



COUNTY OF BRANT

**CORPORATE SERVICES DEPARTMENT – CORPORATE DEVELOPMENT COMMITTEE**

**TO:** To the Chair and Members of the Corporate Development Committee  
**FROM:** Michael Bradley, General Manager of Corporate Services  
**DATE:** March 7, 2013  
**SUBJECT:** CD13-52 – Shareholder Declaration for a Municipal Corporation  
**PURPOSE:** For Decision

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**RECOMMENDATION:**

**Whereas Ontario Regulation 599/06 of the *Municipal Act, S.O. 2001*, allows for the formation of a municipal corporation;**

**And whereas the Council of the County of Brant has undertaken to prepare a business case for Brant Municipal Enterprises and has held a public meeting pursuant to the *Municipal Act, S.O. 2001* regarding its intent to form this municipal corporation;**

**And whereas the Council of the County of Brant has approved the preparation and presentation of a draft Shareholder Declaration for Brant Municipal Enterprises Inc. to the Corporate Development Committee for consideration;**

**And whereas the County of Brant is the sole shareholder of Brant County Power Services Inc.;**

**Therefore be it resolved that the attached Shareholder Declaration, which sets out the expectations of the County of Brant, as shareholder, relating to the principals of governance and other fundamental principles and policies of Brant Municipal Enterprises Inc., be presented in the form of a bylaw to Council for consideration;**

**And that the attached Bylaw to Approve a Policy on Asset Transfers to Corporations Established by the County be presented to Council for consideration;**

**And that the Corporate Development Committee recommends to Council that staff be authorized to file articles of incorporation under the *Business Corporations Act*, for Brant Municipal Enterprises Inc.**

**And that the Corporate Development Committee recommends that Council, as the sole shareholder of Brant County Power Services Inc., winds down the operations of Brant County Power Services Inc. at the time and through the process deemed appropriate, and that the employees, assets, and activities of this organization be transferred to Brant Municipal Enterprises Inc. at the time and through the process deemed appropriate.**

**And that, to ensure continuity of strategic direction for the business activities of Brant County Power Services Inc., the current Council appointed members of the Board of Directors for Brant County Power Services Inc. be appointed to be the initial Board of Directors for Brant Municipal Enterprises Inc. for a one (1) year initial term.**

### **STRATEGIC PLAN GUIDANCE:**

To develop a revenue acquisition plan from grants, assessment, and non assessment sources that is sufficient to sustain the quality of our current services and assets, and further, to fund a long term strategic growth strategy.

### **FINANCIAL CONSIDERATIONS:**

Funds generated by the municipal corporation in excess of its operating and investment needs will be provided to the County of Brant as a dividend; these funds can be utilized at Council's discretion for municipal purposes.

### **EXECUTIVE SUMMARY:**

Council has approved the development of a draft Shareholder Declaration for a new municipal corporation (Brant Municipal Enterprises Inc.). The draft Shareholder Declaration outlines the expectations of the County related to governance and conduct of this new corporation. The document notes that the corporation will have a 7 member Board of Directors who will act in the best interests of the corporation. The document further articulates what County approvals are required by the corporation; activities such as entering into a new businesses or selling a significant asset would require approval by the Council. The document contains a dividend policy and an agreement on providing County support services to the corporation. Further, an asset transfer policy has been developed as per the *Municipal Act*.

If approved by the Corporate Development Committee and by Council, the municipal corporation can be incorporated and the winding down of Brant County Power Services Inc. can be undertaken. It is recommended that the current Council appointees to the Brant County Power Services Inc. board be appointed to the initial Board of Directors for Brant Municipal Enterprises Inc.; this will ensure continuity of strategy for the business activities that will be transferred from Brant County Power Services to Brant Municipal Enterprises.

### **BACKGROUND:**

Council, at its meeting of January 22, 2013, approved a recommendation from the Corporate Development Committee to prepare a Shareholder Declaration for a municipal corporation. This municipal corporation, to be known as Brant Municipal Enterprises Inc., has been the subject of prior reports considered by Council. The purpose of this corporation will be to undertake business opportunities that will generate new revenues for the municipality to offset the municipal tax levy. Further, the corporation will help to promote economic

development within the community by entering into business areas that assist local business interests; an example of this will be the continued development and marketing of fibre optic communication networks throughout the County. These fibre optic networks allow local businesses to access secure, reliable, and high speed communications technology. Currently, many business areas within the County have limited access to this form of communications.

The final step in establishing this corporation is to approve a Shareholder Declaration. This document outlines the expectations of the County, as shareholder, regarding the principles of governance and conduct for the corporation. The draft Shareholder Declaration for Brant Municipal Enterprises is similar to those that are currently in existence for Brant County Power Inc. and Brant County Power Services Inc (BCPSI).

