

Staff Report



To City Council as Shareholder of Guelph Municipal Holdings Inc.

Service Area Guelph Municipal Holdings Inc.

Date Monday, October 24, 2016

Subject Rationalization of GMHI Corporate Structure

Report Number GMHI-2016-10

Recommendation

1. That the CAO be directed to begin implementing:
 - (a) The transfer of functional control of Guelph Hydro Electric Systems Inc. ("Guelph Hydro"), currently owned by Guelph Municipal Holdings Inc. ("GMHI"), to the City;
 - (b) Deferring active business operations of GMHI and the development corporation until it is determined by Council that there are adequate City resources to support this activity or a clear objective with corresponding and compelling business case; and,
 - (c) Transfer oversight and management of Envida Community Energy Inc. ("Envida") and the Strategies and Options Committee to City management, with support from Guelph Hydro, who will report to Council.

2. That, to initiate the process of implementation of the actions in recommendation 1:
 - (a) The CAO, Derrick Thomson, is appointed as the director of GMHI for a term commencing on the date of appointment and ending at the June 2017 AGM;
 - (b) The CAO continue as the CEO of GMHI and the Guelph Hydro CEO continue as the CFO of GMHI and the sole director and CEO of Envida;
 - (c) Mr. Thomson shall be appointed by the GMHI Board as a member of the Guelph Hydro Board of Directors for a term commencing on the date of appointment and ending at the June 2017 AGM;
 - (d) The existing City-GMHI and GMHI-Guelph Hydro Shareholder Declarations are rescinded; and,
 - (e) The CAO is directed to execute the new City-GMHI and City-GMHI-Guelph Hydro Shareholder Declarations attached as Attachment 1

and Attachment 2, respectively, to Report GMHI-2016-10 Rationalization of GMHI Structure dated October 24, 2016.

3. That the CAO shall report back to Council at a January, 2017 Council meeting with the required actions to complete the implementation of the actions in Recommendation 1.

Executive Summary

Purpose of Report

The report provides the rationale for recommending changes to the governance of GMHI and Guelph Hydro.

Key Findings

The “transition” structure of the GMHI Board approved by Council in December 2015 has enabled the City to evaluate its current ability to realize the objectives for GMHI established by Council in 2011 and subsequently in 2014.

The current environment in which Guelph Hydro is operating requires a closer working relationship between Council and the Guelph Hydro Board to ensure all stakeholders are involved in discussions regarding the future of Guelph Hydro.

An analysis of the current governance structure, based on the realities of the City’s capacity at this time, has informed a recommendation to create a direct reporting relationship between Guelph Hydro and the City and the deferral of the achievement of the objectives for GMHI and Guelph’s municipal development corporation.

Further analysis of the procedural steps required to fully implement the recommended actions and review options for the Envida assets needs to be undertaken to complete the rationalization of these entities.

Financial Implications

The full financial implications of transferring the Guelph Hydro shares will be provided to Council in a report in January, 2017. There are no financial implications of Recommendations 2 and 3 other than potential costs for external tax and regulatory advice, which are not anticipated to be significant and can be accommodated within existing budgets.

Background

Guelph Municipal Holdings Inc. (“GMHI”) was incorporated in 2011 with the goal of providing the City with a vehicle to manage select City assets.

In 2014, Council amalgamated GMHI with Guelph Hydro Inc. ("GHI"). In the fall of 2015, Council directed the City CAO to explore different governance options for GMHI. The CAO presented a transition plan to Council designed to last up to 18 months that would provide direct Council oversight of GMHI decisions that affect the City resulting in better alignment of City assets, resources and strategic planning.

Council directed the CAO to implement the proposed transition plan for GMHI which involved:

- Changing the composition of the GMHI Board to the Mayor and two Councillors;
- The appointment of the City CAO as the CEO of GMHI;
- The appointment of two Councillors to the Guelph Hydro Board; and
- Amendments to the Shareholder Declarations to ensure greater control by Council over Envida and Guelph Hydro.

Council further directed the CAO to review and evaluate the effectiveness of the new GMHI structure and develop a recommendation for the long-term structure for Council's review.

