



General Committee Agenda

Meeting Number: 6
March 25, 2019, 9:30 AM - 3:00 PM
Council Chamber

Please bring this General Committee Agenda to the Council meeting on April 2, 2019.

	Pages
1. CALL TO ORDER	
2. DISCLOSURE OF PECUNIARY INTEREST	
3. APPROVAL OF PREVIOUS MINUTES	
3.1 MINUTES OF THE MARCH 4, 2019 GENERAL COMMITTEE (16.0)	6
1. That the minutes of the March 4, 2019 General Committee meeting be confirmed.	
4. DEPUTATIONS	
5. PETITIONS	
6. CONSENT REPORTS - FINANCE & ADMINISTRATIVE ISSUES	
6.1 MINUTES OF THE NOVEMBER 28, 2018 BOARD OF MANAGEMENT UNIONVILLE BUSINESSIMPROVEMENT AREA (16.0)	15
1. That the minutes of the November 28, 2018 Board of Management Unionville Business Improvement Area Committee meeting be received for information purposes.	
6.2 MINUTES OF THE FEBRUARY 19, 2019 SENIORS ADVISORY COMMITTEE (16.0)	19
1. That the minutes of the February 19, 2019 Seniors Advisory Committee meeting be received for information purposes.	
6.3 042-T-15 CATHODIC PROTECTION OF IRON WATERMAINS –	23

CONTRACT EXTENSION (7.12)

P. Kumar, ext. 2989 and F. Chan, ext. 3189

1. That the report entitled “042-T-15 Cathodic Protection of Iron Watermains – Contract Extension” be received; and,
2. That contract # 042-T-15 Cathodic Protection of Iron Watermains, awarded to 1460973 Ontario Limited O/A C.P. Systems (C.P. Systems), be extended for three (3) additional years at the same itemized pricing; and,
3. That the tendering process for the Cathodic Protection of Iron Watermains be waived in accordance with Purchasing By-Law 2017-8, Part II, Section 11.1 (c); which states that “when the extension of an existing Contract would prove more cost-effective or beneficial”; and,
4. That the annual amount of \$289,283.33, inclusive of HST, be awarded for 2019; and,
5. That a 8% contingency in the amount of \$23,142.67 be established to cover any additional construction costs and that authorization to approve expenditures of this contingency amount up to the specified limit be in accordance with the Expenditure Control Policy; and,
6. That the award in the amount of \$312,426.00 be funded from the capital project 053-6150-19241-005 “Cathodic Protection of Iron Watermains”; and,
7. That the remaining funds of \$65,374.00 in project #19241 “Cathodic Protection of Iron Watermains” be returned to the original funding source; and,
8. That the contract services award (inclusive of 8% contingency) for:
 - a. Year 2020 in the amount of \$328,900.12 (\$304,537.15 + \$24,362.97),
 - b. Year 2021 in the amount of \$443,098.05 (\$410,275.97 + \$32,822.08), be requested as part of the 2020 and 2021 capital budget process, subject to Council approval; and further,
9. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

6.4 AWARD OF CONTRACT 126-R-18 REAL ESTATE BROKERAGE SERVICES (7.12)

28

H. Tencer, ext. 5988 and R. Patano, ext. 2990

1. That the report entitled “Award of Contract 126-R-18 Real Estate Brokerage Services” be received; and,
2. That the contract for Real Estate Brokerage Services be awarded to the highest ranked/lowest priced bidder, Cushman & Wakefield Ltd.; and,
3. That Contract 126-R-18 for Real Estate Brokerage Services be awarded to the highest ranked bidder, Cushman & Wakefield Ltd., for a one (1) year term with the City having an option to renew for four (4) additional years, with the following commission rates payable to them upon closing of the property transaction for five years (exclusive of HST);*When it is disclosed at the beginning of a transaction that the Vendor/Landlord will not pay a commission to the broker, the City shall pay the commission at the rate as outlined on the above chart; and,
4. That bidder Cushman & Wakefield Ltd. be designated as the preferred vendor of the City’s Real Estate Brokerage Services needs for a one year term with the City Solicitor having the authority to renew successive one year terms to a maximum of five years; and further,
5. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

7. REGULAR REPORTS - FINANCE & ADMINISTRATIVE ISSUES

7.1 INDEMNIFICATION OF EMPLOYEES AND MEMBERS OF COUNCIL (2.0)

31

C. Conrad, ext. 4737

1. That the report entitled “Indemnification of Employees and Members of Council”, dated March 25, 2019, be received; and,
2. That Attachment “A”, the proposed Indemnification of Employees and Members of Council By-law, be enacted; and,
3. That the contract for the City’s Integrity Commissioner be amended to include the responsibilities set out in the By-law attached as Attachment “A”; and,
4. That the Chief Administrative Office and the City Clerk be authorized to enter into indemnification/reimbursement agreements with eligible persons where the Integrity Commissioner has authorized indemnity, in a form satisfactory to the City Solicitor; and further,

5. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

8. **MOTIONS**

9. **NOTICES OF MOTION**

10. **NEW/OTHER BUSINESS**

As per Section 2 of the Council Procedural By-Law, "New/Other Business would generally apply to an item that is to be added to the Agenda due to an urgent statutory time requirement, or an emergency, or time sensitivity".

11. **ANNOUNCEMENTS**

12. **CONFIDENTIAL ITEMS**

That, in accordance with Section 239 (2) of the Municipal Act, General Committee resolve into a confidential session to discuss the following matters:

12.1 **FINANCE & ADMINISTRATIVE ISSUES**

12.1.1 **BOARD OF MANAGEMENT UNIONVILLE BUSINESS IMPROVEMENT AREA COMMITTEE CONFIDENTIAL MINUTES - DECEMBER 3, 2018 (16.0) [Section 239 (2) (b) (d)]**

12.1.2 **PERSONAL MATTERS ABOUT AN IDENTIFIABLE INDIVIDUAL, INCLUDING MUNICIPAL OR LOCAL BOARD EMPLOYEES (REPORT OF INTEGRITY COMMISSIONER REGARDING CODE OF CONDUCT COMPLAINT ABOUT WARD 4 COUNCILLOR KAREN REA) (16.23) [Section 239 (2) (b)]**

12.2 **LAND, BUILDING & PARKS CONSTRUCTION ISSUES**

12.2.1 **A PROPOSED OR PENDING ACQUISITION OR DISPOSITION OF LAND BY THE MUNICIPALITY OR LOCAL BOARD (WARD 2) (8.6) [Section 239 (2) (c)]**

12.2.2 **A PROPOSED OR PENDING ACQUISITION OR DISPOSITION OF LAND BY THE MUNICIPALITY OR LOCAL BOARD (WARD 6) (8.6) [Section 239 (2) (c)]**

13. **ADJOURNMENT**

Information Page

General Committee Members: All Members of Council

General Committee

Chair: Regional Councillor Jack Heath

Vice Chair: Councillor Khalid Usman

Finance & Administrative Issues

Chair: Regional Councillor Jack Heath

Vice Chair: Councillor Khalid Usman

Community Services Issues

Chair: Councillor Karen Rea

Vice Chair: Councillor Isa Lee

Environment & Sustainability Issues

Chair: Regional Councillor Joe Li

Vice Chair: Councillor Reid McAlpine

Land, Building & Parks Construction Issues

Chair: Councillor Keith Irish

Vice Chair: Councillor Andrew Keyes

General Committee meetings are audio and video streamed live at the City of Markham's website.

Alternate formats are available upon request.

Consent Items: All matters listed under the consent agenda are considered to be routine and are recommended for approval by the department. They may be enacted on one motion, or any item may be discussed if a member so requests.

Note: The times listed on this agenda are approximate and may vary; Council may, at its discretion, alter the order of the agenda items.

**Note: As per the Council Procedural By-Law, Section 7.1 (h)
General Committee will take a 10 minute recess after
two hours have passed since the last break.**

**General Committee is scheduled to recess for lunch from
approximately 12:00 PM to 1:00 PM.**



General Committee Minutes

Meeting Number: 5
March 4, 2019, 9:30 AM - 3:00 PM
Council Chamber

Roll Call	Mayor Frank Scarpitti Deputy Mayor Don Hamilton Regional Councillor Jack Heath Regional Councillor Joe Li Regional Councillor Jim Jones Councillor Keith Irish Councillor Alan Ho	Councillor Reid McAlpine Councillor Karen Rea Councillor Andrew Keyes Councillor Amanda Collucci Councillor Khalid Usman Councillor Isa Lee
Staff	Andy Taylor, Chief Administrative Officer Trinela Cane, Commissioner of Corporate Services Brenda Librecz, Commissioner of Community & Fire Services Arvin Prasad, Commissioner Development Services Catherine Conrad, City Solicitor and Acting Director of Human Resources	Joel Lustig, Treasurer Bryan Frois, Chief of Staff Brian Lee, Director, Engineering Josh Machesney, Election & Committee Coordinator

1. CALL TO ORDER

The General Committee meeting convened at the hour of 9:34 AM with Regional Councillor Jack Heath in the Chair.