## **REPORT:**

### **Shareholder Declaration and Associated Documents**

As noted, the Shareholder Declaration outlines the expectations of the County related to the principals of governance and conduct of the corporation. A high level review of the significant parts of this document is provided below; the draft Shareholder Declaration is attached, along with its schedules and a draft Bylaw to Approve an Asset Transfer Policy:

#### **Shareholder Declaration**

Section 2 – this section contains the purpose and overarching principals of transparency, accountability, ethics, return on investment, adaptability, flexibility, and risk management for the corporation.

Section 4 – this section outlines the role of the Board of Directors for the corporation, noting that they must act in the best interests of the corporation.

Section 5 – this section outlines the composition of the Board of Directors of the corporation, and outlines how officers of the corporation will be appointed. Specifically, the Board and officers of the corporation will be comprised as follows:

- The Board of Directors will have 7 members, including:
  - The Mayor
  - The Chair of the Corporate Development Committee
  - 1 additional member of Council
  - 4 private directors (citizens appointed by Council for a maximum of 2 terms of 4 years each)
- The Chief Executive Officer of the Corporation will be the County CAO or his / her designate; likewise, the Treasurer of the Corporation will be the County Treasurer and the Secretary of the Corporation will be the County Clerk, or designates
- Directors will be compensated based on the approved policy of the County
- County staff who serve as officers of the Corporation will not be compensated beyond their existing compensation as County employees

Section 8 – this section outlines the requirements of the Corporation to provide the County with a business plan, to hold an annual public meeting to present its audited financial statements and annual report, and to allow the County access to its records at any time.

Section 10 – this section outlines the approvals that the Corporation will require from time to time. These approvals ensure that new initiatives or enterprises considered by the Corporation will be reviewed in a public, open, and accountable process.

Schedule “A” – Dividend Policy – this policy outlines the expectations of the County related to an annual dividend. The policy notes that all net income of the corporation is to be paid to the County as a dividend, less the funds required for continued operations, maintenance, and fulfillment of the corporation’s business plan.

Schedule “B” – Form of Services Agreement – this agreement outlines how services provided by the County to the corporation will be paid for by the corporation. The *Municipal Act* requires that the costs of any municipal services provided to the corporation be recovered.

#### Bylaw to Approve an Asset Transfer Policy

This document is a requirement of the *Municipal Act*, and governs how assets will be transferred to corporations owned by the County. The policy contemplates that assets may be transferred to a corporation upon the approval of Council. The policy allows the County to place restrictions on an asset that is contemplated for transfer to a corporation. Section 3.5 of the policy would apply to Brant Municipal Enterprises, as it is a for-profit corporation and thus falls under the “bonusing” section of the *Municipal Act*, as such, any transfer of assets must be at fair market value determined through an appraisal.

#### **Final Steps to Forming Brant Municipal Enterprises**

If Council chooses to approve the Shareholder Declaration and enact it as a bylaw, along with the Bylaw to Approve an Asset Transfer Policy, then staff can undertake to incorporate the new entity. Following this, staff will begin the process to wind-down BCPSI., which is the County’s current for-profit corporation. The new corporation proposed will address several concerns related to the Ontario Energy Board’s policies on the relationship between utility companies and their affiliates; BCPSI is an affiliate of Brant County Power Inc., which is governed by the rules and directives of the Ontario Energy Board. The assets of BCPSI will be transferred or granted to the new corporation so that existing businesses can continue to operate. Staff will work with the County’s auditor and solicitor to determine the process to make this transfer, and will bring resolutions to the Corporate Development Committee as required to facilitate this.

As discussed with Council previously, it will be important to ensure continuity of operations during the transition between BCPSI and Brant Municipal Enterprises. To help with this transition, it is proposed that the existing council appointed members to the BCPSI board be appointed to serve as the initial citizen members of the Board of Directors for Brant Municipal Enterprises. This will ensure that the current business plan of BCPSI continues to be implemented.

**INTERDEPARTMENTAL CONSIDERATIONS:**

Not applicable.

Respectfully Submitted,

**Michael Bradley**  
**General Manager of Corporate Services**

**Paul Emerson**  
**Chief Administrative Officer**

**ATTACHMENTS:**

Draft Shareholder Declaration for Brant Municipal Enterprises  
Schedule "A" – Dividend Policy  
Schedule "B" – Form of Services Agreement  
Draft Bylaw to Approve a Policy on Asset Transfers to Corporations Established by the County

**COPY TO:**

Senior Management Team  
Jack Pierce, Chair, Brant County Power Services Inc.  
Ed Glassbergen, CEO, Brant County Power Inc. / Brant County Power Services Inc.

