

**CITY OF GREATER SUDBURY  
SHAREHOLDER DECLARATION  
FOR  
GREATER SUDBURY UTILITIES INC.**

**1. Definitions and Purpose**

1.1 Definitions - In this Shareholder Declaration, defined terms have the meanings set out in Appendix “A” attached hereto.

1.2 Purpose - This Shareholder Declaration outlines the expectations of the Shareholder relating to the principles of governance and other fundamental principles and policies of the Corporation and in some cases, the Subsidiaries. Except as provided in Sections 6 and 9, 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 Board or the board of directors of any Subsidiary.

**2. Permitted Business Activities**

2.1 Subject to the restrictions in Section 9, the Corporation and the Subsidiaries may engage in the business activities which are permitted by any law applicable to the Corporation and the Subsidiaries from time to time, including the Act and as the board of directors of the Subsidiaries may authorize including, without limitation, the business activities referred to in Subsection 2.2. In so doing, the Corporation and its Subsidiaries shall conform to all requirements of the OEB, the IMO and all other applicable regulatory or governmental authorities.

2.2 As at the date hereof, the Corporation or one or more Subsidiaries may engage in any one of the following business activities and such other business activities

as may be permitted by law and authorized by the Board or board of directors of any Subsidiary, as applicable, from time to time.

- (a) transmitting or distributing electricity;
- (b) owning and/or operating an electricity generation facility;
- (c) retailing electricity;
- (d) distributing or retailing gas or any other energy products which is carried through pipes or wires to the user;
- (e) business activities that enhance or develop the ability of the Corporation to carry any of the activities described in paragraphs (a), (c) or (d) above;
- (f) business activities the principal purpose of which is to use more effectively the assets of the Corporation or any Subsidiary, as applicable, including providing meter installing and reading services, and providing billing services and business activities in the utilities and telecommunications area;
- (g) renting, selling or maintaining equipment and appliances, including without limitation, hot water heaters;
- (h) managing or operating, on behalf of the Shareholder, the provision of a public utility or sewage services; and
- (i) providing services related to improving energy efficiency.

### **3. Standards of Governance**

- 3.1 As required by the OBCA, the Board and the board of directors of any Subsidiary shall supervise the management of the business and affairs of the Corporation and any Subsidiary respectively, and in so doing, shall act honestly and in good

faith with a view to the best interests of the Corporation 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. In addition, the Shareholder expects the Board and the boards of directors of the Subsidiaries to observe substantially the same standards of corporate governance as may be established from time to time by the Toronto Stock Exchange, 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 the Corporation and each Subsidiary is not a publicly traded corporation.

#### **4. Board of Directors**

4.1 Number of Directors - The Corporation shall be governed by the Board which shall consist of a minimum of one and a maximum of twenty directors to be appointed by the Shareholder. The Shareholder shall, by special resolution, or by Shareholder Declaration, designate the number of members of the Board to hold office from time to time. Accordingly, the number of directors for the Board shall be as follows:

- (a) (i) The Board of the Corporation (the “GSUI”), and the boards of the Subsidiaries, Greater Sudbury Hydro Plus Inc., Agilis Networks, 1700211 Ontario Inc. and 1627596 Ontario Inc., shall be comprised of five individuals which shall include the Mayor (or another serving member of Council designated by the Mayor), two other members of Council appointed by Council, and two individuals (“Private

Directors”) who are not City employees or members of Council, appointed by Council.

- (ii) The Board of Greater Sudbury Hydro Inc. shall be comprised of five individuals which shall include the Mayor (or another serving member of Council designated by the Mayor), two other members of Council, and two individuals (“Private Directors”) who are not City employees or members of Council, appointed by Council, and who shall be different from the Private Directors appointed under clause (i) above.