General Committee recessed at 11:05 AM and reconvened at 11:15 AM.

2. DISCLOSURE OF PECUNIARY INTEREST

None disclosed.

3. APPROVAL OF PREVIOUS MINUTES

3.1 MINUTES OF THE FEBRUARY 19, 2019 GENERAL COMMITTEE (16.0)

Moved by Councillor Khalid Usman
Seconded by Councillor Andrew Keyes

1. That the minutes of the February 19, 2019 General Committee meeting be confirmed.

Carried

4. DEPUTATIONS

5. PRESENTATIONS - FINANCE & ADMINISTRATIVE ISSUES

5.1 THERE IS AN URGENT NEED FOR A RESIDENTIAL HOSPICE IN MARKHAM (12.2.6)

Mr. Andy Langer, Member of the Committee for an Age-Friendly Markham, was in attendance to deliver a PowerPoint presentation regarding the urgent need for a residential hospice in Markham.

Mr. Langer asked that City Staff investigate funding opportunities for a hospice in Markham.

Gail Leet, Member of the Committee for an Age-Friendly Markham, spoke in support of having a residential hospice in Markham.

Andy Taylor, Chief Administrative Officer, advised that plans for a residential hospice are not currently on Staff's work plan but would prioritize it if it was Council's desire to move forward with this initiative.

Members of General Committee discussed the following:

- Capital costs and operational costs associated with opening and running a residential hospice in Markham;
- If other levels of government are likely to help fund a residential hospice in Markham;
- Possibility of Staff and Members of Council meeting with other relevant parties, including the Region of York, the new Provincial Health Care body, Evergreen, and other local hospice organizations to discuss what steps would need to be taken to facilitate this project.

Moved by Mayor Frank Scarpitti
Seconded by Councillor Khalid Usman

1. That the presentation by Mr. Andy Langer, Member of the Committee for an Age-Friendly Markham entitled “There is an Urgent Need for a Residential Hospice in Markham” be received; and,
2. **That Regional Councillor Jack Heath facilitate a meeting with various stakeholders; and,**
3. **That the City of Markham express its support for a residential hospice in Markham; and further,**
4. **That the City request the Provincial Government assist in funding a residential hospice in Markham based on the Province's funding formula.**

Carried

6. COMMUNICATIONS

Moved by Regional Councillor Jim Jones

Seconded by Deputy Mayor Don Hamilton

1. That the following communications dated February 1, 2019 from York Region be received for information purposes:
 - a. Water and Wastewater Capital Infrastructure Status Update
 - b. Traffic and Pedestrian Signal Policy Review of Atypical Request
 - c. Inclusion Charter for City of Markham

Carried

7. PETITIONS

There were no petitions.

8. CONSENT REPORTS - FINANCE & ADMINISTRATIVE ISSUES

8.1 MINUTES OF THE FEBRUARY 5, 2019, FEBRUARY 8, 2019 AND FEBRUARY 13, 2019 BUDGET COMMITTEE (16.0)

David Jordan, President, Thornhill Conservation District Ratepayers Association, was in attendance to speak in objection to the budget item relating to the construction of the John Street Multi-use Pathway project in Thornhill. (see New Business)

Moved by Deputy Mayor Don Hamilton

Seconded by Mayor Frank Scarpitti

1. That the minutes of the February 5, 2019, February 8, 2019 and February 13, 2019 Budget Committee meeting be received for information purposes.

Carried

8.2 MINUTES OF THE JANUARY 8, 2019 SENIORS ADVISORY COMMITTEE (16.0)

Moved by Regional Councillor Jim Jones
Seconded by Deputy Mayor Don Hamilton

1. That the minutes of the January 8, 2019 Seniors Advisory Committee meeting be received for information purposes.

Carried

8.3 MINUTES OF THE DECEMBER 17, 2018 MARKHAM PUBLIC LIBRARY BOARD (16.0)

Moved by Regional Councillor Jim Jones
Seconded by Deputy Mayor Don Hamilton

1. That the minutes of the December 17, 2018 Markham Public Library Board meeting be received for information purposes.

Carried

8.4 2018 SUMMARY OF REMUNERATION AND EXPENSES FOR COUNCILLORS AND APPOINTEES TO BOARDS (7.0)

Moved by Regional Councillor Jim Jones
Seconded by Deputy Mayor Don Hamilton

1. That the report titled “2018 Summary of Remuneration & Expenses for Councillors and Appointees to Boards” be received; and
2. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

Carried

9. CONSENT REPORTS - COMMUNITY SERVICE ISSUES

9.1 OPERATIONS AND MAINTENANCE AGREEMENTS FOR MUNICIPAL HIGHWAYS (5.0)

Moved by Councillor Reid McAlpine
Seconded by Councillor Karen Rea

1. That the staff report entitled, Operations and Maintenance Agreements for municipal highways, be received; and,
2. That the Director of Operations be authorized to execute agreements between the City and other government entities and agencies relating to the operation and maintenance of municipal highways in the City of Markham, provided that the form and content of such agreements are satisfactory to the Commissioner of the Community and Fire Services and the City Solicitor; and further,
3. That staff be authorized and directed to do all things necessary to give effect to this resolution.

Carried

**9.2 ANNUAL WATER QUALITY REPORT (JANUARY – DECEMBER 2018)
(5.3)**

Moved by Councillor Reid McAlpine

Seconded by Councillor Karen Rea

1. That the report titled “Annual Water Quality Report (January-December 2018)” as required by Schedule 22 of Ontario Regulation 170/03, under the *Safe Drinking Water Act, 2002*, enclosed herein be received; and,
2. That the Annual 2018 Regulatory Water Quality Report (Attachment “A”), containing information for the Ministry of the Environment, Conservation and Parks (MECP) on water supply and quality as required by Section 11 of Ontario Regulation 170/03, under the *Safe Drinking Water Act, 2002*, be received; and,
3. That Council acknowledge that staff posted the Annual 2018 Detailed Regulatory Water Quality Report on the City’s website and that it has been made available electronically and in hard copy version since February 28, 2019 as per regulations; and further,
4. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

Carried

**9.3 THE ONTARIO MINISTRY OF ENVIRONMENT, CONSERVATION
AND PARKS – MARKHAM DISTRIBUTION SYSTEM – INSPECTION
REPORT, JANUARY 09, 2019 (5.3)**

Moved by Regional Councillor Jim Jones

Seconded by Deputy Mayor Don Hamilton

1. That the report entitled “The Ontario Ministry of Environment, Conservation and Parks – Markham Distribution System –Inspection Report, January 09, 2019” be received; and,
2. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

Carried

10. PRESENTATIONS - FINANCE & ADMINISTRATIVE ISSUES

10.1 AUDITOR GENERAL REVIEW (7.0)

Trinela Cane, Commissioner, Corporate Services, introduced the City's Auditor General.

Geoff Rodrigues, CPA, CA, CIA, CRMA, ORMP, Auditor General, City of Markham, and Veronica Bila, CPA, CA, CIA, Partner, MNP LLP were in attendance to deliver a PowerPoint presentation outlining the role and mandate of the City's Auditor General.

Moved by Councillor Reid McAlpine

Seconded by Councillor Keith Irish

1. That the presentation provided by Geoff Rodrigues, CPA, CA, CIA, CRMA, ORMP, MNP LLP, Auditor General, City of Markham and Veronica Bila, CPA, CA, CIA, Auditor General Partner/Project Manager, entitled “Auditor General Services” be received.

Carried

10.2 VENDOR MANAGEMENT AUDIT- FOLLOW UP (7.0)

Geoff Rodrigues, CPA, CA, CIA, CRMA, ORMP, Auditor General, City of Markham, and Veronica Bila, CPA, CA, CIA, Partner, MNP LLP were in attendance to deliver a PowerPoint presentation regarding the Vendor Management Audit Follow-up.

Moved by Councillor Andrew Keyes

Seconded by Councillor Amanda Collucci

1. That the presentation provided by Veronica Bila, CPA, CA, CIA, Auditor General Partner/Project Manager entitled “Vendor Management Audit-Follow Up” be received; and,

2. That the report prepared by Geoff Rodrigues, CPA, CA, CIA, CRMA, ORMP, MNP LLP, Auditor General, City of Markham, entitled “Vendor Management Audit-Follow Up” be received; and further,
3. That staff be authorized and directed to do all things necessary to give effect to the recommendations.

