feasible, satisfying itself as to the integrity of the chief executive officer (the CEO) and other executive officers and that the CEO and other executive officers create a culture of integrity throughout the organization;
- (b) adopting a strategic planning process and approving, on at least an annual basis, a strategic plan which takes into account, among other things, the opportunities and risks of the business;
- (c) the identification of the principal risks of the issuer’s business, and ensuring the implementation of appropriate systems to manage these risks;
- (d) succession planning (including appointing, training and monitoring senior management);
- (e) adopting a communication policy for the issuer;
- (f) the issuer’s internal control and management information systems; and
- (g) developing the issuer’s approach to corporate governance, including developing a set of corporate governance principles and guidelines that are specifically applicable to the issuer.²

² Issuers may consider appointing a corporate governance committee to consider these issues. A corporate governance committee should have a majority of independent directors, with the remaining members being “non-management” directors.

The written mandate of the board should also set out:

- (i) measures for receiving feedback from stakeholders (e.g., the board may wish to establish a process to permit stakeholders to directly contact the independent directors), and
- (ii) expectations and responsibilities of directors, including basic duties and responsibilities with respect to attendance at board meetings and advance review of meeting materials.

In developing an effective communication policy for the issuer, issuers should refer to the guidance set out in National Policy 5 1-201 *Disclosure Standards*.

For purposes of this Policy, “executive officer” has the same meaning as in National Instrument 5 1-102 *Continuous Disclosure Obligations*.

4.4 Position Descriptions

The board should develop clear position descriptions for the chair of the board and the chair of each board committee. In addition, the board, together with the CEO, should develop a clear position description for the CEO, which includes delineating management’s responsibilities. The board should also develop or approve the corporate goals and objectives that the CEO is responsible for meeting.

4.5 Orientation and Continuing Education

The board should ensure that all new directors receive a comprehensive orientation. All new directors should fully understand the role of the board and its committees, as well as the contribution individual directors are expected to make (including, in particular, the commitment of time and resources that the issuer expects from its directors). All new directors should also understand the nature and operation of the issuer’s business.

The board should provide continuing education opportunities for all directors, so that individuals may maintain or enhance their skills and abilities as directors, as well as to ensure their knowledge and understanding of the issuer's business remains current.

4.6 Code of Business Conduct and Ethics

The board should adopt a written code of business conduct and ethics (a code). The code should be applicable to directors, officers and employees of the issuer. The code should constitute written standards that are reasonably designed to promote integrity and to deter wrongdoing. In particular, it should address the following issues:

- (a) conflicts of interest, including transactions and agreements in respect of which a director or executive officer has a material interest;
- (b) protection and proper use of corporate assets and opportunities;

- (c) confidentiality of corporate information;
- (d) fair dealing with the issuer's security holders, customers, suppliers, competitors and employees;
- (e) compliance with laws, rules and regulations; and
- (f) reporting of any illegal or unethical behaviour.

The board should be responsible for monitoring compliance with the code. Any waivers from the code that are granted for the benefit of the issuer's directors or executive officers should be granted by the board (or a board committee) only.

Although issuers must exercise their own judgement in making materiality determinations, the Canadian securities regulatory authorities consider that conduct by a director or executive officer which constitutes a material departure from the code will likely constitute a "material change" within the meaning of National Instrument 51-102 *Continuous Disclosure Obligations*. National Instrument 51-102 requires every material change report to include a full description of the material change. Where a material departure from the code constitutes a material change to the issuer, we expect that the material change report will disclose, among other things:

- the date of the departure(s),
- the party(ies) involved in the departure(s),
- the reason why the board has or has not sanctioned the departure(s), and
- any measures the board has taken to address or remedy the departure(s).

4.7 Nomination of Directors

The board should appoint a nominating committee composed entirely of independent directors.

The nominating committee should have a written charter that clearly establishes the committee's purpose, responsibilities, member qualifications, member appointment and removal, structure and operations (including any authority to delegate to individual members and subcommittees), and manner of reporting to the board. In addition, the nominating committee should be given authority to engage and compensate any outside advisor that it determines to be necessary to permit it to carry out its duties. If an issuer is legally required by contract or otherwise to provide third parties with the right to nominate directors, the selection and nomination of those directors need not involve the approval of an independent nominating committee.

Prior to nominating or appointing individuals as directors, the board should adopt a process involving the following steps:

- (a) Consider what competencies and skills the board, as a whole, should possess. In doing so, the board should recognize that the particular competencies and skills required for one issuer may not be the same as those required for another.
- (b) Assess what competencies and skills each existing director possesses. It is unlikely that any one director will have all the competencies and skills required by the board. Instead, the board should be considered as a group, with each individual making his or her own contribution. Attention should also be paid to the personality and other qualities of each director, as these may ultimately determine the boardroom dynamic.

The board should also consider the appropriate size of the board, with a view to facilitating effective decision-making.

In carrying out each of these functions, the board should consider the advice and input of the nominating committee.

The nominating committee should be responsible for identifying individuals qualified to become new board members and recommending to the board the new director nominees for the next annual meeting of shareholders.

In making its recommendations, the nominating committee should consider:

- (a) the competencies and skills that the board considers to be necessary for the board, as a whole, to possess;
- (b) the competencies and skills that the board considers each existing director to possess; and
- (c) the competencies and skills each new nominee will bring to the boardroom.

