

MEMORANDUM OF UNDERSTANDING AND DIRECTION
BETWEEN
THE CORPORATION OF THE TOWN OF TILLSONBURG ("TOWN")
AND
TILLSONBURG HYDRO INC. ("THI")

1.0 STATEMENT OF INTENT:

This Memorandum of Understanding and Direction (MOUD) is designed to identify individual and collective responsibilities that will ultimately provide for safe, reliable and financially responsible distribution of electrical energy to identified stakeholders. The purpose of this MOUD is to confirm the working partner relationship between the TOWN and THI (The PARTIES) that reinforces and enhances their joint commitment to maintain a vibrant Electrical Energy Utility to the benefit of the community they serve. Therefore this document shall set out the general expectations of the TOWN (as Sole Shareholder) and THI.

2.0 GUIDING PRINCIPLES (GOVERNANCE):

The following guiding principles will direct the deliberations of the TOWN and THI in achieving that goal. It must be further understood that the TOWN is the Sole Shareholder of THI and that THI is a distinct and separate Corporation granted the benefits of operating under the regulations of the Ontario Business Corporations Act. The Board Shall;

- a) Govern and provide stewardship of the business and affairs of THI. In so doing, shall adhere to all appropriate legislation and regulations that impact the electrical distribution industry in the Province of Ontario
- b) Provide that the focus of safe, reliable and financially responsible distribution is adhered to
- c) Address any conflict of interest, act honestly and in good faith with a view to the best interests of THI and shall exercise the same degree of care, diligence and skill that a reasonably prudent person would exercise in similar circumstances
- d) Promote operational and strategic improvement projects that will enhance the profile of THI and the TOWN

The TOWN Shall;

- a) Encourage and support the THI Board and staff in their endeavors

- b) Receive an annual return on its' investment in the form of a cash Dividend, subject to the conditions set out in Section 7.0-Dividend Policy

3.0 BUSINESS ACTIVITIES:

THI may engage in any business activities as may be permitted by the Ontario Energy Board Act, 1998 (OEB Act) and the Electricity Act, 1998 (Electricity Act), and as authorized by the Board from time to time, including;

- a) Distributing electricity
- b) Business activities, the principal purpose of which is to use more effectively the assets of the distribution system of THI
- c) Generating electricity from renewable energy sources
- d) Conservation and Demand Management activities

In carrying out these business activities THI shall be guided by the following;

- a) Compliance with all applicable laws and regulations.
- b) Operate in a manner that considers community values to the extent possible, TOWN practices and policies.
- c) Act in a safe and environmentally responsible manner
- d) Employ prudent business practices
- e) Have regard to the fact that the TOWN is a Municipal Corporation
- f) Maintain and appropriately enhance THI owned infrastructure

4.0 BOARD COMPOSITION:

The Board of Directors of THI (the BOARD);

- a) Shall be a ~~number as permitted by current By-law(s) of THI~~ **minimum of seven (7) members. Consideration may be given to increasing the number of Directors to ensure maintenance of a desired skill set, within prudent and, cost effective parameters.**

~~a)b)~~ **Shall review the number of Board Directors every three years.**

~~b)c)~~ **Shall consist of;**

- a. One member selected by the TOWN at large, **who is to be considered an Affiliate Related Director. An Affiliate Related Director is someone that is a representative of a shareholder, a municipal council, a member of any affiliate or an employee of the Town.**

- b. ~~A minimum of 4 (four) and a maximum of six (6) independent members,~~ A minimum of six (6) members are to be considered as Independent Directors in accordance with the skills matrix as ~~recommended~~ developed by the Board. An Independent Director means a director that is independent from, the shareholder, the municipal council, any affiliate or employee of the Town, as required by section 2.1.2 of the Affiliates Relationship Code.
- d) Shall take into consideration Director qualifications, skills and experience, in the discharge of THI duties for oversight of; strategy, utility operations, finance, regulatory, technical resources and customer service.
- e) Shall protect the best interests of the electricity rate payers and shareholder, and shall ensure financial integrity.
- ~~b.f)~~ Shall strive for a tenure term of nine years with possible one-year term extensions thereafter. Independent Directors shall be reappointed after each three year increment based on individual performance. An Independent Director's tenure may be extended after nine years by one-year terms when their qualifications and value are in the best interest of THI.
- ~~e)g)~~ Shall meet the requirements as outlined by the Ontario Energy Board (OEB) ~~through~~ and the Affiliate Relationships Code (ARC)
- ~~e)h)~~ The Chair of the Board shall be selected by Board members
- ~~e)i)~~ No member of the Board shall receive any remuneration or compensation, other than as expressly stated in applicable By-Law

