



City of Hamilton  
**HAMILTON ENTERPRISES CORPORATION**  
**REPORT 18-001**

June 6, 2018, 4:25 p.m.  
 Council Chambers, Hamilton City Hall, 71 Main Street West

**Present:** Deputy Mayor B. Johnson (Chair)  
 Councillors T. Jackson, C. Collins, S. Merulla, M. Green, J. Farr,  
 A. Johnson, D. Conley, M. Pearson, L. Ferguson, A. VanderBeek

**Absent with  
 Regrets:** Mayor F. Eisenberger, T. Whitehead – Other City Business  
 Councillors D. Skelly, J. Partridge, R. Pasuta – Personal

**THE HAMILTON ENTERPRISES CORPORATION SHAREHOLDER PRESENTS  
 REPORT 18-001 AND RESPECTFULLY RECOMMENDS:**

**1. Local Representation on the Hamilton Enterprises Holding Corporation  
 Board (Item 4.4)**

That, effective in 2019, with the appointment of the new Hamilton Enterprises Holding Corporation Board at the next Annual General Meeting, with the exception of the two the members currently holding a two-year term, the majority of Directors of the Hamilton Enterprises Holding Corporation Board be residents of the city of Hamilton.

**2. Confirmation of By-law No. 1 (Hamilton Enterprises Holding Corporation  
 General By-law) (Item 4.1)**

WHEREAS, By-Law No. 1 of the Corporation, being a by-law relating generally to the conduct of the business and affairs of the Corporation (herein referred to as the “General By-Law”), was enacted by the first Director of the Corporation on December 19, 2017;

WHEREAS, the General By-Law must be confirmed by the Shareholder at the next Meeting of the Shareholder in order to continue to be in effect;

WHEREAS, this meeting is the first meeting of the Shareholder since the General By-Law was enacted; and,

WHEREAS, it is desirable for the Shareholder to confirm the General By-Law:

THEREFORE, BE IT RESOLVED:

That the General By-Law made by the first Director of the Corporation is hereby confirmed without variation as a By-Law of the Corporation and, further, that the Chair of the Board of the Corporation is authorized to sign and seal the General By-Law so as to indicate that the General By-Law has been confirmed by the Shareholder of the Corporation and that the General By-Law so identified and signed and sealed by the Chair of the Board of the Corporation as such shall be the General By-Law of the Corporation.

**3. Appointment of Hamilton Enterprises Corporation Board of Directors, Appointment of KPMG LLP as the Auditor of the Hamilton Enterprises Holding Corporation (Item 4.2)**

**(a) Appointment of Directors to Hamilton Enterprises Holding Corporation (“HEHCo”)**

That the Resolutions set forth below be presented to the City of Hamilton for passage as Resolutions of the Shareholder of the new Corporation, Hamilton Enterprises Holding Corporation:

Number of Directors

WHEREAS, the incorporator of the Corporation, who as such is the initial director of the Corporation, has resigned as a director of the Corporation, and it is desirable to accept such resignation; and,

WHEREAS, it is desirable for the new Corporation to have six Directors;

- (i) That the resignation of the incorporator of the Corporation as the initial director of the Corporation be accepted effective immediately;
- (ii) That, as a special resolution, that henceforth Hamilton Enterprises Corporation shall have six Directors;
- (iii) That the following person(s), having heretofore consented to serve as a Director of the new Corporation, are elected as a Director of Hamilton Enterprises Corporation, for the period set opposite

below and thereafter until the next annual general meeting of the Corporation:

- (1) Joseph Rinaldo one-year term commencing June 30, 2018
- (2) Laurie Tugman one-year term commencing June 30, 2018
- (3) Daryl Wilson one-year term commencing June 30, 2018
- (4) Christa Wessel two-year term commencing June 30, 2018
- (5) Lesley Gallinger two-year term commencing June 30, 2018

- (iv) That, inasmuch as the Shareholder of the Corporation has previously directed that the Mayor or the Mayor' designate is to be a Director of the Hamilton Utilities Corporation and the Mayor is presently serving as a Director of the Alectra Utilities Corporation, the Mayor's Designate, Councillor Maria Pearson, having heretofore consented to serve as a Director of the Hamilton Enterprises Holding Corporation, is confirmed as elected as a Director of the Corporation except and provided that the term shall end upon the earlier of the end of the term of the Mayor as mayor of the city or the end of the term as Councillor for the City; and,
- (v) That these Directors comprise the Hamilton Enterprises Holding Corporation Board of Directors, effective June 30, 2018.

**(b) Appointment of the Auditor**

That KPMG LLP, Chartered Accountants, the present Auditor of the Hamilton Utilities Corporation, is appointed the Auditor of Hamilton Enterprises Holdings Corporation for the 2018 fiscal year of the Corporation.