Carried

11. REGULAR REPORTS - FINANCE & ADMINISTRATIVE ISSUES

11.1 DIGITAL PAYMENT INITIATIVE (7.0)

Joel Lustig, Treasurer, introduced the item and advised Staff is returning to General Committee with revised recommendations that reflect the discussion from the February 19, 2019 General Committee meeting.

Moved by Deputy Mayor Don Hamilton

Seconded by Mayor Frank Scarpitti

1. That the memo entitled Digital Payment Initiative dated February 21th, 2019 be received; and,
2. **That the correspondence from Gail Leet, Chair, Seniors Advisory Committee, on behalf of the Seniors Advisory Committee be received; and,**
3. That Council approve discontinuing the acceptance of cash as a form of payment for property taxes effective January 1st, 2020; and,
4. That Staff report back in 2021 with the results and feedback of the initiative, along with possible future payment modification opportunities for Council consideration; and further,
5. That staff be authorized and directed to do all things necessary to give effect to this resolution.

Carried

12. MOTIONS

There were no motions.

13. NOTICES OF MOTION

There were no notices of motions.

14. NEW/OTHER BUSINESS

14.1 2019 CAPITAL BUDGET - JOHN STREET MULTI-USE PATHWAY PROJECT (7.0)

David Jordan, President, Thornhill Conservation District Ratepayers Association, was in attendance to speak in opposition to the budget item relating to the construction of the John Street Multi-use Pathway project in Thornhill.

Councillor Keith Irish advised that many residents in Ward 1 are not in favour of the John Street Multi-use Pathway project.

General Committee instructed Staff to prepare a presentation regarding the project and return to the March 18, 2019 Development Services Committee meeting for consideration.

Moved by Mayor Frank Scarpitti
Seconded by Deputy Mayor Don Hamilton

1. That Staff be directed to return to the March 18, 2019 Development Services Committee meeting with a presentation regarding the John Street Multi-use Pathway project.

Carried

15. ANNOUNCEMENTS

There were no announcements.

16. CONFIDENTIAL ITEMS

Moved by Councillor Reid McAlpine
Seconded by Deputy Mayor Don Hamilton

That, in accordance with Section 239 (2) of the Municipal Act, General Committee resolve into a confidential session to discuss the following matters:

Carried

16.1 FINANCE & ADMINISTRATIVE ISSUES

16.1.1 GENERAL COMMITTEE CONFIDENTIAL MINUTES - FEBRUARY 4, 2019 (16.0) [Section 239 (2) (c)]

**16.1.2 BUDGET COMMITTEE CONFIDENTIAL MINUTES - JANUARY
29, 2019 (16.0) [Section 239 (2) (c)]**

16.2 COMMUNITY SERVICES ISSUES

**16.2.1 PERSONAL MATTERS ABOUT AN IDENTIFIABLE
INDIVIDUAL, INCLUDING MUNICIPAL OR LOCAL BOARD
EMPLOYEES (6.3) [Section 239 (2) (b)]**

17. ADJOURNMENT

General Committee adjourned at 1:08 PM.

Moved by Regional Councillor Jim Jones

Seconded by Councillor Karen Rea

1. That the General Committee meeting be adjourned.

Carried



Unionville BIA Minutes

November 28, 2018

BIA office - 157 Main Street

BIA Members: Tony Lamana, Sarah Iles, Rob Kadlovski, Sarah Gratta, Larry Mariani, Tom Vasilovsky, Gary McMahon, Don Hamilton, Jim Jones, Sylvia Morris
 Guests: Ray Smiley, Wes Rowe, Ken Valentino, Jack V.
 Regrets: Dave Tucci, Shibani Sahney

Call to order - 9:10am Tony Lamana

Approval of the Agenda, Tom Vasilovsky 1st, Don Hamilton 2nd

- It was noted that agenda was not distributed prior to meeting and ED was reminded that bylaws state agenda should be distributed at least 1 week prior to meeting.
- Approval of minutes - Tabled til next meeting as they were not ready yet

Website

- Shawna Ferguson provided an update that the website is in final stages of revisions and a Beta will be available for the board to QA hopefully early next week

Remembrance Day

- All feedback positive, approximately 1500 people attended
- Thank you gifts sent to both MCs

Christmas Parade

- 48 floats confirmed
- Full road closure 5:30-10 by YRP
- Parade on budget with the help of CCT grant

Christmas Activities

The month of December has a number of events. A poster with the three main ones has been distributed to all shops and restaurants on the street.

1. Breakfast with Santa
 - 800 of 1000 spots have been sold
2. Christmas Market Dec. 8,9,15 and 16
 - All 4 days have been filled with vendors (16-21 indoor, 8 outdoor)
 - Barn has been painted, minor repairs completed and lit. Decor both indoors and out to be completed by Dec. 7th
 - Response on Facebook has been great, 4000 interested
 - RK asked for clarification re insurance. TV to investigate property insurance and BIA insurance covers the market under the "events" section
3. Candlelight Parade - see above



Street Marketing

Shawna Ferguson gave an update on what marketing efforts are happening on behalf of the street

- New social media agency (Social Talk) has been contracted and creating robust social media interactions including monthly contests
- Social Talk has received assets from Clever Samurai to use for our holiday campaign. They will take the idea, use what can be repurposed and improve where required
- Social Talk is also ensuring each business on the street is given time on the platform
-
- CCT placed an ad in the Nov. 17th Globe and Mail that our December Activities ad was part of, this went to 100,000 households
- Full page ads in Snap'd both Nov. & Dec. issues
- 105.9 The Region will be doing a segment on the street and be a sponsor of the parade. This is a contra deal (+ \$500) where they sponsor the parade and we get 1000 on-air mentions, 6 short videos focussed on the retailers and social media mentions.
- Sarah Gratta asked that in our marketing we be more careful about over promising the number of retail stores we have. A social post called out 60+ and the true number is less than 20 when counting true retail.

Streetscape

Tony Lamana gave an update on streetscape

- Lit sculptures/figurines delivered, not all plugged in and lit. It was requested that land lords and ED make sure this gets done ASAP.
- It was discussed that perhaps the street could add more or change the sculptures to keep things fresh. Tony Lamana reminded everyone that this is the last year of a 3 year rent to own contract and if the board wants to approve funding next year, it is possible to add additional sculptures at an additional cost.
- Also discussed was the addition of a true centre piece Christmas tree and tree lighting to kick off the season the week before the parade, especially when the parade falls at the end of the first week of December.
- There was discussion around the lack of lighting at the Church 150 Main Street and the Veterans flag and how the BIA would like to add lights. Sylvia Morris to talk to landlord.
- Jim Jones would like to find a way to encourage the homes running from Hwy 7 to the rail road tracks to add festive lights and create a "corridor" leading up to the retail area. It was discussed to work with Shack Shine to offer a holiday promotion and create a contest to encourage participation.



Gilmore Girls Fan Fest

Shawna Ferguson and Sarah Gratta gave a brief update on the trip in October. SF then updated where planning stands for next year.

- Festival will take place October 4-6 (same weekend as the Markham Fair)
- CCT on board and excited, they have asked that the grant proposal be ready for April
- Hotels alerted and blocks of rooms on hold at 3 area hotels
- Organizers coming to visit in January
- Dates and tickets will be announced mid-December

Farmers Market

Shawna Ferguson updated on the discussions with Kimberley Kwan and the ask that the BIA take over the market.

- 2019 will be a transition year where KK and BIA will share responsibilities. This allows for BIA to apply for an additional summer student, BIA to take over and merge social media, all coordination of vendors will be KK responsibility
- New hours will be 9-1 and both inside and out of the Mill to be utilized. Rationale is that this will help beat the heat if it's another steamy summer.
- Rob Koslovsky raised the question as to whether Main Street really needs the market and most members seemed to think we do to support the shop local movement.
- It was requested that Shawna Ferguson work with the city to investigate moving it to the Bandstand so it is more central and a focal point to summer activities.

New Business

- Minken Lawyers wants to expand their business space into the garage and need a minor variance by the city to do so. Tony Lamana asked the board to support this - Rob Koslovsky 1st, Sylvia Morris 2nd
-
- Discussion re Shawna Ferguson contract - it was announced that a contract is ready to be presented to the board for approval. This contract changes the ED position from contractor status to employee. A special meeting is required to meet on this so it does not wait until the new year. This meeting should happen ASAP.
- Once the board approves the contract it will be presented to SF for review.

Meetings

- AGM moved to February (date TBD)
- There will be no December meeting, but there is a Holiday dinner on Dec. 3rd with UVA, BIA, Rate Payers from 6-9 at The Old Country Inn
- Next meeting in January to prep for Feb. AGM
- This is an election year for the AGM, we need to advertise this and invite those interested in becoming new directors



Housekeeping

- It was asked why there is no voice mail on the BIA phone and SF stated that it has been in process with Bell but due to length of time and frustrations she will be investigating moving phone and internet services to Rogers ASAP.