The nominating committee should also consider whether or not each new nominee can devote sufficient time and resources to his or her duties as a board member.

4.8 Compensation

The board should appoint a compensation committee composed entirely of independent directors.

The compensation committee should have a written charter that establishes the committee's purpose, responsibilities, member qualifications, member appointment and removal, structure and operations (including any authority to delegate to individual members or subcommittees), and the manner of reporting to the board. In addition, the compensation committee should be given authority to engage and compensate any outside advisor that it determines to be necessary to permit it to carry out its duties.

The compensation committee should be responsible for:

- (a) reviewing and approving corporate goals and objectives relevant to CEO compensation, evaluating the CEO's performance in light of those corporate goals and objectives, and determining (or making recommendations to the board with respect to) the CEO's compensation level based on this evaluation;
- (b) making recommendations to the board with respect to non-CEO officer and director compensation, incentive-compensation plans and equity-based plans; and
- (c) reviewing executive compensation disclosure before the issuer publicly discloses this information.

4.9 Regular Board Assessments

The board, its committees and each individual director should be regularly assessed regarding his, her or its effectiveness and contribution. An assessment should consider:

- (a) in the case of the board or a board committee, its mandate or charter, and
- (b) in the case of an individual director, the applicable position description(s), as well as the competencies and skills each individual director is expected to bring to the board.

SCHEDULE “B-1”

GUELPH MUNICIPAL HOLDINGS INC. DIVIDEND POLICY

The dividend policy of Holdco is predicated on the mandate of the Holdco Board which includes maximizing City value. Such value is generally realized by the City through dividends or the appreciation of City investment. The Holdco Board shall declare and pay dividends from available Net Income and cash flow, as follows:

1. Regular Dividends at a dividend payment rate (DPR) of 100% of all annual Net Income, subject to the Conditions Precedent to the Payment of Dividends set out below.

2. Conditions Precedent to the Payment of Dividends

Dividends will be paid to the extent that such payment would not otherwise cause non-compliance with applicable Laws and that Holdco has cash on hand.

3. Payment of Dividends

Regular Dividends

Each year, at its meeting to approve the annual budget for the next financial year, the Board of Holdco will forecast the annual dividend by applying the DPR to budgeted earnings for the next financial year. Quarterly dividends will, subject to meeting the above Conditions Precedent to the Payment of Dividends, be targeted at up to 100% of Net Income of Holdco and paid April 15th (or shortly following the approval of the annual audited financial statements of the preceding year), June 1st, September 1st and December 1st. The first dividend of the financial year, targeted for payment on April 15th, will also include any adjustment to bring the total annual dividend for the preceding year to the full DPR level.

4. Reporting to City

Upon the payment of any dividend, Holdco shall provide an analysis to the City on whether and how the Conditions Precedent to the Payment of Dividends has reduced the amount of annual Net Income that would otherwise have been declared and paid in dividends, specifying the extent to which each element of such Conditions Precedent has reduced such amount.

In the event that the Holdco Board does not approve a payment of a Regular Dividend, the Holdco Board will promptly report the circumstances underlying the non-payment to the City and, thereafter, provide progress reports to the City on a quarterly basis until such time as the payment of Regular Dividends resumes.

SCHEDULE “B-2”

GUELPH HYDRO INC. **DIVIDEND POLICY**

The dividend policy of GHI is predicated on the mandate of the GHI Board which includes maximizing City value. Such value is generally realized by the City through dividends to Holdco or the appreciation of Holdco investments. The GHI Board shall declare and pay dividends from available Net Income and cash flow, as follows:

1. Regular Dividends at a dividend payment rate (DPR) of the greater of:

- (i) 50% of all annual Net Income of GHI; and
- (ii) \$1,500,000.00 (one million five hundred thousand dollars);

subject to the Conditions Precedent to the Payment of Dividends set out below.

2. Conditions Precedent to the Payment of Dividends

Dividends will be paid to the extent of cash on hand and that such payment would not otherwise cause:

- (a) non-compliance with applicable Laws;
- (b) a breach of contract or the immediate or anticipated failure to otherwise meet the terms of financing arrangements;
- (c) a material impairment in the operations and maintenance of the assets of the corporation;
- (d) a material impairment in financial prudence including capital investment in energy infrastructure by GHESI to sustain reliability and an appropriate level of reserves;
- (e) a material impairment in the ability to service the debt of GHI and its Subsidiaries;
- (f) a deterioration in the credit rating of GHI; and
- (g) a material impairment in the maintenance and growth of businesses, consistent with the Business Plan.

3. Payment of Dividends

Regular Dividends

Each year, at its meeting to approve the annual budget for the next financial year, the Board of Directors of GHI will forecast the annual dividend by applying the DPR to

budgeted earnings for the next financial year. Quarterly dividends will, subject to meeting the above Conditions Precedent to the Payment of Dividends, consist of 25% of the budgeted DPR for that financial year and paid April 15th (or shortly following the approval of the annual audited financial statements of the preceding year), June 1st, September 1st and December 1st. The first dividend of the financial year shall be declared and paid on April 15th and will also include any adjustment to bring the total annual dividend for the preceding year to the full DPR level.