**4. Shareholder Direction and Unanimous Shareholder Declaration – Hamilton Enterprises Holding Corporation (Item 4.3)**

WHEREAS, the City of Hamilton (the "Shareholder"), as the sole shareholder of Hamilton Utilities Corporation ("HUC"), approved the amalgamation of Horizon, PowerStream, Enersource and HydroOne Brampton to create Alectra on October 30, 2015;

WHEREAS, in light of the Alectra Inc. amalgamation HUC was restructured for, among other reasons, to create improved corporate governance and to avoid negative tax implications;

WHEREAS, upon restructuring the assets of Alectra Inc. remained with HUC, but all other assets were transferred to the newly formed Hamilton Enterprises Holding Corporation (“HEHCo”) or its subsidiaries;

WHEREAS, as prudent practice, new unanimous Shareholder declarations were required for both HUC and HEHCo as a result of the HUC restructuring;

WHEREAS, the Board of Directors of HUC and staff for the Shareholder have been involved in the drafting of the new unanimous Shareholder declarations for HUC and HEHCo; and,

WHEREAS, the Board of Directors of HUC passed a resolution on May 24, 2018 in the form set out in Appendix “A” that recommends the adoption of the new unanimous Shareholder declarations by the Shareholder;

**THEREFORE, BE IT RESOLVED:**

- (a) The City of Hamilton, acting in its capacity as sole shareholder of Hamilton Enterprises Holding Corporation, adopt the Unanimous Shareholder Declaration for Hamilton Enterprises Holding Corporation in the form in Appendix “B” attached to Report 18-001; and,
- (b) The Mayor and Clerk of the City of Hamilton, acting in its capacity as sole shareholder of Hamilton Enterprises Holding Corporation, be authorized and directed to execute the Unanimous Shareholder Declaration for Hamilton Enterprises Holding Corporation in the form in Appendix “B” attached to Report 18-001.

**FOR THE INFORMATION OF THE SHAREHOLDER:**

**(a) CHANGES TO THE AGENDA (Item 1)**

The Committee Clerk advised that there were no changes to the agenda.

The agenda for the June 6, 2018 Hamilton Enterprises Holding Corporation Inaugural meeting was approved, as presented.

**(b) DECLARATIONS OF INTEREST (Item 2)**

There were no declarations of interest.

(d) PRESENTATIONS (Item 3)

(i) Hamilton Enterprises Holding Corporation (Item 3.1)

Joe Rinaldo, Chair of the Hamilton Utilities Corporation Board of Directors, addressed Committee respecting the Hamilton Enterprises Holding Corporation.

The presentation, respecting the Hamilton Enterprises Holding Corporation, was received.

(e) SHAREHOLDER RESOLUTIONS (Item 4)

(i) Shareholder Direction and Unanimous Shareholder Declaration – Hamilton Enterprises Holding Corporation (Item 4.3)

Section 4:07 – Qualifications of Directors, of Appendix “B” to the Hamilton Enterprises Corporation Shareholder Declarations, was amended by adding the words “***Notwithstanding the foregoing, the majority of Directors shall be residents of the city of Hamilton.***”, to read as follows:

**4.07 Qualifications of Directors:** When selecting persons to recommend to the Shareholder to be directors of the Corporation, the Nominating Committee of the Board and the Board will, generally, consider all of qualifications of candidates including sound judgment and personal integrity. In evaluating and nominating potential independent nominees for the Board, the Nominating Committee shall strive to achieve a Board composed of members that, as a group, have skills, experience and expertise in, among other things corporate and/or public management including strategic planning, governance, human resources including compensation and health and safety, finance, project development and operations, telecom, non-regulated energy services, environmental matters, municipally-owned corporations and government relations. Preference may be given to qualified candidates who are residents of the City of Hamilton, however non-residents of the City of Hamilton shall not be excluded from serving as directors of the Corporation. ***Notwithstanding the foregoing, the majority of Directors shall be residents of the City of Hamilton.*** Candidates for being a director of the Corporation must consent to the disclosure of his or her director's remuneration to Council for the City of Hamilton and placed on the public record

each fiscal year in a form and with sufficient details as prescribed by the Shareholder from time to time.

Councillor M. Pearson wished to be recorded as OPPOSED to the amending motion above.

**(ii) Local Representation on the Hamilton Enterprises Holding Corporation Board (Item 4.4)**

Councillor M. Pearson wished to be recorded as OPPOSED to this motion.

**(f) ADJOURNMENT (Item 7)**

There being no further business, Hamilton Enterprises Holding Corporation Inaugural meeting adjourned at 4:36 p.m.

