

**SHAREHOLDER DECLARATION OF
GUELPH MUNICIPAL HOLDINGS INC.**

REGARDING GUELPH HYDRO ELECTRIC SYSTEMS INC.

WHEREAS:

1. Guelph Municipal Holdings Inc. was incorporated on August 13, 2011 under the Business Corporations Act (Ontario) under s. 203 of the Municipal Act and related regulations;
2. The original Guelph Municipal Holdings Inc. amalgamated with its Subsidiary, Guelph Hydro Inc., on September 8, 2014 to create the existing Guelph Municipal Holdings Inc. (GMHI);
3. The City of Guelph (the "City") is the sole shareholder of all the issued shares of GMHI;
4. GMHI is the sole shareholder of Guelph Hydro Electric Systems Inc. (GHESI);
5. GMHI wishes to set out its expectations, establish certain operating principles, set out requirements to be met by GHESI and inform the residents of Guelph of GMHI's fundamental principles and accountability mechanisms regarding GHESI.

NOW THEREFORE THIS DECLARATION WITNESSES:

Article 1 Interpretation

1.01 Definitions

In this Shareholder Declaration,

- (a) "Annual Budget" means a quantitative expression of an operating and capital plan for a fiscal year including projected revenues based on anticipated sales volumes and projected operating and capital expenditures, resource quantities, assets, liabilities and cash flows and intended as a tool to control resources and ensure management accountability.
- (b) "Applicable Law" means any statute, regulation, code, regulatory policy or order of any Governmental Authority, including all applicable by-laws, and relevant common law.

- (c) “Business Plan” means a high level quantitative expression of projected revenues and operating and capital expenditures expected to be earned or incurred over a number of future accounting periods estimated on a reasonable efforts basis and intended only as an approximate guide to future financial profitability.
- (d) “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;
- (e) “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, reenactments 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;
- (f) “GMHI Subsidiary” means any subsidiary corporation of GMHI, a majority of whose shares are directly owned by GMHI;
- (g) “Governmental Authority” means a federal, provincial or municipal government, or any entity, person, court or other body or organization exercising one or more executive, legislative, judicial or regulatory functions;
- (h) “Independent Director” means an individual who is not a member of the GMHI Board or a GMHI Subsidiary Board or an employee of GMHI or its Subsidiary;
- (i) “MFIPPA” means the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario);
- (j) “Municipal Act” means the *Municipal Act 2001* (Ontario);
- (k) “OBCA” means the *Business Corporations Act* (Ontario);
- (l) “Strategic Plan” means a plan setting forth for a number of future periods an organization’s vision, mission, values and strategy of resource utilization to successfully execute and achieve its vision; and,
- (m) “Subsidiary” means a corporation, a majority of whose shares are owned directly by another corporation.

1.02 Authority of Applicable Law

In the event of any conflict between any approval, direction or requirement of GMHI under this Shareholder Declaration and any Applicable Law, the Applicable Law shall govern.

Article 2 OBJECTIVES AND PRINCIPLES

2.01 Purpose of this Shareholder Declaration

This Shareholder Declaration:

- (a) establishes a framework of corporate governance for GHESI, including the City and GMHI's expectations of and objectives for GHESI;
- (b) establishes GHESI's mandate, scope of responsibility and reporting requirements;
- (c) sets out the relationship between GHESI and GMHI; and,
- (d) constitutes, where applicable, a declaration by GMHI pursuant to s.108(3) of the OBCA.

2.02 GMHI Objectives

GMHI, as a public sector entity responsible to the City of Guelph and its residents, has the following objectives in its oversight of City-owned assets and investments:

- (a) GMHI will build value for the community through working with its Subsidiary corporations to create collaborative results that strengthen the individual and collective position of City-owned assets and investments within the GMHI group of corporations.
- (b) Operating in a business environment, GMHI will play an integral role in achieving enhanced operational excellence through a continuum of improved communications between the operating corporations and the City of Guelph as Shareholder of GMHI.
- (c) By capitalizing on synergies and unlocking greater potential, GMHI, through its management and oversight role, will help to ensure the continued generation of reliable returns and benefits from its assets.

2.03 Overarching Principles

The following principles shall apply to the relationship between the GMHI and GHESI:

- (a) A Shareholder Declaration for public sector 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.