**FILE #:**

In adopting this report, is a bylaw or agreement required? If so, it should be referenced in the recommendation section.

By-law required	(YES)
Agreement(s) or other documents to be signed by Mayor and /or Clerk	(YES)
Is the necessary by-law or agreement being sent concurrently to Council?	(YES)

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**SHAREHOLDER DECLARATION**

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**THE CORPORATION OF THE COUNTY OF BRANT**

**- and -**

**BRANT MUNICIPAL ENTERPRISES INC.**

**Dated as of , 2013**

## COUNTY OF BRANT SHAREHOLDER DECLARATION

THIS DECLARATION is made as of \_\_\_\_\_, 2013 by the CORPORATION OF THE COUNTY OF BRANT, in its capacity as the sole shareholder of BRANT MUNICIPAL ENTERPRISES INC.

### RECITALS:

1. Brant Municipal Enterprises Inc. (“**BME**”) is wholly-owned by the Corporation of the County of Brant (the “**County**”) and has been incorporated by the County to undertake business and other activities from time to time as permitted under governing Laws and upon approval of the County;
2. This Shareholder Declaration sets out the expectations of the County, as shareholder, relating to the principles of governance and other fundamental principles and policies of BME;

### 1. Definitions and Interpretation

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

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

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

“**Book Value**” means the book value of the corporation 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 BME;

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

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

“**Council**” means the Council of the County and, where appropriate, in its capacity as the governing body of the County as shareholder of BME;

“**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 Canadian Institute of Chartered Accountants, 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;

“**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, and any Person acting under the authority of any Governmental Authority;

“**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 County;

“**MFIPPA**” means the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) , including the Regulations made pursuant thereto, and any statute or regulations that may be substituted, as amended from time to time;

“**Municipal Act**” means the *Municipal Act 2001* (Ontario), including the Regulations made pursuant thereto, and any statute or regulations that may be substituted, as amended from time to time;

“**Municipal Member**” means a sitting member of Council other than the Mayor who serves on the Board of BME;

“**Net Income**” means the net income after taxes or payments in lieu of taxes as determined in accordance with GAAP;

“**OBCA**” means the *Business Corporations Act* (Ontario) , including the Regulations made pursuant thereto, and any statute or regulations that may be substituted, as amended from time to time;

“**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 County or any agency, board or commission of, or corporation established by, the County, who is appointed to the BME Board;

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



**“Shareholder Representative”** has the meaning ascribed thereto in Section 7.1.

## 1.2 Schedules

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

Schedule “A” Brant Municipal Enterprises Inc. Dividend Policy  
Schedule “B” Form of Services Agreement Between BME and The County

## 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.

## 1.6 Conflict

If there is a conflict between the provisions of this Declaration and the articles or by-laws of BME, the provisions of this Declaration shall prevail to the extent of the conflict and such articles and by-laws shall be amended accordingly. If there is conflict between any provision of this Declaration and any other document contemplated by or delivered under or in connection with this Declaration, the relevant provision of this Declaration is to prevail to the extent of the conflict.

## **2. Purpose and Governing Principles**

### 2.1 Purposes

This Shareholder Declaration sets out the expectations of the County, as the shareholder of BME, relating to the principles of governance and other fundamental principles and policies of BME and the powers necessary to acquire, hold, dispose of and otherwise deal with the shares thereof. Except as provided in Sections 3, 5, 6, 8 and 10, this Shareholder Declaration is not intended to constitute a unanimous shareholder agreement within the meaning of the OBCA or to formally

restrict the exercise of the powers of the BME Board. With respect only to the provisions set out in Sections 3, 5, 6, 8 and 10, this Shareholder Declaration is intended to constitute a unanimous shareholder agreement within the meaning of the OBCA.

## 2.2 Overarching Principles

The following principles shall apply to this Shareholder Declaration:

- a) **Transparency:** BME will follow the reporting and approval requirements articulated in the Shareholder Declaration;
- b) **Accountability:** BME will recognize that the County is a public-sector organization responsible for the welfare and interests of the municipality, and that it is in the best interests of BME and the community of stakeholders whom BME affects that BME conduct its affairs: (i) on a commercially prudent basis; (ii) on a for-profit basis; and (iii) in accordance with the policies and financial performance objectives of the County as set out herein or established from time to time with respect to BME;
- c) **Business Ethics:** BME shall operate in a safe and environmentally responsible manner, and will endeavour to engage in businesses which promote social or environmental responsibility;
- d) **Return on Investment:** BME will be measured by several metrics, with a primary focus on strategic investment and a perspective based on the long-term;
- e) **Adaptability and Flexibility:** BME will be flexible, and move expeditiously when warranted to take advantage of emergent opportunities;
- f) **Risk:** BME will take business risks that are reasonable given the context of its position as subsidiary of the County; a business risk policy will be developed.