4. Reporting to Holdco

Annually, GHI shall provide a detailed analysis on whether and how the Conditions Precedent to the Payment of Dividends have reduced the amount of annual Net Income that would otherwise have been declared and paid in dividends, specifying the extent to which each element of such Conditions Precedent (as enumerated in clauses (a) to (g) above under “Conditions Precedent to the Payment of Dividends”) has reduced such amount.

In the event that the GHI Board does not approve payment of a Regular Dividend, the Board will promptly report the circumstances underlying the non-payment to Holdco and, thereafter, provide progress reports on a quarterly basis until such time as the payment of Regular Dividends resumes.

SCHEDULE "C"

FORM OF SERVICES AGREEMENT BETWEEN HOLDCO AND THE CITY

SUPPORT SERVICES AGREEMENT

This agreement made this day of , 2009

Between:

GUELPH MUNICIPAL HOLDINGS INC.
(herein called "Holdco")

OF THE FIRST PART

-and-

THE CORPORATION OF THE CITY OF GUELPH
(Herein called the "City")

OF THE SECOND PART

WHEREAS Holdco requires certain support services in order to carry out its activities;

AND WHEREAS the City has staff and/or contractors capable of providing such support services;

NOW THEREFORE this agreement witnesses that, in consideration of the mutual covenants contained herein, the parties hereto hereby agree as follows:

Support services

1. The City shall provide support services, as set out herein, to Holdco, and Holdco shall pay the City for those support services, as set out herein.
2. The City shall provide support services to Holdco in the following areas:
3. The exact nature of the support services shall be as agreed by the relevant designated representatives of the parties.

Designated representatives

4. For purposes of administering the specified areas of support services, the following shall be the initial designated representatives of the parties:

<i>Support service area</i>	<i>Title of initial City designated representative</i>	<i>Title of initial Holdco designated representative</i>
-----------------------------	--------------------------------------------------------	----------------------------------------------------------

5. Each party may change its respective designated representatives from time to time, by notifying the other party.

Personnel

6. The support services shall be provided by staff and/or contractors retained by the City to provide services in areas relevant to the support services areas.
7. The City shall be solely responsible for determining which individuals perform the support services and for supervising those individuals. However the relevant designated representatives of Holdco may discuss with the relevant designated representatives of the City any issues related to specific individuals performing the work.

Fees and charges

8. After the end of each month, the City shall calculate the fees and charges for the support services provided by the City to Holdco for the month ended, and notify Holdco of those fees and charges.
9. The fees and charges shall be calculated based on the principle that Holdco shall reimburse the City fully for the costs incurred by the City in providing the support services.
10. The fees and charges may be based on hours worked, salaries, wages and benefits paid, liabilities assumed, supplies and utilities consumed, equipment used, travel and other expenses incurred, and any other costs whatsoever involved in providing the support services.
11. The fees and charges may be calculated in different ways for different areas of the support services and may, at the discretion of the City, be based on averages or estimates.
12. The City shall fully disclose to Holdco how all fees and charges are calculated.

- 13. The City may recalculate fees and charges from time to time, even retroactively or retrospectively, and Holdco shall be responsible for paying any amount owing after such recalculation.
- 14. Holdco shall pay any taxes imposed in respect of the support services provided or the fees and charges charged.

Dispute resolution

- 15. The parties and their designated representatives shall use their best efforts to resolve amicably and by discussion and negotiation, any disputes that may arise out of this agreement.
- 16. If a dispute between the parties, relevant to a specific support service area should arise, the designated representatives, relevant to that particular support service area shall attempt to resolve the dispute.
- 17. If a dispute cannot be resolved at the level of the relevant specific support service area, the designated representatives shall refer it to the City’s Council and Holdco’s Board.

Start and finish

- 18. This agreement shall commence on _____, 2009.
- 19. Either party hereto may terminate this agreement upon at least sixty (60) days’ written notice to the other party.

IN WITNESS WHEREOF the parties hereto have, by their proper officers duly authorized in that regard, hereto set their hands and seals.

SIGNED SEALED AND)	GUELPH MUNICIPAL HOLDINGS INC.
DELIVERED)	
Date: _____)	Per: _____
)	I have authority to bind the Corporation
)	
)	
)	THE CORPORATION OF THE CITY OF
)	GUELPH
Date: _____)	Per: _____
)	I have authority to bind the Corporation

CORPORATE POLICY AND PROCEDURE



POLICY	Asset Transfers to Corporations Policy
CATEGORY	Finance
AUTHORITY	Municipal Act, 2001 and Ontario Regulation 599/06
APPROVED BY	Council
EFFECTIVE DATE	April 25, 2011
REVISION DATE	

POLICY STATEMENT

The City may, from time to time, Transfer Assets to corporations, including in accordance with the provisions of the Regulation.

The City shall comply with the requirements of the Municipal Act regarding the granting of bonuses or assistance.

The City may attach conditions to the Transfer of an Asset to a corporation, including what the corporation may do with the Asset, under what conditions the corporation may further Transfer the Asset, and how the Asset should be disposed of upon the winding-up, bankruptcy or dissolution of the corporation.