Respectfully submitted,

Mayor Fred Eisenberger

Stephanie Paparella  
Legislative Coordinator  
Office of the City Clerk

**SHAREHOLDER DIRECTION**

and

**UNANIMOUS SHAREHOLDER DECLARATION**

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**City of Hamilton**

to

**Hamilton Enterprises Holding Corporation**  
and all its present and future Subsidiaries

**JUNE 6, 2018**

## SHAREHOLDER DIRECTION

And

### UNANIMOUS SHAREHOLDER DECLARATION

**WHEREAS** Hamilton Enterprises Holding Corporation (the “**Corporation**”) is a corporation incorporated and existing under the Ontario *Business Corporations Act*; and

**WHEREAS** the City of Hamilton (the “**City**”) is the beneficial and registered owner of all of the issued shares of the Corporation; and

**WHEREAS** through this Direction and Declaration made and issued by the City to the Corporation, it is the purpose of the City to:

- (i) inform the Corporation of certain expectations that the City has with respect to the Corporation and its subsidiaries and their activities;
- (ii) provide certain directions to the Corporation and its subsidiaries as to how their activities are to be conducted;
- (iii) provide certain restrictions on the investments, shares, securities, assets, business, activities and undertaking that the Corporation and its subsidiaries may own and conduct;
- (iv) provide certain principles that are to govern the activities of the Corporation and its subsidiaries;
- (v) restrict certain actions by the directors of the Corporation and of its subsidiaries; and
- (vi) inform the residents of the City of the expectations, principles, directions and restrictions given by the City to the Corporation and its subsidiaries.

**NOW THEREFORE THIS DIRECTION AND DECLARATION MADE AND ISSUED BY THE CITY OF HAMILTON TO HAMILTON ENTERPRISES HOLDING CORPORATION WITNESSETH:**

### ARTICLE 1 – DEFINITIONS

**1.01** **Definitions:** In this Direction and Declaration (including the recitals hereto and this Section), unless the context otherwise necessarily requires, the words and phrases set forth below shall have the meaning provided therefor below, namely:

“**Applicable Laws**” means: (i) all applicable federal, provincial, regional, county, municipal and other governmental laws, statutes and regulations; (ii) all guidelines, rules, ordinances, by-laws, guidelines, directives, policies, standards, codes and similar edicts having the force of law (including, without limitation, official plans, zoning by-laws, development and site plan agreements, building codes and ESA,



CSA and Ontario Energy Board codes); and (iii) all orders, rulings, decisions, mandates and other requirements whatsoever of courts, regulatory and administrative bodies and other authorities having jurisdiction.

“**Board**” means the board of directors of the Corporation.

“**City**” means the City of Hamilton.

“**Corporation**” means Hamilton Enterprises Holding Corporation, an Ontario corporation having Ontario Corporation Number 1986514.

“**Council**” means the City Council of the City of Hamilton.

“**Effective Date**” means June 6 2018.

“**HEHCo Declaration**” means this Direction and Declaration made and issued by the Shareholder to the Corporation dated June 6, 2018, as amended from time to time.

“**HUC**” means Hamilton Utilities Corporation, an Ontario corporation having Ontario Corporation Number 1421133, as may be continued, amalgamated or reorganized.

“**Management**” means the senior employees of the Corporation and the Subsidiaries who are responsible for the management of and conduct of operations by those corporations, including the officers of those corporations except the Chairs of those corporations.

“**Shareholder**” means the City.

“**Shareholder Representative**” shall have the meaning provided therefor in Section 6.04.

“**Subsidiaries**” means all subsidiaries of the Corporation and all subsidiaries of those subsidiaries, collectively; and “**Subsidiary**” means any one of the Subsidiaries separately. The “Subsidiaries” existing on the Effective Date are: (i) Hamilton Infrastructure Projects Corporation and its subsidiary HCE Energy Inc. and its subsidiaries HIPCO-FIT4 Projects Corporation, HIPCO-FIT5 Projects Corporation, HIPCO-MIP Projects Corporation, HIPCO-CUP Projects Corporation and HIPCO-Portlands Projects Corporation; and (ii) Hamilton Ventures Corporation and its subsidiaries HCE Telecom Inc. and its subsidiary Sunrise Interactive Solutions Inc., HCE Energy (2017) Inc. and its subsidiary HCE Energy (2018) Inc. and Hamover Power GP Inc. “Subsidiaries” include subsidiaries incorporated pursuant to Section 2.04 or acquired pursuant to Section 2.05 after the Effective Date. For the purposes of this definition “subsidiaries” has the meaning provided therefor in the Ontario *Business Corporations Act*.

“**Timely**” means within the time provided herein for a particular action or, if no such provision is made herein, means as quickly as circumstances reasonably allow taking into consideration, in appropriate circumstances, the time available for a decision required by an entity not controllable by the Corporation.

**1.02**            **OBCA Definitions:** Words and phrases used but not defined herein but that are defined in the Ontario *Business Corporations Act* shall have the meanings provided therefor in such Act.