## 3. Permitted Business Activities

### 3.1 As Permitted by Law

Subject to this Declaration and those matters requiring approval set out in Section 10, BME shall undertake business activities which are permitted by applicable Laws.

## 4. Corporate Governance

### 4.1 BME Directors Duties

Subject as provided in Sections 3, 5, 6, 8 and 10, as required by the OBCA, the BME Board shall supervise the management of the business and affairs of BME, and, in so doing, shall act honestly and in good faith with a view to the best interests of BME and shall exercise the same degree of care, diligence and skill that a reasonably prudent Person would exercise in comparable circumstances. To the extent that any matter set out in Sections 3, 5, 6, 8 and 10 may only be or shall be dealt with or approved by or requires action by the County, or otherwise sets out the manner in which the BME is to be managed, the powers of the BME Board to manage and supervise the management of the business affairs of BME with respect to those matters are correspondingly restricted.

## **5. Board of Directors and Officers of BME**

### **5.1 Qualifications**

All BME Board members shall be individuals who are at least eighteen (18) years of age, who are not of unsound mind and have not been found to be so by a court in Canada or elsewhere and who do not have the status of a bankrupt. Subject to the BME Board composition requirements set out herein, Council will give due regard to the qualifications of candidates in appointing individuals to the BME Board, including:

- a) sound judgement and personal integrity;
- b) knowledge of and/or background in public policy;
- c) expertise in one or more areas of the business activities of BME;
- d) experience on boards of applicable corporate entities;
- e) experience as an officer(s) of applicable corporate entities;
- f) business, financial, legal, marketing, technological, accounting, or risk management expertise; and
- g) other applicable skills or background.

### **5.2 Residency**

Preference may be given to qualified candidates for the BME Board who are residents of the County, however non-residents of the County shall not be excluded from serving as BME Board members.

### **5.3 Number of Directors**

The BME Board shall consist of seven (7) directors.

### **5.4 Composition of the BME Board**

Unless otherwise determined by the County in its discretion, the BME Board shall consist of the Mayor, the Chair of the Corporate Development Committee of the County (or the successor committee in the event it has amalgamated with another committee or has changed in name), one Municipal Member appointed by Council, and four (4) Private Directors appointed by Council.

### **5.5 Chair of BME**

The Chair of the BME Board shall be the Mayor; provided that, during the absence or inability of the Mayor to act as Chair of the BME Board, the Chair of the Corporate Development Committee shall act as Chair of the BME Board.

### **5.6 Officers of BME**

The CEO of BME shall be the Chief Administrative Officer of the County or such other Person as the County may determine from time to time. The Treasurer of BME shall be the Treasurer of

the County or such other Person as the County may determine from time to time. The Secretary of BME shall be the Clerk of the County or such other Person as the County may determine from time to time. The CEO, Treasurer and Clerk of BME may not be a member of the BME Board.

#### 5.7 Terms of Mayor, Municipal Member and Chair of the Corporate Development Committee of the County

a) The Mayor shall serve as a member of the BME Board for a term coincident with his or her municipal term on Council.

b) The Municipal Member shall serve as a member of the BME Board for a term coincident with his or her municipal term on Council, provided that:

- (i) following the expiry of such term of Council, the Municipal Member shall continue to serve until replaced by Council as at the effective date of the appointment of a replacement Municipal Member;
- (ii) notwithstanding this paragraph (b) of this Section 5.7, Council may, in its discretion, terminate the term of the Municipal Member of the BME Board prior to the end of the municipal term of Council and appoint a replacement Municipal Member;
- (iii) where the Municipal Member of the BME 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, Council shall appoint a replacement Municipal Member as soon as reasonably possible; and
- (iv) where the Municipal Member of the BME 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.

c) The Chair of the Corporate Development Committee of the County shall serve as a member of the BME Board for a term coincident with his or her term as Chair of the Corporate Development Committee of the County.

#### 5.8 Term of Private Directors

The term for the Private Directors of the BME Board shall be a maximum of two (2) terms of four (4) years each; provided, however, that each Private Director shall remain on the BME Board after his or her term until he or she resigns or his or her successor is appointed by Council. Notwithstanding this Section 5.8, the Council may, in its discretion, terminate the term of a Private Director of the BME Board prior to the end of the Private Director's term. Upon the expiry or earlier termination of a Private Director's term, Council shall appoint a successor Private Director as soon as reasonably possible.

