

**CITY OF MARKHAM
THIRD REVISED AND RESTATED
SHAREHOLDER DECLARATION**

December _____, 2023

**CITY OF MARKHAM
THIRD REVISED AND RESTATED
SHAREHOLDER DECLARATION**

RECITALS

1. The City of Markham is the sole shareholder of Markham Enterprises Corporation, formerly Markham Energy Corporation.
2. Markham Enterprises Corporation is a shareholder of Alectra Inc., and the sole shareholder of Markham District Energy Inc.
3. The City of Markham now wishes to replace the Second Revised and Restated Shareholder Declaration of the City of Markham dated June 12, 2007 with this Third Revised and Restated Shareholder Declaration dated December ●, 2023.

1. Definitions

In this Shareholder Declaration, the following terms will have the meanings set out below:

“**Alectra**” means Alectra Inc.;

“**Alectra Unanimous Shareholders' Agreement**” or “**Alectra USA**” means the Unanimous Shareholders' Agreement dated January 1, 2019 relating to the business and affairs of Alectra, as such agreement may be amended, restated or replaced from time to time;

“**appoint**” includes “elect” for the purposes of the OBCA;

“**Authorized Businesses**” has the meaning set out in Subsection 4(b);

“**City of Markham**” means The Corporation of the City of Markham;

“**Casting Vote**” means an extra vote that the presiding officer of a board or committee may exercise to decide an issue when the votes on each side are equal;

“**Companies**” means, collectively, MEC, MDEI and Alectra Inc.;

“**Confidential Information**” means any and all information and data relating in any manner to the Shareholder or the Companies and any activities, plans, ideas, products, services, policies or intentions (including without limitation, information of an operational, business, marketing, financial or economic nature), whether or not proprietary in nature, that is of value to the Shareholder or the Companies and is not generally known to the public;

“**Council**” means the Council for The Corporation of the City of Markham;

“**Electricity Act**” means the *Electricity Act, 1998* (Ontario), as such statute may be amended or re-enacted from time to time;

“**MEC**” means Markham Enterprises Corporation;

“**MEC Board**” means the board of directors of MEC;

“**MEC Chair**” means the director of MEC appointed as Chair of the MEC Board by the Shareholder from time to time;

“**IESO**” means the Independent Electricity Systems Operator;

“**Independent Directors**” means directors of MEC and MDEI, as applicable, who are not members of Council;

“**MDEI**” means Markham District Energy Inc.;

“**MDEI Board**” means the board of directors of MDEI;

“**MDEI Chair**” means the director of MDEI appointed as Chair of the MDEI Board by the MEC Board from time to time;

“**OBCA**” means the *Business Corporations Act* (Ontario), as such statute may be amended or re-enacted from time to time;

“**OEB**” means the Ontario Energy Board;

“**OEB Act**” means the *Ontario Energy Board Act, 1998* as such statute may be amended or re-enacted from time to time;

“**Person**” means an individual, a natural person or a body corporate;

“**Shareholder**” means The Corporation of the City of Markham or “City of Markham”;

“**Shareholder Declaration**” means this Third Revised and Restated Shareholder Declaration dated December ●, 2023;

“**Shareholder Representative**” has the meaning set out in Section 12.

2. *Third Revised and Restated Shareholder Declaration*

- (a) This Third Revised and Restated Shareholder Declaration replaces in its entirety the Second Revised and Restated Shareholder Declaration dated June 12, 2007.
- (b) The provisions of this Shareholder Declaration shall prevail if any conflict arises between the by-laws of MEC and/or MDEI and the provisions of this Shareholder Declaration.
- (c) This Shareholder Declaration shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

3. Purpose

This Shareholder Declaration outlines the expectations of the Shareholder relating to the principles of governance and other fundamental principles and policies of the Companies. Except as provided in Sections 8 and 14, this Shareholder Declaration is not intended to constitute a unanimous shareholder declaration under the OBCA.