- (b) All Directors shall remain on the Board(s) until their successors are appointed. This provision shall include the Mayor (or designate) and municipal councilors, even if their terms on City Council have terminated.
- (c) The individuals appointed by Council whose term have already expired shall have their terms hereby extended until such time as their successors are appointed by Council. The individuals appointed by Council whose terms have not expired shall continue until expiry and replacement by their successors.

4.2 Qualification of Directors - In addition to sound judgment and personal integrity, the qualifications of candidates for the Board or the board of directors of any Subsidiary may include:

- (a) awareness of public policy issues related to the Corporation or a Subsidiary, as applicable;
- (b) business expertise (including retail experience);

- (c) experience on boards of commercial corporations;
- (d) financial, legal, engineering, accounting and/or marketing experience;
- (e) regulated industry knowledge including, but not limited to, knowledge of municipal electric utilities; and
- (f) knowledge and experience with risk management strategy.

4.3 Residency - Preference may be given to qualified candidates for the Board who are residents of the City of Sudbury or of the Municipality of West Nipissing, however, non-residents shall not be excluded from serving as Board members.

4.4 Chair and Vice-Chair Position - The Board may elect its own Chair and Vice-Chair.

4.5 Board Committees - The Board may establish committees of the Board in the Board's discretion. The Shareholder anticipates that the Board may establish the following committees:

- (a) An Audit and Finance Committee to review financial results.
- (b) A Governance Committee to determine senior management compensation; and
- (c) A Co-ordination Committee made up of members of the Board and members of Council to develop a policy regarding the coordination of activities between the Corporation, its Subsidiaries and the City, and on-going collaboration between the management of the Corporation and the City with respect to the delivery of services and activities in the community and capital programs;

(d) The Board shall establish a Nominating Committee consisting solely of the municipal councillors appointed by Council to the Board and the Mayor (or Mayor's designate appointed to the Board), to identify, evaluate and recommend potential Private Director Board candidates to the Shareholder.

4.6 Role of Nominating Committee - The Shareholder shall consider candidates for the Board and the boards of directors of the Subsidiaries nominated by the nominating committee of the Board (the "Nominating Committee"). It is expected that the Nominating Committee will develop a process which takes into account the qualifications listed in Section 4.2 of this Shareholder Declaration in order to identify and evaluate potential candidates for the Board and candidates for the boards of directors of the Subsidiaries in order to recommend a slate of qualified candidates to the Shareholder.

4.7 Appointment of Directors - In selecting the directors to be appointed to the Board and boards of directors of the Subsidiaries, the Shareholder shall take into account the qualifications listed in Section 4.2 of this Shareholder Declaration and the list of candidates proposed by the Nominating Committee.

4.8 Directors' Compensation - The compensation of the Board and of the boards of directors of the Subsidiaries shall be approved by the Shareholder. Directors compensation will initially be set as follows:

(a) all directors of the Corporation or a subsidiary shall receive \$4,000 per annum except the Mayor, but including the Mayor's designate for long-term replacement;

- (b) any director of the Corporation who is also serving as the Chair of the Corporation or a subsidiary shall receive the additional sum of \$2,000 per annum, for a total compensation of \$6,000 per annum;
- (c) if a director or chair of the Corporation is also a director or chair of one or more Subsidiaries, such director shall not receive any additional compensation for his or her role as director or chair of a Subsidiary except that any director who serves as the Chair of a Subsidiary or the Corporation shall be entitled to receive the additional sum referred to in paragraph 4.8 (b) to a maximum of one \$2,000 payment.
- (d) all directors of GSUI shall also receive a \$200 per diem for attendance at Committee meetings, out-of-town travel, and all other hours spent on utility business (excluding Board meetings), on the basis of a minimum of four hours spent on utility business.

The Shareholder may review the compensation of the Board and of the boards of the Subsidiaries at any time in order to ensure that the level of compensation is appropriate and sufficient to attract directors with necessary qualifications.