## **ARTICLE 2 – PERMITTED BUSINESSES**

**2.01**            **Businesses Permitted:** The Corporation and the Subsidiaries may engage only in the following businesses:

- (i)     businesses permitted by Applicable Laws; and
- (ii)    that are approved by the Board,

including the following business activities, some of which are presently being carried on by the Corporation and the Subsidiaries, namely:

- (1)     district heating and cooling and related services, including domestic hot water;
- (2)     telecommunications and related services;
- (3)     generating, co-generating, retailing, distributing and transmitting electricity and related services (on and off grid);
- (4)     generating renewable energy and related services (on and off grid);
- (5)     distributing and retailing natural gas or any other energy product which is carried through pipes or wires to the user;
- (6)     business activities the principal purpose of which is to use more effectively the assets of the Corporation and Subsidiaries, or any of them;
- (7)     providing operation and maintenance services and support in the foregoing regards;
- (8)     providing consulting services in the foregoing regards; and
- (9)     holding investments in the foregoing.

Each business engaged in by the Corporation and the Subsidiaries must be conducted in a manner compliant with this HEHCo Declaration.

**2.02**            **Geographic Constraints on Activities:** Hamilton Infrastructure Projects Corporation and its Subsidiaries shall conduct its operations only within the geographical boundaries of the City of Hamilton. Hamilton Ventures Corporation and its Subsidiaries shall: (i) shall conduct all of their operations (except telecommunications activities) outside the municipal boundaries of the City of Hamilton; and (ii) may conduct their telecommunications activities within and/or outside the geographical boundaries of the City of Hamilton..

**2.03**            **Business Prohibited - Alectra:** Notwithstanding the provisions of Section 2.01, the Corporation and the Subsidiaries shall not have any ownership or other interest whatsoever, direct or indirect, in any of the shares, securities, assets, business, activities or undertaking of Alectra Inc. (an Ontario corporation having Ontario Corporation Number 1969562), as may be continued, amalgamated or reorganized, or any of the subsidiaries of Alectra Inc.

**2.04**            **Subordinate Vehicles:** Provided the Board determines that there is sufficient commercial reason, the Corporation and any Subsidiary may carry on the activities permitted for it by this HEHCo Declaration through a corporation, partnership, unincorporated association,

trustor other legal entity of any kind whatsoever which is wholly owned by the Corporation or such Subsidiary either alone or with one or more of the other Subsidiaries and the Corporation. Any such entity shall comply with the requirements herein applicable to the Subsidiaries except as otherwise provided herein. The Corporation shall forthwith advise the City of the formation of each new Subsidiary. Provided the Board determines that there is sufficient commercial reason, the Board may allow any Subsidiary, except Hamilton Infrastructure Project Corporation and Hamilton Ventures Corporation, to be wound up or dissolved. The Corporation shall forthwith advise the City of the winding up or dissolution of any Subsidiary. For clarity, the winding-up or dissolution of Hamilton Infrastructure Project Corporation or Hamilton Ventures Corporation requires the approval of the Shareholder pursuant to Section 6.01(ix).

**2.05**        **Partly-Owned Vehicles:** Provided the Board determines that there is sufficient commercial reason, the Corporation and/or any Subsidiary may acquire less than the entire ownership interest in a corporation, partnership, unincorporated association, trust or other legal entity of any kind whatsoever which conducts a business activity in which the Corporation or the particular Subsidiary, as the case may be, is empowered to engage under this HEHCo Declaration and no other business activity. The Corporation shall forthwith advise the City of each acquisition made by the Corporation or any Subsidiary pursuant to this Section.

### **ARTICLE 3 - EXPECTATIONS AND PRINCIPLES**

**3.01**        **Shareholder Expectations:** It is the expectation of the Shareholder that the Corporation and each of the Subsidiaries:

- (i)        **Financial Structure:** will develop and maintain a prudent financial and capitalization structure (including a debt/equity policy) in accordance with this HEHCo Declaration consistent with industry norms and sound financial principles, which will be established on the basis that the Corporation and each of the Subsidiaries are intended to be financially self-sufficient entities;
- (ii)       **Rates:** will establish rates for their services which are:
  - (1)       commercially reasonable; and
  - (2)       intended to preserve and enhance the value of their business;
- (iii)      **Services:** provide their services on a reliable, effective, efficient, commercially prudent and for-profit basis and which complies with all Applicable Laws, and emphasizes customer satisfaction;
- (iv)      **Return:** will provide the Shareholder with a reasonable return on equity consistent with a prudent financial and capitalization structure;
- (v)       **Risks:** will manage all risks related to their respective business through the adoption of appropriate risk management strategies and internal controls consistent with industry norms;
- (vi)      **Strategic Plan:** will develop a long range strategic plan which is consistent with the maintenance of a viable, competitive business and preserves the value of their respective business; and

(vii) **Operations:** will operate in a safe and environmentally responsible manner.