If the City proposes to transfer an asset, other than a grant, to a corporation that is wholly owned by the City, the asset shall be transferred to the corporation at audited net book value and the City Treasurer shall provide Council with an estimate of the audited net book value, prior to the transfer taking place

If the City proposes to Transfer an Asset, other than a grant, to a corporation that is not wholly owned by the City, the City Treasurer shall obtain an independent valuation of the fair market value of such Asset, prior to the transfer taking place.

If the City proposes to Transfer any grant to a corporation, the City Treasurer shall prepare a statement of the value of such grant.

If the City proposes to Transfer an Asset to a City Corporation and the Province of Ontario has contributed funds for the purchase or improvement of the Asset, then the City shall comply with the notice and other requirements of the Regulation.

If the City proposes to Transfer a right granted to the City in an agreement with the Province of Ontario, then the City shall obtain prior consent in compliance with the requirements of the Regulation.

PURPOSE

To enable the effective transfer of assets by the City to corporations consistent with Provincial legislation.

DEFINITIONS

For purposes of this policy:

“Asset” includes land, property, equipment, goods, capital shares in corporations, rights and grants of money;

“Audited Net Book Value” means the net difference between the assets and liabilities on the audited financial statements, without adjustment for goodwill or premiums that might be paid for the asset if it were to be exposed to the full market for sale.

“City Corporation” includes a corporation established by the City pursuant to the Municipal Act;

“Municipal Act” means the Municipal Act, 2001, S.O. 2001, c. 25, as amended or replaced from time to time;

“Regulation” means Ontario Regulation 599/06, made pursuant to the Municipal Act, as amended or replaced from time to time; and

“Transfer” means assign or convey.

GUELPH MUNICIPAL HOLDING COMPANY

BUSINESS CASE STUDY

PHASE 1: STRUCTURE AND DESIGN

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12	PUBLIC ACCOUNTABILITY AND REPORTING
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INTRODUCTION

Effective corporate governance is essential to the success of all organizations, regardless of whether they exist in the public, private or not-for-profit sectors. Strong governance practices can generate several benefits including revenue maximization through strategic resource deployment, risk minimization from more integrated planning, communications enhancements, increased market responsiveness and higher levels of trust and confidence for all stakeholders including residents and employees.

In an effort to strengthen corporate governance practices regarding the management of current and future City-owned assets and further contribute to community well being, the City of Guelph is proposing the creation of a new municipal service corporation—Holdco. Development of such an entity is permitted under the 2001 Municipal Act Legislation (O.R. 599/06) which gives local governments the powers to establish a range of corporations.

It is proposed that the new holding company, structured under the Ontario Business Corporations Act (OBCA), will share core operating principles with its subsidiary companies including collaboration, transparency, efficiency and effectiveness. Leadership, open communications and accountability are foundational values upon which the operating principles are based. Consistent with the experiences and best practices of other Ontario municipalities, the new company will be governed by a board of directors including the Mayor, acting as chair, three City Councillors, the Board Chairs from subsidiary companies and one independent community member. All directors will be appointed and approved by City Council. The Chief Executive Officer (CEO) of the holding company will be the Chief Administrative Officer (CAO) of the City of Guelph with the City Solicitor acting as general counsel and secretary and the City Treasurer acting as the treasurer of Holdco.

The holding company model is a strategic approach designed to achieve higher levels of excellence in asset management practices. It will primarily work towards improved communication and information flow between the shareholder and the operating companies, capitalize on potential synergies, and help to maximize value provided to the community.

Background

In February 2009, Guelph City Council approved a mandate and charter for the Guelph Hydro Steering Committee detailing its responsibilities and duties which included the determination of an appropriate structure between the City, as sole shareholder, and its operating companies. It was anticipated that the appropriate model would continue driving the City towards higher levels of excellence in asset management and service quality.

The Committee agreed that the creation of a holding company, as recommended by staff, would be of significant benefit to all parties moving forward and examined the proposal and shareholder agreement implications thoroughly. In addition, related legislation was also reviewed including the *Ontario Business Corporations Act* and the *Municipal Act, 2001* (Sec. 203 O.R. 599/06) which includes a new regulation and related rules enabling municipalities to establish corporations. Holdco will comply with this and applicable laws,

regulations and performance standards passed or imposed by law or regulation by the Province of Ontario.

Purpose

This document has been developed to provide additional and comprehensive information on the proposed new governance model. Specifically this document:

- a) sets out the objectives of the a new municipal holding company, its mandate, guiding principles, governance options, structure, relationship to the City, reporting activities and financial considerations; and
- b) constitutes the provincially required business case for the proposed municipal holding company.

The holding company model represents a vital step forward in meeting the strategic objectives of the City's Strategic Plan, and long term sustainability and economic prosperity goals.

OBJECTIVES

The City of Guelph recognizes that it is prudent to investigate alternate governance models for the management of current and future City-owned assets to ensure the greatest value to the City as the primary shareholder. A number of benefits can be realized from more strategic management and co-ordination through the following objectives:

- a) Holdco, reporting to the Shareholder, will work to build value for the community through synergistic collaboration that strengthens the individual and collective position of City-owned assets and investments.
- b) Operating in a business environment, Holdco will play an integral role in achieving enhanced operational excellence through a continuum of improved communications between the operating companies and the Shareholder.
- c) By capitalizing on synergies and unlocking greater potential, Holdco, through its management and oversight role, will help to ensure the continued generation of reliable returns and benefits from its assets.

