

# CITY OF BURLINGTON

Shareholder Direction relating to

*BURLINGTON ENTERPRISES CORPORATION*

## TABLE OF CONTENTS

<b>ARTICLE 1 Interpretation</b>	<b>3</b>
1.1 Definitions	3
1.2 Recitals	4
<b>ARTICLE 2 Objectives and Principles</b>	<b>5</b>
2.1 Purpose	5
2.2 Shareholder Objectives	5
<b>ARTICLE 3 Business of Burlington Enterprises Corporation</b>	<b>6</b>
3.1 Business of Corporation and Subsidiaries	6
3.2 Business of the Distribution Company	6
3.3 Geographical Scope	6
<b>ARTICLE 4 Operation and Control</b>	<b>7</b>
4.1 Board of Directors and Responsibilities	7
4.2 Board of Directors of Subsidiaries	7
4.3 Qualifications of Directors	7
4.4 Vacancies	8
4.5 Term	8
4.6 Conflict of Interest Policy	8
4.7 Confidentiality	8
4.8 Remuneration	8
<b>ARTICLE 5 Shareholder Matters</b>	<b>8</b>
5.1 Decisions of the Shareholder	8
5.2 Matters Requiring Shareholder Approval	9
<b>ARTICLE 6 Reporting</b>	<b>10</b>
6.1 Business Plan	10
6.2 Quarterly Reports	11
6.3 Access to Records	12
6.4 Audit	12
6.5 Accounting	12
6.6 Annual Financial Statements	12
<b>ARTICLE 7 Financial Performance</b>	<b>12</b>
7.1 Credit Rating	12
7.2 Dividend Policy	13
7.3 Amendments	13

## Shareholder Direction

**WHEREAS** Burlington Enterprises Corporation (the “**Corporation**”) is a corporation existing under the *Business Corporations Act* (Ontario);

**AND WHEREAS** the City of Burlington (the “**Shareholder**”) is the beneficial owner of all of the issued shares of the Corporation;

**AND WHEREAS** the Corporation is a holding body corporation, whose subsidiaries include Burlington Hydro Inc. (the “**Distribution Company**”) and Burlington Electricity Services Inc. (“**BESI**”);

**AND WHEREAS** the Shareholder wishes to establish certain principles of governance relating to the Corporation without restricting the powers of the Board to manage or supervise the management of the Corporation, except as expressly provided for in this Direction;

**AND WHEREAS** this Shareholder Direction replaces an earlier shareholder direction issued to the Corporation (then known as Burlington Hydro Electric Inc.) dated the 7<sup>th</sup> day of December, 1999;

**NOW THEREFORE THIS DIRECTION WITNESSES:**

### ARTICLE 1 INTERPRETATION

#### 1.1 DEFINITIONS

In this Direction, in addition to the terms defined in the recitals, the following terms will have the meanings set out below:

- a) “**Applicable Law**” means applicable laws, rules and regulations, including without limitation those imposed by a Regulator (as defined below);
- b) “**Board**” means the board of directors of the Corporation;
- c) “**Body corporate**” means a firm, partnership, unincorporated association, joint venture, body corporate, corporation, bank, trust, pension fund, union, governmental agency, board, tribunal, ministry or commission or other legal entity of any kind whatsoever, but excludes an individual or natural person;
- d) “**Business**” means the operation of a holding body corporate, with general oversight of the Subsidiary Businesses (as defined below);
- e) “**Business Plan**” means a five (5) year business plan and budget for the Subsidiary Business prepared and approved in accordance with **Section 6.1**;

- f) **“Chair”** means the director of the Corporation appointed as Chair of the Board by the Board upon the nomination by the Shareholder from time to time;
- g) **“Distribution Company”** means any one or more Subsidiaries that carries on the business described in **Section 3.2** and that owns any distribution system, structures, equipment or property used for that purpose;
- h) **“Financial Statements”** means, for any particular period, audited or unaudited (as stipulated in this Direction), consolidated or unconsolidated (as stipulated in this Direction), comparative financial statements of the Corporation consisting of not less than a balance sheet, a statement of income and retained earnings, a statement of changes in financial position, a report or opinion of the Auditor (in the case of audited Financial Statements) and such other statements, reports, notes and information prepared in accordance with generally accepted accounting principles (consistently applied) and as are required in accordance with any applicable law;
- i) **“OBCA”** means the *Business Corporations Act* (Ontario), as such statute may be amended or re-enacted from time to time;
- j) **“Person”** means an individual, a natural person or a body corporate;
- k) **“Regulator”** means the Ontario Energy Board, the Independent Electricity Market Operator and each other governmental or regulatory authority having jurisdiction over a Distribution Company;
- l) **“Subsidiary”** means, with respect to the Corporation, any body corporate of which more than 50% of the outstanding securities of any class carrying exercisable voting rights are beneficially owned, directly or indirectly, by the Corporation, and includes any body corporate in like relation to a Subsidiary;
- m) **“Subsidiary Business”** means the general business and undertaking of a Subsidiary; and
- n) **“third party”** means a person who deals at arm’s length (as interpreted by subsection 251(1) of the *Income Tax Act* (Canada)) with the Corporation or the Subsidiaries.

