

Committee of the Whole (2) Report

DATE: Tuesday, April 12, 2022

WARD(S): ALL

**TITLE: SIDE LETTER TO AMEND THE ALECTRA UNANIMOUS
SHAREHOLDERS' AGREEMENT**

FROM:

Wendy Law, Deputy City Manager, Legal and Administrative Services and City Solicitor
Michael Coroneos, Deputy City Manager, Corporate Services, City Treasurer and Chief
Financial Officer

ACTION: DECISION

Purpose

To seek Council's approval of changes to the Alectra Unanimous Shareholders' Agreement ("USA") through a Side Letter, as proposed by Alectra

Report Highlights

- In 2021, Alectra had proposed changes to the Unanimous Shareholders' Agreement to align with their Strategy 2.0, make changes to certain delegation of authority to the corporation and administrative amendments to update the agreement.
- 11 out of 15 shareholders and Principals of Alectra had approved the changes to the USA last year, including the City of Vaughan and Vaughan Holdings Inc. However, Markham and Hamilton and their respective holding companies did not approve.
- Since last year, Alectra has been negotiating with Markham and Hamilton, and they have agreed to a Side Letter that incorporates certain changes contained in the previously proposed USA amendment, together with some additional requirements.
- Similar to the previously proposed amendments to the USA, Alectra must obtain all the shareholders and the principals' approval. VHI is a shareholder of Alectra, while the City is one of the principals.

Recommendations

1. THAT the Mayor and Clerk be authorized to execute the Side Letter to the Shareholders' Agreement with Alectra Inc. dated January 1, 2019, as reflected in this report, and such other documentation as may be required, in a form satisfactory to Legal Services.
2. That the Deputy City Manager, Corporate Services, City Treasurer and Chief Financial Officer and the Deputy City Manager, Legal and Administrative Services and City Solicitor be authorized to approve such further non-material revisions to the Side Letter as they consider advisable, in the final form of the Side Letter to be executed by the Mayor and Clerk.

Background

Similar to other corporations, a Unanimous Shareholders Agreement governs the relationship between Alectra and its shareholders. The USA was first effective as of January 31, 2017 as a result of the merger that created Alectra. It was subsequently amended with amendments effective as of January 1, 2019.

VHI has 20.49% equity ownership of Alectra. The City is a Principal to Alectra.

On June 8, 2021, Council approved entering into the proposed Amended and Restated Shareholders' Agreement by Alectra. Such amendments were intended to provide greater flexibility to Alectra in pursuing investments and merger and acquisition transactions, increase alignment with its 2.0 strategy, and to remove restrictions related to subsidiaries.

All principals and shareholders also approved, with the exception of the City of Markham, Markham Enterprises Corporation, Hamilton Utilities Corporation and the City of Hamilton. Given that the proposed changes must be approved by all principals and shareholders, the Amended and Restated Shareholders' Agreement could not be signed.

As a result, Alectra engaged in discussions with Markham and Hamilton and they have now come to a Side Letter that would reflect the key provisions in the 2021 proposed Amended and Restated Shareholders' Agreement, with some additional provisions.

Previous Reports/Authority

[Special Council Report, Item 1 - June 8, 2018](#)

[Special Council Minutes, Minute No. 82 - June 8, 2018](#)

[Committee of the Whole Report, Item 20 - June 8, 2021](#)

[Special Council Minutes, Report 32, Item 20, Minute No. 78 - June 8, 2021](#)

Analysis and Options

The Board of Directors of Alectra is requesting amendments to the Alectra's USA through a Side Letter. Most of the substantive changes were previously approved by Council when it approved the Amended and Restated Shareholders' Agreement last year.

Main changes to the USA through the Side Letter are:

1. Remove restrictions related to subsidiaries which in effect will authorize the Alectra Board (rather than unanimous shareholders' approval) to make decisions with respect to their subsidiaries (e.g. changes to articles and bylaws, steps to wind-up, dissolve corporation)
2. Clarify that subsidiaries cannot do what Alectra's board is not authorized to do without 66.66% shareholders' approval (i.e. same approval limits).
3. Increase delegation of authority to Alectra's board for investments and M&A transactions, and making of loans or advances or giving of security while including an aggregate cap on investments on a three year rolling basis
4. Clarify that any mergers and acquisitions shall not result in adverse impact to Alectra's credit profile
5. Provide that no shareholder capital contribution may be required without 66.66% shareholders' approval
6. Include additional reporting requirements to Alectra's shareholders and principals on progress on the delivery of their strategic plan and other significant business transactions, as well as formalize the requirement for quarterly shareholders' meetings

In addition, the Side Letter is time limited. Four (4) years after it is fully executed, Alectra must initiate a thorough review and consultation process with shareholders and principals to determine the continuing applicability of the Side Letter and any other modifications to the USA to reflect the circumstances and business environment at that time. Within six (6) years of the date of the Side Letter, it must either be renewed or amended in writing by the shareholders and principals. Otherwise, the Side Letter expires, and all parties will revert to the term and conditions as set out in the current USA dated January 1, 2019.

Alectra has forwarded these changes to all principals and shareholders for their approval on or prior to April 28th, 2022. It is our understanding that all principals and shareholders are considering these changes at their respective council and board meetings. These changes are reviewed by Vaughan Holdings Inc. at its meeting on April 12, 2022.

Financial Impact

There is no direct financial impact to approving these changes to the Unanimous Shareholders' Agreement. Investments and M&A activities will not require capital calls from existing shareholder, but they could have an impact on the overall business performance of Alectra. The VHI Board and Officers will continue to receive updates on investments and M&A transactions as they occur with key performance updates provided through formal communications and presentations from the Alectra Board and Senior Management.

Broader Regional Impacts/Considerations

In order to amend the Unanimous Shareholders' Agreement through the Side Letter, agreement from each and every one of the shareholders and principals are required. It is our understanding that each shareholder and principal are taking this matter to their respective board and councils for review and approval. Given that there are a number of parties involved in the approval process, minor non-material changes may be required to put the principles of the amendments into effect. As such, it is recommended that staff be delegated the authority to approve such minor, non-material changes, in the final form of the agreement to be executed by the Mayor and the Clerk.

Conclusion

Alectra's Board of Directors has requested each shareholder and principal to approve a Side Letter that amends the USA. As a principal to Alectra, Council's approval is required before any changes can be made. These changes to the USA are intended to provide Alectra with greater flexibility in executing their Strategy 2.0 and managing their investment portfolio.

For more information, please contact:

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Attachments

N/A

Prepared by

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Michael Coroneos, Deputy City Manager, Corporate Services, City Treasurer and Chief Financial Officer

Approved by



Wendy Law
Deputy City Manager, Legal and
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Reviewed by



Nick Spensieri, City Manager



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