4. Authorized Business Activities of MEC and MDEI

- (a) Subject to the restrictions in Section 12 of this Shareholder Declaration, MEC and MDEI may engage in the business activities which are permitted by any law applicable to MEC and MDEI from time to time, including the *Electricity Act*, and as the MEC Board and MDEI Board, respectively, may authorize including, without limitation, the Authorized Businesses referred to in Section 4(b) of this Shareholder Declaration. In so doing, MEC and MDEI shall conform to all requirements of the OEB, the IESO and all other applicable regulatory or governmental authorities.
- (b) MEC or MDEI may engage in the following authorized business activities (the “Authorized Businesses”):
 - (i) telecommunications and fibre optics;
 - (ii) competitive services;
 - (iii) district energy;
 - (iv) business activities that enhance or develop the ability of MEC and MDEI to carry on any of the activities described in paragraphs (i), (ii), or (iii) above.

5. Subsidiaries

As at the date hereof, MEC’s only subsidiary is MDEI which engages in the district energy business.

6. Standards of Governance

As required by the OBCA, the board of directors of MEC and MDEI shall, subject to the provisions of this Shareholder Declaration, supervise the management of the business and affairs of its respective corporation and, in so doing, shall act honestly and in good faith with a view to the best interests of its respective corporation and shall exercise the same degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

7. *Board of Directors of MEC*

- (a) **Number of Directors of MEC** - MEC shall be managed by the MEC Board, which shall consist of 13 members, comprised of all of the members of Council.
- (b) **Term** - The term for each member of the MEC Board shall be as follows:
 - (i) the Mayor and other members of Council shall serve as directors as long as such person remains in office during the term of each Council;
 - (ii) Any director may serve for successive terms.
- (c) **Board Committees** - The MEC Board may establish committees of the MEC Board in the MEC Board's discretion as required, including, but not necessarily,
 - (i) audit and finance committee to review financial results; and
 - (ii) governance committee to recommend such matters as senior management and directors' compensation.
- (d) **Directors' Compensation** - The compensation for members of the MEC Board shall be as determined by the Shareholder from time to time.
- (e) **Conflicts** - Directors and officers of MEC shall comply with the conflict of interest requirements of the OBCA and the conflict of interest rules set forth in the by-laws or any policy of MEC or the Shareholder.
- (f) **MEC Board Chair / Vice-Chair(s)** – A Chair and Vice-Chair(s) of the MEC Board shall be appointed by the Shareholder (and may be removed by the Shareholder).
- (g) **MEC Board Committee Chair** - Unless otherwise determined by the MEC Board, each committee of the MEC Board will elect (and may remove) its Chair.
- (h) **Voting** - At all meetings of the MEC Board or a committee of the MEC Board, every question shall be decided by a majority of the votes cast on the question (unless otherwise required by the OBCA). The Chair (or Vice-Chair) of the meeting shall be entitled to vote, but shall not be entitled to a second or Casting Vote for the purpose of breaking a tie vote. In the event a Director abstains from voting, they will be deemed to have voted in the negative unless they abstain from voting due to a conflict of interest (in which case, their abstention shall be deemed to be neither an affirmative nor a negative vote).

8. *Business and Affairs of MEC and Alectra*

- (a) The Shareholder and MEC acknowledge that they are parties to, and bound by, the Alectra Unanimous Shareholders Agreement (USA). In the event of any inconsistency between the Alectra USA and this Shareholder Declaration, the Alectra USA shall govern.