10:37am Meeting adjourned.

Seniors Advisory Committee

Tuesday February 19, 2019

3:00 PM – 5:00 PM

Committee Room 4

Minutes

<p>Attendance: Satya Arora Arul Rajasingam Patricia Anderson Gail Leet, Chair Anthony Ko Mithan Lal Kansal Diane Gabay Councillor Amanda Collucci (arrived at 3:45 pm)</p>	<p>Regrets: Almas Mawani Alam Muhammad Ramma Chabra, Vice-Chair Christine Wong Yash Kapur</p>
<p>Staff: Josh Machesney, Elections & Council/Committee Coordinator Marta Wrzal, Recreation Coordinator – Programs & Outreach Heather Hogan, Communications Coordinator</p>	

Item	Discussion	Action Item
<p>1. Call to Order & Disclosure of Pecuniary Interest</p>	<p>The Seniors Advisory Committee convened at 3:06 PM with Gail Leet presiding as Chair.</p>	
<p>2. Approval of the January 8, 2019 Seniors Advisory</p>	<p>That the January 8, 2019 Seniors Advisory Committee Minutes be approved.</p> <p style="text-align: right;">Carried</p>	

Committee Minutes		
<p>3. Jan Pearce, Executive Director, Evergreen – Presentation on Compassionate Communities</p>	<p>Jan Pearce, Executive Director, Evergreen, was in attendance to deliver a PowerPoint presentation regarding Evergreen Hospice. She explained that Evergreen is a Community Hospice that provides services in people’s homes and other places in the community, and services Markham, Thornhill and Stouffville.</p> <p>Evergreen specializes in addressing emotional needs of those who have been given a life-threatening or life-limiting illness diagnosis and their families. They offer wellness oriented support (psycho-social support) for adults, teens and children with 7 FTE’s, over 170 trained volunteers, and serve over 870 families annually.</p> <p>Evergreen works directly with Local Health Integration Networks and their associated contracted agencies, hospital clinics, community care teams, social service organizations, transportation organizations, Boards of Education, faith communities and cultural groups.</p> <p>Ms. Pearce discussed Evergreen’s support programs:</p> <ul style="list-style-type: none"> • In-Home Visiting Program • C-Care Support Group for women with cancer • Living Room • Caregiver Support • Complementary Therapy with professional practitioners • Bereavement Program <p>Evergreen provides all of its services for no charge. Referrals can be made by anyone.</p> <p>Ms. Pearce showed a short video regarding “compassionate communities”. She explained that compassionate communities is a movement originating from the UK based on the understanding that less than 10 percent of care</p>	<p>Josh will send Committee Members information from Jan Pearce.</p>

	<p>is provided by professional/formal caregivers, while the other 90 percent must come from friends, family, and the community.</p> <p>Gail advised that she would work with Ms. Pearce to have Evergreen featured in Markham Life magazine.</p> <p>Ms. Pearce advised that Evergreen is working with various community groups to establish partnerships to serve more individuals in the community that need support.</p>	
<p>4. Health Fair</p>	<p>Gail advised that the 2019 Health Fair will take place at Aaniin Community Centre in September or October.</p>	
<p>5. New Business</p>	<p><u>Coffee Talk</u> Marta Wrzal, Recreation Coordinator – Programs & Outreach, advised that she had a discussion with Luke Hiltz regarding coffee talks that are already being organized in Markham East. She advised that they receive a \$42,000 grant that allows them to hire someone to help facilitate 3 or 4 sessions per month, and the coffee and snacks are generally donated (\$50-\$100) by the organization that comes in to speak. There are also a number of administrative tasks associated with facilitating these talks. Marta suggested that the Committee take on hosting one coffee talk to start, to get a better sense of the workload associated with hosting one. She asked the Committee for feedback about whether or not they would like to host one.</p> <p>The Committee consented to allowing Marta and Satya work to move the coffee talk initiative forward.</p> <p><u>Digital Payment Initiative</u> Councillor Collucci advised that City Council is currently considering a recommendation from City Staff to eliminate the acceptance of cash and cheques for services at the Markham Civic Centre, and that Staff and Council are seeking input from the Committee. Josh Machesney further</p>	<p>Josh to send staff report regarding Digital Payment Initiative to Gail for review and feedback for submission to General Committee.</p>

	<p>explained that this would impact how many residents pay their property taxes, as the proposed changes would mean that residents could no longer pay their property taxes with a cheque.</p> <p>After minimal discussion, Gail advised that she would circulate the Staff Report and solicit feedback from Committee members, and submit written correspondence regarding the Committee’s position in time for the March 4, 2019 General Committee meeting where the matter will be considered further.</p>	
<p>6. Adjournment</p>	<p>The meeting adjourned at 4:56 PM</p>	



Report to: General Committee

Meeting Date: March 25, 2019

SUBJECT: 042-T-15 Cathodic Protection of Iron Watermains – Contract Extension

PREPARED BY: Prathapan Kumar, Senior Manager, Environmental Services, Ext. 2989
Flora Chan, Senior Buyer, Ext. 3189

RECOMMENDATIONS:

- 1) THAT the report entitled “042-T-15 Cathodic Protection of Iron Watermains – Contract Extension” be received;
- 2) AND THAT contract # 042-T-15 Cathodic Protection of Iron Watermains, awarded to 1460973 Ontario Limited O/A C.P. Systems (C.P. Systems), be extended for three (3) additional years at the same itemized pricing;
- 3) AND THAT the tendering process for the Cathodic Protection of Iron Watermains be waived in accordance with Purchasing By-Law 2017-8, Part II, Section 11.1 (c); which states that “when the extension of an existing Contract would prove more cost-effective or beneficial”;
- 4) AND THAT the annual amount of \$289,283.33, inclusive of HST, be awarded for 2019;
- 5) AND THAT a 8% contingency in the amount of \$23,142.67 be established to cover any additional construction costs and that authorization to approve expenditures of this contingency amount up to the specified limit be in accordance with the Expenditure Control Policy;
- 6) AND THAT the award in the amount of \$312,426.00 be funded from the capital project 053-6150-19241-005 “Cathodic Protection of Iron Watermains”;
- 7) AND THAT the remaining funds of \$65,374.00 in project #19241 “Cathodic Protection of Iron Watermains” be returned to the original funding source;
- 8) AND THAT the contract services award (inclusive of 8% contingency) for:
 - (a) Year 2020 in the amount of \$328,900.12 (\$304,537.15 + \$24,362.97),
 - (b) Year 2021 in the amount of \$443,098.05 (\$410,275.97 + \$32,822.08),
 be requested as part of the 2020 and 2021 capital budget process, subject to Council approval;
- 9) AND THAT Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

The purpose of this report is to seek Council’s authorization to extend the contract for cathodic protection of iron watermains (042-T-15) with the current contractor, C.P. Systems, for an additional three (3) years from 2019 to 2021, at the same itemized pricing.

BACKGROUND:

External corrosion of iron watermains is the leading cause of municipal watermain breaks. Cathodic protection of iron watermains program is an annual preventative maintenance program for controlling the corrosion rate in cast iron and ductile iron watermain, which reduces costly watermain breaks and extends pipe service life. As part of the program, magnesium anodes are installed using an auger drilling device or a vacuum excavation machine, and are wired to the iron pipe to inhibit the electrochemical corrosion process in the pipe. This protects the pipe itself from corrosion. Anodes are estimated to last for 18 - 20 years, depending on surrounding soil conditions.

Since 1992, Markham has been implementing the cathodic protection preventive maintenance program. The watermain breaks has been significantly reduced from 153 in 1991 to an average of 31 in the last 5 years.

Proposed Program (refer to Attachment A):

2019 – 10.4 km

2020 – 11.0 km

2021 – 15.0 km

Cast iron and ductile iron watermains at the end of their lifecycle are further assessed, planned and replaced as required.

OPTIONS/ DISCUSSION:

Staff considered re-tendering the project but do not recommend due to the following rationale:

Niche Market

As reflected in City's previous tender results in 2009, 2014 and 2015 as well as recent market tender result, there are only a small number of companies who perform this type of work.

Efficiency, Cost and Time Savings

In 2015, the awarded supplier and the recommended supplier under this report was 47% lower in price than the 2nd bidder.

Price competitiveness is further confirmed upon detailed price comparison with current market rates from other municipalities. The City's rate is significantly lower than three local municipalities who tendered this work in 2018. Therefore, for economic reasons, and to mitigate the potential risk of doubling the cost to the City by issuing a new tender, Staff recommend extending the existing contract as per the City's Purchasing By-Law 2017-8, Part II, Section 11.1 (c); which states that "when the extension of an existing Contract would prove more cost-effective or beneficial"

Proven Track Record

C.P. Systems have been working with the City on the cathodic protection program since 2002 and staff are satisfied with their performance.