MANDATE

Holdco will strive to achieve the stated objectives. Specifically:

-
- a) Holdco will work with operating companies, investors and private partners as appropriate to maximize the value of current and future City-owned assets for the benefit of the community as a whole.
 - b) In its oversight role, Holdco will act as a catalyst for operational excellence.
 - c) Holdco will regularly and as required, advise, inform and make recommendations to the City as Shareholder on matters and opportunities pertaining to the operating companies reporting to Holdco.

GUIDING PRINCIPLES

The Directors and Officers of all OBCA corporations have a duty to act honestly, in good faith and in the best interests of the corporation. Holdco will be wholly owned by the City and will be subject to established objectives aligned with the City's interests. The following principles will govern the operations, services and activities of Holdco in that context:

- a) **Collaboration** – Holdco Directors will work to foster and reinforce a collaborative relationship and shared values among all parties and recognize that the interface between the worlds governed by the *Municipal Act* (public sector) and the OBCA (private sector) requires mutual respect, understanding, flexibility and regular communication between Holdco and its subsidiaries concerning business activities.
- b) **Transparency** – The holding company board of directors will adhere to clearly articulated reporting and approval requirements as detailed in the Council approved shareholder agreements to ensure transparency and accountability.
- c) **Independent and skills-based boards** – The boards of the subsidiary companies reporting to the holding company will be recognized and regarded as independent and skills-based. They will be responsible for ensuring effective management of their own interests and contributing to the efficacy of the operations as well as other subsidiary companies by sharing experiences and best practices.
- d) **Integration and co-ordination** – The unique overlapping community interests and professional capabilities of the “family of companies”—including the City—are important components of an integrated and co-ordinated approach to excellence in asset management.
- e) **Comprehensive measurement of returns** – Shareholder return and benefits will be measured by several metrics including but not limited to dividends to ensure a broader understanding of operational success. In general, a long term, strategic view will be applied to the measure of shareholder return.

The guiding principles flow from the foundational values of leadership, accountability, sustainability and regular, open communication.

Confidentiality

Except as required by applicable law or any government authority and except for the annual report to City Council, the City will treat as confidential each Holdco business plan and all other information provided to it in confidence, subject to the Ontario Business Corporations Act, the *Municipal Act* and applicable laws. Information that is in the custody or under the control of the City or Holdco is subject to the access provisions of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA).

ALTERNATIVES

In exploring the concept of improved governance alternatives for current City-owned assets, a number of both form and function options were considered by staff as detailed in the table below. The options included developing a corporate governance division, continuing with established practices, selling of the assets, and creating an independent development corporation, consistent with the provisions of the *Municipal Act* (O.R. 500/06).

Identified Options	
1.	Corporate governance division within the City – A new division with a specific mandate and staff expertise could be established. This would result in a more centralized authority but would also require additional resources for staffing and operational functions.
2.	Status quo – Continuing with current operations presents a risk in terms of a missed opportunity for strengthening the City's corporate governance practices, collaboration and strategic asset management.
3.	Sale/Merger of corporation assets – Annual revenues generated from operations of Guelph Hydro represent a reliable source of regular dividends that can be leveraged against the annual tax levy.
4.	Independent development corporations – The holding company model allows for the development of skills-based boards for the regular management of individual interests, yet brings all parties together to capitalize on potential synergies. Without this unifying entity, the benefits of collaboration are lost. The holding company model allows for additional corporations to be included over time, creating potential opportunities for increased revenue streams.