- 4.9 Meetings of the Board - If requested by the Shareholder, the Board shall invite certain employees of the City, as requested by the Shareholder, to attend meetings of the Board and meetings of the boards of the Subsidiaries. Such City employees shall not be entitled to vote on any matter. A majority of the number of directors required by this Shareholder Declaration constitutes a quorum at any meeting of the Board or meeting of the boards of the Subsidiaries.

## 5. Financial Policies, Risk Management and Strategic Plan

5.1 Policies Requiring Shareholder Approval - The Board shall establish policies in respect of the following matters and present such policies to the Shareholder for its approval:

- (a) Capital Structure - develop and maintain a prudent financial and capitalization structure for the Corporation and its Subsidiaries consistent with industry norms and sound financial principles and established on the basis that the Corporation and its Subsidiaries are intended to be self-financing entities;
- (b) Returns - enhance Shareholder value by generating a reasonable return consistent with a prudent financial and capitalization structure and maintaining just and reasonable rates;
- (c) Dividends - establish a policy relating to the dividend to be received by the Corporation from the Subsidiaries, consistent with a prudent financial and capitalization structure;
- (d) Dividends from Corporation to Shareholder – establish a policy relating to the dividend to be received by the Shareholder from the Corporation, consistent with a prudent financial and capitalization structure, generally in the form attached hereto this Shareholder Declaration as Schedule “B”;  
and
- (e) Coordination Policy - Develop a policy regarding the coordination of activities between the Corporation, its Subsidiaries and the City and on-going collaboration between the management of the Corporation and



the City with respect to the delivery of services, including administrative services, and activities in the community and capital programs.

5.2 Records Policy - The Board shall provide to the Shareholder any and all records of the Corporation or the Subsidiaries within ten (10) business days of the Shareholder's written request.

5.3 Policies Not Requiring Shareholder Approval - The Shareholder expects that the Board will establish policies in respect of the following matters and present such policies to the Shareholder for information purposes only. The Board need not obtain the Shareholder's approval in order to implement these policies:

- (a) Distribution Rates - ensure the establishment of just and reasonable rates for the regulated distribution business of the Corporation, or any of its Subsidiaries;
- (b) Risk Management - manage all risks related to the business conducted by the Corporation and its Subsidiaries, through the adoption of appropriate risk management strategies and internal controls consistent with industry norms;
- (c) Strategic Plan - develop a long range strategic plan for the Corporation and its Subsidiaries which is consistent with the maintenance of a viable, competitive business and preserves the value of the business for the Shareholder;
- (d) Environmental Policy - develop a long range environmental policy which provides that the Corporation and its Subsidiaries operate in a safe and environmentally responsible manner; and

- (e) Employment Policy -develop an employment policy that ensures compensation, benefits and working condition which are substantially consistent with the workforce of the City of Greater Sudbury.

#### 5.4 Telecommunication Business Development

The Shareholder considers it to be in the interests of the City that a competitive telecommunications service be fostered by the Corporation and its Subsidiaries to service the local community. The Shareholder, therefore, expects that the Board shall develop a policy to foster business development and economic growth in the local telecommunications sector through the development of new competitive telecommunications services, facilities and locating new technology based businesses in the local community.

### **6. Decisions of the Shareholder and Shareholder Representative**

- 6.1 The Shareholder hereby designates the Mayor and the City Clerk as the legal representatives of the Shareholder (the “Shareholder Representative”) for the purpose of communicating to the Board pursuant to Subsection 6.2 any consent or approval required by this Shareholder Declaration or by the OBCA or otherwise.
- 6.2 Approvals or decisions of the Shareholder required pursuant to this Shareholder Declaration or the OBCA shall require a resolution or by-law of Council and shall be communicated in writing to the Board and signed by the Shareholder Representative.