FINANCIAL CONSIDERATIONS AND TEMPLATE:**Contract Services for 2019:**

The following table summarizes the financial considerations for 2019 - 2021:

Budget Allocation (A)	\$377,800.00	053-6150-19241-005 "Cathodic Protection of Iron Water mains"
Less: Construction Cost (B)	\$289,283.33	} Awarded to 1460973 Ontario Limited O/A C.P. Systems (042-T-15)
Less: Construction Contingency (8%) (C)	\$ 23,142.67	
Total Cost (D) = (B) + (C)	\$312,426.00	
Budget Remaining (E) = (A) – (D)	\$ 65,374.00	*

*The remaining funds in project #19241 "Cathodic Protection of Iron Water mains" in the amount of \$65,374 will be returned to the original funding source.

Future Contract Services for 2020 and 2021:

The Purchase Order will not be issued until 2020 and 2021, subject to Council approval of the respective year's Capital Budgets. Under this award, Staff are able to lock in pricing for these years.

2020 Budget		Subject to Council approval of the 2020 Capital budget
Contract Award (F)	\$304,537.15	
Contingency (8%) (G)	\$ 24,362.97	
Total Cost for 2020 (H) = (F) + (G)	\$328,900.12	
2021 Budget		Subject to Council approval of the 2021 Capital budget
Contract Award (I)	\$410,275.97	
Contingency (8%) (J)	\$ 32,822.08	
Total Cost for 2021 (K) = (I) + (J)	\$443,098.05	
Total Cost for 2020 & 2021 (Q) = (O) + (P)	\$771,998.17	

OPERATING BUDGET AND LIFE CYCLE RESERVE IMPACT

The Waterworks life cycle reserve study will be updated based on this award. There is no incremental operating budget impact.

ALIGNMENT WITH STRATEGIC PRIORITIES:

The proposed cathodic protection program is aligned with City's goal to provide better quality services to the public and is consistent with the Building Markham's Future Together strategic priority on the "Growth Management" and "Environment" as it considers sustainability on the built environment.

BUSINESS UNITS CONSULTED AND AFFECTED:

Finance department has been consulted and their comments have been incorporated.

RECOMMENDED BY:

2019-02-11

2019-02-11

X 

Phoebe Fu
Director, Environmental Services
Signed by: cxa

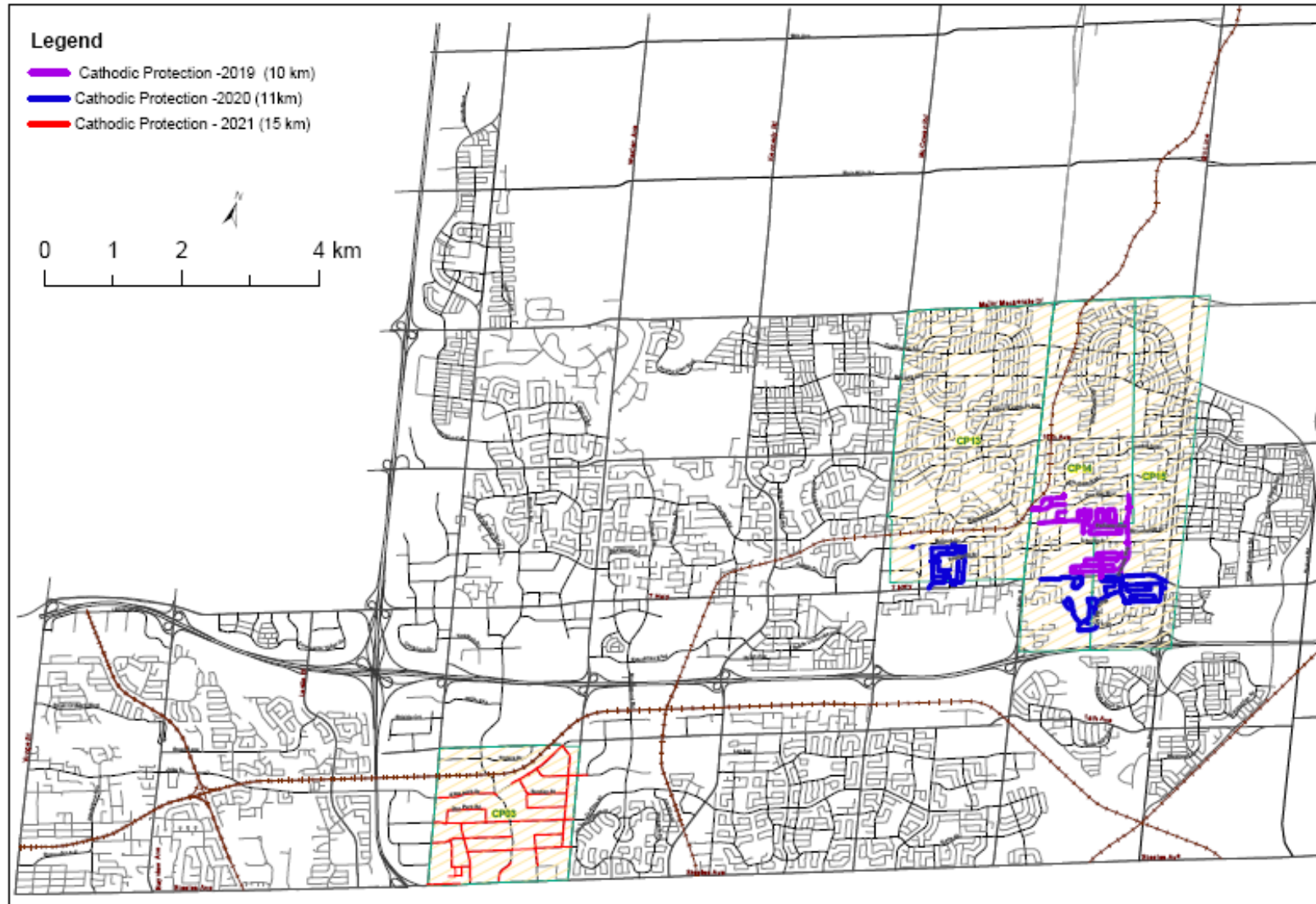
X 

Brenda Librecz
Commissioner, Fire a& Community Services
Signed by: cxa

ATTACHMENTS:

Attachment "A" - 2019/ 2020/ 2021 Cathodic Protection Areas

MARKHAM Attachment "A" : Location Map - 2019/2020/2021 Cathodic Protection Areas





Report to: General Committee

Meeting Date: March 25, 2019

SUBJECT: Award of Contract 126-R-18 Real Estate Brokerage Services

PREPARED BY: Hersh Tencer, Senior Manager Real Property, Ext. 5988
Rosemarie Patano, Senior Construction Buyer, Ext. 2990

RECOMMENDATION:

- 1) THAT the report entitled “Award of Contract 126-R-18 Real Estate Brokerage Services” be received;
- 2) THAT the contract for Real Estate Brokerage Services be awarded to the highest ranked/lowest priced bidder, Cushman & Wakefield Ltd.;
- 3) THAT Contract 126-R-18 for Real Estate Brokerage Services be awarded to the highest ranked bidder, Cushman & Wakefield Ltd., for a one (1) year term with the City having an option to renew for four (4) additional years, with the following commission rates payable to them upon closing of the property transaction for five years (exclusive of HST);

Years 1 - 5	Commission rates
Sale of property	1.00%
Purchase of property*	1.00%
Lease of property	
a) Residential (% of 1-month rent)	50.00%
b) Industrial (% of 1 st year net rent)	1.00%
c) Industrial (% of each of the remaining years of the initial lease term)	1.00%
d) Office (\$ per square foot)	\$0.20

*When it is disclosed at the beginning of a transaction that the Vendor/Landlord will not pay a commission to the broker, the City shall pay the commission at the rate as outlined on the above chart.

- 4) THAT bidder Cushman & Wakefield Ltd. be designated as the preferred vendor of the City’s Real Estate Brokerage Services needs for a one year term with the City Solicitor having the authority to renew successive one year terms to a maximum of five years;
- 5) THAT Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

The purpose of this report is to obtain Council approval to award the contract for real estate brokerage services.

BACKGROUND:

The core responsibilities of the scope of work shall include (but are not limited to) the following:

- Work closely with the City's Real Property Manager;
- Represent the City as landlord or tenant in the leasing of real property;
- Provide advice and guidance on various real estate opportunities (i.e., opinions of value, market data, competitive properties, reported sales, leases, trends, annual reports etc.);
- Provide marketing strategies that would net the greatest exposure and gain in any sale of property;
- Provide regular standardized reporting on the status and action items for various transactions.