Report

The transition plan was implemented between January and June of 2016. Over this time, it became apparent that:

1. The transition structure was not able to meet the objectives of Council for the restructuring;
2. The City resources that would be required by GMHI to achieve the City objectives for GMHI and to make the development corporation operational were not available in the short to medium term; and,
3. Ontario's changing energy landscape requires a closer working relationship between Council and the Guelph Hydro Board to ensure community interests are considered and all stakeholders are involved in discussions regarding the future of Guelph Hydro.

Recommendations

To remedy these concerns, it is recommended that the following actions be taken by Council:

1. Oversight of Guelph Hydro be functionally transferred to Council. This would:
 - Remove GMHI as an unnecessary filter for information between Guelph Hydro and Council;
 - Ensure the community's interests are represented;
 - Enhance the opportunities for the Guelph Hydro Board and Council to understand different stakeholders' perspectives about the future of Guelph Hydro; and,
 - Reinforce Council's direct responsibility for Guelph Hydro as its sole shareholder, through GMHI.

The goal is to transfer the shares of Guelph Hydro back to the City. The City and Guelph Hydro have, with the assistance of external tax advice, determined there could be adverse tax consequences to GMHI if the transfer of the shares of Guelph Hydro to the City is not executed correctly.

2. Active business operations of GMHI and the development corporation be deferred until it is determined there are adequate City resources to support this activity or there is a clear objective with a compelling and corresponding business case. This would:
 - Minimize resources devoted to the management and support of GMHI; and,
 - Maintain the corporate structures of the companies for the short to medium term to allow for future use as determined to be appropriate.
3. Oversight and management of Envida and the GMHI Strategies and Options Committee be transferred to City management as the GMHI Board, who, with the support of Guelph Hydro management, would report directly to Council. This would:
 - Provide the City and Guelph Hydro time to further stabilize Envida's assets; and,

- Allow the City to develop a proposal for the future of these assets

To support these recommendations, revised Shareholder Declarations for GMHI and Guelph Hydro have been drafted in consultation with the Chair of the Guelph Hydro Board. The City-GMHI Shareholder Declaration, Attachment 1, is simplified to set out the authority of the GMHI Board and the role of the City and Guelph Hydro. The City-GMHI-Guelph Hydro Shareholder Declaration, Attachment 2, has been modified to reflect the functional reporting relationship of Guelph Hydro to the City and the appointment of the City CAO to the Guelph Hydro Board of Directors. Summaries of the significant changes to these documents are included in the attachment.

Next Steps

If Council approves the above recommendations, the resolutions at the beginning of this report will begin the change. Further work will be completed and presented to Council including:

1. A recommendation regarding the best process to transfer the Guelph Hydro shares to the City without triggering adverse tax consequences to GMHI.
2. Analysis of the current Envida assets and recommendations about how to optimize the City's and other stakeholders' interests in the assets.

Most of the work described above is anticipated to be completed by mid-January, 2017 with a corresponding Council report presented at that time for final Council approval.

Financial Implications

The full financial implications of these recommendations will be provided to Council at the January 2017 meeting. There are potential costs for external tax and regulatory advice to complete the further analysis of the implementation of the recommendations. Those costs are not anticipated to be significant and can be accommodated within existing budgets.

Corporate Strategic Plan

1.3 Build robust systems, structures and frameworks aligned to strategy.

2.3 Ensure accountability, transparency and engagement.

2.1 Build an adaptive environment for government innovation to ensure fiscal and service sustainability.

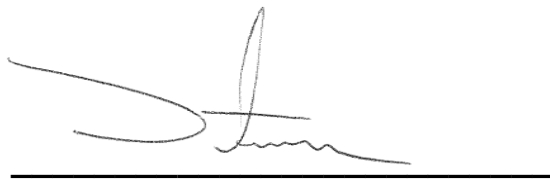
Communications

The City and Guelph Hydro are collaborating on an engagement and communications plan to inform Council, Guelph Hydro employees, industry stakeholders and the community at large about future opportunities for Guelph Hydro and the City's energy assets.

Attachments

Attachment 1 – City-GMHI Shareholder Declaration with summary

Attachment 2 – City-GMHI-GHESI Shareholder Declaration with summary



Recommended By

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Chief Administrative Officer
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ATTACHMENT 1

SUMMARY OF SIGNIFICANT CHANGES TO CITY-GMHI SHAREHOLDER DECLARATION

ARTICLE 1: Some definitions have been removed to reflect the simplified structure, including references to Municipal and Independent Members.

ARTICLE 2: Goals and objectives for GMHI have been removed.