**3.02 Directors Responsible:** The directors of the Corporation and each of the Subsidiaries shall be responsible for determining and implementing the appropriate balance among the expectations set forth in Section 3.01 and for causing the Corporation or the Subsidiary of which they are the directors to conduct its activities in accordance with such determination.

#### **ARTICLE 4 - DIRECTORS**

**4.01 Additional Definitions:** For purposes of this Article, the words and phrases set forth below shall have the meaning provided therefor below, namely:

“**Mayor**” shall have the meaning provided therefor in Section 4.04(1).

“**Mayor’s Surrogate**” shall have the meaning provided therefor in Section 4.04(1).

**4.02 Mandate of the Board:** Excepting matters requiring approval of the Shareholder under either the Ontario *Business Corporations Act* or this HEHCo Declaration, the mandate of the Board is to set and implement the strategic direction for the Corporation and the Subsidiaries and to implement such strategic directions and to supervise and oversee the business, the affairs, and the Management of the Corporation and Subsidiaries in addition to such other duties and responsibilities as are required by Applicable Laws. The Board should consider and, if warranted, approve all significant decisions that affect the Corporation or a particular Subsidiary before they are implemented, and review the results. For matters requiring approval of the Shareholder under either the Ontario *Business Corporations Act* or this HEHCo Declaration, the mandate of the Board is to provide the Shareholder with a Timely report and recommendation.

**4.03 Number of Directors for the Corporation:** Initially, the Corporation shall have six (6) directors. The Corporation may, from time to time, change the number of Directors that the Corporation shall have by special resolution of the Shareholder.

**4.04 Composition of Board:** The directors of the Corporation shall at all times include:

- (i) the Mayor of the City (the “**Mayor**”) or, should the Mayor either: (1) decline to serve as a director of the Corporation or (2) be a director of Alectra Inc. (as may be continued, amalgamated or reorganized), a member of Council selected by the Council from time to time to serve instead of the Mayor (the “**Mayor’s Surrogate**”); and
- (ii) five (5) individuals who are not members of Council or the administration of the City. A director of HUC may serve as a director of the Corporation.

**4.05 Number of Directors for Subsidiaries and Subordinate Vehicles:** The directors of each wholly-owned Subsidiary shall be designated by the Board and the shareholder of each Subsidiary shall cause the designees of the Board to be elected or appointed as directors of that particular Subsidiary.

Where a Subsidiary or other corporation is less than wholly-owned by the Corporation and/or one or more Subsidiaries (a “**Part-Owned Sub**”), the number of directors nominated for the Part-Owned

Sub by the Corporation and/or the Subsidiaries that are shareholders in the Part-Owned Sub shall be the maximum allowed for them under governing documents and the persons that shall be the nominees of the Corporation or the Subsidiary as directors of that Part-Owned Sub shall be designated by the Board; and the Corporation or Subsidiary that is the shareholder in the Part-Owned Sub shall cause the designees of the Board to be elected or appointed as directors of that particular Part-Owned Sub.

Any legal entity (other than a corporation) formed under Section 2.04 or acquired under Section 2.05 shall have as the governing persons appropriate for such entity, the persons designated by the Board, who shall be installed by the appropriate action by the Subsidiary that has the ownership interest in the particular entity.

A member of Management may serve as a director of all or any of the Subsidiaries and of any legal entity (other than a corporation) formed under Section 2.04 or acquired under Section 2.05.

**4.06**            **No Compensation for Management Serving as Directors:** Members of Management shall not receive any compensation for service as a director of the Corporation, of a Subsidiary or as a governing person for any legal entity (other than a corporation) formed under Section 2.04 or acquired under Section 2.05.

**4.07**            **Qualifications of Directors:** When selecting persons to recommend to the Shareholder to be directors of the Corporation, the Nominating Committee of the Board and the Board will, generally, consider all of qualifications of candidates including sound judgment and personal integrity. In evaluating and nominating potential independent nominees for the Board, the Nominating Committee shall strive to achieve a Board composed of members that, as a group, have skills, experience and expertise in, among other things corporate and/or public management including strategic planning, governance, human resources including compensation and health and safety, finance, project development and operations, telecom, non-regulated energy services, environmental matters, municipally-owned corporations and government relations. Preference may be given to qualified candidates who are residents of the City of Hamilton, however non-residents of the City of Hamilton shall not be excluded from serving as directors of the Corporation. Notwithstanding the foregoing, the majority of Directors shall be residents of the city of Hamilton. Candidates for being a director of the Corporation must consent to the disclosure of his or her director's remuneration to Council for the City of Hamilton and placed on the public record each fiscal year in a form and with sufficient details as prescribed by the Shareholder from time to time.