- (b) Under the Alectra USA and the OBCA, certain matters and actions require the approval or consent of the shareholders of Alectra (“Alectra Shareholder Approval Matters”). Once an Alectra Shareholder Approval Matter has been considered and voted upon by Council, as contemplated by Section 13 of this Shareholder Declaration, MEC, in its capacity as shareholder of Alectra, shall vote its shares of Alectra in a manner that is consistent with the vote of Council.
- (c) To the extent that this Shareholder Declaration specifies that any matters relating to MEC only be, or shall be dealt with or approved or consented to by, or shall require action by the Shareholder, the discretion and powers of the MEC Board to manage and to supervise the management of the business and affairs of MEC with respect to such matters are correspondingly restricted. For greater certainty, the parties agree that this Shareholder Declaration is intended to operate as a unanimous shareholder agreement with respect to MEC within the meaning of the OBCA.
- (d) The members of the MEC Board are relieved of any liabilities to the extent that this Shareholder Declaration restricts their discretion or powers to manage or supervise the management of the business and affairs of MEC in accordance with Section 108(5) of the OBCA.

9. *Board of Directors of MDEI*

- (a) **Number of Directors of MDEI** - MDEI shall be managed by the MDEI Board, which shall consist of nine (9) directors, of which five (5) directors shall be Independent Directors.
- (b) **Members of Council as Directors of MDEI** - The Mayor of the City of Markham (or the Mayor’s designate) and three (3) other members of Council, as appointed by the Shareholder, shall serve as directors of MDEI, as long as such persons remain in office during the term of each Council or such lesser period as the Shareholder may determine.
- (c) **MDEI Independent Directors** - The MDEI Independent Directors shall be appointed by the MEC Board, and may be removed from office by the MEC Board.
- (d) **Recruitment of MDEI Independent Directors** – The MEC Board shall determine the recruitment process for the MDEI Independent Directors.
- (e) **Qualifications of MDEI Independent Directors** - In addition to sound judgment and personal integrity, the qualifications of candidates for the MDEI Independent Director positions may include:
 - (i) awareness of public policy issues related to MDEI;
 - (ii) business expertise, including experience related to the district energy industry;
 - (iii) experience on boards of significant commercial corporations;

- (iv) financial, legal, accounting, human resources and/or marketing experience;
 - (v) knowledge and experience with risk management strategy and corporate governance; and
 - (vi) knowledge of community interest.
- (f) **Residency** - Preference may be given to qualified candidates for the MDEI Independent Director positions who are residents of the City of Markham; however, non-residents of the City of Markham shall not be excluded from serving as MDEI Independent Directors.
- (g) **Term** – The term for the members of the MDEI Board shall be as follows:
- (i) The Mayor and other members of Council shall serve as directors as long as such person remains in office during the term of each Council, or such lesser period as the Shareholder may determine.
 - (ii) The Independent Directors shall be appointed by the MEC Board for a term of up to 3 years (as determined by the MEC Board), but shall continue in office until their successor is appointed (unless removed from office by the MEC Board).
 - (iii) Any director may serve for successive terms as determined by the MEC Board or the Shareholder, as applicable.
- (h) **Vacancies** - The MEC Board or the Shareholder, as applicable, shall appoint directors to fill vacancies on the MDEI Board.
- (i) **Board Committees** - The MDEI Board may establish committees of the MDEI Board in the MDEI Board’s discretion as required, including, but not necessarily limited to:
- (i) audit and finance committee to review financial results;
 - (ii) human resources and governance committee to review senior management performance and recommend senior management compensation; and
 - (iii) nominating committee to identify, evaluate and recommend potential MDEI Independent Director candidates to the MEC Board, if requested by the MEC Board.
- (j) **Directors’ Compensation** - The compensation for members of the MDEI Board shall be as determined by the MEC Board from time to time. This shall include the MDEI Board Chair, Vice-Chair(s) and Committee Chairs.
- (k) **Conflicts.** Directors and officers of MDEI shall comply with the conflict of interest requirements of the OBCA and the conflict of interest rules set forth in the by-laws or any policy of MDEI.