#### 5.9 Selection of Private Directors

Recruitment of Private Directors will occur from time to time as required as the term of a Private Director expires. Applications from Private Directors will be solicited through the County website and through any other media avenue deemed appropriate from time to time. Applicants

will shortlisted and interviewed by a committee consisting of the Mayor, the Municipal Member, and the Chair of the Corporate Development Committee of the County. Selection of Private Directors will be based on the qualifications criteria outlined in Section 5.1. Once this selection process has been completed, a recommendation for appointment of a Private Director will be made to Council for approval.

#### 5.10 BME Board Committees

The BME Board may establish committees of the BME Board in the BME Board's discretion. These committees may include but are not limited to the following:

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

#### 5.11 Compensation

Subject to the Municipal Act respecting the provision of assistance to a business or commercial enterprise, inclusive of a wholly-owned corporation:

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

### **6. Policies Adopted Related to BME**

#### 6.1 Policies Adopted by the County

The County shall establish policies addressing the following matters:

- a) Dividends – to ensure the payment of an annual dividend from BME consistent with the BME Dividend Policy attached as Schedule "A";
- b) Asset Transfer – to ensure that assets transferred to BME from the County are consistent with the Municipal Act and the Laws;

#### 6.2 Policies Adopted by the BME Board

The BME Board shall adopt the policy addressing Dividends established by the County and attached as Schedule "A", as amended or replaced from time to time. The BME Board shall establish policies addressing the following matters:

- a) Risk Management – to ensure that BME has adopted an appropriate risk management strategy and internal controls consistent with industry norms in order to manage all risks related to the businesses conducted by BME;
- b) Compensation – to ensure that appropriate and reasonable compensation is provided to board members and officers of BME;
- c) Conflict of Interest – to ensure compliance by directors and officers of BME with the requirements of the OBCA and of BME, including any requirements in respect of disclosure and abstention from voting; and such policy to form a part of the Bylaws of BME.

## **7. Decisions of the County & Shareholder Representative**

### 7.1 Shareholder Representative

The County hereby designates the Chief Administrative Officer of the County or the individual designated by the Chief Administrative Officer of the County from time to time as its legal representative (the “**Shareholder Representative**”) for purposes of communicating to the BME Board, pursuant to Section 7.2, any consent or approval or decision required by this Shareholder Declaration or by the OBCA or otherwise. In the event the Chief Administrative Officer of the County designates another individual to be the Shareholder Representative, the Chief Administrative Officer shall provide written notification in advance to BME of such designation.

### 7.2 County Approval

Approvals or consents or decisions of the County required pursuant to this Shareholder Declaration or the OBCA or otherwise shall require a resolution or bylaw of Council passed at a meeting of Council and shall be communicated in writing to the BME Board and signed by the Shareholder Representative, accompanied by a certified copy of the resolution or bylaw.

## **8. Reports, Records, Annual Meetings and Confidentiality**

### 8.1 Business Plan

BME shall promptly provide the County with a business plan (the “**BME Business Plan**”) for BME. This BME Business Plan will be amended annually and be fully updated every five (5) years, and its adoption and/or implementation by BME shall require prior approval of the County. The BME Business Plan shall include all of the following:

- a) the strategic objectives that BME will undertake;
- b) an operating and capital budget for BME for a five (5) year time horizon, including the resources necessary to implement the BME Business Plan; and,
- c) the projected annual revenues, expenses and Net Income for BME for the following five (5) financial years, including projected dividend payments to the County.

### 8.2 Access to Records

The Shareholder Representative shall, on behalf of the County, have unrestricted access to the books and records of BME and any of its subsidiaries during normal business hours.

### 8.3 Annual Meeting and Annual Report to Council

Within six months after the end of each financial year of BME, BME shall hold an annual meeting with Council and the BME Board. This meeting will be open to members of the public. At this meeting, the CEO shall present the following information:

- a) audited financial statements for the past financial year;
- b) an annual management report, summarizing the performance of business units, accomplishments, resource deployment, and long-term business projections;
- c) written confirmation of compliance to this Shareholders Declaration; and,
- d) additional information as the County may request from time to time.