## 1.2 RECITALS

The recitals to this shareholder direction form part of the terms hereof.

## ARTICLE 2 OBJECTIVES AND PRINCIPLES

### 2.1 PURPOSE

The purpose of this Direction is to express the Shareholder's fundamental principles regarding the Business and to set out the accountability, responsibility and relationship between the Board and the Shareholder.

### 2.2 SHAREHOLDER OBJECTIVES

- a) The Board shall govern the Corporation in a manner that:
  - (i) takes due consideration of the financial objectives established by the Shareholder;
  - (ii) protects the investment of the Shareholder by managing the exposure of the Corporation and Subsidiaries to risks through the development of a strategic planning process and risk management strategy;
  - (iii) provides the Shareholder with a return on its investment, and in the case of a Distribution Company at a rate of return not exceeding that permitted by Applicable Law;
  - (iv) provides adequate reporting to the Shareholder;
  - (v) establishes and maintains appropriate financial and capital structures for the Corporation and the Subsidiaries giving due consideration to the rate of return permitted by Applicable Law;
  - (vi) undertakes activities which will enhance the economic development of the City of Burlington;
  - (vii) provides services beneficial to the City of Burlington; and
  - (viii) provides services in an environmentally responsible manner.
  
- b) The Shareholder's further objective is that the Board explore potential opportunities for the possible disposition, partnering or outsourcing of all or a part of the Subsidiary Businesses with the goal of:
  - (i) maximizing the financial returns to the Shareholder of the Corporation, subject to Applicable Law;

- (ii) identifying one or more acquirors, partners or suppliers that would provide safe and reliable services to the customers of the Subsidiary Businesses at a reasonable price; and
- (iii) identifying one or more acquirors, partners or suppliers that would be responsive to the future needs and concerns of the customers of the Subsidiary Businesses and the City of Burlington

### ARTICLE 3

## BUSINESS OF BURLINGTON ENTERPRISES CORPORATION

### 3.1 BUSINESS OF CORPORATION AND SUBSIDIARIES

The Corporation shall carry on the Business and, subject to s.3.2, the Subsidiaries may engage in any business activity permitted by Applicable Law.

### 3.2 BUSINESS OF THE DISTRIBUTION COMPANY

The Distribution Company may engage only in the following business activities:

- a) selling (i) directly, (ii) through a third party, (iii) through a Subsidiary, or (iv) through a combination of the foregoing, electricity to every person connected to the distribution system of the Distribution Company;
- b) transmitting or distributing electricity;
- c) business activities, the principal purpose of which is to use more effectively the assets of the distribution system of the Distribution Company, including, without limiting the generality of the foregoing, meter installation and reading services, and billing and collection services;
- d) using the real property that the Distribution Company has the right to use for the purpose of providing telecommunications services, or entering into agreements with any third party, including Subsidiaries, authorizing such third party or Subsidiaries to use such real property for the purpose of providing telecommunications services.

### 3.3 GEOGRAPHICAL SCOPE

The business activities of the Corporation and its Subsidiaries may be carried out in any jurisdiction permitted by Applicable Law.

## ARTICLE 4 OPERATION AND CONTROL

### 4.1 BOARD OF DIRECTORS AND RESPONSIBILITIES

The Board of the Corporation shall consist of five directors, unless otherwise consented to in writing by the Shareholder. The Board shall be comprised of:

- a) Two directors appointed by the Shareholder;
- b) The President of Corporation, by virtue of holding that office;
- c) The Mayor of the City of Burlington, by virtue of holding that office; and
- d) The City Manager of the City of Burlington, by virtue of holding that office.

### 4.2 BOARD OF DIRECTORS OF SUBSIDIARIES

The Business of the Subsidiaries will be managed or supervised by their respective boards of directors. The Corporation will elect the directors of the Subsidiaries in accordance with Applicable Law, and particularly in the case of the Distribution Company, in accordance with best practices identified by the Regulator from time to time and provisions of the Ontario Energy Board Affiliate Relationship Code for Electricity Distributors and Transmitters.

### 4.3 QUALIFICATIONS OF DIRECTORS

In addition to all requirements set forth by Applicable Law, directors shall have an established reputation for personal integrity and honesty. In electing directors to the Board, the Shareholder will give due regard to the qualifications of candidates and ensure that the Board cumulatively possesses qualifications that will contribute to the success of the Business and the Subsidiary Businesses, which may include:

- a) experience with corporate finance and business management
- b) knowledge of corporate governance and previous Board experience
- c) background in large systems operations, maintenance, and management
- d) background in government regulation and or regulated industries
- e) knowledge of the energy industry
- f) experience with employee union relations and workplace health and safety
- g) background in marketing and sales
- h) experience with consumer relations
- i) knowledge of the City of Burlington community.