**4.08**            **Procedure for Selection of Directors:** The Nominating Committee of the Board shall establish a process, and follow such process, to broadly canvass for (including advertising), identify, evaluate and validate, select and recommend to the Board candidates acceptable to the Nominating Committee to be Private Directors (as defined in Section 4.09(iii)) of the Corporation. The Board shall select from the candidates for Private Directors recommended by the Nominating Committee the persons to be recommended by the Board to the Shareholder to be Private Directors of the Corporation. The Shareholder must approve each candidate for a Private Director prior to the candidate being appointed and elected as a Private Director of the Corporation. The Shareholder may accept or reject, but not substitute for, any person proposed to Council to be a Private Director.

**4.09**            **Term of Directors:** The terms of the various directors on the Board shall be:

- (i) **Mayor:** The Mayor shall be eligible to serve as director of the Corporation throughout the term of the Mayor as mayor of the City;
- (ii) **Mayor's Surrogate:** The term of any person serving as director on the Board as the Mayor's Surrogate shall end upon the earlier of: (1) the end of that person's term as a Councillor for the City; or (2) the end of the term of the Mayor as mayor of the City, as the case may be.
- (iii) **Private Directors:** Each person serving as a director of the Corporation other than the Mayor and the Mayor's Surrogate (a "**Private Director**") shall be elected to serve as a member of the Board for a term of three years. The terms of the Private Directors shall be arranged such that the terms of approximately one-third of the Private Directors will expire each year.

**4.10** **Chairs:** The Board shall appoint the Chair of the Board and the Chair and Vice Chair, if any, of each committee of the Board.

**4.11** **Committees:** The Board may establish committees of the Board at its discretion. The Shareholder anticipates that the Board will establish the following committees:

- (i) Audit and Risk Management Committee, to review financial results and to provide direction relative to risk-related matters;
- (ii) Nominating Committee to fulfil the responsibilities provided in Section 4:08; and
- (iii) Human Resources and Governance Committee, to provide direction and oversight on human resources policies and on corporate governance matters, to recommend Board and Management compensation, and which may act as the Nominating Committee.

**4.12** **Directors' Compensation:** The compensation of the directors of the Corporation will be determined by the Board from time to time in an amount sufficient to attract and retain directors with the necessary qualifications and on the recommendation of the Human Resources and Governance Committee who shall consult with an independent consultant.

**4.13** **Disclosure of Compensation:** The remuneration received from the Corporation and all Subsidiaries by each director of the Corporation shall be disclosed to the Shareholder each fiscal year in a form and with sufficient details as prescribed by the Shareholder from time to time and may be placed by the Shareholder in the public record, and each director of the Corporation must irrevocably agree thereto as a precondition to becoming and continuing to be a director of the Corporation.

**4.14** **Directors' Insurance:** The Corporation shall carry Directors and Officers Liability Insurance for the directors and officers of the Corporation and all Subsidiaries in an amount and upon terms consistent with industry norms as determined by the Board or by any committee of the Board.

## **ARTICLE 5 – CONDUCT OF ACTIVITIES**

**5.01**            **Requirements:** The directors, officers and Management of the Corporation and each Subsidiary shall conduct their activities in accordance with the requirements of:

- (i)      the Ontario *Business Corporations Act* and other Applicable Laws including, particularly, the provisions thereof dealing with conflict of interest;
- (ii)     this HEHCo Declaration;
- (iii)    the Articles of the Corporation or the particular Subsidiary, as the case may be;
- (iv)    the By-Laws of the Corporation or the particular Subsidiary, as the case may be;
- (v)     the corporate policies, codes and values of the Corporation; and
- (vi)    the charters established by the Board for the various committees of the Board.

These requirements are listed in order of precedence; and, in the event any requirement is in conflict with another requirement, the requirement with the higher precedence shall prevail and govern.

## **ARTICLE 6 - SHAREHOLDER MATTERS**

**6.01**            **Matters Requiring Shareholder Approval:** Without first having obtained the approval of the Shareholder, the Corporation shall not and shall not allow any Subsidiary, either directly or indirectly, to:

- (i)      **Requisite Statutory Approvals:** enter into any transaction or take any action that requires the approval of the shareholder(s) of a corporation under the Ontario *Business Corporations Act* or under any other Applicable Laws;
- (ii)     **Agreement Approvals:** enter into any transaction or take any action that requires the approval of the Shareholder under this HEHCo Declaration;
- (iii)    **Shares and Securities:** issue, purchase, approve the transfer, sell, redeem, retract, convert, divide, contract or otherwise deal with howsoever any of its shares or securities or the terms or conditions thereof or enter into any agreement or warrant to do any of the foregoing except that a corporation formed under Section 2.04 may issue shares to the Subsidiary which is intended to be the shareholder of that corporation;
- (iv)    **Purchases and Sales:** make any acquisition or disposition howsoever (including, without limitation, by way of subscription, lease, exchange, merger, arrangement, consolidation or other corporate reorganization) of:
  - (1)      any business; or
  - (2)      any assets, shares, securities or equity, partnership or joint venture interests;  
or
  - (3)      any rights capable of becoming or effecting any of the foregoing,

which would either increase or decrease the consolidated book value of the Corporation and its Subsidiaries as stated in the consolidated financial statements for the last completed fiscal year of the Corporation and its Subsidiaries by more than twenty-five percent (25%) except that a corporation may be formed and acquired under Section 2.04. The Corporation shall forthwith advise the City of any acquisition or disposition made in reliance upon this item (iv) of Section 6.01;