OPTIONS/ DISCUSSION:**Bid Information**

Bids closed on	January 30, 2019
Number of Bidders picking up bid document	6
Number of Bidders responding to Bid	4

PROPOSAL EVALUATION

This Request for Proposal ("RFP") was released using a two-stage approach whereby the Bidders provided a technical proposal in envelope 1 and a price proposal in envelope 2. The technical proposal (Stage 1) was evaluated with 70 points and 30 points assigned for price in stage two (2).

The Evaluation Team for this RFP was comprised of the Senior Manager of Real Property, and Property Appraiser & Negotiator, with Procurement staff acting as the facilitator. Under Stage 1, a Bidder must achieve a technical score of 75% (or 52.5 points out of 70) to proceed to Stage 2 and be included in the overall results.

Overall Scoring (Combined Stage 1 & II)

Bidders	Score (out of 100)
Cushman & Wakefield ULC	86.90
Colliers Macaulay Nicolls Inc.	66.20
CBRE	62.10

One Bidder did not attain the technical score of 75% under Stage 1 and therefore, did not move forward to Stage 2.

Compared to the current contract RFP 186-R-13 (Year 5) to RFP 126-R-18 (Year 1), the incumbent (C&W) overall fees have reduced. The sale of property commission rate decreased from 1.75% to 1.00% (-0.75); the purchase of property commission rate decreased from 1.5% to 1.00% (-0.50); industrial lease of property commission rate decreased from 2.00% to 1.00% (-1.00); and, office lease of property decreased from \$0.60 per sq. ft. to \$0.20 per sq. ft. (-0.40 per sq. ft.). The remaining area, residential lease of property (% of 1-month rent), remains unchanged from the

current contract. All rates are firm and fixed for the duration of the contract, with no escalation from year 1 to year 5.

FINANCIAL CONSIDERATIONS

The following outlines the commission rates payable to Cushman & Wakefield Ltd. Upon closing of a sale, purchase and/or lease of property transactions, for a one (1) year term with an option to renew for four (4) additional years:

Year 1 - 5	Commission rates
Sale of property	1.00%
Purchase of property*	1.00%
Lease of property	
a) Residential (% of 1-month rent)	50.00%
b) Industrial (% of 1 st year net rent)	1.00%
c) Industrial (% of each of the remaining years of the initial lease term)	1.00%
d) Office (\$ per square foot)	\$0.20

There is no incremental operating budget impact and no incremental life cycle impact over the next 25 years.

HUMAN RESOURCES CONSIDERATIONS

Not applicable

ALIGNMENT WITH STRATEGIC PRIORITIES:

Not applicable

BUSINESS UNITS CONSULTED AND AFFECTED:

Not applicable

RECOMMENDED BY:

Catherine Conrad
City Solicitor

Andy Taylor
Chief Administrative Officer



Report to: General Committee

Meeting Date: March 25, 2019

SUBJECT: Indemnification of Employees and Members of Council
PREPARED BY: Catherine M. Conrad, City Solicitor and Acting Director of
 Human Resources
 Ext. 4737

RECOMMENDATION:

- 1) THAT the report entitled “Indemnification of Employees and Members of Council”, dated March 25, 2019, be received;
- 2) AND THAT Attachment “A”, the proposed Indemnification of Employees and Members of Council By-law, be enacted;
- 3) AND THAT the contract for the City’s Integrity Commissioner be amended to include the responsibilities set out in the By-law attached as Attachment “A”;
- 4) AND THAT the Chief Administrative Office and the City Clerk be authorized to enter into indemnification/reimbursement agreements with eligible persons where the Integrity Commissioner has authorized indemnity, in a form satisfactory to the City Solicitor; and
- 5) AND THAT Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

The purpose of this report is to recommend a by-law that provides for indemnification and defence of employees and Members of Council against loss or liability arising out of acts or omissions that occur while acting on behalf of the City.

BACKGROUND:

Legislated Legal Protection

The Municipal Act, 2001 (the “Act”) contains several immunity provisions that protect the municipality, municipal councillors, officers and employees from personal liability in legal actions in certain circumstances: neglect from “any act done in good faith” (section 448); nuisance from water or sewage works (section 449); negligence for policy decisions (section 450) in the performance of their public duty; damages for highway and bridges (section 45); sale of land for tax arrears (section 386). The Building Code Act contains immunity provisions that specifically protect Chief Building Officials. This legislation provides protection from legal liability for municipal councillors and employees in the stated circumstances, as long as the acts are done in "good faith" and in "performance of their duty."

The general immunity provision reads as follows:

Immunity

448 (1) No proceeding for damages or otherwise shall be commenced against a member of council or an officer, employee or agent of a municipality or a person acting under the instructions of the officer, employee or agent for any act done in good faith in the performance or intended performance of a duty or authority under this Act or a by-law passed under it or for any alleged neglect or default in the performance in good faith of the duty or authority.

Liability for Torts

(2) Subsection (1) does not relieve a municipality of liability to which it would otherwise be subject in respect of a tort committed by a member of council or an officer, employee or agent of the municipality or a person acting under the instructions of the officer, employee or agent.

However, these provisions do not protect municipalities or Councillors from other legal actions, such as a tort (a civil legal action involving a wrongful act that results in injury to another), see subsection (2) above, or misfeasance, which is a knowingly/deliberate unlawful act. Former or retired employees and former or retired Members of Council are not specifically addressed in these provisions.

Furthermore, the legislation does not require a municipality to undertake a defence or pay legal costs on behalf of an employee or Councillor, even in circumstances where the municipality is also named as a defendant.

Finally, the Act does not require the municipality to pay any costs associated with any legal action (although legal costs may be ‘awarded’ to a successful defendant and ordered to be paid by the plaintiff, those costs rarely, if ever, fully indemnify a successful defendant for all of their costs). Consequently, an employee or Councillor who is sued undertakes the defence at their own expense.

Insurance

The City’s insurance policies provide coverage to Councillors, employees, members of Committees of Council and volunteers against claims for bodily injury, personal injury, and property damage caused while performing their City duties during the policy term, subject to limits of liability, exclusions, conditions and other terms of the policy. The areas of coverage relevant to this report include; General Liability, Errors and Omissions, and Legal Expense & Conflict of Interest.

Indemnity By-law

Section 279 of the Municipal Act, 2001 (the “Act”) permits a municipality to act as an insurer for current and former employees and Councillors against any risk that may involve pecuniary loss or liability, subject to certain limitations. One such limitation is contained in section 14 of the Municipal Conflict of Interest Act (the “MCIA”), which

provides that a municipal council may only reimburse a Councillor's legal expenses if that Councillor has been found not to have contravened sections 5, 5.1, and 5.2 of the MClA.

The Act authorizes councils to pass indemnification by-laws or adopt policies to defend or reimburse Councillors and employees for legal expenses they may incur while acting "in their capacity as members of council" or in the course of their public duties, respectively.

Presently, the City does not have an indemnity policy or by-law in effect. The City has relied on the provisions of the Municipal Act to determine indemnification eligibility.

The purpose of a legal indemnification by-law would be to:

- establish a framework for indemnifying employees and Councillors for defence and other costs;
- extend protection into additional types of legal disputes or actions;
- extend protection for legal fees to employees and municipal Councillors, including former employees and Councillors; and
- establish a process to determine when such indemnification applies and how litigation is managed.

Indemnification by-laws are relatively common among mid to large sized municipalities. In 2018, Richmond Hill surveyed municipalities in the GTA and 19 out of 22 municipalities have an indemnification by-law, including York Region, Vaughan, Newmarket, Mississauga and Brampton.

OPTIONS/ DISCUSSION:

Proposed Markham Legal Indemnification By-law

A proposed Indemnification By-law (the "By-law") for City employees and Members of Council is attached as Attachment 'A'. The proposed By-law includes the following provisions:

1. Indemnification for present and former:

- a. Councillors
- b. Employees
- c. Contract employees
- d. Volunteers

2. Indemnifiable Employee and Councillor actions:

- a. acts done in performance of duty and statutory duties
- b. acts done honestly and in good faith with a view to the best interests of the City and with no improper, immoral or objectionable purpose;
- c. the act or omission was done while acting on behalf of the Corporation or done or made by them in good faith in their capacity as Employees or Members;
- d. in cases involving monetary penalties, the conduct was believed to be lawful.

3. Covered Proceedings:

- a. any civil or administrative proceeding before any court or tribunal, subject to certain exclusions.

4. Excluded Conduct or Proceedings:

- a. proceedings relating to a grievance filed under the provisions of a collective agreement;
- b. complaints made pursuant to the Council Code of Conduct where the Integrity Commissioner has found that the Member breached the Code;
- c. proceedings in which the interests of the Councillor or Employee are adverse in interest or in conflict with the City's interests;
- d. *Municipal Elections Act* (coverage available under insurance subject to limits);
- e. *Highway Traffic Act*;
- f. the *Criminal Code*; and
- g. municipal parking and traffic by-laws.