The previous principles have been removed and an acknowledgement of the requirement for approval by the City of any non-administrative decisions made by GMHI has been added.

ARTICLE 3: The duties of GMHI directors has been amended to reflect the assumption of these responsibilities by the City.

ARTICLE 4: The Strategies and Options Committee's reporting relationship with the City is identified.

ARTICLE 5: The former article 5 (DIVIDEND POLICIES, RISK MANAGEMENT AND STRATEGIC OBJECTIVES) has been removed.

The new Article 5 has removed the references to the GMHI Management Team and the CEO Recruitment and Compensation.

ARTICLE 9: Former ARTICLE 9 (Budget) has been removed.

The two clauses regarding decisions reserved to the City have been combined.

**SHAREHOLDER DECLARATION OF
THE CORPORATION OF THE CITY OF GUELPH
REGARDING GUELPH MUNICIPAL HOLDINGS 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 wholly owned subsidiary, Guelph Hydro Inc., on September 8, 2014 to create the existing Guelph Municipal Holdings Inc. (GMHI);
3. The Corporation of the City of Guelph is the sole shareholder of all the issued and outstanding shares of GMHI;
4. GMHI is the sole shareholder of Guelph Hydro Electric Systems Inc. (Guelph Hydro) and Envida Community Energy Inc. (Envida);

NOW THEREFORE THIS DIRECTION WITNESSES:

Article 1 Interpretation

1.01 Definitions

In this Shareholder Declaration,

- (a) “Applicable Law” means any statute, regulation, code, regulatory policy or order of any Governmental Authority, including all applicable by-laws, and relevant common law.
- (b) “City” means the Corporation of the City of Guelph;
- (c) “Council” means the municipal council of the City, as constituted from time to time;
- (d) “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;
- (e) “MFIPPA” means the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario);

- (f) “Municipal Act” means the *Municipal Act 2001* (Ontario);
- (g) “OBCA” means the *Business Corporations Act* (Ontario) as may be amended from time to time; and,
- (h) “Subsidiary” of a person means a corporation whose voting securities carrying more than 50% of the votes that can be cast for the election of directors are held by that person or the votes carried by the securities held by such person are sufficient, if exercised, to elect a majority of the directors of such 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 GMHI and its Subsidiaries, including the City’s expectations of and objectives for GMHI;
- (b) establishes GMHI’s mandate, scope of responsibility and reporting requirements;
- (c) sets out the relationship between GMHI and the City; and,
- (d) constitutes, where applicable, a declaration by the City pursuant to s.108(3) of the OBCA.

2.02 Overarching Principles

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

- (a) The City shall maintain control of and make any decisions required to be made by the shareholder of Guelph Hydro and Envida which are not administrative in nature.
- (b) The GMHI Board shall not have the authority of to make decisions, other than administrative decisions, regarding Guelph Hydro and Envida, which decisions shall be made by the City.

Article 3 CORPORATE GOVERNANCE

3.01 GMHI Director’s Duties

The GMHI Board shall supervise the management of the business and affairs of GMHI but shall not have the authority to make any decisions regarding Guelph Hydro and Envida that are not administrative decisions. The GMHI Board’s responsibility and duty of care in relation to such decisions is assumed by the City.

Article 4 BOARD OF DIRECTORS AND OFFICERS OF GMHI

4.01 Number of Directors

The GMHI Board of Directors shall consist of the number of directors determined and appointed by the City, from time to time.

4.02 Composition of the GMHI Board

The City shall determine the composition of the GMHI Board, from time to time.

4.03 Chair of GMHI Board

The Chair of the GMHI Board shall be determined by City.

4.04 Officers of GMHI

The City CAO shall be the CEO of GMHI. The officers of GMHI, which may include, inter alia, a Chief Financial Officer and a Corporate Secretary, shall be appointed by the CAO.

4.05 Term of Directors

Directors shall be appointed for a term determined by the City at the time of appointment.

4.06 Strategies and Options Committee

The GMHI Strategies and Options Committee shall report to the City as described in the terms of reference for the Committee. The CEO and CFO of GMHI shall be co-chairs of the Committee and shall report to the City as required regarding the activities of the Committee. **Director**

Compensation

The GMHI Board members shall not receive compensation for serving on the Board except for reimbursement of expenses incurred by them as a result of work on behalf of the Board.