#### 4.4 VACANCIES

If a member of the Board ceases to be a director for any reason, the Shareholder will fill the vacancy created thereby as soon as reasonably possible.

#### 4.5 TERM

The term of office for a director appointed pursuant to s.4.1 (a) will be two years or until his or her successor is elected, subject to no more than three (3) consecutive terms unless consented to in writing by the Shareholder. The term of office for a director appointed pursuant to s.4.1 (b), (c) or (d) will run concurrently with his or her term as President, Mayor or City Manager, respectively.

#### 4.6 CONFLICT OF INTEREST POLICY

The directors and officers of the Corporation and the Subsidiaries will strictly abide by the requirements of the OBCA and the Corporation in respect of conflicts of interest, including any requirements in respect of disclosure and abstention from voting.

#### 4.7 CONFIDENTIALITY

The Shareholder and the directors and officers of the Corporation and the Subsidiaries (each a “**Receiving Party**”) will ensure that no confidential information of the Shareholder or , the Corporation or other Subsidiary, as the case may be, is disclosed or otherwise made available to any person, except to the extent that:

- a) disclosure to a Receiving Party’s employees or agents is necessary for the performance of any Receiving Party’s duties and obligations under this Direction;
- b) disclosure is required in the course of judicial proceedings or pursuant to Applicable Law; or
- c) the confidential information becomes part of the public domain (other than through unauthorized disclosure by the Receiving Party).

#### 4.8 REMUNERATION

The remuneration of the members of the Board for their respective services as directors will be as determined by the Shareholder from time to time.

## ARTICLE 5 SHAREHOLDER MATTERS

#### 5.1 DECISIONS OF THE SHAREHOLDER

The following will apply to any approvals or decisions that the Shareholder must provide:



- a) approvals and decisions will be subject to duly passed resolution of City of Burlington Council and shall be evidenced in writing by the City of Burlington, or as otherwise determined by the Shareholder; and
- b) no approval will be given unless the Corporation has given reasonable notice in writing of the need for approval, unless such notice period is waived by the Shareholder in writing, and has provided such information as is reasonably necessary for the Shareholder to make an informed decision regarding the subject matter requiring approval.

## 5.2 MATTERS REQUIRING SHAREHOLDER APPROVAL

Neither the Corporation nor any Subsidiary will, without the approval of the Shareholder:

- a) amend its articles or make, amend or repeal any by-law;
- b) change a corporate name;
- c) amalgamate (except for an amalgamation with one or more Subsidiaries), apply to continue as a body corporate under the laws of another jurisdiction, acquire, merge, consolidate or reorganize, or approve or effect any plan of arrangement, in each case whether statutory or otherwise;
- d) take or institute proceedings for any winding up, arrangement, reorganization or dissolution;
- e) create new classes of shares or reorganize, consolidate, subdivide or otherwise change its outstanding securities;
- f) sell or otherwise dispose of, by conveyance, transfer, lease, sale and leaseback, or other transaction, all or substantially all of its assets or undertaking;
- g) change the Auditor;
- h) make any change to the number of directors comprising the Board;
- i) enter into any transaction or take any action that requires shareholder approval pursuant to the OBCA;
- j) issue, or enter into any agreement to issue, any Shares of any class, or any securities convertible into any Shares of any class;
- k) redeem, purchase for cancellation or otherwise retire any of its outstanding Shares;
- l) reorganize, consolidate, subdivide, or otherwise change its outstanding shares;
- m) establish any requirement for capital contributions by the Shareholder;

- n) borrow money, provide any financial assistance to any Subsidiary (whether by guarantee or otherwise), or grant a security interest in or otherwise encumber its assets in an amount exceeding \$10,000,000 over existing debt levels;
- o) provide any financial assistance, whether by guarantee or otherwise, to any Person not dealing at arm's length to it, or any of its directors or officers;
- p) enter into strategic business alliances, partnerships, joint ventures or arrangement for the sharing of profits with any Person that would require capital contributions exceeding \$5,000,000;
- q) incorporate any material Subsidiary;
- r) change the remuneration of members of the Board or the Board of Directors of any Subsidiary;
- s) enter into gas or electricity trading arrangements or derivative strategies beyond that approved by the Shareholder in the current Business Plan;
- t) make any capital expenditure that exceeds the approved sum magnitude of the capital plan by amounts in excess of \$2,000,000;
- u) acquire all or substantially all of the assets, undertaking or securities of a any business, including without limitation a distributor (as defined in the *Electricity Act, 1998*);
- v) invest funds in publicly-traded securities other than government bonds, guaranteed investment certificates or other short-term debt instruments;
- w) assume any financial obligation which would increase the debt/equity ratio of the Corporation and the Subsidiaries on a consolidated basis above the ratio of 60:40; or
- x) make any decision that would materially adversely affect the tax or regulatory status of the Corporation or any Subsidiary.