- (v) **Dividends & Distributions:** declare any dividend or make any other distribution except:
  - (1) by the Corporation, exercising its discretion having regard to the principles set out in any Dividend and/or Distribution Policy prepared by the Board and approved to by the Shareholder; or
  - (2) dividends by any Subsidiary to its shareholder;
  
- (vi) **Financial Transactions:** the Corporation and any Subsidiary shall not:
  - (1) borrow any funds where, as a result, the debt/equity ratio of the Corporation and all Subsidiaries on a consolidated basis will be less than 75:25;
  - (2) loan any funds to any entity except to the Corporation or any Subsidiary;
  - (3) grant any guarantee of indebtedness or performance or provide financial assistance howsoever to any entity other than the Corporation or a Subsidiary;
  - (4) grant any security except to replace, restructure or change existing security where:
    - (I) the total amount of the debt or obligations secured is not increased; and
    - (II) the assets subjected to security are not expanded;
  - (5) invest funds in any securities other than the debt of governments of Canada or any Canadian province or debt of Canadian chartered banks;
  
- (vii) **Non Arms-Length Transactions:** effect any transaction with any entity who does not deal at arm's length (as that term is interpreted under the *Income Tax Act* of Canada) either with the Corporation or a Subsidiary or any director, officer or employee of the Corporation or a Subsidiary other than any transactions between or among the Corporation and the Subsidiaries. The provisions of this paragraph do not apply to remuneration paid in the normal course of business to directors, officers and employees of the Corporation and the Subsidiaries including, without limitation, fees, honoraria, wages, salaries and bonuses or any reimbursement for expenses incurred in performing duties;
  
- (viii) **Changes in Status:** make any decision that would materially and adversely affect the tax or regulatory status of the Corporation or any of its Subsidiaries;



- (ix) **Wind-up or Dissolution:** take any steps to wind-up or dissolve the Corporation, Hamilton Infrastructure Projects Corporation or Hamilton Ventures Corporation;
- (x) **Litigation:** initiate any litigation, arbitration or other like proceedings against the Shareholder, any of its agencies, local boards, or administrative subdivisions or any corporation or other body owned or controlled by the Shareholder, or any director, officer, official, elected member or employee (including full-time, part-time and contract employees) of any of the foregoing entities in this Section 6.01(x);
- (xi) **Dividend Policy or Distribution Policy:** establish any dividend and/or distribution policy for the Corporation; and
- (xii) **Compliance with Agreement:** conduct any activities not allowed by this HEHCo Declaration.

**6.02** **Materials to Accompany Approval Requests:** Requests by the Corporation to the Shareholder for approvals in relation to Section 6.01 shall be in writing and shall be accompanied by a written analysis and recommendation in connection with the matter in respect of which approval is requested; provided, however, that if it is not practicable for the request to be accompanied by such analysis and recommendation, the analysis and recommendation shall be provided to the Shareholder at the earliest practicable time following such request.

**6.03** **Decisions of the Shareholder:** Approvals and decisions of the Shareholder in relation to this HEHCo Declaration will be given to the Corporation in writing signed by the Shareholder Representative, and approvals and decisions so signed may be relied upon by the Corporation as being the approval and decision of the Shareholder.

**6.04** **Shareholder Representative:** The Shareholder hereby designates the City Clerk for the City or such other person as may be designated by the Council of the City from time to time as the legal representative of the Shareholder (the "**Shareholder Representative**") for purposes of: (1) communicating to the Corporation on behalf of the Shareholder any consent or approval required by the Ontario *Business Corporations Act* or providing any consent, approval, direction, communication or any information to be provided by the Shareholder to the Corporation for the purposes of this HEHCo Declaration; and (2) receiving from the Corporation any communications or information to be provided to the Shareholder by the Corporation for the purposes of this HEHCo Declaration. All communications for the purposes of this HEHCo Declaration between the Shareholder and the Corporation shall be transmitted to and from the President of the Corporation, on behalf of the Corporation, and the Shareholder Representative, on behalf of the Shareholder.

**6.05** **Unanimous Shareholder Agreement:** This HEHCo Declaration is intended to be a unanimous shareholders agreement under Section 108 of the Ontario *Business Corporations Act* to the extent, but only to the extent, that it restricts in whole or in part the powers of the directors of the Corporation, but is not intended to, and shall not be construed, to be a unanimous shareholders agreement except to such extent.