4.08 **GMHI Subsidiary Boards**

The GMHI Board shall recommend to the City individuals to be appointed to the boards of directors of all Subsidiaries of GMHI prior to any such appointment being made. If the City does not approve the recommendation, the City may direct the GMHI board to appoint individuals, if any, it determines appropriate instead of the recommended individuals or, subject to compliance with Applicable Law.

Article 5 DECISIONS OF THE CITY

5.01 **Shareholder Representative**

The City designates the Chief Administrative Officer of the City or his or her designate as its legal representative (the "Shareholder Representative") for purposes of communicating to the GMHI Board any consent or approval required by the Shareholder Declaration or by the OBCA and receiving any notices, reports and other communications required or provided for hereunder to be provided to the City.

5.02 **City Approval**

Approvals or decisions of the City required pursuant to this Shareholder Declaration or the OBCA shall require a resolution of Council and shall be communicated in writing to the GMHI Board by the Shareholder Representative.

Article 6 SHAREHOLDER MEETINGS

6.01 **Closed Meetings**

Shareholder meetings, in whole or in part, may only be conducted as a closed meeting of Council in compliance with the provisions of the *Municipal Act*. All directors of GMHI shall be entitled to have notice of open and closed shareholder meetings.

6.02 **Annual General Meeting**

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

- (a) Audited financial statements and notes thereto with the auditor's report for GMHI and the consolidated statements, notes and auditor's reports of GMHI Subsidiaries for the previous fiscal year;
- (b) Recommendations for any required appointment of members to the GMHI or GMHI Subsidiary Boards;

- (c) Recommendations for the appointment of officers of GMHI; and,
- (d) Recommendations for the appointment of auditors for GMHI and its Subsidiaries;
- (e) Any other information the GMHI Board determines should be presented or that is requested by the City.

Article 7 GMHI REPORTS TO THE CITY

7.01 Regular Reporting

GMHI shall report to the City any significant issues which arise relating to it or any Subsidiary.

Article 8 CONFIDENTIALITY

8.1 Confidentiality of GMHI Information

Except as required by Applicable law or any Governmental Authority, the City shall treat as confidential all GMHI or GMHI Subsidiary information provided to it in confidence pursuant to this section, 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.

8.2 Disclosure of Confidential Information

The City acknowledges that GMHI and GMHI Subsidiaries may, 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 GMHI or the relevant Subsidiary or result in undue loss to GMHI or the relevant Subsidiary, and the City shall protect such information in accordance with the exemption for third party information in Section 10 of MFIPPA.

8.3 Request for Information

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

Article 9 DECISIONS RESERVED TO THE SHAREHOLDER

9.01 Matters Regarding GMHI and its Subsidiaries Requiring Shareholder Approval

GMHI and GMHI Subsidiaries shall not, without the approval of the City:

- (a) enter into any transaction or take any other action that requires shareholder approval pursuant to the OBCA, either with regard to GMHI or to a GMHI Subsidiary;
- (b) make any significant decisions regarding it or its Subsidiaries and shall only be authorized to make administrative decisions required in the ordinary course of managing its business;
- (c) change the auditor of any GMHI Subsidiary;
- (d) make any changes to the number of directors comprising a Subsidiary Board or change the composition of such Board;
- (e) sell, transfer, assign or encumber any shares of a Subsidiary;
- (f) appoint a CEO of a GMHI Subsidiary or any person exercising powers normally associated with a CEO
- (g) approve a charge, encumbrance, mortgage or sale or other disposition by conveyance, transfer, lease, security interest, charge, mortgage, sale and leaseback, or other transaction of any of its assets or undertakings, except those in the ordinary course of business;
- (h) Approve any Subsidiary to make representations or promises of any financial incentives or similar inducements that are binding on the City; or,
- (i) Approve the issue by a Subsidiary 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 GUELPH HYDRO or GMHI or other Subsidiaries.

9.02 GMHI –Guelph Hydro Shareholder Declaration

GMHI shall make a Shareholder Declaration regarding Guelph Hydro which contains the provisions in 11.01.

9.03 GMHI By-laws

The GMHI Board may, subject to Applicable Law, make, amend or repeal any of its by-laws and the changes take effect upon approval by the Board. By-laws and changes to by-laws shall be submitted to the City, as shareholder, immediately upon approval by the Board for approval. If the City makes any amendments, the amendments take effect when approved by the City and are not retroactive.

