



Report to: Council

Meeting Date: December 13, 2023

SUBJECT: Revisions to Second Revised and Restated Shareholder Declaration, 2007

PREPARED BY: Trinela Cane - Commissioner, Corporate Services
Claudia Storto - City Solicitor and Director, People Services

RECOMMENDATION:

- 1) THAT the report entitled “Revisions to Second Revised and Restated Shareholder Declaration, 2007” be received; and
- 2) THAT the Third Revised and Restated Shareholder Declaration attached as Appendix “A” be approved; and,
- 3) THAT the Mayor and City Clerk be authorized to execute the Third Revised and Restated Shareholder Declaration, in a form satisfactory to the City Solicitor; and,
- 4) 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 of the Third Revised and Restated Shareholder Declaration attached as Appendix “A”, which will replace the Second Revised and Restated Shareholder Declaration approved by Council in 2007.

BACKGROUND:

The City of Markham is the sole shareholder of Markham Enterprises Corporation (“MEC”). MEC is the sole shareholder of Markham District Energy Inc. (“MDEI”). MEC and MDEI are governed by the provisions of the Ontario *Business Corporations Act* (“OBCA”), their respective corporate by-laws, and the Second Revised and Restated Shareholder Declaration, 2007 (“Shareholder Declaration”) approved by the City of Markham / Council.

The Shareholder Declaration outlines the expectations of the City of Markham (as Shareholder of MEC) relating to the principles of governance and other fundamental principles and policies of MEC and its subsidiary (MDEI) and their activities.

The current version of the Shareholder Declaration was approved by Council in 2007, and has not be revised since that time. In the intervening period, there have been a number of changes related to the governance of MEC and MDEI which are not captured in the current version of the Shareholder Declaration.

MEC Officers and Legal Staff have undertaken a review and revision of the current version of the Shareholder Declaration, with a view to making those changes required to: reflect the current state regarding the governance of MEC and MDEI; clarify the obligations of MEC and MDEI under the OBCA and their corporate by-laws; and make “clean up” revisions to update terms, etc.

Input received from MEC and MDEI has been considered in the preparation of the attached “Third Revised and Restated Shareholder Declaration”.

OPTIONS/ DISCUSSION:

The attached Third Revised and Restated Shareholder Declaration (“Revised Shareholder Declaration”) revises the Second Revised and Restated Shareholder Declaration, 2007 in the following substantive ways:

- Revisions made to clarify that the City/Council (as Shareholder of MEC) has the authority to appoint a Chair and Vice-Chair(s) of the MEC Board (consistent with MEC By-Law No.1);
- Revisions made to clarify that each committee of the MEC Board will elect its own Chair (unless the MEC Board appoints the Chair) (consistent with MEC By-Law No.1);
- Revisions made to update the number of Independent Directors and Non-Independent Directors of the MDEI Board (as approved by Council), and clarify the recruitment process for MDEI Independent Directors;
- Revisions made to provide flexibility in the term length for MDEI Independent Director appointments (consistent with the OBCA);
- Revisions made to clarify the roles of the MDEI Board committees
- Revisions made to clarify that the MEC Board has the authority to appoint the MDEI Board Chair and Vice-Chair(s) (consistent with MDEI By-Law No.1);
- Revisions made to provide the MEC Board with the authority to appoint a Chair for each committee of the MDEI Board;
- Revisions made to clarify the procedure for board/committee tie votes: specifying that the Chair and Vice Chair are entitled to vote but not entitled to a second or Casting Vote to break a tie vote; specifying that if a Director abstains from voting, they will be deemed to have voted in the negative unless they abstain due to a conflict of interest; and adding a definition of “Casting Vote”;
- Revisions made to clarify the obligations of MEC and MDEI to hold an annual shareholder meeting (consistent with the OBCA); and
- Revisions made to enhance transparency regarding 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

The Revised Shareholder Declaration does not substantively revise the standards of governance, authorized business activities, general qualifications of Directors, capital structure policies, matters requiring Shareholder approval and other key provisions.

The Third Revised and Restated Shareholder Declaration was reviewed by the MEC Board of Directors on Dec. 11, 2023. MEC requested that the Revised Shareholder Declaration be forwarded to MDEI (Bruce Ander, MDEI President & CEO).

MEC requested that the Revised Shareholder Declaration be brought forward for Council approval on December 13, 2023.

Formal approval by Markham Council (as Shareholder) is required for implementation of the attached Third Revised and Restated Shareholder Declaration.

FINANCIAL CONSIDERATIONS

None.

HUMAN RESOURCES CONSIDERATIONS

Not applicable.

ALIGNMENT WITH STRATEGIC PRIORITIES:

Not applicable

BUSINESS UNITS CONSULTED AND AFFECTED:

Legal Services Department has been consulted in preparation of this report.

RECOMMENDED BY:

Trinela Cane
Commissioner, Corporate Services

Claudia Storto
City Solicitor and Director, People Services

ATTACHMENT:

Appendix "A" - Third Revised and Restated Shareholder Declaration