- (b) The activities of the City and GMHI which may be applicable to the Community Energy Initiative shall be a fundamental aspect of the relationship between GMHI and GHESI.
- (c) The provisions of this Shareholder Declaration should be interpreted so as to maximize transparency and facilitate communication between GHESI and GMHI. Employees and management of GMHI and GHESI are expected to communicate seamlessly and transparently with each other on a regular basis without the need for GHESI Board approval.
- (d) The principles of director independence and skills based boards will be considered in the interpretation of this Shareholder Declaration.
- (e) The unique overlapping community interests and professional capabilities of the “group of companies” – including the City – are important components of an integrated and coordinated approach to excellence in asset management.
- (f) Shareholder return and benefits will be measured by several metrics to be developed by GHESI and approved by GMHI, including but not limited to, the declaration and payment of dividends. In general, a long term, strategic view will be applied to the measure of shareholder return which will take into account potential benefits to the Guelph community at large.
- (g) 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 the decision making of the GHESI Board and the GMHI Board in relation to GHESI.
- (h) In making decisions, the GHESI Board and management of GHESI shall act prudently in a manner consistent with GMHI’s requirements from time to time and having regard to the strategic plans and strategic objectives of the City and GMHI.

Article 3 CORPORATE GOVERNANCE

3.01 GHESI Director's Duties

The GHESI Board shall oversee the management of the business and affairs by the officers and senior managers of GHESI. The directors and officers of GHESI have a duty to act honestly , in good faith and in the best interests of the corporation and shall exercise the same degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

3.02 Standards of Governance

In conducting its oversight of the Corporation, the Board may consult but not be bound by the standards for corporate governance established by the Canadian Securities Administrators for publically traded corporations, modified as appropriate, for non-issuing private corporations.

Article 4 BOARD OF DIRECTORS AND OFFICERS OF GHESI

4.01 Qualifications

In addition to the requirements established under the OBCA, it is the intention of GMHI that the GHESI Board will be primarily a skills based board with the collective qualifications to discharge their duty of care to GHESI, GMHI and the City.

4.02 Number of Directors

The GHESI Board shall consist of a minimum of 5 directors.

4.03 Composition of the GHESI Board

GMHI, with the approval of the City, shall determine the composition of the GHESI Board.

4.04 Chair of GHESI Board

The Chair of the GHESI Board shall be an independent member selected by members of the GHESI Board and approved by GMHI and appointed for a term determined by the GHESI Board.

4.05 Officers of GHESI

The GHESI Board may appoint officers of the corporation, except that GMHI shall appoint the CEO of GHESI and approve the employment contract of the CEO. The appointment of and the employment contract, if any, of any other executive or senior management position shall be approved by GMHI. The GHESI Board shall in all other respects oversee the management staff of GHESI.

4.06 Board Meetings

The CEO of GMHI shall be entitled to attend and participate in all meetings of the Board, but shall not be entitled to vote and may be excluded from an *in camera* meeting only for reasons relating to conflict of interest or ethics.

4.07 Term of Directors

- (a) The term for Board members shall be between one and three years unless otherwise determined by GMHI. The GMHI Board will establish a policy for term limits of directors which is informed by best practices in continuity and succession management for Boards of public sector corporations.
- (b) The City, through GMHI, may at any time by resolution of the City and the GMHI Board in its discretion terminate the appointment of a GHESI Board member prior to the end of the member's term and appoint a replacement member.
- (c) Any member of the GHESI Board may serve for successive terms as determined by the City through GMHI, having regard to any GMHI Board policy as set out in (a).

4.08 Board Committees

The GHESI Board may establish committees, either *ad hoc* or standing, or task forces or any other entity for Board support, subject to the approval of GMHI.

4.09 Director Compensation

The GMHI Board shall establish a policy for Director compensation for GMHI and GMHI Subsidiaries, which shall include compensation for reasonable expenses related to the director's role on the GHESI Board.

4.10 Board Budget

The GHESI Board shall establish a budget for the board in the context of the creation of the overall GHESI budget. The Board shall provide a separate variance report on the Board budget to the GMHI Board within 30 days of the end of each quarter. The report shall include an explanation for any negative or positive variances from the budget.

Article 5 DIVIDEND POLICIES, RISK MANAGEMENT, STRATEGIC OBJECTIVES and Requests for Information FOR GHESI

5.01 Dividends

The GMHI Board shall establish policies regarding the payment of dividends by GHESI to GMHI, from time to time, which policy shall be approved by the City. Pending the development of the policy, the GHESI Board shall continue to declare dividends quarterly in the amount of \$750,000 per quarter, subject to section 38(3) of the OBCA.

5.02 Risk Management

The GHESI Board shall establish risk management strategies and internal controls to manage all risk related to its business which strategies and controls shall be approved by GMHI. The GHESI Board shall oversee and manage the implementation of such strategies and controls as they relate to GHESI.

5.03 Strategic Objectives

- (a) The City and the GMHI Board shall establish strategic objectives for GMHI and its Subsidiaries that incorporate the City's long and short term strategic objectives for GMHI and its Subsidiaries and which are consistent with the maintenance of viable, competitive businesses and preservation of the value of the businesses of GMHI and its Subsidiaries.
- (b) The GHESI Board shall establish strategic objectives for GHESI which align with the strategic objectives of GMHI.