- (l) **MDEI Board Chair / Vice-Chair(s)** – A Chair and Vice-Chair(s) of the MDEI Board shall be appointed by the MEC Board (and may be removed by the MEC Board).
- (m) **MDEI Board Committee Chair** – A Chair for each committee of the MDEI Board shall be appointed by the MEC Board (and may be removed by the MEC Board), and the MEC Board shall determine the process to solicit interest in the position unless such authority is delegated by the MEC Board to the MDEI Board Chair.
- (n) **Voting** - At all meetings of the MDEI Board or a committee of the MDEI Board, every question shall be decided by a majority of the votes cast on the question (unless otherwise required by the OBCA). The Chair (or Vice-Chair) of the meeting shall be entitled to vote, but shall not be entitled to a second or Casting Vote for the purpose of breaking a tie vote. In the event a Director abstains from voting, they will be deemed to have voted in the negative unless they abstain from voting due to a conflict of interest (in which case, their abstention shall be deemed to be neither an affirmative nor a negative vote).

10. *Policies Regarding Dividends and Capital Structure of MEC*

- (a) Subject to the restrictions on the powers of the MEC Board provided in Section 8 and subject to the Alectra USA, the Shareholder expects that the MEC Board will establish policies to develop and maintain a financial and capitalization structure for MEC consistent with industry norms and sound financial principles and provide the City of Markham with regular dividend or interest payments consistent with the policies established pursuant to Subsection 10(b) of this Shareholder Declaration.
- (b) The MEC Board will present for the approval of the Shareholder:
 - (i) Dividends – a policy regarding the payment of dividends to the Shareholder; and
 - (ii) Capital Structure - a policy regarding the appropriate capital structure for MEC including plans for recapitalization of MEC using third party financing.

11. *Policies Regarding Dividends and Capital Structure of MDEI*

The Shareholder expects that the MDEI Board will establish policies to develop and maintain a financial and capitalization structure and dividend policies for MDEI consistent with industry norms and sound financial principles and provide MEC with dividend or interest payments consistent with the policies established pursuant to Subsection 11(a) of this Shareholder Declaration-

- (a) The MDEI Board will present for the approval of MEC:
 - (i) Dividends – a policy regarding the payment of dividends to MEC; and
 - (ii) Capital Structure – a policy regarding the appropriate capital structure for MDEI.

12. *Shareholder Representative*

The Shareholder hereby designates the Mayor as the legal representative of the Shareholder (the “Shareholder Representative”) for purposes of communicating to the MEC Board or MDEI Board pursuant to Section 13, any direction, consent or approval required by this Shareholder Declaration or by the OBCA.

13. *Decisions of the Shareholder*

Directions, approvals or decisions of the Shareholder required pursuant to this Shareholder Declaration, the OBCA or the Alectra USA shall require a resolution or by-law of the Council passed at a meeting of Council.

14. *Matters Requiring Shareholder Approval*

Without Shareholder approval given in accordance with Section 13 of this Shareholder Declaration, neither MEC nor MDEI shall:

- (a) **Statutory Approval Rights**
 - (i) change the name of MEC or MDEI; add, change or remove any restriction on the business of MEC or MDEI; create new classes of shares; or in any other manner amend its articles of incorporation or make, amend or repeal any of its by-laws;
 - (ii) amalgamate with any other corporation(s) other than amalgamations which may, under the OBCA, be approved by a resolution of directors;
 - (iii) take or institute proceedings for any winding up, arrangement, or dissolution of MEC or MDEI;
 - (iv) apply to continue as a corporation under the laws of another jurisdiction; or
 - (v) sell, lease or exchange all or substantially all the property of MEC or MDEI other than in the ordinary course of business;
- (b) **Additional Approval Rights**
 - (i) issue, or enter into any agreement to issue, any shares of any class, or any securities convertible into any shares of any class, of MEC or MDEI;
 - (ii) with respect to Authorized Businesses, incur expenditures, make acquisitions, dispose of assets of MEC or MDEI, enter into strategic alliances or joint ventures which would involve expenditures or would involve an amount in an aggregate value equal to 25% or greater of the consolidated book value of the consolidated assets of MEC or MDEI, respectively, as reflected in the most recent audited financial statements of MEC or MDEI respectively;