### 8.4 Confidentiality

- a) Except for the annual report to Council and all other information disclosed at the annual meeting pursuant to Section 8.3, each Party (the "Receiving Party") shall treat as confidential the BME Business Plan and/or any and all other information provided by the other party (the "Disclosing Party") to the Receiving Party in confidence, subject to the Municipal Act, the MFIPPA, County policies, bylaws and protocols and all other applicable Laws or any Governmental Authority.
- b) The parties acknowledge that information that is in the custody or under the control of the County or BME is subject to the access provisions of MFIPPA.
- c) The Receiving Party shall inform the Disclosing Party of any request made for access to information supplied in confidence to the Receiving Party by the Disclosing Party. Subject to the Municipal Act, the MFIPPA, County policies, bylaws and protocols and all other applicable Laws or any Governmental Authority, the Receiving Party shall endeavour to permit the Disclosing Party 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 the Disclosing Party with notice of its decision concerning any such request for access to information of the Disclosing Party.

## 9. Annual Resolutions

The County, by resolution in writing signed in accordance with Section 7.2, shall appoint the necessary members of the BME Board and appoint the auditors for BME and complete such other business as would normally be completed at an annual meeting of shareholders under the OBCA.

## 10. Matters Requiring County or BME Approval

### 10.1 Approvals in Respect of BME

Without the prior written approval of the County in accordance with Section 7.2, BME will not undertake or cause to be undertaken any of the following matters with respect to BME:

- a) adoption and implementation of the BME Business Plan;
- b) entry into one or more transactions to acquire or be acquired, whether by way of purchase or otherwise, or merger or amalgamation with, any one or more Persons;
- c) 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 Section 10.1 with respect to BME, or any public announcement or disclosure in relation to such discussions or document;
- d) entry, through new venture, joint venture, acquisition, merger, or other venture, into a new business activity;
- e) changing or removing any restriction on the business of BME;
- f) creating new classes of shares of BME or in any other manner to amend the articles of BME;
- g) make, amend or repeal any by-law of BME;
- h) enter into one or more mergers or amalgamations with any other corporation(s);
- i) the institution of proceedings for any winding-up, arrangement or dissolution of BME
- j) appointment and replacement of auditors of BME;
- k) an application to continue BME as a corporation under the laws of another jurisdiction;
- l) issue, or enter into any agreement to issue, any shares of any class, or any securities convertible into any shares of any class of BME;
- m) redeem or purchase any outstanding shares of BME;
- n) in any financial year, enter into one or more transactions which individually or in the aggregate, except as provided in the BME Business Plan approved by the County, result in the disposition, lease or sale of any part of the business of BME or any subsidiary of BME equal to or greater than 25% of the Book Value of BME;
- o) any change in the dividend policy of BME
- p) engaging in any business activity other than as expressly permitted under Section 3.1;
- q) policies related to salary, benefits and other compensation of members of the BME Board or any officers of BME;
- r) election, removal, replacement, composition, compensation and/or number of members of the BME Board;
- s) appointment and replacement of officers of BME;
- t) compensation of any officer of BME who is an employee of the County or any agency, board, commission or corporation of the County;
- u) directors and officers insurance arrangements for BME;
- v) establish or sell a subsidiary;
- w) make any material capital expenditures in any fiscal year, except as provided in the BME Business Plan approved by the County;
- x) make, directly or indirectly, loans or advances to, or give security for or guarantee the indebtedness of, or otherwise give financial assistance to, any Person;
- y) take any step or action, which is likely to lead to additional capital contributions from the County; and
- z) any other matters required by the OBCA to be approved by the shareholders.

## **11. Revisions to this Shareholder Declaration**



The County acknowledges that this Shareholder Declaration may be revised from time to time as circumstances may require in the sole discretion of the County; provided that the County will first consult with the BME Board regarding any proposed revisions.

## **12. Support Services**

In addition to any employees that BME may have from time to time, in the event that any or all support services for the activities and business of BME is required by the County, such support services shall be carried out pursuant to a services agreement between BME and the County substantially in the form of Schedule “B” or as otherwise agreed by BME and the County.

## **13. 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 County, BME 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 County,  
The Corporation of the County of Brant  
26 Park Avenue  
Burford, Ontario N0E 1A0  
Attention: General Manager of Corporate Services  
Facsimile: (519) 449-2454
- ii. in the case of BME,  
Brant Municipal Enterprises Inc.  
26 Park Avenue  
Burford, Ontario N0E 1A0  
Attention: Chief Executive Officer  
Facsimile: (519) 449-2454

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.

“Business Day” means any day other than a Saturday, Sunday, statutory holiday, civic holiday or other day on which the County is not open for business, during the County’s regular business hours at its head office.

#### **14. New Subsidiaries**

BME 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*.

