



Report to: Special Council

Meeting Date: March 22, 2024

SUBJECT: Revisions to the Third Revised and Restated Shareholder Declaration, 2023

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

RECOMMENDATION:

- 1) THAT the report entitled “Revisions to the “Third Revised and Restated Shareholder Declaration, 2023” be received;
- 2) THAT the Third Revised and Restated Shareholder Declaration, 2024 attached as Appendix A be approved;
- 3) THAT the Mayor and City Clerk be authorized to execute the Third Revised and Restated Shareholder Declaration, 2024 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 revisions to the Third Revised and Restated Shareholder Declaration, 2023.

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 Third Revised and Restated Shareholder Declaration, 2023 (“Shareholder Declaration”) approved by the City of Markham / Council on December 13, 2023.

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.

DISCUSSION:

The Shareholder Declaration includes provisions related to the governance of MDEI, including the number of independent Directors on the Board. MDEI currently has nine Board members, including five independent Director positions, of which two are vacant.

As a result of the recent independent Director recruitment process and the selection of four qualified candidates for approval by MEC, the Selection Committee has recommended that the number of MDEI independent Directors be increased from five to seven.

A change in the number of Directors appointed to the MDEI Board requires an amendment to the Third Revised & Restated Shareholder Declaration, 2023, and approval by Council.

The attached “Third Revised and Restated Shareholder Declaration, 2024” amends Section 9 of the Third Revised and Restated Shareholder Declaration, 2023 to increase the number of MDEI Independent Directors and provide more flexibility for MDEI Director appointments.

The proposed revision to increase the number of independent MDEI Directors appointed to the MDEI Board has been communicated to the MEC Board and the MDEI Board, as required by the Shareholder Declaration.

Formal approval by the City / Council is required for implementation of the “Third Revised and Restated Shareholder Declaration, 2024” attached as Appendix A.

FINANCIAL CONSIDERATIONS

The cost of having additional Directors will be paid by MDEI. This may have a small impact on dividends from MEC to the City.

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

ATTACHMENTS:

Appendix “A” - Third Revised and Restated Shareholder Declaration, 2024