Article 10 EFFECTIVE DATE

10.01 Effective Date

This Shareholder Declaration shall come into effect on the date approved by the City and the shareholder declaration made February 29, 2016, 2014, as amended, shall be terminated as of that date.

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

THE CORPORATION OF THE CITY OF GUELPH

Per: _____
Derrick Thomson, CAO

ATTACHMENT 2

SUMMARY OF SIGNIFICANT CHANGES TO CITY-GMHI-GUELPH HYDRO SHAREHOLDER DECLARATION

- TITLE:** The name of the document has been changed to the City-GMHI Shareholder Declaration regarding Guelph Hydro to reflect the change in City oversight. Throughout the document the City is referenced where appropriate as the ultimate decision making body.
- ARTICLE 2:** References to the Community Energy Initiative being a fundamental aspect of the relationship have been removed.
- An acknowledgement of the requirement for approval by the City of any substantive decisions made by GMHI has been added.
- ARTICLE 3:** The reference to the City CAO attending all Guelph Hydro Board and Committee meetings has been removed to reflect the appointment of the CEO as a member of the Board.
- The requirement for City approval of Guelph Hydro Board Committees has been removed as the reason for its inclusion, to avoid duplication between GMHI and Guelph Hydro Board Committees, is no longer an issue.
- ARTICLE 5:** The language regarding strategic objectives has been simplified to reflect the requirement that Guelph Hydro strategic objectives must align with the City's strategic objectives.
- ARTICLE 7:** Guelph Hydro will report quarterly to the City.
- ARTICLE 10:** No substantive amendments have been made to this section.

**SHAREHOLDER DECLARATION OF
THE CORPORATION OF THE CITY OF GUELPH
and
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. (Guelph Hydro);

NOWHEREFORE THIS DECLARATION WITNESSES:

Article 1 Interpretation

1.01 Definitions

In this Shareholder Declaration,

- (i) “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.
- (j) “Applicable Law” means any statute, regulation, code, regulatory policy or order of any Governmental Authority, including all applicable by-laws, and relevant common law.

- (k) “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.
- (l) “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;
- (m) “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;
- (n) “GMHI Subsidiary” means any subsidiary corporation of GMHI, a majority of whose shares are directly owned by GMHI;
- (o) “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;
- (p) “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;
- (q) “MFIPPA” means the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario);
- (r) “Municipal Act” means the *Municipal Act 2001* (Ontario);
- (s) “OBCA” means the *Business Corporations Act* (Ontario);
- (t) “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,
- (u) “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:

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

2.02 Overarching Principles

The following principles shall apply to the relationship between the City, GMHI and Guelph Hydro:

- (c) 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.
- (d) The provisions of this Shareholder Declaration should be interpreted so as to maximize transparency and facilitate communication between Guelph Hydro and the City. Employees and management of the City, GMHI and Guelph Hydro are expected to communicate seamlessly and transparently with each other on a regular basis without the need for Guelph Hydro Board approval.
- (e) The principles of director independence and skills based boards will be considered in the interpretation of this Shareholder Declaration.
- (f) GMHI acknowledges that the City is the one hundred (100%) shareholder of GMHI and any substantive decisions made by GMHI shall require the approval of the City.

- (g) 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.
- (h) Shareholder return and benefits will be measured by several metrics to be developed by Guelph Hydro and approved by the City and 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.
- (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 the decision making of the Guelph Hydro Board.
- (j) In making decisions, the Guelph Hydro Board and management of Guelph Hydro shall act prudently and in the best interest of Guelph Hydro and in so doing shall consider the strategic plans and strategic objectives of the City.

Article 3 CORPORATE GOVERNANCE

3.01 Guelph Hydro Director’s Duties

The Guelph Hydro Board shall oversee the management of the business and affairs by the officers and senior managers of Guelph Hydro. The directors and officers of Guelph Hydro 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 Guelph Hydro

4.01 **Qualifications**

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

4.02 **Number of Directors**

The Guelph Hydro Board shall consist of a minimum of 5 directors.

4.03 **Composition of the Guelph Hydro Board**

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

4.04 **Chair of Guelph Hydro Board**

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

4.05 **Officers of Guelph Hydro**

The Guelph Hydro Board may appoint officers of the corporation including the CEO and shall approve the employment contracts of such officers. The appointment and the employment contract of the CEO shall be approved by the City, through GMHI.