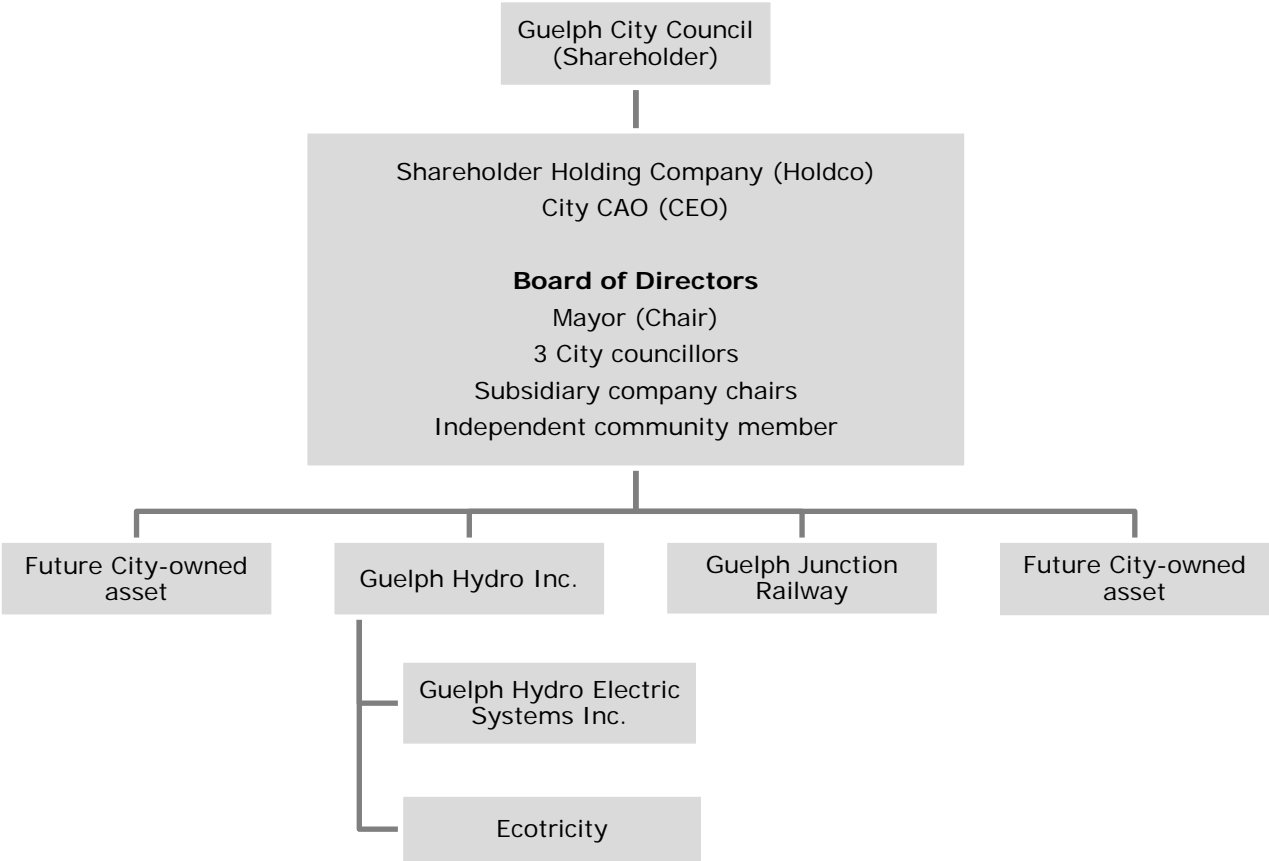
Overall assessment against evaluation criteria (including public accountability, transparency, flexibility of structure, funding constraints and requirements, financing opportunities, statutory requirements, potential conflicts of interest, risk and liability) led to the following conclusions:

- 1) That the benefits associated with a holding company model are significant and that this direction represents a necessary step in advancing prosperity and management excellence goals that will benefit the city as a whole.
- 2) That the current approach is not serving the current and future needs of existing subsidiaries or the residents of Guelph to the level that is possible.
- 3) That to achieve greater success going forward and realize the full potential of City-owned assets, the City believes that a new structure is required. Leadership, partnership and collaboration are the keys to success that will help continue to produce better and more reliable results.

PROPOSED STRUCTURE

The following diagram depicts the recommended structure of the holding company. It is anticipated that the centralized structure will allow for strengthened co-ordination of issues management, well informed decision making and the realization of common goals consistent with the mandate and objectives for Holdco.

Figure 1: Proposed holding company structure



GOVERNANCE

Applicable legislation

The holding company will be governed in compliance with the following legislation, rules and regulations:

Director duties – As required by the *Ontario Business Corporations Act* (OBCA), the holding company board will supervise the management of the business and affairs of Holdco, and, in so doing, will act honestly and in good faith with a view to the best interests of the holding company and its subsidiaries and will exercise the same degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Standards of governance – In addition, the City expects the boards of Guelph Junction Railway (GJR), Guelph Hydro Inc. (GHI) and any GHI subsidiary to observe substantially the same standards of corporate governance as may be established by the Canadian Securities Administrators or any other applicable regulatory or government authority in Canada for publicly traded corporations with such modifications as may be necessary to reflect the fact that GJR, GHI and any GHI subsidiary are not publicly traded corporations.

Board of Directors and Officers

Qualifications – In addition to sound judgment and personal integrity, the qualifications of candidates for the board of the holding company may include:

- awareness of public policy issues related to the holding company;
- relevant business expertise and industry knowledge;
- experience on boards of significant commercial corporations;
- financial, legal, accounting and/or marketing experience; and
- knowledge and experience with risk management strategy.

Residency – Preference may be given to qualified board candidates who are residents of Guelph, however candidates that are not residents of Guelph will not be excluded from serving as board members.

Number of directors – The board of the holding company will consist of a minimum of seven (7) directors to be appointed by and approved by City Council.

Composition of the board – Unless otherwise determined by the Shareholder in its discretion, the holding company board will consist of the mayor, three municipal members (City Councillors), the Chair of the Board of GHI, the Chair(s) of the Board of any other direct subsidiary of Holdco, and an independent member who will not be a municipal member. The chief executive officer, president or general manager, as the case may be,

of a subsidiary or of Holdco will not be eligible to serve as a Director on, nor Chair of, the Holdco Board nor Chair of the Board of its subsidiary companies.

Chair of the Board – The Chair of the Holding Company Board shall be the Mayor.

Officers – The CEO of the Holding Company shall be the Chief Administrative Officer of the City or such other person as the City may determine from time to time. The Treasurer of Holdco will be the Treasurer of the City or such other person as the City may determine from time to time. The general counsel and Secretary of Holdco will be the Solicitor of the City or such other person as the City may determine from time to time.