5.0 TOWN APPROVAL:

The Board shall seek the approval of the TOWN in respect to each of the following matters prior to the BOARD undertaking or causing to undertake, authorizing or approving any of the following matters with respect to THI:

- a) Any changes or amendments to the share structure of THI
- b) Any changes to the business activities of THI as identified in Section 3.0
- c) Entering into any discussions or negotiations regarding a potential merger, amalgamation, divestiture or acquisition of THI or another corporation.

6.0 REPORTING:

THI is required to provide the TOWN with an annual Business Plan and Budget (the "Business Plan"). THI is to carry out its affairs and carry out its business operations in accordance with the Business Plan. THI will provide the TOWN with any revision, update or amendment of a material nature to the Business Plan.

The Business Plan will take the format as adopted by the Board of THI but shall include the following;

- a) Comprehensive financial plan with significant operational projects
- b) Most recent Audited Financial Statements
- c) A statement of any material variances in the projected ability for THI to meet or continue to meet its strategic, financial or development goals, including any material variances from current Business Plan

In addition to the presentation of the annual Business Plan and Budget, THI shall provide updated Financial reports, in a format as adopted by the Board, to the TOWN on a semi-annual basis.

7.0 DIVIDEND POLICY:

Subject to the provisions herein, the Board of THI shall declare and issue an Annual Dividend to the TOWN as referenced in Section 2.0.

The payment of the Dividend shall be subject to the following;

- a) No dividend shall be declared where to do so would significantly impact THI's ability to satisfy any appropriate replacement or improvement of assets of THI
- b) No Dividend shall be declared if the Board can demonstrate to the TOWN that;
 - a. After any expected payment, THI would be unable to meet its financial commitments and pay its liabilities when due
 - b. The realizable value of THI's assets would be less than the aggregate of its liabilities and its stated capital of all classes

With concurrence of the THI Board and the TOWN, the Annual Dividend Policy shall be established as in accordance with Schedule 1 (attached), subject to the conditions in 7.0, and confirmed at the Board's November board meeting, or before December 31.

The approval and the declaration of the actual Annual Dividend shall take place at the conclusion of the annual audit of THI.

A Special Dividend may be considered and approved at the discretion of the Board;

- a) After the review of Annual Financial Statements, and
- b) Consultation with the Corporation of the TOWN of Tillsonburg

8.0 COMMUNICATIONS PROTOCOL:

Positive and effective communication is a cornerstone of relationship building and ultimately enhances the long-term working relationship of the TOWN and THI. In supporting the spirit of this Agreement, the communication protocol between the parties shall be identified as follows;

- a) As to specifically identified services or general information exchange, in writing on Corporate letterhead directed to;
 - i. To TOWN - Clerk copied to CAO
 - ii. To THI -Secretary copied to Chair and Vice-Chair
- b) Best efforts are expected to be used to identify and acknowledge when any issue of communication will be considered and responded to
- c) The Chair of THI will deliver at a minimum, and not counting the Annual General meeting, semi-annual status reports to the TOWN (Shareholder)

9.0 REVISIONS:

This document shall be reviewed at least once every two years and may be revised from time to time as circumstances may require. A review of the MOUD can be initiated by either party subject to appropriate communication and consultation.

Date:

Acknowledged and Agreed to as of the date above
CORPORATE OF THE TOWN OF TILLSONBURG

Name

Title
TILLSONBURG HYDRO INC.

Name

Title