4.06 **Term of Directors**

- (a) The term for Guelph Hydro Board members shall be between one and three years unless otherwise determined by the City. The 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 which shall be approved by the City.
- (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 Guelph Hydro Board member prior to the end of the member's term and appoint a replacement member.
- (c) Any member of the Guelph Hydro Board may serve for successive terms as determined by GMHI and in accordance with any City approved policy of the Guelph Hydro Board.

4.07 **Board Committees**

The Guelph Hydro Board may establish committees, either *ad hoc* or standing, or task forces or any other entity for Board support.

4.08 **Director Compensation**

The Guelph Hydro Board shall establish a policy for Director compensation for Guelph Hydro, which shall include compensation for reasonable expenses related to the director's role on the Guelph Hydro Board. This policy shall be approved by GMHI and the City.

4.9 **Board Budget**

The Guelph Hydro Board shall establish a budget for the board in the context of the creation of the overall Guelph Hydro budget. The Board shall provide a separate variance report on the Board budget to the City through GMHI 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

5.01 **Dividends**

GMHI shall establish policies regarding the payment of dividends by Guelph Hydro to GMHI, from time to time. Pending the development of the policy, the Guelph Hydro 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 Guelph Hydro Board shall establish risk management strategies and internal controls to manage all risk related to its business. The Guelph Hydro Board shall oversee and manage the implementation of such strategies and controls as they relate to Guelph Hydro.

5.03 **Strategic Objectives**

The Guelph Hydro Board shall establish strategic objectives for Guelph Hydro which align with the strategic objectives of the City.

5.04 **Requests for Information**

The City and GMHI may request information, documents or access to electronic information and documents that are within the control of Guelph Hydro. Guelph Hydro shall fulfill the request within 30 days, unless such request is established to the satisfaction of the City as being contrary to the provisions of the Affiliates Relationship Code.

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**

Guelph Hydro shall hold an annual shareholder meeting concurrently with the GMHI AGM prior to June 30 of each year. At the annual meeting, Guelph Hydro shall place before the GMHI Board and City Council as shareholder of GMHI, the following:

- (f) Audited financial statements and notes thereto with the auditor's report for Guelph Hydro for the previous fiscal year;
- (g) Recommendations for any required appointment of members to the Guelph Hydro Board;
- (h) Recommendations for the appointment of auditors for Guelph Hydro; and,
- (i) Any other information the Guelph Hydro Board determines should be presented.

Article 7 REPORTING

7.01 **Quarterly Reporting**

Guelph Hydro shall report, at a minimum, quarterly to the City through GMHI regarding the following:

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

7.02 Additional Reporting

Guelph Hydro shall provide information and reports to the City as requested by the GMHI Board.

Article 8 BUDGET

8.01 Approval of Budget

Guelph Hydro shall present its budget for each fiscal year to GMHI and the City prior to the end of the first quarter of that fiscal year. Guelph Hydro shall immediately advise GMHI and the City of any anticipated decrease in the dividend.

Article 9 CONFIDENTIALITY

9.01 Confidentiality of Guelph Hydro Information

Except as required by Applicable Law, the Municipal Act or any Governmental Authority, the City and GMHI shall treat as confidential Guelph Hydro all Guelph Hydro information provided to it in confidence including information provided pursuant to this Article 9. 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

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

Article 10 DECISIONS RESERVED TO THE THE CITY AND GMHI

10.01 Matters Requiring GMHI and City Approval

Guelph Hydro 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 any of its assets or undertakings, by conveyance, transfer, lease, security interest, charge, mortgage, sale and leaseback, or other transaction, 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

Guelph Hydro 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 or any partnership for shared services. All such matters shall be referred to the GMHI Strategies and Options Committee, who shall be responsible for advising the City regarding all negotiations and other issues regarding the proposed transaction.

10.03 Guelph Hydro By-laws

The Guelph Hydro 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 Guelph Hydro 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 Guelph Hydro 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 May 24, 2016, as amended, shall be terminated as of that date.

Approved by the Board of Directors of Guelph Municipal Holdings Inc. on the 24th day of October, 2016.

GUELPH MUNICIPAL HOLDINGS INC.

Per: _____
Derrick Thomson

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

THE CORPORATION OF THE CITY OF GUELPH

Per: _____
Derrick Thomson, CAO