
SHAREHOLDER DECLARATION

THE CORPORATION OF THE COUNTY OF BRANT

– and –

BRANT MUNICIPAL ENTERPRISES INC.

Dated as of , 2012

COUNTY OF BRANT SHAREHOLDER DECLARATION

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:

“**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 Board of BME 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 Institute of Chartered Accountants in Canada, as such principles may be amended, varied or replaced by International Financial Reporting Standards (IFRS) then in effect and generally accepted in Canada and adopted or required to have been adopted by the Person;

“**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;

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

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

“**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);

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

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

“**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.

2. Purpose and Governing Principles

2.1 Purposes

(a) 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 and the powers necessary to acquire, hold, dispose of and otherwise deal with the shares thereof. Except as provided in Section 13, this Shareholder Declaration is not intended to constitute a unanimous shareholder declaration under the OBCA or to formally restrict the exercise of the powers of the BME Board.

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 to its taxpaying citizens, and as such will make decisions that reflect the best interests of these citizens;
- c) Business Ethics: BME will endeavour to engage in businesses which have a positive social or environmental impact, or at minimum are socially or environmentally benign;
- 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 the restrictions in Section 10, (i) BME shall undertake business activities which are permitted by applicable Laws and determined to be appropriate by the Board and approved by Council.

4. Corporate Governance

4.1 BME Directors Duties

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.

5. Board of Directors and Officers of BME

5.1 Qualifications

In addition to sound judgment and personal integrity, the qualifications of candidates for the BME Board may include:

- a) knowledge and / or background in public policy
- b) expertise in one or more areas of the business activities of BME
- c) experience on boards of applicable corporate entities
- d) experience as an officer(s) of applicable corporate entities
- e) financial, legal, or marketing, or technological expertise
- f) 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 Board members.

5.3 Number of Directors

The BME Board shall consist of a maximum of seven (7) directors to be appointed by and approved by the County.

5.4 Composition of the BME Board

Unless otherwise determined by the County in its discretion, the BME Board shall consist of the Mayor, two (2) Municipal Members, and four (4) Private Directors appointed by Council.

5.5 Chair of BME

The Chair of the BME Board shall be the Mayor.

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.

5.7 Term of Municipal Members

The term for the Mayor and the Municipal Members of the BME Board shall be concurrent with the municipal term of each Council, and the Municipal Member of the BME Board shall be appointed for such term, provided that:

- a) following the expiry of such term of Council, the Municipal Members shall continue to serve until replaced by the County as at the effective date of the appointment of a replacement Municipal Member;
- b) notwithstanding this Section 5.7, the County may, in its discretion, terminate the term of a Municipal Member of the BME Board prior to the end of the municipal term of Council and appoint a replacement Municipal Member; and
- c) where a 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 Municipal Member shall be concurrent with the balance of the municipal term of Council then in effect.

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. 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.

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 and the Municipal Members. 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 Board in the BME Board's discretion. These committees may include the following:

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

5.11 Compensation

- 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-1”;
- 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 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.

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 Subsection 10.1, any consent or approval required by this Shareholder Declaration or by the OBCA.

7.2 County Approval

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

8. BME Reports to County and Business Plan

8.1 Business Plan

BME shall promptly provide the County with a business plan (the “**BME Business Plan**”) for BME. This business plan will be amended annually and be fully updated every five (5) years. 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 and Net Income for BME for the following five (5) financial years.

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 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 as required by applicable law or any Governmental Authority and except for the annual report to Council pursuant to Section 10.3, the County shall treat as confidential the BME Business Plan and all other information provided to it in confidence pursuant to this Section 8, subject to the Municipal Act and applicable Laws. 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.
- b) The County acknowledges that BME shall, from time to time, supply it in confidence with confidential information, the disclosure of which could reasonably be expected to significantly prejudice the competitive position of or interfere with contractual or other negotiations of BME, or result in undue loss to BME, and the County shall protect such information in accordance with the exemption for third party information in Section 10 of MFIPPA.
- c) The County shall inform BME of any request made for access to information supplied to the County by BME, permit BME 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 BME with notice of its decision concerning any such request for access to information of BME.

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

The County hereby directs BME at all times to seek the approval of the County in respect of each of the following matters prior to BME undertaking or causing to be undertaken any of the following matters with respect to BME:

- a) 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;
- b) execution of any memorandum of understanding or other material and binding document with any Person in relation to any transaction described in paragraph (a) of this Subsection 10.1 with respect to BME, or any public announcement or disclosure in relation to such discussions or document;
- c) entry, through new venture, joint venture, acquisition, merger, or other venture, into a new business activity;
- d) changing or removing any restriction on the business of BME;
- e) creating new classes of shares of BME or in any other manner to amend the articles to reduce or increase the number of directors of BME;
- f) enter into one or more mergers or amalgamations with any other corporation(s);
- g) the institution of proceedings for any winding-up, arrangement or dissolution of BME
- h) appointment of auditors of BME;
- i) an application to continue BME as a corporation under the laws of another jurisdiction;
- j) 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;
- k) redeem or purchase any outstanding shares of BME;
- l) in any financial year, enter into one or more transactions which individually or in the aggregate, except as provided in the Business Plan, result in the disposition, lease or sale of any part of the business of BME or any Subsidiary equal to or greater than 25% of the Book Value of BME;
- m) any change in the dividend policy of BME
- n) engaging in any business activity other than as expressly permitted under Section 3.1;
- o) policies related to salary, benefits and other compensation of members of the BME Board or any officers of BME;
- p) election, replacement, composition and number of members of the BME Board;
- q) appointment and replacement of officers of BME; and,
- r) directors and officers insurance arrangements for BME.

11. Revisions to this Shareholder Declaration

The County acknowledges that this Shareholder Declaration may be revised from time to time as circumstances may require and that the County will consult with the BME Board regarding any proposed revisions.

12. 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.

13. 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*.

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

THE CORPORATION OF THE COUNTY OF BRANT

By: _____

Name: David Bailey

Title: Mayor

By: _____

Name: Heather Boyd

Title: Clerk

BRANT MUNICIPAL ENTERPRISES INC.

By:

Name:

Title:

SCHEDULE "A-1"
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 County investment.

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 that such payment would not otherwise cause non-compliance with applicable Laws and that BME has cash on hand.
3. Payment of Dividends

Regular Dividends

Each year, at its meeting to approve the annual budget for the next financial year, the Board of BME 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.