## **ARTICLE 7 – REPORTING**

**7.01**        **Major Developments:** The Corporation shall, from time to time, report to the Shareholder Representative and, if requested by the Shareholder Representative, directly to the Council of the City on business developments regarded by the Board as major or adverse results regarded by the Board as material that pertain to the Corporation and its Subsidiaries as the Board determines, in accordance with the standard of care required to be applied by the Board, appropriate to so report.

**7.02**        **Annual Meetings:** The Corporation and the Subsidiaries shall hold their respective Annual Meeting each year in satisfaction of the requirements of the Ontario *Business Corporations Act* within six months after the end of each fiscal year of the Corporation. The annual meetings for the Subsidiaries may be effected by signed written resolutions.

**7.03**        **Annual Meeting Report:** In the course of each Annual Meeting of the Corporation, either the Chair of the Board or the President of the Corporation shall report to the extent that is appropriate having regard to the forum, competitive position and confidentiality obligations of the Corporation and its Subsidiaries in the following areas: **(i)** business activities and prospects; **(ii)** any updates to, and an overview of, strategic plans or business plans; **(iii)** business performance; **(iv)** financial performance and existing or potential tax liabilities; **(v)** any changes to corporate organization; and **(vi)** current and projected dividends.

**7.04**        **Right of Inspection and Inquiry:** The Corporation shall permit representatives designated by the Shareholder to examine the properties and assets of the Corporation and the Subsidiaries and the financial and other records of the Corporation and the Subsidiaries, at all reasonable times, as often as may be reasonably requested by the Shareholder, and at the expense of the Shareholder. The Corporation shall cause to be answered fully and fairly any inquiries that such representatives may have; and such representatives may, in the course of their investigations, discuss the business and affairs of the Corporation and the Subsidiaries with the officers, employees and auditor of the Corporation and the Subsidiaries.

## **ARTICLE 8 - GENERAL**

**8.01**        **Paramourncy:** In the event of any inconsistency between the provisions of this HEHCo Declaration and of the by-laws of the Corporation, the provisions of this HEHCo Declaration shall prevail to the extent of the conflict. In the event of any inconsistency between the provisions of this HEHCo Declaration and of the by-laws of any of the Subsidiaries, the Corporation shall take all requisite corporate action such that the terms of this HEHCo Declaration shall prevail to the extent of the conflict.

**8.02**        **Control of Subsidiaries:** With respect to matters herein that relate to a Subsidiary of which the Corporation is the shareholder, the Corporation shall vote and otherwise act as a shareholder of such Subsidiary so as to carry out the provisions and intention of this HEHCo Declaration, insofar as such intention is discernable by the Corporation from the provisions of this HEHCo Declaration. With respect to matters herein that relate to a Subsidiary whose shares are held by another Subsidiary, the Corporation shall cause the shareholding Subsidiary, directly or indirectly, to vote and otherwise act as a shareholder so as to carry out the provisions and intention

of this HEHCo Declaration, insofar as such intention is discernable by the Corporation from the provisions of this HEHCo Declaration.

**8.03**            **Revisions:** The Shareholder will endeavor to consult with the Board prior to completing any revisions to this HEHCo Declaration and will promptly provide the Board with copies of each such revision.

**8.04**            **Governing Law:** This HEHCo Declaration shall be governed by and construed in accordance with the laws applicable in the Province of Ontario.

**8.05**            **Legislation, Regulations, Codes and Rules:** Any reference in this HEHCo Declaration to all or any part of any law, statute, regulation, code or rule shall, unless otherwise expressly stated herein, be a reference to the statute, regulation, code or rule, or part thereof, as amended from time to time.

**8.06**            **Article, Section, Subsection and Item References:** The division of this HEHCo Declaration into Articles, Sections and Subsections is for convenience of reference only and shall not affect or be considered to affect the construction or interpretation of the provisions of this HEHCo Declaration. References in this HEHCo Declaration to an Article, Section or Subsection shall mean a reference to an Article, Section or Subsection within this HEHCo Declaration unless otherwise specified.

**8.07**            **Headings:** The headings of Articles, Sections and Subsections in this HEHCo Declaration, are inserted for convenience of reference only and shall not affect or be considered to affect the construction or interpretation of the provisions of this HEHCo Declaration.

**8.08**            **No Third Party Beneficiaries:** Nothing in this HEHCo Declaration shall entitle any entity other than the Shareholder to any claim, cause of action, remedy or right of any kind in respect of this HEHCo Declaration or the subject matter of this HEHCo Declaration.

**8.09**            **Effective Date:** Notwithstanding the date of execution hereof by the City and the date of delivery hereof by the City to the Corporation, this HEHCo Declaration shall become effective on the Effective Date.

**DATED and DELIVERED** at Hamilton, Ontario as of the 6th day of June, 2017.

**CITY OF HAMILTON**

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

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