5. Extent of Indemnification:

- a. legal fees;
- b. fines;
- c. damages;
- d. settlements; and
- e. reasonable expenses incurred.

5. Process:

- a. by written request, forwarded to the Integrity Commissioner, via the City Clerk;
- b. determination of eligibility for indemnification is made by Integrity Commissioner, taking into consideration the criteria in the By-law;
- c. Indemnified Person must execute Indemnification Agreement.

6. Limits to Indemnification:

- a. reasonable defence costs;
- b. City to be reimbursed by any award of costs (but not damages awards to the employee or Councillor) paid to employee or Councillor;
- c. Council may, where the employee or Councillor breaches any provision of the Indemnification By-law, or acts in bad faith or with intentional or malicious wrongful conduct, discontinue indemnification with notice to the employee or Councillor

7. Process for Approval of Lawyer

- a. City selects and retains lawyer;
- b. Employee or Councillor may retain their own lawyer, in lieu of the City's choice of lawyer, provided that the fees are billed at not more than the rate charged by the City's lawyer in insurable claims;
- c. approval of lawyer must be by written request.

8. Investigation costs:

- a. Up to \$15,000 may be provided to assist an employee or Councillor with the costs of representation during an investigation which may lead to charges (criminal, provincial or municipal)

Approval Process and Delegated Authority

Section 3 of the proposed By-law sets out the approval process to determine when indemnification is applicable. The City's Integrity Commissioner, an independent and impartial arbiter, will evaluate requests for indemnification and respond within a reasonable time, with his/her decision based on the criteria for indemnification and the exclusions set out in the By-law. The Integrity Commissioner will ensure that persons assigned to this work will not also work on or have access to any other Markham files, so that the decision is made independently.

FINANCIAL CONSIDERATIONS

The Integrity Commissioner's work related to the By-law will be included within the scope (and fee structure) of their existing contract.

HUMAN RESOURCES CONSIDERATIONS

N/A

ALIGNMENT WITH STRATEGIC PRIORITIES:

This By-law aligns with the provision of exceptional services by exceptional people: fostering a safe and healthy work environment, embracing an organizational culture and adopting management systems that empower and inspire our employees to be champions of excellent service delivery and innovative practices.

BUSINESS UNITS CONSULTED AND AFFECTED:

Legislative Services and Financial Services were consulted in the preparation of this Report.

RECOMMENDED BY:

Catherine M. Conrad, City Solicitor
And Acting Director of Human Resources

ATTACHMENTS:

Attachment "A" - Proposed Indemnification By-law

ATTACHMENT 'A'

The Corporation of the City of Markham

By-law 2019-XX

A By-law to provide for the indemnification and defence of employees and Members of Council against loss or liability in certain circumstances arising out of acts or omissions done while acting on behalf of the Corporation.

WHEREAS section 279 of the *Municipal Act, 2001*, SO 2001, c 25, as amended, provides that a municipality may, subject to certain limitations, act as an insurer and protect present and former members of council, board members, employees and officers from risks that may involve pecuniary loss or liability on the part of those individuals;

And whereas Council has deemed it advisable to enact an indemnification by-law for this purpose.

Therefore be it enacted by the Council of The Corporation of the City of Markham as follows:

1. Definitions:

In this By-law:

"Action or Proceeding" includes all civil actions, provincial offences, administrative proceedings including but not limited to tribunals such as the Human Rights Tribunal, complaints to a professional association and third party proceedings, except any proceeding brought under the *Municipal Elections Act, 1996*, S.O. 1996, c. 32, Sched., the *Highway Traffic Act*, R.S.O. 1990, c.H.8, as amended, the *Criminal Code*, R.S.C. 1985, c.C.46, as amended, or municipal parking and traffic by-laws;

"Chief Administrative Officer" means the Chief Administrative Officer of the City of Markham or his/her designate;

"City" means The Corporation of the City of Markham; and

"City Clerk" means the City Clerk of the City of Markham or his/her designate;

"City Solicitor" means the City Solicitor of the City of Markham or his/her designate;

"Corporation" means The Corporation of the City of Markham;

"Council" means the Council of the City;

"Covered Action or Proceeding" means an Action or Proceeding arising out of alleged acts or omissions done or made by the Employee or Member acting in their capacity as an Employee, Member or officer of the City, including acts or omissions done or made by the Employee or Member in the performance of a statutory duty imposed by any general or special act and duties arising out of an appointment to a Statutory Board or Committee and having been determined by the Integrity Commissioner as entitled to indemnification;

"Department Head" means the Manager, Director, Commissioner or Chief

Administrative Officer directly responsible for overseeing the work of the Employee. The City Clerk is the "Department Head" for Members of Council and the Chief Administrative Officer;

"Director of Human Resources" means the Director of Human Resources of the City of Markham or his/her designate;

"Employee" means any salaried officer or any other person employed by the Corporation and any former employee or salaried officer and includes appointees and volunteers acting under the direction of a person in the employ of the City;

"Indemnified Person" means an Employee or a Member approved for indemnification under this By-law; (CMC: or use Eligible Person?)

"Integrity Commissioner" means any person or corporation appointed by the City of Markham to perform the functions assigned by Section 223.3 of the *Municipal Act*, 2001, S.O. 2001, c. 25 as amended, or by the Code of Conduct for Council, Local Boards, and Adjudicative Boards, as amended from time to time, or any person acting under the instructions of the Integrity Commissioner.

"Member" means a Member of the Council of the City of Markham and any former Member of Council;

"Statutory Board or Statutory Committee" means any board or committee of Council established or required by any Act of the Province of Ontario or whose members are appointed by City By-law;

2. Former Employees, Officers and Members

Subject to subsection 3.4(x), this By-law also applies to any person who was an Employee or Member at the time the cause of Action or other Proceeding arose but who, prior to judgment or other settlement of the Action or Proceeding, has ceased to be an Employee or Member.

3. Indemnification of Employees and Members:

- 3.1 Subject to the provisions of this By-law, the City shall, in respect of any Covered Action or Proceeding against an Employee or Member or in which the Employee or Member is a party and in which their conduct is called into question, indemnify the Employee or Member and his or her heirs and legal representatives in the manner and to the extent provided for in this By-law.
- 3.2 Where an Employee or Member becomes aware that an Action or Proceeding has been threatened against them, for which they may seek indemnification, the Employee or Member shall provide immediate and confidential written notice of the Action or Proceeding to their Department Head.
- 3.3 Where an Employee or Member is served with any document which commences an Action or Proceeding for which they seek indemnification, the Employee or Member shall provide the document or a copy thereof and a written request for indemnification, immediately and confidentially to the Integrity Commissioner, through the City Clerk. A copy of the confidential documents submitted to the Integrity Commissioner shall also be provided to the Employee's or Member's Department Head.
- 3.4 At any time prior to the conclusion of the Action or Proceeding, the Integrity Commissioner shall, exercising its own discretion, determine whether an Employee or Member is entitled to indemnification pursuant to this By-law. The Integrity Commissioner may authorize indemnity where it is determined, in the Integrity Commissioner's sole discretion, acting reasonably, that:
 - a) the Employee or Member acted honestly and in good faith with a

view to the best interests of the City and with no improper, immoral or objectionable purpose; and

- b) the act or omission was done while acting on behalf of the Corporation or done or made by them in good faith in their capacity as Employees or Members; and
- c) in the case of a criminal, quasi-criminal or administrative action or proceeding that is enforced by a monetary penalty, the Employee or Member had reasonable grounds for believing that his/her conduct was lawful; and
- d) the interests of the City and the Employee or Member are not adverse to each other; and
- e) the actions of the Employee were not of a nature as to provide grounds for immediate dismissal; and
- f) indemnification is not prohibited by statute or court order.

3.5 The Integrity Commissioner shall provide a written decision in respect of a request made under Subsection 3.3, within twenty (20) business days of receipt of the request. Notwithstanding Subsections 7.1 and 7.4, the decision of the Integrity Commissioner shall be final.

3.6 Where an Employee or Member is the subject of an investigation in a matter which may result in charges being laid against the Employee or Member under a, provincial statute or regulation, or municipal by-law, because of any act done or any failure to act or allegations of same in the attempted performance or performance of his/her duties, the Employee or Member may be entitled to receive payment from the City for a retainer and/or interim payment of legal costs, up to \$15,000.00, to obtain legal representation during the investigation, at the discretion of the .