#### **15. General**

This Declaration shall enure to the benefit of and be binding on the County and BMI and their respective successors and permitted assigns. If any term or provision of this Declaration is found to be invalid or *ultra vires* the County or BME, it shall not affect the operation of the remaining terms or provisions of this Declaration.

The County has executed this Declaration as of the date first written above.

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

#### **THE CORPORATION OF THE COUNTY OF BRANT**

By: \_\_\_\_\_

Name: R.F. (Ron) Eddy

Title: Mayor

By: \_\_\_\_\_

Name: Jayne Carman

Title: Clerk

We have authority to bind the Corporation.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agrees to abide by the terms of the foregoing Declaration.

DATED at Burford, Ontario, this \_\_\_\_\_, 2013.

**BRANT MUNICIPAL ENTERPRISES INC.**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

I/we have authority to bind the Corporation.

**SCHEDULE "A"**  
**BRANT MUNICIPAL ENTERPRISES INC.**  
**DIVIDEND POLICY**

The dividend policy of BME is predicated on the mandate of the BME Board which includes maximizing County value. Such value is generally realized by the County through dividends or the appreciation of the value of BME.

The BME 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 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 BME;
  - (d) a material impairment in financial prudence including capital investment by BME to sustain growth, reliability and an appropriate level of reserves;
  - (e) a material impairment in the ability to service the debt of BME and its subsidiaries;
  - (f) a deterioration in the credit rating of BME; 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 BME Board will forecast the annual dividend by applying the DPR to budgeted earnings for the next financial year. Dividends will, subject to meeting the above Conditions Precedent to the Payment of Dividends, be targeted at up to 100% of Net Income of BME and paid shortly following the approval of the annual audited financial statements of the preceding year. The dividend will also include any adjustment to bring the total annual dividend for the preceding year to the full DPR level.

*Reporting to County*

Upon the payment of any dividend, BME shall provide an analysis to the County 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 BME Board does not approve a payment of a Regular Dividend, the BME Board will promptly report the circumstances underlying the non-payment to the County and, thereafter, provide progress reports to the County on a quarterly basis until such time as the payment of Regular Dividends resumes.

**SCHEDULE "B"**  
**FORM OF SERVICES AGREEMENT BETWEEN BME AND THE COUNTY**

**SUPPORT SERVICES AGREEMENT**

This agreement made this day of \_\_\_\_\_, 2013

Between:

BRANT MUNICIPAL ENTERPRISES INC.  
(herein called "BME")

OF THE FIRST PART

-and-

THE CORPORATION OF THE COUNTY OF BRANT  
(Herein called the "County")

OF THE SECOND PART

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

**AND WHEREAS** the County 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 County shall provide support services, as set out herein, to BME, and BME shall pay the County for those support services, as set out herein, subject to the Municipal Act respecting the provision of assistance to a business or commercial enterprise, inclusive of a wholly-owned corporation.
2. The County shall provide support services to BME 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>Title of initial County designated representative</i>	<i>Title of initial BME designated representative</i>
<i>Support service area</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 County to provide services in areas relevant to the support services areas.
7. The County shall be solely responsible for determining which individuals perform the support services and for supervising those individuals. However the relevant designated representatives of BME may discuss with the relevant designated representatives of the County any issues related to specific individuals performing the work.

### **Fees and charges**

8. After the end of each month, the County shall calculate the fees and charges for the support services provided by the County to BME for the month ended, and notify BME of those fees and charges.
9. The fees and charges shall be calculated based on the principle that BME shall reimburse the County fully for the costs incurred by the County 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 County, be based on averages or estimates.
12. The County shall fully disclose to BME how all fees and charges are calculated.
13. The County may recalculate fees and charges from time to time, even retroactively or retrospectively, and BME shall be responsible for paying any amount owing after such recalculation.
14. BME 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 County's Council and BME's Board.

**Start and finish**

18. This agreement shall commence on the date first set out herein above.
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.

**THE CORPORATION OF THE COUNTY OF BRANT**

By: \_\_\_\_\_  
Name: R.F. (Ron) Eddy  
Title: Mayor

By: \_\_\_\_\_  
Name: Jayne Carman  
Title: Clerk

We have authority to bind the Corporation.

**BRANT MUNICIPAL ENTERPRISES INC.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

I/we have authority to bind the Corporation.



## BY-LAW NUMBER

-of-

## THE CORPORATION OF THE COUNTY OF BRANT

To approve a policy on asset transfers to corporations established by the County pursuant to the Municipal Act.