5.04 Requests for Information

GMHI may request information, documents or access to electronic information and documents that are within the control of GHESI. GHESI shall fulfill the request within 30 days, unless such request is established to the satisfaction of GMHI as being contrary to the

provisions of the Affiliates Relationship Code or cannot be met on the basis of employee confidentiality and privacy or an identified conflict of interest.

Article 6 SHAREHOLDER MEETINGS

6.01 Open Meetings

Shareholder meetings shall be open to the public as much as possible, however due to the nature of the discussions, they may be closed to the public.

6.02 Annual General Meeting

GHESI shall hold an annual shareholder meeting prior to June 30 of each year. At the annual meeting, GHESI shall place before the GMHI Board, the following:

- (a) Audited financial statements and notes thereto with the auditor's report for GHESI for the previous fiscal year;
- (b) Recommendations for any required appointment of members to the GHESI Board;
- (c) Recommendations for the appointment of auditors for GHESI; and,
- (d) Any other information the GHESI Board determines should be presented.

Article 7 REPORTING

7.01 Quarterly Reporting

GHESI shall report, at a minimum, quarterly to the GMHI Board regarding the following:

- (a) Compliance;
- (b) Achievement of key performance indicators;
- (c) Strategy; and,
- (d) Operational performance.

7.02 Additional Reporting

GHESI shall provide information and reports to the GMHI Board and the City as requested.

Article 8 BUDGET

8.01 Approval of Budget

GHESI shall present its budget for each fiscal year to the GMHI Board for approval prior to the end of the first quarter of that fiscal year.

Article 9 CONFIDENTIALITY

9.01 Confidentiality of GHESI Information

Except as required by applicable law or any Governmental Authority, GMHI shall treat as confidential each GHESI Business Plan and all other information provided to it in confidence pursuant to this Article 9, 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 GMHI is subject to the access provisions of MFIPPA.

9.02 Request for Information

GMHI shall inform GHESI of any request made for access to information supplied to the City or GMHI, permit GHESI 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 GHESI with notice of its decision concerning any such request for access to information.

Article 10 DECISIONS RESERVED TO THE CITY AND GMHI

10.01 Matters Requiring GMHI and City Approval

GHESI shall not take any of the following actions without the approval of GMHI and the City:

- (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 jurisdictions, 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) Charge, encumber, mortgage or sell or otherwise dispose of, by conveyance, transfer, lease, security interest, charge, mortgage, sale and leaseback, or other transaction, any of its assets or undertakings, except those in the ordinary course of business;
- (f) Change the auditor;
- (g) Make any changes to the number of directors comprising the Board;

- (h) Enter into any other transaction or take any other action that requires shareholder approval pursuant to the OBCA;
- (i) Approve the corporation to make representations or promises of any financial incentives or similar inducements that are binding on the City; or,
- (j) Approve the issue by the corporation of any 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 CFO, will have a negative impact on the City's credit rating or if the value is greater than 10% of the Total Asset book value of the corporation.

10.02 Merger/Acquisition, Sale or Partnership Approval

GHESI shall not initiate or approve a transaction for the disposition or acquisition, whether by purchase, merger, amalgamation or otherwise of any assets (outside the normal course of business) or shares. All such matters shall be referred to the GMHI Transactional Committee, who shall be responsible for advising the GMHI Board and the City regarding all negotiations and other issues regarding the proposed transaction. Prior to approval of any shared services arrangements, GHESI shall consult with and obtain the approval of the Transactional Committee.

10.03 GHESI By-laws

The GHESI Board may make, amend or repeal any of its by-laws and the changes take effect at such time as the Board approves. By-laws and changes to by-laws shall be submitted to GMHI, immediately upon approval by the Board for approval. If GMHI makes any amendments, the amendments take effect when approved by GMHI and may be retroactive at the discretion of GMHI.

Article 11 REVISIONS TO THE SHAREHOLDER DECLARATION

11.01 GMHI, in its sole discretion, may revise this Shareholder Declaration from time to time and may consult with GHESI regarding proposed revisions as appropriate in the circumstances. GMHI will provide a written amendment or the amended Shareholder Declaration, as the case may be, to the GHESI Board. The amendment will come into effect on a date specified by GMHI.

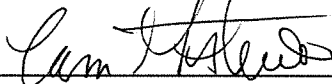
Article 12 TRANSITION PROVISIONS

12.01 Effective Date

This Shareholder Declaration shall come into effect on the date it is approved by the City and the shareholder declaration made September 11, 2014, as amended, shall be terminated as of that date.


Approved by the Board of Directors of Guelph Municipal Holdings Inc. on the 12th day of May, 2016.

GUELPH MUNICIPAL HOLDINGS INC.

Per: 
Cam Guthrie, Chair

Approved by the Corporation of the City of Guelph on the 24th day of May, 2016.

THE CORPORATION OF THE CITY OF GUELPH

Per: 
Ann Pappert, CAO