## **7. Meetings and Annual Resolution**

- 7.1 The Shareholder shall receive notification of all meetings of the Board of Directors of the Corporation and any Subsidiary and a copy of the agenda for the meeting.
- 7.2 Within six months after the end of each fiscal year of the Corporation:
- (a) Annual Report to Meeting of Council - the Board shall report to a meeting of Council and the President and CEO of the Corporation shall attend such meeting and provide such information concerning the Corporation and its Subsidiaries as is appropriate.
  - (b) Annual Resolutions:
    - (i) the Shareholder shall consider candidates for the Board as proposed by the Nominating Committee and the appointment of the auditors of the Corporation and receive the audited financial statements of the Corporation for the last completed fiscal year; and
    - (ii) the Shareholder, by resolution in writing signed by the Shareholder Representative in accordance with Section 6, shall appoint the necessary members of the Board and appoint the auditors for the Corporation and complete such other business as would normally be completed at an annual meeting of shareholder under the OBCA.

## **8. Reporting on Major Developments**

The Board shall from time to time report to Council on major business developments or materially significant or adverse results as the Board, in its discretion, considers appropriate and such reports may be received and considered by the Shareholder at an open or in camera meeting of Council.

## **9. Matters Requiring Shareholder Approval**

Without Shareholder approval given in accordance with Section 6, the Corporation or any Subsidiary, respectively, shall not:

### Statutory Approval Right

- (a) change the name of the Corporation or a Subsidiary; add, change or remove any restriction on the business of the Corporation or a Subsidiary; create new classes of shares; or in any other manner amend its articles of incorporation or make, amend or repeal any by-law;
- (b) amalgamate with any other corporation(s), other than amalgamations that may, under the OBCA, be approved by a resolution of directors;
- (c) take or institute proceedings for any winding up, arrangement, or dissolution of the Corporation or a Subsidiary;
- (d) apply to continue as a corporation under the laws of another jurisdiction;

### Additional Approval Rights

- (e) issue, or enter into any agreement to issue, any shares of any class, or any securities convertible into any shares of any class, of the Corporation or a Subsidiary;

- (f) redeem or purchase any outstanding shares of the Corporation or a Subsidiary;
- (g) take on or assume any financial obligation which would increase the Debt/equity ratio of the Corporate and its Subsidiaries on a consolidated basis above the ratio of 60:40;
- (h) sell assets of the Corporation or of a Subsidiary or purchase assets with an aggregate value in excess of 15% of the Consolidated Book Value of all assets of the Corporation and its Subsidiaries;
- (i) materially alter the nature of or geographic extent of the business of the Corporation or any of its Subsidiaries in a manner which would have a financial impact equal to or greater than 15% of the Consolidated Book Value of all assets of the Corporation and its Subsidiaries; or
- (j) enter into a joint venture, partnership, strategic alliance or other venture, including ventures in respect of the generation or co-generation of electricity which would require an investment or which would have a financial impact, equal to or greater than 15% of the Consolidated Book Value of all assets of the Corporation and its Subsidiaries.

#### **10. Revisions to this Declaration**

The Shareholder acknowledges that this Shareholder Declaration may be revised from time to time as circumstances may require and that the Shareholder will consult with the Board prior to completing any revision and will promptly provide the Board with copies of such revision.

## **11. Replacement**

This Shareholder Declaration replaces all earlier versions of the Shareholder Declaration for the Corporation.

DATED at Sudbury, Ontario the \_\_\_\_ day of June, 2019

CITY OF GREATER SUDBURY

Per:

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Brian Bigger – Mayor

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Eric Labelle- Clerk

**Appendix “A” to Shareholder Declaration**  
**GREATER SUDBURY UTILITIES INC.**  
**DEFINITIONS AND INTERPRETATIONS**

In this Shareholder Declaration the following defined terms have the meaning set out below:

“Act” means the *Energy Competition Act, 1998* (Ontario);

“Board” means the board of directors of the Corporation;

“Chair” means the chair of the Board;

“City” means the City of Greater Sudbury;

“City Clerk” means the Clerk of the City of Greater Sudbury;

“Consolidated Book Value” of all assets of the Corporation and its Subsidiaries shall be the values reported in the audited consolidated financial statements of the Corporation and its Subsidiaries at the end of its most recently completed fiscal year;