Term of municipal members – The term for each municipal member of the Holdco Board shall be concurrent with the municipal term of each council, and each municipal member of the holding company board shall be appointed for such term, provided that:

- following the expiry of such term of council, each director will continue to serve on the board until replaced by the City at the effective date of the appointment of a replacement director;
- the City may, in its discretion, terminate the term of a member of the Holdco Board prior to the end of the municipal term of council and appoint a replacement director; and
- where a Director of the holding company board resigns or his or her term is terminated for any reason prior to the end of the municipal term of council then in effect, the term of the replacement director will be concurrent with the balance of the municipal term of council then in effect.

Successive terms – Any member of the holding company board may serve for successive terms as determined by the City in its discretion.

Holdco board committees – The holding company board may establish committees of the board in the holding company board's discretion. These committees may include but not limited to the following:

- Audit and finance committee to review financial results; and
- Governance committee to address governance matters.

Compensation

- **Directors** – No member of the holding company board will receive any remuneration or other compensation of any kind, other than as expressly approved by the Shareholder, for serving as a director on the holding company board or on any committee thereof, or carrying out any activities or providing services in relation thereto. Each member of the holding company board will be entitled to incur reasonable expenses for travel and/or training in respect of the director's role

on the holding company board, in accordance with policies established by the holding company board and approved by the Shareholder.

- **Officers** – Any officer of the holding company who is also a municipal member or an employee of, or consultant to, the City or any agency, board, commission or corporation of the City, will not receive any compensation for serving in such capacity in addition to such officer's compensation, if any, as an employee of or consultant to the City.
- **Annual resolutions** - The Shareholder will, at an in-camera meeting of City Council (as Shareholder), consider candidates for the Holdco board as proposed by the Holdco nominating committee and the appointment of the auditors of Holdco and receive the audited financial statements of Holdco for the last completed financial year;
- The Shareholder, by resolution in writing, will appoint the necessary members of the holding company board and appoint the auditors for the holding company and complete such other business as would normally be completed at an annual meeting of shareholders under the OBCA; and
- Holdco, by resolution in writing, will appoint the necessary members of the board and appoint the auditors for GHI and its subsidiaries and complete such other business as would normally be completed at an annual meeting of shareholders under the OBCA, subject to approval of Council.

Responsibilities – The Holdco board will establish policies addressing the following matters:

- **Dividends** – To ensure the payment of an annual dividend from Holdco consistent with the dividend policy included in the approved shareholder declarations.
- **Risk management** – To ensure that each subsidiary has adopted appropriate risk management strategies and internal controls consistent with industry norms in order to manage all risks related to the businesses conducted by Holdco subsidiaries.

Additional responsibilities include:

- **Strategic objectives** – To provide input to subsidiaries as to the City's long term strategic objectives which are consistent with the maintenance of a viable, competitive business and preservation of the value of the businesses of its subsidiaries.
- **Corporate governance committee** – Establish a corporate governance committee of the board and such other committees as the board determines are appropriate, and delegate to the committees such authority as the board determines is appropriate, provided that the delegation of authority is permitted under the OBCA.

-
- **Annual approval and insurance coverage** – Approve the business plan for Holdco and the annual budget to ensure that Holdco acts in accordance with these plans; maintain adequate insurance coverage and other requirements to ensure Risk Management.
 - **Conflict of interest** – Each Director and Officer of Holdco will inform the board immediately when he or she has an interest in a matter to be considered by the board or a committee of the board and take appropriate action in accordance with the provisions of the *Municipal Conflict of Interest Act*, and any other applicable laws or City or board policies.

RELATIONSHIP TO THE CITY

As the sole shareholder, the City of Guelph expects that Holdco will take responsibility for oversight of both Guelph Hydro and Guelph Junction Railway in addition to any additional subsidiary companies that may be added from time to time, subject to the specific terms and conditions as laid out in the shareholder agreements. The holding company does not have the capacity to act as an agent of the City unless the City gives express written authorization to the holding company to do so. The holding company will not conduct itself so as to create or purport to create an agency relationship with the City except in accordance with such written authorization.

Shareholder authority – Similar to other municipalities that have restructured governance of their utility and/or other functions such as transit or economic development, the City of Guelph CAO will act as the CEO of the Holding Company and be directly responsible, along with board members, to the City as primary Shareholder.

Shareholder approval – Approvals or decisions of the City required pursuant to the shareholder declarations or the OBCA will require a resolution or by-law of Council passed at a meeting of Council and shall be communicated in writing to the Holdco Board and signed by the shareholder representative and/or the Mayor.

Holdco approvals – Approvals or decisions of Holdco required pursuant to the shareholder declarations will require a resolution of the Holdco Board and, where expressly required pursuant to the shareholder declarations, the approval of the City and communicated in writing to the boards of Guelph Hydro and Guelph Junction Railway as well as any other subsidiaries.