- (iii) with respect to any new business, other than the Authorized Businesses, incur expenditures or make acquisitions, enter into strategic alliances or joint ventures having an aggregate value equal to 10% or greater of the consolidated book value of the consolidated assets of MEC, or MDEI respectively, as reflected in the most recent audited financial statements of MEC or MDEI respectively; or
- (iv) with respect to both new businesses and Authorized Businesses, enter into transactions which, on an annual cumulative basis, would involve expenditures or would involve an amount in an aggregate value equal to 25% or greater of the consolidated book value of the consolidated assets of MEC or MDEI respectively, as reflected in the most recent audited financial statements of MEC or MDEI respectively.

15. *Annual Shareholder Meeting*

(a) *Annual Shareholder Meeting – MEC*

- (i) the MEC Board shall call an annual shareholder meeting with the Shareholder (represented by Council) within six (6) months after the end of the fiscal year of MEC (but not later than fifteen (15) months after holding the last preceding annual meeting);
- (ii) the MEC Board Chair (or in the absence of the Chair, the Vice-Chair) shall act as chair of the annual shareholder meeting;
- (iii) Council shall consider candidates for the appointment of the auditors of MEC;
- (iv) Council shall receive the audited financial statements of MEC for the last completed fiscal year; and
- (iv) Council shall appoint the auditors for MEC and complete such other business as would normally be completed at an annual shareholder meeting under the OBCA.

(b) *Annual Shareholder Meeting – MDEI*

- (i) the MDEI Board shall call an annual shareholder meeting with MEC (represented by the MEC Board) within six (6) months after the end of the fiscal year of MDEI (but not later than fifteen (15) months after holding the last preceding annual meeting);
- (ii) the MDEI Board Chair (or in the absence of the Chair, the Vice-Chair) shall act as chair of the annual shareholder meeting;
- (iii) the MEC Board shall consider Independent Director candidates for the MDEI Board and the appointment of the auditors of MDEI;

- (iv) the MEC Board shall receive the audited financial statements of MDEI for the last completed fiscal year, and any further information respecting the financial position of MDEI and the results of its operations required by the MEC Board, including, without limitation, information respecting MDEI senior management remuneration; and
- (v) the MEC Board shall appoint the Independent Directors of the MDEI Board, appoint the auditors for MDEI and complete such other business as would normally be completed at an annual shareholder meeting under the OBCA.

16. *Reporting on Major Developments*

The MEC Board and the MDEI Board may from time to time report to the Shareholder on major business developments or materially adverse results as the MEC Board and the MDEI Board respectively, in their discretion, considers appropriate and such reports received may be considered by the Shareholder at an in camera meeting of Council.

17. *Confidentiality*

The Shareholder and the directors and officers of MEC and the directors and officers of MDEI (each a “Receiving Party”) shall ensure that no Confidential Information of the Shareholder or the Companies is disclosed or otherwise made available to any person, except to the extent that:

- (a) disclosure to a Receiving Party’s employees or agents is necessary for the performance of any Receiving Party’s duties and obligations under this Shareholder Declaration;
- (b) disclosure is required in the course of judicial proceedings or pursuant to law;
- (c) the Confidential Information becomes part of the public domain (other than through unauthorized disclosure by the Receiving Party); or
- (d) disclosure of Confidential Information is required by the Alectra USA.

18. *Revisions to this Declaration*

The Shareholder acknowledges that this Shareholder Declaration may be revised from time to time as circumstances may require, and that the Shareholder will consult with the MEC Board and the MDEI Board prior to completing any revisions and will promptly provide the MEC Board and the MDEI Board with copies of such revisions.

DATED and **EFFECTIVE** as the date set forth above.

**THE CORPORATION OF THE CITY OF
MARKHAM**

By: _____

Name: Frank Scarpitti
Title: Mayor

By: _____

Name: Kimberley Kitteringham
Title: City Clerk