## ARTICLE 6 REPORTING

### 6.1 BUSINESS PLAN

Not later than 30 days prior to the end of each fiscal year, the Board will approve and submit to the chief financial officer of the Shareholder a business plan for the next five fiscal years (the “**Business Plan**”). In the event that the Corporation notifies the Shareholder that the Business Plan contains sensitive commercial information, the Business Plan shall be received *in camera* by the City of Burlington Council. The Business Plan will be prepared on a consistent basis with the Business Plan then in effect.

The Corporation will carry on its business and operations in accordance with the Business Plan which will include, in respect of the period covered by such plan:

- a) the strategic direction and any new business initiatives which the Corporation or a Subsidiary will undertake;
- b) an operating and capital expenditure budget for the next fiscal year and an operating and capital expenditure projection for each fiscal year thereafter, including the resources necessary to implement the Business Plan;
- c) pro forma unconsolidated Financial Statements for each fiscal year, including projected dividend payments to the Shareholder;
- d) an acquisition budget setting forth the nature and type of capital expenditures proposed to be made in the following fiscal year, supported by explanations, notes and information upon which the budget was based;
- e) energy conservation programs and environmental plans; and
- f) any material variances from the Business Plan then in effect.

## 6.2 QUARTERLY REPORTS

Within 60 days after the end of each fiscal quarter, the Board will prepare (on a consistent basis with the previous fiscal quarter) and submit to the chief financial officer of the Shareholder a quarterly report, which shall be marked as and received as confidential where such report contains sensitive or confidential information. The quarterly report will include, in respect of the immediately preceding fiscal quarter:

- a) quarterly unaudited consolidated Financial Statements;
- b) such explanations, notes and information as is required to explain and account for any material variances between the actual results from operations and the budgeted amounts set forth in the current Business Plan;
- c) information that is likely to materially affect the Shareholder's financial objectives or energy policies or customers' perceptions or opinions regarding Burlington Enterprises Corporation;
- d) information regarding any matter, occurrence or other event which is a material breach or violation of any law; and
- e) any such additional information as the Shareholder may specify from time to time.

### 6.3 ACCESS TO RECORDS

The duly appointed representatives of the Shareholder (as approved by report to the Council of the City of Burlington from time to time) shall have unrestricted access to the books and records of the Corporation and the Subsidiaries during normal business hours. Such representatives shall treat all information with the same level of care and confidentiality as any confidential information of the Shareholder.

### 6.4 AUDIT

The Corporation's consolidated and unconsolidated Financial Statements will be audited annually. The auditor of the Corporation (the "**Auditor**") will be appointed by the Shareholder.

### 6.5 ACCOUNTING

The Corporation will, in consultation with the Auditor, adopt and use the accounting policies and procedures which may be approved by the Board from time to time and all such policies and procedures will be in accordance with standards adopted by the Accounting Standards Board and applicable regulatory requirements.

### 6.6 ANNUAL FINANCIAL STATEMENTS

The Board will cause the Auditor to deliver, as soon as practicable and in any event within 120 days after the end of each fiscal year, the audited consolidated Financial Statements of the Corporation for consideration by the Shareholder.

### 6.7 SHAREHOLDER DESIGNATED REPRESENTATIVE

For any material communications from the Corporation to the Shareholder, including those requiring changes to the Shareholder Direction, By-laws or other matters requiring Shareholder approval, the Shareholder hereby confirms to the Corporation that the City Manager, or his or her designate, shall be authorized to receive any such communication as the Shareholder's designated representative

## ARTICLE 7 FINANCIAL PERFORMANCE

### 7.1 CREDIT RATING

The Corporation shall maintain a financial structure that would achieve a rating of A (low) (as defined by CBRS Inc.) or an equivalent rating (as defined by Dominion Bond Rating) or higher.

## 7.2 DIVIDEND POLICY

Subject to any Applicable Law, the Corporation will pay a dividend of all cash in excess of the requirements for working capital and capital expenditures as established in the Business Plan for the forthcoming fiscal year.

## 7.3 AMENDMENTS

This Direction may be amended solely at the discretion of the Shareholder. The Shareholder will provide 30 days written notice to the Board of any proposed amendments to this Direction.

[signature page follows]

Dated at the City of Burlington this \_\_\_\_\_ day of May, 2019.

\_\_\_\_\_  
Marianne Meed Ward, Mayor

\_\_\_\_\_  
Angela Morgan, City Clerk