“Corporation” means Greater Sudbury Utilities Inc. incorporated pursuant to Section 142 of the Act;

“Council” means the City Council of the City of Greater Sudbury;

“Debt” includes all debt obligations owed to third party creditors, but excludes all debt obligations owed to the Shareholder;

“IMO” means the Independent Electricity Market Operator;

“Mayor” means the Mayor of the City of Greater Sudbury;

“Mayor’s Designate” shall have the meaning set out in Section 4 of this Shareholder Declaration;

“Nominating Committee” means a committee of the Board for the purpose set out in Subsection 4.6;

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

“OEB” means the Ontario Energy Board;

“President” and “CEO” means the president and chief executive officer of the Corporation;

“Private Directors” shall have the meaning set out in Section 4 of this Shareholder Declaration;

“Shareholder” means the City of Greater Sudbury;

“Shareholder Declaration” means this shareholder declaration;

“Shareholder Representative” shall have the meaning set out in Subsection 6.1;

“Subsidiaries” means the subsidiary corporations (as defined in the OBCA) of the Corporation; and

“Vice-Chair” means the vice-chair of the Board.



## **Appendix “B” to Shareholder Declaration**

### **GREATER SUDBURY UTILITIES INC.**

#### **DIVIDEND POLICY**

##### **Background**

Greater Sudbury Utilities Inc./Services Publics du Grand Sudbury Inc. is an investment holding company with its wholly owned subsidiaries involved in the distribution of electricity, provision of broadband telecommunications services and competitive rental & customer support services. Greater Sudbury Utilities Inc. is wholly owned by the City of Greater Sudbury.

Greater Sudbury Utilities Inc. recognizes that the Shareholder should realize economic value from its investment through investment returns that yield dividends and capital appreciation.

##### **Dividend Policy**

In addition to special dividends referred to below, the shareholder is eligible to receive annual, non-cumulative dividends with a target Dividend Payment Rate (DPR) of 35% of the Corporation's consolidated income for the year after net movements and regulatory balances - net of tax (net income) under Modified International Financial Reporting Standards. The Corporation will declare and pay regular dividends subject to the Conditions Precedent to the Payment of Dividends set out below.

## **Conditions Precedent to the Payment of Dividends**

Dividends will be paid to the extent 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 Greater Sudbury Utilities Inc. (and its subsidiaries) to sustain reliability and an appropriate level of reserves;
- e) A material impairment in the ability to service the debt of Greater Sudbury Utilities Inc. and its subsidiaries.

## **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 Greater Sudbury Utilities Inc. will forecast the annual dividend by applying the DPR to budgeted net income for the next financial year. The dividend will, subject to meeting the conditions precedent for the payment of dividends, be targeted at 35% of net income, declared and paid on or before June 30th (shortly following the approval of the annual financial statements of the preceding year).

## **Reporting to Shareholder**

In the event that the Board of Directors of Greater Sudbury Utilities Inc. does not approve a payment of a regular dividend, the Board will promptly report the circumstances underlying the non-payment to the Shareholder and, thereafter, provide progress reports on a quarterly basis until such time as the payment of regular dividends resumes. Greater Sudbury Utilities is to provide *pro forma* income, cashflow and debt/equity forecasts to support the reasoning for the non-payment of a dividend.

## **Review of Dividend Policy**

The Dividend Policy is to be reviewed every four years with recommendations for improvement from the Board.

## **Special Dividend**

1. Periodic payments to maintain the approved capital structure of the Corporation of a 60 / 40 debt to equity split. Should the approved financial statements in any given year indicate a ratio of less than 60 / 40 debt to equity on a consolidated basis a special dividend equaled to the difference in equity that would return the ratio to at least 60/40 would be automatically declared and paid to the shareholder on or before September 1<sup>st</sup>.
2. The Board may declare and pay a special dividend to the shareholder at any time acting in its discretion.