3.7 As a condition precedent to the City making any payment in respect of the costs of or representation of any Employee or Member pursuant to this By- law, the Employee or Member must agree in writing to comply with the provisions of this by-law and such other terms and conditions as are determined to be appropriate by the City Solicitor, and shall agree to repay the City on demand, in the event that the Employee or Member is convicted of an offence in respect of the Covered Action or Proceeding, all sums paid by the City in respect of the costs of defence or representation as to such charges, including the retainer referred to in Subsections 5.2 and must execute an indemnity agreement or other documentation required by the City to secure such repayment to the City. No retainer shall be made on behalf of an Indemnified Person and/or no money shall be paid by the City with respect to any Action or Proceeding until an indemnity agreement has been executed. The Chief Administrative Officer and the Clerk are hereby authorized to execute such indemnity agreements on behalf of the City upon recommendation of the City Solicitor.

4. Excluded Actions and Proceedings

4.1 This By-law does not apply to an Action or Proceeding:

- a) which relates to a grievance filed under the provisions of a collective agreement or any action taken by the City with respect to an Employee;
- b) under the Council Code of Conduct where the Member has been found by the Integrity Commissioner to have been in breach of any provision of the Council Code of Conduct;
- c) where the conduct or incident alleged in the Action or Proceeding

also gives rise to a complaint or request for inquiry or investigation under the Council Code of Conduct and where the disposition of that complaint remains outstanding.

- d) where the Employee or Member acted in bad faith;
- e) where the Employee has been terminated as a result of the actions or omissions that gave rise to the Action or Proceeding;
- f) in any proceeding against a Member or Employee prosecuted by or on behalf of the City or in which the City was the complainant;
- g) where the Employee or Member was performing his or her duties otherwise than in good faith and honestly or with malice;
- h) where, in committing an alleged wrong, the Employee or Member was clearly acting on his or her own behalf and not that of the City.
- i) where adverse parties in civil proceedings would each be entitled to funding for defence costs under this by-law, it being the policy of the City that it shall not finance both sides of an Action or Proceeding and the neither party should receive indemnification in such circumstances;
- j) In third party claims or cross claims brought against Employees or Members where such third party claims or cross claims are for relief over against such Employees or Members in a proceeding commenced by the City;
- k) the subject actions or omissions were not within the Employee or Member's good faith performance of his or her duties.

4.2 Where the Integrity Commissioner has determined that an Employee or Member is not entitled to indemnification, the Employee or Member shall be responsible for all costs, damages, penalties and legal fees in connection with representation in the Action or Proceeding.

5. Manner and Extent of Indemnification:

Where an Employee or Member is entitled to indemnification under this By-law, in a Covered Action or Proceeding, the City shall:

- a) pay the costs of defending such Employee or Member; and
- b) pay any award of damages or costs, including any monetary penalty or award against such Employee or Member; and
- c) pay, either by direct payment or reimbursement, any expenses reasonably incurred by the Employee or Member; and
- d) pay any sum required in connection with the settlement of a Covered Action or Proceeding, provided that, as a condition precedent, the City Solicitor and the Chief Administrative Officer have approved the terms of the settlement.

to the extent that such costs, damages, expenses, monetary penalty, other award or other sums related to the Covered Action or Proceeding are not assumed, paid or reimbursed under any provision of the City's insurance program for the benefit and protection of such person against any liability incurred by him or her.

6. City's Right to Select Legal Counsel:

- 6.1 Subject to Section 12, the City shall have the right to select and retain legal counsel to represent an Indemnified Person and the City Solicitor shall advise the Employee or Member of the legal counsel selected to represent him/her.
- 6.2 An Indemnified Person may retain their own legal counsel for their defence or representation in a Covered Action or Proceeding in lieu of the legal counsel provided by the City, provided that the City shall not be obliged to pay for the services of the Indemnified Person's legal counsel at a rate in excess of the rates the City pays for legal counsel on insurable claims. If the Indemnified Person's choice of legal counsel charges in excess of the rates the City pays for insurable claims, the Indemnified Person shall be responsible for the difference in the legal costs.
- 6.3 Where an Indemnified Person seeks approval of legal counsel under Subsection 6.2, the Indemnified Person shall advise the City Solicitor through the written request in Subsection 3.3, and shall provide sufficient information to support the City Solicitor's decision, acting reasonably, to approve the Indemnified Person's choice of legal counsel, which may include the hourly rate charged by the legal counsel, as well as the experience of such legal counsel in dealing with similar claims.

7. Limits to Indemnification:

- 7.1 The Integrity Commissioner shall have the authority at any time during or after the commencement of the Action or Proceeding, upon the request of the Employee or Member, to review its decision to not provide indemnity and may provide indemnity where additional facts become available, that demonstrate that the Employee or Member is entitled to indemnification pursuant to this By-law.
- 7.2 The City Solicitor, acting reasonably, may require one or both of the following:
- a) Periodic Budgets for anticipated legal costs, which may be revised from time to time as circumstances require; and
 - b) Status Updates in respect of the progress of the proceedings;
 - c) Detailed invoices including details of docketed time; and
 - d) Work plans and any other documents deemed appropriate by the City Solicitor.
- 7.3 The City Solicitor may require that any account for legal costs for which reimbursement is sought, be assessed by Court Assessment Officer prior to payment by the City.
- 7.4 Notwithstanding any other provision of this By-law, the Council may, by resolution of Council, choose not to indemnify an Indemnified Person, or may cease to indemnify an Indemnified Person if it has commenced to do so, if:
- a) the Indemnified Person breaches any provision of this By-law or any agreement for indemnification or reimbursement entered into by the Indemnified Person, at any time;
 - b) the Indemnified Person or their legal counsel took a step which was unnecessary or otherwise prejudicial to the conduct of the Covered Action or Proceeding;
 - c) the Indemnified Person initiated a counterclaim, cross claim, third party claim, appeal, or other proceeding related to the Covered Action or Proceeding for which the indemnity or reimbursement was sought, without first obtaining approval from the City Solicitor; or

- d) the Covered Action or Proceeding arises out of the Indemnified Person's bad faith acts or omissions, or their intentional or malicious wrongful conduct.

8. Third Party Actions and Counterclaims:

An Indemnified Person may not commence a third party action or Counterclaim unless such Action or Counterclaim is part of the proper defence of the Indemnified Person in a Covered Action or Proceeding under this By-law, and only if such Action or Counterclaim has been approved by the City Solicitor.

9. Duty to Cooperate

9.1 An Indemnified Person shall co-operate fully with the City in the management of any Covered Action or Proceeding including the requirements of section 7.2.

9.2 An Indemnified Person shall cooperate fully with any legal counsel retained by the City to defend any Covered Action or Proceeding and shall make available to such legal counsel all information and documentation relevant to matter as are within his or her knowledge, possession or control, and shall attend at all proceedings when requested to do so by such legal counsel.

10. Failure to Comply With By-law

If an Indemnified Person fails or refuses to comply with the provisions of this By-law, or any agreement entered into by the Indemnified Person for indemnification or reimbursement, the Council shall have authority to determine whether to assume or pay or continue to pay any of the costs, damages, expenses or sums mentioned in Sections 5 or 6 of this By-law. Prior to the Council making a decision to terminate or rescind indemnity, the Indemnified Person shall be provided with the opportunity to make submissions to the Council in support of the Indemnified Person's indemnification.

11. Appeal

11.1 Where a person seeks to appeal a judgment or decision in a Covered Action or Proceeding, the Indemnified Person shall first consult with the Integrity Commissioner, and the Integrity Commissioner shall have sole discretion to determine indemnification eligibility for the appeal. If an Indemnified Person pursues an appeal, or participates as a party in an appeal, without first seeking indemnification approval from the Integrity Commissioner and is successful in that appeal, the Integrity Commissioner shall have sole discretion to determine whether the Indemnified Person shall be indemnified for his or her legal costs in the appeal.

11.2 Where the Integrity Commissioner determines that it is not in the City's interest to commence an appeal and the Indemnified Person elects to proceed with an appeal, all costs of the appeal, including any awards of damages or costs, shall be at his or her own expense.

12. Conflict

12.1 The City maintains various policies of insurance for both the City and its Employees and Members. The provisions of this By-law are intended to supplement the protection provided by such policies of insurance. In the event of conflict between this By-law and the terms of any such policy of insurance in place from time to time, the terms of such policy or policies of insurance shall prevail.

13. Reimbursement

Where the Employee or Member is to be indemnified by the City, the amount of the indemnity shall be reduced by the amount of any costs recovered by the Employee or Member and where the indemnity has been paid, any costs recovered by the Employee or Member shall be paid or assigned to the City up to the amount of the indemnity.

14. Severability

If any sections, section or part of a section of this By-law are found by any Court to be illegal or beyond the power of Council to enact, such sections or section or part of a section shall be deemed to be severable and all other sections or parts of sections of this By-law shall be deemed to separate and independent and shall continue in full force and effect.

Enacted and passed this day of 2019.

Mayor Frank Scarpitti

Clerk Kimberley Kitteringham