**WHEREAS**, subsection 203 (1) of the *Municipal Act, 2001, S.O. 2001, c. 25* allows that a municipality to establish corporations;

**AND WHEREAS** Ontario Regulation 599/06, made pursuant to the *Municipal Act, 2001, S.O. 2001, c. 25*, outlines the process and requirements for a municipality to establish a corporation;

**AND WHEREAS**, section 7 of *Ontario Regulation 599/06* requires a municipality to adopt and maintain a policy for transferring assets to corporations;

**NOW THEREFORE** the Council of The Corporation of the County of Brant hereby ENACTS as follows:

### 1.0 DEFINITIONS

In this By-law:

- 1.1 **“Asset”** includes land, property, equipment, goods, capital shares in corporations, rights and grants of money;
- 1.2 **“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;
- 1.3 **“Council”** means the Municipal Council of the Corporation of the County of Brant;
- 1.4 **“County”** means the Corporation of the County of Brant;
- 1.5 **“Municipal Services Corporation”** means a corporation established by the County pursuant to the Municipal Act, and **“Municipal Services Corporations”** is the plural thereof;
- 1.6 **“Municipal Act”** means the Municipal Act, 2001, S.O. 2001, c. 25, as amended or replaced from time to time;

- 1.7 **“Regulation”** means Ontario Regulation 599/06, made pursuant to the Municipal Act, as amended or replaced from time to time; and,
- 1.8 **“Transfer”** means any assignment, conveyance, sale, exchange, gift, loan, grant or other disposition, or any other arrangement by which possession, legal title or beneficial ownership passes from the County to one or more Municipal Services Corporations, whether or not for value, and any agreement to effect any of the foregoing.

## **2.0 PURPOSE**

To enable the effective transfer of assets by the County to Municipal Services Corporations consistent with Provincial legislation.

## **3.0 POLICY**

- 3.1 The County may, from time to time, upon approval by Council for each occurrence, Transfer Assets to Municipal Services Corporations, and may acquire, hold, dispose of, guarantee and otherwise deal with bonds, debentures, promissory notes, mortgages and similar evidences of indebtedness of a Municipal Services Corporation that may issue shares if such debt is incurred by reason of such Asset Transfer, all in accordance with all applicable legislation, including but not limited to the Municipal Act and the provisions of the Regulation;
- 3.2 The County shall comply with the requirements of the Municipal Act and the Regulation regarding the granting of bonuses or assistance;
- 3.3 The County may attach conditions to the Transfer of an Asset to a Municipal Services Corporation, including but not limited to:
  - i) specifying the permitted use of the Asset;
  - ii) restricting or prohibiting further transfer of the Asset;
  - iii) providing for an obligation on the corporation to transfer back the Asset to the County upon the happening of a winding up, bankruptcy or dissolution of the Municipal Services Corporation, or upon the happening of any other event or events;
  - (iv) attaching a purchase price of the Asset, to be paid or owed to the County by the Municipal Services Corporation; or
  - (v) such other terms or conditions as deemed advisable.
- 3.4 Prior to the Transfer of an Asset to a Municipal Services Corporation, County staff shall determine the current fair market value of the Asset or Assets, which determination may involve use of an appraiser, but such an appraisal shall not necessarily be required where staff is of the opinion that a fair market value can otherwise be accurately determined;

- 3.5 If the County proposes to Transfer an Asset to a Municipal Services Corporation that fails to meet the requirements for the provision of assistance by a municipality as set out in the Regulation, the Asset shall be transferred to the Municipal Services Corporation at fair market value.
- 3.6 If the County proposes to Transfer an Asset, other than a grant, to a Municipal Services Corporation that meets the requirements for the provision of assistance by a municipality as set out in the Regulation, the Asset shall be transferred to the Municipal Services Corporation at audited net book value, and the County Treasurer shall provide Council with an estimate of the audited net book value, prior to the Transfer taking place;
- 3.7 Where any Asset Transfer is made below market value, or where any grant is given, to a Municipal Services Corporation that meets the requirements for the provision of assistance by a municipality as set out in the Regulation, the County Treasurer shall provide Council with a statement of the value of any such grant or an estimate of the fair market value of any other assistance provided at less than fair market value to the Municipal Services Corporation;
- 3.8 If the County proposes to Transfer an Asset to a Municipal Services Corporation and the Province of Ontario has contributed funds for the purchase or improvement of the Asset, then the County shall comply with the notice and other requirements of the Regulation.
- 3.9 If the County proposed to Transfer any right granted to it in any agreement between the County and the Province of Ontario to a Municipal Services Corporation, then the County shall first obtain consent in compliance with the requirements of the Regulation.

**READ** a first and second time, this day of, 2012.

**READ** a third time and finally passed in Council, this day, 2012.

**THE CORPORATION OF THE COUNTY OF BRANT**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk