



MEMORANDUM

TO: Mayor and Members of Council

FROM: Eric Lariviere, Manager, Flato Markham Theatre

DATE: April 18, 2023

RE: Markham Foundation for the Performing Arts – Canada Revenue Agency (CRA)
Application to Register as a Charity – Administrative Matter

PURPOSE:

The purpose of this Memorandum is to obtain Council approval in connection with an administrative matter to complete the Canada Revenue Agency (CRA) charity registration process for the Markham Foundation for the Performing Arts.

BACKGROUND:

In 2019 Council provided approval for the Markham Foundation for the Performing Arts (the “Corporation”) to be incorporated as a not-for-profit, Municipal Services Corporation, and apply to Canada Revenue Agency (CRA) to register the Corporation as a charity. As per the Flato Markham Theatre’s Strategic Plan (2017-2021) approved by Council, an arms-length charitable foundation will be more successful in raising donation funds, and charity status is required for many government grants / funding programs.

As part of the final stage of the CRA charity registration process, CRA requires that certain amendments be made to the Corporation’s “Letters Patent” (incorporating document).

The City is the sole Voting Member of the Corporation (similar to the relationship between a sole voting shareholder of a “for-profit” corporation). As the sole Voting Member of the Corporation, the City (through Council) is required to approve amendments to the Corporation’s Letters Patent.

DISCUSSION:

CRA requires that the “purposes” of the Corporation set out in the Letters Patent be amended as follows, to demonstrate that the Corporation is established exclusively for charitable purposes:

~~(i) to educate and increase the public's understanding and appreciation of the arts by providing the residents of the City of Markham with access to arts in a variety of forms and forums;~~

~~(ii)~~ (i) to support the development and sustainability of a vibrant performing arts community in the City of Markham, including the Flato Markham Theatre (or successor) and its facility and programs, in order to advance the public's appreciation of the arts by providing the residents of the City of Markham with access to arts in a variety of forms and forums;

~~(iii) to undertake fundraising and other activities incidental and ancillary to the attainment of above charitable purposes; and~~

~~(iv)~~ (ii) to receive and maintain a fund or funds and to apply all or part of the principal and income therefrom, from time to time, to charitable organizations that are also registered charities under the Income Tax Act (Canada); and -

(iii) to do all such things as are ancillary and incidental to the attainment of the above charitable purposes.

CRA has advised that failure to amend the Corporation's Letters Patent in accordance with the above may result in the Corporation not qualifying to be registered as a charity and its application being denied.

CRA also requires that the Letters Patent provide for a range (minimum/maximum number) of Directors - from 3 to 9 Directors - to more accurately reflect the (3) initial Directors appointed for the purposes of incorporation, and the full Board of Directors (9) to be appointed by Council.

Council has provided approval for a nomination committee to be established to identify suitable Director candidates for the Board of Directors. Staff will bring forward an update to Council in the near future regarding the Director nomination process.

RECOMMENDATION:

1. THAT Council approve the following amendments to the Letters Patent of the Markham Foundation for the Performing Arts (the "Corporation") in order to meet Canada Revenue Agency (CRA) requirements to register the Corporation as a charity (and in a form satisfactory to the City Solicitor):

(A) amend the purposes of the Corporation to provide as follows:

(i) to support the development and sustainability of a vibrant performing arts community in the City of Markham, including the Flato Markham Theatre (or successor) and its facility and programs, in order to advance the public's appreciation



of the arts by providing the residents of the City of Markham with access to arts in a variety of forms and forums;

(ii) to receive and maintain a fund or funds and to apply all or part of the principal and income therefrom, from time to time, to charitable organizations that are also registered charities under the Income Tax Act (Canada); and

(iii) to do all such things as are ancillary and incidental to the attainment of the above charitable purposes.

(B) provide that the Corporation shall have a minimum of 3 and a maximum of 9 Directors.

2. AND THAT the City Solicitor be authorized to approve such further amendments to the Letters Patent necessary to comply with legal and/or administrative requirements to register the Corporation as a charity.
3. AND THAT Staff be authorized and directed to do all things necessary to give effect to this resolution.