Matters requiring shareholder approval under the OBCA – Without approval of its shareholder, the City, the holding company itself will not take any of the following actions:

- a) amend or repeal its articles of incorporation;
- b) amalgamate with another corporation, apply to continue as a body corporate under the laws of another jurisdiction, merge, consolidate or reorganize, or approve or effect any plan of arrangement, in each case whether statutory or otherwise;

-
- c) take or institute proceedings for any winding up, arrangement, reorganization or dissolution;
 - d) create new classes of shares or reorganize, consolidate, subdivide or otherwise change its outstanding securities;
 - e) sell or otherwise dispose of, by conveyance, transfer, lease, sale and leaseback, or other transaction, all or substantially all of its assets or undertaking;
 - f) change the treasurer's role as auditor;
 - g) make any changes to the number of directors comprising the board; or
 - h) enter into any other transaction or take any other action that requires shareholder approval pursuant to the OBCA.

The board may make, amend, or repeal any of its by-laws and the changes take effect at such time as the board approves. Such changes will be submitted to the City as Shareholder, immediately upon approval by the board for Council approval. If Council makes any amendments, the amendments will take effect when approved by Council and are not retroactive.

Other matters requiring Shareholder approval

Without the prior written approval of the City, Holdco will not:

- a) seek financial support without approval or any changes to legislation or regulation from any governmental authority other than the City;
- b) make representations or promises of any financial incentives or similar inducements that are binding on the City;
- c) issue publicly traded debt, or any debt instruments with real or implied recourse to, or guarantees from the City or any borrowing that in the opinion of the City Treasurer have a negative impact on the City's credit rating; or
- d) make or hold investments outside of Canada.

PUBLIC ACCOUNTABILITY AND REPORTING

Regular reporting – Holdco will, from time to time, but at least annually, report to City Council on major business developments or materially significant results in respect of Holdco or any subsidiary. Chairs of subsidiaries will attend such meetings of Council where reports are made in respect of any subsidiaries, and such reports may be received and

considered by the City at an in-camera meeting of Council subject to the requirements of the *Municipal Act* and other applicable laws.

Business plan – Holdco will provide the City with the business plan for Holdco and its subsidiaries on an annual basis prior to the end of each financial year. The Holdco business plan will include all of the following:

- the strategic objectives, priorities and business objectives that Holdco and its subsidiaries will undertake;
- the metrics for monitoring accomplishments;
- an operating budget for Holdco for the next financial year and an operating and capital expenditure budget on a consolidated basis for the subsidiaries next financial year and an operating and capital expenditure projection on a consolidated basis for the subsidiaries for each of the two subsequent financial years, including the resources necessary to implement the Holdco business plan;
- the projected annual revenues and net income for Holdco and its subsidiaries for the following financial year; and
- any material variances from the Holdco business plan then in effect.

Annual report to Council – Within six months after the end of each financial year of the holding company, Holdco will report to a public meeting of City Council and the chair will attend such meeting and provide the following information with respect to Holdco and its subsidiaries:

- financial statements for subsidiaries respecting privacy provisions under the OBCA Act; and
- such additional information as the City may specify from time to time including accomplishments during the fiscal year along with explanations, notes and information as required to explain and account for any variances.

Chairs of the subsidiary companies will also be present at such public meeting.

Audit and evaluation report – The City Treasurer is the auditor of the holding company and an annual report will be submitted at the end of the fiscal year (March 31).

Confirmation of compliance – The Holdco board will, in a confidential report to Council, annually confirm by the end of each financial year that it has complied with the requirements of the shareholder declaration, that it is in compliance with applicable laws and that it has received a similar confirmation of compliance from the board of subsidiaries.

FINANCIAL CONSIDERATIONS

The development of a holding company to help achieve excellence in asset management works towards City goals related to long term financial sustainability and economic prosperity. Not only is the model one that will strengthen governance but also the collective effectiveness and potential of all subsidiaries, thereby creating long term economic benefits for Guelph residents.

Holdco will be self-financing with operating costs coming from the regular dividend payment stream of subsidiary companies.

Although various City staff will provide significant resources to Holdco, it is expected that specific external expertise may be required on occasion to assist with special projects. These additional resources could be cost-shared, if necessary, between Holdco and the City with approval of Council. An operating budget detailing anticipated cost and revenue sources will be prepared by the board upon inception of the holding company.

Winding up provisions of the corporation

Upon liquidation, winding-up or dissolution of the proposed holding company, whether voluntary or involuntary, the property of Holdco will revert back to the City as primary shareholder.

Operating budget

The creation and management of a five year operating budget will be the responsibility of the new board of directors. It is anticipated that labour and program expenditures will be minimal given the use of existing staff as officers of the company. Any expenditures related to the new structure will flow through dividend payments derived from the subsidiary companies.

CONCLUSION

A new governance model for the management of current and future City-owned assets is recommended to realize the full potential of City assets and long term economic benefits for the city. The new model represents a more strategic approach to asset management and would be self financing from regular dividend payments.

The proposed model addresses the need for increased accountability, responsiveness, greater strategic alignment and improved communications. While keeping subsidiaries directly linked through shared policy and strategic direction, the model still embraces the concept of skills-based boards and allows for the right degree of independence so that operating companies continue to be flexible and self-reliant.

Consistent with other municipalities, specific requirements for key competencies among the holding company directors will ensure a variety of perspectives and skill sets to guide decision making and provide sound leadership. The new governance structure will enable

the fulfilment of stated objectives and the achievement of outcomes focused on the long term economic prosperity of the community.